



TOWN OF PALM BEACH

Town Manager's Office

**TENTATIVE-
SUBJECT TO
REVISION**

TOWN COUNCIL MEETING

**TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD**

AGENDA

TUESDAY, JUNE 22, 2010

9:30 A.M.

For information regarding procedures for public participation at Town Council Meetings, please refer to the end of this agenda.

The progress of this meeting may be monitored by visiting the Town's website (www.townofpalmbeach.com) and selecting "Your Government" and then selecting "Live Meeting Audio". If you have questions regarding that feature, please contact the Office of Information Systems (561) 227-6315. The audio recording of the meeting will appear within 24 hours after the conclusion of the meeting under "Agendas, Minutes, and Audio."

No written materials received after 5:00 p.m. on the Thursday immediately prior to a monthly Town Council meeting will be included in the back-up binders distributed to the Mayor and Town Council in preparation for that meeting. Written materials received after 5:00 p.m. on Thursday will be separately distributed to the Mayor and Town Council; however, depending upon the length of the materials, the time of submittal, and other circumstances, the Mayor and Town Council may not be able to read and consider such late submittals prior to acting upon the policy matter(s) which they address.

- I. CALL TO ORDER AND ROLL CALL
- II. INVOCATION AND PLEDGE OF ALLEGIANCE

Post Office Box 2029 * 360 South County Road * Palm Beach, Florida 33480
Telephone (561) 838-5410 * Facsimile (561) 838-5411 * townmanager@townofpalmbeach.com

III. PRESENTATIONS

- A. Recognition of Town Hall Renovation Project and Expression of Appreciation to Hedrick Brothers Construction, Mark Marsh, The Preservation Foundation of Palm Beach, and Town Staff.
- B. Palm Beach Country Club Scholarship Presentations.
- C. Legislative Update Provided by Representative Mary Brandenburg.

IV. COMMENTS OF MAYOR JACK McDONALD

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

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

VII. APPROVAL OF AGENDA

VIII. CONSENT AGENDA

- A. MINUTES: MAY 11, 2010 Page 18
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING
- B. MINUTES: MAY 12, 2010 Page 38
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING
- C. Page 61
APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON MAY 26, 2010.
- D. RESOLUTIONS Page 80
 - 1. RESOLUTION NO. 60-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Expenditure of \$47,250 for the Purchase of One (1) 125-KW Baldor Standby Generator from Standby Systems, Inc., of Melbourne, Florida for the D-16 Pump Station via the Florida Sheriff's Association Contract No. 09-17-0908. [Jay Boodheshwar, Acting Director of Public Works]

2. RESOLUTION NO. 63-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a City/County Right-of-Way Agreement for Underground Conversions (WR# 3749484) with FPL 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] Page 84
3. RESOLUTION NO. 64-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Creation of an Additional 5 Foot Public Utility Easement Adjacent to the Existing 2.5 Foot Public Utility Easement in Peruvian Avenue Park in Conjunction with the Worth Avenue Improvement Project and Authorizing the Town Manager to Undertake All Lawful Actions Necessary to Effectuate the Same on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager] Page 101
4. RESOLUTION NO. 65-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Purchase Order to Kimley-Horn and Associates, Inc., for the A-7 Pump Station Improvements and In-line Booster Station, Establishing a Design Phase Budget of \$140,000 (from the Bond Proceeds Construction Fund) for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Improvements.
[Jay Boodheshwar, Acting Director of Public Works] Page 107
5. RESOLUTION NO. 67-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Expenditure of up to \$370,000 from the Bond Proceeds Construction Fund for the Purchase of Traffic Control and Video Detection Equipment from TPFL, Inc., and for the Installation of That Equipment.
[Jay Boodheshwar, Acting Director of Public Works] Page 110
6. RESOLUTION NO. 68-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Not-to-Exceed \$158,000 Contract to Applied Technology & Management, Inc., for the Annual 2010 Town-Wide Physical Monitoring Services. [Peter B. Elwell, Town Manager] Page 115

E. OTHER

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| 1. | Florida League of Cities 84 th Annual Conference-Authorization of Mayor and Town Council Attendance and Designation of Mayor Jack McDonald as the Town's Official Voting Delegate.
[Peter B. Elwell, Town Manager] | Page 120 |
| 2. | Consent for Distribution of Funding Through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program for FY 2011.
[Kirk W. Blouin, Police Chief] | Page 122 |
| 3. | Approval to Accept a Grant of up to \$60,000 from Palm Beach County for Communications Software that Improves the Efficiency of the Dispatch Process.
[William Amador, Fire-Rescue Chief] | Page 127 |
| 4. | Authorization to Approve Two Change Orders for the Replacement of Windows at the North Fire-Rescue Station, Increasing the Total Project Cost from \$202,625 to \$232,660.
[Jay Boodheshwar, Acting Director of Public Works] | Page 129 |
| 5. | Adoption of Revised Policy Regarding Vacant Storefronts.
[John S. Page, Director of Planning, Zoning, and Building] | Page 131 |

IX. COMMITTEE REPORTS

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| A. | Administrative and Personnel Committee Meeting of June 2, 2010.
[Richard M. Kleid, Town Council Member] | Page 136 |
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X. REGULAR AGENDA

A. Old Business

None

B. New Business

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| 1. | Proposed Charter Amendment Regarding Certain Landmark Properties. [John C. Randolph, Town Attorney] | Page 147 |
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| 2. | <u>RESOLUTION NO. 66-10</u> A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Execute a Not-to-Exceed \$205,000 Contract with Coastal Systems International, Inc., for Reach 8 Beach Restoration State and Federal Permitting. [Peter B. Elwell, Town Manager and Rob Weber, Coastal Coordinator] | Page 179 |
| 3. | Residents' Proposal to Rename the Par 3 Golf Course in Honor of Raymond Floyd. [Jay Boodheshwar, Director of Recreation] | Page 186 |
| 4. | County Budget Task Force Request for Town Council to Designate the Task Force's Mission as Fact Finding Only. [John C. Randolph, Town Attorney] | Page 192 |
| 5. | Street Signage and Pole Standards for Worth Avenue Project. [Thomas G. Bradford, Deputy Town Manager] | Page 210 |
| 6. | Consideration of Property Available for Purchase. | Page 224 |
| a. | 159 Australian Avenue.
[E. Anthony Hollis, Hollis Realty Group, Inc.] | |
| b. | 150 Australian Avenue.
[Sharon S. Kahle, Realtor/Associate, Jeffrey A. Cloninger and Associates, Inc.] | Page 232 |
| 7. | Matters Related to the Completion of the Town Hall Renovation. [Peter B. Elwell, Town Manager] | |
| a. | Opportunity to Convert the Area Between Town Hall and Memorial Fountain Park to Greenspace. | |
| b. | <u>RESOLUTION NO. 61-10</u> A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Request the Florida Department of Transportation ("FDOT") to Convey Surplus Property to the Town of Palm Beach ("Town") to be Utilized for the Public Purpose of Providing Park Facilities, Transportation Facilities, or Parking Facilities, Such Property Being Identified in the Legal Description and Sketch Attached to this Resolution Labeled Exhibit "A"; Providing An Effective Date; And For Other Purposes. | Page 236 |

- c. Review of Town Council Policy Prohibiting Board/Commission Member Participation in Town Meetings by Phone.

XI. ORDINANCES

A. Second Reading

None

B. First Reading

1. ORDINANCE NO. 11-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 1 of the Town Code of Ordinances Relating to General Provisions at Section 1-14 Relating to General Penalties; Amending Chapter 2 Relating to Administration, at Article III, Officers and Employees, Section 2-271; Amending Article IV, Boards and Commissions, Sections 2-326 and 2-334; Amending Article VI, Finance, Sections 2-491, 2-517, 2-518, 2-541, 2-542, 2-566 and 2-567; Deleting Article VII Relating to Issuance of Subpoenas in its Entirety; Amending Article VIII, Investment Policy, Section 2-604; Providing For Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager]

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2. ORDINANCE NO. 12-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 6 of the Town Code of Ordinances Relating to Alcoholic Beverages, at Article I, in General; Amending Section 6-3 Relating to Measurement of Distances; Amending Section 6-4 Relating to Distance Between Vendors at Subsection (e); Amending Section 6-8 Relating to Hours of Sale for Off Premises Consumption; Amending Article II, Adult Entertainment Code, Section 6-37 Relating to Application for License at Subsection (3); Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager]

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3. ORDINANCE NO. 13-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 10 of the Town Code of Ordinances Relating to Animals, at Article I, in General, Section 10-10 Relating to Temporary Permits; Amending Article II, Dogs and Cats, Section 10-41 Relating to Registration; Inoculation; Amending Section 10-43

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Relating to Running at Large Prohibited; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager]

4. ORDINANCE NO. 14-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 22, Businesses, Article III, Pugilistic Exhibits, at Section 22-94 Relating to Benefit Fights; Providing for Severability; Providing For Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager] Page 274
5. ORDINANCE NO. 15-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach by Rescinding Chapter 26, Cable Communications, in its Entirety; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager] Page 277
6. ORDINANCE NO. 16-10 An Ordinance of the Town Council of the Town Of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 30, Consistency and Concurrency Management System, at Section 30-36 Relating To Determination of Consistency; Section 30-73 Relating to Concurrency Determinations and The Development Approval Process; Section 30-76 Relating to Limitations and Expiration of Concurrency Determinations; Section 30-111 Relating to Transportation System; Section 30-112 Relating to Sanitary Sewer; Section 30-113 Relating to Solid Waste; Section 30-114 Relating to Drainage; Section 30-115, Relating To Potable Water; and Section 30-116 Relating To Recreation Open Space; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager] Page 280
7. ORDINANCE NO. 18-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 42, Environment; Article V, Noise; Section 42-199, Hours for Construction Work, So as to Modify the Definition of Construction Work by Deleting the Word "Major" and the Reference to the \$10,000 Permit Valuation; Amending Section 42-230, Lawn Maintenance Equipment Noise, by Deleting the Reference to "Major" Construction; and Further Amending Chapter 42 to Include a New Article VIII Relating to Page 292

Abandoned Real Property; Providing for Purpose and Intent; Providing for Definitions; Providing for Applicability; Providing for Registration of Abandoned Real Property; Providing for Maintenance Requirements; Providing for Security Requirements; Providing for Immunity of Enforcement Officer; Providing Additional Authority; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

[Thomas G. Bradford, Deputy Town Manager]

8. ORDINANCE NO. 19-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 50, Floods; Article II, Flood Damage Prevention; at Section 50-34, Objectives; at Section 50-35, Definitions; at Section 50-66, Designation of Building Official; at Section 50-67, Duties and Responsibilities of the Floodplain Administrator; at Section 50-68, Establishment of Development Permit; at Section 50-69, Variance Procedures; at Section 50-91, General Standards; and at Section 50-93, Standards for Subdivision Proposals; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager] Page 302
9. ORDINANCE NO. 20-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 62, Marine Structures; Article III, Bulkheads and Pierheads on Lake Worth; at Section 62-77 to Require Maintenance and Certification of All Bulkheads and Seawalls; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Thomas G. Bradford, Deputy Town Manager] Page 327
10. ORDINANCE NO. 21-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 74, Parks and Recreation; Article II, Beaches and Aquatic Activities; Section 74-162, Regulation of Fishing; and Amending Article III, Boats and Boating, by Deleting Sections 74-263 and 74-267 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] Page 331

11. ORDINANCE NO. 22-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 66 Natural Resource Protection; Article IV Vegetation; Division 4 Design Requirements; Section 66-286 Water Conserving Landscape Design; at Subsection (d) Irrigation Sectors, To Include A New Subsection (3) Providing For Regulations Regarding “Smart Irrigation Systems”; Providing a New Subsection 4 Relating To Applicability; Providing a New Subsection 5 Relating to Violations and Penalties; Providing for Severability; Providing For Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John S. Page, Director of Planning, Zoning, and Building]

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XII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours For Construction, at 214 Worth Avenue (Cartier) (Per Letter Dated June 3, 2010, From R & R Professional Services, Inc.).
2. Request for Waiver of Section 42-199, Hours For Construction, at 760 N. Ocean Blvd. (Palm Beach Country Club) (Per Letter Dated June 2, 2010, From Steven L. Bielsky).
3. Request for Waiver of Section 42-199, Hours For Construction, at 313 Royal Poinciana Way (TooJays) (Per E-Mail dated June 3, 2010, From Bonnie Kohulka).

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C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes
- a. SPECIAL EXCEPTION #6-2010 The application of Diane Wren, relative to property commonly known as **3000 S. Ocean Blvd., Unit PH6**; described as Bellaria Condominium Unit PH6, Phase South; located in the R-D(2) Zoning District. Request for Special Exception to add a 532 square foot roofed portion on the existing 5th floor patio. The height exception is required above three stories.
[Attorney: James R. Brindell, Esq.]

[ARCOM Recommendation: Approval of the Application Will Not Cause Negative Architectural Impacts Based on Option 1.]

Deferred from the May 12, 2010, Town Council Meeting (Special Circumstances).

- b. **VARIANCE #4-2010** The application of Robert T. Tomsich, relative to property commonly known as **151 Via Bellaria**; described as lengthy legal description on file; located in the R-A Zoning District. Request a variance to permit the construction of a new larger two-story open loggia to replace the existing two-story loggia, which will result in a lot coverage of 25.8% in lieu of the 24.9% existing and 25% maximum allowed.
[Attorney: M. Timothy Hanlon]
[ARCOM Recommendation: Defer to the June 23, 2010, ARCOM Meeting.]
Deferred from the May 12, 2010, Town Council Meeting (Special Circumstances).
Request for Deferral to the July 14, 2010, Town Council Meeting Per Letter Dated June 9, 2010, from M. Timothy Hanlon.

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- c. **MODIFIED SITE PLAN REVIEW #3-2010 WITH VARIANCE** The application of Mr. & Mrs. Adler, relative to property commonly known as **7 Sloan's Curve Drive**; described as lengthy legal description on file; located in the PUD-B Zoning District. Request for Site Plan Review to construct a 135 square foot infill addition on the front entry of an existing townhouse and a 49 square foot infill addition to the breakfast atrium and a 49 square foot infill addition to an upstairs bedroom. A Variance is requested to allow two small additions that will enclose the entry feature and an interior atrium thereby increasing the lot coverage to 42.1% in lieu of the 39.5% existing and the 35% maximum allowed in the PUD-B district. The proposed additions will modify a previously approved site plan in a PUD complying with Section 134-688 (b) of the Town's Zoning Code. [Attorney: Maura A. Ziska, Esq.]
[ARCOM Recommendation: Approval of the Variance Will Not Cause Negative Architectural Impacts. Carried 7-0.]
Deferred from the May 12, 2010, Town Council Meeting (Special Circumstances).

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2. New Business- Less Than 15 Minutes

- a. SPECIAL EXCEPTION #8-2010 The application of BB&T, relative to property commonly known as **125 Worth Avenue**; described as Lots 38 through 48, inclusive, Block 16, REVISED MAP OF ROYAL PARK ADDITION, according to the Plat thereof, recorded in Plat Book 4, Page 1, of the Public Records of Palm Beach County, Florida; located in the C-WA Zoning District. Request for Special Exception to allow a new Town-serving tenant bank (BB&T) to occupy the same 12,396 square feet that the current, Town-serving tenant bank (Colonial Bank) occupies. [Attorney: John C. Dotterer, Esq.]

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- b. SPECIAL EXCEPTION #11-2010 The application of Mary Mahoney, Retail Store, relative to property commonly known as **350 Worth Avenue**; described as lengthy legal description on file; located in the C-WA Zoning District. Request for Special Exception to relocate an existing retail store (Mary Mahoney) into a space with 3,909 square feet of gross leasable area. Since the proposed space is in excess of 2,000 sq. ft. of gross leasable area, the Applicant is required to obtain Town Council approval and a finding that the proposed use is town-serving. [Attorney: Maura A. Ziska, Esq.]
Request for Withdrawal Per Letter Dated June 7, 2010, From Maura Ziska.

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3. Old Business- More Than 15 Minutes

- a. SPECIAL EXCEPTION #3-2010 WITH SITE PLAN REVIEW AND VARIANCE The application of Roy Reeves, Restaurant Operator, relative to property commonly known as **219 Worth Avenue**; described as Lots 20, 21, 34 and 35, ROYAL PARK ADDITION, according to the Plat thereof, on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book, Page 1; located in the C-WA Zoning District. Request for Special Exception for a 4,075 square foot upscale American cuisine restaurant which includes site plan review to allow a new entry door and 36 outdoor seats on the proposed second floor patio within the proposed expansion area. The applicant is requesting umbrellas to cover the outdoor seating. The applicant also proposes to meet all conditions of approval which were granted to the previous restaurant applicant for this tenant

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space. The variance being requested is to eliminate the four additional off-street parking spaces required for the 74 proposed seats. [Attorney: Maura A. Ziska, Esq.]
Deferred from the April 14, 2010, and May 12, 2010, Town Council Meetings.

Request for Withdrawal Per Letter Dated June 14, 2010, From Maura A. Ziska.

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- b. **SITE PLAN REVIEW #4-2010 WITH SPECIAL EXCEPTION AND VARIANCES** The application of Publix Super Markets, Inc., relative to property commonly known as **265, 255, 235, 231 Sunset Avenue and 240 Sunrise Avenue**; described as lengthy legal description on file; located in the C-TS Zoning District. Request for a Site Plan Review and Special Exception to construct a 50,870 (43,360 gross leasable) square foot one story grocery store on 4.36 acres. The new store will provide 218 off street parking spaces. There is proposed to be an outdoor ATM and the grocery cart storage within the building. All of the proposed mechanical equipment will be contained within portions of the building and will not be seen on the roof. Part of the proposed design is to have two generators located within the southeast corner of the proposed store that will contain a 100 KW standby generator and a 500 KW main generator. There is proposed to be two loading areas within the loading dock on the east side of the building that will be screened. The proposed store will have a pharmacy, deli, bakery and a larger selection of food items and other products. Since the proposed grocery store is in excess of 2,000 square feet, the applicant is required to obtain Town Council approval of a special exception and a finding that the proposed use is Town serving. A Special Exception is being requested to have two illuminated monument signs at the northwest and southwest entrances to the west parking lot and one illuminated business identification sign on the west entrance of the building. The following variances are being requested to construct the proposed one story grocery store: (a) to allow a building length of 245 feet in lieu of the 150-foot maximum allowed; (b) to allow a front yard setback at the northwest corner of the proposed building of 10 feet in lieu of the 14 foot minimum required based on building height; (c) to allow a side yard setback for the proposed towers to be 10 feet in lieu of the 19-foot minimum required; (d) to allow two loading spaces in lieu of the three spaces required by code; (e) to allow the proposed building to be a

total square footage of 50,870 square feet in lieu of the 15,000 square foot maximum allowed; (f) to allow 8 towers in lieu of the two maximum allowed; (g) to allow the area of the 8 towers to be 12.2% of the gross floor area of the building in lieu of the 2% maximum allowed (h) to allow the parking lot light poles to be 23 feet in height in lieu of the 15-foot maximum allowed; (I) to allow the height of the proposed one story grocery store to be 22.66 feet in lieu of the 15-foot maximum allowed; (j) to allow the overall height of the proposed one story grocery store to be 37 feet in lieu of the 20-foot maximum allowed; (k) to allow a monument sign at the northwest entrance where no sign is allowed; (l) to allow a monument sign at the southwest entrance where no sign is allowed.

[Attorney: Maura A. Ziska, Esq.]

[ARCOM Recommendation: Defer to the June 23, 2010, ARCOM Meeting.]

Deferred from the May 12, 2010, Town Council Meeting (Special Circumstances).

Request for Deferral to the July 14, 2010, Town Council Meeting Per Letter Dated May 28, 2010, From Maura A. Ziska.

4. New Business- More Than 15 Minutes

- a. SPECIAL EXCEPTION #9-2010 The application of Mizner Inc., relative to property commonly known as **87 Via Mizner**; described as Unit Nos, C-106N, C-107N, C-108N, and C-111N in VIA MIZNER NORTH, A CONDOMINIUM according to the Declaration thereof recorded in Official Record Book 7069, Page 317, Public Records of Palm Beach County, Florida, together with the Patio area adjacent to and lying between said Units C-106N, C-107N and C-111N. (Additional Restaurant Space: Unit Nos. C-112N, C114N, and C-115N in VIA MIZNER NORTH, A CONDOMINIUM according to the Declaration thereof recorded in Official Record Book 7069, Page 317, Public Records of Palm Beach County, Florida; located in the C-TS Zoning District. Request for Special Exception to modify existing Special Exceptions (Nos. 5-89, 6-91 and 17-2005) to convert two retail stores containing a total of 1,265 square feet (previously Fiandaca and C. J. Laing and being Units C-112N, C-114N, and C-115N) to additional restaurant seating space with 18 additional seats. Applicant further requests authorization during periods of inclement weather to move 24 existing seats from the Via Mizner

courtyard into the converted space during the daytime and 42 existing seats from the courtyard into the converted space in the evenings. No variances are required for off street parking. Applicant further requests that the Town accept the documentation previously submitted by the Applicant and that submitted herewith as a final determination of Renato's town-serving status.

[Attorney: William W. Atterbury III, Esq.]

- b. SPECIAL EXCEPTION #10-2010 The application of Terry R. Taylor, relative to property commonly known as **780 South Ocean Boulevard**; described as lengthy legal description on file; located in the R-A Zoning District. Request for Special Exception to permit construction of a 114.2 foot tunnel for pedestrian access under South Ocean Boulevard to and from the beach parcel along the landmarked property. The applicant proposes to only close one lane of traffic at a time.

[Attorney: Peter S. Broberg, Esq.]

- c. VARIANCE #6-2010 The application of Bucephalos, LLC, relative to property commonly known as **310 Eden Road**; described as Lot 55 of EDEN PROPERTIES, an addition to the Town of Palm beach, Palm Beach County, Florida, according to the Plat thereof recorded in Plat Book 18, Page 49, of the Public Records of Palm beach County, Florida; located in the R-B Zoning District. Request for variance to allow the installation of a 4-foot high chain link fence which would be 8.66 feet in height (as measured from the neighbor's grade) in lieu of the 7 foot maximum allowed because of a significant change in the grade between the subject property and the neighbor to the east.

[Attorney: Maura A. Ziska, Esq.]

D. Other

None

XIII. ANY OTHER MATTERS

XIV. ADJOURNMENT

PLEASE TAKE NOTE:

- Note 1:** If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings. For such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
- Note 2:** Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.
- Note 3:** Items listed on the Consent Agenda will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that any item(s) be moved to the Regular Agenda and individually considered.
- Note 4:** A summary of the actions taken at Town Council meetings can be viewed on the Town's website after 5 p.m. on the Friday following the Town Council meeting.

PROCEDURES FOR PUBLIC PARTICIPATION

Citizens desiring to address the Town Council should proceed toward the public microphones when the applicable agenda item is being considered to enable the Town Council President to acknowledge you.

PUBLIC HEARINGS:

Any citizen is entitled to be heard on an official agenda item under the section entitled "Public Hearings," subject to the three minute limitation.

COMMUNICATIONS FROM CITIZENS:

Any citizen is entitled to be heard concerning any matter under the section entitled "Communications from Citizens," subject to the three minute limitation.

OTHER AGENDA ITEMS:

Any citizen is entitled to be heard on any official agenda item when the Town Council calls for public comments, subject to the three minute limitation.

Town Council Meetings are public business meetings and, as such, the Town Council retains the right to limit discussion on any issue.

Town of Palm Beach Meeting Schedule

6/17/10

Mon 06/21/2010 09:30 AM	Special Town Council Meeting Regarding Budget	Council Chambers
Tue 06/22/2010 09:30 AM	Town Council Meeting (Regular Town Business and Development Review Items)	Council Chambers
Tue 06/22/2010 01:00 PM	IAFF Negotiations	South Fire Station
Wed 06/23/2010 09:00 AM	Architectural Commission (ARCOM) Meeting	Council Chambers
Wed 06/23/2010 09:00 AM	FOP Negotiations	Chambers Conference Room
Wed 06/23/2010 01:30 PM	County Budget Task Force	EOC
Thu 06/24/2010 09:00 AM	Shore Protection Board Meeting	Council Chambers
Tue 06/29/2010 09:00 AM	Selection Committee Meeting - Audit Services	Council Chambers
Wed 06/30/2010 09:00 AM	Ordinances, Rules, and Standards Committee Meeting	Council Chambers
Mon 07/05/2010 04:00 AM	INDEPENDENCE DAY (Observed)	TOWN HALL CLOSED
Tue 07/13/2010 09:30 AM	Town Council Meeting	Council Chambers
Wed 07/14/2010 09:30 AM	Town Council Meeting (Development Review)	Council Chambers
Thu 07/15/2010 02:00 PM	Code Enforcement Board Meeting	Council Chambers

Tue 07/20/2010 09:30 AM	Planning & Zoning Commission Meeting	Council Chambers
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Wed 07/21/2010 09:30 AM	Landmarks Preservation Commission Meeting	Council Chambers
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Wed 07/28/2010 09:00 AM	Architectural Commission (ARCOM) Meeting	Council Chambers
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Tue 08/10/2010 09:30 AM	Town Council Meeting	Council Chambers
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Wed 08/11/2010 09:30 AM	Town Council Meeting (Development Review)	Council Chambers
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TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Consent Agenda

Agenda Title

Approval of the Minutes of the May 11, 2010 Regular Town Council Meeting

Presenter

Joanna Cunningham, Town Clerk

Supporting Documents

- Minutes of the May 11, 2010 Regular Town Council Meeting

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON TUESDAY, MAY 11, 2010**

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order on Tuesday, May 11, 2010, at 9:30 a.m., at 355 S. County Road, Palm Beach, Florida 33480, in the Central Fire Station, in the Emergency Operations Center (EOC). On roll call, all elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Stuart Shulman, Recreation Advisory Commission, From April 2004 Through April 2010.

Following Dr. Coffield, Mayor McDonald recognized Stuart Shulman and presented a plaque to him for his service.

B. Recognition of Timothy G. Coffield, Recreation Advisory Commission, From April 2003 Through April 2010.

Mayor McDonald recognized Dr. Coffield first as he had seniority on the Recreation Advisory Commission and presented him with a plaque for his service.

C. Presentation of Palm Beach Day Academy Scholarship to the Child of a Town Employee. [Dr. Becky van der Bogert, Palm Beach Day Academy]

Dr. Rebecca van der Bogert presented a full scholarship to a Town of Palm Beach employee's child, Christina Caristo.

IV. COMMENTS OF MAYOR JACK McDONALD

Mayor McDonald indicated that he would reserve his comments until the appropriate time on the Agenda.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Pro Tem Coniglio commented on several of the following issues:

- Acknowledgement of the Palm Beach Citizens' Association for their efforts to cultivate relationships with the Palm Beach County Board of Commissioners and representatives Senator Atwater and Congressman Klein
- County Commissioner Karen Marcus was setting up a meeting with Town staff and Mrs. Coniglio to discuss Town efforts with the U.S. Army Corps of Engineers (USACE) representatives, dealing with the Port of Palm Beach expansion, and the Sand Transfer Plant.
- County Commissioner Marcus spoke at length regarding an update on the oil spill, emergency measures that the County was enacting, including a forum with subcommittees that included the Town of Palm Beach, as it is an inlet district.
- Palm Beach County Director of Environmental Resources Management Vince Benevento commended Town Manager Peter Elwell, Coastal Coordinator Rob Weber and Emergency Management Coordinator Mike Galvin for their pro-active efforts in emergency measures.
- Mr. Benevento congratulated Coastal Coordinator Robert Weber for contacting the Florida Department of Environmental Protection (FDEP), who will conduct monitoring prior to any possible damage, in order to establish a baseline for response and compensation if needed.

Council Member Kleid reiterated what President Pro Tem Coniglio stated above, and that most of the Town Council was at the Palm Beach Citizens' Association cocktail party and all had an opportunity to talk with several County Commissioners, School Board Members, and candidates for both the Commission and School Board. He noted that the attending County Commissioners were conciliatory and wanted to have a dialogue with the Town. He suggested hosting a workshop to invite County Commissioners and School Board Members to a Sunshine meeting, to discuss common problems.

Town Manager Elwell noted that there was an addition to the Agenda. In last month's action regarding the two coastal matters the budget amendment necessary to fund them was overlooked. A resolution would need to be adopted for each of the two pieces of work, one related to the groins and the other to the sand search. He apologized that it was not on the Agenda, but the action was needed today in order to keep the efforts moving.

1 Mr. Elwell also indicated that this was the last month that Town Council would be meeting in the
2 Emergency Operations Center (EOC) for the Town Council meetings. The June Town Council
3 meetings will be held in the Town Council Chambers as the Town Hall renovation will be
4 completed.
5

6 Mr. Elwell also announced that the June Town Council Meeting will be held on Monday, June
7 21st and Tuesday, June 22nd, rather than the usual second Tuesday and the following day. He
8 added that the Boards and Commissions will continue to meet at the EOC until June 22nd; after
9 June 22nd, they will meet in the Chambers.
10

11 President Rosow indicated there was a letter to the editor of the local newspaper by Wendy
12 Victor regarding the civility of anonymous blogs to various stories. He agreed with her and
13 contacted Joyce Reingold regarding abuse of a comment on a story and it was removed. He
14 wanted to encourage everyone to express their opinion but not to do so behind anonymity.
15

16 President Pro Tem Coniglio commented that the golden rule should be used as a benchmark and
17 that negative comments could be made while maintaining dignity.
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19

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

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

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21 Mrs. McNamara, 422 N. Lakeside Drive, Lake Worth, commented regarding the Royal
22 Poinciana Theater.
23

24 Several of the Town Council Members and Mr. Elwell responded to Mrs. McNamara's
25 comments
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27 Connie Gasquez, 167 Root Trail, commented regarding Steven White's involvement in Reaches
28 3 and 4, and the Mid-Town 2006 Beach Renourishment.
29

30 Eric Gilberston, 151 Chilean Avenue, commented regarding a conspiracy against him by a
31 former property appraiser, Rebecca Walker, and provided a copy of notes by her for the record.
32

33 Laurence McNamara, 422 N. Lakeside Drive, Lake Worth, Treasurer of Preserve Palm Beach,
34 commented regarding the 1979 Agreement and the Royal Poinciana Theater. He submitted a
35 copy of the certified petition into the record.
36

37 Council Member Kleid responded to Mr. McNamara's comments.
38

39 Leslie Evans, 135 Seminole Avenue, spoke regarding comments made by non-residents of Palm
40 Beach and collecting signatures involving the Town.
41

1 President Rosow indicated that according to Florida State Law, the Council was required to hear
2 from any citizen irrespective of where they live.

3
4 Patrick Flynn, President of Palm Beach Theater Guild, 2600 N Flagler Drive, commented
5 regarding the collection of 817 Palm Beach voters' signatures for a second referendum regarding
6 the Theater.

7
8 **VII. APPROVAL OF AGENDA**

9 Council Member Diamond pulled Item VIII.E.1., Receipt of Comcast 2010 Rate Filings and
10 Proposed Rate Order.

11
12 The following changes were made to the Agenda:

13
14 **MOVED:** Item VIII.E.1., Receipt of Comcast 2010 Rate Filings and Proposed Rate Order
15 was pulled from the Consent Agenda and MOVED to Item XI.B.8.

16
17 **ADDED:** Item XII.A.2., Resolution No. 57-10

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19 **ADDED:** Item XII.A.3., Resolution No. 58-10

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21 **Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond, to**
22 **approve the Agenda as amended. On roll call, the motion carried unanimously.**

23
24 **VIII. CONSENT AGENDA**

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26 **Motion made by President Pro Tem Coniglio, seconded by Council Member Kleid, to**
27 **approve the Consent Agenda as amended. On roll call, the motion carried unanimously.**

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29 A. MINUTES: APRIL 13, 2010 APPROVAL OF THE MINUTES OF THE TOWN
COUNCIL MEETING

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31 B. MINUTES: APRIL 14, 2010 APPROVAL OF THE MINUTES OF THE TOWN
COUNCIL MEETING

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33 C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL
COMMISSION AT ITS MEETING ON APRIL 28, 2010.

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35 D. RESOLUTIONS

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37 1. RESOLUTION NO. 52-10 A Resolution of the Town Council of the Town of Palm Beach,
Palm Beach County, Florida, Authorizing the Purchase of a Complete Weapons System
from B&H Gunrack, Inc., for the Police Department, Sealed Bid 2010-12. [Kirk W. Blouin,

Police Chief]

E. OTHER

1. Receipt of Comcast 2010 Rate Filings and Proposed Rate Order. [Thomas G. Bradford, Deputy Town Manager]

Council Member Diamond pulled this item, VIII.E.1. Receipt of Comcast 2010 Rate Filings and Proposed Rate Order from the Consent Agenda for discussion.

2. Approval of Request from the City of West Palm Beach for Town Sponsorship of the City's Fourth on Flagler Event. [Thomas G. Bradford, Deputy Town Manager]
3. Approval of a New One-Year Lease Agreement Between the Town and Rosarian Academy for the Use of Town Property in Downtown West Palm Beach for Physical Education Programs. [Thomas G. Bradford, Deputy Town Manager]
4. Approval of Banking Services Selection Committee. [Jane Struder, Director of Finance]
5. Authorization to Accept Assistance to Firefighters Grant in the Amount of \$218,000 for the Purchase of a Mobile Training Tower. [William Amador, Fire-Rescue Chief]

IX. COMMITTEE REPORTS

- A. Water Committee Meeting of April 26, 2010. [David A. Rosow, Town Council President]

Council President Rosow provided the Water Committee Report. He recommended to the Town Council that they approve of the City of West Palm Beach's proposed water plan, as they have made great strides and provided an excellent report. He discussed the new billing software, and the Civic Association also made a presentation about the smart irrigation systems. He also mentioned that Denis Coleman, an ex-officio member of the panel, felt the Town should take over the program to manage water consumption.

Town Manager Elwell and City of West Palm Beach Assistant City Administrator Eduardo Balbis were directed to come up with a plan on how to manage the program. When that recommendation is ready, it will come back to the Town Council.

The Committee also discussed ordinances with respect to water conservation. Council Member Diamond had suggested a new ordinance to require smart irrigation systems on new construction and any re-model over 50%.

There was discussion about water usage and the creation of a subsidiary water advisory board to monitor what the City is doing.

Council President Pro Tem Coniglio congratulated the Water Committee on all its hard work, since she is the new member. She felt that the residents do need to be responsible with water consumption. The point was conveyed to Mr. Balbis that if the Town reduces its usage, it should not be penalized. Town Manager Elwell indicated that the Town of Palm Beach accounts for 30% of the revenue stream for West Palm Beach but was uncertain of the percentage of water usage of the system. Council Member Wildrick asked about water trends based on the past ten years.

Motion to accept the Water Committee Report of April 26, 2010 was made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the motion carried unanimously.

Motion to direct staff to develop an Ordinance for first reading requiring smart irrigation systems on new construction made by Council Member Diamond, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

B. Ordinances, Rules, and Standards Committee Meeting of April 29, 2010. [William J. Diamond, Town Council Member]

Council Member Diamond presented the ORS report.

He highlighted the main proposed changes:

- Decided not to recommend any changes in the closing hours of entertainment establishments
- The Town will propose a 75 decibels noise limit on lawn maintenance equipment.
- Eliminated the word “secretary” from the Boards and Commissions Code
- Eliminated the limitation of selling alcohol during Sunday mornings and increased by an hour each week day
- Discussed letter from Former Mayor “Deedy” Marix regarding telephone participation at meetings in the new chambers

Council President Pro Tem Coniglio had comments about the minutes in the Report, and asked that in the future, more detailed information be presented. It was requested of staff that when the actual Ordinances are brought forth to the Town Council, a black-lined version be provided. Staff was also directed to add a one sentence bullet on the actual change being proposed or accepted.

Council President Pro Tem Coniglio also in addition to Publix only selling beer and wine, wondered if the ordinance should address hard liquor sales as well. Town Manager Elwell indicated he did not know what the State Law said. It could be researched and reviewed at the next ORS meeting.

Town Manager Elwell addressed the concerns with the minutes and noted that the back-up and staff recommendations are linked to the minutes and agenda. By the time the actual proposed ordinance would be brought forth to the Town Council, Town Manager Elwell indicated that each item would have proper back-up for discussion and have attention to detail.

Council President Pro Tem Coniglio commended Deputy Town Manager Tom Bradford for all of his leadership and Council Member Diamond commended Town Attorney Randolph for all of his hard work.

Motion to accept the ORS report of April 29, 2010, made by Council Member Diamond, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

C. Administrative and Personnel Committee Meeting of May 4, 2010, and May 5, 2010.
[Richard M. Kleid, Town Council Member]

Council Member Kleid presented the Administrative and Personnel Committee Report regarding the two-day hearing of Keith Munyan.

He noted that the Committee agreed on many findings but disagreed on the punishment. He proposed the two recommendations from the Committee for the Town Council to consider:

- Allow the termination to stand but allow Mr. Keith Munyan to resign after the date his pension vested and sign an agreement of no lawsuits against any Town employee, Department of the Town or the Town.
- Terminate Mr. Munyan.

Council President Rosow explained his recommendation for termination. He cited:

- Mr. Munyan made comments based upon serious infractions (molestation of a minor).
- The possession of several driver licenses and ID cards
- The obscene note that was a part of a screenplay and he was appalled that it was available for others to see. It was so obnoxious and filthy; he was appalled that it was created by an employee.
- Threats against employees of the Police Department to be “taken down one by one”
- Despite the stress of an investigation, a police officer who carries a weapon, was trained to hold emotions in check, and demonstrated an unstable side.
- All of the evidence together justified the termination.

Council Member Kleid commented by saying that the original complaint allegation of sexual misconduct of a minor was unfounded and the comments about the screenplay were previously ruled unfounded. He was concerned about the cascading events. There was mitigation for prior incidents and he did not agree with Committee Member Rosow. He noted that anyone who was

1 accused of misconduct of a minor certainly could cause unbearable stress on a person. He added
2 that the termination was justified but he asked that the fellow Council Members think of
3 consequences of their action. If Mr. Munyan was terminated, there was no doubt he would ever
4 be able to work a job in law enforcement again and his future employment at any job would be
5 jeopardized.

6
7 Council Member Kleid quoted John Milton's book *Paradise Lost* "that one should temper justice
8 with mercy" and that is what he asked the Town Council to do. Council President Rosow said the
9 obscene note was unfounded because the note was not directed at the supervisor.

10
11 Eugene Gibbons, attorney for Mr. Munyan, noted that Council Member Kleid had recommended
12 discipline but not termination. Something less or lesser punishment should be given. He
13 advocated for his client to be permitted to collect his pension and give him his job back. He
14 asked that the Town Council have compassion and reminded them that the initial investigation
15 charge was unfounded. He stated that Mr. Munyan had been promoted to Sergeant and was a
16 good officer.

17
18 Council Member Diamond stated that he questioned the timing since Mr. Munyan was eighteen
19 days from being vested. Police Chief Kirk Blouin responded that the timing was of no
20 consideration when he took the termination action. It was a matter of when the investigation
21 ended, and it had been delayed due to Mr. Munyan being on FMLA. Council Member Diamond
22 supported the decision of the Police Chief.

23
24 Council Member Wildrick noted that he had read the 500+ pages of transcript and listened to the
25 hearings and spent the entire weekend reading the report. He felt that the termination should
26 stand due to:

- 27
- 28 • Mr. Munyan made the statements to another officer that started the discussion of sexual
- 29 misconducts
- 30 • Threats to another individual are unacceptable, particularly by a trained person who
- 31 carries a gun.
- 32 • Lying on an application was wrong and asked what else he would lie about.
- 33 • Withholding of evidence was wrong.
- 34 • The disgusting comments and the pattern of profane comments towards co-workers were
- 35 unprofessional and unacceptable.
- 36 • A Police Officer must be above reproach.
- 37 • The argument that he was a good officer because he was promoted was a phony
- 38 argument- he said to look at Bank Presidents who have failed and are now in jail.
- 39

40 Council Member Wildrick felt the dismissal should be upheld. No gift or reward for bad
41 behavior should be tolerated. It would send the wrong messages to Town employees by saying
42 that bad behavior is rewarded and a department head is not the final authority. The Town
43 Council should support the decision of the Police Chief. He commended Police Chief Blouin for
44 maintaining integrity and courage within the department, as well as the employees that testified
45 against Mr. Munyan. He felt those employees should be recognized for their integrity and

1 honesty. He asked to make a motion at the appropriate time to commend the employees in the
2 investigation for their honesty and integrity.

3
4 Council President Pro Tem Coniglio said the decision was going to be difficult. Her sense as a
5 mother and having read the transcript, she believed that Mr. Munyan did violate the employee
6 manual and had wrongdoings. She proposed a third option, which was resignation without
7 pension and release on litigation. She did not want him to be prevented from making a living.
8 However, she was not comfortable with him serving as a law enforcement officer.

9
10 She supported the leadership of Chief Blouin and felt it must be upheld. Council Member Kleid
11 said if he saw more support to submit a resignation in lieu of termination but no pension, he
12 would change his recommendation. Mayor McDonald clarified that Chief Blouin terminated Mr.
13 Munyan on a date specific. Police Chief Kirk Blouin stated that his role within town policy was
14 to conduct the investigation and decide the discipline. The facts in the investigative report led to
15 his decision to terminate Mr. Munyan. It was not within his authority to make a determination on
16 pension vestment.

17
18 **Motion was made by Council Member Diamond, that the Town Council support, based on**
19 **all of the evidence presented to the Administrative and Personnel Committee, the decision**
20 **made by Police Chief Kirk Blouin to terminate Mr. Keith Munyan's employment from the**
21 **Town of Palm Beach. The motion was seconded by Council Member Wildrick.**

22
23 Mayor McDonald said he was not at the hearings, but conveyed a story about the eagle and the
24 dove and the conflicting roles they have. He made comments that we start adult life and have an
25 eagle and a dove. The eagle is strong and decisive while the dove is peaceful and nurturing. As
26 adults they merge into one and are compassionate and fearless. The Mayor noted that a
27 termination would prohibit him from employment in law enforcement and would be correct, but
28 would also destroy Mr. Munyan's life in the future. He agreed with the termination but taking his
29 pension as well was too much.

30
31 **On roll call, the motion carried 4-1, with Council Member Kleid dissenting.**

32
33 Council Member Wildrick stated that the Mayor was being overly dramatic. In his private career,
34 any one of the offenses was enough to terminate Mr. Munyan. He destroyed his own life by not
35 following the rules and regulations that he was well aware of. The Town has a fiduciary
36 responsibility to protect the taxpayer. If the Mayor felt so strongly, he should wisely create a
37 foundation, take collections and provide Mr. Munyan with additional income. Council Member
38 Wildrick added that they should not use tax dollars and have someone who violates the rules, and
39 then reward them for the next thirty or more years with a pension. People with this history of
40 action throughout the years, are a disservice and Mr. Munyan finally got caught. He strongly
41 disagreed with Mayor McDonald.

42
43 Mayor McDonald responded by asking Council Member Wildrick if he recalled the last time the
44 Town terminated an employee and allowed vesting. Council Member Wildrick said he
45 remembered it, but he was not on the Town Council at that time.

X. BOARD/COMMISSION ANNUAL REPORT

A. Code Enforcement Board. [Timothy Hoffman, Chair and Kirk W. Blouin, Police Chief]

Annual Town Council Code Presentation 2010

Mr. Hoffman, Chairman of the Code Enforcement Board, provided an update to the Town Council. Captain John Maio, Support Services, provided a snapshot of Code Enforcement in a Power Point Presentation. A copy was submitted into the record.

Council Member Diamond asked about unpaid fines. Captain Maio and Police Chief Blouin responded that collection agencies are used and liens placed on properties. **Council Member Diamond asked that an agenda item be added to the next Ordinances Rules & Standards Committee agenda to discuss collection remedies for unpaid fines for non-property owners.**

Council Member Kleid queried whether we have restrictions on building contractors and landscape contractors working in the Town who continually violate our rules and he was advised that the Town did have such contractors.

Council Member Wildrick praised the Code Enforcement department. He commented that the code enforcement function is what keeps getting better in the community and the staff uses excellent judgment, they work with citizen, and that was how things should be run. He noted that the Police Department was doing well and he congratulated all of them.

Council President Pro Tem Coniglio stated that the revenue has been reduced because code enforcement was doing such a good job. She informed the public that the ORS Committee has taken action regarding abandoned properties. There will be a new ordinance to give the Town additional options for compliance on foreclosed properties. Town Attorney Randolph said that the Town Manager could exercise judgment and order that a property be cleaned up by the Town, after notifying the homeowner, and the costs charged to the homeowner. Florida Law prohibits the foreclosure of a homesteaded property.

Motion to accept the Code Enforcement Board Report made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the motion carried unanimously.

Motion made by Council Member Wildrick, seconded by Council Member Diamond, to have the Town Manager place commendations in the permanent files of the Police Chief, the Captains, the Sergeants, police officers and employee involved in the disciplinary hearings, because the integrity within the Police Department was extremely high and the courage to take on the investigation of a co-worker was exemplary and showed the willingness to do the right thing in a very tough situation showed the high caliber of people

1 **that the Town was blessed with. On roll call, the motion passed 4-1, with Council Member**
2 **Kleid dissenting.**

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4 Town Manager Elwell would consult with Police Chief Blouin to determine the appropriate
5 recipients.
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XI. REGULAR AGENDA

A. Old Business

1. Casa Bendita Gazebo-Potential Reconstruction or Demolition. [Jay Boodheshwar, Acting Director of Public Works]

Jay Boodheshwar, Acting Public Works Director, announced this item was deferred from last month. They have not received any correspondence from the neighbors that have an interest in the decision. The Preservation Foundation had comments. The Town owns the gazebo but it is in poor condition and needs renovation. The original offer from a donor to assist with the renovation had been withdrawn. Acting Director Boodheshwar noted there were no funds in the budget for the renovation and the Landmarks Commission did not feel it was worthy of landmarking.

Council President Pro Tem Coniglio felt more time was needed and wanted to delay the decision. The gazebo was not visible from the road but she did not want to lose it. It was a small piece of history in Palm Beach. Council Member Diamond asked the cost of demolition and was informed that it would likely be less than \$15,000. He was opposed to spending more money for the restoration of the structure.

Motion made by Council Member Wildrick, seconded by Council Member Kleid to defer the item until the October Town Council Meeting to allow the residents and the Preservation Foundation to secure funding for the maintenance and rehabilitation of the gazebo.

John Mashek, Preservation Foundation, felt strongly that the gazebo was a worthy piece of architecture that needed to be saved. He stated that the neighbors received notices from the Town on April 12th and most have left for the summer. He asked if the Town Council would defer the item until the fall when the residents return. He noted that there currently was no irrigation and to renovate it, they should do everything properly. The neighbors want to save it.

Council President Rosow asked if the gazebo posed a hurricane hazard. Town Manager Elwell said it was a legitimate concern and the degree of hazard would depend upon the severity of the storm. The rehabilitation would occur in the summer. Mayor McDonald asked the Town Attorney if the gazebo was on Town right of way and it was.

On roll call, the motion carried unanimously.

2. RESOLUTION NO. 55-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for the Appointment of a County Budget Task Force to Review the Palm Beach County Budget for the 2010/2011 Fiscal Year; to Encourage Fiscal Responsibility by County Officials; and to Make Recommendations to the Town Council; Providing an Effective Date. [Peter B. Elwell, Town Manager]

Town Attorney Randolph read Resolution 55-10 by title, as printed above.

Council President Pro Tem Coniglio received a letter from Bruce McAllister regarding the process. There was lengthy discussion among the Council members regarding the Sunshine laws and if this was strictly a fact-finding group working outside of public meetings. Town Attorney John Randolph opined that the task force's fact-digging can occur outside of the Sunshine law, but said that any recommendations or conclusions reached by the body should occur in a public meeting

Deputy Town Manager Tom Bradford was directed to provide leadership and staff support to the task force which would be headed by Mayor Jack McDonald. In addition to Mayor McDonald, the task force would have six members, one of whom was appointed by the Mayor, and the remainder would be appointed by the Town Council.

Council Members Richard Kleid and Gail Coniglio said town residents wanted the council to become more proactive about addressing the county tax and budget issue. Councilman Robert Wildrick said the town must persuade its various groups to come together and speak to the county with a common voice. In the past, there had been too many groups and individuals asking for different things. He suggested, instead of trying to cut the budget, they should try to obtain more services. He gave the analogy of using a shotgun and a rifle. You need to take aim, but you will reach the target better if you are more focused.

Lewis Crampton, S. Ocean Blvd., offered his thoughts on hiring a professional to conduct studies and collect information.

Mayor McDonald appointed Tim Moran to the board after Council Member Wildrick declined to serve. Town Attorney Randolph read the language in the body of the Resolution that needed to be changed and instructed the Council that they could still vote on it as amended, as the title had not changed. The new language was:

Section 2. The County Budget Task Force shall consist of not more than seven (7) members. The Mayor shall serve as a member and Chair of the Task Force and shall appoint an additional member. The remaining five (5) members shall be appointed by the Town Council. Appointees are required to be registered electors in the Town.

Motion to approve Resolution No. 55-10 as amended made by Council Member Diamond, Seconded by Council Member Kleid. On roll call, the motion carried unanimously.

B. New Business

1. Comprehensive Annual Financial Report for FY2009. [Jane Struder, Director of Finance]

Jane Struder, Finance Director introduced Mr. Mark Vale, presented the report and sought direction on the financial annual report. Mark Vale, Auditor from Caler, Donten, Levine, Porter & Vale, P.A. provided a brief report for FY 2009. After that, Ms. Struder sought acceptance of the financial report for FY 2009, and also sought direction on printing of the Annual Financial Report.

Mr. Vale noted that the CAFR is divided into four sections and he briefly reviewed each section:

- Introductory Section
- Financial Section
- Statistical Section
- Compliance Section

Council President Rosow asked about the Governmental Activities- Internal Service Funds (page 22 of CAFR) for insurance and claims. He thought that the cost of \$5,394,203 was excessive. He was informed that this line item included property and casualty risk, health insurance risk and the equipment replacement fund. Council President Rosow indicated that per employee that worked out to \$13,500 per employee. Town Manager Elwell indicated that was incorrect because it was a combination of the different types of insurance, not all of it was health related and include retirees. Town Manager Elwell indicated that there would be a better breakdown when they go through the budget process. They also discussed the contracts without bids.

Council President Rosow asked why the auditors did not catch the recent deception by a Town employee. Mr. Vale responded that they make sure the auditing policies are followed. He noted that those instances where contracts were awarded, Resolutions were approved by the Town Council. What they would not see was the kickback. He advised that you would not have detected that in the control process.

Council President Pro Tem Coniglio was concerned with the management letter and what actions were being taken to prevent the following from occurring next year:

- Internal control over financial reporting
- Grant Awards and the tracking of funds
- Recording purchases of Inventory and supplies
- Purchasing requirements for Construction projects
- Performance Bonds

Council President Pro Tem Coniglio noted she was appreciative of the efforts of Director Struder and Town Manager Elwell for keeping the AAA bond rating, and financial health of the Town top quality. Finance Director Struder responded with changes in tracking software, EDEN upgrades, but she also noted that her department is currently short-staffed.

Council Member Wildrick stated as a point of information, that there were approximately four different auditing procedures going on right now: police dept forensic audit, internal, forensic audit by Crowe Horwath for policies and how they relate and thirdly ongoing internal audit function. Report forthcoming. It identifies problems but also solutions.

Motion to accept the FY 2009 CAFR made by Council Member Diamond, seconded by Council president Pro Tem Coniglio. On roll call, the motion carried unanimously.

With regard to the printing of the Annual Report, Finance Director Struder advised the Town Council it would cost approximately \$9,000.00 to print and distribute. The Consensus of the Town Council was not to print it but to provide the document on the Town Website and to the various civic associations.

Motion to not spend the money on printing of the Annual Financial Report and provide the document electronically was made by Council Member Diamond, seconded by Council president Pro Tem Coniglio. On roll call, the motion carried unanimously.

2. Funding and Scope of Engagement for Forensic Auditing and Administrative Investigation.
[Peter B. Elwell, Town Manager]

Council President Rosow announced that this item was not to discuss the audit, but a request to increase the funding for the audit.

Town Manager Elwell announced that the amount requested was not to exceed \$48,000.00

Motion to approve the funding and scope for the forensic audit made by Council Member Diamond, seconded by Council Member Wildrick. On roll call, the motion carried unanimously.

3. Status Report and Recommendations for Engineering Projects. [Jay Boodheshwar, Acting Director of Public Works]

Acting Director of Public Works Jay Boodheshwar was asked several questions by Council President Pro Tem Coniglio and other Town Council Members on:

- Pendleton Avenue Drainage Project regarding cost and construction time.
- Cost estimate and design proposal expected next month
- Lift Station 22
- Flashing beacon at North Fire Station
- Sanitary sewage force main installation delays and the impact of failing sections of the system
- Disconnecting from the Lake Worth Wastewater System as soon as possible
- Reach 8, dune enhancement, and beach re-nourishment funding

Jere Zenko, 232 Tangier Ave., expressed her opposition to the flashing traffic lights at the North Fire Station.

Council Member Wildrick asked further questions about the liability at the North Fire Station in relation to a previous employee error incident where the fire apparatus rolled out of the station. He also asked about the bond issue and if the Town would be penalized if there were construction delays. Town Manager Elwell responded that as long as they spend at least 85% of the proceeds within three years, then they would be restricted only to the investment return on the bond yield.

Motion to accept the status report and recommendations for Engineering Projects made by Council Member Diamond, and seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

- a. RESOLUTION NO. 50-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Increasing the Contract Amount for Dune Restoration Permitting by Applied Technology Management, Inc. [Jay Boodheshwar, Acting Director of Public Works]

Town Attorney Randolph read Resolution No. 50-10 by title, as printed above.

Motion to approve Resolution No. 50-10 made by Council Member Diamond, and seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

- b. RESOLUTION NO. 53-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Purchase Order to Kimley-Horn and Associates, Inc., for D-9 Storm Water Pump Station Construction Phase Services, Establishing a Budget for Said Services, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Services. [Jay Boodheshwar, Acting Director of Public Works]

Town Attorney Randolph read Resolution No. 53-10 by title, as printed above.

Motion to approve Resolution No. 53-10 made by Council Member Diamond, and seconded by Council Member Kleid. On roll call, the motion carried unanimously.

Council President Pro Tem Coniglio added that she had been informed by Public Works, that in addition to the Coordinator from Kimley-Horn, there would also be a coordinator designated from Public Works as well.

4. Preparations for Potential Impacts of Oil Spill in the Gulf of Mexico. [Jay Boodheshwar, Acting Director of Public Works]

1 Acting Director of Public Works Boodheshwar and Town Manager Elwell indicated that the
2 back-up provided full detail of the communications that have been undertaken, which are all
3 preliminary and very prospective to make sure the town is ready to take actions if any conditions
4 arise along our coastline.
5
6

- a. RESOLUTION NO. 56-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, awarding a contract to Tetra Tech, Inc. for the annual 2010 Mid-Town and Phipps Ocean Park biological monitoring services of offshore natural and artificial resources, per FDEP and USACE permit requirement. [Jay Boodheshwar, Acting Director of Public Works]

7
8 Town Clerk Cunningham read Resolution No. 56-10 by title, as printed above.
9

10 **Motion to approve Resolution No. 56-10 made by Council Member Diamond, and seconded**
11 **by Council Member Wildrick. On roll call, the motion carried unanimously.**
12

13 Council President Pro Tem Coniglio commended Coastal Coordinator Rob Weber and thanked
14 him for being so pro-active. Council President Pro Tem Coniglio stated that it was so important
15 to have the monitoring identified prior to any impacts in order to have a baseline and she really
16 appreciated his extraordinary homework in getting the work done. Council Member Wildrick
17 added that it was very smart and well done.
18
19

5. Request for Increase in the Par 3 Golf Course Maintenance Labor Contract. [Alan Brown, Acting Director of Recreation]

20
21 Acting Director of Recreation Alan Brown presented the item.
22

23 **Motion to approve the request for increase in the Par 3 Golf Course Maintenance Labor**
24 **Contract in the amount of \$47,000 made by Council president Pro Tem Coniglio, and**
25 **seconded by Council Member Diamond. On roll call, the motion carried unanimously.**
26

6. Request for Waiver of Townwide Hiring Freeze to Allow the Hiring of Certain Civilian Personnel in the Police Department. [Kirk W. Blouin, Police Chief]

27 Council President Rosow indicated that there would be a savings of \$90-100,000 a year.
28

29 **Motion to approve the Request for Waiver of Townwide Hiring Freeze to Allow the Hiring**
30 **of Certain Civilian Personnel in the Police Department made by Council Member**
31 **Diamond, seconded by Council Member Wildrick. On roll call, the motion carried**
32 **unanimously.**
33
34

7. RESOLUTION NO. 54-10 A Resolution of the Town Council of the Town of Palm Beach,

Palm Beach County, Florida, Expressing Opposition to the Proposed Palm Beach County 1% Fire Rescue Sales Surtax; Memorializing the Town Council's Decision to Decline Participation in a Proposed Interlocal Agreement with Palm Beach County; Providing an Effective Date. [Peter B. Elwell, Town Manager]

Town Attorney Randolph read Resolution No. 54-10 by title, as printed above.

Motion to approve Resolution No. 54-10 made by Council President Pro Tem Coniglio, seconded by Council Member Diamond.

Council President Rosow indicated that if there was any money on the table, the Town wanted some of it. His concern was that should this become a referendum and passed, he wanted to be assured that the Town of Palm Beach would get its Pro Rata share of the money. Town Manager Elwell assured him that by voting against it, the Town was not opting out, should it become law.

Council Member Wildrick stated that it would be difficult for the County to exclude Palm Beach but wanted a legal opinion. Town Attorney Randolph agreed with Council Member Wildrick. Council Member Wildrick also said the Town should take a leadership position on this issue.

Council Member Diamond felt this was the most dreadful measure, and the Town should take the bull by the horns and oppose it. If the Town does not stop this, next the sales tax will go to the police departments, and then transportation and Towns will lose control over their budgets. Council President Pro Tem Coniglio and Council Member Kleid agreed.

On roll call, the motion carried unanimously.

8. Receipt of Comcast 2010 Rate Filings and Proposed Rate Order. [Thomas G. Bradford, Deputy Town Manager]

This item was pulled from the Consent Agenda by Council Member Diamond.

Council Member Diamond asked Deputy Town Manager Bradford if the Town would have to hire someone to oppose the rate increase. He responded that the last time the Town opposed it was the early part of the prior decade, and it cost approximately \$40,000. Council member Diamond withdrew his objection.

Motion made by Council Member Diamond and seconded by Council President Pro Tem Coniglio to receive the proposed Comcast 2010 Rate Filings and Proposed Rate Order. On roll call, the motion carried unanimously.

XII. ORDINANCES

A. Second Reading

- 1
1. ORDINANCE NO. 10-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for an Amendment to the Town's Comprehensive Coastal Management Project Fund Budget and the General Fund Budget Adopted for the Fiscal Year Commencing October 1, 2009, as Amended March 9, 2010, Providing an Effective Date. [Jane Struder, Director of Finance]

2
3 Town Manager Elwell read Ordinance No. 10-10 by title, as printed above.
4

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

- 8 2. RESOLUTION No. 57-10 A Resolution of the Town Council of the Town of Palm Beach, Palm
9 Beach County, Florida, awarding a contract to Coastal Technology Corporation to perform a groin
10 analysis.
11

12 Town Manager Elwell read No. 57-10 by title, as printed above. He noted that the contract
13 amount was not to exceed \$195,000.
14

15
16 **Motion to approve Resolution No. 57-10 made by Council member Diamond, seconded by**
17 **Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.**
18

- 19 3. RESOLUTION NO. 58-10 A Resolution of the Town Council of the Town of Palm Beach, Palm
20 Beach County, Florida, awarding a contract to Applied Technology & Management, Inc. to perform an
21 offshore sand search investigation and borrow area development at the northern end of Town,
22 including the Lake Worth Inlet vicinity.
23

24 Town Manager Elwell read No. 58-10 by title, as printed above. He noted that the contract
25 amount was not to exceed \$495,000.
26

27
28 **Motion to approve Resolution No. 58-10 made by Council member Diamond, seconded by**
29 **Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.**
30

B. First Reading

None

31
32
33 **XIII. ANY OTHER MATTERS**

34 There were none.
35
36

XIV. ADJOURNMENT

1
2 There being no further business, the Tuesday, May 11, 2010, Town Council Meeting was
3 adjourned at 1:06 p.m.
4

5
6 APPROVED:
7

8
9
10 _____
11 David A. Rosow
12 Town Council President
13

14 ATTEST:
15

16
17 _____
18 Joanna Cunningham
19 Town Clerk

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Consent Agenda

Agenda Title

Approval of the Minutes of the May 12, 2010 Regular Town Council Meeting

Presenter

Joanna Cunningham, Town Clerk

Supporting Documents

- Minutes of the May 12, 2010 Regular Town Council Meeting

**MINUTES OF THE TOWN COUNCIL MEETING
HELD ON WEDNESDAY, MAY 12, 2010**

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Wednesday, May 12, 2010, at 9:30 a.m., in the Emergency Operations Center, 355 South County Road, Palm Beach. On roll call, all of the elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. COMMENTS OF MAYOR JACK McDONALD

There were none.

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

There were none.

V. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

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

William Cooley, 8 Windsor Court, commented regarding an ATM Report entitled Townwide 2009 Physical Monitoring Report regarding sand placement on beaches, and stated that it was an interesting report for the Council to read. He also commented regarding the Council enforcing the 1979 Agreement.

Council Member Wildrick briefly responded regarding the Report.

Laurel Baker, Palm Beach Chamber of Commerce, commented regarding the window treatment issue and town serving regulations.

VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

DEFERRED: Item VIII.C.2.b., Special Exception #6-2010, to the June 22, 2010 Town Council Meeting.

DEFERRED: Item VIII.C.2.d., Variance #4-2010, to the June 22, 2010 Town Council Meeting.

DEFERRED: Item VIII.C.3.a., Special Exception #3-2010, with Site Plan Review and Variance to the June 22, 2010 Town Council Meeting.

DEFERRED: Item VIII.C.4.b., Site Plan Review #3-2010, with Variance to the June 22, 2010 Town Council Meeting.

DEFERRED: Item VIII.C.4.c., Site Plan Review #4-2010, with Special Exception and Variances to the June 22, 2010 Town Council Meeting.

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

VII. PUBLIC HEARINGS

Town Clerk Cunningham administered the oath to all those who would be providing testimony.

A. RESOLUTION NO. 48-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 290 South County Road Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach.[John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Resolution No. 48-10 by title, as printed above.

Ex-parte communication was not declared by any members of the Town Council.

Historical Consultant Jane Day provided an overview of the Designation Report.

Attorney Kathy Elliott, representing Mr. Campaniello, indicated that he was opposed to the landmarking of his building at 290 S. County Road. Attorney Elliott read a letter written by Mr. Campaniello for the record (a copy of the letter was not submitted). Attorney Elliott noted that he was in the process of selling the building and a landmark designation would make it more

1 difficult to sell. Mr. Campaniello requested delaying the landmarking or landmarking only the
2 front facade of the building.

3
4 Discussion occurred among the Town Council and Dr. Day clarifying for Mr. Campaniello
5 several of the following issues:

- 6
7 • Landmarking would not restrict the inside use of the building.
- 8
9 • There were tax advantages for doing restoration on the building.
- 10
11 • Changing any existing windows would need to go before the Landmarks Preservation
12 Commission, although there were options available.

13
14 President Rosow expressed concern regarding the following:

- 15
16 • Landmarking anything when there was opposition and subjecting an owner to a
17 referendum process.
- 18
19 • The definition of “public building” as it is used in the proposed referendum

20
21 Council Member Diamond noted that previously the Town Council decided that an owner
22 objection was not a reason to turn down a landmark request; however, it would lead to close
23 scrutiny of any such request.

24
25 President Pro Tem Coniglio said that the objection raised by the property owner was basic to the
26 internal use, and as discussed, was not included in the landmark designation. She noted that, as
27 she is concerned about the referendum, the process cannot stop because of it and the Council
28 should move forward.

29
30 Council Member Kleid said that the Council agreed not to consider the 50 years and also agreed
31 not to consider the owner’s opposition. He indicated that in his own mind, he makes that one of
32 the considerations; when it is less than 50 years old and an owner did not consent then he felt
33 that the burden shifts a little. He noted that he wanted to make that point, which would indicate
34 why he would be voting a certain way.

35
36 Council Member Wildrick said that he fundamentally agreed with President Pro Tem Coniglio in
37 her comments. He added that the owner is trying to sell the building, and the other would
38 prohibit internal changes in the building, and neither applies in this case.

39
40 **Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to**
41 **accept the Designation Report of the Property Known as 290 South County Road as a**
42 **Town of Palm Beach Landmark Pursuant to Ordinance 2-84. On roll call, the motion**
43 **carried unanimously.**

44
45 **Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to**
46 **approve Resolution No. 48-10.**

Mayor McDonald asked how this property was distinguished from the Meier property and was the Council intending to discuss the owner's alternatives for a façade landmarking. He noted that the alternatives should at least be discussed in order to consider Mr. Campaniello's objections. Mayor McDonald commented that he could see inconsistency with the Meier property, which was turned down because the owner objected to it.

President Rosow said the Mayor raised a valid point and that the western façade was not landmarkable in anybody's opinion. The Council was talking about landmarking the northern and eastern facades of the building.

Dr. Day said that she preferred that the entire building be landmarked, as the owner would have the ability to qualify for any tax credits either federal or local, which was to the owner's advantage.

President Pro Tem Coniglio indicated that she did not know how it would be done and if the building still existed on the backside, she did not know if it would be a considered issue, as the whole building needed to be ratified at this point. The comparison to the Meier property was that the property owner was not objecting to the landmarking, mostly with respect to his internal ability to change the use. She stated that the Meier house also did not comply with the "pseudo 50 year rule" and, as she is a preservationist, the Council should go forward with the designation.

Upon roll call, the motion to approve Resolution No. 48-10 carried 3-2.

President Rosow	No
President Pro Tem Coniglio	Yes
Council Member Diamond	Yes
Council Member Kleid	No
Council Member Wildrick	Yes

**This item was reconsidered after the following item, VII.B.*

B. RESOLUTION NO. 51-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 977 North Ocean Boulevard Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach. [John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Resolution No. 51-10 by title, as printed above.

Ex-parte communication was declared by:

- 1 • Council Member Diamond spoke with Attorney James Brindell, visited the property, and
2 spoke with the owners; he received calls from residents.
3
- 4 • Council Member Kleid spoke with and received a letter from Attorney Brindell
5 advocating the position of his client; he visited the house and spoke to the owners; he
6 received calls from residents.
7
- 8 • President Rosow spoke with and received a letter from Attorney Brindell advocating the
9 position of his client; he visited the property and received at least two phone calls from
10 residents who asked President Rosow not to vote in favor of landmarking the property.
11
- 12 • President Pro Tem Coniglio met with Attorney Brindell and the homeowners at the site;
13 she received verification by letter from Attorney Brindell; she spoke with two members
14 of the Landmarks Preservation Commission, and received a telephone call asking her to
15 oppose this designation.
16
- 17 • Council Member Wildrick talked with Attorney Brindell, who spoke to him about not
18 landmarking the property; also a couple of residents called, and he drove by the property
19 and read the paperwork on the subject; he received a voice mail from Mr. Austin.
20

21 Historic Consultant Day presented a full designation report, as there was a court reporter present.
22

23 Attorney Brindell, on behalf of property owner Genevieve Du Pont, indicated that he was here as
24 a result of the Landmarks Preservation Commission's split vote of 4-3 to recommend designation
25 of the property. He noted that Nicole Du Pont Limbocker, the daughter of Mr. and Mrs. Du Pont,
26 and her husband Derek, Dr. John Garner, a landmark's expert, and Attorney Josh Long, from
27 Attorney Brindell's office was present today. Mrs. Du Pont was not available, as she is no
28 longer capable of managing her business; a letter was in the backup from Attorney Thomas
29 Sweeney, who resides in Delaware, and had represented the Du Pont's since the mid 1970's. The
30 letter objected to landmarking the house.
31

32 Attorney Brindell provided a PowerPoint presentation regarding Mrs. Du Pont's opposition to
33 landmarking her property. He submitted a copy for the record and a large binder of exhibits.
34

35 Nicole Du Pont Limbocker provided a history and background of the process of building her
36 parent's home.
37

38 Mr. Brindell continued with his presentation.
39

40 He introduced Dr. John Garner who spoke in opposition to the landmark designation, and
41 provided a detailed report of his argument.
42

43 Attorney Brindell pointed out that according to a 1952 article the Du Pont house was not a
44 Georgian Revival style house.
45

Lori Volk, John L. Volk Foundation, said that the John Volk book was written by him and that it was disappointing to hear that Mr. Volk built such a terrible house; he prided himself on working with his clients. She said she was frustrated that an outside architect was brought in that didn't live in Palm Beach or know Palm Beach architecture.

Council Member Kleid responded to Lori Volk's comment that he was predisposed and stated that he did not say that he was predisposed. He said that two of the considerations that he would put into the mix, when he decided whether to landmark or not, was the 50 years and whether or not the owner had consented. That was not determinative as far as he was concerned, but it was one of the criteria that he goes through.

Eugene Pandula, Chairman of Landmarks Preservation Commission, provided his comments and said that Dr. Garner had spoken in opposition of landmarking certain properties in the past; he wanted to remind Dr. Garner that it was the Town of Palm Beach's Ordinance, and this was not a classroom environment. He suggested that Dr. Day's presentation be allowed to stand.

Attorney Brindell spoke again and said that the allegations in the Designation Report had been addressed. Dr. Garner had shown that it was not traditional Georgian Revival on the exterior. The interior did not represent a new concept, as it evolved after WWII. The consultants did not meet the criteria with positive evidence. Attorney Brindell noted that he had presented positive evidence to refute the allegations.

Edward Cooney, 495 N. Lake Way, Landmarks Preservation Commission member, said that 977 is not typical landmarked property. He focused on criteria three and noted that it did adhere to the Ordinance. He disagreed with Attorney Brindell and endorsed the landmarking of the home.

Council Member Diamond moved not to accept the Designation Report of 977 North Ocean Boulevard, as it was defective, had omissions, was based on sociology, and not the requirements of law, to which every property owner was entitled.

Motion died for lack of second.

Responding to President Pro Tem Coniglio, Dr. Day noted that the importance of landmarking the property was because it was designed in a transitional period and was valuable for study.

President Rosow called for a motion regarding the Designation Report.

Council Member Diamond moved not to accept the Designation Report of 977 North Ocean Boulevard, as it was defective.

Motion died for lack of second.

Motion made by President Pro Tem Coniglio, seconded by Council Member Kleid, to accept the Designation Report for Property Known as 977 North Ocean Boulevard. On roll call, the motion failed 3-2.

1 **President Rosow** No
 2 **President Pro Tem Coniglio** Yes
 3 **Council Member Diamond** No
 4 **Council Member Kleid** Yes
 5 **Council Member Wildrick** No

6
 7 Council Member Kleid indicated that it was his understanding that the Council would either
 8 accept the Designation Report or not, and then have a second vote. He said that if this was the
 9 end of the voting, he would change his vote on landmarking it.

10
 11 Town Attorney Randolph explained that there should be a second vote, but this vote did not pass;
 12 a second vote was still required, but there had to be an action in regard to this motion. He
 13 suggested that Council Member Diamond renew his motion to reject it because it was flawed and
 14 if there was a second, vote on it, and then vote on the Resolution.

15
 16 Council Member Diamond renewed his motion:

17
 18 **Council Member Diamond moved not to accept the Designation Report of 977 North Ocean**
 19 **Boulevard, as it was defective. Council Member Wildrick seconded the motion. On roll call,**
 20 **the motion carried 4-1, with President Pro Tem Coniglio dissenting.**

21
 22 Town Attorney Randolph advised that a vote on the Resolution was required, even though the
 23 Designation Report had not been accepted.

24
 25 **Motion made by Council Member Diamond to deny Resolution No. 51-10. Council Member**
 26 **Wildrick seconded the motion.**

27
 28 President Pro Tem Coniglio indicated that the Resolution for landmarking fulfilled two of the
 29 four criteria, and that the Town needed to be consistent with a mission to preserve history in the
 30 Town of Palm Beach

31
 32 **On roll call, the motion carried 4-1, with President Pro Tem Coniglio dissenting.**

33
 34 * * * * *

35
 36 Mayor McDonald commented on the passing of Resolution No. 48-10, as he indicated that the
 37 Council needed to be consistent with their policy. He noted that two of the last three landmarked
 38 approvals were denied based on owner objection. He would like Resolution No. 48-10 to be
 39 reconsidered and to provide Dr. Day with an opportunity to talk to the property owner; he may
 40 be persuaded to agree with the landmarking; it could be deferred for one month. Otherwise, he
 41 announced that he would veto the Council's decision.

42
 43 Council Member Diamond responded that his vote was not based on owner objection, and if the
 44 buildings were landmarkable under the law, they should be landmarked no matter what the
 45 owner says.

President Rosow was concerned with the potential referendum and he deferred to Counsel.

Town Attorney Randolph noted that someone who voted on the prevailing side could bring it up for reconsideration.

Council Member Wildrick commented that he did not want a precedent of re-opening after the voting had occurred, and linking one building to the other. Each building should stand on its own. He said that the point was that this building in the center of Town represented the look of Palm Beach. He said the second issue was that the owner should have some say, more in the case of a private home or dwelling as opposed to a public facility such as a restaurant, or an office building.

President Pro Tem Coniglio commented that the end of landmarking season would not be over until November, and the potential referendum was stopping the process based on another lawsuit.

Responding to President Pro Tem Coniglio, Town Attorney Randolph indicated what the legal ramifications were if she were to re-open the discussion and vote again.

Motion made by President Pro Tem Coniglio, on the prevailing side, to re-open discussion and reconsider Resolution No. 48-10, at the July meeting; there was discussion among the Council, that if there was owner consent, there could be a unanimous decision. Council Member Kleid seconded the motion. On roll call, the motion carried 3-2.

President Rosow	Yes
President Pro Tem Coniglio	Yes
Council Member Diamond	No
Council Member Kleid	Yes
Council Member Wildrick	No

President Rosow noted that it would be put on the July meeting agenda.

Dr. Day would be the liaison between the Town Council and Mr. Campaniello in speaking with him.

Mayor McDonald asked that this Resolution be reconsidered as he requested since he hoped that communication with the owner would illuminate to him all the advantages of landmarking his property and that he would then agree.

Motion made by President Pro Tem Coniglio to defer Resolution No. 48-10 to the July 22, 2010, Town Council Meeting, seconded by Council Member Kleid. On roll call, the motion carried 3-2.

President Rosow	Yes
President Pro Tem Coniglio	Yes
Council Member Diamond	No
Council Member Kleid	Yes

Council Member Wildrick No

VIII. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of Landmarks Preservation Commission Approval, Certificate of Appropriateness #7-10, 780 South Ocean Boulevard.

Ex-parte communication was declared by:

- Council Member Wildrick spoke with Attorney Maura Ziska about all three of her subjects on one phone call; and Keith Austin left a voice message; he spoke with Attorney Peter Broberg.
- President Pro Tem Coniglio had not spoken with Attorney Ziska, although they tried; spoke with the Curtis's and met at their property; and spoke with Attorney Broberg.
- President Rosow spoke with Attorney Ziska, visited the Curtis's property and spoke with Attorney Broberg, and the appropriate people lobbied for their positions.
- Council Member Kleid spoke with Attorneys Broberg and Ziska, who both advocated the position of their clients; and also went to the Curtis house to look at the site and spoke with Mrs. Curtis.
- Council Member Diamond met with Attorney Ziska, the Curtis's, and looked at both properties.

Attorney Ziska, on behalf of Mr. and Mrs. Curtis, at 720 S. Ocean Blvd., provided an overview of the appeal of the Landmarks Preservation Commission's decision granting their neighbor, Mr. Taylor, approval for an outdoor summer kitchen within 20 feet of the Curtis's property line.

Christine Curtis, property owner, provided a detailed explanation of the impact that the Landmarks Preservation Commission's approval of Mr. Taylor's property, at 780 S. Ocean Blvd., would have on the Curtis's.

Attorney Broberg, representing Terry Taylor, submitted into the record the Town Code, Sec 134-237; he also submitted a drawing of the property for the record. He provided an overview of his client's position.

Architect Jason Drobot, Brasseur & Drobot Architects, was about to provide a PowerPoint presentation when President Rosow interjected that it was clear that the dimensional waiver had been met, and it was the Council's decision on whether or not to uphold the dimensional waiver.

1 Responding to Mayor McDonald, Attorney Broberg stated that the Florida law says the opinion
2 of neighbors was not factual evidence for the Town Council to consider.

3
4 Council Member Kleid noted that the Council could take judicial notice of the fact that there was
5 conformance with the dimensional waiver and the law says that people do not have a right to a
6 view.

7
8 Responding to President Rosow, Historical Consultant Day provided an explanation of
9 Landmarks Preservation Commission's process of approval of Mr. Taylor's property; this was
10 the first time that Landmarks Preservation Commission considered a dimensional waiver. She
11 stated that had the Landmarks Preservation Commission visited the Curtis's property, they would
12 have understood the impact of the dimensional waiver on the neighbor.

13
14 Mayor McDonald stated that in terms of Palm Beach and neighbors, quiet enjoyment of their
15 property was a very large factor. He indicated that hardship was not a requirement and that the
16 property owner should be able to locate the outdoor kitchen elsewhere on the property, as it was
17 only four feet. He did not see where this meets the test of why the waiver process was
18 implemented.

19
20 Responding to President Pro Tem Coniglio, Dr. Day indicated that she would not mind if
21 Landmarks Preservation Commission reconsidered the Certificate of Appropriateness, and that
22 the structure could be moved.

23
24 President Rosow indicated that the Council did not like to see neighbors upset regarding
25 additions and changes.

26
27 President Rosow stated that he would like to see a motion that sends the waiver back to the
28 Landmarks Preservation Commission for review and obtain input from the neighbor, with a
29 solution acceptable to all.

30
31 Mr. Terry Taylor, owner of 780 S. Ocean Blvd., explained the use of the outdoor kitchen.

32
33 Town Attorney Randolph advised that the Town Council was required under the Appeal Section
34 of the Code to act on the appeal within 45 days unless the applicant agreed to an extension of
35 time. Mr. Taylor would need to provide an agreement that would extend the period of the appeal.

36
37 Gene Pandula, Chairman of the Landmarks Preservation Commission, noted that this appeal
38 appeared to be the letter of the law. If this building is moved over 4'9", it complied with all of
39 the zoning codes.

40
41 Responding to Mr. Pandula, Mayor McDonald said that the Town Council was sending the
42 appeal back to Landmarks Preservation Commission for consideration in terms of how it would
43 impact the neighbors. He added that a policy decision would need to be made on how to treat
44 waivers in the future.

45
46 Town Attorney Randolph explained the appeal process to Mr. Pandula.

Attorney Broberg indicated that his client, Mr. Taylor has agreed to go back to the Landmarks Preservation Commission.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to return the Certificate of Appropriateness #7-10, 780 South Ocean Boulevard to the Landmarks Preservation Commission, and applicant agreed to waiver of hearing within 45 days. On roll call, the motion carried unanimously.

2. Ratification of Side Yard Setback "Dimensional Waiver" at 780 South Ocean Boulevard. [John S. Page, Director of Planning, Zoning, and Building]

Please refer to Item VIII.A.1. (above) for information on this item.

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours of Construction, at 1170 South Ocean Boulevard (Bath and Tennis Club) (Per Letter Dated April 27, 2010, From Kast Construction III, LLC).

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to approve the Request for Waiver of Section 42-199, Hours of Construction, at 1170 South Ocean Boulevard (Bath and Tennis Club). On roll call, the motion carried unanimously.

President Rosow disclosed that he is a member of the Bath and Tennis Club, and has no financial interest in the outcome of this decision.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

a. SPECIAL EXCEPTION #5-2010 WITH SITE PLAN REVIEW AND VARIANCE The application of Society of the Four Arts, Inc., relative to property commonly known as 1-2 Four Arts Plaza; described as lengthy legal description on file; located in the R-B Zoning District. Request for Special Exception and Site Plan Review to modify the Four Arts cultural center by demolishing a 1,262 square foot one story building and constructing a 1,561 square foot one story addition onto the existing Garden House. The addition will contain bathrooms (including handicap stalls), food preparation area, storage and a loading

dock area. A Variance request to allow a rear yard setback of 6.75 feet in lieu of the 15-foot minimum required for the addition. [Attorney: Maura A. Ziska, Esq.] [Landmarks Commission Recommendation: Implementation of the proposed variance will not cause negative architectural impact to the landmark property. Carried 7-0.]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Ziska, and she advocated her client's position.
- Council Member Kleid spoke with Attorney Ziska, and she advocated her client's position.
- President Rosow spoke with Attorney Ziska, and she advocated her client's position.
- President Pro Tem Coniglio had no ex-parte communication.
- Council Member Wildrick spoke with Attorney Ziska.

President Pro Tem Coniglio noted that according to the backup there were no objections from any of the neighbors and asked if staff had any objections.

Planning, Zoning and Building Director Page indicated that staff had no objections.

Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond, that Special Exception #5-2010 with Site Plan Review and Variance shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met. On roll call, the motion carried unanimously.

- b. SPECIAL EXCEPTION #6-2010 The application of Diane Wren, relative to property commonly known as 3000 S. Ocean Blvd., Unit PH6; described as Bellaria Condominium Unit PH6, Phase South; located in the R-D(2) Zoning District. Request for Special Exception to add a 532 square foot roofed portion on the existing 5th floor patio. The height exception is required above three stories. [Attorney: James R. Brindell, Esq.] [ARCOM Recommendation: Defer to the May 26, 2010 ARCOM meeting. Carried 7-0.] Request for Deferral to the June 22, 2010, Town Council Meeting Per Letter Dated May 3, 2010, From James R. Brindell (Special Circumstances).

Item VIII.C.2.b., Special Exception #6-2010 was deferred to the June 22, 2010, Town Council Meeting.

- c. SITE PLAN REVIEW #2-2010 WITH VARIANCES The application of Cathedral Estates LTD., relative to property commonly known as 417 Peruvian Avenue (a/k/a 2 Major Alley); described as lengthy legal description on file; located in the R-C Zoning District. Request

for Site Plan Review with Variance requests to construct a free standing glass rooftop of 200 square feet over an existing terrace that will be open on all four sides and would result in a west side yard setback of 2.45 feet in lieu of the 20 foot minimum required, lot coverage of 44.4% in lieu of the 43.4% existing and the 30% maximum allowed and landscaped open space of 7.35% in lieu of the 7.5% existing and the 35% minimum required.[Attorney: Maura A. Ziska, Esq.] [Landmarks Commission Recommendation: Implementation of the proposed variance does not cause negative architectural impact on the landmark property with conditions the applicant reduce the size; add landscaping on the west side after removal of existing landscape material; and meet drainage and lighting requirements of the Town. Carried 7-0.]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Ziska, and she advocated the position of her client.
- Council Member Kleid spoke with Attorney Ziska, and she advocated the position of her client.
- President Rosow spoke with Attorney Ziska, and she advocated the position of her client.
- President Pro Tem Coniglio had no ex-parte communication.
- Council Member Wildrick spoke with Attorney Ziska, and she advocated the position of her client.

Planning, Zoning and Building Director Page recommended that if Town Council was inclined to say yes, that the conditions placed on the approval by the Landmarks Preservation Commission would be adhered to.

Motion made by Council Member Diamond that Site Plan Review #2-2010 With Variances be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning Section 134-329, items 1 through 11, subject to staff recommendations. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

- d. VARIANCE #4-2010 The application of Robert T. Tomsich, relative to property commonly known as 151 Via Bellaria; described as lengthy legal description on file; located in the R-A Zoning District. Request a variance to permit the construction of a new larger two-story open loggia to replace the existing two-story loggia, which will result in a lot coverage of 25.8% in lieu of the 24.9% existing and 25% maximum allowed. [Attorney: M. Timothy Hanlon] [ARCOM Recommendation: Defer to the May 26, 2010, Architectural Commission meeting. Carried 7-0.]Request for Deferral to the June 22, 2010, Town Council

Meeting Per Letter Dated May 4, 2010, From M. Timothy Hanlon (Special Circumstances).

Item VIII.C.2.d., Variance #4-2010 was deferred to the June 22, 2010, Town Council Meeting.

- e. VARIANCE #5-2010 The application of Fairfax, Sammons & Partners Limited Co. Architectural Firm, relative to property commonly known as 214 Brazilian Avenue, Suite 100; described as Royal Park Addition, Lot 32, Block G; located in the C-TS Zoning District. Request for variance approval to allow an office use (architectural firm) of approximately 550 square feet on the first floor, which is in contradiction to the Code which does not allow an office on the first floor in this circumstance.[Attorney: Jason Evans, Esq.]

Ex-parte communication was declared by:

- President Rosow spoke with Les Evans, who advocated for approval of the Variance.
- President Pro Tem Coniglio spoke briefly to Les Evans.

Zoning Administrator Castro said that in the past, the Council had granted these variances, but only so that it did not run with the land, and ran only to the applicant. The office space involved was tucked away off the frontage of the street.

Responding to President Pro Tem Coniglio, Les Evans noted that the other requests for variances for offices had been on the street and this one was back in the lobby with no visibility from the street.

Motion made by President Pro Tem Coniglio that Variance #5-2010 be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

- a. SPECIAL EXCEPTION #3-2010 WITH SITE PLAN REVIEW AND VARIANCE The application of Roy Reeves, Restaurant Operator, relative to property commonly known as 219 Worth Avenue; described as Lots 20, 21, 34 and 35, ROYAL PARK ADDITION, according to the Plat thereof, on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book, Page 1; located in the C-WA Zoning District. Request for Special Exception for a 4,075 square foot upscale American cuisine restaurant which includes site plan review to allow a new entry door and 36 outdoor seats on the proposed second floor patio within the proposed expansion area. The applicant is requesting umbrellas to cover the outdoor seating. The applicant also proposes to meet all conditions of approval which were granted to the previous restaurant applicant for this tenant space. The variance being requested is to eliminate the four additional off-street parking spaces required for the 74 proposed seats. [Attorney: Maura A. Ziska, Esq.]Deferred from the April 14, 2010, Town Council Meeting. Request for Deferral to the

June 22, 2010, Town Council Meeting Per Letter Dated April 26, 2010, From Maura A. Ziska (SECOND REQUEST).

Item VIII.C.3.a., Special Exception #3-2010 with Site Plan Review and Variance was deferred to the June 22, 2010, Town Council Meeting.

b. SPECIAL EXCEPTION #4-2010 The application of M. Timothy Hanlon; relative to property commonly known as 710 South Ocean Blvd.; described as lengthy legal description on file; located in the R-A Zoning District. Request for Special Exception approval to permit construction of a 72-foot long tunnel for pedestrian access under South Ocean Blvd. to and from the beach parcel for this landmarked property. The applicant proposes to close one lane of traffic at a time during construction. [Attorney: M. Timothy Hanlon] Deferred from the April 14, 2010, Town Council Meeting.

Ex-parte communication was declared by:

- Council Member Kleid spoke with Attorney M. Timothy Hanlon.
- President Rosow had a brief conversation with Attorney Hanlon.
- President Pro Tem Coniglio had a voicemail from Attorney Hanlon.

Council Member Wildrick commented that he understood that another tunnel was being constructed a month later, and he did not want disruption twice in the event this application was approved. He asked if the applicant would be willing to move his to the same time as the later one.

Attorney Hanlon responded to Council Member Wildrick that if the two projects were approved at the same time, he would be willing to comply. He indicated that conceptual approval may have been received from Florida Department of Environmental Protection (FDEP), next it would come to the Town Council for approval, then it would go back to FDEP and he would have at least 90 days to respond. He expressed concern regarding being tied to the other project in the event that it was delayed. If approved in the same timeframe, they would want to stand on their own and move forward. Their timing would be in August or September, when traffic was minimal. He indicated that his traffic plan currently provides for no closure of traffic lanes.

Council Member Kleid noted that if there was a free flow of traffic they would not have to be tied in with another construction project.

Zoning Administrator Castro made several of the following comments:

- Concern as the first time he saw this was last Friday,
- Marty Gauthier had concerns with the configuration.
- The traffic engineer did not have time to review the project, as it was only just received last Friday.

- Concern with the realignment and whether it was feasible to change the lanes around, as was being proposed at this curb, keep the traffic safe, and at what speed.
- He was reluctant to make a recommendation since he did not have an opportunity to look at the plans.

Attorney Hanlon responded that the traffic plan was not part of the zoning application, which was why it was not delivered to Mr. Castro; he had no problem with the proposed conditions, and the traffic plan was approved by Public Works. He stated that it was part of the building permit anyway, so he could accept that condition.

Discussion occurred among the Town Council members and Attorneys Hanlon and Broberg regarding the conditions of approval for the application. Several of the following comments were made:

- There would be no traffic stoppage.
- Attorney Broberg noted that next month he would be coming before the Town Council with a schedule that would mimic the application of Attorney Hanlon, if possible. He would be presenting a traffic closure, going down County Road and coming up the other side for the duration of one week.
- It could be done in turtle season.
- The seawall was not yet approved.
- No complaints were on file from the neighbors.

Zoning Administrator Castro provided several of the following concerns by staff:

- Last Friday was the first he had heard of the project.
- Public Works had concerns since the traffic engineer had not yet reviewed the plans.
- He did not know what was proposed for the speed of the traffic.

Attorney Hanlon responded that the traffic plan was not part of zoning, and that they were continuing to work with Public Works.

Motion made by Council Member Diamond, seconded by Council Member Wildrick to approve Special Exception #4-2010 with the following conditions of approval:

- **Two way traffic flow would be maintained at all times.**
- **A corrective plan of action for the seawall would be submitted.**
- **The traffic routing plan was acceptable to the Public Works Department.**

- The construction project would be coordinated with neighbor at 780 S. Ocean Blvd, before October.

On roll call, the motion carried unanimously.

Responding to President Pro Tem Coniglio, Attorney Broberg affirmed that he had received preliminary approval from the Florida Department of Environmental Protection (FDEP).

4. New Business- More Than 15 Minutes

- a. SPECIAL EXCEPTION #7-2010 The application of Island Hotel, Inc., relative to property commonly known as 235 Sunrise Avenue C-22; described as Palm Beach Hotel Condominium Commercial Unit C-22 per Condominium Declaration of 2/12/81; located in the C-TS Zoning District. Request for Special Exception to modify condition of approval within the Declaration of Use Agreement. In 2007 Unit C-22 of the Palm Beach Hotel was approved for use as a synagogue. A Declaration of Use Agreement was approved in 2008 which outlined certain restrictions and limitations on the use of the unit. One of those restrictions (Article IV#9) was that the Synagogue shall not be allowed to prepare food in the kitchen which requires the use of cooking equipment. The kitchen cooking equipment shall only be used for keeping warm pre-prepared or catered food. The Synagogue is requesting that this restriction be eliminated in order to cook and prepare food in the kitchen. The range hood was updated with a new fire suppression system in 2007. [Attorney: James R. Brindell, Esq.]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney James Brindell; he worshipped at that Temple and understood the situation.
- Council Member Kleid spoke with Attorney Brindell, who advocated the position of his client, and years ago was at the property and saw the kitchen.
- President Pro Tem Coniglio had a lengthy conversation with Mr. Abraham; she visited the site.

Council Member Diamond requested that the letter from the Palm Beach Hotel be addressed concerning the kitchen being used only while the Synagogue was there.

Attorney Brindell responded that the only Special Exception right now was for the Synagogue.

Planning, Zoning and Building Director Page confirmed that the ladder capability and existing equipment in Fire-Rescue Department could serve the top floor and also as a result of an inspection last Friday, with the Fire-Rescue Department and the Building Official, it was determined that the existing kitchen facility was protected and there was adequate fire protection to allow for the improvements.

Zoning Administrator Castro commented that in the Declaration of Use Agreement that it needed to be clear that the applicant had to come back.

President Rosow noted that currently all that was allowed in the kitchen was the warming of food.

Responding to President Rosow, Mr. Castro indicated that at the time of application, the Synagogue did not ask for an operable kitchen. He requested that the use for the kitchen apply only to the Synagogue.

Town Attorney Randolph indicated that, although the Declaration of Use Agreement was not transferable, it should be stated in the motion that the kitchen use was for the Synagogue only.

President Pro Tem Coniglio recalled that the Synagogue was hoping to have a full service kitchen from the beginning, but staff's recommendations negated that and only allowed warming.

Attorney Brindell noted that there was new fire suppression equipment, which met all the fire safety codes.

Motion made by Council Member Diamond that Special Exception #7-2010, shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met, with the condition that the Declaration of Use Agreement was amended only for this applicant. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

- b. SITE PLAN REVIEW #3-2010 WITH VARIANCE The application of Mr. & Mrs. Adler, relative to property commonly known as 7 Sloan's Curve Drive; described as lengthy legal description on file; located in the PUD-B Zoning District. Request for Site Plan Review to construct a 135 square foot infill addition on the front entry of an existing townhouse and a 49 square foot infill addition to the breakfast atrium and a 49 square foot infill addition to an upstairs bedroom. A Variance is requested to allow two small additions that will enclose the entry feature and an interior atrium thereby increasing the lot coverage to 35.9% in lieu of the 33.7% existing and the 35% maximum allowed in the PUD-B district. The proposed additions will modify a previously approved site plan in a PUD complying with Section 134-688 (b) of the Town's Zoning Code. [Attorney: Maura A. Ziska, Esq.][ARCOM Recommendation: Defer to the May 26, 2010, Architectural Commission meeting. Carried 7-0.]Request for Deferral to the June 22, 2010, Town Council Meeting Per Letter Dated April 26, 2010, From Maura A. Ziska (Special Circumstances).

Item VIII.C.4.b., Site Plan Review #3-2010 with Variance was deferred to the June 22, 2010, Town Council Meeting.

- c. SITE PLAN REVIEW #4-2010 WITH SPECIAL EXCEPTION AND VARIANCES The application of Publix Super Markets, Inc., relative to property commonly known as 265, 255, 235, 231 Sunset Avenue and 240 Sunrise Avenue; described as lengthy legal description on file; located in the C-TS Zoning District. Request for a Site Plan Review and Special Exception to construct a 50,870 (43,360 gross leasable) square foot one story grocery store on 4.36 acres. The new store will provide 218 off street parking spaces. There is proposed to be an outdoor ATM and the grocery cart storage within the building. All of the proposed mechanical equipment will be contained within portions of the building and will not be seen on the roof. Part of the proposed design is to have two generators located within the southeast corner of the proposed store that will contain a 100 KW standby generator and a 500 KW main generator. There is proposed to be two loading areas within the loading dock on the east side of the building that will be screened. The proposed store will have a pharmacy, deli, bakery and a larger selection of food items and other products. Since the proposed grocery store is in excess of 2,000 square feet, the applicant is required to obtain Town Council approval of a special exception and a finding that the proposed use is Town serving. A Special Exception is being requested to have two illuminated monument signs at the northwest and southwest entrances to the west parking lot and one illuminated business identification sign on the west entrance of the building. The following variances are being requested to construct the proposed one story grocery store: (a) to allow a building length of 245 feet in lieu of the 150-foot maximum allowed; (b) to allow a front yard setback at the northwest corner of the proposed building of 10 feet in lieu of the 14 foot minimum required based on building height; (c) to allow a side yard setback for the proposed towers to be 10 feet in lieu of the 19-foot minimum required; (d) to allow two loading spaces in lieu of the three spaces required by code; (e) to allow the proposed building to be a total square footage of 50,870 square feet in lieu of the 15,000 square foot maximum allowed; (f) to allow 8 towers in lieu of the two maximum allowed; (g) to allow the area of the 8 towers to be 12.2% of the gross floor area of the building in lieu of the 2% maximum allowed (h) to allow the parking lot light poles to be 23 feet in height in lieu of the 15-foot maximum allowed; (I) to allow the height of the proposed one story grocery store to be 22.66 feet in lieu of the 15-foot maximum allowed; (j) to allow the overall height of the proposed one story grocery store to be 37 feet in lieu of the 20-foot maximum allowed; (k) to allow a monument sign at the northwest entrance where no sign is allowed; (l) to allow a monument sign at the southwest entrance where no sign is allowed. [Attorney: Maura A. Ziska, Esq.][ARCOM Recommendation: Defer to the May 26, 2010, Architectural Commission meeting. Carried 7-0.]Request for Deferral to the June 22, 2010, Town Council Meeting Per Letter Dated April 26, 2010, From Maura A. Ziska (Special Circumstances).

Item VIII.C.4.c., Site Plan Review #4-2010 with Special Exception and Variances was deferred to the June 22, 2010, Town Council Meeting

D. Other

1. Vacant Storefronts: Possible Ordinance/Policy Change. [Robert N. Wildrick, Town Council Member]

Council Member Wildrick presented photos of unacceptable screening methods around Town, and stressed that it was a continuous problem within the Town, which had to be corrected. He then presented photos of screening that enhanced the Town.

Council Member Wildrick requested that the Council amend the Ordinance from 75% coverage to 100% coverage of the vacant storefronts. He noted that the expense was minimal, it would be easier to enforce, and it would improve the look of the Town.

Planning Administrator John Lindgren asked if it would be acceptable for Royal Poinciana Plaza to use more than one picture to cover their windows, as they were very large.

Responding to President Pro Tem Coniglio, Mr. Lindgren indicated that the entire window would be filled.

Responding to Council Member Diamond, Mr. Lindgren added that venetian blinds were not allowed, unless it was a suite in an office building that had become vacant with the remaining suites having blinds, it would be allowed if the business was a not-for-profit organization, and staged storefronts were also acceptable.

Council Member Wildrick noted that if all the windows were like the Gucci windows, it would improve the Town's appearance.

Mr. Lindgren indicated that the Royal Poinciana Plaza liked the historic postcards, however the size of the files could not be enlarged enough to cover the larger windows, as the image becomes distorted. There were other alternatives, such as the Norton Art Museum pictures; they could use the postcards for the smaller windows, but they wanted to know if other pictures would be acceptable.

Council Member Wildrick noted that it would be acceptable.

Motion made by Council Member Diamond, seconded by Council Member Wildrick, to approve amending the policy regarding vacant storefronts from 75% coverage to 100%.

Mr. Lindgren noted that the change was in the policy within the ordinance.

Rob Walton Code Compliance Officer commented that staged windows were difficult to assess as they were not a defined criteria.

Council Member Wildrick suggested that staged would be acceptable if only approved by the Planning, Zoning and Building Department.

The maker and seconder agreed.

Amended motion made by Council Member Diamond, seconded by Council Member Wildrick, to approve amending the policy regarding vacant storefronts from 75% coverage

1 **to 100%, and that the staged storefronts be approved by the Planning, Zoning and**
2 **Building Department. On roll call, the motion carried unanimously.**

3
4 Town Attorney Randolph advised that even though this did not require an ordinance change, he
5 suggested that the new policy, as amended, come back to the Council for review.

6
7 *Council Member Wildrick left the meeting at 12:54 p.m., and did not return.*
8
9

10
11 2. Town Serving Regulations: Study Update Recommendations from Planning and Zoning
12 Commission. [John S. Page, Director of Planning, Zoning, and Building]

13
14 Planning, Zoning and Building Director Page provided an overview of the Town Serving
15 Regulations Study.

16 Mr. Page stated that Bill Brisson expanded his scope of services, as follows:

- 17 1. Is concept of Town Serving relevant after 30 years and is there a need for a Town
18 Serving provision?
- 19 2. What would be the ramifications of eliminating the Town Serving provision?
- 20 3. If the Town Serving concept/regulation is relevant and needed, is the limit on the square
21 footage of a building or use still necessary or useful; is there a better alternative criteria or
22 standard?
- 23 4. If the square footage limitation is needed or useful, what would be the most appropriate
24 square footage limitation? Also is it necessary for the business to prove it qualifies as
25 Town Serving either initially or periodically thereafter. Which zoning districts should be
26 applicable?

27 The Planning and Zoning Commission, after hearing from business interests and some residents,
28 indicated that Town Serving should not be eliminated but that it would be appropriate to have the
29 study updated.

30
31 Responding to President Pro Tem Coniglio, President Rosow indicated that criteria #4 would
32 deal with what reporting requirements were necessary.

33
34 Zoning Administrator Castro said that it had been very difficult for staff to determine what could
35 be used for qualifying for Town Serving. Staff wanted it to be fair and equitable for qualifying.

36
37 President Rosow noted that the consultant would come back and offer recommendations to the
38 Council.

39
40 **Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio to**
41 **approve the expanded scope of services by the consultant as recommended by the Planning**
42 **and Zoning Commission. On roll call, the motion carried 4-0, as Council Member Wildrick**
43 **was absent.**
44

IX. ANY OTHER MATTERS

Mayor McDonald asked for clarification regarding the Resolution and the Budget Tax Force that was approved at yesterday's meeting, because it only dealt with the County budget and excluded the schools.

X. ADJOURNMENT

There being no further business, the May 12, 2010, Town Council Meeting was adjourned at 1:00 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Consent Agenda

Agenda Title

Approval of Major Matters Considered by the Architectural Commission at its Meeting of May 26, 2010

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated June 4, 2010 from John S. Page, Director of Planning, Zoning and Building Department
- Minutes of the Architectural Commission meeting of May 26, 2010

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John S. Page, Director of Planning, Zoning & Building

Re: Approval of the Architectural Commission Meeting Minutes of May 26, 2010

Date: June 4, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the major items that were approved by ARCOM at the regularly scheduled meeting of May 26, 2010.

BOARD OR COMMISSION RECOMMENDATION

The Architectural Commission recommends that the Town Council approve the major items which were considered at the regularly scheduled meeting of May 26, 2010.

GENERAL INFORMATION

These minutes are submitted to the Town Council for approval pursuant to Chapter 18-177 of the Town of Palm Beach Code of Ordinances.

Attachment

JSP:cmd



MINUTES
ARCHITECTURAL COMMISSION
AT THE
EMERGENCY OPERATIONS CENTER
3RD FLOOR, 355 SOUTH COUNTY ROAD

WEDNESDAY, MAY 26, 2010, 9:00 a.m.

Please be advised that in keeping with a recent directive from the Town Council, the minutes of all Town Boards and Commissions will be "abbreviated" in style. Persons interested in listening to the meeting, after the fact, may access the audio of that item via the Town's website at www.townofpalmbeach.com or may obtain an audio recording of the meeting by contacting Cindy Delp, Secretary to the Architectural Commission at (561) 227-6408. As a point of reference, you will find the recording times listed on these minutes at the beginning of each item.

I. CALL TO ORDER (9:00:03 a.m.)

Chairman Smith called the meeting to order at 9:00 a.m.

II. ROLL CALL (9:00:33 a.m.)

The following members of the Architectural Commission were present: Jeffery W. Smith, Chairman, William J. Strawbridge Jr., Vice Chairman, Members Leslie C. Diver, Kenn Karakul, Nikita Zukov, and Alternate Members Martin D. Gruss (arrived at 9:28 a.m.) and Peter I. C. Knowles II. The following were absent: Members Samuel M. Boykin (excused) and Robert J. Vila (unexcused) and Ann L. Vanneck, Alternate Member (unexcused).

The following staff members were present: John C. Randolph, Town Attorney, John Page, Director of Planning, Zoning & Building, John Lindgren, Planning Administrator, and Cynthia M. Delp, Secretary to the Architectural Commission.

III. PLEDGE OF ALLEGIANCE (9:00:35 a.m.)

IV. APPROVAL OF THE MINUTES FROM THE APRIL 28, 2010 MEETING (9:00:50 a.m.)

MOTION BY MS. DIVER FOR APPROVAL OF THE MINUTES.
MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.

V. APPROVAL OF THE AGENDA : (9:01:08 a.m.)

Please note that there was no motion for approval of the agenda, but under this agenda item, there were 3 motions for deferral for projects B22/10, B24/10 and A5/10. The motions can be found at each of those items.

VI. ADMINISTRATION OF THE OATH TO PERSONS WHO WISH TO TESTIFY:

By Mrs. Delp

VII. OTHER BUSINESS: Informal Review: Street Signage Pole Standards for Worth Avenue Improvement Project - Thomas G. Bradford, Deputy Town Manager (Please note this matter was reviewed informally at the April meeting, but no consensus was reached.)

Mr. Bradford, Deputy Town Manager, along with Mark Marsh, Project Architect, returned to the commission with new plans in response to comments made at last month's meeting. Mr. Marsh stated that the number of signs shown is the minimum number required to address traffic and safety concerns. He presented a series of elevations showing where the signs will be placed on the street. Two types of signs are involved: Traffic and safety signs (dictated by state and national standards), and signs which allow the Town to enforce its standards, like parking signs, etc. Certain signs will be affixed to black poles on a fluted base with an acorn finial at the top, while the enforcement-type signage will be on 2" diameter round silver poles. Frames, proposed last month, have been removed from the signage. Mr. Marsh presented the street signs to be white with black letters, but the commission later corrected him that they were to be black with white letters. He commented particularly about the new state requirement which requires not only a crosswalk sign, but a directional arrow sign to accompany it.

Mr. Smith stated that there are just too many signs...50 alone that say 2 hour parking. He felt this was absurd, creating clutter and ugliness, costly to taxpayers, and not appropriate for Palm Beach. Mr. Marsh responded that they are necessary for enforcement according to Public Works. Mr. Bradford added that, based on Public Works experience, the signs promote the legitimacy of parking tickets, for example. He indicated that they could confer further with Public Works relative to this matter.

Mr. Smith discussed the proposed crosswalk (double) signage, and asked Mr. Marsh to determine whether the requirement for two signs is actually a law or just a recommended standard. In summary, the commission felt the materials to be used are acceptable, but the locations and numbers of signs are still in question.

VIII. PROJECT REVIEW(9:16:39 a.m.)

PLEASE BE ADVISED THAT THE PROJECT FOR PUBLIX (B25/10) WILL BE THE LAST PROJECT ON THE AGENDA.

A. MAJOR PROJECTS - OLD BUSINESS

B16/10 Gates/Landscape

Address: 200 S. Ocean Boulevard

Applicant: Julie Heberlein and Robert J. Reveley

Architect: Leslie Divoll

Project Description: Construct two gates (1) a beach access gate of decorative wrought aluminum (7 ft. 8 in. wide x 18 in. high) located in existing hedge; (2) an automated driveway gate of stained pecky cypress (14 ft. wide x 8 ft. high at existing driveway, hung from 24 in. x 24 in. x 6 ft. 8in. masonry piers. No changes to pavement are planned. Final landscape will be presented

Please note that at the April meeting, there was a motion to approve the driveway gate and the location of the beach access gate, with the instruction to return with a different style beach access gate to coordinate with the chickee hut. There was also a motion for deferral of the beach access gate to the May meeting.

Call for disclosure for ex parte communication: Messrs. Zukov and Knowles made ex parte declarations.

Architect Leslie Divoll returned with a revised beach access gate which is basically a scaled down, simpler version of the driveway gate. It will be a solid cypress gate with an arched top and minimal hardware. The side support posts are peeled cypress posts stained and finished to coordinate with the gate.

**MOTION BY MR. ZUKOV FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.**

B19/10 Addition

Address: 3000 South Ocean Boulevard, PH 6 South

Architect: The Lawrence Group

Applicant: Diane Wren

Project Description: Addition of an unenclosed roof shade on the Penthouse terrace. Materials are stucco and clay barrel tile matching the form of the existing Penthouse.

Please note that this project was reviewed at the April meeting, but was deferred (for re-design) to the May meeting.

Call for disclosure of ex parte communication: Several members made ex parte declarations.

Architect Eugene Lawrence returned to the commission with two design alternatives, Option #1: with the same columns, but with walls behind the columns and rounded arched openings, and Option #2: a double column option with rounded arched openings.

**MOTION BY MS. DIVER FOR APPROVAL OF DESIGN OPTION #1.
MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.**

B20/10 A/C Sight Screening

Address: 333 Sunset Avenue

Applicant: Royal Poinciana South

Architect: Steven Z. Epstein, Architect; Engineering Express

Project Description: Furnish & install A/C sight screening along the entire roof perimeter that will extend six (6) feet in height above the roof tie-beam/parapet

Please note that at the April meeting, this project was deferred to the May meeting for lack of proper plans.

Call for disclosure of ex parte communication: Several members made ex parte declarations.

Attorney Maura Ziska discussed the history surrounding this project, which began as a Code Enforcement issue (visibility of air conditioning units subsequent to re-roof and hurricanes), was appealed in court, and eventually resulted in a settlement agreement that the Royal Poinciana South would screen the a/c equipment on the roof. Several screening options were discussed: entire roof perimeter screening, cluster screening, screening with louvers, screening with lattice, etc.

Mr. Lindgren read a letter into the record from Neil L. Aronstam objecting to the project. He also stated that there are no zoning issues with regard to the request. Mr. Randolph explained that the a/c equipment had been grandfathered without screening until the roof work was done and the a/c equipment was raised, nullifying the grandfathering.

Rob Allen, President of the Palm Beach Biltmore, stated that they prefer individual cluster screening, rather than screening the entire rooftop, to preserve views for their residents. If, however, it becomes necessary to have perimeter screening, the Biltmore would prefer to work with the condo to adjust the angles of the louver option to provide some view possibilities. Ms. Ziska stated that cluster screening is not possible in this case.

Commission comments: Looks awful: looks like a prison yard on the roof; no architectural thought here; like the lattice option, but lowered by a foot: like the louver option; and, you are changing the height of this building visually.

MOTION BY MR. STRAWBRIDGE FOR APPROVAL OF THE PROJECT WITH THE CONDITION THAT THE APPLICANT GOES BACK TO SEE IF THERE IS A WAY TO PLACE THE LOUVERS IN A WAY THAT IS MORE ACCEPTABLE TO THE NEIGHBORS.

MOTION DIED FOR LACK OF A SECOND.

MOTION BY MR. ZUKOV FOR DEFERRAL (TO THE JUNE MEETING); TAKE THE LATTICE DESIGN...SHOW IT COMPLETELY DARK, AND THEN THE VERTICAL PIECES BELOW THE ROOF ARE TO BE COMPLETELY BLENDED IN WITH THE BUILDING ITSELF.

**MOTION SECONDED BY MS. DIVER.
UPON ROLL CALL, MOTION CARRIED 5-2 WITH MESSRS.
STRAWBRIDGE AND SMITH VOTING AGAINST THE MOTION.**

In light of the deferral, Mr. Smith asked Ms. Ziska to have their engineer look at doing cluster screening supported from the actual a/c stands, without impacting the roof membrane.

B22/10 New Residence

Address: Lot 7 & 8, El Mirasol

Applicant: Mr. and Mrs. Khubani

Architect: Roger Hansrote Architect

Project Description: New two-story single family residence with 8 bedrooms, 10 bathrooms, 2 1/2 bathrooms, (2) two-car garages, and (1) one-car garage, breezeway, porte cochere, and (2) pools. 11,427 sq. ft. A/C

Please note that this project was deferred from the April meeting (without review), and again from the May meeting, at the request of the attorney for the applicant.

MOTION BY MS. DIVER FOR DEFERRAL OF B22/10 TO THE JUNE MEETING.

MOTION SECONDED BY MR. KARAKUL.

MOTION CARRIED UNANIMOUSLY.

B23/10 Atrium enclosures (In association with Site Plan Review #3-2010 with Variance)

ARCOM TO MAKE RECOMMENDATION REGARDING VARIANCE

Address: 7 Sloan's Curve Drive

Applicant: Mr. and Mrs. Alan Adler

Architect: Smith and Moore Architects, Inc.

Project Description: A 135 sq. ft. atrium enclosure, a 49 sq. ft. interior atrium enclosure and window changes in an existing townhouse. A variance to allow two small additions that will enclose the entry feature and an interior atrium thereby increasing the lot coverage to 42.1% in lieu of the 39.5% existing and the 35% maximum allowed in the PUD-B district. The proposed additions will modify a previously approved site plan in a PUD complying with Section 134-688 (b) of the Town's Zoning Code.

Please note that this project was deferred from the April meeting at the request of the attorney for the owner, since the variance application had to be revised and re-advertised.

Call for disclosure of ex parte communication: Several members made ex parte declarations.

Attorney Maura Ziska discussed the variance requests related to this project. Architect Harold Smith presented the architectural plans as described in the project description. In addition to the project description, Mr. Smith presented associated fenestration changes of impact windows and the addition of Confederate Jasmine at the front entry. Attorney Neil Schiller from Becker & Poliakoff, representing the Residences at Sloan's Curve Association, stated the association's complete support for the project.

Mr. Lindgren noted that two letters of support for this project have been received from neighbors: letter dated May 17, 2010 from H. Barry Gales, 6 Sloan's Curve Drive, and letter dated May 17, 2010 from Harold Peerenboom, 8 Sloan's Curve Drive.

MOTION BY MR. ZUKOV THAT THE IMPLEMENTATION OF THE PROPOSED VARIANCE WILL NOT CAUSE NEGATIVE ARCHITECTURAL IMPACTS TO THE SUBJECT PROPERTY.

**MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.**

**MOTION BY MR. ZUKOV FOR APPROVAL OF THE ARCHITECTURE AS PRESENTED.
MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.**

B24/10 New Loggia (In association with Variance #4-2010)

ARCOM TO MAKE RECOMMENDATION REGARDING VARIANCE

Address: 151 Via Bellaria

Applicant: Robert J. Tomsich

Architect: Smith and Moore Architects, Inc., Jonathan Moore

Project Description: Construction of a new two-story open loggia to replace smaller existing two-story open loggia. Variance to permit the construction of a new larger two-story open loggia to replace the existing two-story loggia, which will result in a lot coverage of 25.8% in lieu of 24.9% existing and 25.0% maximum allowed.

Please note that at the April meeting, after review, the project was deferred to the May meeting for re-study. At the May meeting, the project was deferred again at the request of the architect.

MOTION BY MS. DIVER FOR DEFERRAL OF B24/10 TO THE JUNE MEETING.

MOTION SECONDED BY MR. KARAKUL.

MOTION CARRIED UNANIMOUSLY.

B. MAJOR PROJECTS - NEW BUSINESS

B26/10 New Residence

Address: 120 Wells Road

Applicant: Mr. and Mrs. Peter Lacaillade

Architect: Smith and Moore Architects, Inc.

Project Description: New two-story residence with pool. Final landscape and hardscape. Roof: white concrete tile; Building and trim color: white; shutter color: black

Call for disclosure of ex parte communication: Several members made ex parte declarations.

The project was presented by Architect Harold Smith, Peter Papadopoulos, and Keith Williams of Mario Nievera Designs, Landscape Architect. Mr. Papadopoulos stated that the proposed home is a simple, Bermuda style residence with 6,400 sq. ft. total air-conditioned space, and requires no variances. The front

facade is symmetrical with a centered, two-story entry element with mahogany door, which is flanked by one-story Flemish gabled wings with copper-roofed bay windows. The garage (with guest suite) and service functions are placed at the rear corner of the property. Black shutters are a mix of both Colonial and Bermuda styles. The roof will be done in white Kaidisen Bermuda tiles.

Keith Williams presented the landscape/hardscape defining plant materials to be removed, relocated and newly planted. He noted that the Australian Pines and the Podocarpus at the street will remain. The main driveway/motorcourt has two curb cuts off Wells Road, and will be surfaced in brick in a herringbone pattern with a flush brick border and a raised brick curb. Two brick tire paths lead from the front motorcourt back to the rear of the property to the garage and service court, also brick in a herringbone pattern. The pool (coping-brick) is on axis with the master bedroom with four Cocoanut Palms near each corner. The plan includes two garden gates, one at the service court entering to the pool area and the other at the main motorcourt leading into the East garden.

Commission comments: The tire paths will be difficult; it will be very difficult to get two vehicles into the garage; may need to find a different spot for generator; sand-set bricks will be problematic; the bay windows with copper roofs do not fit with this design...a hip roof would be better; the gable ends are over scaled and the front entrance gable is under scaled; the one-story elements need to be thinner; the front door is too narrow; the front elevation is disturbing and needs a lot of work; problem with gables on rear elevation also; and the scale and proportion is off at the windows on the front elevation.

**MOTION BY MR. ZUKOV FOR DEFERRAL TO THE JUNE MEETING.
MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.**

Let the record show that at 10:29 a.m., there was a 15 minute break. The meeting reconvened at 10:46 a.m.

B27/10 Time Extension

Address: 198 Via Linda

Applicant: Andrew Thomka Gazdik c/o Stromberg and Tarone

Architect: SKA Architect & Planner

Project Description: Extension of ARCOM approvals for both demolition of existing one-story residence and new two-story Bermuda residence with white smooth stucco walls, gray concrete roof, white casement windows, French doors, and black louvered shutters.

Call for disclosure of ex parte communication: Mr. Knowles made an ex parte declaration.

Architect Jacqueline Albarran requested a 12 month time extension. Without any presentation of the project, the following motion was made:

**MOTION BY MR. KARAKUL FOR A 12 MONTH EXTENSION.
MOTION SECONDED BY MR. ZUKOV.
MOTION CARRIED UNANIMOUSLY.**

C. MINOR PROJECTS - OLD BUSINESS

A2/10 Facade Renovation

Address: 201 Seminole Avenue

Applicant: Mr. Terry (David) and Mrs. Linda Collier

Architect: David J. Gengler, Architect

Project Description: Minor renovation of the South (Main) and East facades of an existing two-story residence: Adding Mediterranean Revival cast stone, balustrade, and railing ornamentation

This project was heard at the March meeting, and was deferred to the April meeting for re-study. At the April meeting, the project was not reviewed, but was deferred to the May meeting at the request of the architect.

Call for disclosure of ex parte communication: Several members made ex parte declarations.

Architect David Gengler returned to the commission stating that the proposed ornamentation has been refined in response to comments heard at the March meeting including the following: Simplified the entrance into the side yard; toned down cast stone carved elements; eliminated the grillwork over the quatrefoil window; made ironwork simpler; the lights, ironwork, and lion masks have all been eliminated or refined; and, simplified iron strap work on the garage and eliminated it on the front door. Mr. Gengler discussed the new balcony over the open trellis in the rear and railing changes from cast stone to aluminum hand forged railings.

**MOTION BY MR. KARAKUL FOR APPROVAL AS PRESENTED WITH
THE CONDITION THAT THE LIGHT NEXT TO THE FRONT DOOR IS
REMOVED AND THAT GRILLWORK IS ADDED TO THE
QUATREFOIL WINDOW.**

**MOTION SECONDED BY MR. ZUKOV.
MOTION CARRIED UNANIMOUSLY.**

A3/10 Landscape and Terrace

Address: 440 Royal Palm Way

Applicant: Marni Propp, Owner, Palm Beach Park Centre

Architect: Morgan Wheelock Inc.

Project Description: Installation of landscape buffer on south and southwest property line, new employee terrace over existing garage (hardscape approximately 1,100 sq. ft.

Please note that this item was reviewed at the April meeting, and was deferred to the May meeting for re-study.

Call for disclosure of ex parte communication: There were no ex parte declarations.

Mr. Smith stated that it was his understanding that the applicant and the neighbors have come to terms. Don Skowron of Morgan Wheelock Inc. testified that he had met twice with the adjacent property owner, who lives in the penthouse and has the most direct view of the site, and had presented him with three options. Both parties agreed on one of the options, and also agreed that the condo will allow its clusia hedges to grow taller for an additional buffer.

**MOTION BY MR. ZUKOV FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.**

A4/10 Facade changes

Address: 110 Wells Road

Applicant: 110 Wells Road LLC/James Pappas

Architect: Brasseur & Drobot Architects PA

Project Description: Add cast stone veneer to entry & stair tower, add balcony & rail to (2) front windows, remove window and door from west side of stair tower, and add windows to rear elevation

Please note that this item was reviewed at the April meeting, and was deferred to the May meeting for re-study.

Call for disclosure of ex parte communication: None declared

As no one was in attendance to present the project when the item was called:

**MOTION BY MR. ZUKOV FOR DEFERRAL TO THE JUNE MEETING.
MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.**

After the Publix project was concluded, the architect for this applicant was present and requested that the project be heard.

**MOTION BY MS. DIVER TO RE-OPEN THIS ITEM.
MOTION SECONDED BY MR. ZUKOV.
MOTION CARRIED UNANIMOUSLY.**

Architect Jeff Brasseur stated that since the meeting last month, some changes have been made to the cast stone, hardscape, doors/windows and balconies.

It should be noted that this home was originally approved by ARCOM in February 2009, was constructed, but it is not yet complete. Several staff approvals have been given to the project since the original ARCOM approval. Today's project represents yet even more changes.

**MOTION BY MR. ZUKOV TO KEEP THE BUILDING AS ORIGINALLY
APPROVED.
MOTION DIED FOR LACK OF A SECOND.**

**MOTION BY MR. GRUSS FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY. (NO NAY VOTE WAS AUDIBLE,
DESPITE MR. ZUKOV'S EARLIER MOTION.)**

A5/10 Facade changes

Address: 286 Jamaica Lane

Applicant: Mr. and Mrs. John Raese

Architect: Roger Janssen, Dailey Janssen Architects

Project Description: Removal of balcony, shutters and stucco surrounds. Addition of cast stone entry surround, window surrounds, belt course and cornice.

Please note that this item was reviewed at the April meeting, and was deferred to the May meeting for re-study. Please note that the architect requested deferral to the June meeting.

**MOTION BY MS. DIVER TO DEFER A5/10 TO THE JUNE MEETING.
MOTION SECONDED BY MR. KARAKUL.
MOTION CARRIED UNANIMOUSLY.**

D. MINOR PROJECTS - NEW BUSINESS

A6/10 Change of exterior wall finish

Address: 135 Root Trail

Applicant: Root Ocean Property LLC

Architect: James C. Paine, Jr.

Project Description: East building only: Change exterior wall finish from Hardiboard lap siding (recently approved by ARCOM) to stucco with identical siding pattern.

Call for disclosure of ex parte communication: Several members made ex parte declarations.

Architect James Paine was present. Since the members were very familiar with this project; and, since the change was simple, to a material which had received previous approvals; without further comment or presentation:

**MOTION BY MR. ZUKOV FOR APPROVAL AS PRESENTED.
MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.**

A7/10 Changes to roof, porch, and balcony

Address: 111 Reef Road

Applicant: Bradford and Carol Hack

Architect: James C. Paine, Jr.

Project Description: Change existing cement tile roof to metal; increase width of front porch by approximately 3 feet; new column at corner; and, adjust balcony columns and rail

Call for disclosure of ex parte communication: Several members made ex parte declarations.

Architect James Paine, accompanied by Margaret Kaywell, presented this request pursuant to the project description listed. (*Let the record show that staff was not provided a copy of the mini-set plans.*) A sample of the metal roof was brought to the meeting. Mr. Smith commented that he was not in favor of the metal roof...that it is a commercial product and is not an enhancement to the home...too "Key Westy"...out of scale with this house...no need to change the existing roof style. Mr. Paine responded that the owner prefers metal roofs.

MOTION BY MR. STRAWBRIDGE FOR APPROVAL AS PRESENTED WITH A 12" RIDGE.

MOTION SECONDED BY MS. DIVER.

MOTION CARRIED 6-1, WITH MR. SMITH OPPOSING.

A8/10 Removal of previously approved changes

Address: 12 Sloan's Curve Drive

Applicant: Muriel G. Leventhal & Norman B. Leventhal

Architect: Brower Architectural Associates, Inc.

Project Description: Removal of previously approved changes: 1) 18 sq. ft. second floor bedroom expansion; 2) 18 sq. ft. attic expansion; and 3) 18.34 sq. ft. of breakfast room addition

Call for disclosure of ex parte communication: Mr. Zukov and Ms. Diver made ex parte declarations.

Attorney Maura Ziska and Architect Ken Brower provided the presentation. Ms. Ziska explained that ARCOM approved this project a year ago in conjunction with a Town Council approval. Since that time, it has been discovered that the architect used a part of Old South Ocean Boulevard in his lot calculations. The deletions requested in the project description attempt to rectify the situation and bring the property into compliance. Mr. Brower discussed the proposed architectural changes.

Mr. Lindgren read a letter dated May 18, 2010 into the record from the Residents of Sloan's Curve Association wherein they state their objection to the project. The Association's attorney, Neill Schiller of Becker and Poliakoff, stated that the homeowner's association has not granted approval of this project; that seven issues must be resolved (per the association's consulting architect) related to the project; and, that deferral of the project is recommended until the approval of the homeowner's association is secured.

Mr. Smith saw no point to this matter being on the ARCOM or Town Council agendas if no HOA approval was in place. Ms. Ziska countered that the project had been previously approved by the HOA, and now the request is to delete those portions of that approval which would have added lot coverage.

Robert Moore, 420 Santa Fe Road, West Palm Beach, testified that the HOA

alleges that this owner constructed an addition to his property in 1991 without a permit, and if today's project were approved, that would technically approve the alleged 1991 addition as well. He recommended that these issues should be resolved with the HOA prior to any approval from ARCOM, and testified that this has been the customary procedure which has been followed by ARCOM in the past....that HOA approval is secured prior to seeking commission or Town Council approval.

MOTION BY MR. GRUSS TO DEFER THE APPLICATION BECAUSE OF TOO MANY LEGAL COMPLICATIONS, WITH THE INSTRUCTION THAT THE TOWN ATTORNEY SHOULD ADVISE ARCOM AND THE APPLICANT OF THE PROPER COURSE TO FOLLOW.

MOTION DIED FOR LACK OF A SECOND.

Zoning Administrator Paul Castro was sworn and testified to the history and circumstances of this project. He stated that typically the Town only requires HOA approval of those types of elements which are under the control of the association, not on private property. This is a private issue.

MOTION BY MR. ZUKOV FOR APPROVAL AS PRESENTED, WITHOUT COMMENT REGARDING THE RIGHT OF WAY ISSUE AND THE DIFFERENCES BETWEEN THE HOA AND THE OWNER.

**MOTION SECONDED BY MS. DIVER.
MOTION CARRIED UNANIMOUSLY.**

- E. MAJOR PROJECTS - OLD BUSINESS (CONTINUED) PUBLIX PROJECT B25/10 Demolition and New Construction of Publix Supermarket (In association with Site Plan Review #4-2010 with Special Exception and Variances)
ARCOM TO MAKE RECOMMENDATION REGARDING VARIANCES*
Address: 265 Sunset Avenue
Applicant: Publix Supermarkets, Inc. & Sunset Avenue Corp.
Architect: Fisher and Associates, LLC
Project Description: Demolition of an existing 33,059 sq. ft. Publix Supermarket and construction of a new 50,870 sq. ft. one-story Publix Supermarket. Final Landscape and Hardscape. Roof material: clay barrel tile; Roof color: Terra cotta; Building color: alabaster; trim color: ivoire. The following variances are being requested to construct the proposed one story grocery store: a) To allow a building length of 245 ft. in lieu of the 150 ft. maximum allowed; b) To allow a front yard setback at the northwest corner of the proposed building of 10 ft. in lieu of the 14 ft. minimum required based on building height; c) To allow a side yard setback for the proposed towers to be 10 ft. in lieu of the 19 ft. minimum required; d) To allow two loading spaces in lieu of the three spaces required by code; e) To allow the proposed building to be a total square footage of 50,870 sq. ft. in lieu of the 15,000 sq. ft. maximum allowed; f) To allow 8 towers in lieu of the two maximum allowed; g) To allow the area of the 8 towers to be 12.2% of the gross floor area of the building in lieu of the 2% maximum allowed; h) To allow the parking lot light poles to be 23 ft. in height in lieu of the 15 ft. maximum allowed;

i) To allow the height of the proposed one story grocery store to be 22.66 ft. in lieu of the 15 ft. maximum allowed; j) To allow the overall height of the proposed one story grocery store to be 37 ft. in lieu of the 20 ft. maximum allowed; k) To allow a monument sign at the northwest entrance where no sign is allowed; and, l) To allow a monument sign at the southwest entrance where no sign is allowed.

Please note that this project was reviewed and deferred from the April meeting, and the following motion was made at that time: MOTION BY MRS. VANNECK FOR DEFERRAL FOR ONE MONTH. MOTION SECONDED BY MR. ZUKOV. MRS. VANNECK CLARIFIED SOME REASONS FOR DEFERRAL: TOO MANY UNANSWERED QUESTIONS; THE SITING OF THE STORE IS A MAJOR PROBLEM; AND MORE PIERCINGS IN THE SHELL WOULD MAKE THE STORE MORE USER FRIENDLY. MR. ZUKOV CALLED FOR RE-DESIGN OF THE BUILDING, AND A DIFFERENT ROOF TREATMENT. HE NOTED THAT THE VARIANCES WOULD PROBABLY ALL BE ACCEPTABLE IF THE COMMISSION LIKED THE BUILDING ARCHITECTURE AND THE SITE PLAN. MR. SMITH CALLED FOR THE RE-STUDY OF THE SITE PLAN, ENCOURAGED THE ACQUISITION OF THE WACHOVIA PROPERTY; RECOMMENDED MORE THAN ONE ENTRANCE INTO THE STORE; RECOMMENDED THE PURSUIT OF THE "SENSE OF COMMUNITY" WITHIN THE STORE...A PLACE TO HAVE COFFEE WITH FRIENDS; STRESSED THE IMPORTANCE OF LANDSCAPING; AND NOTED THAT IT IS TOO EARLY TO EVEN CONSIDER THE VARIANCES. MRS. VANNECK RE-CLARIFIED THAT IT IS RECOMMENDED THAT THE DESIGN INCLUDE MORE ENTRANCES (BOUTIQUE-LIKE ENTRANCES) INTO SPECIFIC AREAS OF THE STORE TO MAKE IT MORE STREET FRIENDLY; IT IS RECOMMENDED THAT THERE BE WINDOWS ON THE FIRST FLOOR; IT IS RECOMMENDED THAT THERE BE MORE SHADE TREES; AND, IT IS RECOMMENDED THAT THE SITE PLAN BE RE-STUDIED. MR. ZUKOV CALLED FOR MORE WORK ON THE ARCHITECTURE AND THE ROOF; MR. SMITH CALLED FOR RE-STUDY OF THE SITE PLAN, PARKING CIRCULATION AND TRUCK UNLOADING AREA. MOTION CARRIED UNANIMOUSLY.

Call for disclosure of ex parte communication: All members present, except Mr. Gruss, made ex parte declarations.

Mr. Randolph attempted to clarify the role of ARCOM in the review of this Publix project.

Attorney Maura Ziska, representing Publix, stated that the applicant has attempted to address the concerns mentioned at last month's meeting. She provided a list of persons/groups with whom Publix representatives have met to date. She also listed some of the suggestions made last month, along with the applicant's response to those suggestions. Finally, Ms. Ziska discussed how the variances requested have changed since the last presentation.

Mrs. Delp administered the oath to many persons who wished to testify regarding the Publix project.

Brian Fisher, Publix architect, reviewed the changes made since the last meeting, including, but not limited to re-positioning the building between the Wachovia Bank on the West side and the adjacent building on the East side which actually helped to reduce the mass and scale of the building; changes to the "back of house"; elimination of curb cuts and truck traffic on Sunrise which benefits the Palm Beach Hotel; truck access changed to Sunset; improved pedestrian access; barrel tile covered arcade on Sunrise Avenue with benches and some landscaping; introduced angled parking; change windows to true windows...impact resistant Pella with sage green tint; lighting to resemble Town Hall lighting; large gates with decorative hinges to enclose and hide trucks; wrought iron elements at tower openings; hand painted Mexican tiles at bench seating areas; looking at two pedestrian pavilions with decorative shutters and benches; increased floor area; wider store aisles, increased check-out area, all mechanical equipment off the roof; reduced number of towers...only 3 now; reduced overall height of the building; and, Mediterranean light fixtures on more attractive light poles. Mr. Fisher noted that multiple entries, as suggested last month, would be very difficult to insert without loss of function interiorly.

Don Skowron of Morgan Wheelock Inc. stated that last month it was clear that people want shade. As such, the proposed trees are mostly oak trees for shade. Mr. Skowron discussed the various landscape treatments for each facade, and reviewed the overall landscape plan.

PUBLIC COMMENT:

Mr. Lindgren reported that staff has received many letters and e-mails relative to Publix. Letters from the following persons/groups were received and distributed to ARCOM members, but were not read into the record: Garden Club of Palm Beach (comments/recommendations), Orator Woodward (opposing), Sunset Condo Association (in support), Palm Beach Civic Association (comments and recommendations), Siegfried, Rivera, Lerner, P.A., et al (representing the Palm Beach Hotel Association), and two letters from Laura Miller (opposing).

Anne Fairfax, representing the 300-member Neighborhood Alliance of Palm Beach, distributed a handout of requests/suggestions with regard to the project and presented a short PowerPoint presentation. Several other persons addressed the commission offering lists of concerns and recommendations: Allen Mason, 1485 Via Manana; Polly Reed, Executive Committee of the Garden Club of Palm Beach; Susan Markin, 1450 North Lake Way; Susan Watts, 455 Worth Avenue; Attorney Jeffrey A. Rembaum, representing the Palm Beach Hotel Condominium Association, (expressing several concerns in a 12 page document), Michael Sexton, of Sexton Engineering for the Palm Beach Hotel and Condo; and, Jerry Dinger, the Leverett House Condo Manager.

This concluded Public Comment as all persons who wished to speak were given the opportunity to do so. It should be noted that while no one who spoke was totally in favor of the revised design, several persons thanked the Publix team for their efforts to re-design the store, taking into account the opinions expressed at the April meeting.

Let the record show that Mr. Smith called a lunch break from 1:00 p.m. to 2:00 p.m., after which the commission would enter into executive session. The meeting actually was reconvened at 2:11 p.m.

Executive Session:

The following are comments made by the commission members: We want Publix here, but this design is not even close; question the mixing of straight and angled parking; the entrance from Sunset is potentially dangerous; the proposed pavilions will end up being used by Publix employees rather than Publix customers; the roof area is so huge that the mechanical equipment could be rearranged to the center of the roof which would allow the towers to be improved; this town does not deserve this type of architecture; the scale still needs refinement; it needs to feel like a village market; do something with the scale and the blank walls; look at other areas in town to understand scale and pleasing architectural styles and details; the arcades have brought the "box" down and that is good; more articulation is needed; the proposed main store entrance/exit is odd; murals good; this is an opportunity for Publix to do something special; you're moving in the right direction; the changes made thus far are appreciated; we need a bigger Publix; we need smaller carts and wider aisles; the Biltmore and Palm Beach Hotel are not "villagey", so why try to create a village market; be careful what you ask for when you ask for either an indoor or outdoor cafe...it would compete with the cafes already struggling on Royal Poinciana Way; the landscape is moving in the right direction, a mix of indigenous and naturalized; carve "PUBLIX" into the facade rather than the typical green sign; go for world class detail; in the current proposal, you listened to us last month, and a lot of good came from it, but you're not there yet; there is only 10 feet of overlap between the existing store location and the new store location, so find a way to keep the existing store running, while the new store is being built; the parking is still a problem mixing straight and angled parking; on the main drive in and out, you still have cars backing up into that traffic, so it's a site plan issue; concerned about FEMA elevation, especially at the parking lot; circulation through the site is an issue; too much asphalt; gates should be on human scale; gates too tall as shown; prefer more and lower light poles; look to Europe for tile choices, not to Mexico; use real coral stone, real stucco, real divided lites; an outdoor cafe would not be used as intended; let the towers hit the ground and let pedestrians walk through them; look to the Breakers for details; if we do not want a bigger store, don't make them re-design again without knowing that up front; typically with every new design draft, the design improves; generally not in favor of granting variances in order to get a bigger building; the new design architecture is not great; it's standard retail design; this design is better than the first draft; a larger store will draw customers from across the bridge; the Town doesn't need a bigger store; limit the use of the store to "pick up and leave" without creating a space (cafe) to socialize, so it does not negatively impact businesses on Royal Poinciana Way; perhaps think about a building in the modern vernacular; what about an architectural competition; what you did this month shows you are trying to work with us; and, how about a workshop to speed up the process.

Mr. Fisher responded that the proposal would increase the size of the store by one-third to accommodate the requests of Publix customers. He agreed that a workshop would be very helpful and appreciated the comments made during this meeting.

As to the size of the store issue, Mr. Smith polled the members to see if they were agreeable to making the store bigger. All members, except Mr. Gruss, were in favor of a bigger store. Mr. Gruss stated he would only be in favor of it if the architecture was outstanding.

Attorney Maura Ziska, on behalf of Publix, liked the idea of a workshop. Mr. Randolph clarified that attendance at the workshop was not mandatory for the members.

**MOTION BY MS. DIVER FOR DEFERRAL TO THE JUNE MEETING.
MOTION SECONDED BY MR. GRUSS.
MOTION CARRIED UNANIMOUSLY.**

**MOTION BY MS. DIVER TO SCHEDULE A WORKSHOP WITH THE
PUBLIX ARCHITECT AND CIVIL ENGINEER, AND ANY OTHER
MEMBERS OF THE PUBLIX TEAM WHO WOULD LIKE TO BE
THERE; THAT THE ATTENDANCE FOR THE MEMBERS IS NOT
REQUIRED, BUT MEMBERS WILL MAKE AN EFFORT TO BE THERE;
AND, THAT THE WORKSHOP BE SCHEDULED ON JUNE 8TH AT 9:30
A.M. (IN THE EMERGENCY OPERATIONS CENTER).**

**MOTION SECONDED BY MR. ZUKOV.
MOTION CARRIED UNANIMOUSLY.**

Mr. Randolph clarified that no decisions will be made at the workshop. Mr. Smith noted that the public may attend the workshop, but may not participate in the discussion.

IX. COMMUNICATIONS FROM CITIZENS (3 MINUTE LIMIT PLEASE)

**X. COMMENTS OF THE ARCHITECTURAL COMMISSION AND DIRECTOR OF
PLANNING, ZONING AND BUILDING DEPARTMENT:(1:52:36 a.m.)**

Mr. Page reported that the Emergency Operations Center has been reserved for the June 8, 2010 ARCOM Workshop relative to the Publix project.

The June 23, 2010 meeting of ARCOM will be held in the new Town Council Chambers. After the June 8th workshop meeting, ARCOM members will be taken into the Town Council Chambers to become familiarized with the new setting and equipment. Members who cannot attend the workshop should contact staff to arrange a time to meet staff in the Chambers.

XI. ADJOURNMENT:(1:54:05 a.m.)

MOTION BY MS. DIVER TO ADJOURN THE MEETING AT 3:20 P.M.

MOTION SECONDED BY MR. KNOWLES.

MOTION CARRIED UNANIMOUSLY.

The ARCOM workshop meeting regarding Publix will be held on June 8, 2010 at 9:30 a.m. in the Emergency Operations Center.

The next regular meeting of the Architectural Commission will be held on Wednesday, June 23rd at 9:00 a.m. in the Town Council Chambers, 2nd floor, 360 South County Road, Palm Beach.

Respectfully submitted,

Jeffery W. Smith, Chairman
ARCHITECTURAL COMMISSION

cmd

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 60-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Expenditure of \$47,250 for the Purchase of One (1) 125-KW Baldor Standby Generator from Standby Systems, Inc. of Melbourne, FL, for the D-16 Pump Station via the Florida Sheriffs Association Contract No. 09-17-0908.

Presenter

Jay Boodheshwar, Acting Director of Public Works

Supporting Documents

- Memorandum dated June 7, 2010, from Jay Boodheshwar, Acting Director of Public Works.
- Resolution No. 60-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Acting Director of Public Works

Re: Approve Purchase of Standby Generator for D-16 Pump Station, Accelerated Capital Improvement Program
Resolution No. 60-10

Date: June 7, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 60-10 for the purchase of one (1) 125-KW (Kilowatt) Baldor Standby Generator in the amount of \$47,250 via the Florida Sheriffs Association, and Standby Systems, Inc. of Melbourne, Florida, Contract No. 09-17-0908, and authorize staff to expend an amount not-to-exceed \$25,000 to install the equipment.

GENERAL INFORMATION

On July 6, 2009, the existing 100-KW generator at the Town's D-16 Storm Water Pumping Station, located on Jungle Road, was removed from service due to excessive corrosion of the weatherproof enclosure and the fuel tank. Upon investigation staff determined that the cost to remove, rebuild and replace the corroded components with more suitable corrosion-resistant materials would be comparable to the cost of a new generator. Since that time, there has been a portable trailer-mounted generator on site that has to be operated manually. This results in unnecessary delays during non-business hours due to the response time. In addition, with the increase in size from 100-KW to 125-KW the Town will be able to provide enough power to eliminate the need for portable trailer-mounted generators at the nearby E-11 Wastewater Pumping Station during emergencies. Staff is receiving separate written proposals for the installation of the generator, which is expected to be less than \$25,000.

FUNDING/FISCAL IMPACT

Funding for this project is fully contained within the FY 2010 Capital Improvement Program budget under Storm Water Drainage Improvements.

TOWN ATTORNEY REVIEW

The proposed resolution is similar to those previously reviewed and approved by the Town Attorney for legal form and sufficiency.

Attachments

JB:mrs

cc: Jane Struder, Director of Finance
Cheryl Somers, Assistant Director of Finance
Eric B. Brown, Assistant Director of Public Works
Doug Terry, Water Resources Division Manager
Lynda Venne, Purchasing Agent

RESOLUTION NO. 60-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE EXPENDITURE OF \$47,250 FOR THE PURCHASE OF ONE (1) 125-KW BALDOR STANDBY GENERATOR FROM STANDBY SYSTEMS, INC. OF MELBOURNE, FL, FOR THE D-16 PUMP STATION VIA THE FLORIDA SHERIFFS ASSOCIATION CONTRACT NO. 09-17-0908.

* * * * *

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1. The Town of Palm Beach's purchase of (1) 125-KW Baldor Standby Generator, from Standby Systems, Inc., of Melbourne, FL, via the Florida Sheriffs Association, Contract No. 09-17-0908, in the amount of \$47,250 is hereby approved.

Section 2. The Town Manager, or his designee, is hereby authorized and directed to execute a contract on behalf of the Town of Palm Beach for the purchase of (1) 125-KW Baldor Standby Generator, under the terms of the Florida Sheriff's Association, contract No. 09-17-0908 in the amount of \$47,250.

Section 3. The Town Manager, or his designee, is hereby authorized and directed to take such further actions as may be necessary to effectuate the completion of the purchase, and other outfitting purchases as needed to place this equipment in service.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 22nd day of June, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 63-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a City/County Right-of-Way Agreement for Underground Conversions (WR # 3749484) in Conjunction with the Worth Avenue Improvement Project and Authorizing the Town Manager to Execute the Same on Behalf of the Town.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Memorandum Dated June 16, 2010, from Thomas G. Bradford, Deputy Town Manager
- Resolution No. 63-10
- Exhibit A ROW Agreement

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Thomas G. Bradford, Deputy Town Manager

Re: Resolution No. 63-10 - Approving a City/County Right-of-Way Agreement for Underground Conversions (WR # 3749484) in Conjunction with the Worth Avenue Improvement Project and Authorizing the Town Manager to Execute the Same on Behalf of the Town.

Date: June 16, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council adopt Resolution No. 63-10 Approving a City/County Right-of-Way Agreement for Underground Conversions (WR # 3749484) in Conjunction with the Worth Avenue Improvement Project and Authorizing the Town Manager to Execute the Same on Behalf of the Town.

GENERAL INFORMATION

The Worth Avenue Improvement Project is currently on schedule. The project's scope includes converting the highly visible overhead utility lines to underground service. The contractor has been laying conduit in certain areas in anticipation of the lines ultimately being inserted and energized by FPL and/or Comcast forces. A Right-of-Way (ROW) Agreement between the Town and FPL is necessary for this project because we must cross roads in underground conduit in four places, Worth Avenue, South County Road, Hibiscus Avenue and Cocoanut Row. Think of a ROW Agreement as the roadway or right-of-way equivalent of an easement on private property. It gives the utility assurance that their interests are protected once their facilities are placed underground and in right-of-way controlled by a government entity. Basically, the ROW Agreement documents the utilities location in the right-of-way and requires utility reimbursement if they are asked to relocate their facilities in the future for any reason other than that caused by the utility itself.

The form of the ROW Agreement was negotiated with FPL by the Town with Schef Wright and Skip Randolph. It is now the template used across FPL's service area. ROW Agreements are essential tools in compact urban areas where little to no land is available for the reasonable provision of an easement.

FUNDING/FISCAL IMPACT

Direct cost to the Town due to the proposed ROW Agreement is de minimis.

TOWN ATTORNEY REVIEW

The Town Attorney has approved the ROW Agreement for legal form and sufficiency and has signed the ROW Agreement indicating such.

Attachment

cc: Jay Boodheshwar, Acting Director of Public Works
Eric Brown, Assistant Director of Public Works

n:\tgb\agenda items\2010\Res. No. 63-10 ROW Agreement Memo for Worth Ave Imp Proj

RESOLUTION NO. 63-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A CITY/COUNTY RIGHT-OF-WAY AGREEMENT FOR UNDERGROUND CONVERSIONS (WR# 3749484) WITH FPL IN CONJUNCTION WITH THE WORTH AVENUE IMPROVEMENT PROJECT AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA, AS FOLLOWS:

Section 1: The City/County Right-of-Way Agreement for Underground Conversions (WR # 3749484) with FPL in Conjunction with the Worth Avenue Improvement Project, attached hereto is Exhibit "A" and incorporated by reference as a part of this resolution, is hereby approved and the Town Manager is authorized to execute the same on behalf of the Town.

PASSED AND ADOPTED IN REGULAR, ADJOURNED SESSION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH ASSEMBLED THIS 22th DAY OF JUNE, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

**CITY/COUNTY RIGHT-OF-WAY
AGREEMENT FOR UNDERGROUND CONVERSIONS (WR # 3749484)**

THIS AGREEMENT (the "**Agreement**") is made and entered into this ____ day of _____, 20 ____ by and between Town of Palm Beach ("**Local Government**"), a Florida municipal corporation or county with an address of 360 South County Road, Palm Beach, FL 33480 and Florida Power & Light Company ("**FPL**"), a Florida corporation with an address of P.O. Box 14000, 700 Universe Boulevard, Juno Beach, FL 33408-0429.

WHEREAS, Local Government has requested that FPL convert certain overhead electric distribution facilities located within the following boundaries (the "**Conversion**"): Along S. County Rd. (Worth Ave. Area), Hibiscus Ave. (n/o Worth Ave.), and Coconut Ave. (n/o Worth Ave.) (WR# **3749484**, see attached drawings) (collectively, the "**Existing Overhead Facilities**") to underground facilities, including transformers, switch cabinets and other appurtenant facilities some of which may be installed above ground (collectively, the "**Underground Facilities**") and has further requested that certain of the Underground Facilities be placed in certain of its road rights-of-way ("**Local Government ROW**") and/or certain road rights-of-way owned by or under the jurisdiction of other agencies ("**Other ROW**"). Local Government ROW and Other ROW may be referred to collectively as "**ROW**"; and

WHEREAS, the Local Government has agreed to pay FPL the cost of such Conversion as required by FPL's electric tariff and Section 25-6.115 of the Florida Administrative Code and has or will enter into a separate Underground Facilities Conversion Agreement with FPL; and

WHEREAS, FPL is willing, subject to the terms and conditions set forth in this Agreement, FPL's electric tariff and Section 25-6.115 of the Florida Administrative Code, to place certain of the Underground Facilities in the ROW.

NOW THEREFORE, in recognition of the foregoing premises and the covenants and agreements set forth herein, and other consideration the sufficiency of which is hereby acknowledged, intending to be legally bound hereby, the parties covenant and agree as follows:

1. The foregoing recitals are true and correct, and are hereby incorporated by reference into this Agreement.

2. Conditions Precedent to Placement of Underground Facilities in ROW

- (a) Local Government covenants, represents and warrants that:
 - (i) Local Government has full legal right and authority to enter into this Agreement;
 - (ii) Local Government has full legal right and authority to take all actions and measures necessary to fulfill Local Government's obligations under this Agreement;
 - (iii) Local Government hereby authorizes the use of the ROW by FPL for the purposes stated herein.
- (b) All applicable permits for FPL to install, construct, or maintain Underground Facilities in ROW must be issued on a timely basis by the appropriate agency, subject to the timely filing for permits by FPL.
- (c) Local Government agrees to provide, at its expense, a legal description that is acceptable to FPL of the ROW to be occupied by the Underground Facilities at a time before FPL initiates the design of the Underground Facilities. Said legal description shall be made part of this Agreement and attached as Exhibit "A".
- (d) FPL agrees to identify and document all existing FPL underground facilities within the ROW that will not be included under this Agreement. Local Government shall reimburse FPL's reasonable costs and expenses to deliver said documentation. Said documentation shall be made part of this Agreement and attached as Exhibit "B".
- (e) FPL warrants that the design of the Underground Facilities to which Local Government has agreed are in compliance with all operational and safety guidelines, codes and standards. FPL and Local Government have mutually agreed upon the location of the facilities within the ROW as per the construction drawings. Said construction drawings shall be attached as Exhibit "C" to this agreement, are part of this agreement, and may be amended to reflect changes to location of facilities as required.

3. Relocation and Rearrangement of FPL Facilities. If the Local Government or other agency with control over the Local Government ROW or Other ROW, for any reason whatsoever, requires that FPL relocate or rearrange, in whole or in part, any Underground Facilities (as they are to exist as a result of this Conversion, or as they may later be modified, upgraded, or otherwise altered) from or within the Local Government ROW or Other ROW, the Local Government, notwithstanding any language to the contrary in any applicable permit or franchise agreement, and prior to any such relocation by FPL, shall provide FPL with a substitute location, satisfactory to FPL, obtain any easements that may be necessary, and shall pay FPL for the costs of any such relocation, adjustment or rearrangement, now or in the future. Local Government shall reimburse FPL for all costs to locate, expose, protect or support the Underground Facilities, whether underground or above ground, in the event of future construction or excavation in close proximity to the Underground Facilities, when such services are required by Local Government or other agency with control over the Local Government

ROW or Other ROW Local Government shall use its best efforts in any design and construction of its future road improvement projects to avoid or mitigate the necessity of relocating or adjusting the Underground Facilities in Local Government ROW and, to the extent reasonably practicable, in Other ROW.

Local Government shall only be responsible for relocation costs associated with replacement facilities conforming to FPL standards in effect at the time of relocation. Any costs associated with the replacement facilities to provide increased capacity, improved reliability, future use facilities, or other such enhancements over and above the FPL standards in effect at the time of the relocation shall not be the responsibility of Local Government.

Nothing herein shall preclude Local Government from obtaining reimbursement for any and all costs requiring FPL to relocate or rearrange any of its Underground Facilities from that entity which initiated the requirement for the relocation or rearrangement of the facilities, excluding only other agencies which own or have jurisdiction over the ROW.

FPL shall be responsible for any and all costs of removal or relocation when such removal or relocation is initiated by FPL. Additionally, FPL agrees that when any portion of a street is excavated by FPL in the location, relocation or repair of any of its facilities when said location, relocation or repair is initiated by FPL, the portion of the street so excavated shall, within a reasonable time and as early as practical after such excavation, be replaced by FPL at its expense in a condition as good as it was at the time of such excavation.

4. **Abandonment or Sale of Local Government ROW.** If the Local Government desires to subsequently abandon or discontinue use of the Local Government ROW, and ownership of the land is transferred to a private party, the Local Government, as a condition of and prior to any such sale, abandonment, or vacation, shall grant FPL an easement satisfactory to FPL for the Underground Facilities then existing within the ROW or require the transferee to so grant FPL an easement satisfactory to FPL at the time of transfer. If ownership of the Local Government ROW is transferred to another public entity, that public entity shall take the ROW subject to the terms and conditions of this Agreement.

5. **Term.** This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Underground Facilities placed in the ROW.

6. **Title and Ownership of Underground Facilities.** Title and ownership of Underground Facilities installed by FPL as a result of this Agreement shall, at all times, remain the property of FPL.

7. **Conversion Outside ROW.** In the event that the FPL Underground Facilities are not, for any reason other than the sole error of FPL or its contractors,

constructed within the ROW, Local Government shall grant or secure, at Local Government's sole cost and expense, new easements or ROW grants for the benefit of FPL for the placement of the Underground Facilities in these areas, and shall secure subordinations of any mortgages affecting these tracts to the interest of FPL. In the alternative, at the discretion of Local Government, Local Government shall reimburse FPL for all costs incurred to remove said facilities which were constructed outside the ROW and for reinstallation within the ROW. FPL shall be responsible at completion of construction for notifying Local Government in writing of FPL's approval and acceptance of the conversion. Upon acceptance there shall be no further responsibility on the Local Government for relocations referenced in this paragraph.

8. **Agreement Subject to FPL's Electric Tariff.** This Agreement is subject to FPL's electric tariff, including but not limited to the general rules and regulations for electric service and the rules of the Florida Public Service Commission.

9. **Venue; Waiver of Jury Trial.** This Agreement shall be enforceable in Palm Beach County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Palm Beach County, Florida. By entering into this Agreement, FPL and the Local Government expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement. This Agreement shall be construed in accordance with the laws of the State of Florida.

10. **Attorney Fees.** In the event it becomes necessary for either party to institute or defend legal proceedings as a result of the failure of the other party to comply with the terms, covenants, or provisions of this Agreement, each party in such litigation shall bear its own cost and expenses incurred and extended in connection therewith, including, but not limited to attorneys' fees and court costs through all trial and appellate levels.

11. **Assignment.** The Local Government shall not assign this Agreement without the written consent of FPL.

12. **Recording.** This Agreement shall be adopted by the Local Government and maintained in the official records of Local Government for the duration of the term of this Agreement. This Agreement also shall be recorded in the Official Records of the County in which the Underground Facilities are located, in the place and in the manner in which deeds are typically recorded.

13. **Conflict between Terms of Permit or Franchise Agreement.** In the event of a conflict between the terms of this Agreement and any permit or franchise agreement entered into by Local Government and FPL, the terms of this Agreement shall control.

14. **Notice.** Any notice, instruction or other communication to be given to either party hereunder shall be in writing and shall be hand delivered, telecopied, sent by Federal Express or a comparable overnight service or by U. S. registered or certified mail, with return receipt requested and postage prepaid to each party at their respective addresses set forth below:

As to Local Government:

Town Manager Town of Palm Beach 360 South County Road Palm Beach, FL 33480

With copies to:

John C. Randolph, Esq. Town Attorney Jones, Foster, Johnston & Stubbs 505 South Flagler Drive Eleventh Floor West Palm Beach, FL 33402

As to FPL:

FPL
700 Universe Blvd.
Juno Beach, FL 33408
Attn.: FPL Legal Department

IN WITNESS WHEREOF, Florida Power & Light Company and Local Government have executed this Agreement on the date first set forth above.

For TOWN OF PALM BEACH

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

Approved as to Terms and Conditions: _____
(signature/title)

Approved as to Form and Legal Sufficiency: _____
(signature/title)

For FLORIDA POWER & LIGHT COMPANY

By: _____
(signature)

Name: _____
(print or type)

Title: _____
(print or type)

Exhibit A

WR # 3749484

Exhibit B

WR # 3749484

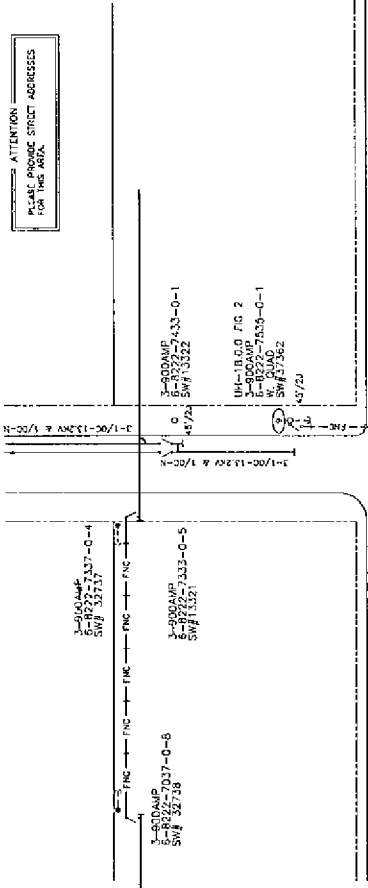
Currently, there is no existing underground equipment within the road right-of-way.

Exhibit C

WR # 3749484

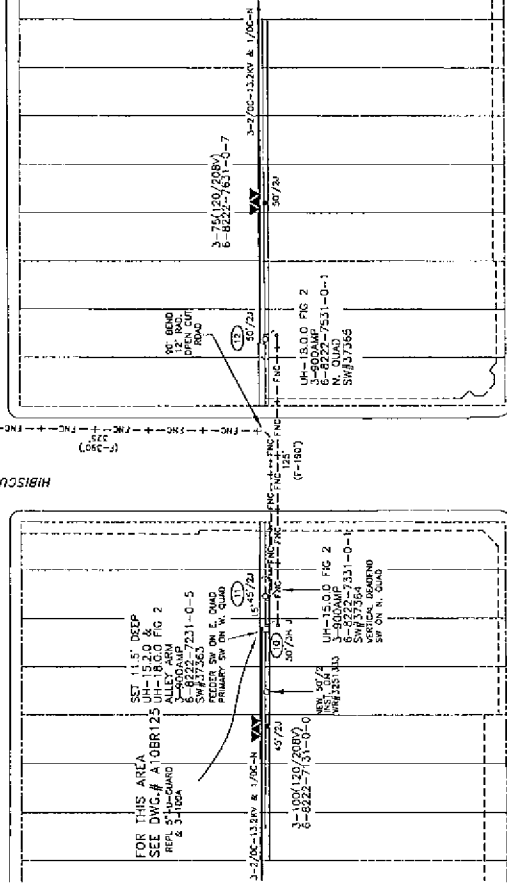
Location	City	State	County	Zip	Remarks

ATTENTION
PLEASE PROVIDE STREET ADDRESSES
FOR THIS AREA.

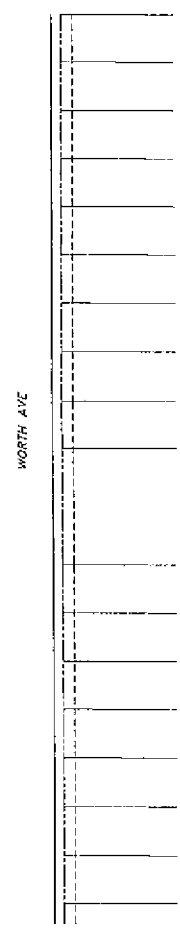


PERUVIAN AVE

HIBISCUS



WORTH AVE



The location and existence of any facilities shown on this plan shall be verified by the supplier in accordance with the conditions set forth in the contract. Supplier is responsible for conducting site conditions with above and below ground utilities including underground facilities.

REFERENCE DWG'S

EXHIBIT A

TEMP. 11. INC. DEC. SEC. 2807-10

WORTH AVE
CONVERSION
PERUVIAN AVE & WORTH AVE
WEST PALM BEACH, FL 33411
A10R283
Rev 3/74 494844 US 5714 -39-454

DESIGNED BY	S. HALLON	DATE	04/20/10
DRAWN BY	D. WILLIAMS	MAP NO.	K-0437
SCALE	1" = 30' FEET	DATE	04/20/10
PROJECT NO.	374844	DATE	04/20/10
PROJECT NAME	WORTH AVE CONVERSION	DATE	04/20/10
PROJECT LOCATION	PERUVIAN AVE & WORTH AVE	DATE	04/20/10
PROJECT OWNER	WEST PALM BEACH, FL	DATE	04/20/10
PROJECT ENGINEER	WEST PALM BEACH, FL	DATE	04/20/10
PROJECT SURVEYOR	WEST PALM BEACH, FL	DATE	04/20/10
PROJECT DRAFTER	WEST PALM BEACH, FL	DATE	04/20/10
PROJECT CHECKER	WEST PALM BEACH, FL	DATE	04/20/10
PROJECT APPROVER	WEST PALM BEACH, FL	DATE	04/20/10

AS-BUILT COPY	AS-BUILT COPY	AS-BUILT COPY	AS-BUILT COPY
DATE	DATE	DATE	DATE
BY	BY	BY	BY
CHECKED	CHECKED	CHECKED	CHECKED
APPROVED	APPROVED	APPROVED	APPROVED

REVISION	DATE	BY	DESCRIPTION
1	04/20/10	374844	INSTALL P.H. POLES & PULL TIGHTEN CABLE TO SUC WORTH AVE CONVERSION

105

[illegible]

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 64-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Creation of an Additional 5 Foot Public Utility Easement Adjacent To The Existing 2.5 Foot Public Utility Easement In Peruvian Avenue Park In Conjunction With The Worth Avenue Improvement Project and Authorizing the Town Manager to Undertake All Lawful Actions Necessary to Effectuate the same on Behalf of the Town

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Memorandum Dated June 16, 2010, from Thomas G. Bradford, Deputy Town Manager
- Resolution No. 64-10
- Sketch of Peruvian Avenue Park with Proposed Easement

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Thomas G. Bradford, Deputy Town Manager

Re: Resolution No. 64-10 - Approving the Creation of an Additional 5 Foot Public Utility Easement Adjacent to the Existing 2.5 Foot Public Utility Easement Along the Southern Property Line of the Town Owned Parcel known as Peruvian Avenue Park and Authorizing the Town Manager to Undertake all Lawful Actions to Effectuate the Same.

Date: June 16, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council adopt Resolution No. 64-10 Approving the Creation of an Additional 5 Foot Public Utility Easement Adjacent to the Existing 2.5 Foot Public Utility Easement Along the Southern Property Line of the Town Owned Parcel known as Peruvian Avenue Park and Authorizing the Town Manager to Undertake all Lawful Actions to Effectuate the Same. Doing so will enable the Worth Avenue Improvement Project to stay on schedule, maintain the same project scope, and solve a potential problem in the least expensive manner known.

GENERAL INFORMATION

The Worth Avenue Improvement Project scope includes converting the highly visible overhead utility lines to underground service. This request relates to the project's underground work.

On the south property line of the Town's Peruvian Avenue Park parcel there is a 2.5' utility easement. There is also a 2.5' utility easement on the north property line of the parcel to the south thereby providing a 5' wide gross area utility easement. However, this easement contains sewer lines, gas lines and telephone facilities all underground and FPL and Comcast facilities above ground. There is not any room to convert the FPL and Comcast lines to UG without more easement area. We are proposing to provide another 5' easement north of and adjacent to the current 2.5' easement on the Town's property for a total 7.5' wide public utility easement on Town property. I have attempted to depict this on the attached survey, which is not to scale and only for illustration purposes. Once the utility easement is approved the contractor will proceed with laying the underground conduit. This will disrupt portions of the park's landscaping along the southern boundary, but it will all be replaced with new, but not at Town expense. Granting this easement will allow everything to fall into place for the undergrounding portion of this

project. The FPL underground easement standard for new construction is a minimum 10 foot easement. By approving this additional 5 feet we still remain below the norm, but still accomplish our goal. Seeking the same from a private property owner could require use of expensive condemnation proceedings and cause serious project delay.

The proposed resolution authorizes the Town Manager to undertake all lawful actions to effect the easement. This will entail minimal expenditures to draw up a legal description and sketch, plus recording costs. All costs are legitimate project costs that will come from the project budget as opposed to the Town's general fund or capital improvement fund.

FUNDING/FISCAL IMPACT

Direct costs to the Town are minor and will be borne by the construction project budget.

TOWN ATTORNEY REVIEW

The Town Attorney will create or approve all related documents necessary to create the easement if approved by the Town Council.

Attachment

cc: Jay Boodheshwar, Acting Director of Public Works
Eric Brown, Assistant Director of Public Works

n:\tgb\agenda items\2010\Res. No. 64-10 Memo to Create Additional 5 foot easment at Peruvian Park

RESOLUTION NO. 64-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE CREATION OF AN ADDITIONAL 5 FOOT PUBLIC UTILITY EASEMENT ADJACENT TO THE EXISTING 2.5 FOOT PUBLIC UTILITY EASEMENT IN PERUVIAN AVENUE PARK IN CONJUNCTION WITH THE WORTH AVENUE IMPROVEMENT PROJECT AND AUTHORIZING THE TOWN MANAGER TO UNDERTAKE ALL LAWFUL ACTIONS NECESSARY TO EFFECTUATE THE SAME ON BEHALF OF THE TOWN.

WHEREAS, the Town Council wishes to facilitate the timely completion of the Worth Avenue Improvement Project in keeping with its original scope to include the undergrounding of all highly visible overhead utility lines; and

WHEREAS, due to the urban, compact environment that constitutes the majority of the property within the project boundaries, various accommodations may become necessary to provide a corridor of sufficient size to accommodate the placement of all public utility service lines underground ; and

WHEREAS, a portion of the Town's Peruvian Avenue Park property has been identified as a potential location for an additional public utility easement that can reasonably accommodate a portion of the intended project underground utilities with minimal expense and without project delay.

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA, AS FOLLOWS:

Section 1: The proposed public utility easement to be located on the Town property commonly known as the Peruvian Avenue Park property, located at 400 South County Road, Palm Beach, Florida, more specifically described as an additional 5 foot wide public utility easement north of, and adjacent to, the existing 2.5 foot public utility easement located on the southern boundary of the aforementioned parcel or parcels, is hereby approved in concept and the Town Manager is hereby authorized to undertake all lawful actions necessary to effectuate the creation and recording of this approved public utility easement.

Section 2: The public utility easement authorized herein shall be deemed a non-exclusive public utility easement and drafted in such a manner so as to accomplish this intention.

PASSED AND ADOPTED IN REGULAR, ADJOURNED SESSION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH ASSEMBLED THIS 22th DAY OF JUNE, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 65-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Purchase Order to Kimley-Horn and Associates, Inc., for the A-7 Pump Station Improvements and In-Line Booster Station Addition, Establishing a Design Phase Budget of \$140,000 (from the Bond Proceeds Construction Fund) for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Improvements.

Presenter

Jay Boodheshwar, Acting Director of Public Works

Supporting Documents

- Memorandum dated June 10, 2010, from Jay Boodheshwar, Acting Director of Public Works
- Resolution No. 65-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Acting Director of Public Works

Re: Award of A-7 Pump Station Improvements and In-Line Booster Station Design Services,
Accelerated Capital Improvement Program
Resolution No. 65-10

Date: June 10, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 65-10 authorizing the award of the A-7 Pump Station Improvements and In-Line Booster Station Design Services in the amount of \$121,950 to Kimley-Horn and Associates, Inc., and establishing a design phase budget of \$140,000.

GENERAL INFORMATION

Contained within the Accelerated Capital Improvement Program is the design and construction of improvements to the A-7 Pump Station at South County Road and Island Drive. The existing A-7 pump station renovation will include existing equipment replacement, station modifications to house new electrical equipment for the in-line booster station, and repairs to the wetwell area to rehabilitate the concrete which has deteriorated over time.

The purpose of the in-line station is to “boost” the pressure of the flows being transmitted from the stations upstream of the A-7 pump station to reach another booster station that is planned for the S-2 master station site. The wastewater flows from the S-2 station will then be pumped to the East Coast Regional Wastewater Treatment Facility.

The Accelerated Capital Improvement Program budget allotted \$140,000 for the combined pump station and in-line station project. We have negotiated a Design Phase Services contract with Kimley-Horn and Associates, Inc., in the amount of \$121,950. Staff also recommends a project contingency resulting in a total design phase budget of \$140,000.

FUNDING/FISCAL IMPACT

Funding for this Accelerated Capital Improvement Program project is fully contained within the Bond Proceeds Construction Fund.

TOWN ATTORNEY REVIEW

This is a standard resolution in a form previously approved by the Town Attorney for legal form and sufficiency.

JB:mrs

cc. Jane Struder, Director of Finance
Eric B. Brown, P.E., Assistant Director of Public Works/Operations
Douglas Terry, Water Resources Division Manager
Jeffrey Sanon, P.E., Project Engineer

RESOLUTION NO. 65-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A PURCHASE ORDER TO KIMLEY-HORN AND ASSOCIATES, INC., FOR THE A-7 PUMP STATION IMPROVEMENTS AND IN-LINE BOOSTER STATION, ESTABLISHING A DESIGN PHASE BUDGET OF \$140,000 (FROM THE BOND PROCEEDS CONSTRUCTION FUND) FOR SAID IMPROVEMENTS, AND AUTHORIZING THE TOWN MANAGER TO TAKE ACTIONS NECESSARY TO COMPLETE SAID IMPROVEMENTS.

* * * * *

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1. The A-7 pump station improvements and In-Line Booster station design services is hereby awarded to Kimley-Horn and Associates, Inc., for their proposal amount of \$121,950 with allowance for contingencies for a total amount of \$140,000.

Section 2. The Town Manager is hereby authorized and directed to execute a purchase order on behalf of the Town of Palm Beach for design services with Kimley-Horn and Associates, Inc.

Section 3. The Town Manager, or his designee, is hereby authorized and directed to take such further actions as may be necessary to effectuate the completion of the design services for the A-7 pump station improvements and In-Line Booster station.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 22nd day of June 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 67-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Expenditure of up to \$370,000 From the Bond Proceeds Construction Fund for the Purchase of Traffic Control and Video Detection Equipment from TPFL, Inc., and for the Installation of that Equipment.

Presenter

Jay Boodheshwar, Acting Director of Public Works

Supporting Documents

- Memorandum dated June 7, 2010, from Jay Boodheshwar, Acting Director of Public Works
- Resolution No. 67-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Acting Director of Public Works

Re: Approve Purchase of Traffic Control Equipment, Accelerated Capital Improvement Program
Resolution No. 67-10

Date: June 7, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council approve Resolution No. 67-10 for the purchase of traffic control and video detection equipment from TPFL, Inc., in the amount of \$273,313.

GENERAL INFORMATION

An initial budget of \$370,000 was approved in the Accelerated Capital Improvement Program for Fiscal Year 2010 to upgrade the traffic intersections throughout the Town. This would allow for the installation of video detection equipment and replacement of obsolete cabinets and controllers which do not support video detection software. The use of video detection at traffic intersections prior to the replacement of underground infrastructure will allow the electrical bureau to efficiently manage changes in traffic flow without placing the intersection in “recall” mode which leads to frustration for the residents.

The intersections of Hammon Avenue, Worth Avenue, Peruvian Avenue, and County Road currently have video detection that was installed by FDOT contractors during the County Road project. The requested funding will allow for video detection at the following nine (9) intersections:

- Royal Palm Way and County Road
- Royal Palm Way and Cocoanut Row
- Royal Poinciana Way and County Road
- Royal Poinciana Way and Bradley Place
- Barton Avenue and County Road
- Pinewalk and County Road
- The Breakers and County Road
- Sunrise Avenue and County Road
- Sunrise Avenue and Bradley Place

The three (3) remaining intersections at Seabreeze Avenue, Clarke Avenue and Pendleton Avenue at Cocoanut Row will be converted at a future time.

Staff recommends the use of Econolite controls because it is the only system that staff has been able to identify which uses “3 wire band over power technology”. This feature significantly reduces installation time, material use, and labor costs. The Econolite traffic controls are not compatible with other types of traffic control systems. The implementation of alternate systems would not allow for monitoring of the Town signalization, and ultimately lead to an unacceptable response time to traffic problems.

Public Works staff will need to obtain contractor support in the future to assist with the installation of cabling and supports for the finalized video detection system. Staff recommends procuring the traffic controls from the regional distributor to avoid additional mark-ups associated with purchases from a 3rd party contractor.

The purchase includes the following:

<i>Item</i>	<i>Make</i>	<i># to be installed</i>
Traffic Cabinets	Econolite	4
Autoscope Cameras	Econolite	43
Traffic Controller	Econolite	1
Master Controller	Econolite	2

FUNDING/FISCAL IMPACT

Approval of this request will expend \$273,313 from the original \$370,000 budget from the Accelerated Capital Improvement Program.

TOWN ATTORNEY REVIEW

The proposed resolution is similar to those previously reviewed and approved by the Town Attorney for legal form and sufficiency.

Attachments

EB:mrs

cc: Jane Struder, Director of Finance
Cheryl Somers, Assistant Finance Director
Eric Brown, Assistant Public Works Director
Joseph Ugi, Facilities Maintenance Manager
Lynda Venne, Purchasing Agent

RESOLUTION NO. 67-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING EXPENDITURE OF UP TO \$370,000 FROM THE BOND PROCEEDS CONSTRUCTION FUND FOR THE PURCHASE OF TRAFFIC CONTROL AND VIDEO DETECTION EQUIPMENT FROM TPFL, INC., AND FOR THE INSTALLATION OF THAT EQUIPMENT.

* * * * *

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1. The Town of Palm Beach's purchase of traffic control and video detection equipment from TPFL, Inc., in the amount of \$273,313 is hereby approved. The overall approved budget for the purchase and installation of this equipment is established at \$370,000.

Section 2. The Town Manager, or his designee, is hereby authorized and directed to execute a contract on behalf of the Town of Palm Beach for the purchase of traffic control and video detection equipment from TPFL, Inc., in the amount of \$273,313.

Section 3. The Town Manager, or his designee, is hereby authorized and directed to take such further actions as may be necessary to effectuate the completion of this purchase, and other outfitting purchases as needed to place this equipment in service.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 22nd day of June, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Resolutions

Agenda Title

RESOLUTION NO. 68-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Not-to-Exceed \$158,000 Contract to Applied Technology & Management, Inc., for the Annual 2010 Town-wide Physical Monitoring Services.

Presenter

Peter B. Elwell, Town Manager

Supporting Documents

- Memorandum dated June 10, 2010, from Rob Weber, Coastal Coordinator
- Resolution No. 68-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Robert Weber, Coastal Coordinator

Re: Contract with Applied Technology for Physical Monitoring
Resolution No. 68-10

Date: June 10, 2010

STAFF RECOMMENDATION AND BOARD RECOMMENDATION

The Shore Protection Board (SPB) and Town staff recommend that Council grant approval for the Town Manager to authorize the expenditure of \$158,000 for Applied Technology & Management, Inc. (ATM) to complete the State of Florida Department of Environmental Protection (FDEP) permit required and Town-wide annual physical monitoring.

GENERAL INFORMATION

Physical monitoring of the Town's beaches is essential for coastal management. Physical monitoring provides engineers and regulators the necessary information to track the performance of previously constructed coastal projects and to design permissible storm protection and erosion control projects in the future.

The physical monitoring procedure includes surveying both above the water (topographic) and below the water (bathymetric). Each year, the Town performs surveys starting from a given point on land with a known horizontal position and vertical elevation established by the State of Florida Department of Environmental Protection (FDEP). Horizontal and vertical data is collected from this given point, perpendicular to shore, out to a specific depth offshore. The given point, called a range monument, is numbered by FDEP and is located approximately every 1000 feet down the beach parallel to shore. Using the data, a cross section of each beach profile can be drawn which follows the movement of sand within the profile.

The Town is required to provide FDEP with engineering reports for the monitoring of our engineered beaches (Mid-Town and Phipps Ocean Park) within 90 days following completion of the beach profile surveys. The requested authorization includes the funding necessary to complete the Town's permit obligations for both the field work and the reporting.

For the past three annual events, the Town has tasked an engineering consultant to provide a Town-wide analysis of the beach profiles, comparing the newly collected data with the

previously collected data. A report is provided to the Town which includes all the Town's beach profiles. This "Sediment Budget" report assists the Town with keeping track of the sand currently within the coastal system of the Town limits. In order to accomplish this task, surveys are to be conducted Town-wide, beyond the scope of the existing permitting requirements.

ATM/Coastal Eco-Group recently completed the FDEP mandated Mid-Town Cumulative Review of the previous biological monitoring reports for the 2003 and 2006 beach nourishment projects. One of the primary FDEP concerns, leading to the request for this report, was the cross shore movement of sand over the offshore natural resources, aided by the presence of several tropical systems which impacted the region. This year's monitoring will include mapping of exposed and subsurface rock. If this additional mapping proves useful to the Town and the regulatory agencies, other areas in Town may be considered for this innovative approach to integrate physical and biological monitoring to develop a more environmentally responsible and cost effective program.

FUNDING/FISCAL IMPACT

ATM's Not-To-Exceed Time and Materials proposal for 2010 physical monitoring tasks, including three (3) engineering reports, and the additional physical and biological monitoring integration task, totals \$158,000. Appropriations by Town Council in the FY 2010 budget are sufficient to fund this work. No additional funding is being requested at this time.

TOWN ATTORNEY REVIEW

Town Attorney has reviewed the resolution and approved it for legal form and sufficiency.

cc: Shore Protection Board
Jay Boodheshwar, Acting Director of Public Works
Jane Struder, Director of Finance

RESOLUTION NO. 68 - 10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A NOT-TO-EXCEED \$158,000 CONTRACT TO APPLIED TECHNOLOGY & MANAGEMENT, INC. FOR THE ANNUAL 2010 TOWN-WIDE PHYSICAL MONITORING SERVICES.

* * * * *

BE IT RESOLVED BY THE TOWN OF COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1. The Town of Palm Beach contract for Annual Physical Monitoring Services is hereby awarded to Applied Technology & Management, Inc. for a Not-To-Exceed Time and Materials cost of \$158,000.

Section 2. The Town Manager is hereby authorized and directed to execute a contract on behalf of the Town of Palm Beach for the Annual Physical Monitoring Services contract with Applied Technology & Management, Inc.

Section 3. The Town Manager, or his designee, is hereby authorized and directed to take such further actions as may be necessary to effectuate the completion of the Annual Physical Monitoring Services contract to satisfy Town obligations to the State of Florida Department of Environmental Protection (FDEP Permit Nos. 0164713-001-JC and 0165332-006-JC).

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the
Town of Palm Beach on this 22nd day of June 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Consent - Other

Agenda Title

Florida League of Cities 84th Annual Conference-Authorization of Mayor and Town Council Attendance and Designation of Mayor Jack McDonald as the Town's Official Voting Delegate.

Presenter

Peter B. Elwell, Town Manager

Supporting Documents

- Memorandum dated June 15, 2010, from Peter Elwell

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council
From: Peter B. Elwell, Town Manager
Re: Florida League of Cities 84th Annual Conference
Date: June 15, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council authorize Mayor McDonald and all individual Town Council members to attend the Florida League of Cities' Annual Conference at Town expense. Additionally, staff recommends that the Town Council designate Mayor McDonald as the Town's official voting delegate for this conference.

GENERAL INFORMATION

The 84th annual Conference of the Florida League of Cities will be held in Hollywood, Florida, August 19-21. The **registration deadline is August 2nd** and the **hotel reservation deadline is July 19th**. Mayor McDonald has indicated that he plans to attend the conference, so it is appropriate for the Town Council to designate him to serve as the Town's voting delegate.

If any of the Town Council members also plan to attend this conference, you should see Cheryl Kleen in the Town Manager's Office as soon as possible so she can complete the necessary paperwork and make your reservations.

FUNDING/FISCAL IMPACT

There is funding available in the Mayor and Town Council's FY10 Budget for this purpose. No additional appropriation is required at this time.

PBE:cek

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Consent - Other

Agenda Title

Consent for Distribution of Funding Through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program for FY2011.

Presenter

Kirk Blouin, Chief of Police

Supporting Documents

- Memorandum dated June 4, 2010, from Kirk W. Blouin, Chief of Police.
- JAG FY2011 Letter from FDLE to Mayor
- JAG FY2011 Letter from Mayor to FDLE

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Kirk W. Blouin, Chief of Police

Re: Edward Byrne Memorial Justice Assistance Grant (JAG) Program - FY2011

Date: June 4, 2010

STAFF RECOMMENDATION

- Staff recommends that the Town Council authorize the Mayor to sign the attached letter signifying the Town's approval of the Criminal Justice Commission's allocation of FY2011 JAG Funds.

GENERAL INFORMATION

- Palm Beach County was awarded funds by the Justice Assistance Grant (JAG) program in the amount of \$581,068.
- The Criminal Justice Commission (CJC) voted to support and allocate the funds to the programs listed on the attached letter.
- FDLE requires that fifty-one percent (51%) of the local units of government representing at least fifty-one percent (51%) of the county's population agree on the allocation of these funds.
- Execution of the attached form letter by Mayor McDonald signifies the Town's approval of the allocation. Letter must be submitted to the CJC by no later than June 22, 2010.

FUNDING/FISCAL IMPACT

- None

Attachments

KWB:lsg

C: Blowing
German

Criminal Justice Commission
 1000 North American Boulevard
 Suite 1000 • Virginia Beach, Virginia 23462-4000
 Phone: 757/463-1400
 Fax: 757/463-1401
 E-Mail: info@cjc.state.va.us
 Web: www.phdgc.com/cjc

May 25, 2010

To All Palm Beach County Mayors:

The Criminal Justice Commission (CJC) seeks your approval in the allocation of FY2011 (Federal Fiscal Year 2010) JAG funds. The total FY2010 allocation to Palm Beach County is \$581,068.

Palm Beach County
Board of County
Commissioners

$$C_{\text{eff}} = \frac{C_{\text{eff}}^{\text{max}}}{1 + \frac{C_{\text{eff}}^{\text{max}}}{C_{50}}} \quad (1)$$
$$= \frac{9}{8} \left(\frac{\pi^2}{6} - \frac{1}{2} \right) = \frac{9\pi^2}{48} - \frac{9}{16}$$
$$\frac{1}{2} \left(\frac{1}{2} \right) = \frac{1}{4} \quad \frac{1}{2} \left(\frac{1}{2} \right) = \frac{1}{4}$$
$$I = \frac{1}{\pi} \int_0^\pi \left(\sum_{n=1}^{\infty} \frac{r^n}{n} \cos n\theta \right) d\theta$$
[illegible]

County Administrator

[illegible]

SUBGRANTEE	PROJECT TITLE	FEDERAL FUNDS RECOMMENDED
Palm Beach County/ Public Safety	Pre-Trial Services Program	\$48,500
Palm Beach County/Criminal Justice Commission	Juvenile Assessment Center (JAC) Security	\$202,254
Gulfstream Goodwill	Alternatives to Secure Detention for Juveniles	\$48,151
Palm Beach County/Criminal Justice Commission	Weed & Seed Program	\$100,000
Palm Beach County/Criminal Justice Commission	Program Evaluation	\$65,663
City of Riviera Beach	Civil Drug Court & Family Restart	\$116,500
TOTAL		\$581,068

The Florida Department of Law Enforcement (FDLE) requires that fifty-one percent (51%) of the local units of government representing at least fifty-one percent (51%) of the county's population agree on the allocation of these funds.

For your convenience, we have prepared a sample letter for your use. This sample letter can also be e-mailed to you by e-mailing a request to Michael Szakacs at MSZAKACS@PBCGOV.ORG. Due to the application deadline, we ask this letter be received at the Criminal Justice Commission Office no later than June 22, 2010.

The reaction scheme shows the conversion of compound 2 to compound 1. Compound 2 is a benzene ring with six 4-oxocyclohex-1-en-1-yl groups attached at the 1,2,3,4,5,6 positions. The reaction involves the removal of the cyclohexenyl groups, likely through a series of steps including reduction and elimination, to yield compound 1, which is a benzene ring with six ketone groups (C=O) at the 1,2,3,4,5,6 positions.

Please send the letter to:

**Palm Beach County Criminal Justice Commission
Attn: Michael Szakacs
301 North Olive Avenue, Suite 1001
West Palm Beach, FL 33401**

If you should require additional information or have any questions, please contact Michael Szakacs at (561) 355-4939. Your immediate attention to this matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Rodriguez", with a stylized flourish at the end.

**Michael L. Rodriguez
Executive Director**

**Cc: Ms. Barbara Cheives, CJC Chair
All Palm Beach County Police Chiefs**

June 22, 2010

Mr. Clayton Wilder
Florida Department of Law Enforcement
Office of Criminal Justice Grants
2331 Phillips Road
Tallahassee, FL 32308

Dear Mr. Wilder:

In compliance with the State of Florida Rule 11D-9, F.A.C. the Town of Palm Beach approves the distribution of \$581,068 of the Federal Fiscal Year 2010 (FY2011) Edward Byrne Memorial Justice Assistance Grant (JAG) for the following projects within Palm Beach County:

<u>Subgrantee</u>	<u>Project Title</u>	<u>Federal Funds Recommended</u>
Palm Beach County/ Public Safety	Pre-Trial Services Program	\$48,500
Palm Beach County/Criminal Justice Commission	Juvenile Assessment Center (JAC) Security	\$202,254
Gulfstream Goodwill	Alternatives to Secure Detention for Juveniles	\$48,151
Palm Beach County/Criminal Justice Commission	Weed & Seed Program	\$100,00
Palm Beach County/Criminal Justice Commission	Program Evaluation	\$65,663
City of Riviera Beach	Civil Drug Court & Family Restart	\$116,500
TOTAL		\$581,068

Sincerely,

Mayor Jack McDonald
Town of Palm Beach

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Consent - Other

Agenda Title

Approval to Accept a Grant of up to \$60,000 from Palm Beach County for Communications Software that Improves the Efficiency of the Dispatch Process.

Presenter

William Amador, Chief of Fire-Rescue

Supporting Documents

- Memorandum dated June 9, 2010, from Chief Amador

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: William Amador, Fire-Rescue Chief

Re: Approval to Accept Reimbursement Funds for the Purchase of Emergency Medical Dispatch and
Emergency Fire Dispatch Software

Date: June 9, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the acceptance of Palm Beach County 9-1-1 Management Reimbursement funds in the amount not to exceed \$60,000.00, for the purchase of Emergency Medical Dispatch and Emergency Fire Dispatch software.

GENERAL INFORMATION

The inclusion of this dispatch software integrates the power of the National Academy Protocols with our mission critical computer technology. Currently the dispatch personnel flip through cumbersome card sets for Emergency Medical Dispatch. This integrated software helps emergency dispatchers move smoothly through Case Entry and Key Questioning directly on the CAD entry screens for the Fire and EMS services. It assists dispatchers in quickly determining the appropriate codes, and clearly displays the response configurations. This software will greatly improve the efficiency and level of care provided to residents, guests, and visitors to the Town of Palm Beach. The software will integrate seamlessly with the recently installed new Computer-Aided Dispatch (CAD) system, and the CADVoice® Fire Station alert system due to be installed in July 2010.

FUNDING/FISCAL IMPACT

One hundred percent (100%) of the funding for this purchase will be provided from the County's 911 Management Reimbursement Fund that distributes money collected from monthly phone bills for this purpose. There will be no cost to Palm Beach taxpayers.

There are maintenance costs associated with this software as there are with any operational software requiring frequent updates. The yearly maintenance costs are expected to total approximately \$6,000.00. Grant funding and donations will be explored to offset the annual budgetary impact for these maintenance costs.

WA/bf

cc: Jane Struder, Finance Director
Lynda Venne, Purchasing Agent

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Consent - Other

Agenda Title

Authorization to Approve Two Change Orders for the Replacement of Windows at the North Fire Station.

Presenter

Jay Boodheshwar, Acting Director of Public Works

Supporting Documents

- Memorandum dated June 7, 2010, from Jay Boodheshwar, Acting Director of Public Works.

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Acting Director of Public Works

Re: Authorization to Approve Two Change Orders for the Replacement of Windows at the North Fire Station

Date: June 7, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council approve two change orders to Purchase Order #100489, for the window replacement project at the North Fire Station.

GENERAL INFORMATION

At the October 13, 2009, Town Council Meeting, Council approved Resolution No. 107-09 for the replacement of window sashes at the North Fire Station, including a contract in the amount of \$202,675 to Palm Beach Glass Specialties, Inc. Change Order #1, in the amount of \$12,985, would increase the amount of the Purchase Order to \$215,660. Change Order #2 is being requested for a not-to-exceed amount of \$17,000, increasing the Purchase Order to \$232,660.

The first change order would be for recommendations by the design consultant (Bridges Marsh & Associates). It was recommended that the finish be factory applied to the mahogany interior of all window sashes to ensure proper moisture content. This would also ensure that the manufacturer's warranty of 10 years remains in full effect.

The additional work in the proposed second change order includes all existing interior and exterior window trims being sanded, spot primed and prepared as needed, and each will receive one coat of enamel to match the new windows. All new jambs and stills are to be primed, with one coat of enamel trim. A final finish coat will also be applied once installed.

FUNDING/FISCAL IMPACT

Staff requests authorization to expend \$29,985 for change orders #1 and #2. Sufficient funds are available in the Capital Improvement Program project budget in the amount of \$239,200.

JB:mrs

cc: Jane Struder, Director of Finance
Eric B. Brown, P.E., Assistant Public Works Director
Joseph Ugi, Facilities Maintenance Manager
Lynda Venne, Purchasing Agent

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Consent - Other

Agenda Title

Revised Policy Language for Vacant Store Fronts

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated June 1, 2010, from John Page, Director of Planning, Zoning and Building
- Vacant or Under Construction Window Treatment Policy

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John S. Page, Director of Planning, Zoning and Building

Re: Revised Policy Language for Vacant Store Fronts

Date: June 1, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council review the attached proposed new policy language for screening vacant store fronts, and if found acceptable, approve the revised policy language.

BOARD OR COMMISSION RECOMMENDATION

The Architectural Commission (ARCOM) reviewed and approved the addition of the new screening theme ("Pictures of art work provided by the Norton Museum of Art") at its March 24, 2010 meeting. No changes to percentage of window coverage were proposed during said review.

TOWN COUNCIL REVIEW

The code and related policy addressing vacant store fronts was last revised by Town Council on December 16, 2009. The policy was created so that the Council could easily add screening themes to the approved list, and to make revisions to the screening language, without having to revise the code. At the Council's April 14, 2010 meeting, the screening theme of "Pictures of art work provided by the Norton Museum of Art" was added to the list of approved themes in the policy. Furthermore, Council directed staff to add more specificity to the policy language that limits the amount of space for a caption and/or credit line.

At the May 12, 2010 Council meeting, the Town Council directed staff to further revise the policy by requiring 100% (instead of 75%) of the glass area of a vacant store front be screened with pictures, drawings, sketches, or paintings, and that only one picture, etc. be used per window. Council asked that staff make the changes to the policy, including the revisions from the April 14, 2010 meeting, and bring the revised policy language back for final approval.

Attachment

cc: Robert Walton, Code Enforcement Officer
John C. Randolph, Town Attorney
John Lindgren, AICP, Planning Administrator

TOWN OF PALM BEACH

“VACANT OR UNDER CONSTRUCTION WINDOW TREATMENT POLICY”

Per Sections 22-56 through 22-90 of the Town of Palm Beach’s Code of Ordinances, all vacant or under construction store fronts must screen the interiors of said store fronts through the use of an attractive display for those who can observe the window from the public streets and sidewalks of the Town. The Code also requires that the Town Council establish a “Vacant or Under Construction Window Treatment Policy” that provides the requirements and details of the screening for the vacant and under construction store fronts (which may be amended by the Town Council from time to time, with input from the Architectural Review Commission). Approved policy is as follows:

A. Dimensions & Location of Screening

Screening shall be of a sufficient dimension to completely screen the vacant or under construction interior. The screening may be affixed to the window glass provided clear tape or some other unseen method is used, and the glass is maintained in a clean and neat appearance, both on the outside and inside. The screening material can also be hung behind the glass provided the material is within six (6) inches of the glass.

~~The screening may also be set back from the glass up to 40 inches, which will thereby provide a pocket to display the screening. The pocket area can exceed 40 inches from the glass if it is an existing display case. If a pocket is created, then the pocket area shall be lighted at night. During daytime hours, if natural light does not clearly illuminate the pocket area and display, then lighting must be used so that the display is clearly visible. The pocket area shall also be maintained in a clean and neat appearance.~~

B. Themes for Screening

Approved themes that can be used for screening of vacant or under construction store fronts include the following:

- 1) Historical pictures of the Town of Palm Beach.
- 2) Pictures, Drawings or paintings of the Town of Palm Beach.
- 3) Black and white sketches of the Town of Palm Beach.
- 4) Historical post cards of the Town of Palm Beach (enlarged).
- 5) Photos from Paramount of people and historical events in Palm Beach.
- 6) Pictures of art work provided by the Norton Museum of Art.

~~Pictures, drawings, paintings, sketches, post cards, photos, etc. shall comprise at least 75% of the glass store front area (including any portion of a door that is glass), with the remaining area screened with the back drop for the pictures, etc. The back drop shall be unified, neat and clean in appearance, and may be made of paper, fabric, or foam board. For legibility purposes, the minimum size of an individual picture, etc. shall~~

be 11" X 17" (ledger size); however, One picture, drawing, sketch, etc. shall be used to screen each individual piece of glass, including those instances where the glass is divided by mullions or muntin bars. Pictures, drawing, sketches, etc. can also be smaller if used in conjunction with a traditional/customary display of merchandise or products if the pictures are clearly legible to those walking by the storefront. A detail showing an example of 100% and 75% screening is attached.

Repetition of a specific picture, drawing, painting, sketch, post card, photo, etc. should be avoided, and in no circumstance shall repetition occur within 200 linear feet.

Captions at the bottom of the displays are permitted that describe the picture, drawing, sketch, painting, post card, or photos. Furthermore, credit for the photo, picture, etc. may be given (e.g. "Photo courtesy of the Historic Society of Palm Beach County.").

Generally, The captions and credit lines must be legible and in a uniform style. Captions and/or credit lines will be large enough to be read by those walking by the store front, but not so large as to dominate the photo, picture, etc. The length or number of words in a caption should shall be limited as much as possible.

Specifically, captions and credit lines shall not exceed 40 square-inches in size for windows greater than 5.5 square-feet, or 5% of the glass area for windows that are 5.5 square-feet or smaller in size. Captions and credit lines shall use block lettering that is black in color. No advertising or logos isare permitted within the caption, credit line, or the overall display.

Property owners shall be responsible for the purchase and installation of all required screening material for vacant or under construction store fronts.

C. Timing

All window treatments and displays are required to be installed within ten (10) business days of vacancy or start of construction. A time extension of up to five (5) business days may be given by the Planning, Zoning & Building Director if formally requested by the property owner.

D. Information

Please contact the Planning Administrator at 561.227-6414 with questions about the code and/or policy, including questions about exceptions to screening with historic photographs, pictures, postcards, artwork, etc. (Sec. 22-59), such as using window treatments and traditional or customary displays of merchandise (staging a space).

Revised: 42-3-096-8-10

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Committee Reports

Agenda Title

Approval of the Administrative and Personnel Committee Meeting Held on June 2, 2010

Presenter

Richard M. Kleid, Town Council Member

Supporting Documents

- Memorandum dated June 17, 2010, from Peter B. Elwell, Town Manager
- Minutes of the Administrative and Personnel Committee Meeting Held on June 2, 2010

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

From: Peter B. Elwell, Town Manager

Re: Termination of John Fallon

Date: June 17, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council affirm the termination of John Fallon and urges the Town Council to be extremely cautious in considering the potential precedent that would be established by granting Mr. Fallon a pension.

GENERAL INFORMATION

The Administrative and Personnel Committee recommended that Mr. John Fallon's termination be sustained, but also recommended that the Town Council provide for Mr. Fallon to receive pension benefits as if he had ten years of active service with the Town of Palm Beach as of the date of his termination in accordance with the pension plan policies in effect as of that date.

Mr. Fallon is not vested in the Town's pension program. He was hired on May 29, 2001, and his employment was terminated on April 6, 2010. His 8 years and 10 months of service fall 14 months short of the 10 years of service needed to vest in the pension fund. Therefore, he is not currently eligible to receive a pension in the normal manner.

I do not believe the Town Council has any intent to consider changing the ordinance to reduce the 10-year vesting standard for all employees. Even if you did, it is questionable whether that could be done in a manner that would entitle Mr. Fallon to a pension, since his employment has already been terminated while the 10-year vesting standard is still in effect. Therefore, the Town Council has only two options for providing pension benefits to Mr. Fallon:

- Extend his termination date to May 29, 2011, place Mr. Fallon on administrative leave without pay through that date, and authorize a pension be granted to Mr. Fallon from the General Employee's pension fund.
- Take a policy action outside the scope of the Town's retirement ordinance to provide a "pension" to Mr. Fallon either through recurring annual appropriations in the Recreation Enterprise Fund or through a lump sum payment from that fund.

I urge the Town Council to be extremely cautious in considering either of the above alternatives.

Mr. Fallon's annual salary at termination was \$48,479. His annual "pension" based on his actual years of service would start at \$11,955, likely resulting in total payments exceeding \$450,000 during the remainder of his lifetime. If Mr. Fallon were allowed to be on administrative leave without pay until he has vested in the retirement system, this would increase to an annual pension starting at \$13,807, with a lifetime total of over \$530,000. Either of these approaches would not only cause the Town to incur the above noted costs but, perhaps more importantly, would involve actions that could be cited in the future as precedent for virtually any terminated employee to contend that they are entitled to some form of pension payments from the Town.

If Mr. Fallon does not receive a pension from the Town, he will be entitled to a refund of his contributions to the General Employees pension fund, which with credited interest amount to \$26,735.28.

FUNDING/FISCAL IMPACT

The fiscal impact of each alternative is described above.

PBE:

cc: Danielle Olson, Director of Human Resources
Jane Struder, Director of Finance
Jay Boodheshwar, Director of Recreation

**MINUTES OF THE ADMINISTRATIVE & PERSONNEL COMMITTEE MEETING
HELD ON WEDNESDAY, JUNE 2, 2010**

I. CALL TO ORDER AND ROLL CALL

The meeting of the Administrative and Personnel Committee was called to order at 9:00 a.m. on June 2, 2010, in the Emergency Operations Center, 355 S. County Road, Palm Beach. On roll call, Chair Richard M. Kleid and Committee Member David A. Rosow were present.

Attorney Joseph A. Vassallo represented Mr. John Fallon; Attorney Peter Sampo represented the Administrative and Personnel Committee; Attorney John Randolph represented the Town of Palm Beach.

II. APPROVAL OF AGENDA

The Agenda was approved as presented.

**III. PRESENTATION OF DIRECTOR OF RECREATION JAY BOODHESHWAR'S CASE
[JOHN C. RANDOLPH, ATTORNEY]**

Town Attorney John Randolph provided exhibits and noted that he would make a brief opening statement. Attorney Vassallo also made brief opening statements. The witnesses were sequestered and ordered not to discuss the case or any matters relating to the case while outside of the hearing. Town Clerk Cunningham administered the oath to those providing testimony.

The following witnesses were called:

- Jay Boodheshwar, Director of Recreation
- Jonathan Luscomb, Dockmaster
- James Hawkins, Dock Employee
- John Fallon

*****The Committee recessed at 12:39 p.m. for a lunch recess and reconvened at 1:45 p.m.*****

IV. PRESENTATION OF JOHN FALLON'S CASE [JOSEPH A. VASSALLO, ATTORNEY]

1 Town Clerk Cunningham administered the oath to all those who would be providing testimony.

2
3 The following witnesses were called:

- 4
- 5 • Allen Dix, Retired Police Detective with the Town of Palm Beach
 - 6 • Sergeant Scott McClure, Town of Palm Beach Police
 - 7 • David Mack, 958 N. Lake Way, Resident and dock renter
 - 8 • Officer Mick Keehan, Town of Palm Beach Police Marine Unit
 - 9 • Mark Rowen, 174 East Inlet Drive, resident and dock renter
 - 10 • Officer Thomas Michotti, Town of Palm Beach Police Marine Unit
 - 11 • John Fallon
- 12

13 Both Committee Members declared ex parte communications with Mr. David Mack about the
14 case prior to the Committee Meeting.
15

16
17 V. REBUTTAL BY DIRECTOR OF RECREATION JAY BOODHESHWAR [JOHN C. RANDOLPH, ATTORNEY]

18 Town Attorney Randolph and Attorney Vassallo each provided a three minute closing statement.

19 VI. CONSIDERATION BY THE ADMINISTRATIVE AND PERSONNEL COMMITTEE

20 Chairman Kleid announced that the Committee would now go into Executive Session to discuss
21 the findings. He asked Attorney Sampo to explain to the Committee what their directive was.
22

23 Attorney Sampo instructed the Committee that their charge was to determine, in essence,
24 whether there was just cause for Mr. Fallon's termination from employment. That would require
25 them to make findings that were supported by substantial competent evidence.
26

27 Chairman Kleid noted that he was curious about the pension. Apparently, Mr. Fallon was nine
28 months short of being fully vested and he had a few questions for Human Resources.
29

30 Town Clerk Cunningham administered the oath to Human Resources Director Danielle Olson
31 who would be providing testimony.
32

33 Responding to Chairman Kleid, Ms. Olson noted that his original hire date according to his
34 personnel file was May 29, 2001 and his vesting date was May 29, 2011. If he were terminated,
35 he would not receive a pension, but would receive his portion of the contributions plus interest.
36

37 Responding to Member Rosow, Ms. Olson indicated that she would need to step away in order to
38 calculate the information regarding what his pension would be as of next May when he would
39 have ten years worth of vesting.
40

1 Chairman Kleid and Committee Member Rosow commented that they would go back into
2 Executive Session and would hear Ms. Olson's answer when she was ready, rather than wait.

3
4 Committee Member Rosow stated that this was a very difficult case because the worst witness
5 before us was Mr. Fallon. Mr. Fallon basically acknowledged everything that he had done and
6 understood that what he was doing was in contradiction to the instructions he had been given by
7 his superiors. But Mr. Fallon does not get it at all. He said earlier when he was asked if reinstated
8 would he take a direct order from his superiors he said he would discuss it with them unless his
9 job description was changed. Committee Member Rosow found it fascinating that Mr. Fallon
10 knew more about his job description than he knew about the Employee Manual. Because he did
11 not know anything about the facts in the Employee Manual, which are the basic guidelines for all
12 employees on something that he thought they probably not only had repeated access to, but he
13 believed had repeated seminars on. The most appalling part of all of this was that the major
14 infractions were all for the same reason. It was not like he did this and he was suspended, and he
15 did that and he was suspended and he did that and got a disciplinary action. He had all three of
16 those disciplinary actions because of one particular type of attitude, and that was continued
17 fraternization with owners and captains. The Committee did not talk about the captains that spent
18 a lot of time with him; nor did the Committee hear a lot of testimony about violating another
19 Town rule, which was smoking on duty. All of this, in a cumulative sort of sense is very, very
20 troubling. Mr. Fallon stated that he told his bosses what they wanted to hear. Committee Member
21 Rosow said he was willing to bet Mr. Fallon did not tell the yacht owners or captains what they
22 wanted to hear. He gave them the unvarnished truth. Mr. Rosow did not know who Mr. Fallon
23 thought he was getting his paycheck from. He thinks that Mr. Fallon believes he is above it all.
24 That he did not have to take direction and was just fine doing his own thing.

25
26 Basically, there was a disrespect for his superiors. Committee Member Rosow was concerned
27 too, that if Mr. Fallon had done any work on anybody's yacht, that he did not understand the
28 liability implications for the Town; if he fixed a breaker the wrong way, and the electrical system
29 in the yacht shorted out, that same high powered guy who has 120,000 employees would be all
30 over the Town's back asking for us to pay for that error because it was our employee who did it.
31 He said he was very concerned about that. The final thing that Committee Member Rosow
32 mentioned was much was made about the breaking and entering, but not much was made about
33 the fact that he was asked about it twice and he denied it. Mr. Fallon denied that he went over the
34 wall. We have testimony to that effect. He denied that he went over the wall, and then finally the
35 third time he was asked, "yeah, I did that". That is a fundamental dishonesty that really concerns
36 him. He added that there had been an attempt to try the Dockmaster, here, but he was not the one
37 who got disciplinary action. Mr. Fallon did and he had it for the same reasons as he had before.

38
39 Human Resources Director Olson provided the calculation based on ten years of service with a
40 multiplier of 2.75 and using only base salaries, and it did not include overtime. The estimated
41 annual pension for Mr. Fallon would be \$13,331.00. He would defer that until age 55, as he was
42 currently 51 years of age.

43
44 Chairman Kleid announced that the Committee would go back into Executive Session to discuss
45 the findings. He asked Attorney Sampo to explain to the Committee what their directive was.

1
2 Attorney Sampo instructed the Committee that their charge was to determine, in essence,
3 whether there was just cause for Mr. Fallon's termination from employment. That would require
4 them to make findings that were supported by substantial competent evidence.
5

6 Chairman Kleid said there was no doubt in his mind that Mr. Fallon was a well meaning
7 individual and he had heard a lot of testimony that he was a nice guy who wanted to help people.
8 There was no disputing that. With respect to several of the charges, if they stood by themselves,
9 they were not terminable events, but he should have been rebuked or suspended. The same was
10 true with respect to the time clock. Mr. Fallon was well-meaning but he was a good worker,
11 probably did work during his lunch hour, and was caught with an infraction of the rules.
12

13 Chairman Kleid continued that the problem was that Mr. Fallon was interpreting the rules as he
14 saw fit and he understood that the job description said that there was a public relations factor and
15 they should be ambassadors of good will. Particularly in the Town of Palm Beach, there are very
16 influential people, and they can at times be tough to deal with. He gave the example of the
17 Police Department hiring procedures. They do not only hire good crime fighters, they hire a
18 certain type of person that understand and respect Palm Beach residents. He had spent a great
19 deal of time in corporate life, both as a lawyer and as head of a legal department in a large
20 corporation. He understands that there are rules and regulations in corporations. When he was
21 head of a department, he had an open door policy, and employees were free to argue rule. But
22 once the policy was instituted, that was the way it went. If every employee changed the rules and
23 did what he or she wanted, there would be chaos. Once an employee has been told that is not
24 proper procedure, and he continues to do it, he should be disciplined.
25

26 Chairman Kleid stated that he heard loud and clear in the testimony from Mr. Fallon in response
27 to Attorney Randolph's questions that if he was told not to do something, he would continue to
28 do it for the good of the Town against his supervisor's instructions. You cannot have employees
29 who do that. Everyone has a boss, even the Town Manager. Everyone has to follow rules and
30 regulations, particularly if you were told by your supervisor and the head of the department to do
31 something, you should obey. Chairman Kleid was also concerned that if Mr. Fallon were
32 reinstated, he would continue to not follow instructions. Mr. Fallon provided conflicting
33 testimony. His response to Attorney Randolph early on in the hearing was that he would not
34 listen to his supervisor, but then later stated that he would.
35

36 Chairman Kleid thought Mr. Fallon meant well and did nothing intentional to break the rules.
37 But his mind set causes him problems. He noted that at meetings with his supervisors he did not
38 want to make waves, but that was the time to speak up. There are methods by which to bring
39 forth changes and objections, but Mr. Fallon did not exercise those options. He does not fully
40 understand what he did was wrong and Chairman Kleid did not feel he was capable of turning
41 over a new leaf and changing his attitude.
42

43 Committee Member Rosow stated that having listened to Chairman Kleid's comments and
44 agreeing fully, the only difficulty in all of it was there were people involved. The fact that boat
45 owners were willing to come here, as well as police officers, to testify was all very positive.

1 However, many people do not know that he was once a tenant on that dock. Committee Member
2 Rosow had been in the recreation business almost all of his adult life and understands customers
3 more than most. He understands what it means to take care of customers. He stated that he had
4 run ski resorts, golf courses, tennis tournaments, built yachts and had docked yachts everywhere
5 but fundamentally, he was a businessman. He was not as successful as David Mack but if I told
6 someone how to deal with a customer, they could disagree and discuss it, but in the end, if they
7 did not obey and follow the rules, they would have to leave. At the end of the day, someone
8 needs to be in charge. Committee Member Rosow moved to sustain the termination.

9
10 Chairman Kleid was concerned with terminations and pension rights and he realized that the
11 Town people will foot this particular bill. It was pointed out to him that when you live to age
12 eighty, that is a lot of money. He does understand that, but he also looked at the fact that
13 apparently the Town had no issues in the first six years of his nine years of employment and Mr.
14 Fallon's heart was in the right place. He was reluctant again to take away someone's pension
15 rights, when basically they were a good employee. If someone had stolen, he would have an
16 entirely different philosophy. Chairman Kleid believed that Mr. Fallon was well-meaning,
17 although totally misguided and he did not feel that returning him to the Town would be a service,
18 either to Mr. Fallon or to the Town because he was not convinced Mr. Fallon could change his
19 position. Mr. Fallon had been through this and had been counseled many times. Chairman Kleid
20 stated that all of the facts that were found, he believed were true, but he was again concerned
21 with the punishment. He suggested something along the lines of either a resignation effective as
22 of the date of pension vestment or a termination as of such date. He felt strongly that we not take
23 away Mr. Fallon's pension which he had contributed to and earned.

24
25 Committee Member Rosow was informed by Human Resources Director Olson that on average,
26 Mr. Fallon earned approximately \$40,000 per year and his last year of employment he earned
27 \$48,000. Assuming Mr. Fallon lived for thirty more years, he would have collected \$400,000 in
28 pension funds which was equal to the amount he earned in ten years of salary.

29
30 Chairman Kleid stated that other than the infractions regarding socialization, Mr. Fallon
31 apparently had a good work record. Chairman Kleid did not want to cut him off from his
32 pension even though he was not technically vested.

33
34 Chairman Kleid made a motion to terminate Mr. Fallon and ask that Human Relations give him
35 his pension beginning at age 55.

36
37 Human Resources Director Olson indicated that if the Town Council approved the motion, and
38 the Town Council adopted proposed changes to the pension plans, the proposed benefits may
39 change. As of right now, Mr. Fallon's pension would become "Bucket A" and he would earn
40 approximately \$13,000 per year at age 55.

41
42 Committee Member Rosow said he would support that motion.

43
44 **Chairman Kleid restated his motion that Mr. Fallons' termination be sustained, but**
45 **recommends that the Town Council provide for Mr. Fallon's pension benefits to be bridged**

1 in order to allow him to receive pension benefits as if he had ten years of active service with
2 the Town of Palm Beach as of the date of his termination, the amount to be calculated by
3 Human Resources.

4
5 Attorney Sampo stated that having listened to the deliberations and reviewed the information that
6 had been presented, he recommends the following findings:

7
8
9 **The Town of Palm Beach Administrative and Personnel Committee Findings**

10
11 On June 2, 2010, the Town of Palm Beach's Administrative and Personnel Committee
12 ("Committee") met and conducted a hearing pursuant to Town of Palm Beach Code of
13 Ordinances, Chapter 82, Article III for the purpose of resolving the grievance of John Fallon
14 regarding his termination from employment.

15
16 Having met and considered the evidence presented at the hearing, as well as argument of
17 Counsel, the Committee makes the following findings and recommendations:

18
19 1. Mr. Fallon had prior disciplinary measures taken with regard to his employment
20 before his termination in the following manner: a verbal counseling instituted February 14,
21 2006, regarding excessive socializing on the job; a verbal counseling on March 27, 2007
22 regarding excessive socializing on the job, smoking on duty, and failure to complete assigned
23 tasks; a verbal reminder September 28, 2007, of past counselings and again reminding Mr.
24 Fallon to stop excessive socializing with customers in the office; a written reprimand November
25 2, 2007, regarding continued inappropriate behavior with Town dock customers and yacht staff
26 on the weekend; a two day suspension on April 29, 2008, based on video footage of continued
27 inappropriate behavior with Town dock customers, yacht staff and Town dock staff; and a two
28 day suspension on December 15, 2008, along with a probationary period for an incident
29 involving inappropriate access to an office space and lack of admission of responsibility for the
30 conduct.

31
32 2. In each of the counseling's, Mr. Fallon's supervisor Dockmaster Jonathan Luscomb
33 who was joined on three of the counseling's, by Director of Recreation Jay Boodheshwar, met
34 with Mr. Fallon and reviewed the conduct. Mr. Fallon did not deny any of the conduct alleged
35 and in each instance promised to improve in his behavior.

36
37 3. Despite the prior counselings, on February 7, 2010, Mr. Fallon was found to have
38 engaged in a social visit with a friend at the dock facility and visited the vessel *Southern Comfort*
39 while on duty for a total time of approximately three hours and fifteen minutes; on February 13,
40 2010, Mr. Fallon engaged in an extended social visit for approximately fifty minutes to another
41 vessel at the dock; on February 13, 2010 Mr. Fallon engaged in a social visit with Mr. Terry
42 Smith on the vessel *Lion Heart* for approximately forty eight minutes while on duty; on February
43 14, 2010, Mr. Fallon accepted a gratuity in the form of a bottle of wine from the vessel *Southern*
44 *Comfort*; On February 20, 2010, Mr. Fallon engaged in a social visit with Mr. Terry Smith while
45 on duty for approximately one hour, seven minutes; and on February 20, 2010 and February 28,

2010, Mr. Fallon directed a subordinate employee to punch his time clock reflecting a departure at approximately 5:00 p.m. in the afternoon, when Mr. Fallon had departed work earlier than that at approximately 4-4:30 p.m.

4. Mr. Fallon's supervisor Dockmaster Luscomb and the Director of Recreation Boodheshwar, met with Mr. Fallon in a pre-determination disciplinary hearing, at which time Mr. Fallon was asked for his version of these events. Mr. Fallon did not deny any of the conduct alleged.

5. On April 6, 2010 Mr. Boodheshwar issued a Notice of Termination terminating Mr. Fallon's employment effective April 6, 2010.

6. The Committee finds that based upon these findings, sufficient cause exists for the termination of Mr. Fallon's employment based upon violations of the following provisions of the Town Employee Personnel Manual:

Section 6-6: CAUSES FOR DISCIPLINARY ACTION, INCLUDING DISCHARGE, SUSPENSION OR DEMOTION:

- c. The employee has violated the provisions of this manual, department policies and procedures, the Town's Administrative Policies, the Information Systems Security Policy, or any other approved rules and regulations of the Town of Palm Beach*
- d. The employee has engaged in conduct unbecoming of an officer or employee of the Town either on or off duty.*
- e. The employee has failed to obey any proper and lawful order or directive given by a superior, or has otherwise been insubordinate.*
- j. The employee has falsified any document used with regards to the employee's application for employment, employee benefits, and/or any action affecting the employee's status or employment with the Town.*
- l. The employee has induced or, has attempted to induce, an officer or employee in the service of the Town to commit and unlawful act or to act in violation of any lawful departmental or official regulation or order.*

Section 7-13.2: Public confidence

Section 7-13.3: Acceptance of favors and gratuities

Section 7-13.7: Responsibility

7. The Committee further finds cause for termination of Mr. Fallon based upon violations of the following sections of the Recreation Department General Employee Handbook:

Code of Conduct: Items 7, 14, and 19.

Both Committee Members indicated assent to the findings.

The Town of Palm Beach Administrative and Personnel Committee
Recommendations

The Committee recommends that Mr. Fallons' termination be sustained, but recommends that the Town Council provide for Mr. Fallon's pension benefits to be bridged in order to allow him to receive pension benefits as if he had ten years of active service with the Town of Palm Beach as of the date of his termination in accordance with the pension plan policies in effect as of that date.

VII. ANY OTHER MATTERS

There were none.

VIII. ADJOURNMENT

There being no further business, the Administrative and Personnel Committee Meeting of June 2, 2010, concluded at 4:33 p.m.

APPROVED:

Richard M. Kleid
Chairman

Backup Documents 6-2-10

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

Proposed Charter Amendment Regarding Certain Landmark Properties.

Presenter

John C. Randolph, Town Attorney

Supporting Documents

- Memorandum dated June 4, 2010, from John C. Randolph
- Petition for charter amendment for Town of Palm Beach
- Order on plaintiff's motion for summary judgement and defendant's cross-motion for summary judgement dated November 9, 2009
- Memorandum dated May 20, 2009, from John Randolph
- City of West Palm Beach firefighters vs Board of City Commissioners City of West Palm Beach
- Letter dated June 8, 2009, from Bruce S. Rogow
- List of correspondence

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John C. Randolph, Town Attorney

Re: Petition for Charter Amendment

Date: June 4, 2010

STAFF RECOMMENDATION

The Town staff and Town Attorney request that the Town Council give consideration to the Petition for Charter Amendment submitted by Preserve Palm Beach Committee and make a determination as to whether to place the Petition on the ballot for the November 2, 2010 general election in the Town or whether to challenge such Petition by Petition for Declaratory Relief.

GENERAL INFORMATION

Attached is a copy the Petition for Charter Amendment which sets forth the text of the proposed Charter amendment. The text is self-explanatory and provides that no Certificate of Appropriateness shall issue for the demolition of a public or private group use structure that has been designated as a landmark structure by the Town nor shall the landmark designation of such structure be withdrawn without the approval by a majority vote of the citizens voting in a referendum. The text further lists eight landmarked properties to which the Charter amendment applies, but provides that the Charter amendment is not limited to those eight properties.

Public/private group use has a specific definition in the Town's zoning code.

"Public/private group use means use of land or structures thereon or portions thereof for public structures, governmental operations, education, essential services, recreation and cultural amenities generally beneficial to the public health, safety and general welfare of the Town's residents."

Further, public structures are defined as follows:

" . . . municipally owned and/or operated structures used for public purposes such as, but not limited to, administrative offices, recreational buildings, police and/or fire stations and other public safety facilities."

I am not sure, based upon the definition of public or private group use structures, what structures other than those listed were intended to be included within this Charter amendment by the sponsors of this Petition. The answer to that question, however, is not essential to the ultimate analysis of the constitutionality of the proposed Charter amendment.

Recall that the previously submitted Charter amendment proposed by the Preserve Palm Beach Committee sought to require any alterations to the 1979 Agreement between the Town and the owners of the Royal Poinciana Plaza to be submitted to a referendum vote. The trial Court ruled in the opinion I have attached hereto that the proposed Charter amendment was unconstitutional since it is in conflict with an existing Florida State Statute, Section 163.3167 (12), which provides in part:

"(12) An initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment that affects five or fewer parcels of land is prohibited."

The Royal Poinciana property which was the subject of the 1979 Agreement is comprised of fewer than five parcels of land. The Court held that the 1979 Agreement was a "development order" subject to the restrictions in Section 163.3167(12). In so holding, the Court noted that the Florida statutes define a "development order" to include any order granting, denying or granting with conditions an application for "development permit," which, in turn, includes any variance or "other official action of local government having the effect of permitting the development of land." Fla. Stat. §163.3164(7), (8). The Court therefore concluded that the Charter amendment proposed by Preserve Palm Beach Political Action Committee and its founder and chairman Patrick Henry Flynn is facially unconstitutional because it conflicts with existing state statutes and directed that the Town shall not place the proposed Charter amendment on the ballot at the general election or any special election called for such purpose.

It appears that with the newly proposed Charter amendment, Preserve Palm Beach has attempted to address the Court's concerns by expanding the number of properties included in the Charter amendment to properties that, when considered together, incorporate more than five parcels of land, apparently believing that this proposal does not fly in the face of the Florida statute which prohibits the use of a referendum in regard to any development order that affects "five or fewer parcels." It is my opinion, however, that the proposed Charter amendment does not resolve the problem addressed by the Court and that the proposed amendment still conflicts with state statutes and is, therefore, facially unconstitutional. My opinion is based upon the following analysis.

It is the function of the Landmarks Preservation Commission to grant Certificates of Appropriateness for properties designated as landmarks. Section 54-71 of the Town Code

provides that no landmark building shall be erected, altered, restored, moved or demolished until after an application for a Certificate of Appropriateness as to exterior architectural features has been submitted to and approved by the Commission. The granting, therefore, of a Certificate of Appropriateness for demolition would be considered a "development order" under state statute which provides that a development order is any order granting, denying or granting with conditions an application for a development permit. A development permit includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land. Certainly, the granting of a Certificate of Appropriateness to allow for a permit to be granted for demolition fits within the definition of a development order.

On the basis of the above, what the proposed Charter amendment establishes is the potential for a situation which falls squarely in violation of state statute, i.e., any one of the properties listed in the Charter amendment which consists of five or fewer parcels of land, having successfully received a Certificate of Appropriateness for demolition from the Landmarks Preservation Commission based upon criteria set forth in the code, would be subject to having their Certificate of Appropriateness become the subject of a referendum and perhaps ultimately denied the right to demolish based upon a popular vote rather than upon the criteria established by the Town. This would fall squarely in violation of Section 163.31367 (12) which provides that a referendum process in regard to any development order that affects five or fewer parcels of land is prohibited.

In this regard, notice should be taken of the following language contained within the opinion of the Court in the Town of Palm Beach vs Preserve Palm Beach Political Action Committee and Patrick Henry Flynn case.

" . . . [i]t is not difficult to see the due process problems associated with subjecting small property owners to public referendum votes when they would otherwise be entitled to a quasi judicial hearing and review procedures. In general "local government decisions pertaining to building permits, site plans, special zoning exceptions and other development orders are generally deemed quasi judicial in nature and thus subject to certiorari review."

* * * *

"The Petition attempts to remove that decision making process from the Town Council and attempts to bypass the quasi judicial process otherwise afforded . . . under the Town Code."

In the event the Mayor and Town Council agree that the proposed Charter amendment is unconstitutional, then the question becomes what action should the Town Council take in regard to the proposed Charter amendment. In this regard, I am providing as backup a copy of my memorandum dated May 20, 2009, which addresses the legal issues relating to this matter. The first point to note is that the Town is statutorily required to place the Petition on

the ballot absent court intervention. The Town has no authority or discretion to examine the substance of the Petition. Only the courts have this discretion. Therefore, absent court intervention, the proposed Petition shall be placed on the next general or special election ballot. If a majority of electors voting in the referendum vote for the proposed Charter amendment, the Town will thereafter be required to incorporate the amendment into the Charter and file a copy of the revised Charter with the Department of State, at which time the revised Charter shall become effective.

In the event, however, the Town were to refuse to place the proposed Charter amendment on the ballot, the proponents can file a Writ of Mandamus against the Town in an effort to compel the Town to do so. If a mandamus action were filed, the court would examine whether the proposed Charter amendment is facially unconstitutional and, if it were, would not compel the Town to place it on the ballot. Alternatively, as was done in the last case, in order to determine whether the proposed Charter amendment is facially constitutional and therefore proper, the Town can file a declaratory action with the court prior to placing it on a general or special election ballot. Courts have recognized that such involvement may very well be warranted so that the public interest and rights can be determined prior to a ballot procedure which will involve "the possible expenditure of substantial sums of public monies in the doing of what could be a vain and useless thing." Where constitutionality questions are raised, the courts should and must rule on them prior to the election.

In regard to the above alternatives, I call the Mayor and Town Council's attention to the case of West Palm Beach Association of Firefighters Local Union vs Board of City Commissioners of the City of West Palm Beach from the Fourth District Court of Appeal (copy attached). In that case, the Firefighters Local Union 727 prepared and circulated a petition requesting that an ordinance be placed on the ballot for consideration by the electors of the city. The city refused to submit the proposed ordinance to a referendum on the grounds that the ordinance was unconstitutional. Appellants thereupon filed an action seeking a Writ of Mandamus. Appellants contended that the city did not have the authority to refuse to place the ordinance on the ballot on the ground of alleged unconstitutionality. It was argued that the city must either adopt the ordinance as proposed or submit it to the electorate and that the city cannot itself pass on its validity. It was conceded by the city that it cannot make the final determination as to constitutionality, but the city contended that it can refuse to submit the matter to referendum and let the court decide the constitutional question. The court inquired "why, then, the city did not seek declaratory relief from the circuit court to resolve the issue we are not aware. However, we suggest that under the circumstances that would have been the preferred procedure." We have relied on the Firefighters Local Union case before the trial court and on appeal in the Royal Poinciana case and will be deemed to be fully aware of the procedure deemed preferred by the Fourth District Court of Appeal, the appellate court with jurisdiction over any civil action here.

Clearly, unless someone or some entity places the issue of the constitutionality of this proposed Charter amendment before the Court, the Town will be required to place the question on the ballot. A determination, therefore, should be made by the Town Council as to the manner in which it wishes to proceed. Time is of the essence as the next general

election in the Town is on November 2, 2010. We are also advised that the Supervisor of Elections needs the language for the ballot from the Town 73 days prior to the election (August 20, 2010 at noon). If the Court is to address this matter, therefore, it will need to be given as much opportunity as possible to address it prior to the November 2nd election and preferably prior to August 20, 2010.

In the interest of providing a complete record of what went on before, I am providing you with a copy of a letter from Bruce Rogow, a constitutional expert, who on June 8, 2009 rendered his opinion in regard to the situation which existed with the previously proposed Charter amendment.

ATTACHMENTS

- Petition for Charter Amendment for Town of Palm Beach
- Order on Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment, dated November 9, 2009
- Memorandum from John C. Randolph to Mayor and Town Council, dated May 20, 2009
- City of West Palm Beach Association of Firefighters vs Board of City Commissioners City of West Palm Beach
- Letter from Bruce S. Rogow to John C. Randolph, dated June 8, 2009

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PETITION FOR CHARTER AMENDMENT FOR TOWN OF PALM BEACH

104 185 A person who knowingly signs more than one time a petition or petitions for a candidate, a minor political party, or an issue commits a first degree misdemeanor, punishable as provided in s 775 082 or s 775 083

Name _____

Please print name as it appears on voter information card

Signature _____ **Date Signed** _____

Voter Registration # _____ **OR Date of Birth** _____

Residential Street Address _____

City _____ **Palm Beach** _____ **State** FL **Zip Code** _____ 33480 _____

BALLOT TITLE: Voter Approval Required For Demolition or Withdrawal of Public or Private Group Use Landmark Structures

BALLOT SUMMARY: Voter Approval by Referendum is required for the Demolition or Withdrawal of a Landmark Structure that is a Public or Private Group Use Structure

TEXT OF THE PROPOSED CHARTER AMENDMENT:

No Certificate of Appropriateness shall issue for the demolition of a Public or Private Group Use Structure that has been designated as a Landmark Structure by The Town of Palm Beach, nor shall the Landmark Designation of such Structure be Withdrawn, without the approval by majority vote of the citizens voting in a referendum. The Landmark Public or Private Group Structures subject to this referendum approval requirement include but are not limited to: St. Edward's Church, the Four Arts Administration Building, The Four Arts (King) Library, the Paramount Building, the Royal Poinciana Playhouse Building, Whitehall (Flagler Museum), Seagull Cottage, and the Bethesda By the Sea Church.

Pd Pol Adv Paid for by the Preserve Palm Beach Committee, PO Box 726, Palm Beach, FL 33480

Please mail to "Preserve Palm Beach Committee" PO Box 726, Palm Beach, FL 33480

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR PALM BEACH COUNTY CIVIL DIVISION

CASE NO.: 502009CA020515 MB AG

TOWN OF PALM BEACH, etc ,

Plaintiff(s),

vs

PRESERVE PALM BEACH POLITICAL
ACTION COMMITTEE and PATRICK
HENRY FLYNN,

Defendant(s)

ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court upon the TOWN OF PALM BEACH's ("TOWN") Motion for Summary Judgment and upon the Cross-Motion of the Defendants, PRESERVE PALM BEACH POLITICAL ACTION COMMITTEE ("PRESERVE") and PATRICK HENRY FLYNN ("FLYNN") for Summary Judgment. Prior to the hearing, the Court received and has reviewed the comprehensive Motions and Memorandums in support of both the Motion and Cross-Motion, and has also considered the Memorandum filed by the Intervenor, STERLING PALM BEACH, LLC ("STERLING"). The Court also considered the argument of counsel and the authorities they have cited. This Court has considered the uncontested facts or documents and the affidavits filed in this cause. All parties agree that there are no material issues of fact in dispute and that the issue presented to the Court is one of law and first impression. The Court agrees. After considering all of the above, and after thorough consideration of same, it is

CONSIDERED, ORDERED AND ADJUDGED as follows:

The case was instituted by way of declaratory action filed by the TOWN against PRESERVE and FLYNN. The crux of the declaratory action is the constitutionality

of a proposed Citizens Initiative Petition which seeks to require any alterations to a 1979 Agreement ("Agreement") between the TOWN and the owners of the Royal Poinciana Plaza be submitted to referendum vote. This Agreement was executed as a result of a variance and an amended variance request by the developers of the plaza. The town counsel approved in principle the request subject to various agreed conditions, all of which was codified in the 1979 Agreement.

This Court has been called upon to examine the 1979 Agreement previously in the matter of *Poinciana Management, Inc. v. Palm Beach*, Case No. 502005CA005585XXXXMBAO (Fifteenth Judicial Circuit, in and for Palm Beach County, Florida). That case involved a dispute between the TOWN and the owner of the plaza as to whether various amendments to town zoning ordinances had provided the developer with "further development possibilities" thereby terminating this Agreement by its own terms. In rejecting the owner's contention that the Agreement had terminated, this Court specifically found that the terms, conditions, covenants and restrictions set forth in the 1979 Agreement, as well as subsequent amendments thereto were in full force and effect. Further, the Court held that the Royal Poinciana Theater, located in the Plaza, could only be operated and maintained as a theater of the performing arts and/or visual arts and for lectures or other special events and could not be used for any other purpose. In addition, the Court found that the owner, pursuant to the 1979 Agreement, did not have the right to demolish the Royal Poinciana Theater.

FLYNN founded PRESERVE and currently serves as chairman of that organization. The Defendant PRESERVE sponsored the following ballot initiative titled

"Summary and Charter Amendment Petition".

BALLOT TITLE: Alterations of covenants of Royal Poinciana Plaza and Royal Poinciana Playhouse only by referendum

BALLOT SUMMARY: Voter approval required for alterations to the covenants set forth in the 1979 Royal Poinciana Plaza Agreement between the Town of Palm Beach and the predecessor of Poinciana Properties, Limited, concerning property known as the royal Poinciana Plaza

TEXT OF THE PROPOSED CHARTER AMENDMENT:

(1) The Town of Palm Beach Charter Shall be amended to incorporate portions of the covenants set forth in the 1979 Agreement between the Town of Palm Beach and the predecessor of Poinciana Properties, Limited concerning property known as the Royal Poinciana Plaza; which do not allow the construction of new buildings in the Poinciana Plaza, and require that the Poinciana Theater only be used as a theater of the performing arts and/or visual arts or for lectures or other special events.

(2) That a majority of Voters of the Town of Palm Beach voting in a referendum must approve any alterations to the Royal Poinciana Plaza Agreement.

This Petition received signatures from at least 10% of the TOWN's registered electors as of the last preceding general election and, therefore, the TOWN must place the proposed charter amendment on the ballot at the next general election or special election called for such purposes, unless this Court determines otherwise. *Fla Stat § 166.031*
The TOWN's next general election is scheduled for February 2, 2010

The TOWN asserts that the proposed citizen charter amendment is unconstitutional, since it preempts or purports to preempt or is otherwise in conflict with an existing state statute *West Palm Beach Ass'n of Firefighter, Local Union 727 v. Bd of City Comm'rs of West Palm Beach*, 448 So 2d 1212, 1215 (Fla. 4th DCA 1984). Specifically,

the TOWN suggests that the charter amendment conflicts with the Local Government Comprehensive Planning and Development Regulation Act because it purports to use the public referendum process to alter the 1979 Agreement, which codifies the TOWN's grant of a variance request made by the plaza owners and permitted development of this property. Specifically, the TOWN contends Florida Statutes Section 163.3167(12) prohibits the use of referendum process in regard to any development order that effects five parcels or fewer. That statute provides in part:

(12) An initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment . . . that affects five or fewer parcels of land is prohibited.

See, City of Lake Worth v. Save our Neighborhood, Inc., 995 So.2d 1002 (Fla. 4th DCA 2008).

It is not disputed that the property subject to the 1979 Agreement is comprised of fewer than five parcels of land. Further, the requirement that any alterations to the 1979 Agreement be made by referendum clearly involves the initiative or referendum process. At issue, therefore, is whether the 1979 Agreement constitutes a "development order" and, therefore, is subject to the restrictions set forth in Florida Statutes Section 163.3167(12).

Pursuant to Florida Statutes Section 163.3164(7), a development order "means any order granting, denying or granting with conditions an application of a development permit". In turn, a "development permit" "includes any building permit, zoning permit, subdivision approval, rezoning certification, special exceptions, variance, or any other official action of local government having effect of permitting the development of land" [Emphasis supplied.] *Fla. Stat. § 163.3164(8)*.

The TOWN contends that the 1979 Agreement was a codification of the TOWN's grant, with conditions of the Plaza owners' variance request and, therefore, was an official action of the TOWN permitting the Plaza to be developed subject to conditions. The TOWN thus contends that the 1979 Agreement meets the definition of a "development order" under Florida Statutes Section 163.3164(7)(8). On the other hand, the Defendants contend that although the Agreement may have been executed as the result of a variance request, it was not an approval of a variance or a variance itself and, therefore, is not a development order. The Defendants further contend that the official act of the TOWN in approving the variance is the "development order" and that the Agreement is merely a "development agreement".

Unfortunately, there is no controlling authority defining a "development order" under the circumstances of this case. A "development agreement", however, has been defined as a contract between a local government and property owner/developer, which provides the developer with vested rights by freezing the existing zoning regulation applicable to a party in exchange for public benefits. *See e.g., Morgan Company, Inc v Orange County*, 818 So 2d 640 (Fla. 5th DCA 2002). In this case, the minutes of the January 24, 1978 Town Council meeting specifically provide that the variance request was "approved in principle", subject to the entering into of the 1979 Agreement which specified the conditions of the variance. Therefore, the Agreement did not freeze the zoning as to the developer but granted a change or a variance from zoning in return for certain specified conditions. Moreover, the action at the town meeting was not an approval of the variance but only an "approval in principle". The official act of the Town Council which

allowed the further development was the Agreement itself. Absent entering into the Agreement, no variance would have been allowed nor would there have been allowed any further development.

The statutory definition of a "development order" includes any order granting, denying or granting with conditions an application for development permit which development permit would include any variance or any other official action of local government having any effect or permitting the development of land. See, *Fla Stat § 163.3164(7)(8)*. The application for the variance and the Town Council's consideration of that request clearly reflect the developers of the Poinciana Plaza requested an order granting with conditions their application for variance and permitting the additional development of land. Thus, the 1979 Agreement clearly had the effect of permitting the development of land by granting the request for variance with conditions in conformity with the Town's zoning ordinances. Compare *City of Jacksonville v. Coffield*, 20__ So.2d ___, 2009 WL 886214 at 6 (Fla. 1st DCA 2009). The 1979 Agreement was clearly an official action of local government – having the effect – or permitting the development of land. To construe the 1979 Agreement as anything other than a development order ignores the plain language of the statute and ignores what actually occurred in this case.

In addition to contending that the 1979 Agreement is not a "development order", Defendants have also raised two affirmative defenses. First, the Defendants contend that prohibiting the referendum process as to any alteration of the Agreement would constitute an impermissible retroactive application of Florida Statutes Section 163.3164(12). However, a statute does not operate "retrospectively" because it is applied

in a case arising from conduct prior to the statute's enactment. The issue for the Court is whether this new provision attaches new legal consequences to events completed before its enactment. *See e.g., Metro Dade Cty. v. Chase Fed'l Hos. Corp.*, 737 So.2d 498, 499 (Fla. 1999). Applying Section 163.3167(12) to prohibit the use of a public referendum process for any future alteration of the 1979 Agreement will not attach any new legal consequences to the events completed before its enactment and, therefore, is a prospective not retroactive in application. The Defendants also assert that the TOWN is somehow estopped from arguing that Section 163.3167(12) applies because the 1979 Agreement has been amended. The TOWN in amending the 1979 Agreement in accordance with the express terms in no way estops the TOWN from asserting that the 1979 Agreement is a development order as defined by the Act. The fact that the Plaza and the TOWN have previously amended the 1979 Agreement upon application of Plaza owners upon proper notice and hearing does not alter the fact that the Petition proposes to use the referendum process to affect a development order in violation of Florida Statutes Section 163.3167(12).

As pointed out by the TOWN, the legislative history is silent in regard to the purposes of Florida Statutes Section 163.3167(12). However, it is not difficult to see the due process problems associated with subjecting small property owners to public referendum votes when they would otherwise be entitled to a quasi judicial hearing and review procedures. In general "local government decisions pertaining to building permits, site plans, special zoning exceptions and other development orders are generally deemed quasi judicial in nature and thus subject to certiorari review." *Webb v. Town Council of Hilliard*, 766 So.2d 1241, 1243 (Fla. 1st DCA 2000). In 1979, the Plaza owners asserted

their right to apply for and obtain a variance to permit development of the Plaza in accordance with TOWN procedures pursuant to the 1979 Agreement. Therefore, they should continue to receive the benefits of those procedures in the future as any other property owner. The Petition attempts to remove that decision making process from the Town Council and attempts to bypass the quasi judicial process otherwise afforded to the Plaza owners under the Town Code.

This Court recognizes that, in general, statutes giving the power of initiative to the electors of a municipality are to be liberally construed by the court to the ends of permitting rather than restricting the power and to attaining rather than preventing its object. See, *Barnes v City of Miami Beach*, 47 So.2d 3, 4 (Fla. 1950). Such a policy, however, does not alter, amend and certainly does not lessen the level of judicial scrutiny to be applied when a proposed initiative is claimed to be in conflict with general state law. The Supreme Court has clearly stated that it is in the public interest that public rights as to a citizens initiative should be determined in advance of a vote in order to preclude or forestall possible expenditure of substantial public monies in doing what could be a useless thing. See e.g., *Dade County v. Dade County League of Municipalities*, 104 So.2d 512, 514-15 (Fla. 1958).

This Court does not doubt the sincerity and motives of the Defendants and those citizens of the Town who signed the Petition and those that support it or their desire to preserve what many feel is an historic landmark in the Town. No matter how laudable these goals may be, that decision is not by popular vote but through the quasi judicial hearing procedures entrusted to the elected representatives on the Town Council and the

legal review of those decisions. To permit the referendum process to govern whether and the extent to which a development order granted to the owners of the Plaza can be altered, would violate the protections provided by Florida Statutes Section 163.3167(12). Based upon the foregoing, it is

CONSIDERED, ORDERED AND ADJUDGED as follows:

1 The TOWN's Motion for Summary Judgment is hereby granted and the Defendants' Motion for Summary Judgment is hereby denied.

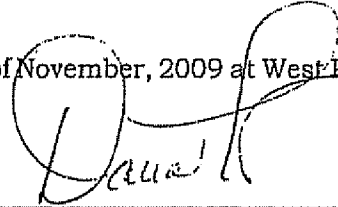
2. The Court grants the Plaintiff's declaratory action and determines that the charter amendment sponsored by the Defendants, PRESERVE PALM BEACH POLITICAL ACTION COMMITTEE and its founder and Chairman, PATRICK HENRY FLYNN, is facially unconstitutional, because it is in conflict with existing state statutes

3. The TOWN shall not place the proposed charter amendment on the ballot at the general election or at any special election called for such purpose.

4 Based upon the foregoing, the TOWN's request for declaratory relief in regard to whether the proposed ballot language, title and summary are sufficiently clear and unambiguous are hereby moot.

5. This Court retains jurisdiction to grant further relief as the Court deems just and proper under the circumstances.

DONE AND ORDERED this 9th day of November, 2009 at West Palm Beach,
Palm Beach County, Florida



DAVID F. CROW
CIRCUIT COURT JUDGE

*Town of Palm Beach v Preserve Palm Beach
Political Action Committee and Flynn
Case No 2009CA020515 MB AG
Order
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Copy furnished:

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**ATTORNEY/CLIENT PRIVILEGE
CONFIDENTIAL COMMUNICATION
PURSUANT TO FLORIDA STATUTE 119.071**

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John C. Randolph, Town Attorney *JCR*

Re: Proposed Charter Amendment re. Royal Poinciana Plaza and Playhouse

Date: May 20, 2009

Summary of the Issue: Because the Petition to amend the Town Charter to incorporate "portions of the covenants" of the 1979 Agreement and to require that "any alterations" to that agreement be approved by referendum vote has now obtained the requisite number of signatures, the Town must place the Petition on the ballot at the next general election or a special election called for that purpose. If the Town refuses to place the proposed Charter amendment on the ballot, the proponents can file a writ of mandamus with the court to compel the Town to do so. However, because a very real possibility exists that the proposed Charter amendment is facially unconstitutional, the Town should consider asking a court for a declaration as to its constitutionality before expending the considerable funds required to place the proposed amendment on a general or special election ballot. The proposed Charter amendment arguably conflicts with state comprehensive planning law, which restricts the use of the initiative or referendum process in regard to development orders affecting 5 or fewer parcels of land.

BACKGROUND

The Proposed Charter Amendment

The Preserve Palm Beach Political Committee has petitioned the Town to place a proposed ballot title, summary and charter amendment on the ballot in the next general election. The proposed charter amendment provides as follows:

(1) The Town of Palm Beach Charter Shall be amended to incorporate portions of the covenants set forth in the 1979 Agreement between the Town of Palm Beach and the predecessor of Poinciana Properties, Limited concerning property known as the Royal Poinciana Plaza; which do not allow the construction of new buildings in the Poinciana Plaza, and require that the Poinciana Theater only be used as a theater of the performing arts and/or visual arts or for lectures or other special events.

(2) That a majority of Voters of the Town of Palm Beach voting in a referendum must approve any alterations to the Royal Poinciana Plaza Agreement.

The proposed ballot title and summary provide as follows:

BALLOT TITLE: Alterations of covenants of Royal Poinciana Plaza and Royal Poinciana Playhouse only by referendum.

BALLOT SUMMARY: Voter approval required for alterations to the covenants set forth in the 1979 Royal Poinciana Plaza Agreement between the Town of Palm Beach and the predecessor of Poinciana Properties, Limited, concerning property known as the Royal Poinciana Plaza.

The Supervisor of Elections has certified the Petition as receiving signatures from 10% of the Town's registered voters. John Jorgensen, attorney for the Preserve Palm Beach Political Action Committee, in a letter dated May 19, 2009, has demanded, on behalf of his client, that the amendment be placed on the ballot at the Town's next general election.

The 1979 Agreement

As you are aware, Royal Poinciana Plaza ("the Property") is presently the subject of an agreement entered into on or about March 6, 1979 by and between the Town and the predecessor of Poinciana Management, Inc., Poinciana Properties, Ltd. (the "1979 Agreement"). The 1979 Agreement codified the Town's grant of a variance request for the Property subject to various agreed conditions, which conditions bound the developer along with its successors and assigns. Among those conditions were the following:

2. Subsequent to the completion of construction and during its ownership of the Royal Poinciana Plaza the Partnership (and during the ownership of any purchaser) agrees to perform as follows:

* * *

B. There shall be no construction of any new buildings in the Royal Poinciana Plaza after completion of construction of Building B... however, this shall not prohibit construction of alterations or renovations of any buildings in the Plaza which does not increase number of square feet in said buildings.

* * *

E. It will continue to lease the space now occupied and used by the "Poinciana Theater" only for use as a theater of the performing and/or visual arts and for lectures or other special events. ...

As reflected in the legal description attached to the 1979 Agreement, the Royal Poinciana Plaza property is comprised of two (2) separate parcels of land. The property is currently governed by the C-PC Planned Center District zoning regulations.

I. The Town is Statutorily Required to Place the Petition on the Ballot -- Absent Court Intervention

Because the Petition has now received the requisite number of signatures as provided for by statute, the Town must place the proposal on the ballot. The Town has no authority or discretion to examine the substance of such petition. See AGO 74-69. Only the courts have this discretion. Section 166.031(1), Florida Statutes outlines the procedure associated with charter amendments as follows:

(1) The governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose.

See also Section 5.07 of the Town Code of Ordinances (charter amendments may be placed on general or special election ballot by (a) majority vote of Town Council; or (b) petition signed by at least 10% of the electors and filed with Town Council at least 90 days before a general election).

If a majority of electors voting in the referendum vote for the proposed Charter, the Town will thereafter be required to incorporate the amendment into the Charter and file a copy of the revised Charter with the Department of State, at which time the revised Charter shall become effective. See AGO 2002-79 (Nov. 14, 2002).

II. If the Town Refuses to Place the Petition on the Ballot, the Proponents Could Seek Mandamus to Compel

If the Town refuses to place the proposed Charter amendment on the ballot, the proponents can file a writ of mandamus against the Town in an effort to compel the Town to do so. See, e.g., Wright v. Frankel, 965 So. 2d 365, 370 (Fla. 4th DCA 2007), reh'g en banc denied by, 970 So. 2d 504 (Fla. 4th DCA 2007) and rev. denied by, 985 So. 2d 1093 (Fla. 2008). As noted below, if a mandamus or declaratory judgment action were filed, a court would examine whether the proposed Charter amendment is facially unconstitutional and, if so, would not compel the Town to place it on the ballot.

III. The Town Can Seek A Court Declaration of Constitutionality to Mitigate Expense of Taking a Potentially Unconstitutional and Invalid Action

In order to determine whether the proposed Charter amendment is facially constitutional and therefore proper, the Town can file a declaratory action with the court prior to placing it on a general or special election ballot. See e.g. Gaines v. City of Orlando, 450 So. 2d 1174, 1177 (Fla. 5th DCA 1984) (courts may make an initial determination as to whether the substantive provisions of the proposed amendment are facially constitutional and within the powers of the enacting body). Courts have recognized that such involvement may very well be warranted so that the public interest and rights can be determined prior to a ballot procedure which will involve "the possible expenditure of substantial sums of public monies in the doing of what could be a vain and useless thing" (by contrast to elections of individual candidates to public office, which is considered a purely political rather than judicial matter). Dade Cty v. Dade Cty. League of Municipalities, 104 So. 2d 512 (Fla. 1958). Where constitutionality questions are raised, the courts should and must rule on them prior to the election. City of Ft. Pierce v. McCarty, 422 So. 2d 1094 (Fla. 4th DCA 1982).

IV. A Court Will Declare the Proposed Amendment Invalid and Not Subject to a Vote of Electorate if Deemed Facially Unconstitutional

If the proposed amendment is deemed "unconstitutional in its entirety and on its face," a court will invalidate it. Wright, 965 So. 2d at 372, citing West Palm Beach Ass'n of Firefighters, Local Union 727 v. Bd. of City Comm'rs of City of West Palm

Beach, 448 So. 2d 1212, 1214 (Fla. 4th DCA 1984). A determination that a statute is facially unconstitutional means that no set of circumstances exists under which the statute would be valid. Walton Cty. v. Stop Beach Renourishment, Inc., 998 So. 2d 1102 (Fla. 2008).

It should be noted that a court will construe any ambiguities in the proposed amendment a manner which avoids any constitutional problems, if possible. Granite State Outdoor Advertising, Inc. v. City of Clearwater, 213 F. Supp. 2d 1312 (M.D. Fla. 2002). Moreover, courts liberally construe the power of initiative given to electors. Wright v. Frankel, *supra*; Brooks v. Watchtower, Bible & Tract Soc'y of Fla., Inc., 706 So. 2d 85, 88-89 (Fla. 4th DCA 1998). See also Harris v. Moore, 752 So. 2d 1241, 1243 (Fla. 4th DCA 2000) ("As a general rule, courts will not interfere with the democratic process to restrain the holding of an election. Accordingly, courts must act with 'extreme care, caution and restraint' before removing an amendment from the vote of the people.").

V. The Proposed Amendment May be Facialy Unconstitutional as Violating State Comprehensive Planning Law

Notwithstanding the foregoing, an initiative ordinance which conflicts with or purports to preempt general state law will be deemed unconstitutional in its entirety and invalidated.¹ Charlotte Cty. Bd. of Cty. Comm'rs v. Taylor, 650 So. 2d 146 (Fla. 2d DCA 1995); West Palm Bch Ass'n of Firefighters, 448 So. 2d 1212.

Here, a good faith argument exists that the proposed charter amendment conflicts with state comprehensive planning law to the extent that it purports to use the referendum process to alter the 1979 Agreement, which governs a property consisting of only 2 parcels of land. Section 163.3167(12), Florida Statutes prohibits use of the initiative or referendum process in regard to any development order that affects 5 or fewer parcels of land, as follows:

(12) An initiative or referendum process in regard to any development order or in regard to any local comprehensive plan amendment... that affects five or fewer parcels of land is prohibited.

¹ References have been made to the fact that the appellate court in Wright v. Frankel, 965 So. 2d 365 (Fla. 4th DCA 2007) directed the City of West Palm Beach to place on the ballot two initiatives concerning relocation of the city hall and library. Those initiatives proposed that neither the city hall nor the library would be relocated to another site unless the relocation were first approved by a majority of the city's electorate voting in a referendum election. There was no question in Wright, however, as to whether the proposed initiatives were facially unconstitutional. 965 So. 2d at 373 ("Here, as in Brooks, the proposed ordinances have not been shown to be defective or unconstitutional in any respect.") Instead, the City's opposition to placing them on the ballots was based "primarily on the passage of time and expenditure of funds on relocation efforts." *Id.* The court held that where the petitioners had satisfied all of the requirements for placing the initiatives on the ballot, the delay in seeking a referendum and the possible consequences to the city from that delay could not justify the trial courts' refusal to enforce the referendum process. See *id.*

The statute defines a "development order" as "any order granting, denying, or granting with conditions an application for a development permit. Fla. Stat. §163.3164(7). The latter includes any "variance, or any other official action of local government having the effect of permitting the development of land. Fla. Stat. §163.3164(8). Although an argument might be raised that Section 163.3167(12), which became effective in 1995, should not apply to development orders enacted prior to its effective date, we do not believe such an argument would be successful. The 1979 Agreement effectively codified the Town's grant of variance applications on the Property, subject to certain conditions, and thereby arguably constitutes a development order for purposes of Section 163.3167(12). The action of amending the Town Charter to incorporate provisions of that 1979 Agreement and to limit its alteration by the referendum process is a prospective act under the statute.

While the language of the proposed Charter amendment is somewhat unclear, as noted in more detail below, its passage would at the very least mean that "any alterations" to the 1979 Agreement would have to be accomplished by referendum vote of a majority of the Town's electorate. In other words, any changes to the Property, whether by zoning ordinance, comprehensive plan amendment or otherwise, would arguably have to be decided by public referendum.

VI. If the Town Council Is Inclined to Seek a Court Declaration on the Petition's Constitutionality, it Should Also Consider Raising with the Court the Clarity (or Lack Thereof) of the Proposed Ballot Language and the Adequacy of the Ballot Title and Summary

Should the Town decide to seek a court declaration with regard to the constitutionality of the proposed Charter amendment, it should also consider raising with the Court the clarity (or lack thereof) of the proposed ballot language and the adequacy of the ballot title and summary. These issues would be raised in the alternative and only to the extent that a court otherwise finds the proposed Charter amendment constitutional. These issues would be moot if a court found the proposed Charter Amendment to be facially unconstitutional and thus invalid.

Section 101.161(1), Florida Statutes, which governs referenda and ballots, requires that a proposed referendum be printed in "clear and unambiguous language," and accompanied by a ballot summary describing its chief purpose and a ballot title. Section 101.161(1) provides:

Whenever a constitutional amendment or other public measure² is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot...The substance of the amendment or other public measure shall be an **explanatory statement**, not

² Fla. Stat. § 101.161(1) applies not only to constitutional amendments, but also to ballot summaries for municipal charter amendments

exceeding 75 words in length, of the chief purpose of the measure. The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of. (emphasis added)

The purpose of this requirement is to provide the voter with fair notice of the content of the proposed measure so that he or she will not be misled as to its purpose and may intelligently cast his or her vote. City of Miami v. Staats, 919 So. 2d 485, 487 (Fla. 3d DCA 2005).

At least one court has held that the Town has the ultimate responsibility for creating a ballot summary that complies with Fla. Stat. § 101.161(1). Shulmister v. City of Pompano Beach, 798 So. 2d 799, 802 (Fla. 4th DCA 2001) (city's creation of ballot summary is ministerial act). This result follows even though the proposed amendment was sponsored by an initiative committee. See id. (holding that city commission, rather than initiative proponent, was responsible for providing ballot summary in compliance with statute). The language of the ballot summary must be straightforward and clear and sufficiently apprise the voters of the substance of the proposed revisions to their charter. See Charter Review Com'n of Orange County v. Scott, 647 So. 2d 835 (Fla. 1994).

Ballot Language. Here, the language of the proposed Charter amendment is arguably vague and ambiguous in several respects. First, subsection (1) proposes to amend the Town Charter to "**incorporate portions of the covenants** set forth in the 1979 Agreement" and then identifies two covenants related to the construction of new buildings and the use of the Poinciana Theater. It is unclear which covenants and which portions thereof are to be incorporated into the Town Charter. Specifically, it is unclear whether the latter two covenants are provided for illustrative purposes -- in which case passage of the amendment would require amendment of the Town Charter to incorporate all of the numerous covenants set forth in the 1979 Agreement -- or whether those two covenants are the only ones to be incorporated. Second, subsection (2) proposes that "**any alterations**" to the 1979 Agreement would have to be approved by referendum. This language suggests that any comprehensive plan amendment, zoning code change or other municipal regulation that might affect the Property would be subject to a referendum vote. Arguably, therefore, the ballot language is not clear and unambiguous as required by statute.

Ballot Summary and Title. The proposed ballot summary likewise arguably does not adequately describe the "chief purpose" of the proposed Charter Amendment. The proposed ballot summary addresses only one aspect of the proposed Charter amendment, namely, the proposed requirement of referendum approval for any changes to the 1979 Agreement. Neither the ballot summary nor the ballot title advise the voters that portions of the 1979 Agreement will be incorporated into the Town Charter.

I will need the direction of the Mayor and Town Council as to how they wish to proceed in this matter. Would you please place this on a future agenda for consideration.

Thank you.

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attorney on December 27, 1982, at which time said papers were misplaced and no responsive pleadings were filed. Default was entered on February 10, 1983. Motion to Vacate was not filed until May 17, 1983. Between the date of the filing of the default and the filing of the Motion to Vacate there is a conflict of a factual situation inasmuch as on April 1, 1983, plaintiffs' attorney sent the Claims Adjuster for the defendant's insurer a letter containing a copy of the Motion and Order for Default and requested the adjuster to contact him with regard to settlement. The plaintiff complained that the adjuster did not forward the investigative file to defense counsel for several weeks, alleging that such neglect was not excusable. On the other hand, the defense argued that the plaintiffs' counsel represented to him that the matter could be amicably settled without further litigation.

On October 25, 1983, a hearing was held on the defendant's Motion to Set Aside Default, and on November 3, 1983, the trial court entered an order denying defendant's motion and ruled that the defendant's agents were not misled and that there had been no excusable neglect demonstrated on the part of the defendant, and that defendant was guilty of not timely moving to set aside the default. The facts of each case are very important in determining whether to set aside a default.

After review of the record, we cannot say that the trial court abused its discretion.

[1] Discretion is reposed in the trial judge by Florida rule. Florida Rule of Civil Procedure 1.540 is of the broadest scope and, in order to reverse the judge's ruling thereunder, there must be a showing of gross abuse of discretion.

In addition, it is the duty of the trial court, not the appellate courts to make the determination of whether or not the facts constitute excusable neglect, mistake, or inadvertence sufficient to excuse compliance with the rules. *Farish v. Lum's Inc.*, 267 So.2d 325 (Fla.1972).

Schwab & Co., v. Breezy Bay, Inc., 360 So.2d 117, 118 (Fla.3d DCA 1978).

[2] We conclude there has been no gross abuse of discretion on the part of the trial court in denying defendant's Motion to Set Aside Default. *See Schwab & Co.*

Affirmed.



**WEST PALM BEACH ASSOCIATION
OF FIREFIGHTERS, LOCAL UNION**
727, Walter L. Byrd, Robin Herring,
David Heyer, Dennis J. Wirthington,
and Dennis L. Grimes, Appellants,

v.

**BOARD OF CITY COMMISSIONERS
OF the CITY OF WEST PALM
BEACH, Appellee.**

No. 82-2129.

District Court of Appeal of Florida,
Fourth District.

April 25, 1984.

The Circuit Court for Palm Beach County, Richard B. Burk, J., entered final judgment holding that proposed initiative ordinance was unconstitutional and denying petition for writ of mandamus, and proponents of ordinance appealed. The District Court of Appeal, Downey, J., held that proposed ordinance governing resolution of contract issues between city and its fire fighter employees, which nullified impasse proceedings provided for in state statute and state statute governing compelled proposals or concessions, was unconstitutional and invalid.

Affirmed.

1. Declaratory Judgment ¶128

Where city contended that ordinance proposed for consideration by electors was

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at ordinance
electors was

unconstitutional in its entirety, preferred
procedure would have been to seek declara-
tory relief from circuit court to resolve
constitutional question.

2. Municipal Corporations §63.1(4)

When initiative petition is presented
requesting presentation of proposed ordi-
nance to electorate and government agency
in good faith questions constitutionality of
ordinance in its entirety and on its face,
court may properly consider such question
in advance of election.

3. Municipal Corporations §63.1(4)

When initiative petition is presented
requesting presentation of proposed ordi-
nance to electorate and government agency
questions ordinance on grounds that it is
unconstitutional in part or is invalid on
nonconstitutional grounds, such issue is not
cognizable by court prior to proposed elec-
tion.

4. Municipal Corporations §111(2)

Proposed ordinance governing resolu-
tion of contract issues between city and its
fire fighter employees, which nullified im-
passe proceedings provided for in state
statute and state statute governing
compelled proposals or concessions, was
unconstitutional and invalid. West's F.S.A.
§§ 447.203(14), 447.403(3) et seq.; West's
F.S.A. Const. Art. 8, § 2(b).

Joseph C. Segor and Joseph H. Kaplan,
Gerald A. Rosenthal and Steven Bloom of
Kaplan, Sicking, Hessen, Sugarman, Ro-
senthal & DeCastro, Miami, for appellants.

Carl V.M. Coffin, City Atty., West Palm
Beach, Lee E. Miller and Peter J. Hurtgen,

1. The proposed ordinance provides:

"In any contract involving terms or condi-
tions of employment, between the City of
West Palm Beach and its firefighter employ-
ees acting through its employee organization,
where unresolved issues are submitted to a
special master pursuant to Florida Statutes
chapter 447.403 and 447.405, it shall be
deemed to be in the public interest including
the interest of the employees involved for the
commission of the City of West Palm Beach to
accept the recommended decision of the Spe-
cial Master, and such recommended decision

Sp. Counsel for City of West Palm Beach,
of Seyfarth, Shaw, Fairweather & Gerald-
son, Tallahassee, for appellee.

DOWNEY, Judge.

Appellants, the West Palm Beach Associ-
ation of Firefighters, and a group of tax-
payers, seek reversal of a final judgment
holding that a proposed initiative ordinance
was unconstitutional and denying appel-
lants' petition for writ of mandamus. The
judgment was entered upon the petition,
response, and appellants' reply to the re-
sponse. Appellants concede there is no
factual dispute involved.

[1] Appellants prepared and circulated
an initiative petition, requesting that an
ordinance¹ be placed on the ballot for con-
sideration by the electors of the city. The
city refused to submit the proposed ordi-
nance to a referendum on the grounds that
the ordinance was unconstitutional in its
entirety. Appellants thereupon filed this
action seeking a writ of mandamus; from
the adverse judgment they have perfected
this appeal.

Appellants' first point is that the city did
not have the authority to refuse to place
the ordinance on the ballot on the ground
of alleged unconstitutionality. It is argued
that the city must either adopt the ordi-
nance as proposed or submit it to the
electorate; the city can not itself pass on
its validity. It is conceded by the city that
it can not make the final determination as
to constitutionality, but the city contends it
can refuse to submit the matter to referen-
dum and let the court decide the constitu-
tional question. Why, then, the city did not
seek declaratory relief from the circuit

shall be accepted unless there was not compe-
tent substantial evidence to support that rec-
ommended decision, provided; however, if
the Firefighter employees strike in violation
of state law to coerce acceptance of the rec-
ommended decision, this provision shall not
be applicable. In the event there is any disa-
greement concerning this provision, the mat-
ter shall be resolved by application of either
party to the Circuit Court of the Fifteenth
Judicial Circuit in and for the State of Flori-
da."

court to resolve the issue we are not aware. However, we suggest that under the circumstances that would have been the preferred procedure. *Dade County v. Dade County League of Municipalities*, 104 So.2d 512 (Fla.1958); *City of Ft. Pierce v. McCarty*, 422 So.2d 1094 (Fla. 4th DCA 1982).

[2, 3] Be that as it may, appellants instituted a suit for mandamus to force the city to submit the matter to the people. As a result, the pleadings presented to the court, among other things, the constitutionality of the proposed ordinance. It appears that when an initiative petition is presented requesting the presentation of a proposed ordinance to the electorate and the governmental agency in good faith questions the constitutionality of the ordinance in its entirety and on its face the court may properly consider that question in advance of an election concerning its approval. *Dade County v. Dade County League of Municipalities*, *supra*. The rationale of that rule is that this type of question (as opposed to a political question) may be determined in advance of the election in order to preclude or forestall the possible expenditure of funds in a useless act should the ordinance ultimately be held unconstitutional. *Dade County*, *supra*. On the other hand, a proposal that is unconstitutional only in part or is invalid on nonconstitutional grounds is not cognizable by the court prior to a proposed election. *Rivergate Restaurant Corp. v. Metro Dade Cty.*, 369 So.2d 679 (Fla. 3d DCA 1979).

Thus, in the present case it was appropriate for the court to entertain and decide the constitutional question because the city contended the ordinance was unconstitutional in its entirety.

[4] Next, appellant suggests that the proposed ordinance in this case is not expressly prohibited by the constitution, nor is the subject expressly preempted to the State by the constitution or general law.

Regarding the preemption argument, there are cases saying that the legislature has preempted to the state via Chapter 447, Florida Statutes (1981), the subject of public employee bargaining. See: *Marwell v.*

School Board of Broward County, 330 So.2d 177 (Fla. 4th DCA 1976); *Public Employees Relations Com'n. v. City of Naples*, 327 So.2d 41 (Fla. 2d DCA 1976); *City of Panama City v. Florida Public Emp., etc. Commission*, 364 So.2d 109 (Fla. 1st DCA 1978). However, our reading of Chapter 447 leaves us with some degree of apprehension about the validity of those opinions because we fail to find in Chapter 447 the express preemption (as opposed to preemption by implication) required by Section 166.021(3)(c), Florida Statutes (1981). Nevertheless, we leave a full treatment of that question for another day because we hold that the proposed ordinance is unconstitutional in its entirety and on its face because it conflicts with the general law contained in Chapter 447. The impasse proceedings provided for in Section 447.403(3), et seq. are nullified by the ordinance, since the reason for their existence is disposed of. For example, the written notice required by Section 447.403(3), the discussions between parties, the recommendation for settling by the Chief Executive Officer, the public hearing before the legislative body, and the legislative body's action, taken in the public interest are all obviated by the ordinance. Furthermore, Section 447.203(14), which provides that "neither party shall be compelled to agree to a proposal or required to make a concession unless otherwise provided in this part" is likewise nullified by the ordinance. On the subject of conflict between municipal ordinances and state general law, the Third District Court of Appeal, in *City of Miami Beach v. Rocio Corp.*, 404 So.2d 1066 (Fla. 3d DCA 1981), stated:

One impediment to constitutionally derived legislative powers of municipalities occurs when the municipality enacts ordinances which conflict with state law.

404 So.2d at 1069.

In *Rocio* the City suggested that the foregoing rule of law had changed by passage of the Home Rule Powers Act, Chapter 166, Florida Statutes (1973). The court, however, disposed of that contention by pointing out:

The principle that a municipal ordinance is inferior to state law remains undis-

HARDY BY & THROUGH HARDY v. SANYEI HONG KONG Fla. 1215

Cite as 448 So.2d 1215 (Fla.App. 4 Dist. 1984)

turbed. Although legislation may be concurrent, enacted by both state and local governments in areas not preempted by the state, concurrent legislation by municipalities may not conflict with state law. If conflict arises, state law prevails.

404 So.2d 1070.

Accord: *Edwards v. State*, 422 So.2d 84 (Fla. 2d DCA 1982).

Article VIII, § 2(b), Florida Constitution, provides that municipalities "may exercise any power for municipal purposes unless otherwise provided by law." Thus a municipality may not properly exercise its legislative power by enacting an ordinance that conflicts with an existing state statute. Because the ordinance in question conflicts with provisions of Chapter 447, Florida Statutes, it violates Article VIII, § 2(b), and is invalid.

Accordingly, the judgment of the trial court holding the proposed ordinance unconstitutional and denying the petition for writ of mandamus is affirmed.

AFFIRMED.

LETTES and DELL, JJ., concur.



Micah HARDY, a minor, by and through his parent, natural guardian and next friend, Leonard HARDY, and Leonard Hardy, individually, Appellants,

v.

SANYEI HONG KONG, LTD., and Kwong Ming Plastic Factory, Appellees.

No. 83-289.

District Court of Appeal of Florida, Fourth District.

April 25, 1984.

Minor plaintiff, who sued domestic retailer for damages and obtained a substan-

Fla Cases 447-448 So 2d-23

tial settlement, sued foreign supplier and foreign manufacturer in tort for injuries arising out of his use of a toy gun. The Circuit Court, Palm Beach County, Thomas E. Sholts, J., entered a nonfinal order quashing service of process and dismissing claim against foreign supplier, and minor plaintiff appealed. The District Court of Appeal held that foreign supplier did not have sufficient minimum contacts with Florida to bring it within purview of the long-arm statute and subject it to service of process in minor plaintiff's tort action, notwithstanding that supplier acted as an agent for domestic retailer in Hong Kong, where domestic retailer's representatives went to Hong Kong and, after deciding to purchase certain items, executed the purchase order requiring foreign supplier to obtain merchandise properly assembled and packaged as per domestic retailer's instructions and ship it F.O.B. Hong Kong to domestic retailer at various destinations in the United States.

Affirmed.

Hurley, J., dissented and filed opinion.

1. Courts ⇐12(2.5)

Foreign supplier did not have sufficient minimum contacts with Florida to bring it within purview of the long-arm statute and subject it to service of process in minor plaintiff's tort action for injuries sustained from use of a toy gun, notwithstanding that supplier acted as an agent for domestic retailer in Hong Kong, where domestic retailer's representatives went to Hong Kong and, after deciding to purchase certain items, executed the purchase order requiring foreign supplier to obtain merchandise properly assembled and packaged as per domestic retailer's instructions and ship it F.O.B. Hong Kong to domestic retailer at various destinations in the United States.

2. Contracts ⇐206

Provision of purchase order agreement wherein foreign supplier consented to juris-

BRUCE S. ROGOW, P.A.
BROWARD FINANCIAL CENTRE
500 EAST BROWARD BOULEVARD, SUITE 1930
FORT LAUDERDALE, FLORIDA 33394

June 8, 2009

Bruce S. Rogow*
Cynthia E. Gunther

* Board Certified Appellate Lawyer

Phone (954) 767-8909
Fax (954) 764-1530
guntherc@rogowlaw.com
brogow@rogowlaw.com

**ATTORNEY CLIENT PRIVILEGE
CONFIDENTIAL COMMUNICATION
PURSUANT TO FLORIDA STATUTE 119.071**

VIA EMAIL (jrandolph@jones-foster.com)
JOHN C. RANDOLPH
JONES FOSTER JOHNSTON & STUBBS, P.A.
305 South Flagler Drive, Suite 100
West Palm Beach, FL 33401

RE: Proposed Charter Amendment

Dear Skip,

I have read your May 20, 2009 Memorandum relating to the Proposed Charter Amendment re: Royal Poinciana Plaza and Playhouse and the cases relied upon by you, as well as cases referred to in some of the cases cited in your Memorandum. I concur with your analysis.

I am especially impressed with the decision in *West Palm Beach Ass'n of Firefighters, Local Union 727 v. Board of County Commissioners of City of West Palm Beach*, 448 So. 2d 1212 (Fla. 4th DCA 1984) where Judge Downey chided the City for not seeking declaratory relief where there was a question of the constitutionality of a proposed initiative ordinance. He wrote: "Why, then, the city did not seek declaratory relief from the circuit court to resolve the issue we are not aware. However, we suggest that under the circumstances that would have been the preferred procedure." *Id.* at 1213-14. And his statement on the substantive issue, which was referred to in your Memorandum, is on point here: "[W]e hold that the proposed ordinance is unconstitutional in its entirety and on its face because it conflicts with the general law contained in Chapter 447." *Id.* at 1214.

Here we have a referendum that conflicts with Chapter 163, specifically Section 163.3167(12). I am also heartened by the *per curiam* (Letts, Downey and

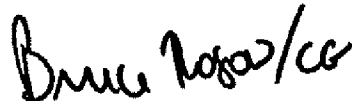
Walden) decision in *City of Fort Pierce v. McCarty*, 422 So. 2d 1094 (Fla. 4th DCA 1982) which specifically relies "upon the authority of and for the reasons stated in *Rivergate Restaurant Corporation v. Metropolitan Dade County*, 369 So. 2d 679 (Fla. 3d DCA 1979)." *Rivergate* has this language regarding when a court should preclude an election, recognizing it should occur "only on the narrowest of grounds" and that "[o]ne such exception is where the election is being held in violation of an applicable legislative enactment." *Rivergate*, 369 So. 2d at 683.

Therefore we have strong favorable precedent by historically respected Fourth DCA judges that lends added credence to your conclusions on the constitutional issue.

I do see the inconsistency between the proposed Charter Amendment's two sections as puzzling, problematic and perhaps a reason to preclude the election. I read section (1) – the "incorporate portions of the covenants" language – as meaning that only the no new buildings and maintaining a theater provisions shall become part of the Charter, and the proposed ballot title refers to only those two provisions as requiring a referendum to change them. But section (2) speaks of "any alterations," and the proposed ballot summary is equally broad. It is very confusing and I do not think we could prepare a ballot summary that would obviate the inconsistency.

The bottom line is that I agree that the Town should seek a declaratory judgment. That would avoid the election expense, turmoil, doubts and constitutional and practical questions that arise from the proposed Charter Amendment.

Best,

A handwritten signature in black ink that reads "Bruce Rogow/cc". The signature is written in a cursive, somewhat stylized font.

BRUCE S. ROGOW

(Signed in Mr. Rogow's Absence)

PROPOSED CHARTER AMENDMENT REGARDING CERTAIN LANDMARK PROPERTIES

The following is a list of individuals who submitted e-mails or letters regarding the above referenced item on the June 22, 2010, Town Council meeting. The correspondence was previously distributed to the Mayor and Town Council and is available to view in the Town Manager's Office.

Alan Lindsay
Jessie Araskog
Rand V. Araskog
Stewart B. Clifford
Skira Semeta Watson
William O. Cooley
David W. Barton
Carol Barton
Randolph and Beatrice Guthrie
Edward T. Curran
Cappy Abraham
Nick Adams and Dee Silvers
Elizabeth Latta
Edward W. Callahan
Heribert Obser
Mr. And Mrs. Ridgely Foster

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

RESOLUTION NO. 66-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Contract with Coastal Systems International, Inc., for Reach 8 Beach Restoration State and Federal Permitting.

Presenter

Peter B. Elwell, Town Manager

Supporting Documents

- Memorandum dated June 14, 2010, from Rob Weber, Coastal Coordinator
- Resolution No. 66-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Robert Weber, Coastal Coordinator

Re: Award Contract for Reach 8 Beach Restoration Permitting
Resolution No. 66-10

Date: June 14, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council approve Resolution No. 66-10 authorizing the Town Manager to contract with Coastal Systems International, Inc., for the hourly not-to-exceed expenditure of \$205,000 to perform the state and federal environmental permit processing associated with the Reach 8 Beach Restoration project.

GENERAL INFORMATION

Chronological History

March 2, 2009

Administrative Law Judge Robert E. Meale releases his Recommended Order (RO), which suggests that FDEP deny the permit to the Town for a Reach 8 beach restoration project as designed. Both Judge Meale's RO and the Petitioners' proposed Recommended Order provide alternative coastal management measures in Reach 8 for the Town to consider.

July 15, 2009

The Final Order by FDEP Secretary Michael Sole is issued, denying permit issuance for beach nourishment in Reach 8.

October 13, 2009

The Town Council authorizes a \$20,000 preliminary design effort for a modified Reach 8 beach restoration project.

November 10, 2009

The Shore Protection Board submits a Coastal Management Work Plan to the Town Council that includes a recommendation to "Reapply for Reach 8 Beach Restoration".

November 20, 2009

Coastal Systems International, Inc. (CSI) provides Town staff with a scope of work cost proposal relative to beach nourishment in Reach 8. The hourly not-to-exceed proposal of nearly \$280,000

includes approximately \$75,000 for the project design and Joint Coastal Permit (JCP) Application and approximately \$205,000 environmental permit processing, including meetings/coordination.

December 2009

Continued discussion between the Town and FDEP result in a time extension of the state's grant agreement with the Town for cost-sharing appropriations for Reach 8. Rather than expiring on December 31, 2009, the agreement is amended to extend the life of the agreement until June 30, 2011.

January 22, 2010

CSI presents a Reach 8 beach restoration feasibility study to the Shore Protection Board. The preliminary design includes the placement of 261,000 cubic yards of upland trucked beach compatible sand. The Board recommends that Town Council authorize CSI for \$75,000 for the project design and JCP Application. In addition, the Board requests Town Council authorization to expend up to \$20,000 for a coastal engineering peer review of the CSI project design.

February 9, 2010

Town Council approves the expenditure of \$95,000, as recommended by the Shore Protection Board. In addition, Town Council includes the direction to conduct a survey by the Citizens' Association to obtain feedback from the Reach 8 residents regarding the tolerance of traffic related to a truck haul project.

May 25, 2010

The completed design is presented to the Shore Protection Board by John Studt, Regional Director of CSI. Michael Walther, President of Coastal Technology Corporation, provides the Board with the peer review of the design. The Reach 8 Beach Restoration project design is discussed by the Board and the Board votes to recommend Town Council approval for CSI to proceed with the permitting process, in the not-to-exceed amount of \$205,000.

The Current Reach 8 Beach Restoration Project

Design

The project is designed in an innovative stepped approach to strategically place sand and allow the natural southerly movement of sand to help sustain a minimum beach profile throughout Reach 8. The project was designed to gradually decrease in size and width as it moves south and closer to nearshore hardbottom. The narrow southern portion of the project will rely on the southerly littoral drift to naturally move sand from the larger density segments. Rather than placing advanced fill seaward of a project area (similar to a typical nourishment project), the placement of sand updrift of the erosional and resource sensitive areas will serve as the advanced fill. As the sand from the northern portion of the project, coupled with the sand from the coastal projects in Reach 7, continue to feed the erosional beaches in the southern sections of Reach 8, a more stable shoreline will be maintained.

Through field verification in April 2010, the nearshore hardbottom locations were mapped out and incorporated into the model runs. Based on both the project's design template and unexposed hardbottom, the estimated secondary impacts are 0.9 acres. Due to the quality of the hardbottom, early estimates of mitigation would require approximately 2 acres of artificial reef construction. Any actual mitigation amounts would be determined following a Unified Mitigation Assessment Method (UMAM) during the permitting process.

The design and volume of the project is consistent with recommendations by Judge Meale and the Petitioners in the previous Reach 8 beach project administrative hearing. This revised project addresses coastal protection needs of the upland property owners as well concerns for nearshore resources by other stakeholders.

Surfrider Foundation

In trying to develop a more productive relationship with the Surfrider Foundation, I made a promise to Greg Lyon and Tom Warnke (Executive Committee members of the Palm Beach Chapter of Surfrider Foundation) to provide them with an appropriate opportunity to review and comment on the entire Reach 8 JCP permit application package. Regular communication between Greg Lyon and myself specific to the project's design were held as CSI was preparing their design parameters. Some early verbal feedback from Surfrider Foundation was included in CSI's work.

On May 27, 2010, I sat down with Tom Warnke and reviewed the entire Reach 8 project. Tom Warnke was one of the listed Petitioners from the Reach 8 administrative hearing. The meeting was successful as there appeared to be a clear understanding by Surfrider of what the Town's intentions are, and a clear understanding by myself of what Surfrider's concerns are. A hard copy of the Reach 8 JCP permit application was given to Mr. Warnke for further review at his convenience. Mr. Warnke agreed to document concerns on behalf of Surfrider Foundation, specific to this revised Reach 8 project.

On June 11, Mr. Warnke submitted an email to me requesting that various items be addressed to make the project even more sensitive to both surfing and the environment. The email was clarified by additional electronic correspondence and provided to CSI. Should Town Council decide to move forward with the permitting process, CSI will see that all comments and suggestions from Mr. Warnke are included within the Town's submitted permitting documents. The comments/suggestions include additional construction management and monitoring protocols to ensure that the proper sand from the upland mine is delivered and placed, adjustments to the sand placement template, and dune vegetation. Surfrider Foundation would prefer the sand placed between the north end of Kreusler Park and 800 feet south of the pier to be above the mean high water. Therefore, these areas would receive a dune with vegetation and an elevated berm. As the project naturally equilibrates and spreads both north and south, these areas would likely receive sand below the mean high water line. If the Town satisfies Mr. Warnke's listed concerns, the properties which would receive the sand placement above the mean high water line are the Bellaria, Palm Beacher, and Palm Beach Hampton condominiums.

The permittable project, which appears not to be objected from Surfrider Foundation, provides the Reach 8 area with at least a 15-year return interval storm protection.

Storm return intervals are based on probabilities that a particular storm would affect a particular area. For example, a 10-year storm has a $1 / 10 = 0.1$ or 10% chance of occurring in any one year and a 25-year storm has a 0.04 or 4% chance of occurring in any one year. Tropical storms and categories of intensity for hurricanes are not linear relationships. Due to size, speed, and direction of storms, it is difficult to classify the intensity of a hurricane with respect to the storm return interval.

Sand Placement Methods

The project description for the JCP application proposes transportation of sand via truck haul. As more information regarding other methods is obtained, the project description can be modified accordingly through the permitting process.

Town staff will continue to explore all options that may be available for the transportation of upland beach compatible sand. Council will be notified if a viable alternative method is identified.

Work In Progress/Future Actions

Should Town Council decide to move forward with the permitting process, Town staff recommends several of the items listed below to be completed prior to submittal of the JCP application. CSI estimates that approximately one-month would be necessary to complete the tasks outlined by the peer review and Surfrider Foundation. Submission of the JCP application would occur sometime in late July/early August. It is imperative that the submittal date does not slide beyond early August if construction in November 2011 is still the Town's goal.

Pre-Application Meetings

The Town will be meeting with the FDEP in Tallahassee on June 30, 2010. The project will be presented to FDEP staff. Shortly after meeting with FDEP, the Town will meet with the U.S. Army Corps of Engineers regulatory staff in Palm Beach Gardens. Feedback received by both the state and federal agencies will be incorporated into the JCP application.

Peer Review

On May 19, 2010, Coastal Technology Corporation (Coastal Tech) provided the Town with a letter report summarizing the peer review of the work performed by Coastal Systems International, Inc. (CSI). Coastal Tech determined that "the proposed Beach Fill Project appears to reasonably meet the Town's 'objectives to protect upland property' while minimizing potential adverse environmental impacts." Coastal Tech mentioned that "expanded documentation of the design and/or design revisions are likely to be required by the reviewing agencies in order to obtain the permits necessary for construction."

In summary, the following specific recommendations were made by Coastal Tech to be added by CSI to the JCP Application:

- Identification of the reasons why fill is not proposed to be placed fronting the Lake Worth Municipal Park
- Substantiation of Project Need - Address the "no action" alternative quantitatively
- A more complete characterization of the Equilibrium Toe of Fill prediction methods
- Further details in the Project Description

During the peer review period, Coastal Tech and CSI worked together to ensure that the peer review process was productive in developing a better project design and permit application. CSI has incorporated some of Coastal Tech's concerns with the JCP application package. Following feedback from the Town staff and SPB, remaining concerns should be addressed by CSI before the JCP application is submitted to the regulatory agencies.

Grant Agreement Extension

If Town Council decides to move forward with beach restoration in Reach 8, Town staff will discuss developing a new amendment for a time extension to the grant agreement for state funding assistance with FDEP. The current grant agreement (with existing amendment) expires on June 30, 2011.

Methods of Transportation for Sand

As more information is collected by Town staff, related to the E.R. Jahna Ortona sand mine, it is becoming clear that a rail or barging alternative is unlikely. The Ortona sand mine is the most accepted upland mine by FDEP for beach placement. However, due to the tonnage of sand necessary

to complete the Reach 8 project and the related concerns about impacts of trucking this sand, Town staff is looking for other mines which could meet the needs of this project.

FDEP staff and Town consultants are currently aiding Town staff in locating sand mines that 1) may be closer to the Town, 2) may have rail service directly from the mine, and 3) may have or be close to a deep water port for barging capabilities. To be exhaustive in this effort, CSI and Town staff will need to complete this task during the permitting process.

Another consideration is that the Ocean Avenue Bridge from Lantana will probably be closed during the period of construction for the Reach 8 project. That would limit the trucking of sand to the Lake Worth Bridge and, possibly, the Southern Boulevard Bridge.

Citizens Association

Trucking is a concern for the south end residents and Town Council recognizes this. Town Council has requested feedback from the south end residents through the Citizens' Association. Because we are currently out of season, that poll will need to be conducted during the permitting process. Town staff will assist the Citizens' Association, as necessary.

Over the past two months, I have communicated regularly with the Citizens' Association coastal engineer, David Decker (East Bay Group). Mr. Decker is generally supportive of the project as designed. Concerns of repetitive dune restoration versus beach restoration have been raised. CSI will be prepared to address this comparative analysis through continued "Project Need" sections of the permit application, if necessary.

FUNDING/FISCAL IMPACTS

Sufficient funds exist in the Coastal Management Fund to pay the not-to-exceed cost of \$205,000 for this permitting process.

TOWN ATTORNEY REVIEW

This resolution has been reviewed by the Town Attorney and approved for legal form and sufficiency.

cc:Shore Protection Board

RESOLUTION NO. 66-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE A NOT-TO-EXCEED \$205,000 CONTRACT WITH COASTAL SYSTEMS INTERNATIONAL, INC. FOR REACH 8 BEACH RESTORATION STATE AND FEDERAL PERMITTING.

*

*

*

BE IT RESOLVED BY THE TOWN COUNCIL of the Town of Palm Beach, Palm Beach County, Florida as follows:

Section 1. The Town of Palm Beach contract for permitting services for beach restoration in Reach 8 is hereby awarded to Coastal Systems International, Inc. for Parts 3 & 4 of their Not-To-Exceed Time and Materials proposal, dated November 20, 2009, in the maximum amount of \$205,000.

Section 2. The Town Manager is hereby authorized and directed to execute a contract on behalf of the Town of Palm Beach for state and federal permitting services related to a JCP permit application for beach restoration in Reach 8 with Coastal Systems International, Inc., as described in Section 1 above.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on this 22nd day of June, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

Residents' Proposal to Rename the Par 3 Golf Course in Honor of Raymond Floyd.

Presenter

Jay Boodheshwar, Director of Recreation

Supporting Documents

- Memorandum dated June 10, 2010, from Jay Boodheshwar, Acting Director of Public Works
- Letter dated April 26, 2010, from the Par 3 Foundation
- May 5, 2010, Recreation Advisory Commission Minutes

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Acting Director of Public Works

Re: Request to Re-name the Par 3 Golf Course

Date: June 10, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council review the name change proposals for the Par 3 Golf Course, as recommended by the Par 3 Foundation Board of Directors and the Recreation Advisory Commission, and provide direction.

GENERAL INFORMATION

In a letter dated April 26, 2010, the Par 3 Foundation Board of Directors requested that the Par 3 Golf Course be renamed the “Raymond Floyd Town of Palm Beach Par 3 Golf Course” to honor Mr. Floyd for the design and fundraising leadership he provided for the restoration of the course. On May 5, 2010, the Recreation Advisory Commission discussed the renaming initiative and unanimously recommended that the golf course be renamed “The Raymond Floyd Course at the Palm Beach Par 3”. Most of the Par 3 Foundation Board of Directors would also support this alternative. In addition to these two options, “The Raymond Floyd Par 3 Golf Course, Palm Beach” also received support from some Foundation members.

Although both the Par 3 Foundation and the Recreation Advisory Commission recognize that many residents played important roles in the success of the renovated golf course, they feel that this unique public/private partnership would not have been possible without Mr. Floyd’s dedication and leadership. They also recognize that the Town historically has not named public facilities in honor of individuals, but they feel that renaming the golf course is an appropriate gesture for recognizing Mr. Floyd’s extraordinary contribution to the Par 3 Golf Course and the Town.

FUNDING/FISCAL IMPACT

There is no fiscal impact with the request, as the cost for changing out the golf course entry sign would be paid for by the Par 3 Foundation.

cc: Recreation Advisory Commission
Par 3 Foundation Board of Directors
Alan Brown, Acting Director of Recreation
Rick Dytrych, Golf Pro/Manager

THE PAR ③ FOUNDATION, INC.

400 Royal Palm Way, Suite 304 - Palm Beach, FL 33480 / phone (561) 655-6989 fax (561) 835-9995

TOWN OF PALM BEACH

MAY 11 2010

Town Manager's Office

April 26, 2010

Palm Beach Town Council:
David A. Rosow, President
Gail Coniglio, President Pro Tem
William J. Diamond
Richard M. Kleid
Robert N. Wildrick
360 South County Road
Palm Beach, FL 33480

BOARD OF DIRECTORS

RAYMOND & MARIA FLOYD

JIM CLARK

HOWARD COX

MARJORIE FISHER

GERRY GOLDSMITH

STEPHEN HALL

IRA HARRIS

DANIELLE HICKOX-MOORE

TERRY ALLEN KRAMER

PAULINE PITT

THOMAS QUICK

ROBERT G. SIMSES

JEFFREY SMITH

LESLEY SMITH

SCOTT SNYDER

FLOYD WIDEMAN

Re: The "Raymond Floyd Town of Palm Beach Par 3 Golf Course"

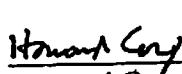
Dear President Rosow and Town Council Members:

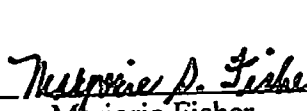
Golf has been renewed in the Town of Palm Beach! As you know, the Palm Beach Par 3 golf course has been completely rebuilt, with a new clubhouse soon to follow. This remarkable renovation is the result of a collaborative effort by the Town of Palm Beach and a group of dedicated Palm Beach citizens. The members of this team had the vision to understand what the Par 3 could become and the commitment to expend the time and money to make it happen. The result speaks for itself. We now have a golf course that is beautiful, enjoyable, and environmentally sound.

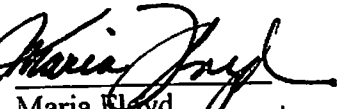
Although many residents played a part in this transformation, there is one person whose efforts clearly led the way and enabled this project to succeed. Raymond Floyd lent his valuable name recognition and his unsurpassed knowledge of the game of golf to this project. From fundraising to course design to implementation, Mr. Floyd guided this private/public collaboration and spent countless hours to make certain that everything would be perfect. It is now time to recognize his efforts by renaming the Par 3 the "Raymond Floyd Town of Palm Beach Par 3 Golf Course." Thus, we the Board of Directors of the Palm Beach Par 3 Foundation, Inc. respectfully request that the Palm Beach Town Council rename the golf course accordingly. This will honor and memorialize Mr. Floyd's contribution to this town landmark – a landmark that will continue to be enjoyed by the citizens of Palm Beach for years to come.

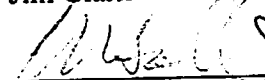
Very truly yours,

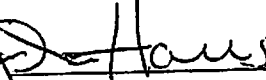

Jim Clark

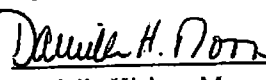

Howard Cox

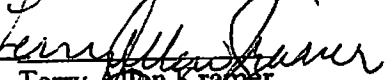

Marjorie Fisher

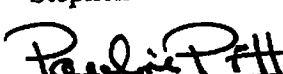

Maria Floyd

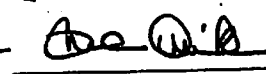

Stephen Hall


Ira Harris

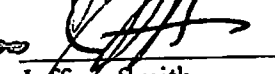

Danielle Hickox-Moore

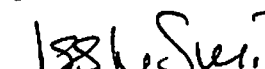

Terry Allen Kramer


Pauline Pitt


Thomas Quick

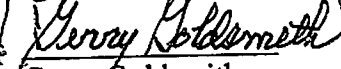

Robert G. Simses


Jeffrey Smith


Lesley Smith


Scott Snyder


Floyd Wideman


Gerry Goldsmith

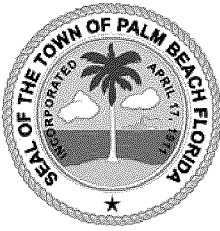
cc: The Honorable Jack McDonald

Florida Registration Number: CH26854 - A copy of the official registration and financial information may be obtained from the Florida Division of Consumer Services by calling toll-free within the state - 800-435-7352. Registration does not imply endorsement, approval, or recommendation by the state.

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Federal Tax ID: 26-2656681

The Par 3 Foundation, Inc. is a 501(c)3 nonprofit organization.



TOWN OF PALM BEACH RECREATION DEPARTMENT

MINUTES OF THE RECREATION ADVISORY COMMISSION HELD ON WEDNESDAY, MAY 5, 2010

I. CALL TO ORDER & ROLL CALL

A meeting of the Town of Palm Beach Recreation Advisory Commission was held on May 5, 2010, at the Recreation Center. The meeting was called to order by Mr. Joseph Della Giustina, Vice Chairman, at 9:00 a.m. Commission members in attendance were Mr. Della Giustina, Mr. Stephen Hall, Mrs. Danielle Moore, Mr. Henry Jamison, Mr. Daniel McDonnell and Mr. Donald Singer. Alternate members in attendance were Dr. Ellen Howe, Mrs. Pamela McIver and Mr. Chris Storkerson. Absent from the meeting was Mr. Timothy O'Hara. Staff members in attendance were Director Mr. Jay Boodheshwar, Assistant Directors Mr. Alan Brown and Mr. Rod Gardiner, and Office Manager Mrs. Lisa Walkowich. Also in attendance were Mr. William Diamond and Mr. Richard Kleid, Town Council members.

A. Welcome New Members

Mr. Boodheshwar congratulated Mr. Hall and Mr. Singer for being reappointed to the commission as regular members. He welcomed Dr. Howe and Mr. Storkerson who were recently appointed as alternate members to the commission.

II. OATH OF OFFICE

Mrs. Walkowich administered the oath of office to the following commissioners, Mr. Della Giustina, Mr. Jamison, Mr. Hall, Mr. Singer, Dr. Howe and Mr. Storkerson.

III. ORGANIZATIONAL ITEMS

A. Annual Commission Orientation/Re-Orientation – Mr. Boodheshwar reviewed the Recreation Commission Handbook with the commissioners, focusing on the Sunshine Laws.

B. Election of Commission Chairperson – Mr. Hall made the motion to nominate Mrs. Moore as Recreation Advisory Commission Chairperson, seconded by Mr. McDonnell. There were no other nominations. Motion passed unanimously. Mrs. Moore then presided over the remainder of the meeting

C. Election of Commission Vice Chairperson – Mr. McDonnell made the motion to nominate Mr. Della Giustina as Vice Chairperson for the Recreation Advisory Commission, seconded by Mr. Hall. There were no other nominations. Motion carried unanimously.

IV. COMMUNICATIONS FROM CITIZENS - There were none.

V. APPROVAL OF AGENDA

Mrs. Moore asked if there were any changes to the agenda. Mr. Boodheshwar requested that under New Business the order of items A and B, be reversed. Mrs. Moore called for an approval of the agenda with this change. Mr. Della Giustina made the motion to approve the revised agenda, seconded by Mr. Jamison, all were in favor.

VI. APPROVAL OF MARCH 3, 2010 MEETING MINUTES

Mrs. Moore asked for a motion to approve the March 3, 2010, minutes. Mr. Singer made the motion to approve the minutes, seconded by Mr. McDonnell, all were in favor.

VII. NEW BUSINESS

A. FY2009/10 Business Plan Report – Mr. Boodheshwar gave a power point presentation regarding the business plan. After the presentation Mr. Boodheshwar asked the commissioners if there were any questions. There were none with the exception of Mr. Hall requesting a clarification on where in the report donated monies to the golf course were represented in the business plan.

B. FY2011 Budget Proposal Draft – Mr. Brown gave a presentation on the FY2011 proposed budget. After the presentation Mr. Brown asked if there were any questions. There were none.

Mr. Boodheshwar said that there were some final numbers that staff would be receiving from the Finance Department that may affect the budget slightly. He said that staff would be presenting the budget to the Mayor and Town Council over the summer months and then there would be two budget hearings in September.

Mr. Boodheshwar also reported that at the April 6, 2010, Town Council meeting the concept of privatization was introduced and suggested that staff may be directed to look into privatization for certain functions over the summer months. He said that he wanted the commissioners to be aware of this and said that he would keep them updated on the entire budget process via email. He invited the commissioners to contact him at any time with any questions they may have.

Mrs. Moore thanked Mr. Boodheshwar and the staff for their hard work on both the business plan and budget presentations.

VIII. ANY OTHER MATTERS

A. May 2010 Staff Report - Mr. Boodheshwar asked the commission if there were any questions regarding the report that they had received. There were none.

Mr. Jamison complimented Mr. Boodheshwar on his professionalism and complimented him on all his hard work. He also complimented the tennis professional staff for their professionalism and complimented them on how successful they have been with the new tennis programs that have been implemented.

Mrs. McIver said that she would like to suggest a monthly payment plan system for annual tennis permits as a way to attract more business.

Mr. Storkerson said that there is a great deal of interest in youth programs and suggested that we might want to cross market between recreation, golf and tennis. Mr. Boodheshwar said that this is going to be addressed and staff has begun to look at different ways to cross market all of our programs. Mrs. McIver suggested that we may want to look at email blasts as a form of marketing. Another suggestion that was made was to promote programs through local civic organization and school newsletters.

Mr. Hall gave a brief summary on the Par 3 restoration project and showed the commission a rendering of the proposed club house. He stated that this project would never have taken place without the help of Mr. Raymond Floyd. Mr. Hall said that because of Mr. Floyd's hard work and dedication to the project he was suggesting that the golf course be renamed to honor Mr. Floyd. One suggestion that had been made was The Raymond Floyd Course at the Palm Beach Par 3. After some discussion Mr. Jamison made the motion to recommend renaming the Par 3 Golf Course as presented by Mr. Hall, to honor and recognize Mr. Raymond Floyd for his hard work and dedication to the Par 3 restoration project. Seconded by Mr. Della Giustina, all were in favor.

IX. ADJOURNMENT

The meeting was adjourned by Mrs. Moore at 10:22 a.m.

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

County Budget Task Force Request for Town Council to Designate Mission as Fact Finding Only

Presenter

John C. Randolph, Town Attorney

Supporting Documents

- Memorandum dated June 14, 2010, from John C. Randolph, Town Attorney
- Resolution No. 55-10
- Letter dated May 9, 2010, from Bruce A. McAllister
- E-mail dated May 27, 2010, from Bruce A. McAllister
- Letter dated June 10, 2010, from Assistant Attorney General Lagran Saunders

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John C. Randolph, Town Attorney

Re: County Budget Task Force
Resolution No. 55-10

Date: June 14, 2010

STAFF RECOMMENDATION

The Town Attorney recommends that the Palm Beach County Budget Task Force, as established by Resolution No. 55-10, conduct all of its meetings in compliance with Florida's Government in the Sunshine Law, Section 286.011, Florida Statutes. It is further recommended that if the Mayor and Town Council continue to desire to delegate the Town Council's authority in regard to this matter to a committee, whether it be a fact finding committee or otherwise, no attempts should be made to modify the Resolution in a manner so as to attempt to avoid compliance with the Government in the Sunshine Law.

GENERAL INFORMATION

The Town Council at its meeting of May 11, 2010, adopted Resolution No. 55-10, copy attached, establishing the County Budget Task Force in order to monitor the Palm Beach County budget and to encourage fiscal responsibility by County officials and to advise the Town Council in regard to issues relating to the Palm Beach County budget. The County Budget Task Force held its first meeting on May 27, 2010 and, after lengthy discussion, passed the following motion:

"That the members of the Palm Beach County Budget Task Force undertake to assemble and organize the facts relevant to the Palm Beach County budget, including sources and applications of revenue, decision making methodology and other facts the Task Force deems significant and present them in a report to the Town Council. Since these are fact finding activities only, the Task Force deems itself in the exercise of these activities free from the operation of the Sunshine Law, subject to the contrary opinion of the Town's Attorney or the contrary instruction of the Town Council."

The above referenced motion was passed by four out of the seven committee members and has been referred to the Town Council for consideration at its meeting of June 22, 2010. This proposal, by necessity, urges that the Council modify Resolution No. 55-10 to remove any reference to the County Budget Task Force making recommendations to the Town Council so as to remove any obligation to operate under the Sunshine Law and by making it clear, within the Resolution, that the committee shall serve as a fact finding committee only with its only obligation being to report back to the Town Council the facts obtained by the committee.

The Task Force, in placing this request before the Town Council, presumably relies, at least in part, on the argument set forth by Mr. McAllister in his letter of May 9, 2010, copy attached. In a subsequent email to the Town Council, dated May 27, 2010, Mr. McAllister also urged that any inadvertent overstepping of the committee's fact finding activities can be cured. A copy of that email is also attached.

In anticipation of the Town Council giving consideration to this matter, I requested an informal opinion from the Attorney General's office relating directly to issues raised by Mr. McAllister in each of the above referenced communications. The first question posed to the Attorney General was the following:

Can the Town Council, by identifying the Palm Beach County Budget Task Force committee as strictly a fact finding committee, which will report its findings to the Town Council, avoid the requirements of the Sunshine Law thereby allowing the committee to meet in private in regard to said fact finding activities?

The other question posed was the following:

If the committee somehow oversteps their fact finding activities when meeting outside the sunshine, can their actions be corrected by the Town Council taking action in regard to the committee's findings at a public meeting which complies with the requirements of the sunshine law?

On June 10, 2010, the Attorney General's office responded to my request for an informal opinion. A copy of the letter from the Attorney General's office is attached. The comments received from the Attorney General's office are informal comments only in order to attempt to be of assistance and are not considered to be a formal legal opinion as such an opinion will be rendered only upon request of a majority of the members of the Town Council or of the Task Force. Although the comments received from the Attorney General's office are more general in nature than I had anticipated, I believe the letter supports the proposal that the County Budget Task Force committee continue to conduct its meetings subject to the requirements of the Government in the Sunshine Law.

The letter addresses the fact that: "There is no 'government by delegation' exception to the Sunshine Law and a public board or commission may not avoid compliance with the law by delegating its responsibilities to another group."

"The law is quite clear. An ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law."

The above referenced statement does not necessarily address the question posed to the Council as I believe it is the intention of the County Budget Task Force to request the Council to remove from the Resolution any authority to make recommendations to the Town Council and to make it clear that it is only a fact finding committee. The letter, however, addresses, the exception to the Sunshine Law's applicability to committees established for "fact finding" only, acknowledging that a limited exception to the Sunshine Law does apply to strictly a fact finding committee. The letter goes on to state, however, as follows:

"In determining whether a committee is subject to the Sunshine Law, the actual function of the committee must be scrutinized to determine whether it is acting in strictly a fact finding role or it is exercising part of the decision making function by sorting through options and making recommendations to the governmental body. Moreover, it raises concerns that a committee officially designated as a fact finding body would be engaged in activities that might overstep the bounds of their authority and subject it to the Sunshine Law on an intermittent or accidental basis."

I believe, in the event the committee were designated as strictly a fact finding committee there is great opportunity for this committee to overstep its bounds and its authority. In this regard, I reference Mr. McAllister's letter of May 9, 2010, in which he suggests that factual findings might contain any or all of the following:

1. The County budget process is defective, at least in the opinion of a majority of the Task Force in the following respects: a)____; b)____; etc.
2. The County budget allocates too little (or too much) money to the following department and activities;
3. There is too little/enough communication between the County Commission (or its staff) and the Town Council (or its staff).

I suggest, as I have previously suggested to the Council, that these types of activities go beyond fact finding and fall into that category referenced in the Attorney General's letter of actions which must be closely scrutinized to determine whether it is acting in strictly a fact finding role or it is exercising part of the decision making function by sorting through options and making recommendations to the governmental body.

I believe this same scrutiny would apply to the language of the motion passed by the Task Force which, if passed by the Town Council, would allow the Task Force to "undertake to assemble and organize the facts relevant to the Palm Beach County budget, including sources and applications of revenue, decision making methodology and other facts the Task Force deems significant and present them in a report to the Town Council."

Scrutinization of this language would, in my opinion, suggest to a court of law that the committee, in considering these matters, has gone beyond its fact finding role.

Finally, it has been urged that even if the Task Force were to inadvertently overstep its bounds as a fact finding committee that such a violation could be cured at a subsequent meeting in the sunshine. It is for that reason that I raised the question with the Attorney General's office that if the committee somehow were to overstep its fact finding activities when meeting outside the sunshine, could the committee's actions be corrected by the Town Council taking action in regard to the committee's findings at a public meeting which complies with the requirements of the Sunshine Law. The Attorney General's letter addresses this matter by responding as follows:

"Should action be taken in violation of the Sunshine Law, it is considered void *ab initio*. The perfunctory or ceremonial acceptance of actions that were taken at a meeting held in violation of the Sunshine Law will not cure the violation; rather it takes 'independent, final action in the sunshine.'"

I do not recommend that this Council take comfort in appointing a fact finding committee in reliance upon the argument that any inadvertent overstepping of the Sunshine Law can be easily corrected.

It is my opinion that Mr. McAllister's reliance upon the cases cited for the proposition that the Council may appoint a fact finding committee and thereby avoid the requirements of the Sunshine Law is misplaced. I believe those cases are limited to their facts and are not applicable to the situation here where the Town Council has appointed the committee to undertake the tasks described in Resolution No. 55-10. My opinion is the same even if the Resolution were amended to make it clear that the committee is strictly a fact finding committee and even if the power to make recommendations to the Council is deleted from the Resolution. Finally, I am also of the opinion that any overstepping of the Sunshine Law in regard to such fact finding activities may not be as easily cured as has been suggested.

ATTACHMENTS

Resolution No. 55-10

Letter from Bruce McAllister, dated May 9, 2010

Email from Bruce McAllister, dated May 27, 2010

Letter from Office of Attorney General, dated June 10, 2010

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RESOLUTION NO. 55-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, PROVIDING FOR THE APPOINTMENT OF A COUNTY BUDGET TASK FORCE TO REVIEW THE PALM BEACH COUNTY BUDGET FOR THE 2010/2011 FISCAL YEAR; TO ENCOURAGE FISCAL RESPONSIBILITY BY COUNTY OFFICIALS; AND TO MAKE RECOMMENDATIONS TO THE TOWN COUNCIL; PROVIDING AN EFFECTIVE DATE.

WHEREAS, approximately 25% of the tax bill of residents of the Town of Palm Beach for fiscal year 2010 is distributed to Palm Beach County for the operation of Palm Beach County government; and

WHEREAS, Town of Palm Beach taxpayers are paying approximately \$58 million to Palm Beach County in fiscal year 2010; and

WHEREAS, the Town Council believes that in Palm Beach County budget governance must be prudent and restrained and elected officials must review past decisions for sustainability without large future tax increases; and

WHEREAS, the Town Council desires to appoint a County Budget Task Force to monitor the Palm Beach County budget and to encourage fiscal responsibility by County officials; and

WHEREAS, the purpose of this task force, in addition to reviewing the Palm Beach County budget and encouraging fiscal responsibility by County officials, will be to advise the Town Council in regard to issues relating to the Palm Beach County budget.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, AS FOLLOWS:

Section 1. The Town Council hereby creates a County Budget Task Force for the purposes of monitoring the Palm Beach County budget and to make recommendations in regard to same.

Section 2. The County Budget Task Force shall consist of not more than seven (7) members. The Mayor shall serve as a member and Chair of the Task Force and shall appoint an additional member. The remaining five (5) members shall be appointed by the Town Council. Appointees are required to be registered electors in the Town. The initial appointees by this resolution are as follows:

Mayor Jack McDonald

Tim Moran (Appointed by Mayor Jack McDonald)

Stuart Shulman (Appointed by David A. Rosow)

Bruce McAllister (Appointed by Gail Coniglio)

Jere Zenko (Appointed by William J. Diamond)

Bobbi Horwich (Appointed by Richard M. Kleid)

Erica Elliott (Appointed by Robert N. Wildrick)

Section 3. The first meeting of the County Budget Task Force shall be held prior to June 11, 2010. The Task Force shall meet as frequently as necessary to accomplish their intended purpose. The term of office of the members of the Task Force shall cease and the Task Force shall be dissolved at such time as the Town Council determines that the Task Force has completed its work.

Section 4. This Resolution shall become effective immediately upon passage.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of
the Town of Palm Beach assembled this 11th day of May, 2010.



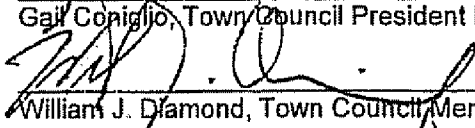
Jack McDonald, Mayor



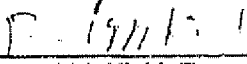
David A. Rosow, Town Council President



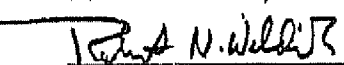
Gail Coniglio, Town Council President Pro Tem



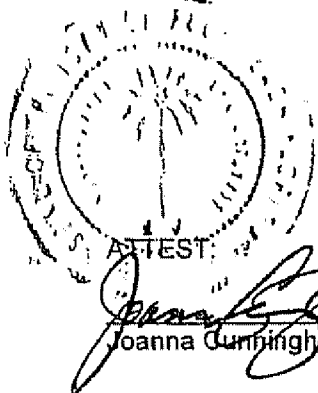
William J. Diamond, Town Council Member



Richard M. Kleid, Town Council Member



Robert N. Wildrick, Town Council Member



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BRUCE A. McALLISTER
224 Bahama Lane
Palm Beach FL 33480

May 9, 2010

Memo to the Mayor and Town Council Members:

Re: Resolution No. 5540

In anticipation of the Council passing the subject Resolution, and, of course grateful for this opportunity to serve, I have the following comments on the Resolution:

I respectfully submit that the mission of the County Budget Task Force (the "Task Force") need not and should not be stated in such a way as to require the application of the Sunshine Law.

While the Resolution calls on the Task Force to "make recommendations" in regard to the County budget, it is not at all clear that the best use of the Task Force is to make recommendations. Rather, it should establish a base-line of agreed data and analyses which the Council will review, and which may be useful in the Town's relationship with the County Commission.

One of the first tasks to which we should turn our attention, after organizational and other administrative matters are attended to, is an examination of the County budget with a view to reporting on certain facts to the Town Council.

I would envision that report as consisting of a series of factual findings. These findings would be based on a) reading, discussing and analyzing various aspects of the budget with each other, informally, by telephone and e-mail, as well as in person; b) discussing those aspects with as many Palm Beach County Commission members and staff, present and former, or other persons, as each of us believes might be helpful. To hold such discussions in any number and with the necessary informality would obviously be impossible under the Sunshine Law.

What "factual findings" might our report contain? Well, for example, we might make any or all of the following:

1. The County budget process is defective, at least in the opinion of a majority of the Task Force, in the following respects:
 - a) ____; b) ____; etc.
2. The County Budget allocates too little (or too much) money to the following departments and activities;

3. There is too little/enough communication between the County Commission (or its staff) and the Town Council (or its staff).

Of course these are limited examples only, but I submit they suffice to illustrate why I think the Task Force should be designated as a "fact-finding" body only. As such, as the following analysis of the Sunshine Law makes clear, the Task Force would not be subject to the Sunshine Law:

"A limited exception to the applicability of the Sunshine Law to advisory committees has been recognized for advisory committees established for fact-finding only. When a committee has been established strictly for, and conducts only, fact-finding activities, *i.e.*, strictly information gathering and reporting, the activities of that committee are not subject to s. 286.011, ES. *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985). *Accord*, AGO 95-06 (when a group, on behalf of a public entity, functions solely as a fact-finder or information gatherer with no decision-making authority, no board or commission subject to the Sunshine Law is created).

For example, the court in *Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976), held a fact-finding committee appointed by a community college president to report to him on employee working conditions was not subject to the Sunshine Law. Later, in *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983), the Supreme Court approved the holding in *Bennett* that such fact-finding consultations are not subject to s. 286.011 F.S." (Government-In-The-Sunshine-Manual, 2008 Ed., p. 7).

After receiving and reviewing the Task Force report (which will obviously be delivered sooner than if it has to be written under the Sunshine Law), and taking into account such other changes in circumstances which might affect its conclusions, the Town Council might then take whatever actions it deems advisable, including appointing a Commission to develop recommendations based in part on the Task Force's report, asking the individual members of the Task Force to work with the Council's Financial Committee to develop recommendations, etc.

If, after the Task Force gets organized and begins its investigations and discussions, but before any report is made, it appears advantageous to designate the Task Force as subject to the Sunshine Law, that can be done at that time. But there is no reason now, unnecessarily, to tie up the Task Force (and the necessary Town staff) in the paralyzing procedures of meeting notification and recording (and prohibition of between-meeting communication) that the Sunshine Law requires.

These observations are based on limited research, but, unless they can be refuted by more extensive research, I strongly recommend that the Task Force not be subjected to the Sunshine Law.

Respectfully submitted,

Bruce A. McAllister

Matias, Sally

From: Bruce McAllister [Bruce.McAllister@amri.com]
Sent: Thursday, May 27, 2010 12:53 PM
To: council@townofpalmbeach.com
Cc: TBradford@TownofPalmBeach.com; Randolph, John C
Subject: PB County Budget Task Force
Attachments: docs-327592-v1-PBCB Task Force DOC
<<docs-327592-v1-PBCB Task Force.DOC>>

Mrs. Coniglio and Gentlemen: The attached Motion (the Clerk has the precise wording) was adopted by the Task Force at its meeting today, by a vote of 4 in favor and 3 opposed. We then agreed that a) despite the Motion, we would consider ourselves under Sunshine until the Town Council instructs us otherwise, as requested by the Motion; and b) that our next meeting would be scheduled for June 23rd at 1:30 PM

Incidentally, the point was made by the Town Attorney, with whom I'm compelled to agree, that if the Sunshine Law continues to govern the Task Force, then I cannot continue as a member of the "Committee for Fiscal Responsibility", so long as any other member of the Task Force is also a member

Not to belabor the subject, but I feel the following might be useful. The fear has been raised that any violation of the Sunshine Law by our group could result in a Court's abrogating, or declaring null and void, any work that we might do or any actions resulting therefrom. First, any inadvertent overstepping of our fact-finding activities can be cured. See *Finch and S.C. Read v. Seminole County School Board*, 5th DCA, 2008; "In *Tolar v. School Board of Liberty County*, 398 So. 2d 427 (Fla. 1981), the Florida Supreme Court held that public final action of a board or committee subject to the Sunshine Law will not always be void and incurable simply because the topic of the public action was previously discussed at a private meeting. Indeed, the Sunshine Law can be satisfied if the board or commission reaches a mutual decision on the pertinent issue when they subsequently meet together in public for their "formal action." See *Occidental Chemical v. Mayo*, 351 So. 2d 336 (Fla. 1977). That is to say, some Sunshine Law violations may be cured by later actions of the decision maker".

Secondly, it is difficult, if not impossible, to conceive of any report which the Task Force might make, whose nullification would disturb the Town. Our mission should be to investigate and educate ourselves and others concerning pertinent aspects of the County Budget, and, perhaps (if requested by the Town Council), to make some recommendations. Any recommendations we make would be discussed and formulated by the Task Force in the Sunshine. If any Town Council deliberations were held, based on those recommendations, they would be held in the Sunshine.

We are not dealing with zoning codes here

I respectfully request that the Town Council, at its next meeting or sooner if action can be taken sooner, adopt the following

Resolution:

WHEREAS the Town Council has appointed a County Budget Task Force, and

WHEREAS, it herewith revises the Task Force's mission as follows: to monitor the Palm Beach County budget and undertake to assemble and organize the facts relevant to the Palm Beach County Budget and the budgets of such other governmental units within the County as the Task Force deems advisable, including sources and applications of revenue, decision-making methodology and other facts the Task Force deems significant, and present them in a report to the Town Council,

NOW THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, that the activities of the Task Force undertaken pursuant to this Resolution are not deemed to be subject to the Sunshine Law of the State of Florida

P.S. Of course, the opinion of the Town Council is not determinative of the question, but, like the opinion of the Town Attorney, it would certainly be persuasive to a Court, should any Court have reason to examine this matter. I seriously doubt that any Court would ever be asked to do so.

Bruce A. McAllister
Alley, Maass, Rogers & Lindsay, P.A.
340 Royal Poinciana Way, Ste. 321
Palm Beach FL 33480
Phone: 561-659-1770
Fax: 561-833-2261
Cell 561-341-3665
Direct Dial 561-804-4627 (after 6PM)

cc: Tom Bradford (for distribution to the Task Force)

RESOLVED: In light of the decrease in Palm Beach County's tax revenues and the recent increases in the Palm Beach County Budget expenditures,

That the members of the Palm Beach County Budget Task Force undertake to assemble and organize the facts relevant to the Palm Beach County Budget, including sources and applications of revenue, decision-making methodology and other facts the Task Force deems significant, and present them in a report to the Town Council.

And Further, That, since these are fact-finding activities only, the Task Force deems itself, in the exercise of these activities, free from the operation of the Sunshine Law, subject to the contrary opinion of the Town's Attorney or the contrary instruction of the Town Council.



BILL McCOLLUM
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Opinions Division

PL 01 The Capitol
Tallahassee, Florida 32399-1050
Telephone (850) 245-0158
Fax (850) 922-3969

June 10, 2010

Mr. John C. Randolph
Attorney for the Town of Palm Beach
Flagler Center Tower, Suite 1100
505 South Flagler Drive
West Palm Beach, Florida 33401

Dear Mr. Randolph:

You have asked this office for advice as to whether the town council, by official act, may identify the Palm Beach County Budget Task Force (created by the town council) as a strictly fact-finding committee which reports its findings to the town council and is, thereby, not subject to the requirements of the Government in the Sunshine Law, section 286.011, Florida Statutes. You also ask, in the event the task force oversteps its fact-finding role and acts in a manner that would be subject to section 286.011, Florida Statutes, may the actions be validated by the town council's subsequent action at a properly noticed public meeting.¹

The following general comments are provided in order to be of assistance.

Section 286.011(1), Florida Statutes, Florida's Government in the Sunshine Law, provides in pertinent part that "[a]ll meetings of any board or commission . . . of any agency or authority of any . . . municipal corporation . . . at which official acts are to be taken are declared to be public meetings open to the public at all times" In considering the application of section 286.011, Florida Statutes, the courts have stated that the entire decision-making process is covered, not merely those meetings where the final vote is taken.² As stated by the court in *Times Publishing Company v. Williams*,³

Every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action. It follows that each such step constitutes an 'official act,' an indispensable requisite to 'formal action,' within the meaning of the act.

There is no "government by delegation" exception to the Sunshine Law and a public board or commission may not avoid compliance with the law by delegating its responsibilities to another group.⁴ As the Florida Supreme Court stated in *City of Miami Beach v. Berns*,⁵ "[t]he Legislature intended to extend application of the 'open meeting' concept so as to bind every 'board or commission' of the state, or of any county or political subdivision over which it has dominion or control."

The fact that the board or commission is advisory, possessing only the authority to make recommendations to the public agency, does not remove it from the ambit of the Government in the Sunshine Law. As recognized in *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*,⁶

The law is quite clear. An ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law.

In reaching this conclusion, the court relied on the decision of the Florida Supreme Court in *Town of Palm Beach v. Gradison*,⁷ in which the Court held that a citizens' planning commission established by the town council to act as an advisory group to the council regarding the formulation of the zoning plan was subject to the Sunshine Law. The Fifth District Court of Appeal in *Lyon v. Lake County*⁸ held that the Sunshine Law applies to a site plan review committee created by the county commission to serve in an advisory capacity to the county manager. As the Court stated in *Monroe County v. Pigeon Key Historical Park, Inc.*,⁹ "the Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials."

Thus, Florida courts have determined that advisory boards whose powers are limited to making recommendations to a public agency and that possess no authority to bind that agency in any way are subject to the Sunshine Law.¹⁰

A limited exception to the Sunshine Law's applicability to advisory committees has been recognized for such committees established for "fact-finding" only. When a committee has been established strictly for fact-finding and it conducts only fact-finding activities, *i.e.*, strictly information gathering and reporting, the activities of the committee are not subject to section 286.011, Florida Statutes.¹¹ However, it has been judicially determined that the fact-finding exception does not apply to the ultimate decision-making governmental authority.¹² When a committee has been granted a decision-making function in addition to fact-finding, the Sunshine Law will apply to the committee's activities.¹³

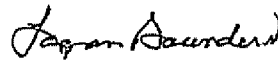
Mr. John C. Randolph
Page Three

In determining whether a committee is subject to the Sunshine Law, the actual function of the committee must be scrutinized to determine whether it is acting in strictly a fact-finding role or it is exercising part of the decision-making function by sorting through options and making recommendations to the governmental body. Moreover, it raises concerns that a committee officially designated as a fact-finding body would be engaged in activities that might overstep the bounds of their authority and subject it to the Sunshine Law on an intermittent or accidental basis.

Section 286.011, Florida Statutes, provides that no resolution, rule, regulation, or formal action shall be considered binding unless taken or made at an open meeting. Should action be taken in violation of the Sunshine Law, it is considered void *ab initio*.¹⁴ The perfunctory or ceremonial acceptance of actions that were taken at a meeting held in violation of the Sunshine Law will not cure the violation; rather it takes "independent, final action in the sunshine."¹⁵ Only a full open hearing will cure a violation of holding a meeting outside the Sunshine Law.¹⁵

I trust that these informal comments will be of assistance.

Sincerely,



Lagran Saunders
Assistant Attorney General

ALS/tsrh

¹ The authority of this office to render legal opinions is statutorily limited to responding to public officials and entities on questions of law relating to their own duties, thereby precluding comment on the actions of a public official or entity at the request of another. See Statement Concerning Attorney General Opinions. You do not indicate that you are requesting an opinion on behalf of a majority of the members of the city commission or of the task force.

² See, e.g., *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973)

³ 222 So. 2d 470, 473 (Fla. 2d DCA 1969).

⁴ See *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974), stating that s. 286.011, Fla. Stat., should be construed so as to avoid all evasive devices and that this can only be accomplished by embracing within the terms of the statute the inquiry and discussion stages conducted by a committee or other authority appointed and established by a governmental agency which relates to a matter on which foreseeable action will be taken.

⁵ 245 So. 2d 38, 40 (Fla. 1971). And see *Town of Palm Beach v. Gradison*, *supra*; cf. Ops. Att'y Gen. Fla. 97-17 (1997) (Sunshine Law applies to not-for-profit corporation created by city development agency to assist in the implementation of the agency's redevelopment plan); 97-32 (1997) (s. 286.011, Fla. Stat., applies to meeting of board of trustees of pension fund of not-for-profit corporation created by county to manage county's public transit system).

⁶ 535 So. 2d 694, 695 (Fla. 3d DCA 1988).

⁷ 296 So. 2d 473 (Fla. 1974).

⁸ 765 So. 2d 785 (Fla. 5th DCA 2000)

⁹ 647 So. 2d 857, 869 (Fla. 3d DCA 1994).

¹⁰ And see the following opinions in which this office has concluded that advisory bodies are subject to the Sunshine Law: Op. Att'y Gen. Fla. 03-28 (2003) (council created by community college board of trustees to make recommendations to the manager of the college's Business Assistance Center and to the community college president); Op. Att'y Gen. Fla. 92-26 (1992) (committee responsible for making recommendations to the city council on personnel matters); Op. Att'y Gen. Fla. 87-42 (1987) (ad hoc committee appointed to meet with the Chamber of Commerce to discuss a proposed transfer of city property); Op. Att'y Gen. Fla. 85-76 (1985) (ad hoc committee appointed by mayor for purpose of making recommendations concerning legislation); Op. Att'y Gen. Fla. 82-35 (1982) (citizens' advisory committee appointed by a metropolitan planning organization).

¹¹ See *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985). Accord Op. Att'y Gen. Fla. 95-06 (1995) (group acting on behalf of a public entity functioning solely as a fact-finder or information gatherer with no decision-making authority not subject to the Sunshine Law).

¹² See *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008) (school board could not take a fact-finding tour without compliance with Sunshine Law even when members are separated by several rows of seats, there was no discussion of preferences or opinions, and no vote was taken during the trip).

¹³ See *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) ("search and screen" committee for university president with undisputed decision-making function in screening candidates was subject to the Sunshine Law). See also Op. Att'y Gen. Fla. 94-21 (1994) (Sunshine Law applies to meetings of negotiation team created by city, even though negotiations were subject to ratification by city commission).

¹⁴ See *Town of Palm Beach v. Gradison, supra.*, and *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979) (resolutions made during meetings held in violation of s. 286.011, Fla. Stat., had to be re-examined and re-discussed in open public meetings).

¹⁵ *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981); *Bruckner v. City of Dania Beach*, 823 So. 2d 167, 171 (Fla. 4th DCA 2002) (Sunshine Law violations "can be cured by independent, final action completely in the Sunshine.")

¹⁶ See *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694 (Fla. 3d DCA 1988).

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

Worth Avenue Commercial District Street Signage and Pole Standards

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Memorandum dated May 27, 2010, from Thomas G. Bradford, Deputy Town Manager
- Worth Avenue Street Signage & Pole Standards Drawings

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Thomas G. Bradford, Deputy Town Manager

Re: Worth Avenue Street Signage

Date: May 27, 2010

STAFF RECOMMENDATION

It is recommended that the Town Council review feedback obtained from the Architectural Commission relative to new street signage plans for the Worth Avenue Improvement Project for the purpose of determining the street signage plans to be installed in the improvement area.

BOARD OR COMMISSION RECOMMENDATION

ARCOM conducted an informal review of plans prepared by architect Mark Marsh of Bridges, Marsh & Associates identifying all new street signage to be placed in the Worth Avenue improvement area as part of the ongoing reconstruction project. Plans were reviewed at both the April and May monthly meetings. Though no formal motion occurred, it was the consensus of the Commission that:

- Signs will be placed on either decorative black fluted poles or clear (silver) anodized circular poles, dependent upon sign type. Street name, traffic and safety signs will be mounted on the decorative poles; secondary enforcement signs, i.e., No Parking, will be mounted on the clear anodized circular poles.
- Street name signs should be black in background with white lettering.
- No frames should be included around the outside edges of regulatory signs.
- The number of signs, particularly "No Parking" should be kept to an absolute minimum to avoid clutter. It was suggested that the current amount of parking regulatory signs could be reduced by up to 30% (per plans dated 5/14/10). It was recognized that Worth Avenue is a local street that should not be subject to state and/or federal signage standards relative to minimum spacing for parking regulatory signage.

GENERAL INFORMATION

Public appurtenances, including street signs, are authorized administratively (as provided for in the Town's Right-of-Way Manual) rather than being reviewed by ARCOM. Because the

ongoing Worth Avenue project is of such prominence, however, architect Mark Marsh and I sought feedback from ARCOM regarding street signage. When first reviewed by ARCOM in April, the Commission directed that the number of signs should be kept to a minimum in order to create a visually stunning streetscape, that signs be co-located on poles whenever practical, and that details regarding sign locations be provided for further review. Signage plans were changed and further detailed per such comments, and were re-presented to ARCOM on May 26. The Commission offered feedback as requested. It was of particular concern that the decorative fluted poles be used for street naming, traffic and safety signs only, that secondary enforcement signs be mounted on clear anodized posts, and that the overall number of signs be kept to the lowest number necessary to accomplish their task.

FUNDING/FISCAL IMPACT

Street signage costs were previously factored into the overall project. No new or unanticipated costs will be incurred.

cc: Architectural Commissioners
John S. Page, Director of Planning, Zoning and Building
Jay Boodheshwar, Acting Director of Public Works
Eric Brown, Assistant Director of Public Works
Mark Marsh, AIA, Bridges, Marsh and Associates

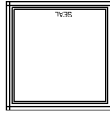
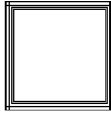


WORTH AVENUE IMPROVEMENT PROJECT STREET SIGNAGE



**BRIDGES MARSH
& ASSOCIATES, INC.**
LANDSCAPE ARCHITECTS
10000 N. 10th Ave., Suite 100
Phoenix, AZ 85020
Phone: (602) 632-1333
Fax: (602) 632-1333

LANDSCAPE ARCHITECTS
10000 N. 10th Ave., Suite 100
Phoenix, AZ 85020
Phone: (602) 632-1333
Fax: (602) 632-1333



NORTH AVE.
20017

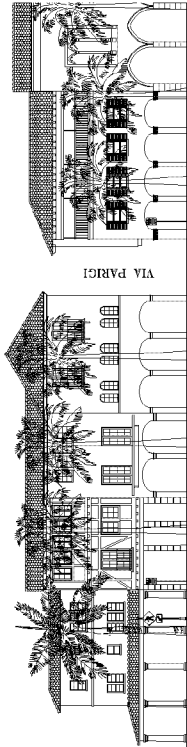
STREET ELEVATION
NORTH

20017

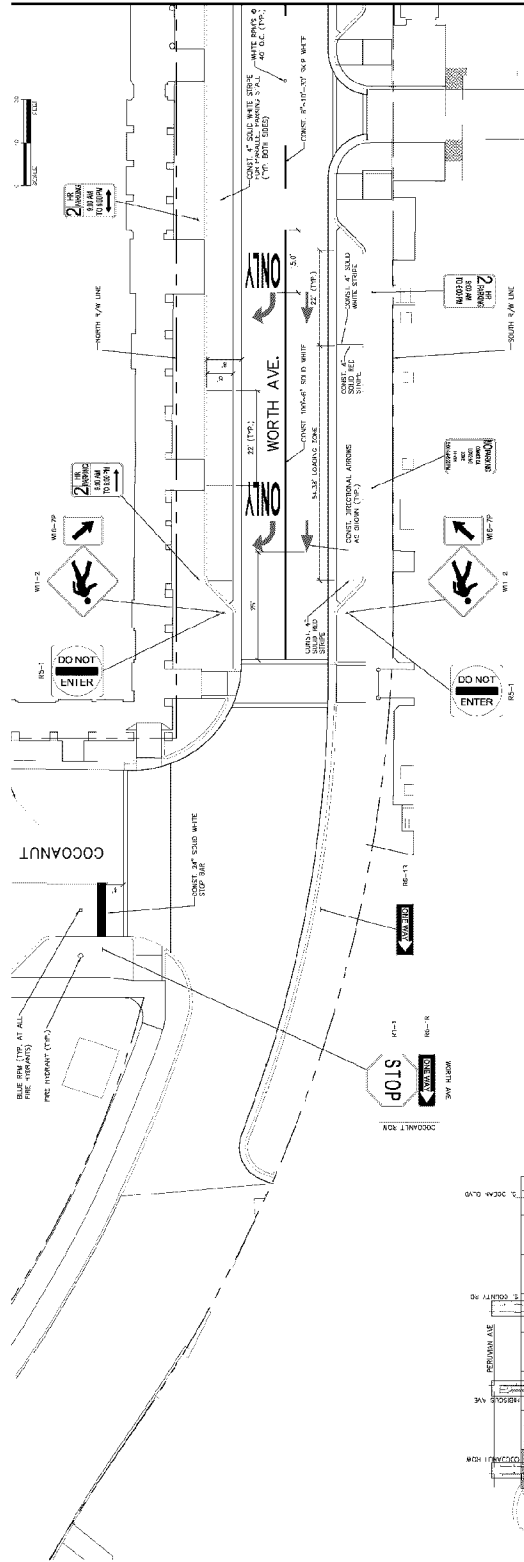
REVISIONS

1"=10'

A-3.1.1



PARTIAL STREET ELEVATION - NORTH



PARTIAL SITE PLAN



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Professional Seal
Project: 02411 0202 1000
Date: 02/15/2022

BRIDGES MARSH & ASSOCIATES, INC.
REGISTERED ARCHITECT
Professional Seal
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Date: 02/15/2022

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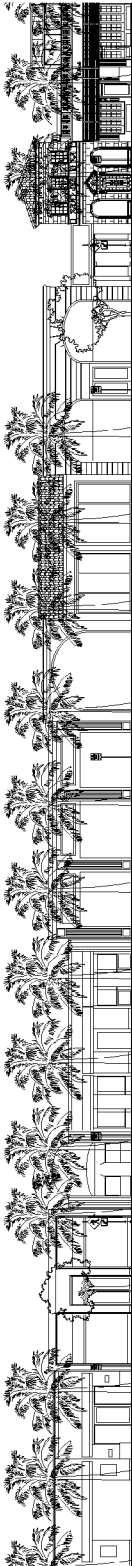
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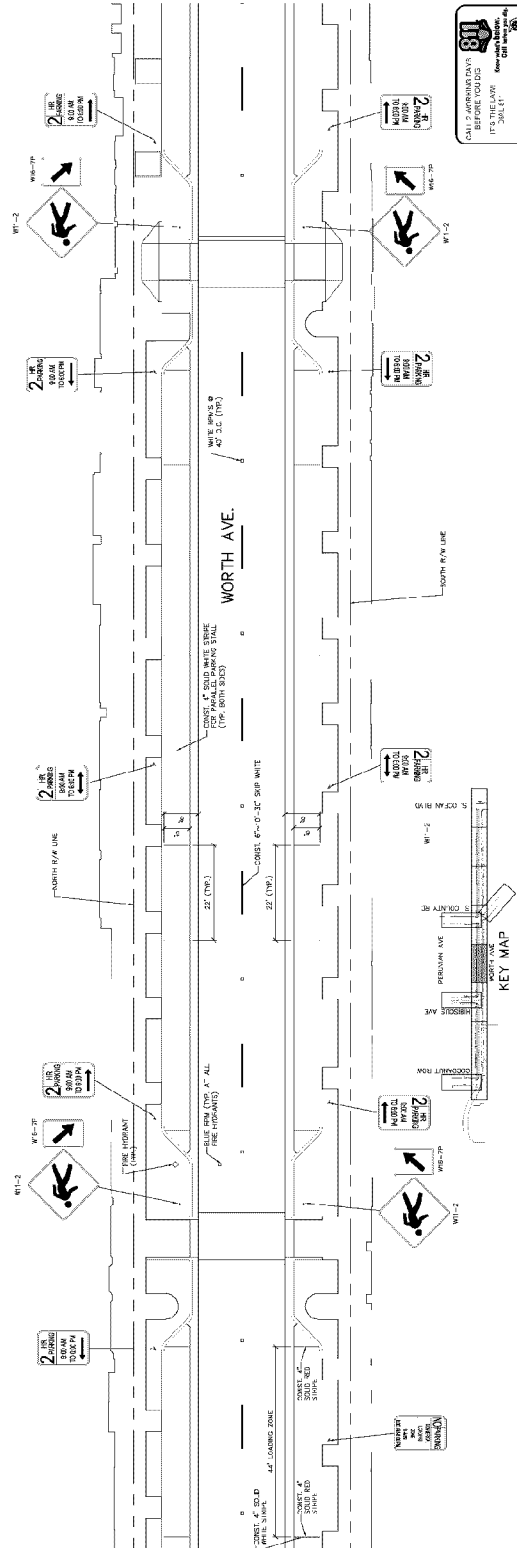
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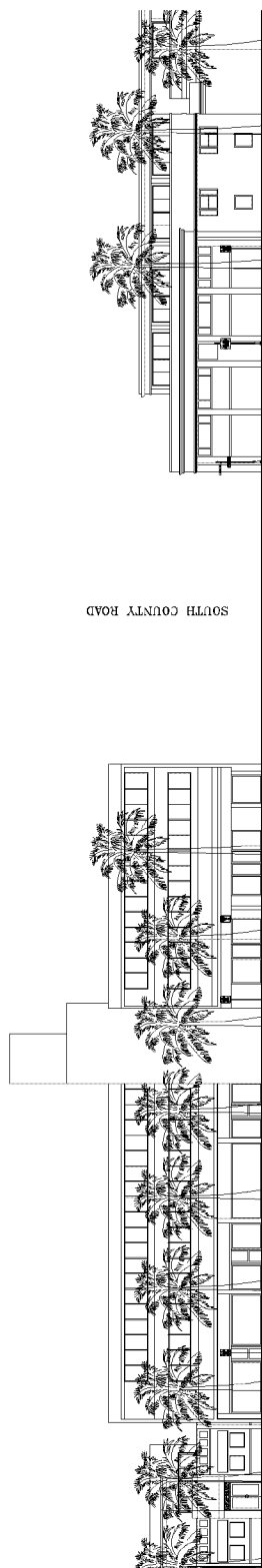
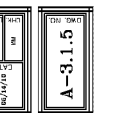
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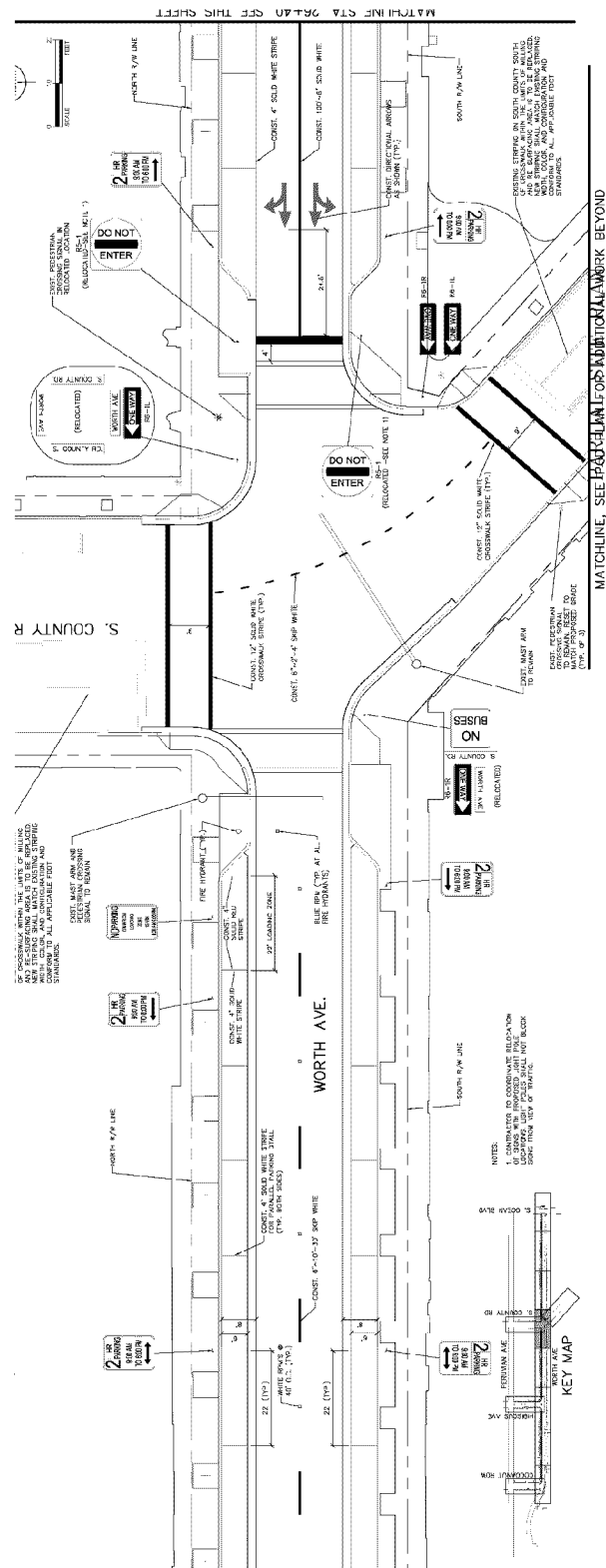
PARTIAL STREET ELEVATION - NORTH



PARTIAL SITE PLAN



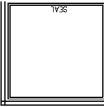
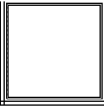
PARTIAL STREET ELEVATION - NORTH





BRIDGES MARSH & ASSOCIATES, INC.
LANDSCAPE ARCHITECTS
1000 Biscayne Blvd., Suite 1400
Miami, FL 33132
Phone: (305) 576-1200
Fax: (305) 576-1201

LANDSCAPE ARCHITECTS
1000 Biscayne Blvd., Suite 1400
Miami, FL 33132
Phone: (305) 576-1200
Fax: (305) 576-1201



WORTH AVE.
NORTH AVENUE
DADE COUNTY, FLORIDA

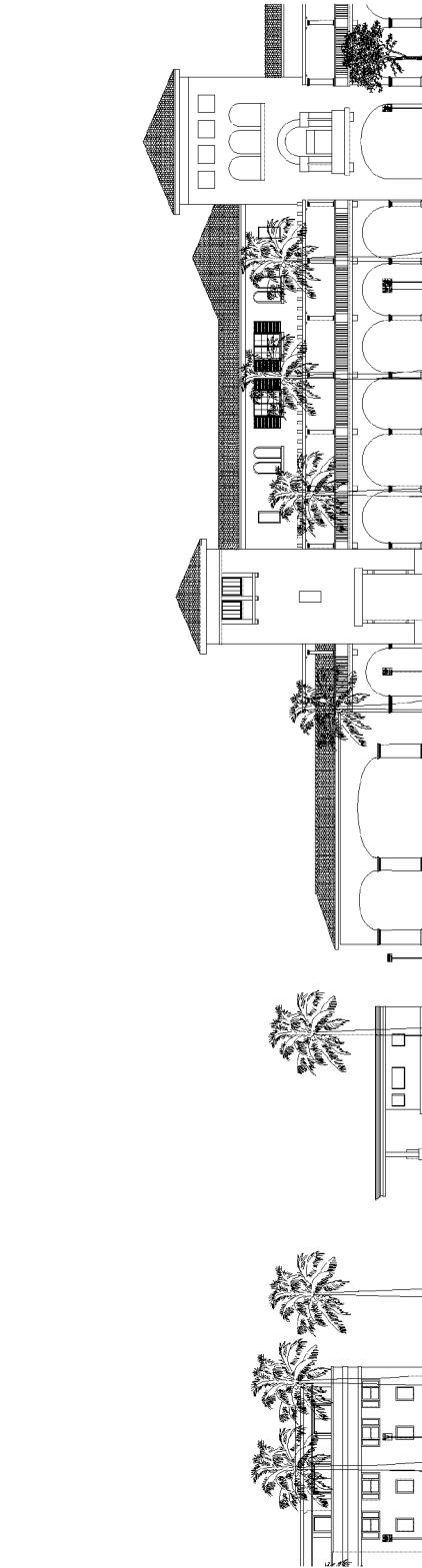
STREET ELEVATION
NORTH

28017

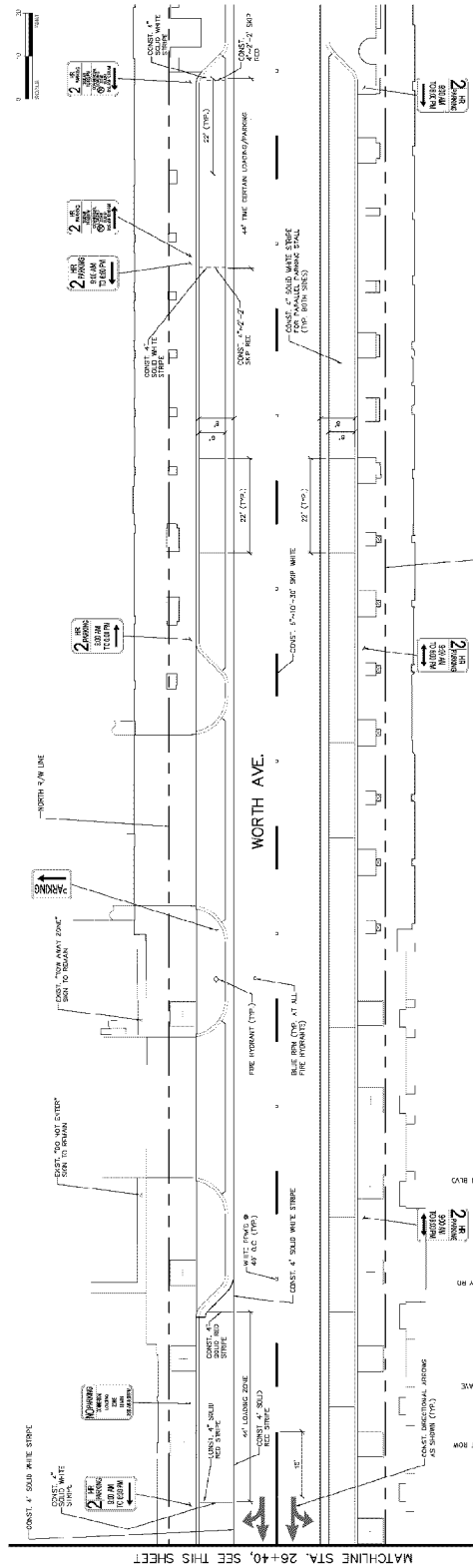
NOTES: SEE SHEET 28016 FOR
GENERAL NOTES AND SPECIFICATIONS.
SPECIFICATIONS FOR LANDSCAPE ARCHITECTURE
AND PLANTING: SEE SHEET 28016 FOR
GENERAL NOTES AND SPECIFICATIONS.
SPECIFICATIONS FOR LANDSCAPE ARCHITECTURE
AND PLANTING: SEE SHEET 28016 FOR
GENERAL NOTES AND SPECIFICATIONS.

1"=10'

A-3.1.6



PARTIAL STREET ELEVATION - NORTH

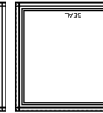
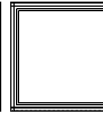


PARTIAL SITE PLAN



BRIDGES MAISH & ASSOCIATES, INC.
CERTIFIED AGENTS
10000 N. 15th Ave., Suite 1000
Tampa, FL 33613
Phone: (813) 833-1333
Fax: (813) 833-1333

LANDSHAW GROUP, INC.
10000 N. 15th Ave., Suite 1000
Tampa, FL 33613
Phone: (813) 833-1333
Fax: (813) 833-1333



WORTH AVE.
10000 N. 15th Ave., Suite 1000
Tampa, FL 33613
Phone: (813) 833-1333
Fax: (813) 833-1333

STREET ELEVATION
10000 N. 15th Ave., Suite 1000
Tampa, FL 33613
Phone: (813) 833-1333
Fax: (813) 833-1333

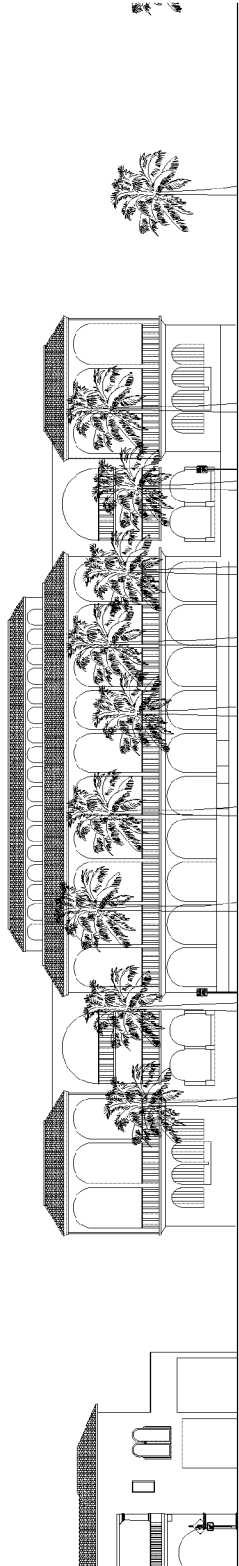
29017
10000 N. 15th Ave., Suite 1000
Tampa, FL 33613
Phone: (813) 833-1333
Fax: (813) 833-1333

10000 N. 15th Ave., Suite 1000
Tampa, FL 33613
Phone: (813) 833-1333
Fax: (813) 833-1333

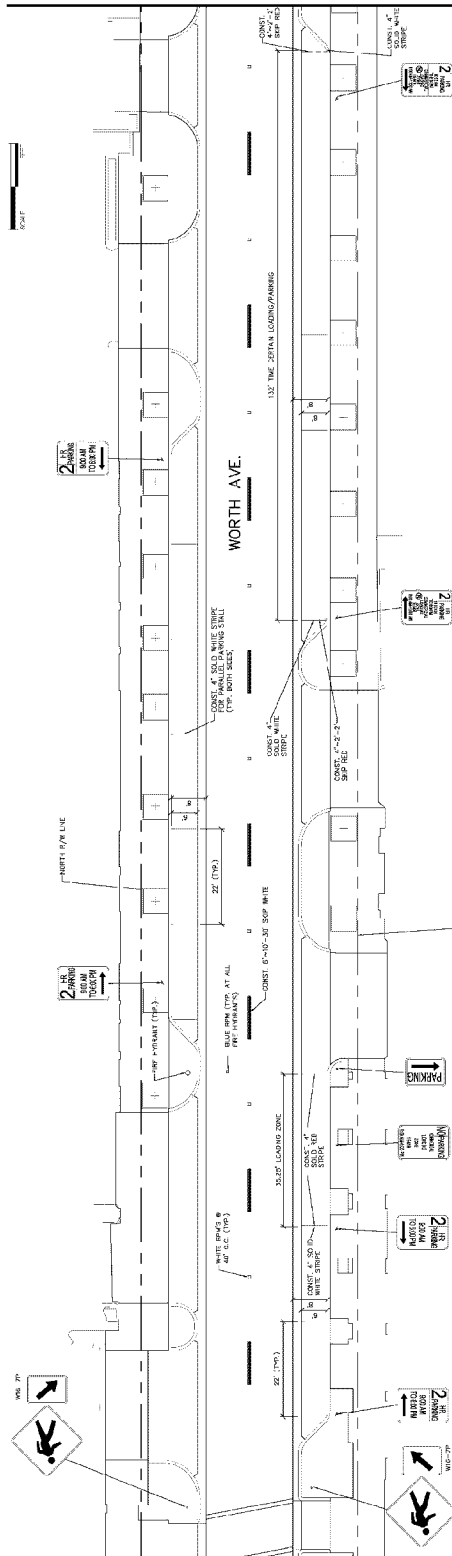
10000 N. 15th Ave., Suite 1000
Tampa, FL 33613
Phone: (813) 833-1333
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10000 N. 15th Ave., Suite 1000
Tampa, FL 33613
Phone: (813) 833-1333
Fax: (813) 833-1333

A-3.1.7
10000 N. 15th Ave., Suite 1000
Tampa, FL 33613
Phone: (813) 833-1333
Fax: (813) 833-1333



PARTIAL STREET ELEVATION - NORTH

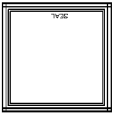
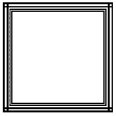


PARTIAL SITE PLAN



BRIDGES MARSH & ASSOCIATES, INC.
ARCHITECTS
10000 N. 10th Ave., Suite 200
Phoenix, Arizona 85020
Phone: (602) 955-1234
Fax: (602) 955-1235
www.bridgesmarsh.com

LANDSCAPE ARCHITECT
10000 N. 10th Ave., Suite 200
Phoenix, Arizona 85020
Phone: (602) 955-1234
Fax: (602) 955-1235
www.bridgesmarsh.com



WORTH AVE.
10000 N. 10th Ave., Suite 200
Phoenix, Arizona 85020
Phone: (602) 955-1234
Fax: (602) 955-1235
www.bridgesmarsh.com

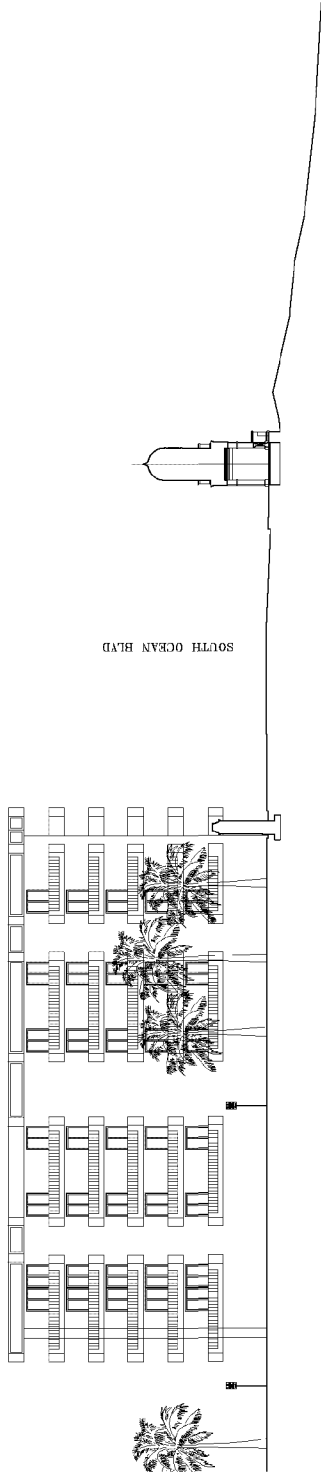
STREET ELEVATION
10000 N. 10th Ave., Suite 200
Phoenix, Arizona 85020
Phone: (602) 955-1234
Fax: (602) 955-1235
www.bridgesmarsh.com

29017
10000 N. 10th Ave., Suite 200
Phoenix, Arizona 85020
Phone: (602) 955-1234
Fax: (602) 955-1235
www.bridgesmarsh.com

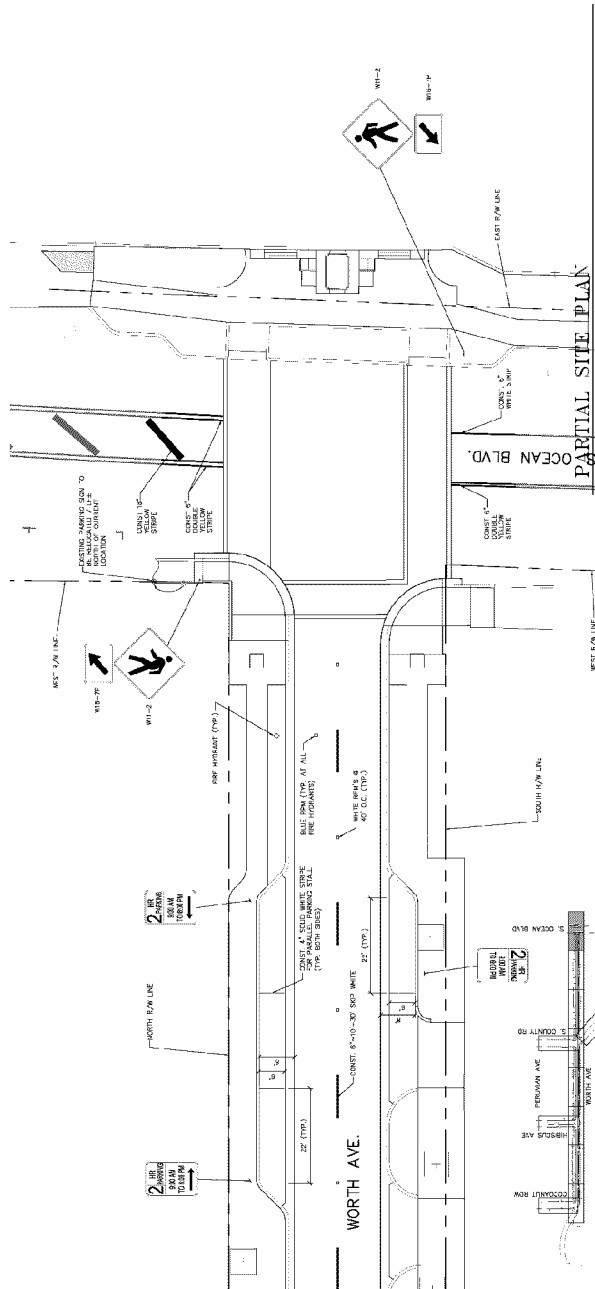
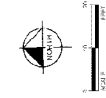
REVISIONS
10000 N. 10th Ave., Suite 200
Phoenix, Arizona 85020
Phone: (602) 955-1234
Fax: (602) 955-1235
www.bridgesmarsh.com

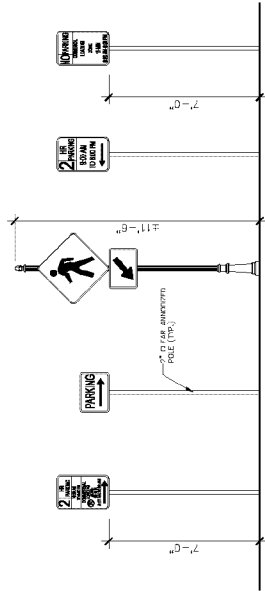
1'-10"
10000 N. 10th Ave., Suite 200
Phoenix, Arizona 85020
Phone: (602) 955-1234
Fax: (602) 955-1235
www.bridgesmarsh.com

A-3.1.8
10000 N. 10th Ave., Suite 200
Phoenix, Arizona 85020
Phone: (602) 955-1234
Fax: (602) 955-1235
www.bridgesmarsh.com

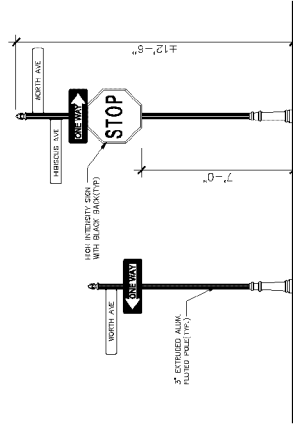


PARTIAL STREET ELEVATION - NORTH

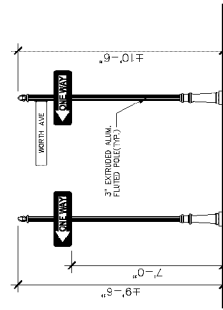




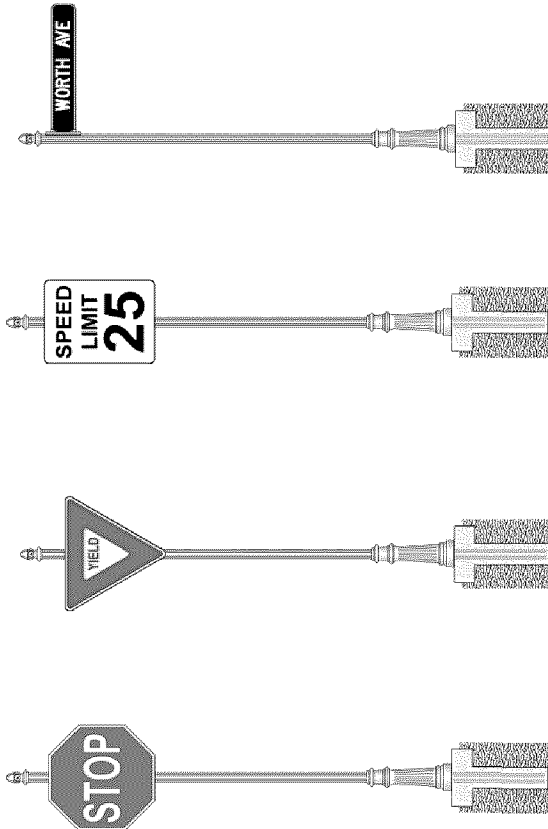
TYPICAL SIGNAGE

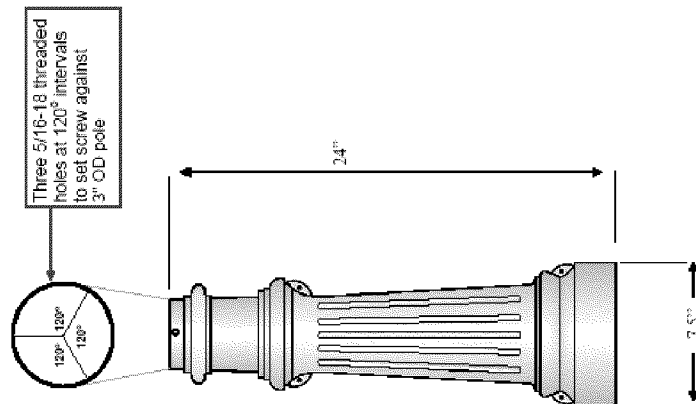


TYPICAL SIGNAGE



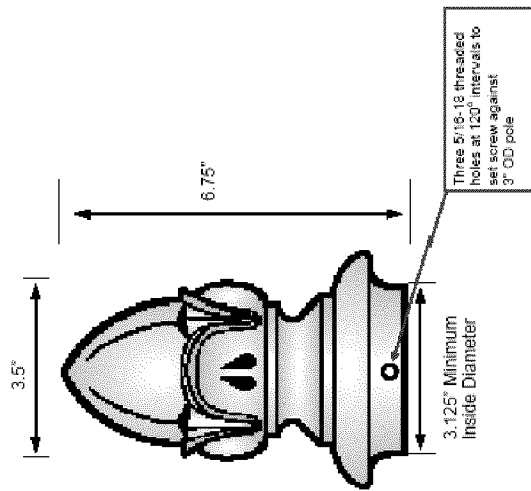
TYPICAL SIGNAGE





2PC33

2 Piece base for 3" OD pole.
Clampells around pole.
Cast Aluminum Alloy # 356



FIN-A3

Acorn Finial for 3" OD pole
Cast Aluminum Alloy #356

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

Consideration of Property Available for Purchase.
159 Australian Avenue.

Presenter

Earl Hollis, III, Hollis Realty Group, Inc.

Supporting Documents

- E-mail dated May 21, 2010, from Earl Hollis, III.
- 159 Australian Ave. Prop Tax Card
- 159 Australian Ave MLS



159 Australian avenue Palm Beach Fl

Earl Hollis III to: TBradford

Cc: earlhollis, Elwell Peter B

05/21/2010 11:59 AM

History:

This message has been replied to.

1 attachment



159 Australian Ave PCN TAX Card.pdf

Thomas G Bradford
Deputy Town Manager
Town of Palm Beach
Palm Beach Florida 33480

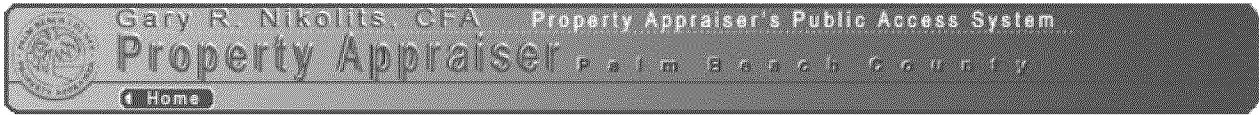
Re:Sale and Purchase -159 Australian Avenue Palm Beach Florida

Dear Mr. Bradford,

I appreciate you returning my call made to Mr Elwell yesterday. As I mentioned the property at 159 Australian Avenue which is contiguous to the east border the Police Department is now available for sale. It is my understanding that you will be forwarding the information which I presented yesterday to all of the Council Members and any others you deem necessary to apply for the next Town Council agenda. Also to be included I enclosing a copy of the the 2009 Palm Beach County Tax Assessment . I look forward to answering any questions you or anyone may have. In the event you need additional material that would be helpful or you would like to tour the property kindly let my father or myself know. Thank you

Earl Hollis III
ehollis3@bellsouth.net

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Property Information**Location Address:** 159 AUSTRALIAN AVE[View Map](#)**Municipality:** PALM BEACH[Calculate Portability](#)**Parcel Control Number:** 50-43-43-23-05-028-0410**Subdivision:** ROYAL PARK ADD TO P B IN[Proposed Tax Notice](#)**Official Records Book:** 08246 **Page:** 1282 **Sale Date:** May-1994[Reverse Side Help](#)**Legal Description:** ROYAL PARK ADD LT 41 & W 1/2 OF LT 42 BLK H**Owner Information****Name:** BRYANT ELIZABETH TRUST[All Owners](#)**Mailing Address:** 159 AUSTRALIAN AVE
PALM BEACH FL 33480 4434**Sales Information**

Sales Date	Book/Page	Price	Sale Type	Owner
May-1994	08246/1282	\$100	QUIT CLAIM	BRYANT ELIZABETH TRUST
Mar-1994	08201/1130	\$100	QUIT CLAIM	
Sep-1988	05917/0709	\$100	LIFE ESTATE	

[All Sales](#)**Exemptions****Exemption Information Unavailable.****Appraisals**

Tax Year:	2009	2008	2007
Improvement Value:	\$145,626	\$217,742	\$218,058
Land Value:	\$1,969,695	\$1,875,900	\$1,563,250
Total Market Value:	\$2,115,321	\$2,093,642	\$1,781,308

Use Code: 0100 - RESIDENTIAL**Property Information****Number of Units:** 2***Total Square Feet:** 4045*** May indicate living area in residential properties.****All values are as of January 1st each year****Assessed and Taxable Values**

Tax Year:	2009	2008	2007
Assessed Value:	\$541,209	\$540,668	\$524,920
Exemption Amount:	\$50,500	\$50,500	\$25,500
Taxable Value:	\$490,709	\$490,168	\$499,420

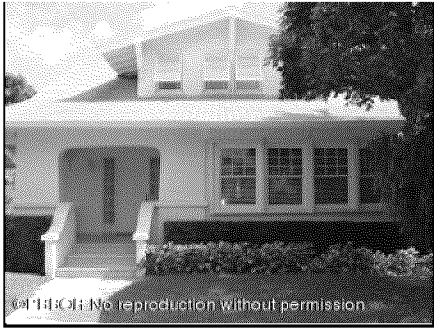
[Structure Detail](#)

Taxes

Tax Year:	2009	2008	2007
Ad Valorem:	\$9,174	\$8,379	\$8,406
Non Ad Valorem:	\$312	\$312	\$252
Total Tax:	\$9,486	\$8,691	\$8,658

[Tax Calculator](#)[Details](#)[Tax Collector WebSite](#)

NOTE: Lower the top and bottom margins to 0.25 on File->Page Setup menu option in the browser to print the detail on one page.

159 AUSTRALIAN Ave, Palm Beach, FL 33480 Palm Beach		10-1225 Residential Active \$1,990,000	
<i>Provided as a courtesy of</i> E. ANTHONY HOLLIS HOLLIS REALTY GROUP, INC Fax: (561)828-2292 Mobile: (561)346-6400 Office: (561)626-7467 4 BENTWOOD ROAD PALM BEACH GARDENS, FL 33418 hollisrealty@bellsouth.net			
Exclusive:	Right	Photo to be Supplied:	Photo Supplied by LO Ok to Lease: No
PCN#:	50434323050280410	Subdivision:	Royal Park
Certified Flood	No	Certified Survey:	No
Elev:		County:	Palm Beach
Homestead Exempt:	Yes	Zoned:	RB
Taxes:	9,486	Tax Year:	2009
Lot Dim (1):	75	X Lot Dim (2):	140
X Lot Dim (4):		Sub Type:	Residential
SqFt Total:		Waterfront Ftg:	
Depth:		# of Bedrooms:	6
Half Baths:	1	Year Built:	1922
Pool Size:		Waterfront:	No
Staff Bath:		X Lot Dim (3):	
		Living Area:	
		\$ Front Ft:	
		# of Baths:	3
		Pool:	No
		Staff Bedrooms:	
Open House Notes:			
Remarks: Delightful, spacious Palm Beach classic. Located in the ocean block close to Worth Avenue. Close to everything. 6BR/3.1BA. Separate guest apartment. Directions: Call listing agent. Legal: ROYAL PARK ADD LT 41 & W 1/2 OF LT 42 BLK H			
Waterfront: No - Waterfront Exposure: North; South Pool: No Pool Dock: No Dock Lot Size: Up To 10,889 SF Landmark: No Landmarks Style: Two Story Construction: Frame	Roof: Asphalt Shingle Floors: Hardwood Windows: Casement; Double Hung Garage: Garage; 2 Car; Detached AC/Heat: Central Air; Multi Zone Heat Water/Sewer: City Water; Sewer Exterior Features: Storm Shutters; Storm Shutters-Auto	Interior Features: Cable; Ceiling Fan Other Rooms: Dining Room; Garage Apartment Appliances: Dishwasher; Disposal; Refrigerator; Freezer; Range-Gas; Oven-Single; Microwave; Washer; Dryer Security: No Security HOA: None Terms: Cash Terms Occupancy: Occupancy At Closing	
List Price: 1,990,000			

Information provided by the Palm Beach Board of Realtors Multiple Listing Service. This information was received from third parties and has not been verified, and there are no warranties expressed or implied. All room dimensions and other measurements are approximate. Prospecting purchasers or lessees should verify all information to their own satisfaction. Not for public distribution: For PBMLS subscribers only. Copyright PBMLS.

Prepared by E. ANTHONY HOLLIS on Thursday, May 20, 2010 1:37 PM

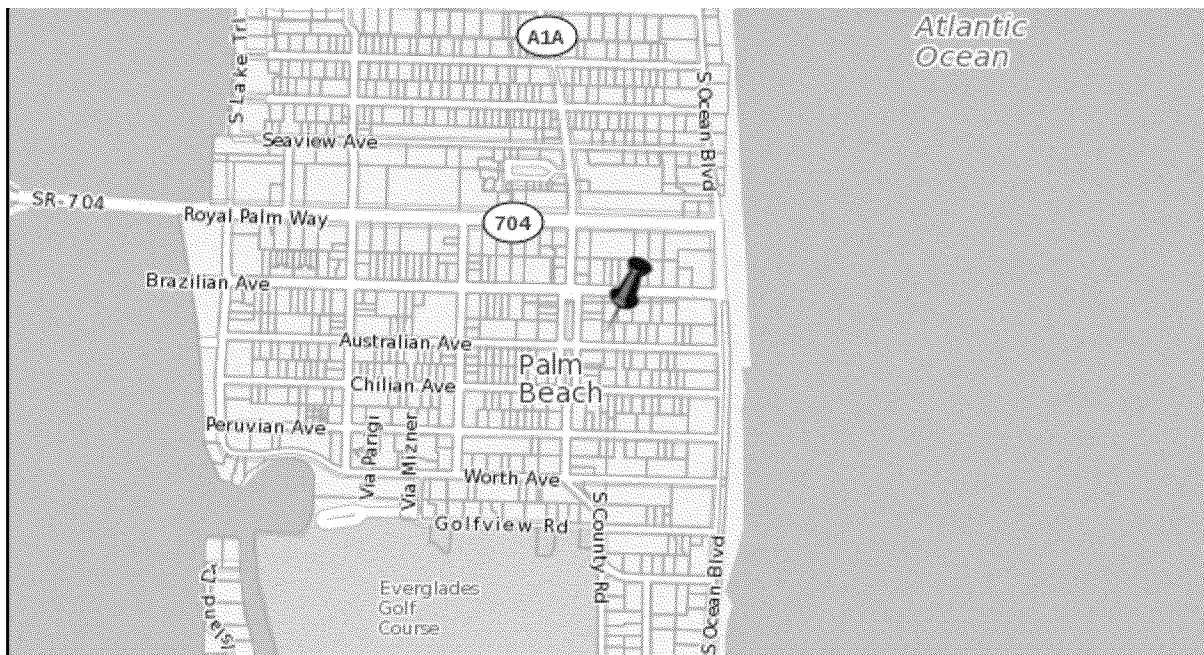
The information on this sheet has been made available by the MLS and may not be the listing of the provider.

Photo sheet**159 AUSTRALIAN Ave Palm Beach, FL 33480**

Exterior Front

Street Map

159 AUSTRALIAN Ave Palm Beach, FL 33480



TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

Consideration of Property Available for Purchase.
150 Australian Avenue.

Presenter

Sharon S. Kahle, Realtor Associate

Supporting Documents

- Letter dated May 24, 2010, from Sharon S. Kahle, Realtor Associate and Jeffrey A. Cloninger & Associates, Inc.

May 24, 2010

Thomas Bradford
Deputy Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

TOWN OF PALM BEACH

MAY 25 2010

Town Manager's Office

Dear Mr. Bradford,

I spoke to you last week, by phone. When I am walking on South County, Chilean and Australian, I am so aware for the great need for additional parking for our devoted Police & Fireman.

As I live on the ocean block of Australian, I hear many moans and groans that there is NOT enough parking for the residents of the streets, as most of the available parking spaces are taken by our town employees. I do not have a problem, as I have my own driveway. On occasion, cars and trucks do block my driveway.

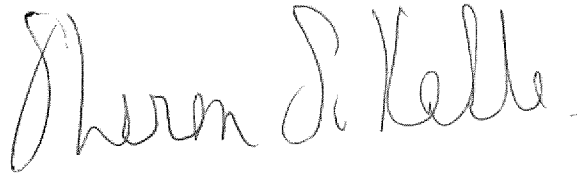
Enclosed, please find a survey of the property where I live. I feel that this would be a perfect place to construct a parking area for your many town employees. By tearing down the existing apartment building, there would be more parking available, which would satisfy the need for employees, residents, voters etc.

There are two cottages on the property. They are on the east side of the apartment building. The cottage I live in faces the street and it is land marked, and there is a cottage behind it. These cottages could be used for additional office space, meetings etc.

Could you please direct and advise me if the Town of Palm Beach would be interested in the purchase of this property. I would prefer to keep this confidential, as the owner and I don't want people wandering on the property for safety reasons.

Thank you so much for your time and attention to this matter. I look forward to hearing from you at your convenience.

Sincerely,

A handwritten signature in cursive script, reading "Sharon S. Kahle". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Sharon S. Kahle Realtor/Associate
Jeffrey A Cloninger & Associates, Inc. Licensed Real Estate Broker
241 Bradley Place
Palm Beach, FL 33480
Office 561.659-6640
Home 561.655-4862

GENERAL SERVICES GROUP, INC

LAND SURVEYORS AND MAPPERS

1000 NW 72nd STREET SUITE 807

MIAMI, FL. 33123

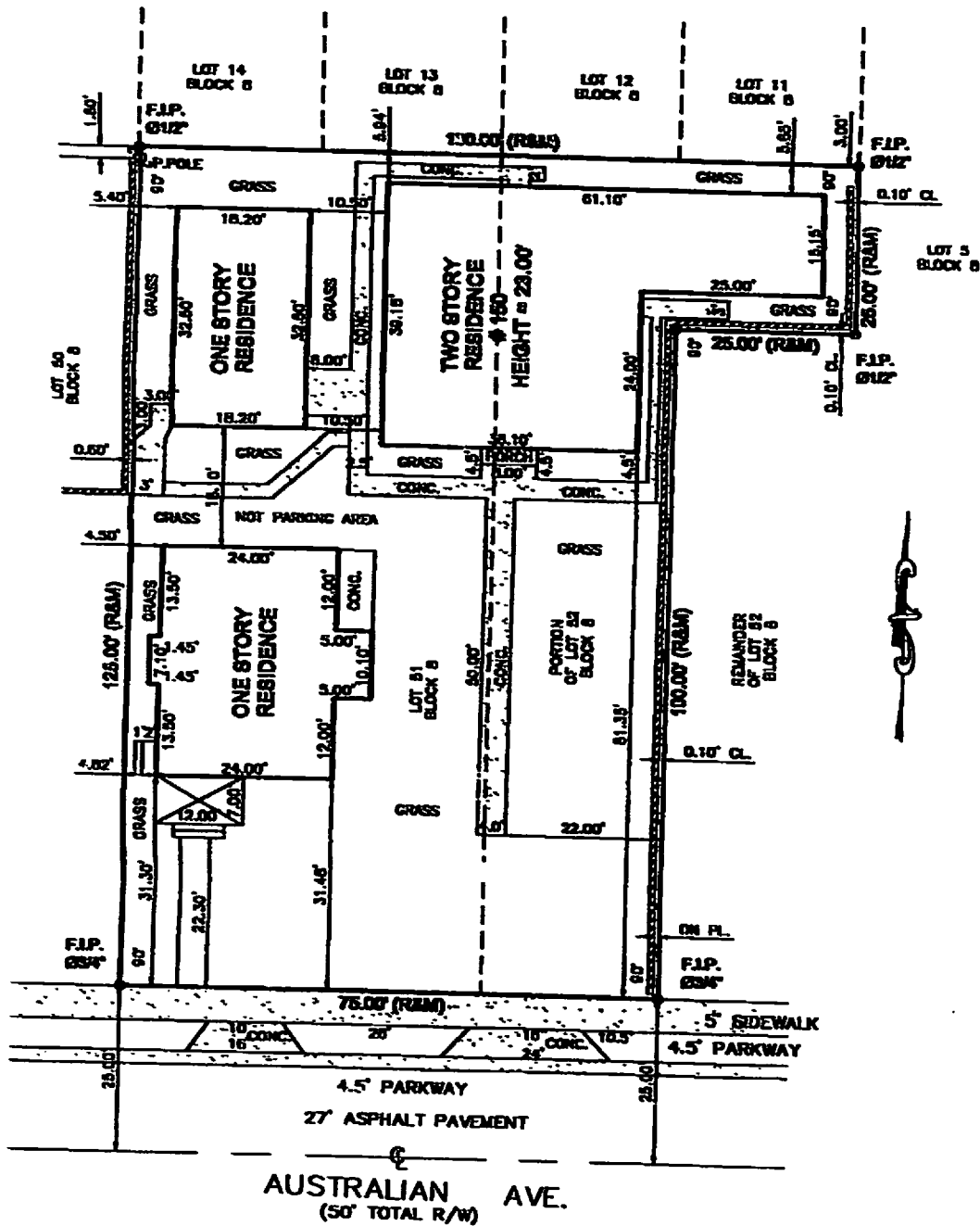
PHONE (305) 461-3875 FAX (305) 461-2182

PAGE 2 OF 2
NOT VALID WITHOUT PAGE 1 OF 2

JOB No. 00-05284

SCALE: 1" = 20'

BOUNDARY SURVEY



TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

RESOLUTION NO. 61-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Request the Florida Department of Transportation ("FDOT") to Convey Surplus Property to the Town of Palm Beach ("Town") to be Utilized for the Public Purpose of Providing Park Facilities, Transportation Facilities, or Parking Facilities, Such Property Being Identified in the Legal Description and Sketch Attached to this Resolution Labeled Exhibit "A"; Providing An Effective Date; And For Other Purposes.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Memorandum dated June 11, 2010, from Thomas G. Bradford, Deputy Town Manager
- Resolution No. 61-10
- Resolution No. 61-10 Exhibit A

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Thomas G. Bradford, Deputy Town Manager

Re: Resolution No. 61-10 Authorizing the Town Manager to Request FDOT Conveyance of Surplus Property to the Town

Date: June 11, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council approve Resolution No.61-10 that authorizes the Town Manager to request FDOT to convey property FDOT has designated as surplus to the Town for either park purposes, transportation purposes or for public parking purposes. The land in question is that land that lies between Memorial Park and Town Hall.

GENERAL INFORMATION

Recently, staff requested FDOT to consider turning over the land between Memorial Park and Town Hall to the Town. FDOT undertook a formal internal review and concluded that the land could be designated as surplus so long as it was to be used for a valid public purpose. Staff contemplates three potential uses for the land. The land can be used now, or in the future, by the Town for park purposes, transportation purposes, which includes roadways, or for public parking purposes. Adopting Resolution No. 61-10 will start the process of the land becoming under the ownership of the Town. If you want to effect this land conveyance, you should approve the resolution.

Next, it must be decided which use is to be put into place upon completion of conveyance.

- Green Space – if this is the preference of the Town Council we can have Mark Marsh develop a design that can be paid for with the remaining project funds for Town Hall while it is in its final days. The cost should fall within the contractual authority of the Town Manager should you wish him to proceed in that direction.
- Roadway – a design exists for building an extension of Australian Avenue along the north side of Town Hall.
- Parking – a conceptual plan exists from the Townwide Parking and Traffic Study. However, this option would require funds for a design to be prepared for plans to build parking improvements.

FUNDING/FISCAL IMPACT

There is no known direct cost to the Town by virtue of taking ownership of the referenced property. Developing the property will have a cost, but it depends on the option chosen by the Town Council.

TOWN ATTORNEY REVIEW

Resolution No. 61-10 has been approved by the Town Attorney for legal form and sufficiency.

cc: Jay Boodheshwar, Acting Director of Public Works
Eric Brown, Assistant Director of Public Works
John C. Randolph, Town Attorney

N:TGB/Agenda Items/2010/ Res. No. 61-10 FDOT Conveyance of Land/ 062210 TCM

RESOLUTION NO. 61-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO REQUEST THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) TO CONVEY SURPLUS PROPERTY TO THE TOWN OF PALM BEACH (TOWN) TO BE UTILIZED FOR THE PUBLIC PURPOSE OF PROVIDING PARK FACILITIES, TRANSPORTATION FACILITIES, OR PARKING FACILITIES, SUCH PROPERTY BEING IDENTIFIED IN THE LEGAL DESCRIPTION AND SKETCH ATTACHED TO THIS RESOLUTION LABELED AS EXHIBIT A ; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the FDOT acquires properties for transportation facilities for the citizens of the State of Florida; and

WHEREAS, the FDOT is permitted by law to convey real property that FDOT no longer needs and determines to be surplus to other public entities to further the public needs of the State of Florida; and

WHEREAS, the Town can utilize FDOT's surplus property described on the attached Exhibit "A" for park facilities, transportation facilities, or parking facilities in connection with the public needs of the Town; and

WHEREAS, it is in the best interest of the citizens of the State of Florida to gain the most benefit from properties acquired with public funds; and

WHEREAS, the Town is requesting that FDOT convey to the Town the surplus property described on the attached Exhibit "A"; and

WHEREAS, the surplus property is sought for the public needs of the Town and is proposed to be conveyed to the Town for the public purpose of providing park facilities, transportation facilities, or parking facilities by the Town.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA, THAT:

SECTION 1: The foregoing recitals are true, correct and incorporated into this Resolution by this reference.

SECTION 2: The Town requests the FDOT to convey title to the surplus property described on the attached Exhibit "A" to the Town pursuant to Section 337.25(4)(h), Florida Statutes.

SECTION 3: The surplus property to be conveyed to the Town by FDOT will be used for the public purpose of providing park facilities, transportation facilities, or parking facilities which will be in the best interests of the general public of the Town of Palm Beach.

SECTION 4: Upon adoption of this Resolution, the Town Clerk shall forward an executed copy of this Resolution to Brent Taylor, Florida Department of Transportation, 3400 W. Commercial Blvd., Ft. Lauderdale, Florida 33309-3421, for further handling.

SECTION 5: This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 22nd day of June, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, President Pro Tem

William J. Diamond, Town Council Member

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

241

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Regular Agenda - New Business

Agenda Title

X. REGULAR AGENDA

B. New Business

7. Matters Related to the Completion of Town Hall Renovation.

- c. Review of Town Council Policy Prohibiting Board/Commission Member Participation in Town Meetings by Phone.

Presenter

Peter B. Elwell, Town Manager

Supporting Documents

- Memorandum dated June 17, 2010, from Peter Elwell

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

From: Peter B. Elwell, Town Manager

Re: Town Policy Regarding Participation in Board and Commission Meetings via Telephone

Date: June 17, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council reaffirm the existing Town policy prohibiting members of Town Boards and Commissions from participating in public meetings via telephone.

GENERAL INFORMATION

Several years ago, the Town Council adopted a policy that no member of a Town Board or Commission can participate in a public meeting via telephone. The only exceptions that have been made to that policy are for those few Town boards that are primarily governed by State Statutes (such as the public safety pension boards). State law allows telephone participation as long as a quorum of board members is physically present in the meeting room.

The Council direction on this matter was driven in part by the outdated technology and poor condition of the audio/visual systems in the old Town Council Chambers. The modern equipment in the renovated Council Chambers has addressed that concern. However, the other factor in the Town Council's prior decision was the question of how fully or effectively a member can participate in a meeting when they are on the phone instead of physically in the meeting room. The Council's consensus was that to fully and effectively participate, a member needs to be in the meeting room, observing presentations and other visual information.

Some members of Town boards and commissions have inquired as to whether the Town Council will change this policy as we resume use of the Town Council Chambers. Staff seeks your direction on this matter. Once we have received it, we will make sure that it is communicated to all board and commission members and enforced. If your direction is that telephone participation should be allowed, we will need to define a fair procedure for identifying who must be in the room and who can be on the phone on those occasions when several members of a single board desire to participate by phone in a single meeting.

PBE:

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 11-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 1 of the Town Code of Ordinances Relating to General Provisions at Section 1-14 Relating to General Penalties; Amending Chapter 2 Relating to Administration, at Article III, Officers and Employees, Section 2-271; Amending Article IV, Boards and Commissions, Sections 2-326 and 2-334; Amending Article VI, Finance, Sections 2-491, 2-517, 2-518, 2-541, 2-542, 2-566 and 2-567; Deleting Article VII Relating to Issuance of Subpoenas in its Entirety; Amending Article VIII, Investment Policy, Section 2-604; Providing For Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Memorandum dated June 9, 2010, from Thomas G. Bradford, Deputy Town Manager
- Ordinance No. 11-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Thomas G. Bradford, Deputy Town Manager

Re: Review of Ordinances for First Reading Incorporating Ordinance, Rules and Standards (ORS) Committee Approved and Town Council Approved Code Changes.

Date: June 9, 2010

STAFF RECOMMENDATION

Staff recommends Town Council approve each of the ordinances delineated below on first reading. Each ordinance change has been approved by the ORS Committee and by the Town Council in a follow-up ORS report to the Town Council at a monthly Town Council meeting. However, the ordinance changes are being presented to the full Town Council in the ordinance format for the first time.

GENERAL INFORMATION

In the fall of 2009 the Town Council requested that the ORS Committee begin the process of reviewing the Town Code of Ordinances in a systematic fashion with regular reports to the Town Council. Thereafter, this office instructed all departments to conduct a review of those code provisions that they work with, or make any reference to their departments, for the purpose of recommending any Code changes to this office and ultimately to the ORS Committee. The first ORS Committee meeting held for the purpose of Code review was convened on December 7, 2009 and ORS has met each month except for May.

There are a total of thirty-seven (37) chapters in the Town's Code of Ordinances. Each one is being reviewed by ORS, with the exception of Chapter 134, the Zoning Ordinance, which is not being reviewed because it receives fairly constant attention by the Town Council, the Planning and Zoning Commission and staff. Many of the other thirty-six chapters have not had a thorough review since at least 1998 when Ordinance No. 17-98 adopted a new Code of Ordinances.

Only seven more chapters remain to be reviewed by ORS. However, there are a number of staff and Town Attorney follow-up items remaining for ORS consideration in accordance with the instructions of the ORS Committee. The work is estimated to be

completed before the end of the summer. In the end, each ordinance change approved by ORS is reported to the full Town Council. If the full Town Council approves, the ordinance change is presented for first reading at a Town Council meeting and is submitted in the redline format, meaning ordinance additions are underlined and ordinance deletions are shown as ~~strike throughs~~. Ten such ordinances are up for first reading consideration. Each ordinance number, a synopsis of its full title and the highlights of what is being changed appears below.

- ORDINANCE NO. 11-10, Amending Chapter 1 Relating to General Provisions and General Penalties; Amending Chapter 2 Relating to Administration; Amending Boards and Commissions, Amending Finance; Deleting Issuance of Subpoenas by Town Manager; Amending Investment Policy.
 - Sec. 1-14 (a): “Housekeeping” amendment to provide a cross reference for ease of use for town personnel.
 - Sec. 1-14(a)(2): Ties maximum fines to state law allowing the code to have a more useful life.
 - Sec. 2-271: Provides additional flexibility in the designation of a town engineer.
 - Sec. 2-326(e): Formally establishes Chair and Vice-Chair for the Planning and Zoning Commission.
 - Sec. 2-334: Requires annual reports to the Town Council from the Planning and Zoning Commission without reference to the town’s annual reorganizational meeting.
 - Sec. 2-491: Provides hierarchical supremacy of the Town Manager in billing and collection procedures to be used.
 - Sec. 2-517: Requires annual designation of town depositories.
 - Sec. 2-518(a)(6): Formally establishes the debt service fund.
 - Sec. 2-518(b): Deletes reference to non-existent “golf course fund.”
 - Sec. 2-541(a): Requires Town Manager to transmit annual budget to the Town Council, not the Town Clerk.
 - Sec. 2-541(a)(2): Eliminates requirement to provide estimate of supplies and materials with annual budget submittal.
 - Sec. 2-541(b) & Sec. 2-542(a): Deletes requirement for annual budget “to be spread in full upon the minutes of the Town Council.”
 - Sec. 2-566: Changes provide for maximum flexibility in use of a “competitive process” for purchases in excess of \$25,000 instead of the current provision limiting town use of “sealed bids” only.
 - Sec. 2-567(g): Requires the Investment Advisory Committee to provide the director of finance advice on the investment of surplus funds.
 - Art. VII, Sec. 2-568: Eliminates Town Manager’s power to issue subpoenas.
 - Sec. 2-604(b): Designates the Deputy Town Manager as the secondary investment signatory in the absence of the Town Manager.
- ORDINANCE NO.12-10 Amending Chapter 6 of the Town Code of Ordinances Relating to Alcoholic Beverages, in General; Relating to Measurement of Distances;

Relating to Distance Between Vendors; Hours of Sale for Off Premises Consumption; Amending Adult Entertainment Code, Relating to Application for License.

- - Sec. 6-3: Requires vendors seeking a license to submit distance measurements performed by licensed engineers or registered land surveyors in Florida and making zoning administrator decisions conclusive.
 - Sec. 6-4: Requires license transfers to be submitted to the Planning and Zoning Director instead of the Director of Finance.
 - Sec. 6-8: Amending hours of sale of alcoholic beverages for off premise consumption and eliminating the existing Sunday morning sale prohibition.
 - Sec. 6-37(3): Corrects a scrivener's error.
- ORDINANCE NO. 13-10 Amending Chapter 10 of the Town Code of Ordinances Relating to Animals, in General, Temporary Permits; Registration; Inoculation; and Running at Large Prohibited.
 - Sec. 10-10: Requires permit fee adoption and fee amendments to be done by resolution. Also, this amendment updates the Town's temporary animal permit requirements to be congruent with the Wildlife Code of Florida.
 - Sec. 10-41(a): Clarifies persons required to tag and license any dog or cat in town.
 - Sec. 10-41(c): This amendment directs the reader to the penalty section of the Code for failure to properly license a dog or cat.
 - Sec. 10-43: Eliminates the misdemeanor tag for persons allowing a dog to run at large.
- ORDINANCE NO. 14-10 Amending Chapter 22, Businesses, Article III, Pugilistic Exhibits, at Section 22-94 Relating to Benefit Fights.
 - Sec. 22-94: Delegates permit power to the chief of police instead of the director of finance for benefit pugilistic (boxing, etc.) exhibits and requires application submittal to the Town Clerk.
- ORDINANCE NO. 15-10 Rescinding Chapter 26, Cable Communications, in its Entirety.
 - Florida's Consumer Choice Act of 2007 gave all cable television franchising authority and regulation of cable television service providers to the state thereby rendering the entirety of Chapter 26 null and void. Accordingly, this ordinance rescinds all of Chapter 26.
- ORDINANCE NO. 16-10 Amending the Consistency and Concurrency Management System, at Section 30-36 Relating To Determination of Consistency; Section 30-73 Relating to Concurrency Determinations; Development Approval Process; Section 30-76 Relating to Limitations and Expiration of Concurrency Determinations; Relating to

Transportation System; Relating to Sanitary Sewer; Relating to Solid Waste; Relating to Drainage; Relating To Potable Water; Relating To Recreation Open Space

- Sec.30-36: Grants determinations of consistency for development proposals to the Director of PZB instead of the Building Official.
- Sec. 30-73: Grants final comprehensive plan concurrency determinations to the Director of PZB instead of the Building Official.
- Sec. 30-76: Clarifies the limitations and expiration of concurrency.
- Sec. 30-111(a): Transportation level of service (LOS) standards are removed here and the reader is directed to the Town's adopted Comprehensive Plan where adopted transportation LOS is recorded, thereby eliminating the need to change the Code each time the transportation LOS changes.
- Sec. 30-111(b)(3)(a): Requires annual evaluation of roadway capacity, but not necessarily in September of each year.
- Sec. 30-111(b)(3)(b): Instead of making reference to a specific edition of the handbook entitled Trip Generation, this amendment only references the latest version of the manual to avoid having to change the Code each time a new edition is published.
- Sec.30-112: Directs the reader to the adopted Comprehensive Plan for adopted sanitary sewer LOS thereby avoiding having to change the Code each time the LOS changes.
- Sec. 30-112(b)(1): Requires continued annual capacity certification from the City of West Palm Beach for ECRWTP, but not necessarily in September of each year as is currently required.
- Sec. 30-112(b)(2): Referencing the Director of PZB instead of the Building Official.
- Sec. 30-112(b)(2)(d): Requires town engineer determination of adequacy of sanitary sewage capacity flow without reference to specific force mains.
- Sec. 30-113(a): Directs the reader to the adopted Comprehensive Plan for adopted solid waste LOS thereby avoiding having to change the Code each time the LOS changes.
- Sec. 30-113(b)(1): Requires continued annual capacity certification from the Palm Beach County Solid Waste Authority for solid waste, but not necessarily in September of each year as is currently required nor is analysis to be limited to the North County Regional Resource Recovery Facility.
- Sec. 30-113(b)(2): Changes development impact determination from Building Official to Director of PZB.
- Sec. 30-113(b)(3): Requires Director of Public Works to make an annual evaluation of the Town's vegetative trash disposal sites, but not necessarily in September of each year.
- Sec. 30-114(a): Directs the reader to the adopted Comprehensive Plan for adopted drainage LOS thereby avoiding having to change the Code each time the LOS changes.
- Sec. 30-115(a): Directs the reader to the adopted Comprehensive Plan for adopted potable water LOS thereby avoiding having to change the Code each time the LOS changes.

- Sec. 30-115(b)(1): Requires continued annual capacity certification from the City of West Palm Beach for potable water , but not necessarily in September of each year as is currently required.
 - Sec. 30-115(b)(2): Transfers development impact determinations for potable water from Building Official to Director of PZB.
 - Sec. 30-116(a): Directs the reader to the adopted Comprehensive Plan for adopted recreation/open space LOS thereby avoiding having to change the Code each time the LOS changes.
- ORDINANCE NO. 18-10 Chapter 42, Environment; Article V, Noise; Section 42-199, Hours for Construction Work, So as to Modify the Definition of Construction Work by Deleting the Word "Major" and the Reference to the \$10,000 Permit Valuation; Amending Section 42-230, Lawn Maintenance Equipment Noise, by Deleting the Reference to "Major" Construction; and Further Amending Chapter 42 to Include a New Article VIII Relating to Abandoned Real Property; Providing for Purpose and Intent; Providing for Definitions; Providing for Applicability; Providing for Registration of Abandoned Real Property; Providing for Maintenance Requirements; Providing for Security Requirements; Providing for Immunity of Enforcement Officer; Providing Additional Authority.
- Sec. 42-199(a): Redefines construction work and eliminates ambiguity caused by reference to “major” construction work definition.
 - Sec. 42-230(a): Eliminates reference to “major” construction work and increases allowed decibels from 69 dBA to 75 dBA to improve operator compliance when using lawn maintenance equipment.
 - Sec. 42-230(c): Eliminates requirement for leaf blower operator to wear hearing protection. Such laws are properly promulgated and enforced by OSHA, not the Town.
 - New Article VIII: These provisions establish procedures to address abandoned property usually involving foreclosure to avoid blighted conditions. It requires registration of abandoned properties by mortgagees, monthly inspections, an annual registration fee, maintenance requirements, security requirements and posting of name of contact person and 24 hour contact phone number of the local property management company and other requirements.
- ORDINANCE NO. 19-10 Amending Chapter 50, Floods; Article II, Flood Damage Prevention; at Section 50-34, Objectives; at Section 50-35, Definitions; at Section 50-66, Designation of Building Official; at Section 50-67, Duties and Responsibilities of the Floodplain Administrator; at Section 50-68, Establishment of Development Permit; at Section 50-69, Variance Procedures; at Section 50-91, General Standards; and at Section 50-93, Standards for Subdivision Proposals
- This ordinance constitutes the Town’s Flood Damage Prevention Ordinance. It has been amended to dovetail as closely as possible the Florida Model Ordinance promulgated by the State for local government usage in codifying a

floodplain management program. Definitions have been modified and new definitions included. Administrative responsibility falls to the Building Official to enforce these provisions who shall be the Town's designated floodplain administrator. The Building Official may delegate this to his designee. A permit is required to develop in the floodplain or coastal high hazard areas and the amount of the permit is to be established by resolution. Variances from the floodplain requirements may be applied for with the payment of a permit fee which shall also be established by resolution. Most other components of the ordinance remain as is currently in effect.

➤ ORDINANCE NO. 20-10 Amending Chapter 62, Marine Structures; Article III, Bulkheads and Pierheads on Lake Worth; at Section 62-77 to Require Maintenance and Certification of All Bulkheads and Seawalls.

- Sec. 62-77: These changes entail establishment of some additional maintenance standards and new certification requirements for seawalls and bulkheads. Certification and recertification requirements would occur incrementally over time in two ways. First, if a property owner is cited by the Code Enforcement Board for not meeting the adopted maintenance requirements, the seawall /bulkhead would need to be repaired or upgraded and certified to the Town by proper professional as to its acceptable condition. Thereafter, every 15 years, the seawall/bulkhead would be required to be recertified. Second, whenever a new building is proposed to be constructed or a major renovation proposed at 50% or greater of the property's value, a seawall/bulkhead certification would be required. Thereafter, every 15 years, the seawall/bulkhead would be required to be recertified. These provisions would apply to Town owned seawalls/bulkheads too. In each instance, Public Works would maintain a "tickler file," most likely via a computer program, to know when to notify applicable property owners to commence recertification. There would be no permit fee associated with this program.

The process described above is considered an acceptable means to systematically, over time, develop a functional program to monitor the condition of seawalls/bulkheads and require repairs and upgrades as may be needed to protect valuable property located on a barrier island. This will allow for a smooth transition from today's reactive program to a proactive program without creating new major expenses and radical changes in procedures.

➤ ORDINANCE NO. 21-10 Amending Chapter 74, Parks and Recreation; Article II, Beaches and Aquatic Activities; Section 74-162, Regulation of Fishing; and Amending Article III, Boats and Boating, by Deleting Sections 74-263 and 74-267 in Their Entirety.

- Sec. 74-162: Makes it unlawful to fish within 50 yards or less, north or south of any public beach guarded by lifeguards of the Town for obvious reasons.

- Sec. 74-263: Reduce speed when passing moored craft
 - Sec. 74-267: Reckless operation (of watercraft)
- Each of the above code sections are being deleted in their entirety because the same prohibitions are covered in state law and it is state law that is cited whenever Town marine officers issue citations for violations of these requirements.

FUNDING/FISCAL IMPACT

The cost of preparing the ordinances, advertising second reading and codifying the ordinances are known direct costs of ordinance adoption. A General Fund contingency allocation is anticipated to be requested by staff prior to the end of FY 2010 to provide additional funds to the Town Clerk's budget to accomplish these tasks, the cost of which was not known at the time of preparing the FY 2010 budget.

Some of the proposed fees referenced in the ordinances, but proposed to be adopted by resolution, will generate additional revenue, but this is mostly an adjustment to reflect updated costs incurred by the Town in the program primarily attributable to inflation subsequent to the last change in the fee. Any indirect costs associated with this process or the programs delineated in the ordinances are deemed to be de minimis.

TOWN ATTORNEY REVIEW

Each ordinance has been prepared by the Town Attorney.

cc: Department Directors
 John C. Randolph, Town Attorney
 Eric Brown, Assistant Director of Public Works
 Rick Howe, Major, Police Department
 Veronica Close, Assistant Director of Planning, Zoning and Building
 Bill Bucklew, Combination Plans Examiner
 John Maio, Captain, Police Department
 Curtis Krauel, Sergeant, Police Department
 Raychel Houston, Code and Parking Enforcement Manager
 Rob Walton, Chief Code Compliance Officer
 Tim Pompos, Fire Marshall
 Mark Hassell, Ocean Rescue Supervisor

ORDINANCE NO. 11-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 1 OF THE TOWN CODE OF ORDINANCES RELATING TO GENERAL PROVISIONS AT SECTION 1-14 RELATING TO GENERAL PENALTIES; AMENDING CHAPTER 2 RELATING TO ADMINISTRATION, AT ARTICLE III, OFFICERS AND EMPLOYEES, SECTION 2-271; AMENDING ARTICLE IV, BOARDS AND COMMISSIONS, SECTIONS 2-326 AND 2-334; AMENDING ARTICLE VI, FINANCE, SECTIONS 2-491, 2-517, 2-518, 2-541, 2-542, 2-566 AND 2-567; DELETING ARTICLE VII RELATING TO ISSUANCE OF SUBPOENAS IN ITS ENTIRETY; AMENDING ARTICLE VIII, INVESTMENT POLICY, SECTION 2-604; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 1, General Provisions; Section 1-14, General Penalty, to read as follows:

"Sec. 1-14. General penalty.

(a) Except where another penalty is expressly provided therefor, pursuant to Chapter 2, Article V, of the Town's Code of Ordinances relating to Code Enforcement, any person violating any provision of this Code shall be punished as follows:

- (1) Where such violation also constitutes a violation of any law or regulation of the state, such violation shall be punished in the same manner and within the same limits as is provided by law for such state violation.
- (2) Where such violation does not also constitute a violation of a state law or regulation, it shall be punished by a fine of not more than \$500.00 maximum, or as otherwise established by state law, or a term of imprisonment not in excess of 60

days, or both such fine and imprisonment, in the discretion of the court.

(b) Each separate act or omission in violation of this Code and each separate day any violation continues or exists shall constitute a separate offense. When the unlawfulness of an act or omission depends upon the giving of a notice by any officer of the town, the continuance of the act or omission after such notice shall be deemed an offense; and the offender shall be punishable for each day of such continuance as for a separate offense.

(c) The imposition of a penalty for the violation of this Code shall not bar or preclude any other remedies available to the town, legal or equitable, to correct or prevent the continuance of such violation."

Section 2. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 2, Administration; Article III, Officers and Employees; Division 6, Engineer; Section 2-271, Position Established, to read as follows:

"Sec. 2-271. Position established.

There is hereby established the position of town engineer. As determined by the director of public works, the director of public works, or his designee, may serve as the town engineer provided the qualifications of the position are met. Alternatively, the director of public works may designate an engineering consultant or a qualified person employed by an engineering consulting firm to serve in the capacity of town engineer provided the person or firm has been selected in accordance with adopted town procedures."

Section 3. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 2, Administration; Article IV, Boards and Commissions; Division 2, Planning and Zoning Commission; Section 2-326, Created; Membership; Requirements; Term, to read as follows:

"Sec. 2-326. Created; membership; requirements; term.

(a) There is created a town planning and zoning commission consisting of seven members to be appointed by the town council, each member of which shall be a resident of the town.

(b) Four voting members of the commission shall constitute a quorum; however, the affirmative or negative vote of a majority of the entire membership of the commission shall be necessary for it to take action.

(c) The commission shall be deemed to be, in all events and in all transactions, directly under the supervision of the town council, which shall have power to alter, modify or change any action or ruling of the commission.

(d) The persons initially appointed to the commission shall forthwith assemble and determine by lot:

- (1) The two members who shall hold office until the first Tuesday after the first Monday in February next thereafter;
- (2) The two members who shall hold office until the first Tuesday after the first Monday in the second February thereafter;
- (3) The two members who shall hold office until the first Tuesday after the first Monday in the third February thereafter;
- (4) The one member who shall hold office until the first Tuesday after the first Monday in the fourth February thereafter.

Thereafter, members of the commission shall serve for terms of three years. All persons appointed pursuant to subsections (d) (1) - (4) shall hold office until October 1 of the year in which their term expires.

(e) The commission shall elect a Chair and Vice-Chair in March of each year. The Chair shall approve the agenda for each meeting and conduct the meetings of the commission pursuant to Robert's Rules of Order, Newly Revised, the latest edition. The Vice-Chair shall serve as Chair in the absence of the Chair."

Section 4. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 2, Administration; Article IV, Boards and Commissions; Division 2, Planning and Zoning Commission; Section 2-334, Reports, to read as follows:

"Sec. 2-334. Reports.

The planning and zoning commission shall make an annual report to the town council each year ~~prior to the town council reorganizational meeting~~ and shall make such other reports as may be requested by the town council."

Section 5. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 2, Administration; Article VI, Finance; Division 2 Finance Department; Section 2-491, Responsibilities, Duties, to read as follows:

"Sec. 2-491. Responsibilities, duties.

It shall be the responsibility of the finance department of the town, through its director, or as otherwise directed by the town manager, to conduct all billings and collections for any and all fines, penalties and/or forfeitures imposed by the town."

Section 6. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 2, Administration; Article VI, Finance; Division 3 Funds; Section 2-517, Designation of Town Depositories and Authorized Signatories for Banking Accounts, to read as follows:

"Sec. 2-517. Designation of town depositories and authorized signatories for banking accounts.

~~From time to time~~ On an annual basis, the town council will take up and consider the designation of the town depositories. The depositories selected must be a qualified public depository as specified by F.S. ch. 280. The designation will be made by resolution and include the designation of the authorized parties to sign checks and warrants on behalf of the town."

Section 7. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 2, Administration; Article VI, Finance; Division 3, Funds; Section 2-518, Funds to be Maintained, to read as follows:

"Sec. 2-518. Funds to be maintained.

(a) The director of finance shall maintain certain different funds designated in this section:

- (1) General revenue fund.
- (2) Internal service fund.
- (3) Fiduciary fund.
- (4) Capital improvement fund.
- (5) Proprietary or enterprise fund.
- (6) Debt service fund.

(b) Any other specific accounts previously designated by the town, specifically including but not limited to the general fund, capital projects fund, special assessment fund, ~~golf course fund~~, and Kreusler Park Fund, or others specifically designated in the future by resolution of the town council may be consolidated in any one of the appropriate accounts designated above by approval of the town council provided that the integrity of such additional funds therein consolidated is maintained and preserved effectively through a uniform system of accounting."

Section 8. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 2, Administration; Article VI, Finance; Division 4, Budget Procedures; Section 2-541, Manager to Estimate Receipts and Expenditures, to read as follows:

"Sec. 2-541. Manager to estimate receipts and expenditures.

(a) No later than September 1 of each year, the town manager shall investigate fully the finances of the town and shall make an estimate of the revenues and receipts, other than from taxes to be levied, reasonably to be expected, from October 1 to September 30 of the following year; and shall ~~file~~transmit the same ~~with~~to the town ~~clerk~~council. In such estimate, the town manager shall also include the estimate of the expenditures of the town for the ensuing year. The classification of the estimate of the expenditures shall be in accordance with the various funds specified in section 2-518, and shall include the following information:

(1) A detailed estimate of the expense of conducting the work properly included within each fund.

~~(2) An estimate of the amount of supplies and materials on hand at the commencement of the ensuing fiscal year.~~

~~(32)~~ The increase or decrease in requests compared with the corresponding appropriation and expenditure for the current year.

~~(43)~~ A recommendation of the town manager as to the amount of money to be appropriated with reasons therefor in such detail as the town council may direct, or as the town manager may deem advisable to submit.

~~(54)~~ Such other information as is required by the town council or as the town manager may deem advisable to submit.

~~(b) Such estimate of the town manager shall be spread in full upon the minutes of the town council."~~

Section 9. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 2, Administration; Article VI, Finance; Division 4, Budget Procedures; Section 2-542, Adoption of Budget Expenditures, to read as follows:

"Sec. 2-542. Adoption of budget of expenditures.

(a) Prior to the making of the tax levy for the year, the town council shall review the town manager's estimate and recommendations and make an estimate of the necessary and ordinary expenses and all special and extraordinary expenses contemplated for the fiscal year next ensuing. Such estimate shall set out every item of expenditure contemplated or reasonably to be anticipated during the year for which such estimates are made, with as much particularity as is practicable, and shall designate the fund from which the item of expenditure shall be paid. Such designation shall be in accordance with the particular funds created by section 2-518. Such estimates when fixed by the town council shall be adopted in the manner provided by Florida law ~~and spread in full upon the minutes of the town council.~~

(b) The adoption of such estimates by the town council shall give such estimates the force and effect of fixed appropriations; and the same shall not be altered or amended or exceeded, nor shall the expense estimated under one fund be paid out of any other fund except as

provided by Florida law, town ordinance or resolution. All unexpended balances to the credit of any fund at the end of the fiscal year shall revert to the fund from which the appropriation was made, but nothing in this section shall be considered as prohibiting the reserving in the estimate of a reasonable sum for contingencies and emergencies and the appropriation of any part of such sum so reserved for any expense of the town authorized by law."

Section 10. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 2, Administration; Article VI, Finance; Division 5, Contracts and Purchases; Section 2-566, Procedure for Contracts, Purchases, Exceeding Twenty-Five Thousand Dollars, to read as follows:

"Sec. 2-566. Procedure for contracts, purchases, exceeding twenty-five thousand dollars.

Construction of public works and improvements of the town for projects estimated to have a total construction project cost of ~~less than~~over \$100,000.00 ~~may~~must be awarded ~~without the need for sealed bids~~ through a competitive process

Additionally, the purchase of labor and/or materials which labor and materials when considered independently have a cost of ~~less~~more than \$100,000.00 on any public construction contract that is estimated to have total construction project costs of ~~less~~more than \$200,000.00 ~~may~~shall be awarded ~~without the need for sealed bids~~ through a competitive procurement process, except that electrical work estimated at a cost in excess of \$50,000.00 must be competitively awarded.

Additionally, the town may purchase vehicles, defined as "motorized rolling stock intended for travel over public roadways with a cost of less than \$50,000.00," without the need for formal sealed bids.

Other than for the above stated exceptions, the purchase of all supplies and equipment for the use of the town not involving construction of public work and improvements in the town amounting to \$25,000.00 dollars or more, shall only be made ~~to and with the lowest responsive responsible bidder, upon bids using a competitive procurement process.~~ Responses shall be submitted to the town manager or his designee, after advertisement, giving notice of the character and quantity of the supplies or equipment needed, or a brief description of the extent of the construction work or improvement to be undertaken, to be published in

some newspaper of general circulation in the county, once each week for two successive weeks, which notice shall call for ~~sealed bids~~responses to be deposited with the town manager or his designee at the time and place set forth in such published notice, and which sealed bids shall be opened and read at the approved time and place and proposal responses tabulated.

The town manager or his designee shall make a report and make recommendations thereon ~~at the next ensuing meeting of~~ to the town council ~~following the opening~~upon award determination.

Any person desiring to submit a bid or bids shall be permitted to inspect the plans and specifications which govern the construction to be undertaken, or the supplies and equipment ~~in tended~~ intended to be purchased. ~~;~~ but ~~the published notice need only~~ shall give such brief description as to give reasonable notice to prospective bidders of the character and extent of the work to be done, or the quality and amount of materials to be purchased.

All exceptions from public bid requirements referenced herein are intended to be in compliance with Florida Statutes, specifically, but not limited to, F.S. § 255.20 and to the extent any provision herein is in contravention of said statute, said exception shall not apply."

Section 11. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 2, Administration; Article VI, Finance; Division 6, Investment Advisory Committee; Section 2-567, Investment Advisory Committee Created, subparagraph (g), to read as follows:

Sec. 2-567 Investment advisory committee created; appointments; terms; qualifications; advisory function; requirements; officers; procedure.

"(g) *Advisory capacity.* The investment advisory committee shall act in an advisory capacity and shall make recommendations to the town council on matters relating to the town's investment policy ~~and the investment of the town's surplus funds.~~ The investment advisory committee shall advise the director of finance on the investment of the town's surplus funds. All recommendations must be made within the constraints and limitations of F.S. § 218.415."

Section 12. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 2, Administration, by deleting Article VII, Issuance of Subpoenas, in its entirety.

~~"ARTICLE VII. ISSUANCE OF SUBPOENAS~~

~~Sec. 2-568. Town manager authorized to issue subpoenas.~~

~~(a) The town manager, or the town manager's authorized designee, is hereby authorized to issue subpoenas on behalf of the town to compel attendance and testimony at hearings before the various boards and commissions established by the town through its ordinances and/or resolutions.~~

~~(b) Subpoenas issued by the town manager shall have full force and authority of law and shall grant the town the ability to enforce said subpoenas by issuing an order of contempt for failure to comply with the terms of said subpoenas.~~

~~(c) Subpoenas issued by the town manager may be served by the sheriff of the county or the police department of the town.~~

~~(d) Any person found to be in contempt of a subpoena issued by the town shall be subject to the general penalty provision prescribed by town code."~~

Section 13. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 2, Administration; Article VIII, Investment Policy; Section 2-604, Standards of Care, subparagraph (b), to read as follows:

Sec. 2-604. Standards of care.

"(b) *Delegation of authority.* Responsibility for management of the investment program is hereby delegated to the finance director, under the direction of the town manager. No investment activity shall take place except as provided under the terms of this policy. The town may appoint an outside investment manager as agent for the town's cash reserves. The agent for the town shall have discretion over the purchase and sale of securities within this investment policy.

| Positions authorized as investment signatories are the town manager and the finance director. If either of these individuals is unavailable, the ~~assistant~~deputy town manager may authorize investment transactions in the place and stead of the town manager and the assistant finance director may authorize investment transactions in the place and stead of the finance director.

| In all cases, every investment transaction requires two authorizing signatures. However, the town manager and ~~assistant~~deputy town manager are not authorized to countersign each other's signature. Nor are the finance director and assistant finance director authorized to countersign each other's signature."

Section 14. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 15. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 16. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 17. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 22nd day of June, 2010, and for second and final reading on this _____ day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

N:\TGB\Misc\2009\Attorney\Town Code\17M3010-ordinance chapters 1 and 2 red.DOC

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 12-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 6 of the Town Code of Ordinances Relating to Alcoholic Beverages, at Article I, in General; Amending Section 6-3 Relating to Measurement of Distances; Amending Section 6-4 Relating to Distance Between Vendors at Subsection (E); Amending Section 6-8 Relating to Hours of Sale for Off Premises Consumption; Amending Article II, Adult Entertainment Code, Section 6-37 Relating to Application for License at Subsection (3); Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Ordinance No. 12-10

ORDINANCE NO. 12-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 6 OF THE TOWN CODE OF ORDINANCES RELATING TO ALCOHOLIC BEVERAGES, AT ARTICLE I, IN GENERAL; AMENDING SECTION 6-3 RELATING TO MEASUREMENT OF DISTANCES; AMENDING SECTION 6-4 RELATING TO DISTANCE BETWEEN VENDORS AT SUBSECTION (e); AMENDING SECTION 6-8 RELATING TO HOURS OF SALE FOR OFF PREMISES CONSUMPTION; AMENDING ARTICLE II, ADULT ENTERTAINMENT CODE, SECTION 6-37 RELATING TO APPLICATION FOR LICENSE AT SUBSECTION (3); PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 6, Alcoholic Beverages; Article I, In General; Section 6-3, Measurement of Distance, to read as follows:

"Sec. 6-3. Measurement of distances.

For the purposes of this chapter, all distances shall be measured by ~~the town engineer~~ a licensed engineer or registered land surveyor within Florida secured by the applicant at the applicant's expense and submitted to the zoning administrator for review, whose determination shall be conclusive on all parties affected thereby."

Section 2. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 6, Alcoholic Beverages; Article I, In General; Section 6-4, Distance Between Vendors; subparagraph (e), to read as follows:

Sec. 6-4. Distance between vendors.

"(e) The licensee desiring to transfer a business from one location to another as permitted in subsection (c) of this section must file with the director of ~~finance~~planning, building and zoning a written application for such transfer, giving the exact location of the then existing place of business and the exact location of the proposed new place of business. The transfer to the new location shall not be made until authorized by the mayor and town council."

Section 3. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 6, Alcoholic Beverages; Article I, In General; Section 6-8, Hours of Sale for Off Premises Consumption, to read as follows:

"Sec. 6-8. Hours of sale for off-premises consumption.

No alcoholic beverages may be sold, served or distributed in sealed containers for consumption off the premises within the town between the hours of ~~9:00~~10:00 p.m. and ~~9:00~~7:00 a.m. of the following day, ~~or at any time before 1:00 p.m. during Sundays.~~"

Section 4. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 6, Alcoholic Beverages; Article II, Adult Entertainment Code; Section 6-37, Application for License; Application Fee; Consent by Applicant; subparagraph (b)(3), to read as follows:

Sec. 6-37 Application for license; application fee; consent by applicant.

"(3) Whether the applicant or any of the other individuals listed pursuant to subsection (b)(1) has, within the five-year period immediately preceding the date of the application, ~~been convicted of a felony of any state or application, been~~ convicted of a felony of any state or of the United States or any specified criminal act and, if so, the specific crime involved, the date of conviction and the place of conviction;"

Section 5. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 6. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 7. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 8. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 22nd day of June, 2010, and for second and final reading on this _____ day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

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TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 13-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 10 of the Town Code of Ordinances Relating to Animals, at Article I, in General, Section 10-10 Relating to Temporary Permits; Amending Article II, Dogs and Cats, Section 10-41 Relating to Registration; Inoculation; Amending Section 10-43 Relating to Running at Large Prohibited; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Ordinance No. 13-10

ORDINANCE NO. 13-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 10 OF THE TOWN CODE OF ORDINANCES RELATING TO ANIMALS, AT ARTICLE I, IN GENERAL, SECTION 10-10 RELATING TO TEMPORARY PERMITS; AMENDING ARTICLE II, DOGS AND CATS, SECTION 10-41 RELATING TO REGISTRATION; INOCULATION; AMENDING SECTION 10-43 RELATING TO RUNNING AT LARGE PROHIBITED; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 10, Animals; Article I, In General; Section 10-10, Temporary Permits, to read as follows:

"Sec. 10-10. Temporary permits.

(a) Permits may be granted for the temporary possession of animals otherwise prohibited under this chapter in connection with either a special event, as said term is defined in this Code or in regard to a private event, subject to the following conditions:

- (1) Application shall be filed with the town clerk at least 30 days prior to the event at which the temporary possession permit is requested. An \$50.00 application fee is hereby authorized and shall be paid upon filing of the application with the town clerk. The application fee shall be established by adoption of a resolution of the Town Council and may be amended by adoption of a resolution of the Town Council. The 30-day period may be waived by the town manager if it is determined by the town manager that good cause exists for waiving the period and further providing that all other requirements set forth in this section are met.
- (2) A temporary possession permit shall be approved by the town manager if:

- a. The applicant agrees to abide by the most recently adopted rules and regulations designated as the Wildlife Code of the State of Florida as promulgated by the Fish and Wildlife Conservation Commission or its successor organization as designated by the State of Florida.
- ab. The permit is for a period of time no longer than 12 hours and the applicant has specified in their application specific times the animals will be present at the property in question and, if different, the specific times the animals will be on display.
- c. A floor plan or site plan, whichever is deemed appropriate by the town for the property in question is submitted in conjunction with a fully completed town application for a temporary permit indicating to the satisfaction of the town the location of the animals to be displayed, the location where the animals will be displayed and the location of the people that will be in attendance to view the animals to be displayed.
- bd. Adequate proof is submitted that a trained animal handler licensed or permitted by the Florida Fish and Wildlife Conservation Commission or its successor organization as designated by the State of Florida will be responsible for the handling of any animal permitted, and that ~~there~~ a sufficient number of licensed and permitted handlers be present to handle the animal or animals for the duration of the special event.
- ee. No animals permitted under this exception shall be permitted in residentially zoned areas of the town, other than ~~animals considered appropriate for a petting zoo such as ponies and trained monkeys~~ Class III wildlife as designated by the Florida Fish and Wildlife Conservation Commission or its successor organization as designated by the State of Florida and those for which a permit is not required pursuant to rule 68A-6.0022, Florida Administrative Code, as amended. Class I and Class II wildlife as designated by the Florida Fish and Wildlife Conservation Commission or its successor organization as designated by the State of Florida may be allowed on

all town owned property and all commercial, R-D(1), R-D(2) and PUD-A zoning districts provided all permit requirements have been met and a minimum setback buffer of not less than fifty (50) feet is maintained between the location of the wildlife and the nearest adjacent residentially zoned areas of the town..

ef. A certificate of insurance naming the town as insured shall be provided for an amount of insurance not less than \$5,000,000.00 to indemnify the town against any and all liability relating to the presence of the animals in the town. A certificate of insurance shall not be required for events described in subsection (a)(2)ee of this section relating to animals appropriate for a petting zoo such as ponies and trained monkeys.

eg. Notwithstanding the requirements set forth in subsections c. and d. above, a permit may be allowed for animal displays used in conjunction with educational wildlife programs on town property and on public or private school property within the town.

h. The applicant agrees to all written conditions issued by the town in conjunction with and requisite to the permit.

(b) If a permit is denied by the town manager, the applicant may appeal the decision to the town council, which shall give consideration to the appeal at the next regular meeting of the town council subsequent to the denial of the permit.

(c) If a special event or a private event is scheduled or held involving the display or possession of animals prohibited by this section, absent a permit as required under this section, the event may be terminated or dispersed by action of the code enforcement officer, fire rescue officer or by the police department."

Section 2. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 10, Animals; Article II, Dogs and Cats; Section 10-41, Registration; Inoculation, to read as follows:

"Sec. 10-41. Registration; inoculation.

(a) Every person who is the owner of, keeper of, or ~~harborer~~ of ~~harbors~~ any dog or cat over the age of four months within the town shall secure a tag or license for each dog or cat from the county animal control department.

(b) Dogs of more than four months of age shall at all times, while outside the premises of the owner, wear a tag denoting currently effective registration and inoculation data issued by the county animal control department. Cats of more than four months of age shall at all times, while outside the premises of the owner, wear a tag or chip denoting currently effective registration and inoculation data issued by the county animal control department.

(c) Failure to have a dog or cat properly licensed shall result in ~~an automatic fine of at least \$50.00 for the first offense and \$100.00 for each subsequent offense~~ a penalty as set forth in Sec. 1-14.."

Section 3. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 10, Animals; Article II, Dogs and Cats; Section 10-43, Running at Large Prohibited, to read as follows:

"Sec. 10-43. Running at large prohibited.

No dog shall run at large within the town or upon the property other than that of its owner unless the dog is running on property other than that of its owner with the express or implied consent of the owner of the property. ~~Persons allowing dogs to run at large shall be guilty of a misdemeanor."~~

Section 4. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 5. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 6. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 7. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 22nd day of June, 2010, and for second and final reading on this _____ day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 14-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 22, Businesses, Article III, Pugilistic Exhibits, at Section 22-94 Relating to Benefit Fights; Providing for Severability; Providing For Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Ordinance No. 14-10

ORDINANCE NO. 14-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 22, BUSINESSES, ARTICLE III, PUGILISTIC EXHIBITS, AT SECTION 22-94 RELATING TO BENEFIT FIGHTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 22, Businesses; Article III, Pugilistic Exhibits; Section 22-94, to read as follows:

"Sec. 22-94. Benefit fights permitted.

The ~~director of finance~~chief of police of the town may grant, upon appropriate application to be submitted to the office of the town clerk, permission to stage a benefit pugilistic encounter for any charitable or beneficent purpose, upon any location in the town agreeable to the town council; but the granting of such permit shall be effective only for the particular exhibition at the particular place and time as set forth in such application."

Section 2. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 3. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 4. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 5. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 22nd day of June, 2010, and for second and final reading on this _____ day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

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TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 15-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach by Rescinding Chapter 26, Cable Communications, in its Entirety; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Ordinance No. 15-10

ORDINANCE NO. 15-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH BY RESCINDING CHAPTER 26, CABLE COMMUNICATIONS, IN ITS ENTIRETY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended by rescinding Chapter 26, Cable Communications, in its entirety.

Section 2. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 3. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 4. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 5. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 22nd day of June, 2010, and for second and final reading on this _____ day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

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TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 16-10 An Ordinance of the Town Council of the Town Of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 30, Consistency and Concurrency Management System, at Section 30-36 Relating To Determination of Consistency; Section 30-73 Relating to Concurrency Determinations and The Development Approval Process; Section 30-76 Relating to Limitations and Expiration of Concurrency Determinations; Section 30-111 Relating to Transportation System; Section 30-112 Relating to Sanitary Sewer; Section 30-113 Relating to Solid Waste; Section 30-114 Relating to Drainage; Section 30-115, Relating To Potable Water; and Section 30-116 Relating To Recreation Open Space; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Ordinance No. 16-10

ORDINANCE NO. 16-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 30, CONSISTENCY AND CONCURRENCY MANAGEMENT SYSTEM, AT SECTION 30-36 RELATING TO DETERMINATION OF CONSISTENCY; SECTION 30-73 RELATING TO CONCURRENCY DETERMINATIONS AND THE DEVELOPMENT APPROVAL PROCESS; SECTION 30-76 RELATING TO LIMITATIONS AND EXPIRATION OF CONCURRENCY DETERMINATIONS; SECTION 30-111 RELATING TO TRANSPORTATION SYSTEM; SECTION 30-112 RELATING TO SANITARY SEWER; SECTION 30-113 RELATING TO SOLID WASTE; SECTION 30-114 RELATING TO DRAINAGE; SECTION 30-115, RELATING TO POTABLE WATER; AND SECTION 30-116 RELATING TO RECREATION OPEN SPACE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 30, Consistency and Concurrency Management System; Article II, Consistency Requirements; Section 30-36, to read as follows:

"Sec. 30-36. Determination of consistency.

If a development proposal is found by the ~~town building official~~ planning, zoning and building director to meet all the requirements of the town's land development regulations, including the concurrency requirements, it shall be presumed to be consistent with the comprehensive plan."

Section 2. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 30, Consistency and Concurrency Management System; Article III, Concurrency Requirements; Division 1, Generally; Section 30-73, subparagraph (a), to read as follows:

"Sec. 30-73. Concurrency determinations and the development approval process.

(a) ~~The building official, planning, zoning and building director,~~ upon advice of the public works department and/or other town departments, shall make the final administrative concurrency determination."

Section 3. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 30, Consistency and Concurrency Management System; Article III, Concurrency Requirements; Division 1, Generally; Section 30-76, to read as follows:

"Sec. 30-76. Limitations and expiration of concurrency determinations.

~~Longevity and validity of concurrency determinations are contingent upon building permit issuance, and are subject to the same limitations, as outlined in section 104 of the building code as amended in section 18-242. Concurrency determinations shall expire at the same time as building permits in effect so long as a corresponding development order is valid. If any development order received in conjunction with a concurrency determination expires, is terminated or becomes void, the concurrency determination shall also expire."~~

Section 4. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 30, Consistency and Concurrency Management System; Article III, Concurrency Requirements; Division 2, Adopted Levels of Service and Concurrency Management; Section 30-111 to read as follows:

"Sec. 30-111. Transportation system.

(a) *Adopted level of service.* Peak-hour peak-season level of service (LOS) standards for facilities and segments of roadways are as follows:

Facility or Segment		LOS
(1)	SR A1A	E
(2)	Royal Poinciana Way	D

- (3) ~~Coconut Row/Bradley Place~~
~~from Seabreeze to north of~~
~~Royal Poinciana Way~~ ~~E~~
- (4) ~~Southern Boulevard~~ ~~D~~
- (5) ~~All other roadways~~ ~~D~~ specified in the
town's adopted comprehensive plan.

(b) *Management procedures.*

- (1) Individual single-family or two-family development shall be exempt from these requirements.
- (2) Single-family subdivisions and multifamily or nonresidential uses shall be evaluated by the town building official upon advice of the town engineer for the traffic impact of the development upon arterial and major collector roadways in the town.
- (3) Available roadway capacities shall be determined in the following manner:

- a. ~~In September of e~~Each year the town will evaluate roadway capacity of each of the arterials and major collectors in the town, using the Florida Highway System Plan Level-of-Service and Guidelines Manual issued by the state department of transportation and effective January 1, 1989, as amended. Available roadway capacity will be calculated using state department of transportation traffic counts (or other available traffic counts, as appropriate) for the prior peak season time period.
- b. The impact of any given project on the roadway system will be calculated using the trip generation standards contained in the most recently amended version of Trip Generation, 4th Edition, published by the Institute of Traffic Engineers.
- c. It shall be the responsibility of the applicant to provide all traffic data necessary for a determination of concurrency.

- d. The estimated number of trips to be generated by the proposed project will be subtracted from the available capacity of the roadway and compared to the town's adopted level of service to determine whether or not the available capacity is adequate to support the project.
- e. If no official traffic count is available for the arterial or major collector to be impacted, the town will arrange, at the applicant's expense, to have such counts made.
- f. Calculation of traffic to be generated by the proposed project will assume 100 percent build-out and occupancy.

(c) *Compliance with county performance standards.* All applicants must submit evidence to the town that the proposed project conforms to the requirements of the county traffic performance standards ordinance as it applies within the town."

Section 5. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 30, Consistency and Concurrency Management System; Article III, Concurrency Requirements; Division 2, Adopted Levels of Service and Concurrency Management; Section 30-112, to read as follows:

"Sec. 30-112. Sanitary sewer.

(a) *Adopted level of service.* Sanitary sewer level of service is as follows:

- ~~(1) At least 142 gallons per person per day;~~
- ~~(2) A maximum peak flow of 0.941 mgd through the Lake Worth force main over a rolling three-month average; and~~
- ~~(3) A maximum of five mgd through its northern force main specified in the town's adopted comprehensive plan.~~

(b) *Management procedures.*

- (1) ~~In September of e~~Each year the town will obtain a letter from the City of West Palm Beach certifying that the East Central Regional Wastewater Treatment Plant has the capacity to treat the volume of wastewater projected to be generated within the town during the following fiscal year. The projected volume will be based upon the projected town seasonal population for the applicable period multiplied by the town's adopted per capita level of service.
- (2) The impact of any development requiring site plan approval shall be determined by the town ~~building official~~planning, zoning and building director upon advice of the town engineer.
- a. For residential projects, the impact shall be calculated by multiplying the estimated total population of the project, as provided by the applicant, by the town's adopted per capita level of service.
 - b. For nonresidential projects, the impact shall be provided by the applicant and approved by the town engineer.
 - c. The town engineer shall determine the adequacy of treatment capacity by adding the volume of demand to the demand for any other approved developments and the current level of demand generated within the town at the start of the fiscal year. The cumulative total demand shall be compared with the capacity certified annually to be available to the town by the City of West Palm Beach.
 - d. The town engineer shall determine the adequacy of capacity of flow ~~through the Lake Worth and northern force mains~~ based upon the anticipated demand generated by the project and available capacity of these mains as calculated by the town engineer."

Section 6. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 30, Consistency and Concurrency Management System; Article III, Concurrency Requirements; Division 2, Adopted Levels of Service and Concurrency Management; Section 30-113, to read as follows:

"Sec. 30-113. Solid waste.

(a) *Adopted level of service.* Solid waste level of service is as follows:

- ~~(1) For garbage, 2.55 pounds per person per day; and~~
- ~~(2) For vegetative yard trash, 0.033 cubic yard per person per day specified in the town's adopted comprehensive plan.~~

(b) *Management procedures.*

(1) ~~In September of e~~Each year the town will obtain a letter from the Palm Beach County Solid Waste Authority, certifying that ~~the North County Regional Resource Recovery Facility has~~ they have the capacity to treat the amount of garbage projected to be generated within the town during the following fiscal year. The projected amount will be based upon the projected town seasonal population for the applicable period multiplied by the town's adopted per capital level of service.

(2) The impact of any development requiring site plan approval shall be determined by the town ~~building official planning, zoning and building director~~ upon advice of the town engineer.

a. For residential projects, the impact shall be calculated by multiplying the estimated population of the project, as provided by the applicant, by the town's adopted per capita level of service.

b. For nonresidential projects, the impact shall be provided by the applicant and approved by the town engineer.

(3) The town's comprehensive plan recognizes that the town has the capacity to meet demand for vegetative trash disposal throughout the planning period. ~~In September of e~~Each year, the public works ~~department~~director shall certify that the town maintains adequate capacity to continue to dispose of the amount of vegetative trash associated with the projected population for that year at the adopted per capita level of service. Unless annual determinations identify unexpected capacity problems, it is assumed that there is

adequate capacity to meet any demand for vegetative trash disposal that may be generated by new development."

Section 7. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 30, Consistency and Concurrency Management System; Article III, Concurrency Requirements; Division 2, Adopted Levels of Service and Concurrency Management; Section 30-114, to read as follows:

"Sec. 30-114. Drainage.

(a) *Adopted level of service.* Drainage level of service is as follows:

~~(1) Flooding will not occur during a one-year storm for systems served by pumping stations or during a three-year storm for systems with gravity outfalls, and the minor flooding associated with a five-year storm shall be carried off within 60 minutes.~~

~~(2) Water quality will be protected by the retention of the first two inches of rainfall prior to discharge into the town system, or the post-development runoff does not exceed predevelopment runoff for a three-year one-hour storm, whichever is greater specified in the town's adopted comprehensive plan.~~

(b) *Management procedures.* Drainage plans and calculations shall be submitted by applicants in conjunction with all commercial and residential development and redevelopment, which shall demonstrate, and the town engineer shall confirm that:

- a. The impact on the drainage system will not lower the level of service;
- b. The drainage problem area is scheduled and contracted for improvement in the town's capital improvement program;
- c. The developer will upgrade the drainage system to meet the level of service; or

- d. The first two inches of rainfall will be retained on site prior to discharge into the town system or post-development runoff will not exceed predevelopment runoff, whichever is greater, thereby preventing additional degradation of the system.
- e. The engineered storm water management system designed in accordance with the town's adopted level of service, as contained herein, contains sufficient provisions to retain storm water and prevent soil erosion into the roadway or adjacent properties throughout construction.
- f. Retention walls, when required, will be constructed prior to the stem wall foundation pour, or at a similar point in the construction process."

Section 8. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 30, Consistency and Concurrency Management System; Article III, Concurrency Requirements; Division 2, Adopted Levels of Service and Concurrency Management; Section 30-115, to read as follows:

"Sec. 30-115. Potable water.

(a) *Adopted level of service.* The potable water level of service shall be ~~369 gallons per day~~ as specified in the town's adopted comprehensive plan.

(b) *Management procedures*

(1) ~~In September of e~~ Each year the town will obtain a letter from the City of West Palm Beach certifying that the city has the capacity to provide the town with the volume of potable water projected to be needed during following fiscal year. The projected volume will be based upon the projected town seasonal population for the applicable period multiplied by the town's adopted per capita level of service.

(2) The impact of any development requiring site plan approval shall be determined by the town ~~building official~~ planning, zoning and building director upon advice of the town engineer.

- a. For residential projects, the impact shall be calculated by multiplying the estimated population of the project, as provided by the applicant, by the town's adopted per capita level of service.
- b. For nonresidential projects, the impact shall be provided by the applicant and approved by the town engineer.
- c. The town engineer shall determine the adequacy of the existing plant capacity by adding the volume of demand to the demand for any other approved developments and the current level of demand generated within the town at the start of the fiscal year. The cumulative total demand shall be compared with the capacity certified to be available to the town by the City of West Palm Beach."

Section 9. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 30, Consistency and Concurrency Management System; Article III, Concurrency Requirements; Division 2, Adopted Levels of Service and Concurrency Management; Section 30-116, to read as follows:

"Sec. 30-116. Recreation/open space.

(a) *Adopted level of service.* The recreation/open space level of service shall be ~~ten acres per 1,000 population~~ as specified in the town's adopted comprehensive plan.

(b) *Management procedures.*

- (1) The town's comprehensive plan recognizes that the present inventory of recreational facilities are adequate to maintain the adopted level of service for a resident population of 15,000 and a peak seasonal population of 30,000.
- (2) Until such time as the annual estimates of the town's resident population, prepared by the Bureau of Economic and Business Research, exceed 15,000 indicative of a peak seasonal population of 30,000, it is assumed that the town has adequate recreational facilities to maintain its adopted

level of service, and that all new development in the town is in compliance with concurrency requirements with respect to recreational facilities."

Section 10. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 11. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 12. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 13. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of
the Town of Palm Beach on first reading this 22nd day of
June, 2010, and for second and final reading on this _____
day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

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TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 18-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 42, Environment; Article V, Noise; Section 42-199, Hours for Construction Work, So as to Modify the Definition of Construction Work by Deleting the Word "Major" and the Reference to the \$10,000 Permit Valuation; Amending Section 42-230, Lawn Maintenance Equipment Noise, by Deleting the Reference to "Major" Construction; and Further Amending Chapter 42 to Include a New Article VIII Relating to Abandoned Real Property; Providing for Purpose and Intent; Providing for Definitions; Providing for Applicability; Providing for Registration of Abandoned Real Property; Providing for Maintenance Requirements; Providing for Security Requirements; Providing for Immunity of Enforcement Officer; Providing Additional Authority; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Ordinance No. 18-10

ORDINANCE NO. 18-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 42, ENVIRONMENT; ARTICLE V, NOISE; SECTION 42-199, HOURS FOR CONSTRUCTION WORK, SO AS TO MODIFY THE DEFINITION OF CONSTRUCTION WORK BY DELETING THE WORD "MAJOR" AND THE REFERENCE TO THE \$10,000 PERMIT VALUATION; AMENDING SECTION 42-230, LAWN MAINTENANCE EQUIPMENT NOISE, BY DELETING THE REFERENCE TO "MAJOR" CONSTRUCTION; AND FURTHER AMENDING CHAPTER 42 TO INCLUDE A NEW ARTICLE VIII RELATING TO ABANDONED REAL PROPERTY; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR APPLICABILITY; PROVIDING FOR REGISTRATION OF ABANDONED REAL PROPERTY; PROVIDING FOR MAINTENANCE REQUIREMENTS; PROVIDING FOR SECURITY REQUIREMENTS; PROVIDING FOR IMMUNITY OF ENFORCEMENT OFFICER; PROVIDING ADDITIONAL AUTHORITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 42, Environment; Article V, Noise; Sections 42-199, Hours for Construction Work, to read as follows:

"Sec. 42-199. Hours for construction work.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

~~Major c~~Construction work means construction work of a physical nature requiring a permit in accordance with the provisions of this code
~~that involves more than \$10,000.00 in permit valuation and/or violates the~~

conditions of section 42-198 and/or violates the conditions of this section, and/or causes excessive noise as defined by section 42-228.

(b) *Limited.* During the months of December, January, February, March and April of each year, construction work or other work resulting in noise tending to disturb the people in the vicinity thereof shall not begin until the hour of 8:00 a.m., and shall cease at the hour of 5:00 p.m., except Saturday, Sunday and legal holidays, when all ~~major~~ construction work is prohibited. In no event shall heavy equipment or other construction-related noise be permitted before 9:00 a.m. At all other times (May through November) such work may commence at 8:00 a.m. and cease at the hour of 6:00 p.m., except Sunday and legal holidays, including the Friday immediately after Thanksgiving, when all ~~major~~ construction work is prohibited. However, the permitted hours for construction work in the C-WA zoning district shall be only 8:00 a.m. until 8:00 p.m. during the months commencing May 1 and ending on October 31, except Sunday and legal holidays, when all ~~major~~ construction work is prohibited.

(c) *Exceptions*

- (1) It shall be within the discretion of the town council when in its opinion the operation of any of the prohibited machinery or appliances mentioned in subsection 42-198(a) shall not be overly offensive to the residents or inhabitants of the town in the vicinity of the equipment's operation to grant an exception to this section.
- (2) The operation of equipment relating to essential services of the town and equipment operating during emergency conditions shall be exempted from subsection (a) of this section.
- (3) At the discretion of the director of planning, zoning and building, or his representative, emergency work for nontown related essential services may be authorized at any time during the year.
- (4) Interior work not resulting in noise tending to disturb people in the vicinity thereof, shall be allowed during the hours of 9:00 a.m. and 5:00 p.m. on Saturdays during the period commencing on December 1 and ending on April 30."

Section 2. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 42, Environment; Article V, Noise; at Section 42-230, Lawn Maintenance Equipment Noise, to read as follows:

"Sec. 42-230. Lawn maintenance equipment noise.

(a) Operation of lawn maintenance equipment shall be limited to the hours outlined for ~~major~~ construction work at section 42-199, including the prohibitions stated therein on Sundays and all legal holidays. Nothing in this section shall preclude the operation of lawn maintenance equipment on Saturdays or the Friday immediately after Thanksgiving. Additionally, nothing in this section shall preclude the operation of lawn maintenance equipment, including leaf blowers, by residents on Saturdays, Sundays or legal holidays, including the Friday immediately after Thanksgiving. Further, lawn maintenance equipment used for golf course maintenance within the town is not restricted during the hours outlined for construction work at section 42-199; however, such equipment shall not be used before 8:00 a.m. or after 5:30 p.m. on any day at locations within 300 feet of residential properties, except in the event of valid emergencies and once per month for purposes of chemical spraying or fertilizing. The sound level meter measurement shall be no greater than ~~69~~⁷⁵ dBA measured 50 feet from the point of operation of the equipment. The sound level meter measurement shall not be applicable to lawn maintenance equipment used on golf courses.

(b) Lawn maintenance equipment includes but is not limited to lawn mowers, edgers, hedge trimmers, yard tractors, leaf blowers, lawn vacuum machines, and monofilament line grass trimmers.

(c) Leaf blowers shall be prohibited from use between the hours of 5:00 p.m. and 9:00 a.m. Additionally, during the period of the year commencing December 1 and ending April 30, leaf blowers may be used on Saturdays only from 9:00 a.m. to 12:00 p.m. Leaf blowers shall not exceed a decibel level of 65 dBA as measured at 50 feet from the point of operation. ~~All persons operating leaf blowers in town shall be required to wear hearing protection. It shall be unlawful to blow yard trash or clippings into the public street."~~

Section 3. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 42, Environment, to include a new Article VIII, titled Abandoned Real Property, to read as follows:

"ARTICLE VIII. ABANDONED REAL PROPERTY

Sec. 42-355. Purpose and Intent.

It is the purpose and intent of the Town to establish a process to address abandoned residential real property located within the Town. It is the Town's further intent to specifically establish an abandoned residential property program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.

Sec. 42-356. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned real property means any property that is vacant and is subject to an uncured notice of default and/or notice of mortgagee's sale by the lender or a pending tax deed sale and/or properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure or sale.

Accessible building means a residential building that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

Enforcement officer means any law enforcement officer, building official, code enforcement officer, fire inspector or building inspector employed within the Town.

Evidence of vacancy means any condition that on its own, or combined with other conditions, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but not be limited to, overgrown and/or dead vegetation, accumulation of abandoned personal items and property, statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacant.

Foreclosure means the process by which a property, placed as security for a real estate loan, is sold at public sale to satisfy the debt if the borrower defaults.

Property management company means a local property manager, property maintenance company or similar entity responsible for the maintenance of abandoned real property.

Residential building means any real property, or portion thereof, situated in the Town, improved by a single-family dwelling or multi-family dwelling of not more than four (4) dwelling units, and shall include the buildings and structures located on such improved real property.

Vacant means any building/structure that is not legally occupied.

Sec. 42-357. Applicability.

This article shall be considered cumulative and not superseding or subject to any other law or provision, but shall rather be an additional remedy available to the Town above and beyond any other state, county and/or code provisions relating to same.

Sec. 42-358. Registration of abandoned real property.

(a) Any mortgagee who holds a mortgage on real property located within the Town that is improved with a residential building shall perform an inspection of the property that is the security for the mortgage upon the issuance of a notice of default and the expiration of any cure period set forth in the mortgage documents. If such property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned and the mortgagee shall, within ten (10) days of the inspection, register the property with the Director of the Planning, Zoning and Building Department, or his or her designee, on forms provided by the Town. A registration is required for each vacant property or dwelling unit within a multi-family dwelling.

(b) If such property is occupied but remains in default, it shall be inspected by the mortgagee or his designee monthly until (1) the mortgagor or other party remedies the default, or (2) it is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned, and the mortgagee shall, within ten (10) days of that inspection, register the property with the Town's Planning and Zoning Administrator, or his or her designee, on forms provided by the Town.

(c) Registration pursuant to this article shall contain the name of the mortgagee, the direct mailing address of the mortgagee, a direct contact name and telephone number of mortgagee, facsimile number and e-mail address and, in the case of a corporation or out-of-area mortgagee,

the local property management company responsible for the security and maintenance of the property.

(d) An annual registration fee in an amount established by the Town Council shall accompany the registration form(s).

(e) This article shall also apply to properties improved with a residential building that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

(f) Properties subject to this article shall remain under the annual registration requirement, security and maintenance standards of this article as long as they remain vacant and for properties not yet subject to a foreclosure sale or a transfer under a deed in lieu of foreclosure, the property owner remains in default.

(g) Any person or corporation that has registered a property under this article must report any change of information contained in the registration within ten (10) days of the change.

Sec. 42-359. Maintenance requirements.

(a) Improved properties subject to this article shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state, or local law, discarded personal items included, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.

(b) Residential buildings shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.

(c) Front, side, and rear yard landscaping shall be maintained in accordance with the Town's standard at the time registration was required. Landscape shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, or decorative rock or bark.

(d) Maintenance shall include, but not be limited to, watering, irrigation, cutting, and mowing of required landscape and removal of all trimmings.

(e) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris. Pools and spas shall comply with the enclosure requirements of this Code and Florida Building Code, as amended from time to time.

(f) Compliance with Section 46-71 of the Fire Prevention and Protection Code shall be met.

(g) Failure of the mortgagee and/or property owner of record to properly maintain the property and residential building may result in a violation of this Code and issuance of a notice of violation/notice of hearing by a Town code enforcement officer. Pursuant to a finding and determination by the Town's code enforcement board, the Town may take the necessary action to ensure compliance with this article.

Sec. 42-360. Security requirements.

(a) Residential buildings subject to this article shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

(b) A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property and/or structure. Broken windows shall be secured by re-glazing or boarding of the window.

(c) If the property is owned by a corporation and/or out of area mortgagee, a local property management company shall be contracted to perform bi-weekly inspections to verify compliance with the requirements of this article, and any other applicable laws.

(d) The property shall be posted with the name and twenty-four (24) hour contact phone number of the local property management company. The posting shall be no less than an eight-inch by ten-inch sign. The posting shall contain the following language:

THIS PROPERTY IS MANAGED BY:
TO REPORT PROBLEMS OR CONCERNS CALL:

The posting shall be placed on the interior of a window facing the street to the front of the property so it is visible, or secured to the exterior of the building/structure facing the street to the front of the property so it is visible or, if no such area exists, on a stake of sufficient size to support the posting in a location as close as possible to the main door entrance of the

property. Exterior postings shall be constructed of, and printed with, weather-resistant materials.

(e) The local property management company shall inspect the property on a bi-weekly basis to ensure that the property is in compliance with this chapter. Upon the request of Town, the local property management company shall provide a copy of the inspection reports to the code enforcement division.

(f) Failure of the mortgagee and/or property owner of record to properly maintain the property may result in a violation of this Code and issuance of a notice of violation/notice of hearing by a Town code enforcement officer. Pursuant to a finding and determination by the Town's code enforcement board, the Town may take the necessary action to ensure compliance with this article.

Sec. 42-361. Immunity of enforcement officer.

Any enforcement officer or any person authorized by an enforcement officer shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon real property while in the discharge of duties imposed by this chapter.

Sec. 42-362. Additional authority.

The Town Manager, or his or her designee, shall have authority to require the mortgagee and/or owner of record of any property affected by this article, to implement additional maintenance and/or security measures as may be reasonably required to help prevent further decline of the property."

Section 4. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 5. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 6. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 7. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 22nd day of June, 2010, and for second and final reading on this _____ day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 19-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 50, Floods; Article II, Flood Damage Prevention; at Section 50-34, Objectives; at Section 50-35, Definitions; at Section 50-66, Designation of Building Official; at Section 50-67, Duties and Responsibilities of the Floodplain Administrator; at Section 50-68, Establishment of Development Permit; at Section 50-69, Variance Procedures; at Section 50-91, General Standards; and at Section 50-93, Standards for Subdivision Proposals; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Ordinance No. 19-10

ORDINANCE NO. 19-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 50, FLOODS; ARTICLE II, FLOOD DAMAGE PREVENTION; AT SECTION 50-34, OBJECTIVES; AT SECTION 50-35, DEFINITIONS; AT SECTION 50-66, DESIGNATION OF BUILDING OFFICIAL; AT SECTION 50-67, DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR; AT SECTION 50-68, ESTABLISHMENT OF DEVELOPMENT PERMIT; AT SECTION 50-69, VARIANCE PROCEDURES; AT SECTION 50-91, GENERAL STANDARDS; AND AT SECTION 50-93, STANDARDS FOR SUBDIVISION PROPOSALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 50, Floods; Article II, Flood Damage Prevention, to read as follows:

CHAPTER 50

FLOODS

"ARTICLE II. FLOOD DAMAGE PREVENTION

DIVISION 1. GENERALLY

Sec. 50-31. Statutory authorization.

The state legislature has in F.S. ch. 166 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the town council does ordain as follows.

Sec. 50-32. Findings of fact.

(a) The flood hazard areas of the town are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are caused by the occupancy in flood hazard areas of uses vulnerable to floods, which are inadequately elevated, flood proofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.

Sec. 50-33. Statement of purpose.

It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (2) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in flood heights, velocities, or erosion;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage or erosion, and;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Sec. 50-34. Objectives.

The objectives of this article are:

- (1) To protect human life, ~~and health,~~ and eliminate or minimize property damage;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and
- (7) To insure that potential home buyers are notified that property is in a flood area.

Sec. 50-35. Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Accessory structure (appurtenant structure) means a structure, which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

Addition (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is considered new construction.

Appeal means a request for a review of the ~~building official's~~ floodplain administrator's interpretation of any provision of this article or a request for a variance.

Area of shallow flooding means a designated AO or VO zone on a community's flood insurance rate map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. This term is synonymous with the phrase "special flood hazard area."

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year. (also called the "100-year flood" and the "regulatory flood"). Base flood is the term used throughout this article.

Base Flood Elevation means the water surface elevation associated with the base flood.

Basement means that portion of a building having its floor subgrade (below-ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

Building means any structure built for support, shelter, or enclosure for any occupancy or storage.

Coastal high hazard area means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. These areas are designated on the Flood Insurance Rate Map and may change from time to time as determined by the Federal Emergency Management Agency.

Development means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment.

Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers) or shear walls.

Existing construction means any structure for which the "start of construction" commenced before (a specific date, i.e., the effective date of the first floodplain management code or ordinance (Sept. 13, 1977) based upon specific technical base flood elevation data which establishes the area of special flood hazard, i.e. FIRM).

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management regulations adopted by a community (Sept. 13, 1977).

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding means:

(a) a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters;
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

(b) The collapse or subsidence of land along a shore of a lake or other body of water as the result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a) (1) of this definition.

Flood hazard boundary map (FHBM) means an official map of the town issued by the Federal Emergency Management Agency (FEMA), where the boundaries of the areas of special flood hazard have been defined as zone A.

Flood insurance rate map (FIRM) means an official map of the town on which the Federal Emergency Management Agency has delineated the areas of special flood hazard and/or risk premium zones applicable to the town.

Flood insurance study is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the flood boundary floodway map and the water surface elevation of the base flood.

Floodplain means any land area susceptible to flooding.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain Administrator is the individual appointed to administer and enforce the floodplain management regulations of the town, which person shall be the building official or the building official's designee.

Floodplain management regulations means this section and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance). This term includes Federal, State, or local regulations in any combination thereof which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved property, water and sanitary facilities, structures, and their contents.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Freeboard means the additional height, usually expressed as a factor of safety in feet, above a flood level for purposes of floodplain management. Freeboard tends to compensate for many unknown factors, such as wave action, bridge openings, and hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected frequency flood and floodway conditions.

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hardship as related to variances from this chapter means the exceptional hardship associated with the land that would result from a failure to grant the requested variance. The Town requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to construction, next to the proposed foundation walls of a building.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Lowest adjacent grade means the lowest elevation, after the completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the provisions of this Code.

Mangrove stand means an assemblage of mangrove trees which is mostly low trees noted for a copious development of interlacing adventitious roots above the ground and which contain one or more of the following species: black mangrove (*Avicennia nitida*); red mangrove (*Rhizophora mangle*); white mangrove (*Longuncularia racemosa*); and buttonwood (*Conocarpus erecta*).

Manufactured home means a building transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Market Value means the building value, which is the property value excluding the land value and that of the detached accessory structures and other improvements on site (as agreed between a willing buyer and seller) as established by what the local real estate market will bear. Market value can be established by an independent certified appraisal (other than a limited or curbside appraisal, or one based on income approach), actual cash value (replacement cost depreciated for age and quality of construction of building), or adjusted tax-assessed values.

Mean sea level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this article, the term is synonymous with national geodetic vertical datum (NGVD).

National geodetic vertical datum (NGVD) as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

National geodetic vertical datum (NGVD) as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means any structure for which the "start of construction" commenced after a specific date, i.e. the effective date of the first floodplain management code or ordinance based upon specific technical base flood elevation data which establishes the area of special flood hazard, i.e. FIRM. The term also includes any subsequent improvements to such structure.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the first floodplain management regulations adopted by a community.

North American Vertical Datum (NAVD) of 1988 means a vertical control used as a reference for establishing varying elevations within the floodplain.

Primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

Recreational vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Reference feature is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal highwater line or the seaward line of permanent vegetation if a highwater line cannot be identified.

Sand dunes means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

60-year setback means a distance equal to 60 times the average annual long term recession rate at a site, measured from the reference feature.

Start of construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of

excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any combination of repairs, reconstruction, alteration, or improvements to a building, taking place during a one-year period in which the cumulative cost equals or exceeds 50 percent of the market value of the structure prior to the improvement. The market value of the building should be:

- (1) The appraised value of the structure prior to the start of the initial repair or improvement; or
- (2) In the case of damage, the value of the structure prior to the damage occurring.

This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include any project for improvement of a building required to comply with existing health, sanitary, or safety code specifications which have been pre-identified by the code enforcement official and which are solely necessary to assure safe living conditions.

Substantially improved existing manufactured home parks or subdivisions is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

30-year setback means a distance equal to 30 times the average annual long term recession rate at a site, measured from the reference feature.

Variance is a grant of relief from the requirements of this article which permits construction in a manner otherwise prohibited by this article.

Violation means the failure of a structure or other development to be fully compliant with the requirements of this article. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this article is presumed to be in violation until such time as that documentation is provided.

Zone of imminent collapse means an area subject to erosion adjacent to the shoreline of an ocean, bay or lake and within a distance equal to ten feet plus five times the average annual long term erosion rate for the site, measure from the reference feature.

Sec. 50-36. Lands to which this article applies.

This article shall apply to all areas of special flood hazard within the jurisdiction of the town.

Sec. 50-37. Interpretation.

In the interpretation and application of this article all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

Sec. 50-38. Abrogation and greater restrictions.

This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Sec. 50-39. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger flood can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the town or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

Sec. 50-40. Compliance.

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations. No parking structure, other development, or any part thereof shall occur below grade unless a recorded hold harmless agreement satisfactory to the town is provided.

Sec. 50-41. Basis for establishing areas of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency (FEMA) in the flood insurance study, dated May 15, 1978, and accompanying flood insurance rate maps (FIRMs) and flood boundary and floodway maps (FBFMs), dated May 15, 1978, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this article. This FIS and attendant mapping is the minimum area of applicability of this article and may be supplemented by studies for other areas which allow implementation of this article and which are recommended to the town by the floodplain administrator. The study, FIRMs and FBFMs are on file at Town Hall, 360 South County Road, Palm Beach, Florida.

The areas of special flood hazard identified by the Federal Emergency Management Agency in its flood insurance rate map, dated September 30, 1982, with accompanying maps and other supporting data, and any revision thereto, are adopted by ordinance.

Sec. 50-42. Penalties for violation.

Any person who violates this article or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 or a term of imprisonment not more than 60 days, or both such fine and imprisonment, at the discretion of the court and, in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the town from taking any other lawful actions as are necessary to prevent or remedy any violation, including legal or equitable remedies or referral to the town's code enforcement board.

DIVISION 2. ADMINISTRATION

Sec. 50-66. Designation of building official. or his designee

The building official or his designee is hereby appointed as the floodplain administrator to administer and implement the provisions of this article.

Sec. 50-67. Duties and responsibilities of the floodplain administrator.

Duties of the ~~building official~~ floodplain administrator shall include, but shall not be limited to:

- (1) Review all development permits to assure that the permit requirements of this article have been satisfied.
- (2) Advise permittee that additional federal or state permits may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit.
- (3) Notify adjacent communities and the state department of environmental protection prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Verify and record the actual elevation, in relation to mean sea level, of the lowest floor (including basement) of all new or substantially improved structures, in accordance with section 50-92.
- (6) Verify and record the actual elevation, in relation to mean sea level, to which the new or substantially improved structures have been flood-proofed, in accordance with section 50-68(b)(2) and section 50-92(2).
- (7) In coastal high hazard areas, certification shall be obtained from a registered professional engineer or architect that the structure is designed and securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.
- (8) In coastal high hazard areas, the ~~building official~~ floodplain administrator shall review plans for adequacy of breakaway walls in accordance with section 50-92(6)f.
- (9) When flood-proofing is utilized for a structure, the ~~building official~~ floodplain administrator shall obtain certification from a registered professional engineer or architect, in accordance with section 50-92(2) and section 50-95(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the ~~building official~~ floodplain administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (11) When base flood elevation data or floodway data have not been provided in accordance with section 50-41, then the ~~building~~

~~official floodplain administrator~~ shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of division 3.

- (12) All records pertaining to the provisions of this article shall be maintained in the office of the ~~building official~~ floodplain administrator and shall be open for public inspection.

Sec. 50-68. Establishment of development permit.

(a) A development permit shall be required in conformance with the provision of this article prior to the commencement of any development activities. A fee for filing a development permit is hereby authorized and shall be adopted by a resolution of the Town Council and may be amended from time to time by adoption of a resolution of the Town Council.

(b) Application for a development permit shall be made to the building official on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(1) *Application stage:*

- a. Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all structures;
- b. Elevation in relation to mean sea level to which any non-residential structure will be flood proofed;
- c. Certificate from a registered professional engineer or architect that any non- residential flood-proofed structure will meet the flood-proofing criteria in section 50-92(2) and Section 50-95(2).
- d. Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development; and

- (2) *Construction stage:* Provide a regulatory floor elevation or flood-proofing certification after the lowest floor is completed. Upon placement of the lowest floor, or instances where the structure is subject to the regulations applicable to coastal high hazard areas, after placement of the horizontal structural members of the lowest floor, or for non-residential structures, flood-proofing, whichever is applicable, it shall be the duty of the permit holder to submit to the ~~building official~~ floodplain administrator a certification of the elevation of the lowest floor, or flood-proofed elevation, or the elevation of the lowest portion of the horizontal structural members of the lowest floor,

whichever is applicable, as built in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk.

The ~~building official~~ floodplain administrator shall review the referenced floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

Sec. 50-69. Variance procedures.

(a) The town council as established by the town shall hear and decide appeals and requests for variances from the requirements of this article. The fee for filing for a variance or an appeal shall be adopted by resolution.

(b) The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the ~~building official~~ floodplain administrator in the enforcement or administration of this article.

(c) Any person aggrieved by the decision of the town council may appeal such decision to the circuit court as provided by law.

(d) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continue designation as an "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.

(e) In passing upon such applications, the town council shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity of a facility to a waterfront location, in the case of a functionally dependent use;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to a comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(f) Upon consideration of the factors listed above, and the purposes of this article, the town council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

(g) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(h) Conditions for variance.

(1) Variances shall only be issued when there is:

- a. A showing of good and sufficient cause;
- b. A determination that failure to grant the variance would result in exceptional hardship; and
- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of an historic

structure, a determination that the variance is the minimum necessary so as not to destroy the, historic character and design of the building;

- (3) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the building is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (4) The ~~building official~~ floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

Secs. 50-70--50-90. Reserved.

DIVISION 3. PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 50-91. General standards.

In all areas of special flood hazard the following provisions are required:

- (1) New construction and substantial improvements of existing structures shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
- (3) New construction and substantial improvements of existing structures shall be constructed with materials and utility equipment resistant to flood damage.
- (4) New construction or substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage.
- (5) All electrical, heating, and air conditioning equipment, ventilation, plumbing, and other service facilities, including ductwork, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of waters into the systems and discharges from the systems into flood waters.
- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (9) Any alteration, repair, reconstruction or improvements to a structure which is in compliance with the provisions of this article, shall meet the requirements of "new construction" as contained in this article.
- (10) Any alteration, repair, reconstruction or improvement to a structure which is not compliant with the provisions of this article shall be undertaken only if the nonconformity is not furthered, extended or replaced.

Sec. 50-92. Specific standards.

In all areas of special flood hazard where base flood elevation data have been provided, as set forth in section 50-41 or section 50-67(11), the following provisions are required:

- (1) *Residential construction.* New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor, including basement elevated no lower than six inches above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of section 50-92(3).
- (2) *Non-residential construction.* New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall have the lowest floor, including basement, elevated no lower than six inches above the base flood elevation. Structures located in A-zones, together with attendant utility and sanitary facilities, may be flood-proofed in lieu of elevation provided that all areas of the structure below the base flood elevation are designed to be watertight, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and in section 50-67(9).
- (3) *Elevated buildings.* New construction or substantial improvements of existing elevated structures that include any fully enclosed area located below the base flood elevation and

formed by foundation and other exterior walls shall be designed so as to be a flood resistant or unfinished enclosure and designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

- a. Designs for complying with this requirement must either be certified by a professional engineer or, architect or meet the following minimum criteria:
 - 1. Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - 2. The bottom of all openings shall be no higher than one foot above grade; and
 - 3. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both direction.
- b. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator); and
- c. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

(4) *Standards for manufactured homes and recreational vehicles.*

- a. All manufactured homes placed or substantially improved, on individual lots or parcels, in expansions to existing manufactured home parks or subdivisions, or in new or substantially improved manufactured home parks or subdivisions, must have the lowest floor including basement, elevated no lower than six inches above the base flood elevation.
- b. All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:
 - 1. The lowest floor of the manufactured home is elevated no lower than six inches above the level of the base flood elevation; or
 - 2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength and no less than 36 inches in height above grade.

3. The manufactured home must be securely anchored to the adequately anchored foundation system to resist flotation, collapse and lateral movement.
 4. On a site in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, any manufactured home placed or substantially improved on that site must meet the standards of section 50-92(4)b.1. and 3. above.
- c. All recreational vehicles placed on sites must either:
1. Be fully licensed and ready for highway use; or
 2. The recreational vehicle must meet all the requirements for "new construction (including anchoring and elevation requirements of section 50-92(4)a. and (4)b.3 above.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached structures.

(5) *Floodways.* Located within areas of special flood hazard established in section 50-41, are areas designated as floodways. A floodway may be an extremely hazardous area due to velocity flood waters, debris and erosion potential. In addition, the area must *remain* free of encroachment in order to discharge the base flood without increased flood heights. Therefore, the following provisions shall apply:

- a. Prohibit encroachments, including earthen fill, new construction, substantial improvements and other development within the regulatory floodway unless certification with supporting technical data is provided by a registered professional engineer demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge;
- b. Only if section 50-92(5)a. is satisfied, then all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of division 3.
- c. Prohibit the placement of manufactured homes (mobile homes) except in an existing manufactured home (mobile home) park or subdivision. A replacement manufactured home may be placed on a lot in an

existing manufactured home park or subdivision provided the anchoring standards of section 50-91(2), and the elevation standards of section 50-92(1) and the encroachment standards of section 50-92(5)a. are met.

(6) *Coastal high hazard areas (V zones).* Located within the areas of special flood hazard established in section 50-41, are areas designated as coastal high hazard areas. These areas have special flood hazards associated with wave wash, therefore, the following provisions shall apply:

- a. All new construction and substantial improvements of existing structures shall be located landward of the reach of the mean high tide;
- b. All new construction and substantial improvements of existing structures shall be elevated so that the bottom of the lowest supporting horizontal member (excluding pilings or columns) is located no lower than the base flood elevation level. All space below the lowest supporting member shall remain free of obstruction. Open lattice work or decorative screening may be permitted for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with section 50-92(6)f. below;
- c. All new construction and substantial improvements of existing structures shall be securely anchored on pilings or columns;
- d. All pile and column foundations and structures attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. Water loading values shall equal or exceed the base flood. Wind loading values shall be in accordance with the building code, latest edition.
- e. A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in section 50-92(6)b.d. herein.
- f. All space below the lowest horizontal supporting member must remain free of obstruction. Open lattice work or decorative screening may be permitted for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action without causing structural damage to the supporting foundation or elevated portion of the structure. The following design specifications are allowed:
 1. No solid walls shall be allowed; and

2. Material shall consist of lattice or mesh screening only.
 3. If aesthetic lattice work or screening is utilized, any enclosed space shall not be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises.
- g. Prior to construction, plans for any structures having lattice work or decorative screening must be submitted to the ~~building official~~ floodplain administrator for approval;
 - h. Any alteration, repair, reconstruction or improvement to a structure shall not enclose the space below the lowest floor except with lattice work or decorative screening, as provided for in section 50-92(6)f. and g. above;
 - i. There shall be no fill used as structural support. Non-compacted fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge, (thereby rendering the building free of obstruction) prior to generating excessive loading forces, ramping effects, or wave deflection. The ~~building official~~ floodplain administrator shall approve design plans for landscaping/aesthetic fill after the applicant has provided an analysis by an engineer, architect, and/or soil scientist, which demonstrates that the following factors have been fully considered:
 1. Particle composition of fill material does not have a tendency for excessive natural compaction;
 2. Volume and distribution of fill will not cause wave defection to adjacent properties; and
 3. Slope of fill will not cause wave run-up or ramping.
 - j. There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage;
 - k. Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of section 50-92(6)e.,

and the elevation standards of section 50-92(6)b. are met.

Sec. 50-93. Standards for subdivision proposals.

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
- (d) Base flood elevation data shall be provided for subdivision proposals and other proposed development, including manufactured home parks and subdivisions, greater than 50 lots or five acres, whichever is less.

Sec. 50-94. Standards for streams without established base flood elevation and/or floodways.

Located within the areas of special flood hazard established in section 50-41, where streams exist but where no base flood data has been provided or where base flood data has been provided without floodways, the following provisions apply:

- (1) When base flood elevation data or floodway data have not been provided in accordance with section 50-41, then the ~~building official~~ floodplain administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer the provisions of division 3. If data are not available from outside sources, then the following provisions (2 and 3) shall apply:
- (2) No encroachments, including fill material or structures, shall be located within a distance of the stream bank equal to one times the width of the stream at the top of the bank or 20 feet each side from the top of the bank, whichever is greater, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (3) In special flood hazard areas without base flood elevation data, new construction and substantial improvements of existing structures shall have the lowest floor of the lowest enclosed area (including basement) elevated no less than three feet above the highest adjacent grade at the building site.

Sec. 50-95. Standards for areas of shallow flooding (AO zones).

Located within the areas of special flood hazard established in section 50-41, are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet, where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to the flood depth number specified on the flood insurance rate map, above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade.
- (2) All new construction and substantial improvements of non-residential structures shall:
 - a. Have the lowest floor, including basement, elevated to the flood depth number specified on the flood insurance rate map above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade; or
 - b. Together with attendant utility and sanitary facilities be completely flood proofed to the specified flood level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as stated in section 50-92(2)."

Section 2. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 3. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 4. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 5. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 22nd day of June, 2010, and for second and final reading on this _____ day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

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TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 20-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 62, Marine Structures; Article III, Bulkheads and Pierheads on Lake Worth; at Section 62-77 to Require Maintenance and Certification of All Bulkheads and Seawalls; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Ordinance No. 20-10

ORDINANCE NO. 20-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 62, MARINE STRUCTURES; ARTICLE III, BULKHEADS AND PIERHEADS ON LAKE WORTH; AT SECTION 62-77 TO REQUIRE MAINTENANCE AND CERTIFICATION OF ALL BULKHEADS AND SEAWALLS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 62, Marine Structures; Article III, Bulkheads and Pierheads on Lake Worth, at Section 62-77 to read as follows:

"Sec. 62-77. Maintenance and certification of all bulkheads and seawalls.

All bulkheads and seawalls within the town shall be maintained in good condition to provide for the protection of upland and foreshore properties, limit wave overtopping, and be impervious condition without cracks or holes that would allow for the passage of sand. Failure to maintain a bulkhead or seawall in an impervious-good condition shall be a violation of this ordinance and subject to action before the town's code enforcement board. When cited by the town's code enforcement board a condition survey of any seawall or bulkhead prepared by a professional engineer licensed to practice in the State of Florida along with plans required to implement the engineer's recommendation to bring the structure into compliance shall be submitted to the town. Upon project completion, certification by a professional engineer licensed to practice in the State of Florida must be submitted to the town. Recertification of the seawall by a professional engineer licensed to practice in the State of Florida shall be required every fifteen years from the date of the original certification.

A condition survey of any seawall or bulkhead prepared by a professional engineer licensed to practice in the State of Florida along with plans required to implement the engineer's recommendation for repair or

replacement shall be submitted to the town when a new building is proposed or when renovations exceeding fifty percent of the value of the primary structure are proposed. Upon project completion certification by a professional engineer licensed to practice in the State of Florida must be submitted to the town. Recertification of the seawall by a professional engineer licensed to practice in the State of Florida shall be required very fifteen years from the date of the original certification."

Section 2. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 3. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 4. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 5. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach on first reading this 22nd day of June, 2010, and for second and final reading on this _____ day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 21-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 74, Parks and Recreation; Article II, Beaches and Aquatic Activities; Section 74-162, Regulation of Fishing; and Amending Article III, Boats and Boating, by Deleting Sections 74-263 and 74-267 in Their Entirety; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

Thomas G. Bradford, Deputy Town Manager

Supporting Documents

- Ordinance No. 21-10

ORDINANCE NO. 21-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 74, PARKS AND RECREATION; ARTICLE II, BEACHES AND AQUATIC ACTIVITIES; SECTION 74-162, REGULATION OF FISHING; AND AMENDING ARTICLE III, BOATS AND BOATING, BY DELETING SECTIONS 74-263 AND 74-267 IN THEIR ENTIRETY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 74, Parks and Recreation; Article II, Beaches and Aquatic Activities; Division 2 Fishing, Section 74-162 to read as follows:

"Sec. 74-162. Regulation of fishing ~~from public right-of-way adjacent to Lake Worth.~~

(a) It shall be unlawful for any person to fish in the waters of Lake Worth from any public property or right-of-way adjacent to Lake Worth between sunset and sunrise the following day.

(b) Any person found to be in violation of this section shall be subject to penalties provided pursuant to the provisions of section 1-14.

(c) It shall be unlawful for any person to fish in the waters fifty (50) yards in either direction north or south of any public beach operated and patrolled and guarded by lifeguards of the town."

Section 2. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 74, Parks and Recreation; Article III, Boats and Boating, by deleting Sections 74-263 and 74-267 in their entirety.

~~**Sec. 74-263. Reduce speed when passing moored craft.**~~

~~In passing private or public docks at which watercraft have been moored, all watercraft shall, in passing such dock, reduce the speed of such watercraft to a point that the wake from the craft will not damage any watercraft tied or moored to such private or public dock.~~

* * * *

~~**Sec. 74-267. Reckless operation.**~~

~~It shall be unlawful to operate any motorboat or other watercraft or vessel over any of the navigable waters in the town in a reckless or negligent manner, or at such speed as to endanger persons or property.~~

Section 3. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 4. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 5. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 6. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of
the Town of Palm Beach on first reading this 22nd day of
June, 2010, and for second and final reading on this _____
day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

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TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Ordinances - First Reading

Agenda Title

ORDINANCE NO. 22-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 66 Natural Resource Protection; Article IV Vegetation; Division 4 Design Requirements; Section 66-286 Water Conserving Landscape Design; At Subsection (d) Irrigation Sectors, to Include a New Subsection (3) Providing for Regulations Regarding "Smart Irrigation Systems"; Providing A New Subsection 4 Relating to Applicability; Providing a New Subsection 5 Relating to Violations and Penalties; Providing For Severability; Providing For Repeal of Ordinances in Conflict; Providing for Codification; Providing An Effective Date.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated June 11, 2010, from John S. Page, Planning, Zoning and Building Director
- Ordinance No. 22-10

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Planning, Zoning & Building Director

Re: Smart Irrigation Systems Ordinance

Date: June 11, 2010

STAFF RECOMMENDATION

It is recommended that the Town Council approve the adoption of Ordinance No. 22-10, which requires that all future irrigation systems installed in Palm Beach to incorporate smart irrigation technology (SIRT) that inhibits or interrupts operation of the system during periods of sufficient moisture, thus saving water resources.

BOARD OR COMMISSION RECOMMENDATION

The Town Water Committee has studied the issue of smart irrigation systems. The Committee concluded that smart irrigation systems that disperse water as needed, as opposed to traditional sprinklers that simply cycle on and off regardless of weather conditions, have the potential to dramatically reduce water usage in Palm Beach. Staff has been directed to draft a smart irrigation ordinance for consideration by the full Town Council.

The Palm Beach Civic Association has been a strong proponent of smart irrigation technology. The Civic Association has encouraged the installation of pilot systems in Town. Early results (over 50 installations) are extremely positive and the Civic Association supports the adoption of this ordinance as an important step forward. The Association also urges that the Water Committee and Town Council consider requiring all existing irrigation systems to be retrofitted with SIRT, which the Water Committee intends to do later this summer as part of a broader water conservation program.

GENERAL INFORMATION

As reported in the Palm Beach Civic Association Report, Smart Irrigation Studies and Pilot Tests, Palm Beach households use a median of 1,343 gallons per day compared to the rest of Palm Beach County where water usage averages 515 gallons per day. Most of that excess water usage goes toward irrigating lush landscaping throughout the Island. By implementing smart irrigation, which uses controllers and other techniques to conserve water, the potential savings could be 40% - 60%, or 2.4 - 3.6 million gallons per day town wide.

Dramatic water consumption decreases would not only conserve limited natural resources, but also would save money for owners that utilize such systems, and may negate the need for future, costly overhauls/upgrades of the overall water supply system operated by the City of West Palm Beach.

The State of Florida has also acted to promote smart irrigation. New legislation, SB 494, adopted last year and effective beginning July 1, 2009, authorizes local governments to impose smart irrigation requirements. The legislation provides a long listing of additional amendments including the definition of terms, requiring irrigation contractors to test for the correct operation of systems devices and switches, penalties, etc. The attached Ordinance has been drafted utilizing language as contained within the State's Model Code.

FUNDING/FISCAL IMPACT

Per information obtained from the Palm Beach Civic Association the initial cost of installing and programming smart controllers is from \$200 - \$700 for residential models and up to \$3,000 for commercial models. Some models have a subscription fee to wirelessly download weather data into the controller. That fee ranges from \$48/year to \$300/year. The up-front cost of purchase, installation and programming is relatively modest, and should be dwarfed by water savings in a short time-frame. Such costs will be borne, of course, by private owners as improvements are made on their private properties. There is no direct expense to the Town.

STRATEGIC PLAN

Adoption of a Smart Irrigation Ordinance is in keeping with language found in the Executive Summary of the Town's Strategic Plan that reads... "Opportunities to reduce potable water demand through alternative irrigation alternatives and conservation programs should also be evaluated." There is also a nexus to the section of the Strategic Plan titled Water Supply Actions that stipulates... "The Town will also continue to explore alternative sources of irrigation water."

COMPREHENSIVE PLAN

The Town of Palm Beach Comprehensive Plan, specifically the Infrastructure Element, also addresses water conservation. Several references exist that promote water conserving landscape design and the use of water sensing devices on new automatic irrigation systems. The proposed Ordinance complies with the Comprehensive Plan.

SPECIAL CONSIDERATIONS

Review of this relatively new State legislation (SB 494), inquiries to the South Florida Water Management District (SFWMD), and consultation with the Town Manager and the Town Attorney result in these findings:

- The SFWMD knows of no other municipality in the County that has adopted a smart irrigation systems ordinance.

- The Ordinance now pending before the Council should be considered as a “first step” toward adopting and implementing a vigorous smart irrigation program throughout Palm Beach. Ongoing and future discussions with the City of West Palm Beach and the Town’s Water Committee could likely lead to a “second step” during the year ahead whereby additional Ordinance requirements will be enacted (see next bullet for further explanation).
- A variance from specified days-of-the-week watering restrictions is now provided for in State Code for certain smart irrigation systems. The attached model ordinance does not include any variance provisions, yet incorporating a variance procedure may be included as part of a “second step” toward implementing more smart irrigation provisions. The variance granting authority is the SFWMD. If or when a variance procedure is included, a complex set of local monitoring and strict enforcement actions become necessary. A “monitoring entity” must be established, which can be a local government, homeowners association, condominium association, cooperative or public or private utility. It should be noted that monitoring entities assume all responsibility for adherence to all provisions as now contained in SB 464: maintaining an electronic listing all active users of soil moisture sensor control systems within its jurisdiction; assuring annual certifications of individual systems; prosecuting violators; posting a notice at each parcel that has installed a compliant soil moisture sensor control system in plain view from the nearest roadway reading “Irrigating with Smart Irrigation Controller”; etc.
- Persons that install smart irrigation systems are not automatically exempted from days-of-the-week watering restrictions unless a variance has been issued. To date, the SFWMD has not issued any variances.
- Dissatisfaction with certain provision of the State statute have been expressed by industry representatives throughout Florida. The SFWMD acknowledges that the State could act to revise the law within the next 18 months.

TOWN ATTORNEY REVIEW

The attached ordinance was approved by Town Attorney Randolph for legal form and sufficiency.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

The attached ordinance has also been reviewed by the Lead Water Conservation Officer at the South Florida Water Management District and has received favorable review.

ORDINANCE NO. 22-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 66 NATURAL RESOURCE PROTECTION; ARTICLE IV VEGETATION; DIVISION 4 DESIGN REQUIREMENTS; SECTION 66-286 WATER CONSERVING LANDSCAPE DESIGN; AT SUBSECTION (d) IRRIGATION SECTORS, TO INCLUDE A NEW SUBSECTION (3) PROVIDING FOR REGULATIONS REGARDING "SMART IRRIGATION SYSTEMS"; PROVIDING A NEW SUBSECTION 4 RELATING TO APPLICABILITY; PROVIDING A NEW SUBSECTION 5 RELATING TO VIOLATIONS AND PENALTIES PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the Town of Palm Beach is hereby amended at Chapter 66, Natural Resource Protection; Article IV, Vegetation; Division 4, Design Requirements; Section 66-286, Water Conserving Landscape Design, to read as follows:

"Sec. 66-286. Water conserving landscape design.

(a) *Required.* The requirements for water conserving landscape designs are included in subsections (b)--(h) of this section.

(b) *Minimum landscaped open space.* Minimum landscaped open space shall be required as stipulated by the lot, yard and bulk regulations in the zoning code, chapter 134 of this Code.

(c) *Required vegetation.* The following vegetation is required:

(1) *Lawns.*

- a. If very drought tolerant grass, as defined by the South Florida Water Management District "Xeriscape Guide II" (6/88) as amended, is used, not more than 70

percent of the required landscaped open space shall be planted in lawn grass.

- b. If moderate drought tolerant grass, as defined by the South Florida Water Management District "Xeriscape Guide II" (6/88) as amended, is used, not more than 60 percent of the required landscaped open space shall be planted in lawn grass.

(2) *Nonturfed areas.*

- a. Nonturf areas shall be planted in mixes of trees, shrubs and ground covers.
- b. Plants shall be grouped according to their water needs, and irrigated accordingly. At least 33 percent of the groupings shall be characterized by highly or moderately drought tolerant vegetation, as defined by the "Xeriscape Plant Guide II" (6/88) as amended, produced by the South Florida Water Management District.

(d) *Irrigation sectors.* Irrigation shall be designed in sectors that reflect necessary water regimes for specific groupings of vegetation.

(1) *Sprinkler sectors.*

- a. Sprinkler heads irrigating lawns or other high water requirement landscape areas shall be circuited so that they are on a separate sector from those irrigating trees, shrubbery or other reduced water requirement areas.
- b. In order to prevent overthrow, low trajectory heads or low volume water distributing devices shall be used when irrigating confined areas.
- c. No more than ten percent of spray radius shall be allowed onto impervious areas.

(2) *Control systems.*

- a. Automatically controlled irrigation systems shall be operated by an irrigation controller that is capable of

watering high water requirement areas on a different schedule from low water requirement areas.

(3) Smart irrigation systems.

~~a.~~ Rainfall or moisture sensing devices shall be used to avoid operation of the system during periods of increased rainfall. Any automatic irrigation system not equipped with rainfall or moisture sensing devices designed to avoid operation of the system during periods of increased rainfall shall come into compliance on or before December 31, 2005. ~~In order to encourage prompt compliance hereunder, no permit fee shall be charged for applications for retrofitting of a rainfall or moisture sensing device on any existing irrigation system received prior to January 1, 2004.~~ Rainfall or moisture sensing devices include soil moisture sensors that assess the available plant soil moisture in order to minimize the unnecessary use of water and/or rain sensors placed in the irrigation system designed to restrict operation of a sprinkler controller when precipitation has reached a pre-set quantity.

b. 1. Evapotranspiration-based (ET) controllers are required on any automatic landscape irrigation system installed subsequent to July 15, 2010. In addition said systems are required on automatic irrigation systems when any principal structure on a property in the Town is substantially altered. Substantial alteration occurs when 50% or more of the total sum of floor and roof areas of the principal structure is proposed to be structurally altered within a 12 month period, or in the case of any structural alteration to a principal structure, when the fair market value of the structural addition equals or exceeds 50% of the original structure's fair market value prior to the alteration.

2. "Evapotranspiration-based (ET) controller" means a controller that calculates soil moisture from known weather and related inputs. An ET-based controller:

Receives and monitors weather data or on-site environmental conditions including, but not limited to, solar radiation, wind speed, temperature, relative humidity, rainfall, and soil moisture; and

Calculates or determines the amount of moisture input to and moisture lost from the soil and plants; and

Automatically creates or adjusts the irrigation schedule to apply only the amount of water that is necessary to maintain adequate soil moisture.

(4) *Applicability.*

This section shall apply to all licensed contractors within the jurisdiction of the Town of Palm Beach who install or perform work on automatic irrigation systems and to any person or entity which purchases or installs an automatic landscape irrigation system on their property.

a. Any person who purchases or installs an automatic landscape irrigation system on their property must properly install, maintain, and operate the system in accordance with manufacturer specifications, technology that inhibits or interrupts operation of the system during periods of sufficient moisture, and otherwise comply with the provisions of this section.

b. A licensed contractor who installs or performs work on an automatic landscape irrigation system must test for the correct operation of each inhibiting or interrupting device or switch on the system. If such devices are not installed, or are not functioning properly, the contractor must install new devices or repair the existing ones and insure that each is operating properly before completing other work on the system.

- c. A licensed contractor performing work on an automatic landscape irrigation system shall report systems that are not in compliance with this section, to Code Enforcement personnel in the Police Department. Failure of a contractor to report non-compliant systems within five business days is punishable by fines as specified in the Violations and Penalties section of this ordinance. A system that is repaired by the contractor and brought into compliance need not be reported.
- d. Regular maintenance and replacement of worn or broken moisture sensing equipment, such as soil moisture or rain sensors, is not a violation of this section, if such repairs are made within thirty days from the time non-compliance is noted.
- e. All contractors performing work on irrigation systems within the Town of Palm Beach, shall be licensed or registered under chapter 489, Florida Statutes, and shall hold a municipally-issued license or business tax certificate that permits work on irrigation systems.

(5) Violations and penalties.

- 1. Failure of any person who purchases or installs an automatic landscape irrigation system on their property, or property managed by them, to properly install, maintain, and operate technology that inhibits or interrupts operation of the system during periods of sufficient moisture is guilty of a violation of this section, and shall be subject to a fine of \$50.00 for a first offense, \$100.00 for a second offense, and \$250.00 for a third or subsequent offense. A person in violation of this section may be cited for each day the system fails to be in compliance with this section.
- 2. Failure of a licensed contractor to report to Palm Beach Code Enforcement automatic landscape irrigation systems that are not in compliance with this section, which requires properly operating devices to inhibit or interrupt the operation of the irrigation

system during periods of sufficient moisture, shall be subject to a fine of not less than \$50.00 for a first offense, \$100.00 for a second offense, and \$250.00 for a third or subsequent offense.

3. Funds generated by penalties imposed under this section shall be used by the Town of Palm Beach for the administration and enforcement of this section, and the corresponding sections of this ordinance, and to further water conservation activities.

(e) *Water application rates.* Since deep watering promotes deep root growth and healthier plant material, water shall not be applied at a precipitation rate of less than one-half inch per application.

(f) *Irrigation standards.*

(1) *Irrigation of existing plant communities.* Existing native plant communities and ecosystems, maintained in a natural state, do not require, and shall not have, any additional irrigation water added in any form.

(2) *Reestablished native plant area.* Newly installed native plant areas may require irrigation during the establishment period. Water during this period shall be applied from a temporary irrigation system, a water truck, or by hand watering from a standard bib source.

(3) *Cultivated and other landscape areas.* Irrigation systems, either manual or automatic, may be used for the cultivated landscape areas.

(g) *Antitranspirants.* In order to reduce water loss through leaves during installation, antitranspirants shall be used on all permitted landscape installation projects.

(h) *Use of organic mulches.* When appropriate, a minimum of two inches of organic mulch shall be placed over all newly installed tree, shrub and ground cover planting areas."

Section 2. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 3. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 4. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 5. Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of
the Town of Palm Beach on first reading this 22nd day of
June, 2010, and for second and final reading on this _____
day of _____, 2010.

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

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TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Time Extensions

Agenda Title

Request for Waiver of Section 42-199, Hours For Construction, at 214 Worth Avenue (Cartier)

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated June 4, 2010, from John Page, Director of Planning, Zoning and Building
- Letter dated June 3, 2010 from Roberta Head

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Director, Planning, Zoning & Building

Re: Extension of Work Hours – Cartier, 214 Worth Avenue

Date: June 4, 2010

STAFF RECOMMENDATION

Staff recommends approval of an extension of the hours for construction work for one week, with the following conditions:

- No work allowed on Sundays or Town of Palm Beach legal holidays.
- Approval of the Worth Avenue Merchants Association.
- All work will be coordinated with the streetscape contractor, Burkhardt Construction, 561-659-1400.
- No construction related parking will be allowed on Worth Avenue.
- No workers shall congregate or loiter on Worth Avenue.
- No exterior work will be performed during this extension of working hours.
- Any verified complaints from neighbors may revoke this extension of hours.
- Subject to an affidavit that all property owners, businesses and residents (Condominium Association if a condominium) within a 300 foot radius of the subject property have been notified of this request prior to 10 days of the scheduled hearing date.
- Contractor will provide a copy of the affidavit and a copy of the notice to the Building Official no later than 5 days prior to the scheduled hearing date.

GENERAL INFORMATION

Staff has received a fax letter from R & R Professional Services requesting a waiver of construction working hours to perform interior remodeling/decorating work at Cartier. Work is minor interior remodeling consisting of electrical fixtures and wood work and will not require any heavy machinery or equipment. The contractor is requesting this waiver to prevent disruption of normal working hours.

Staff believes granting extended construction hours under the conditions listed will not be overly offensive to the residents or inhabitants of the town and qualifies for an exception as provided in Town Code 42-199(c).

Attachment

cc: Jeff Taylor, Building Official
Paul W. Castro, Zoning Administrator
Jay Boodheshwar, Acting Public Works Director
Raychel Houston, Parking/Code Enforcement Manager

R & R PROFESSIONAL SERVICES, INC.

7785 Oakmont Drive

Lake Worth, FL 33467-1219

office (561)966-7882** fax (561) 433-1223

CBC 1251053

Email: mrpro1@yahoo.com

* * * * *

WEB: www.rnrwedoitall.com

June 3, 2010

Town of Palm Beach

Attn: Jeff Taylor

360 South County Road

Palm Beach, FL 33480

Via Facsimile Transmission

Fax # 835-4621

RECEIVED

RE: Extended Construction Hours

Permit # B10-10209

Address: 214 Worth Avenue, Palm Beach (Cartier)

JUN 04 2010

TOWN OF PALM BEACH
PZB DEPT

Jeff:

Please include us in the Town Council meeting on the 22nd of June. We are interested in applying to the council to be granted special permission to extend the regular construction hours for one (1) week, Monday thru Saturday, to enable us to accomplish some interior remodeling/decorating of the showroom.

All equipment that will be used during the remodeling/decorating will be on the interior of the building. No equipment will be outside of the building, therefore there will be no noise on the avenue.

Should you have any questions, please contact me at the numbers referenced above.

Thank you in advance for your cooperation.

Sincerely,


Roberta Head for

R&R Professional Services, Inc.

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Time Extensions

Agenda Title

Request for Waiver of Section 42-199, Hours For Construction, at 760 North Ocean Boulevard (Palm Beach Country Club)

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated June 10, 2010, from John Page, Director of Planning, Zoning and Building
- Letter dated June 2, 2010, from Steven L. Bielsky
- Letter dated June 9, 2010, from Steven L. Bielsky

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Director, Planning, Zoning & Building

Re: Extension of Work Hours – Palm Beach Country Club, 760 South Ocean Boulevard

Date: June 10, 2010

STAFF RECOMMENDATION

Staff recommends approval of an extension of the hours for construction work until August 31, 2010, with the following conditions:

- Work hours are from 7:00 AM to 6:00 PM.
- No work allowed on Sundays or Town of Palm Beach legal holidays.
- No work will be performed within 300 feet of a residence during hours other than allowable construction hours, which are 8:00 AM to 6:00 PM Monday through Saturday.
- Any verified complaints from neighbors will revoke this extension of hours.
- Subject to an affidavit that all property owners, businesses and residents (Condominium Association if a condominium) within a 200 foot radius of the subject property have been notified of this request prior to 10 days of the scheduled hearing date.
- Contractor will provide a copy of the affidavit and a copy of the notice to the Building Official no later than 5 days prior to the scheduled hearing date.

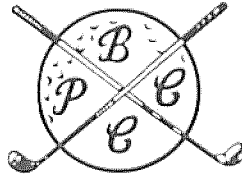
GENERAL INFORMATION

The Town has received a letter dated June 2, 2010 from the Palm Beach Country Club, requesting an extension of the allowable hours for construction. This work is to modify the topography of the golf course. Earth moving equipment, generally front end loaders, is being used. No building permit is required to change the topography to match site elevations reviewed by the Town storm water management plans examiner.

Staff believes granting extended construction hours under the conditions listed will not be overly offensive to the residents or inhabitants of the town and qualifies for an exception as provided in Town Code 42-199(c).

Attachment

cc: Jeff Taylor, Building Official
Paul W. Castro, Zoning Administrator
Jay Boodheshwar, Acting Public Works Director
Raychel Houston, Parking/Code Enforcement Manager
Palm Beach Country Club



Palm Beach Country Club

June 2, 2010

RECEIVED
JUN - 2 2010
TOWN OF PALM BEACH
PZR DEPT

Mr. Peter B. Elwell, Town Manager
360 S. County Road
Palm Beach, FL 33480

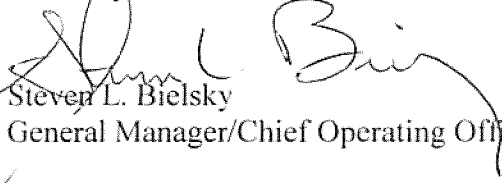
RE: City Ordinance – #18-05 - Planning, Zoning, and Building Division

TO WHOM IT MAY CONCERN:

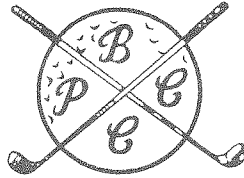
The Palm Beach Country Club would very much appreciate being able to start work on the golf course at 7:00 a.m. We would certainly work in the most isolated part of the property, specifically avoiding any inconvenience to our neighbors, including the area near Bahama Lane.

As time is of the utmost importance in being able to complete the project, we would make sure that all of the neighbors are comfortable and would work with them to not cause any issues. Would you please put this on the agenda for the June Council meeting.

Sincerely,


Steven L. Bielsky
General Manager/Chief Operating Officer

✓ cc: John Page



Palm Beach Country Club

June 9, 2010

Mr. Peter B. Elwell, Town Manager
360 S. County Road
Palm Beach, FL 33480

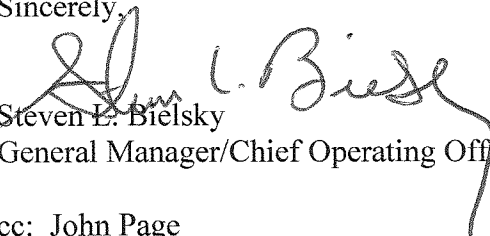
RE: City Ordinance – #18-05 - Planning, Zoning, and Building Division

TO WHOM IT MAY CONCERN:

This letter serves as a follow-up to our request dated June 2, 2010. The reason that we are requesting to start our work day at 7:00 a.m. is due to the extensive amount of regrassing that we are doing on our golf course. We are currently in the process of regrassing our 20 greens and 9 fairways, along with bunker restoration and relocation. This process is extremely time consuming and weather sensitive. Being in South Florida, you can usually experience heavy rains in the afternoon; however, the early part of the day is usually dry, thus the importance of the 7:00 a.m. start time.

Thank you for your consideration, as stated in the letter of June 2. We would be conscious not to inconvenience our neighbors.

Sincerely,


Steven L. Bielsky
General Manager/Chief Operating Officer

cc: John Page

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Time Extensions

Agenda Title

Request for Waiver of Section 42-199, Hours of Construction, at 313 Royal Poinciana Way
(TooJays Restaurant)

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated June 3, 2010, from John Page, Director of Planning, Zoning and Building
- E-mail dated June 3, 2010, from Bonnie Kohulka
- E-mail dated June 4, 2010, from Bonnie Kohulka

TOWN OF PALM BEACH

Information for Town Council Meeting on: June 22, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Director, Planning, Zoning & Building

Re: Extension of Work Hours – TooJay's Restaurant, 313 Royal Poinciana Way

Date: June 3, 2010

STAFF RECOMMENDATION

Staff recommends approval of an extension of the hours for construction work for three nights, with the following conditions:

- Work hours are from 8:00 PM to 6:00 AM.
- No work allowed on Sundays or Town of Palm Beach legal holidays.
- Any verified complaints from neighbors will revoke this extension of hours.
- Subject to an affidavit that all property owners, businesses and residents (Condominium Association if a condominium) within a 200 foot radius of the subject property have been notified of this request prior to 10 days of the scheduled hearing date.
- Contractor will provide a copy of the affidavit and a copy of the notice to the Building Official no later than 5 days prior to the scheduled hearing date.

GENERAL INFORMATION

The Town has received an email dated June 3, 2010 from TooJay's Restaurant, requesting an extension of the allowable hours for construction. This work is to replace the grease trap in the sanitary sewer line. The existing grease trap is not functioning correctly and is allowing grease to enter the sanitary sewer line. All work will be performed inside the building and should not adversely affect any residences. TooJay's is requesting this waiver to prevent disruption of normal working hours.

Staff believes granting extended construction hours under the conditions listed will not be overly offensive to the residents or inhabitants of the town and qualifies for an exception as provided in Town Code 42-199(c).

Attachments

cc: Jeff Taylor, Building Official
Paul W. Castro, Zoning Administrator
Jay Boodheshwar, Acting Public Works Director
Raychel Houston, Parking/Code Enforcement Manager
Bonnie Kohulka, TooJay's, Inc

----- Forwarded by Jeff Taylor/PalmBeach on 06/04/2010 09:44 AM -----

From: "Bonnie Kohulka" <bonniek@TOOJAYS.com>
To: <jtaylor@townofpalmbeach.com>
Cc: "Alan Nuckles" <alann@TOOJAYS.com>
Date: 06/03/2010 05:01 PM
Subject: Request for Extended Hours

Jeff,

TooJay's is requesting the approval to replace the grease trap at the Palm Beach location during the hours of 8:00 pm - 6:00 am. We are requesting to have this work completed after hours due to the nature that we are an operating business & this type of work will interfere with the operation of the business if completed during normal business hours.

If you have any questions please feel free to contact Alan Nuckles or myself at 561-282-4001.

Bonnie Kohulka

Administrative Assistant, Purchasing & Operations
(561) 282-4001 | Fax: (561) 472-5464
email: bonniek@toojays.com

Jeff Taylor,
Building Official
Phone: 561-227-6415
Fax: 561-835-4621
e-mail: jtaylor@townofpalmbeach.com

PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from the Town of Palm Beach officials and employees regarding public business are public records available to the public and media upon request. Under Florida law e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. If you have received this message in error, please notify us immediately by replying to this message, and please delete it from your computer. Thank you.

Please consider the environment before printing this e-mail.

----- Forwarded by Jeff Taylor/PalmBeach on 06/04/2010 12:11 PM -----

From: "Bonnie Kohulka" <bonniek@TOOJAYS.com>
To: <JTaylor@TownofPalmBeach.com>
Cc: "Alan Nuckles" <alann@TOOJAYS.com>
Date: 06/04/2010 10:12 AM
Subject: RE: Request for Extended Hours

Jeff,
This work will take three nights to be completed and the grease trap is located inside the restaurant.

Please let me know if you have any additional questions.

Thank you

Bonnie Kohulka
Administrative Assistant, Purchasing & Operations
(561) 282-4001 | Fax: (561) 472-5464
email:bonniek@toojays.com

-----Original Message-----

From: JTaylor@TownofPalmBeach.com [mailto:JTaylor@TownofPalmBeach.com]
Sent: Friday, June 04, 2010 9:53 AM
To: Bonnie Kohulka
Subject: Re: Request for Extended Hours

Bonnie,

Two questions, please answer ASAP.

Is this for just one night?

Is the grease trap located inside the restaurant, in the courtyard or in the parking lot?

Jeff Taylor,
Building Official
Phone: 561-227-6415
Fax: 561-835-4621

e-mail: jtaylor@townofpalmbeach.com

PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from the Town of Palm Beach officials and employees regarding public business are public records available to the public and media upon request. Under Florida law e-mail addresses are public records.

If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. If you have received this message in error, please notify us immediately by replying to this message, and please delete it from your computer. Thank you.

Please consider the environment before printing this e-mail.

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Old Business - < 15 Minutes

Agenda Title

VARIANCE #4-2010 The application of Robert T. Tomsich, relative to property commonly known as **151 Via Bellaria**; described as lengthy legal description on file; located in the R-A Zoning District. Request a variance to permit the construction of a new larger two-story open loggia to replace the existing two-story loggia, which will result in a lot coverage of 25.8% in lieu of the 24.9% existing and 25% maximum allowed. [Attorney: M. Timothy Hanlon] [ARCOM Recommendation: Defer to the June 23, 2010, ARCOM Meeting.] *Deferred from the May 12, 2010, Town Council Meeting (Special Circumstances).*

Request for Deferral to the July 14, 2010, Town Council Meeting Per Letter Dated June 9, 2010, from M. Timothy Hanlon.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated June 9, 2010 from M. Timothy Hanlon

LAW OFFICES
ALLEY, MAASS, ROGERS & LINDSAY, P.A.

340 ROYAL POINCIANA WAY, SUITE 321

POST OFFICE BOX 431

PALM BEACH, FLORIDA 33480-0431

(561) 659-1770

FACSIMILE (561) 833-2261

DOYLE ROGERS
ALAN LINDSAY
PAUL B. ERICKSON
DAVID H. BAKER
WILLIAM W. ATTERBURY III
LOUIS L. HAMBY III
ROBB R. MAASS
M. TIMOTHY HANLON
WARREN D. HAYES, SR.
STUART J. HAFT
DWIGHT A. MILLER
BRUCE A. McALLISTER

RAYMOND C. ALLEY (1993-1975)
HAROLD G. MAASS (1923-2006)
KAREN S. MARX (1984-1994)

EDWARD D. LEWIS (OF COUNSEL)

CAROL S. WAXLER
600 S.W. CAMDEN AVENUE
STUART, FLORIDA 34994-2026
P (772) 287-4404
F (772) 287-4044

June 9, 2010

VIA FACSIMILE - 835-4621 &
U.S. MAIL

Paul Castro, AICP
Zoning Administrator
Town of Palm Beach
360 So. County Road
Palm Beach, FL 33480

Re: Variance #4-2010
151 Via Bellaria

Dear Paul:

On behalf of the property owner and due to a deferral at the April ARCOM meeting, we hereby request deferral of Variance #4-2010, until the July 14, 2010 Town Council meeting.

If you have any questions, do not hesitate to contact me.

Sincerely,



M. Timothy Hanlon

MTH/cac

cc: Robert J. Tomsich

RECEIVED

JUN 11 2010

TOWN OF PALM BEACH
PZB DEPT

TOWN OF PALM BEACH

JUN 14 2010

Town Manager's Office

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Old Business - < 15 Minutes

Agenda Title

MODIFIED SITE PLAN REVIEW #3-2010 WITH VARIANCE The application of Mr. & Mrs. Adler, relative to property commonly known as 7 Sloan's Curve Drive; described as lengthy legal description on file; located in the PUD-B Zoning District. Request for Site Plan Review to construct a 135 square foot infill addition on the front entry of an existing townhouse and a 49 square foot infill addition to the breakfast atrium and a 49 square foot infill addition to an upstairs bedroom. A Variance is requested to allow two small additions that will enclose the entry feature and an interior atrium thereby increasing the lot coverage to 42.1% in lieu of the 39.5% existing and the 35% maximum allowed in the PUD-B district. The proposed additions will modify a previously approved site plan in a PUD complying with Section 134-688 (b) of the Town's Zoning Code. [Attorney: Maura A. Ziska, Esq.] [ARCOM Recommendation: Approval of the Variance Will Not Cause Negative Architectural Impacts. Carried 7-0] *Deferred from the May 12, 2010, Town Council Meeting (Special Circumstances).*

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated May 17, 2010, from H. Barry Gales
- Letter dated May 17, 2010, from Harold Peerenboom

H. Barry Gales
No. 6 Sloan's Curve Drive
Palm Beach, Florida 33480

VIA FACSIMILE: 561-838-5411

May 17, 2010

Mayor and Town Council and
Members of the Architectural Review Commission
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

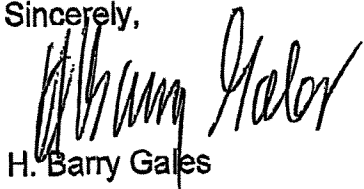
RE: Site Plan Review Number 3-2010
7 Sloan's Curve, Palm Beach, Florida

Dear Mr. Mayor, Town Council members and ARCOM members:

I reside at No. 6 Sloan's Curve Drive in Palm Beach. My neighbor to the south, Mr. and Mrs. Adler is planning to renovate their existing home at 7 Sloan's Curve. I have reviewed the plans for the proposed renovations and fully support their changes and any relief they might need from the Town in order to get their project approved. I believe that the newly renovated residence will be a fine improvement to both my neighbor's property and our neighborhood. Hopefully, you and your staff will agree with me and will approve the proposed project.

Thank you for your consideration and please call me if you have any questions.

Sincerely,



H. Barry Gales

cc: Maura A. Ziska, Esq. (Via facsimile : 561-802-8995)



Harold Peerenboom
c/o 401-55 St. Clair Avenue West
Toronto, ON M4V 2Y7

May 17, 2010

Mayor and Town Council and
Members of the Architectural Review Commission
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Dear Mr. Mayor, Town Council members and ARCOM members:

**RE: Site Plan Review Number 3-2010
7 Sloan's Curve Drive, Palm Beach, Florida**

I reside at 8 Sloan's Curve in Palm Beach. My neighbors to the north, Mr. and Mrs. Adler, are planning to renovate their existing home at 7 Sloan's Curve. I have reviewed the plans for the proposed renovations and fully support their changes and any relief they might need from the Town in order to get their project approved. I believe that the newly renovated residence will be a fine improvement to both my neighbors' property and our neighborhood. Further, both the board of the association on which I am a board member and the Architectural Committee unanimously support this application. Hopefully, you and your staff will agree with me and will approve the proposed project.

Thank you for your consideration and please call me if you have any questions.

Sincerely,

Harold Peerenboom
(416) 453-7234

cc: Maura A. Ziska, Esq., Kochman & Ziska PLC
cc: All board members for The Residences at Sloan's Curve
cc: Rena Damone, Chair, Architectural Committee

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

New Business - < 15 Minutes

Agenda Title

SPECIAL EXCEPTION #8-2010 The application of BB&T, relative to property commonly known as **125 Worth Avenue**; described as Lots 38 through 48, inclusive, Block 16, REVISED MAP OF ROYAL PARK ADDITION, according to the Plat thereof, recorded in Plat Book 4, Page 1, of the Public Records of Palm Beach County, Florida; located in the C-WA Zoning District. Request for Special Exception to allow a new Town-serving tenant bank (BB&T) to occupy the same 12,396 square feet that the current, Town-serving tenant bank (Colonial Bank) occupies. [Attorney: John C. Dotterer, Esq.]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated May 26, 2010, from John C. Dotterer

JOHN C. DOTTERRER

COUNSELLORS AT LAW, P.A.

125 WORTH AVENUE, SUITE 310

PALM BEACH, FL 33480

TELEPHONE: (561) 802-3808

TELEFAX: (561) 802-3318

EMAIL: DOTTJ@DOTTLAW.COM

JOHN C. DOTTERRER, ESQ. (FL, MI)

STEPHEN J. GIOVINCO, ESQ., P.A. (FL, NY)

VINCENT C. GREEN, ESQ., (FL, NY)

JENNY TORRES, ESQ., P.A. (FL)

JEFFREY W. GRINNELL, ESQ. (FL)

JOSEPH D. CONWAY, FRP, CLA

RECEIVED

MAY 26 2010

TOWN OF PALM BEACH
PBZ DEPT.

JOHN C. DOTTERRER, ESQ.

DOTTJ@DOTTLAW.COM

May 26, 2010

ALL SENT VIA HAND DELIVERY

Mr. Paul Castro

Zoning Administrator
For the Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Mr. David A. Rosow

President of Town Council
For the Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Mr. William J. Diamond

Town Council Member
For the Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Mr. Robert N. Wildrick

Town Council Member
For the Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Hon. Jack McDonald

Mayor of the Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Ms. Gail Coniglio

President *Pro Tem* of Town Council
For the Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Mr. Richard M. Kleid

Town Council Member
For the Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Special Exception Zoning Application No.: 8-2010

Applicant: Branch Banking & Trust Company ("BB&T"), successor In Interest to Colonial Bank by asset acquisition from FDIC as Receiver for Colonial Bank

Town Serving Certification and Exception

Town Council Meeting: June 22, 2010 at 9:30AM

Dear Mr. Castro, Mr. Mayor and Members of Town Council:

Our client, BB&T, through an FDIC assisted transaction, succeeded to former Colonial Bank deposits and certain assets, including those associated with the former Colonial Bank Branch located at 125 Worth Avenue, which is now operated by the successor, BB&T.

Since at least 1992, the Bank at this location has been granted a Town Serving Special Exception (beginning with Special Exception No.: 13-92), under Town Ordinance 134-229, which has been continuously renewed.

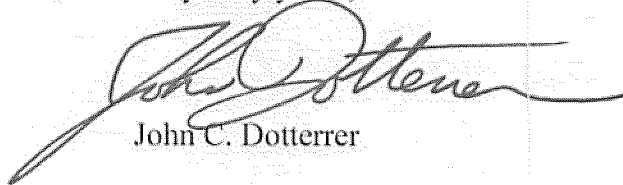
On April 26, 2010, BB&T submitted its Application (Special Exception No.: 8-2010) for the same exception which corresponds to the earlier Exceptions granted, as the customer account base is essentially the same.

In further support thereof, we now submit the original of the Report of Independent Accountants MarcumRachlin, which concludes that BB&T is in compliance with the Ordinance as not less than 50% of the Customers of the Bank are "Town Persons".¹ The Independent Accountant's Report satisfies the demonstration requirements of the Ordinance.

This matter has been placed on the Agenda of the Town Council for the June 22, 2010 meeting. We respectfully request that the Request for Special Exception to BB&T be granted.

We are at the service of the Town and its administration to answer any questions it may have, and are available to do so prior to the meeting of the Town Council.

Very truly yours,



John C. Dotterer

Encl.

cc: John C. Randolph, Esq.

Ms. Grace Halabi, Vice President / Financial Center Leader of BB&T

Mr. Randolph Hopros, Senior Vice President of BB&T

¹ We also enclose our Re-Designation as Agent for BB&T

BB&T
TOWN SERVING COMPLIANCE
AGREED-UPON PROCEDURES
May 21, 2010



INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

Ms. Grace Halabi, Vice President
BB&T
125 Worth Avenue
Suite 100
Palm Beach, Florida 33480

We have performed the procedures enumerated below, which were agreed to by BB&T (the "Bank"), solely to assist the users with respect to evaluating management's assertion that not less than fifty (50) percent of the customers of the Bank will be "Town Persons" as specified by the Town of Palm Beach (the "Town"). We understand that the definition of "Town Persons" as it appears in Section 134-2 (b) of the Town's zoning ordinance is:

"All full-time and seasonal residents as well as visitors staying in accommodations and employees working in establishments located within the Town."

This agreed-upon procedures engagement was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and findings are as follows:

- We obtained a certified list of the accounts domiciled at 125 Worth Avenue, Suite 100, Palm Beach, Florida 33480 as of May 13, 2010.

The certification stated that we received a complete list of customer accounts. We reviewed the listing with the Bank and recalculated the percentage of those customers represented to us to be Town Persons and found the Bank to be in compliance with assertion that not less than fifty (50) percent of the customers of the Bank are Town Persons.



MarcumRachlin a Division of Marcum LLP • marcumrachlin.com

777 South Flagler Drive • Suite 150 • West Palm Beach, Florida 33401 • Phone 561.833.0002 • Fax 561.833.3235

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- We randomly selected a sample of 25 clients who had a 33480 zip code and verified that each customer had a deposit relationship with the bank and that the address per the list agreed with client files. Our procedures included a review of the client files maintained by the bank.

No exceptions were noted.

- We randomly selected a sample of 25 other customers who were identified by management as being "Town Persons" and verified that they had a deposit relationship with the bank and that client files provided proof of Town residency or employment.

No exceptions were noted.

We were not engaged to, and did not perform an examination, the objective of which would be the expression of an opinion on management's assertion. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of the management of BB&T and the Town of Palm Beach and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.



a division of Marcum LLP
West Palm Beach, Florida
May 21, 2010

RE-DESIGNATION OF AUTHORIZED AGENT

RE: Consent for: 125 Worth Avenue, Palm Beach, FL 33480
PCN: 50-43-43-23-05-016-0380

This form shall serve as consent for the law firm of John C. Dotterrer Counsellors at Law, P.A., and John C. Dotterrer, Esq., to act as agent to prepare and submit all documentation affecting the subject property including, but not limited to, applications and petitions for zoning code amendments, special exceptions, site plan approval, variances, ARCOM, administrative inquiries, appeals and/or building permits to allow the continuation of a bank, to wit: Branch Banking and Trust Company ("BB&T") at 125 Worth Avenue, Palm Beach, FL 33480.

We do hereby give consent to the law firm of John C. Dottererr Counsellors at Law, P.A., and John C. Dottererr, Esq., to act on our behalf to submit these applications, all required material and documents, and attend and represent us at all meetings and public hearings pertaining to the request(s) on the property described in the attached application.

APPLICANT:

BB&T (Branch Banking & Trust Company),
successor In Interest to Colonial Bank by asset
acquisition from FDIC as Receiver for Colonial
Bank.

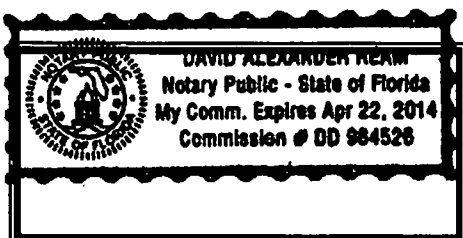
By: Ms. Grace Halabi
Ms. Grace Halabi,
Vide President/Financial Center Leader of
BB&T

Dated: 5/26/2010, 2010

[illegible]

The foregoing instrument was acknowledged before me this 26 day of May, 2010 by Grace Halabi, who is:

1. personally known to me ✓
2. or who produced her _____ as identification



as identification

Notary Public Signature

My Commission expires: 4/22/2014

Notary Stamp

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

New Business - < 15 Minutes

Agenda Title

SPECIAL EXCEPTION #11-2010 The application of Mary Mahoney, Retail Store, relative to property commonly known as **350 Worth Avenue**; described as lengthy legal description on file; located in the C-WA Zoning District. Request for Special Exception to relocate an existing retail store (Mary Mahoney) into a space with 3,909 square feet of gross leasable area. Since the proposed space is in excess of 2,000 sq. ft. of gross leasable area, the Applicant is required to obtain Town Council approval and a finding that the proposed use is town-serving. [Attorney: Maura A. Ziska, Esq.]

Request for Withdrawal from the June 22, 2010, Town Council Meeting Per Letter Dated June 7, 2010, from Maura A. Ziska.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated June 7, 2010, from Maura A. Ziska

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

*Also admitted in New York

Esperanté

222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA FACSIMILE: 561-835-4621

June 7, 2010

Mayor and Town Council
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

TOWN OF PALM BEACH

JUN 15 2010

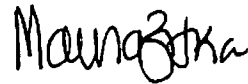
Town Manager's Office

RE: Special Exception #11-2010/ 350 Worth Avenue

Dear Mayor and Town Council:

Please **withdraw** the above referenced matter from the June 22, 2010 Town Council agenda. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely yours,



Maura A. Ziska

MAZ/mr

cc: Paul Castro
Harold Smith
Scott Lese

00007749

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Old Business - > 15 Minutes

Agenda Title

SPECIAL EXCEPTION #3-2010 WITH SITE PLAN REVIEW AND VARIANCE The application of Roy Reeves, Restaurant Operator, relative to property commonly known as **219 Worth Avenue**; described as Lots 20, 21, 34 and 35, ROYAL PARK ADDITION, according to the Plat thereof, on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book, Page 1; located in the C-WA Zoning District. Request for Special Exception for a 4,075 square foot upscale American cuisine restaurant which includes site plan review to allow a new entry door and 36 outdoor seats on the proposed second floor patio within the proposed expansion area. The applicant is requesting umbrellas to cover the outdoor seating. The applicant also proposes to meet all conditions of approval which were granted to the previous restaurant applicant for this tenant space. The variance being requested is to eliminate the four additional off-street parking spaces required for the 74 proposed seats. [Attorney: Maura A. Ziska, Esq.]

Deferred from the April 14, 2010, and May 12, 2010, Town Council Meetings.

Request for Withdrawal Per Letter dated June 14, 2010, From Maura A. Ziska.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated June 14, 2010, from Maura A. Ziska

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

*Also admitted in New York

Esperanté

222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401

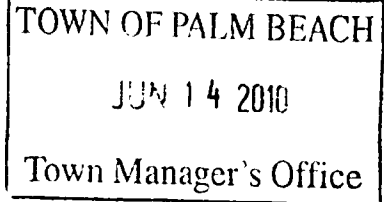
Telephone: (561) 802-8960

Facsimile: (561) 802-8995

June 14, 2010

VIA FACSIMILE: 561-835-4621

Mayor and Town Council
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480



RE: Special Exception #3/2010 w/Site Plan Review and Variance

Dear Mayor and Town Council:

Please **withdraw** the above referenced matter from the June 22, 2010 Town Council agenda.
Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely yours,

A handwritten signature in cursive script that reads "Maura Ziska".

Maura A. Ziska

MAZ/mr

cc: Paul Castro
Burt Handelsman
Jane Rankin

00007821

TOWN OF PALM BEACH

Town Council Meeting on: June 22, 2010

Section of Agenda

Old Business - > 15 Minutes

Agenda Title

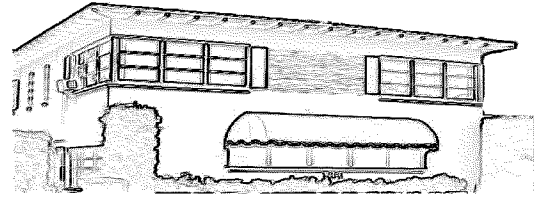
SITE PLAN REVIEW #4-2010 WITH SPECIAL EXCEPTION AND VARIANCES The application of Publix Super Markets, Inc., relative to property commonly known as **265, 255, 235, 231 Sunset Avenue and 240 Sunrise Avenue**; described as lengthy legal description on file; located in the C-TS Zoning District. Request for a Site Plan Review and Special Exception to construct a 50,870 (43,360 gross leasable) square foot one story grocery store on 4.36 acres. The new store will provide 218 off street parking spaces. There is proposed to be an outdoor ATM and the grocery cart storage within the building. All of the proposed mechanical equipment will be contained within portions of the building and will not be seen on the roof. Part of the proposed design is to have two generators located within the southeast corner of the proposed store that will contain a 100 KW standby generator and a 500 KW main generator. There is proposed to be two loading areas within the loading dock on the east side of the building that will be screened. The proposed store will have a pharmacy, deli, bakery and a larger selection of food items and other products. Since the propose grocery store is in excess of 2,000 square feet, the applicant is required to obtain Town Council approval of a special exception and a finding that the proposed use is Town serving. A Special Exception is being requested to have two illuminated monument signs at the northwest and southwest entrances to the west parking lot and one illuminated business identification sign on the west entrance of the building. The following variances are being requested to construct the proposed one story grocery store: (a) to allow a building length of 245 feet in lieu of the 150 foot maximum allowed; (b) to allow a front yard setback at the northwest corner of the proposed building of 10 feet in lieu of the 14 foot minimum required based on building height; (c) to allow a side yard setback for the proposed towers to be 10 feet in lieu of the 19 foot minimum required; (d) to allow two loading spaces in lieu of the three spaces required by code; (e) to allow the proposed building to be a total square footage of 50,870 square feet in lieu of the 15,000 square foot maximum allowed; (f) to allow 8 towers in lieu of the two maximum allowed; (g) to allow the area of the 8 towers to be 12.2% of the gross floor area of the building in lieu of the 2% maximum allowed (h) to allow the parking lot light poles to be 23 feet in height in lieu of the 15 foot maximum allowed; (I) to allow the height of the proposed one story grocery store to be 22.66 feet in lieu of the 15 foot maximum allowed; (j) to allow the overall height of the proposed one story grocery store to be 37 feet in lieu of the 20 foot maximum allowed; (k) to allow a monument sign at the northwest entrance where no sign is allowed; (l) to allow a monument sign at the southwest entrance where no sign is allowed. [Attorney: Maura A. Ziska, Esq.] [ARCOM Recommendation: Defer to the June 23, 2010, ARCOM Meeting] *Deferred from the May 12, 2010, Town Council Meeting (Special Circumstances).* **Request for Deferral to the July 14, 2010, Town Council Meeting Per Letter Dated May 28, 2010, From Maura A. Ziska.**

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Undated letter from George Payne
- Email dated May 21, 2010, from Maura Ziska
- Letter dated May 28, 2010, from Maura A. Ziska



Sunset Condominium Association
244 Sunset Avenue Box 13
Palm Beach, Florida
33480

To Whom It May Concern,

We, the collective owners of 244 Sunset Avenue, are unanimous in our support of the proposed construction of a new Publix. Although we will be directly affected by the construction site, less than 20 yards from our building, we feel the improvements and careful planning Publix has proposed warrant the special considerations they need. Prior to the initial submittal, Publix took the step to contact our building representative, Scotch Peloso, and spent a considerable amount of time with him at their local architect's office explaining the intricacies and specifics of their plan. They then came to our building to understand our concerns. They walked around our property, stood in our homes and looked out our windows to see how we would be affected. Rarely, do we see such a concerted effort being made by developers towards their neighbors.

Although some in our building have expressed concerns about parking, we reluctantly understand that this is one of those problems we face for choosing to live in an urban area. Hopefully, traffic congestion will be alleviated by the larger parking lot and easier ingress/egress. It also appears that in the revised plans, more street parking on Sunset will become available, due to fewer driveways.

We look forward to a new and improved Publix. One with better architectural style that compliments the area, better containment of delivery noise and trash and better hurricane response.

George Payne
President, Sunset Condominium Association

From: "Maura Ziska" <MZiska@floridawills.com>
To:
Cc:
Date: 05/21/2010 04:08 PM
Subject: FW: Civic Association Symposium on Publix

The Palm Beach Civic Association held a symposium on May 19th to ask the public "what they want to see" in the new store. This symposium resulted in a three page letter you have received from the Civic Association. Unfortunately, the symposium took place the same day the revised plans were due to the Town, so the attendees of this meeting did not have the benefit of seeing the new plans - which do address many of their comments. Below is an email exchange between one of the Publix representatives, Hank Porcher, and Mike Brown from the Civic Association. Mr. Porcher's email responds to the three page letter from the Civic Association. Please include this in the Publix file.Tx Maura

Maura A. Ziska, Esq.
Kochman & Ziska PLC
222 Lakeview Avenue, Suite 1500
West Palm Beach, FL 33401
561-802-8960 (telephone)
561-802-8995 (fax)

This electronic message transmission contains information from the law firm of Kochman & Ziska PLC which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

From: Hank Porcher [mailto:hank@tlpittman.com]
Sent: Friday, May 21, 2010 3:54 PM
To: Mike Brown
Cc: Maura Ziska
Subject: Re: Civic Association Symposium on Publix

Mike,

Once again, thank you for your interest in this project.

I hope that you shared with those in attendance at your symposium that we were not extended an invitation until Monday May 17th and responded that same day to let you know we were working on a deadline to resubmit plans taking into account ARCOM's direction as well as comments from residents. (email chain follows)

The timing was such that we were working very diligently to accomplish meeting the deadline since the last ARCOM meeting, nearly a 3-4 week lead time.

Publix is very interested in getting customer input and that is why we met with:

- o Biltmore Condominiums
- o Palm Beach Hotel Condominiums

- o Palm Beach Civic Association
- o Neighborhood Alliance of Palm Beach
- o Sunset Condo Apartments
- o Kiwanis of Palm Beach
- o The Rampells
- o Testa's
- o The Preservation Foundation of Palm Beach
- o members of the Palm Beach architectural community

These were not meetings that were required by the Town or other governmental agencies but meetings we sought to get input and explain our plans. This all occurred before we began our public meetings with the governmental and quasi-governmental boards as dictated by the approval process. We have now begun the approval process and it is our intent to respond to the comments that come from this process. At the ARCOM public meeting we were given direction by the ARCOM members as well as the residents and the new plans reflect that input.

I can tell you without hesitation, that the architecture of this store is special and the intent is to fit the standard of Palm Beach. The landscaping is well in excess of Town of Palm Beach Code and the revisions were a direct reflection of public input. The pedestrian walkways, pergolas, angled parking, relocation of the truck-wells, arcade on the north side, reduction of "towers" are all directly attributed to our meeting with the residents and ARCOM direction. **These changes were reflected in the plans re-submitted on May 19th at the same time your symposium was taking place.**

With respect to product offerings, remember at this juncture we are dealing with the building plans, architecture and site plan so the professionals involved are not the folks that merchandise the store. However, all of the concerns concerning: more Greenwise products, more organic products, increased selection of meats, more cheese variety etc. have been forwarded to the correct channels at Publix and will be offered in the store. Publix is very good at tailoring their product offerings to the clientele that shops each particular store and you can see that throughout their company as you move from one neighborhood market to another. I am not sure how to further address product offering at the Architectural Review level. Publix is customer driven as evidenced by their customer service awards:

- Scored higher than any other supermarket for customer satisfaction in a national survey conducted by the American Customer Satisfaction Index (1995-2010)
- Ranked as one of BusinessWeek magazine's list of the top 25 Customer Service Champs (2007-2010)

Wegmans is a good company and a fine store, however, according to their web site, their stores range in size from 80,000 sq ft to 130, 000 sq ft, nearly double or triple the size of the proposed Publix. The existing Palm Beach site is not nearly large enough for this size store and would surely go beyond "town serving".

In closing, I think we will be able to show that not only have we listened to the residents but we have heard them.

Thank you again

Hank Porcher

T.L. Pittman and Assoc., Inc.

128 W Broadway Street

Suite 103

Oviedo, FL 32765

561.346.4702 cell

hank@tlpittman.com

Begin forwarded message:

From: Hank Porcher <hank@tlpittman.com>

Date: May 17, 2010 3:40:06 PM EDT

To: Mike Brown <mikebrown@palmbeachcivic.org>

Cc: Maura Ziska <MZiska@floridawills.com>

Subject: Re: Civic Association Publix meeting

Mr. Brown,

We appreciate the offer and the interest in the project, however, all re-submittal plans (architectural, civil engineering and landscape) are due Wednesday May 19th. We have been working on incorporating the ARCOM comments into our plans since the last meeting.

Thank you again for your offer,

Hank Porcher

T.L. Pittman and Assoc., Inc.

128 W Broadway Street

Suite 103

Oviedo, FL 32765

561.346.4702 cell

hank@tlpittman.com

On May 17, 2010, at 9:34 AM, Mike Brown wrote:

Hank:

Can you or a representative attend?

After the ARCOM meeting, there has been a lot of discussion about the Publix redevelopment in our organization so we decided to have a meeting to make a list of what our members would like for the new Publix – and then give the list to your team.

If you or anyone from your team would like to attend, you are more than welcome. You wouldn't have to make a presentation and our intention isn't to put you on the spot. But if you want to listen and/or contribute, we would be happy to have you attend.

Please let me know.

Wednesday, May 19

2:00 p.m.

Palm Beach Civic Association Community Room, Paramount Theater Bldg.

Regards,

Mike

R. Michael Brown

Communications Director

Town of Palm Beach Civic Association

Proud Marine Dad

The Paramount Building, 139 North County Road, Suite 33

Palm Beach, FL 33480

Tel: 561-655-0820 Fax: 561-655-1070

mikebrown@palmbeachcivic.org

www.palmbeachcivic.org

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On May 21, 2010, at 12:38 PM, Mike Brown wrote:

Hank:

Let me start by saying that most in Town, including our members, really like Publix as a company, store, staff, and the service Publix provides. Our surveys showed a 70% - 80% approval rating at the start of the process.

However, we had our symposium this week because many of our members felt like their voice has not been heard by your team and that Publix hasn't provided an ongoing venue to allow them to explain their ideas and concerns. I'm afraid that anecdotally, the initial positive survey results are starting to slip into a groundswell in the other direction.

Attached is the letter with a list of ideas and concerns that we received from members and delivered to Nick and the Town as a result of our symposium. Don't let the number of attendees at the meeting (23) make you think there is not interest. We received emails from all over the country saying they wished they could attend and they emailed their comments. One member flew in from New York that morning to be here.

Residents want something special. They see stores all over the country and they want something that looks and feels like some examples mentioned: Whole Foods, Fresh Market, Carmine's in Palm Beach Gardens, and Wegmans in the northeast.

This store was brought up several times in the meeting:

http://www.wegmans.com/webapp/wcs/stores/servlet/CategoryDisplay?storeId=10052&identifier=CATEGORY_1441&catalogId=10002&langId=-1

Perhaps the Town of Palm Beach store could become a pilot test for an upscale store model?

Thanks for giving us the opportunity to provide input. If you need anything, please don't hesitate to contact us.

Regards,
Mike

R. Michael Brown

Communications Director

Town of Palm Beach Civic Association

Proud Marine Dad

The Paramount Building, 139 North County Road, Suite 33

Palm Beach, FL 33480

Tel: 561-655-0820 Fax: 561-655-1070

mikebrown@palmbeachcivic.org

www.palmbeachcivic.org

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<Publix Symposium Ltr 5-20-10.pdf>

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Palm Beach CIVIC ASSOCIATION

Improving Life in Palm Beach Since 1944

Phone: 561-655-0820 • Fax: 561-655-1070 • Web: www.palmbeachcivic.org
139 North County Road, Suite 33 • Palm Beach, Florida 33480-3950

May 20, 2010

Dear Sir:

The Palm Beach Civic Association has great interest in the new Palm Beach Publix. We have spoken with Publix representatives, reviewed the proposals, conducted surveys, and considered the plans in a community forum.

On May 19, we held a symposium entitled “**Tell Publix What You Want**” where we invited Civic Association members and guests to share their ideas about the type of store that should be built in our community.

Twenty-three people gathered at the Civic Association to voice their thoughts and concerns. Publix was invited to send a representative, but declined.

Those who attended felt strongly that Publix should *not* simply reproduce another basic “cookie cutter” store in this community. Instead, a one-of-a-kind, state-of-the-art, “Palm Beach worthy” facility should be constructed here.

Residents at the meeting expressed their views:

- The new Palm Beach Publix should be tailored to meet the specific needs and desires of those who live in Palm Beach.
- Publix representatives should take the time to find out what those needs and desires are.
- Publix officials should invest the necessary funds and additional resources to make the Palm Beach store an exceptional model that stands alone.

Here is a summary of input received at our “Tell Publix What You Want” symposium:

General Comments:

- Publix has no competition in town. We feel like we are getting what Publix wants and not what the residents want.
- After the Architectural Commission’s review, Publix should have held public meetings with residents to find out what they want in the new store. We fear that Publix will provide what they can make the most money on from their vendors.
- Publix is asking for variances, so they should be willing to give residents what they want in return. If this store is getting exclusivity, Palm Beach should receive an exclusive style store.

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Dr. Rebecca van der Bogert, *Palm Beach Day Academy*

- We like the custom and independent grocery stores that have the most up-to-date designs. The Palm Beach Publix should have the most up-to-date design as well.
- Mega-Store vs. a Town-Serving Store
 - We are not convinced that we need a new larger store.
 - Why can't the existing store be re-configured?
 - Why can't Publix just add to the existing store?
- Store Size
 - We don't want the new Publix to be so large and contain so many products that it resembles a mini-Wal-Mart.
 - The walking distance from the western edge of the parking lot to the back of the store is very far.
- Substitute store during construction
 - Can't part of the store be built while keeping the other part open?
- Traffic
 - Reports state that there will be 30% more traffic initially and 10% more customers after the newness settles down. That will create serious traffic problems in an area that already has major problems.
 - We have great concerns about ingress and egress.
- Other groups in Town should be evaluating the Publix proposal. Specifically, the Town Council should protect the interests of residents and insist that a 'Palm Beach worthy' store is built in the community.

Exterior

- Better landscape plan with native plants and non-invasive plants that don't use a lot of water. There is a "sea of asphalt" and not enough shade.
- Make the project more reflective of Palm Beach.
 - The massive parking lot and extra large building is out of scale for the Palm Beach community.
 - There should be more architectural components from the Mediterranean Revival style.
- The building should not be painted white. It will be too industrial looking.
- Parking
 - Traffic flow in the new parking lot appears quite problematic. Locating the valet service in the front will create major bottlenecks.
 - Move valet to another entrance on the side or back.
 - Traffic in the parking lot will be corralled and not able to access other areas to find available spaces.
 - Publix should meet with area businesses and residents to create a pooled parking arrangement to serve everyone.
 - With this larger store, we will end up with the same parking problems we have now.

Interior

- The new store should not reflect the standard Publix layout. It should be reorganized to serve an upscale customer.
 - It should be similar to the Fresh Market or Carmines (in Palm Beach Gardens) in providing what Palm Beach customers really desire:
 - Gourmet cuts of meat
 - Prime fresh fish selection
 - Organic (GreenWise) products
- Publix should offer a catering section
- Publix should offer a coffee shop/café.
- Could the store have 2 floors, i.e. a mezzanine inside, to keep the store footprint small but still have what residents want?
- The size of the aisles shouldn't be bigger than what we have now. The carts should be smaller.
- The use of "green technologies" for lighting, refrigeration, and water should be a primary importance to the design.
- Publix should join with the other merchants in the Royal Poinciana Way Business Association and District and work out a product mix that will be helpful to the town. The presence of a larger store should not jeopardize the smaller businesses in the area (i.e. wine, gourmet products, flowers, books & magazines, pharmacy).

Sincerely,



Ned Barnes
President

Cc:
Palm Beach Publix
Palm Beach Architectural Commission
Palm Beach Mayor and Town Council
Palm Beach Daily News

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

*Also admitted in New York

Esperanté

222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

May 28, 2010

VIA FACSIMILE: 561-835-4621

Mayor and Town Council
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

***RE: Site Plan Review #4-2010 w/Special Exception and Variance/265, 255, 235, 231
Sunset Ave. and 240 Sunrise Ave.***

Dear Mayor and Town Council:

On behalf of the property owner, I would like to request a deferral of the above-referenced matter from the **June 22, 2010** until the **July 14, 2010** Town Council meeting. The reason for the deferral is because of being deferred at ARCOM.

Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely yours,



Maura A. Ziska

MAZ/mr

cc: Paul Castro
Hank Porcher
Harold Smith

1009

**JONES
FOSTER
JOHNSTON
& STUBBS, P.A.**
Attorneys and Counselors

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505 South Flagler Drive
West Palm Beach, Florida 33401
Telephone (561) 659-3000

Mailing Address
Post Office Box 3475
West Palm Beach, Florida 33402-3475

John C. Randolph, Esquire
Direct Dial: 561-650-0459
Direct Fax: 561-650-0435
E-Mail: jrandolph@jones-foster.com

June 18, 2010

VIA EMAIL: pelwell@townofpalmbeach.com

Mr. Peter B. Elwell
Town Manager
Town of Palm Beach
Post Office Box 2029
Palm Beach, Florida 33480

Re: Town of Palm Beach
Proposed Charter Amendment
Our File No. 13156.8

Dear Peter:

I have been asked to comment regarding the effect, if any, of the Bert J. Harris, Jr. Private Property Rights Protection Act as applied to the proposed Charter amendment which, if passed, would provide that the electorate, in a referendum, could prohibit the demolition of certain landmarked "public or private group use" structures in the Town.

Chapter 70.001, Florida Statutes, the Bert J. Harris, Jr. Private Property Rights Protection Act, provides that when a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief which may include compensation for the actual loss to the fair market value of the real property caused by the action of government. The term action of a governmental entity means a specific action of a governmental entity which affects real property, including action on an application for permit. The term inordinate burden means an action of a governmental entity that has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable investment backed expectation for the existing use of the real property.

No cause of action exists under this section for any law that was enacted on or before May 11, 1995, or as to the application of any rule, regulation or ordinance adopted or formally noticed for adoption on or before that date. Today, and prior to May 11, 1995, the Landmarks ordinance of the Town provided that a Certificate of Appropriateness may be granted to allow for the demolition of a landmark structure subject to the criteria within the ordinance being met. The proposed Charter amendment proposes that no Certificate of Appropriateness for demolition of public or private group use structures designated as landmarks shall issue without the approval of a majority vote of the

citizens voting in a referendum. Although a determination as to whether a Bert Harris claim will ultimately be sustained is dependent upon the facts of each case and the ultimate ruling of the court, there is a strong argument that the Charter amendment, if passed, can give rise to a Bert Harris claim.

Although one could argue that a person owning a landmark structure has no reasonable investment backed expectation that they would be able to demolish the structure because of the fact that it is landmarked and that they would, therefore, not be entitled to a remedy under the Bert Harris Act, consider the following. Under the current state of the law, a person owning a landmark structure has the right to file an application for Certificate of Appropriateness for demolition and a right to put on competent substantial evidence at a quasi-judicial hearing to prove their entitlement to demolition. They are afforded the right of due process and if they prevail before the Landmarks Preservation Commission they are also afforded the right to obtain a Certificate of Appropriateness for demolition.

Under the proposed law that will be in effect if the Charter amendment is passed, an owner of a landmark structure would presumably still be afforded the right of due process and can apply for and be considered for a Certificate of Appropriateness for demolition before the Landmarks Preservation Commission. In the event the Landmarks Preservation Commission were to deny the Certificate of Appropriateness, no cause of action would inure to the property owner other than as may exist under the current code. In the event, however, that the Landmarks Preservation Commission were to approve the Certificate of Appropriateness for demolition, the new law will provide that the Certificate of Appropriateness for demolition will not issue absent approval of the citizens voting in a referendum. If in fact a Certificate of Appropriateness for demolition is not approved by a vote of the electorate, a property owner could make a strong argument that they have been affected by a specific action of a governmental entity, enacted after May 11, 1995, which has inordinately burdened the existing use of their property entitling them to relief which may include compensation for the actual loss to the fair market value of the real property caused by the action of the government.¹

One might reason that it should not be the Town that is responsible to compensate the property owner under the above referenced circumstances as it was not the action of the Town government which prevented demolition but, rather, the action of the electorate.

¹ I recognize the argument, as I mentioned above, that denial of demolition may not place an inordinate burden on the "existing" use of the real property, which use was as a landmark property and I would use that argument if a Bert Harris claim were made against the Town in regard to these factual circumstances. I have been asked, however, to comment on the possible ramifications or the potential for a claim under Bert Harris in the event the Charter amendment were to pass.

That issue was raised in a dispute which involved a referendum in the City of West Palm Beach requiring that a 15 story height limitation be reduced to 5 stories. It was argued in that case by an affected property owner that the action by the electorate to reduce the height allowed by zoning from 15 stories to 5 stories was actionable under the Bert Harris Act. The City of West Palm Beach argued that since the ordinance was created by a citizens initiative and implemented by voter referendum, it does not constitute a specific action by a governmental entity as contemplated by the Bert Harris Act and, therefore, does not give rise to a Bert Harris claim. I have attached a copy of the Complaint for Declaratory Relief relating to that action. The Palm Beach County Circuit Court held in that case that the citizens initiative and voter referendum process constitutes a specific action of a governmental entity as contemplated by the Bert Harris Act. (See copy of Final Judgment Denying Declaratory Relief attached.) The Court amplified its decision in an Order Denying a Motion for Rehearing filed by the City and stated, in part, as follows:

"The law explicitly provides relief or payment of compensation whenever an ordinance inordinately burdens private property rights . . . It does not matter whether the ordinance arises through the representative process or referendum. It does not matter if the city enacts the ordinance at the request of some of its citizens or if the idea springs from the minds of city commissioners. All that matters is whether it inordinately burdens private property rights." (See attached.)²

In summary, although one might argue there is no reasonable investment backed expectation on the owner of a landmark property that they will be entitled to demolish a landmark structure on the property, there are strong implications that the Charter amendment, if passed, could give rise to a Bert Harris claim on the basis that the action of the government has inordinately burdened the property to the extent that the property owner has suffered a loss in the fair market value of their property. The fact that the action was by vote of the electorate, rather than by vote of the Town Council, does not prevent the action from being an action of the governmental entity as defined by Bert Harris.

I hope this information is responsive to the questions posed.

² See also Attorney General Opinion 2006-31 (attached) which opines that an amendment to a town charter proposed and approved [by petition signed by ten percent of the registered electors] does constitute "action of a governmental entity" as that term is defined and used in the Bert J. Harris, Jr. Private Property Rights Protection Act.

Mr. Peter B. Elwell
June 18, 2010
Page 4

Peter, I would request that you provide a copy of this memorandum to the Mayor and Town Council so that they may have it for consideration at their meeting of June 22, 2010.

Please do not hesitate to contact me if you have any comments or questions.

Thank you.

Sincerely,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.

A handwritten signature in black ink, appearing to read "John C. Randolph", is positioned above the printed name.

John C. Randolph
JCR/ssm
Enclosures

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CITY OF WEST PALM BEACH,
a municipal corporation,

CIVIL DIVISION

Plaintiff,

CASE NO.

vs.

FIDELITY FEDERAL SAVINGS
BANK OF FLORIDA, a federally
chartered bank,

Defendant.

CL 97, 001470 AE

ORIGINAL ENTRY

FEB 14 1997

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, CITY OF WEST PALM BEACH, a municipal corporation ("City"), files this Complaint against Defendant, FIDELITY FEDERAL SAVINGS BANK OF FLORIDA, a federally chartered bank ("Fidelity"), and alleges:

1. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes.
2. The City is a municipal corporation duly organized and existing under the laws of Florida.
3. Fidelity is a federally chartered bank having its principal place of business in West Palm Beach, Florida.
4. This court has jurisdiction of the subject matter and the parties of this cause.
5. On January 16, 1997, Fidelity filed a claim against City pursuant to Chapter 70, Florida Statutes, the "Bert J. Harris, Jr., Private Property Rights Protection Act" (the "Bert Harris Act"). A copy of Fidelity's claim is attached to this Complaint as Exhibit "A." [Note: the exhibits to Fidelity's claim have been omitted due to size and because they are not necessary to consider the declaratory relief sought here.]
6. Fidelity's claim alleges that City's adoption of Ordinance 2918-26 (the

City of West Palm Beach vs.
Fidelity Federal Savings Bank

“Ordinance”) placed an inordinate burden upon the private property rights of Fidelity.

7. City is in doubt as to its legal obligations to Fidelity under the Bert Harris Act because the burden on private property rights under the act must be the result of a “specific action of a governmental entity.” The Ordinance was adopted as the result of a citizens’ initiative and approved in a voter referendum and is not a specific action of a governmental entity.

8. On January 3, 1996, the City Clerk received a citizens’ initiative petition proposing to amend building height limits. A copy of the petition (with partial signatures) is attached to this Complaint as Exhibit “B.”

9. On January 25, 1996, the Supervisor of Elections certified the signatures on the petition in accordance with Article VI of the City Charter. A copy of the certification is attached to this Complaint as Exhibit “C.”

10. The City Clerk certified to the City Commission that the petition was sufficient in accordance with the requirements of Sec. 6.01 of the City Charter. A copy of the certification is attached to this Complaint as Exhibit “D.”

11. Section 6.07 of the City Charter requires that the City Commission shall vote either to adopt the initiative ordinance or to call a referendum election on the citizens’ petition. The section does not give the City Commission discretion to ignore the citizens’ initiative petition.

12. The City Commission voted to call a referendum election on the citizens’ petition and adopted the Ordinance on February 8, 1996. A copy of the Ordinance is attached to this Complaint as Exhibit “E.”

13. The Ordinance contains the following caption:

AN ORDINANCE OF THE CITY COMMISSION OF CITY OF WEST PALM BEACH, FLORIDA, AUTHORIZING THE SUBMISSION TO THE ELECTORS FOR THE GENERAL ELECTION OF MARCH 12, 1996 A CITIZENS' PETITION TO ADOPT AMENDMENTS TO THE NEW URBAN CODE TO REDUCE MAXIMUM BUILDING HEIGHTS FROM FIFTEEN TO FIVE STORIES IN THE WATERFRONT DISTRICTS AND THE GOVERNMENT CENTER DISTRICT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

14. Section 2 of the Ordinance contains the following ballot question:

REDUCING BUILDING HEIGHTS FROM FIFTEEN
TO FIVE STORES IN GOVERNMENT
AND WATERFRONT DOWNTOWN DISTRICTS.

Shall an initiative ordinance be approved to reduce new building heights from fifteen (15) to five (5) stores on all properties east of Olive Avenue in the Waterfront Districts and all properties in the Government Center District?

YES - FOR THE INITIATIVE ORDINANCE
NO - AGAINST THE INITIATIVE ORDINANCE

15. The citizens' referendum election was held on March 12, 1996 and the voters of the City approved the citizens' initiative ordinance changing building height limits to five stories. Copies of the sample ballot, certified copy of election results and Resolution 120-96 are attached to this Complaint as Composite Exhibit "F."

16. The Ordinance, which was created by a citizens' initiative and implemented by voter referendum, does not constitute a specific action by a "governmental entity" as contemplated by the Bert Harris Act.

17. An actual controversy now exists between the parties as to whether the Ordinance constitutes specific action by a governmental entity under the Bert Harris Act and whether Fidelity even has a Bert Harris claim against the City arising out of the Ordinance. An

City of West Palm Beach vs.
Fidelity Federal Savings Bank

interpretation of the Bert Harris Act and its application is necessary before City can determine its legal duties under the act.

18. Time is of the essence because the act prescribes a 180 day period within which the City must respond to Fidelity's claim.

19. City has no adequate remedy at law.

WHEREFORE, City respectfully prays that this Court enter judgment declaring the rights, duties and legal relations of Fidelity and City as follows:

- a. determining that an ordinance created by a citizens' initiative petition and implemented by voter referendum does not constitute "specific action by a governmental entity" under the Bert Harris Act;
- b. determining that the Ordinance does not constitute specific action by a governmental entity under the Bert Harris Act; and
- c. determining that Fidelity does not have a Bert Harris claim against the City arising out of the Ordinance.

City further prays for a judgment for costs of this action and such further relief as the Court deems proper.

Patrick N. Brown, Esq., City Attorney
CITY OF WEST PALM BEACH
200 2nd Street
West Palm Beach, FL 33401

By *Claudia M. McKenna*
Claudia M. McKenna, Esq.
Pam McNierney, Esq.
Assistant City Attorneys
Florida Bar Nos. 520586 & 771430

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CITY OF WEST PALM BEACH,
a municipal corporation,

CIVIL DIVISION

Plaintiff,

CASE NO. CL 97-001470 AE

vs.

FIDELITY FEDERAL SAVINGS
BANK OF FLORIDA, a federally
chartered bank,

Defendant.
_____ /

FINAL JUDGMENT DENYING DECLARATORY RELIEF

This cause came before the Court on April 11, 1997 upon Defendant's FIDELITY FEDERAL SAVINGS BANK OF FLORIDA ("Fidelity"), Motion for Judgment on the Pleadings or, in the Alternative, Motion for Summary Judgment in response to the Plaintiff's, CITY OF WEST PALM BEACH ("City"), Complaint for Declaratory Relief (the "Complaint").

The Court has considered the Complaint, the Answer of Fidelity, Fidelity's Motion for Judgment on the Pleadings, or, in the Alternative, Motion for Summary Judgment, the Memorandum of Law submitted by the City and the Memorandum of Law submitted by Fidelity and the argument of counsel. The parties agree that the material facts are as stated in the City's Complaint and Fidelity's Answer. The parties have agreed that a judgment on the pleadings is appropriate. The Court determines the following legal issue:

LEGAL ISSUE

The City filed a Complaint for Declaratory Relief asking the Court to declare that Fidelity

does not have a claim under Section 70.001, F.S., the Bert Harris Act, because the ordinance reducing building heights was enacted by a citizens' initiative petition and voter referendum, as opposed to having been enacted by the City Commission. The Court herein decides the issue of whether the citizens' initiative and voter referendum process by which the building height ordinance was adopted¹, precludes Fidelity from making a claim under the Bert Harris Act.

CONCLUSION

1. Section 70.001, F.S. contemplates that, in appropriate cases, relief is available to property owners from the "specific action of a governmental entity" and expressly recognizes the burdens created by municipal ordinances.

2. The citizens' initiative ordinance is a municipal ordinance of the City of West Palm Beach.

3. The City, as evidenced by the April 11, 1996 letter from the City's Interim Planning and Zoning Administrator, Charles Wu, has enforced and implemented the citizens' initiative ordinance regarding Fidelity's application.

4. Section 70.001, F.S. provides no exclusion to property owner relief because a municipal ordinance may have been enacted pursuant to the initiative and referendum process as opposed to having been enacted by a city commission.

¹The parties have agreed that, notwithstanding what may be inaccurate reference numbers in the pleadings, the municipal ordinances at issue here include the initiative ordinance, which is the ordinance proposed by a citizens' initiative petition and approved by a voter referendum, reducing building heights to five stories.

5. The Florida Constitution, Article I, Section 1 states: "All political power is inherent in the people." Our theory of government is that the power flows from the people and in our form of government, the way in which laws are enacted, whether it be in a town meeting or whether it be by referendum or in some representative form of government doesn't change the fact that the legislation is state action (or in this case, city action).

IT IS THEREUPON ORDERED AND ADJUDGED that:

1. Fidelity Federal Savings Bank of Florida's Motion for Judgment on the Pleadings is granted.
2. The citizens' initiative and voter referendum process constitutes a specific action of a governmental entity as contemplated by the Bert Harris Act.
3. City's Complaint for Declaratory Relief is hereby dismissed with prejudice.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this _____ day of APRIL, 1997.

SIGNED AND DATED

CIRCUIT COURT JUDGE

JUDGE JAMES T. CARLISLE

Furnished to all counsel on the attached service list.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA - CIRCUIT CIVIL DIVISION 'AE'

CASE NO: CL 97-1470-AE

CITY OF WEST PALM BEACH, a
municipal corporation,

Plaintiff,

vs.

FIDELITY FEDERAL SAVINGS BANK
OF FLORIDA, a federally chartered bank,

Defendant.

ORDERED DENYING PLAINTIFF'S MOTION FOR REHEARING

Section 70.001 Florida Statutes provides as follows:

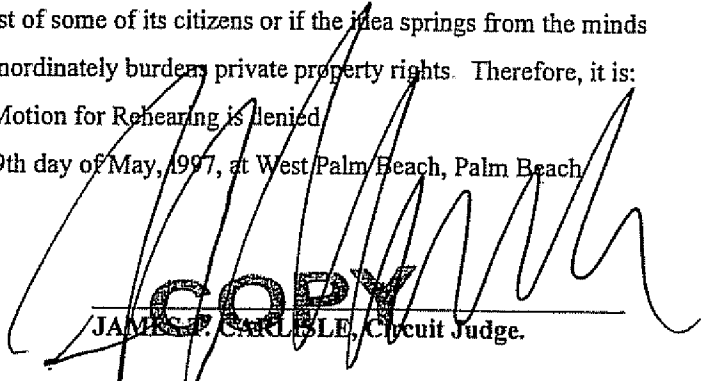
"The Legislature recognizes that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property."

This law explicitly provides relief or payment of compensation whenever an ordinance inordinately burdens private property rights but does not amount to a taking. The concept is that the private property owner would not bear the burden of an ordinance whose purpose is to benefit the many.

It does not matter whether the ordinance arises through the representative process or referendum. It does not matter if the city enacts the ordinance at the request of some of its citizens or if the idea springs from the minds of city commissioners. All that matters is whether it inordinately burdens private property rights. Therefore, it is:

ORDERED AND ADJUDGED plaintiff's Motion for Rehearing is denied

DONE AND ORDERED in Chambers this 9th day of May, 1997, at West Palm Beach, Palm Beach County, Florida.


COPY
JAMES P. CARLS, Circuit Judge.

Copies furnished:

Claudia McKenna, Esq. - City of West Palm Beach, Law Department, P.O. Box 3366, West Palm Beach, FL 33401
H. Adams Weaver, Esq. - Jones, Foster, et al, P.A., 505 South Flagler Drive, #1100, West Palm Beach, FL 33401
Ronald K. Kolis, Esq. - Moyle, Flannigan, et al, P.A., 625 North Flagler Drive, #900, West Palm Beach, FL 33401

Florida Attorney General Advisory Legal Opinion

Number: AGO 2006-31

Date: July 20, 2006

Subject: Bert J. Harris Act, governmental action

Mr. James A. Cherof
Town of Lauderdale By The Sea Attorney
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308

RE: BERT J. HARRIS, JR., PRIVATE PROPERTY RIGHTS PROTECTION ACT -
MUNICIPALITIES - REAL PROPERTY - PROPERTY RIGHTS - CHARTERS -
citizen initiated charter amendment as governmental action under
Bert J. Harris Act. ss. 70.001 and 166.031, Fla. Stat.

Dear Mr. Cherof:

As Attorney for the Town of Lauderdale By The Sea, you have asked
for my opinion on substantially the following questions:

1. Does an amendment to a town charter initiated by ten percent of
the registered electors pursuant to section 166.031(1), Florida
Statutes, constitute "action of a governmental entity" as that term
is used in the Bert J. Harris, Jr., Private Property Rights
Protection Act?
2. Following such amendments to the charter, does subsequent action
by the Town Commission, compelled by language in the charter as
amended, constitute "action of a governmental entity" as that term
is defined in the Bert J. Harris, Jr., Private Property Rights
Protection Act?

Your questions are related and will be answered together.

According to your letter, the electors of the Town of Lauderdale By
The Sea submitted a proposed amendment to the town charter using the
procedure authorized by section 166.031(1), Florida Statutes. This
amendment was submitted to the electors and was approved earlier
this year. [1]

The charter amendment provides for a 44-foot height limit on new
construction in the area that was annexed into the town from

unincorporated Broward County in 2001. Prior to approval of the charter amendment, the 44-foot height limit did not exist in the annexation area. Under Broward County zoning regulations, buildings as high as 15 stories or 150 feet were allowed, subject to other zoning regulations.

In the annexation area there are several 15-story high-rise buildings that now exceed the new 44-foot height limit. These buildings are now legal nonconforming structures. In addition, there are several undeveloped parcels in the area that were zoned under Broward County regulations to permit structures of 15 stories in height that now may only be constructed to a maximum height of 44-feet. The town is concerned about potential liability for imposing an inordinate burden on property rights through the adoption and implementation of this charter amendment and has requested assistance in resolving these questions.

The 1995 Legislature enacted the "Bert J. Harris, Jr., Private Property Rights Protection Act." [2] The act provides in part that when a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief that may include compensation for the actual loss to the fair market value of the property caused by the action of government, as provided in the statute. [3] This cause of action is separate and distinct from any cause of action that might arise under the law of takings. [4]

The term "inordinate burden" or "inordinately burdened" is defined in section 3(e) of the act to mean that

"[A]n action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large."

Legislative intent is the polestar that guides statutory construction analysis. [5] The legislative intent of the Bert J. Harris, Jr., Private Property Rights Protection Act is evident from the first section of the act, which clearly provides that the statute was intended to protect private property interests against "inordinately burdensome" governmental regulations that do not necessarily amount to a constitutional taking. [6]

Section 70.001(1), Florida Statutes, provides for relief or payment of compensation "when a new law, rule, regulation, or ordinance" unfairly affects real property. An amendment to the municipal charter would appear to come within the scope of this language. A municipal charter is the paramount law of that municipality. It represents the constitution of the town, enumerating and providing all the powers the town possesses. A municipal charter consists of the creative act and all laws in force relating to the corporation, whether in defining its powers or regulating the method of their exercise.[7] Thus, the provisions of the Charter of the Town of Lauderdale By The Sea are laws within the scope of section 70.001, Florida Statutes, and can give rise to liability for any inordinate burden the charter provisions impose on real property "for the good of the public" when "in fairness [this disproportionate share of the burden] should be borne by the public at large." Likewise, the regulations, ordinances or rules adopted by the town to implement the charter amendment, would constitute "action of a governmental entity" that may implicate the Bert J. Harris, Jr., Private Property Rights Protection Act if these regulations impose an "inordinate burden" on real property.

In sum, it is my opinion that an amendment to a town charter proposed and approved pursuant to section 166.031(1), Florida Statutes, does constitute "action of a governmental entity" as that term is defined and used in the Bert J. Harris, Jr., Private Property Rights Protection Act. In addition, any new rules, regulations, or ordinances adopted by the town to effectuate the terms of the amendment to the charter would also constitute "action of a governmental entity" as that term is defined and used in the act. I note that the authority to determine whether such action gives rise to a claim under the act is expressly vested in the judicial branch.[8]

Sincerely,

Charlie Crist
Attorney General

CC/tgh

[1] As you note, pursuant to section 166.031(1), Florida Statutes, the town commission, as governing body, has no discretion regarding submission of the proposed charter amendment to a vote of the electors:

"The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose."

[2] See Ch. 95-181, Laws of Fla.

[3] Section 70.001(2), Fla. Stat.

[4] Section 70.001(1), Fla. Stat.

[5] *Reynolds v. State*, 842 So. 2d 46, 49 (Fla. 2002); *State v. J.M.*, 824 So. 2d 105, 109 (Fla. 2002).

[6] Section 70.001(1), Fla. Stat. And see *Royal World Metropolitan, Inc. v. City of Miami Beach*, 863 So. 2d 320 (Fla. 3rd DCA 2003).

[7] 12 Fla. Jur. 2d *Counties and Municipal Corporations* s. 22.

[8] Section 70.001(6)(a), Fla. Stat.

TC Mtg
6/22/10

MEMO

DATE: June 22, 2010
TO: Palm Beach Town Council
FROM: David Decker, PE
PROJECT: Coastal Erosion Task Force
Citizens Association of Palm Beach
SUBJECT: Comments – Reach 8 Shore Protection Project

I have been retained by the Citizens Association to advise the Association's Coastal Erosion Task Force on the technical aspects of the Town's ongoing shore protection efforts. I would like to thank Rob Weber. He has been extremely helpful providing information, answering my many questions and has been very receptive to our concerns.

With regards to the Reach 8 project, we recognize that the opinion of the Administrative Law Judge has placed numerous constraints on the project design. However, the Town should not view the Judge's Recommended Order as an absolute mandate that limits future shore protection options. Adopting such a view could potentially galvanize several precedent setting aspects of that decision, which in turn would seriously hamper the Town's future overall shore protection efforts. I am not suggesting that the decision be ignored, just that we are dealing with varying shades of gray here. The decision should not constrain the alternatives being considered to provide for the Town's beach infrastructure.

As you may know, the beach nourishment or storm protection projects called for in the Town's CCMP are planned and designed considering a 30 year project life. This involves not just a single but several planned renourishment efforts. Therefore it is important to consider the overall long term costs and benefits for these projects and not simply focus on the initial near term monetary or regulatory constraints. We must be sure to choose the best overall path, even though there actually may be more obstacles early on. I strongly recommend the Town not abandon the possibility of using a suitable offshore sand source for Reach 8, or to consider performing more hard bottom mitigation. These steps will improve the overall performance, storm protection levels and reduce costs over the long term.

There are still several questions that remain unanswered and we recognize that the Town is still receiving important information, including the results of shoreline modeling efforts and completion of offshore sand search. So, we view the proposed Reach 8 plan as a work in progress. I would like share a few observations with you.

Reach 8 Design

- The design approach now being considered for Reach 8 is technically acceptable but it incorporates several compromises to make the project more permittable but reduce the project's performance. They include;
 - Storm Protection - The present Reach 8 plan provides a modest beachfill volume which in turn provides modest storm protection. The project design is for a 15 year storm, which is about equal to a strong tropical storm. On behalf of the Coastal Erosion Task Force, I request that the proposed project design provide at a minimum, protection from a 30 year storm, which compares to a Category 2 hurricane. This has been the approximate level of storm protection provided with the Town's other storm protection efforts.
 - Feeder Beach - The Reach 8 design depends on Reach 7 to serve as a feeder beach. Therefore it is essential that these two projects be planned, designed and implemented in a complimentary manner. If this is not accomplished, the life of each nourishment efforts will be shortened considerably.
 - Lake Worth Gap - The Lake Worth Beach gap is especially troublesome. I strongly recommend that a concerted effort be made to work with Lake Worth to join with the Reach 8 project.

Sand Sources

- Offshore Sand Source - The eligibility of Reach 8 to use of an offshore sand source needs to be explored further. Ongoing offshore sand investigations need to include looking for sand for Reach 8.
- Sand Trap Sand - Consideration should be given to the use of the sand scheduled to be dredged from the Lake Worth Inlet sand trap as a source for the Reach 7 and 8 dune project, or the Reach 8 shore protection project.
- Hauling Costs - Truck hauling costs for sand from the Ortona source appear to make this option cost prohibitive and alternative sand transport methods should continue to be explored.
- Alternative Sand Sources - There are other sand mines in central Florida that are positioned near rail facilities. If the sand is suitable, their use may reduce the transport costs assuming rail is offloaded to a barge and the material directly pumped on the beach. The Town staff and the Shore Protection Board are actively investigating other sand sources and transportation methods and we encourage their continued efforts.
- Coarse Sand - The use of a more coarse sand is proposed for Reach 8. We agree that this is important.

Alternatives

- Evaluate Alternatives – it is strongly recommended that an alternatives analysis be performed including both more and less significant nourishment concepts. For example, as a lesser alternative may just consider dune fill. A greater alternative may consider enlarging the fill template south of the Lake Worth pier with additional offsetting hard bottom mitigation. Since the sand source is still not finalized it is recommended that sand costs be established as a constant for all alternatives considered.

Economic Feasibility

- Cost Benefit Analysis - To our knowledge neither the design nor the peer review team were asked to perform a cost - benefit analysis to determine if the Reach 8 plan now being considered is favorable. It is suspected that it may be necessary to join the Reach 7 and 8 projects to overcome the high costs and relatively short renourishment intervals required for Reach 8.
- Economic Feasibility - While the Reach 8 Feasibility Study provides a construction cost estimate, the question of the economic feasibility of the project was not discussed. To help assess alternatives, costs need to be estimated and compared. This effort should be performed for the total project life (30 years). The estimated benefits (storm / erosion protection and recreational use) over the project's design life are also estimated and compared with the costs.

Permitting

We support the submittal of a permit application for a project plan that includes the placement of sufficient sand to provide storm protection from a Category 2 hurricane as has been accomplished with the Town's other shore protection efforts. While the application is being considered, the details of the project can be confirmed, the design refined, and the permit application modified to reflect any needed adjustments.

Cc: Rob Weber

Cc: Peter Ellwell

JC

From: william strawbridge <wstraw@gmail.com>
To: N Barnes <barnesn@palmbeachcivic.org>, J Page <jpage@townofpalmbeach.com>, J Day <dayjane@bellsouth.net>, Preservation Foundation <aives@palmbeachpreservation.org>, C Delp <CDelp@townofpalmbeach.com>, annmbeha@aol.com
Date: 06/20/2010 03:19 PM
Subject: the Landmarking Referendum

Cindy: *Please forward and give hard copies to the Mayor & Council for their meeting Tuesday. Thanks.*

Dear Mayor & Town Council:

Its a shame that a reasonable? sounding idea is being turned on its head and used to promote a misguided cause - the preservation of the Royal Poinciana Playhouse.

Lets get something straight. It was a mistake to put the 1979 agreement in place and to landmark the theater but we all make make mistakes and clearly reasonable voices are now trying to correct them.

Granted, its a Volk building but its also a totally **undistinguished** piece of architecture. (*Lots of artists do mediocre work. Critics often site the reams of drawings cranked out by Picasso, picked up off the floor and saved by his wife, as nothing more than wall paper.*) It's in the **wrong place** at the wrong time and ruins the site (*even Volk did plans which made a vista on the site's east west axis from the Breakers golf course to the Inter coastal*). And it is functionally and economically **obsolescent**.

So lets not compound the errors. Saving the theater is insanity. If there's a landmarking issue in here anywhere, lets deal with it honestly and not crash a working system for an irrational cause.

Bill Strawbridge

*Read by
Madeline Greenberg
at TC Mtg
6/20/10*

Remarks on Behalf of The Citizens' Association Coastal Erosion Task Force
At 6-22-10 Town Council Meeting

The Coastal Erosion Task Force for the Citizens' Association of Palm Beach which represents about 6,000 residents strongly endorses placing adequate amounts of sand on Reaches 7 & 8. We appreciate and endorse the town's efforts to get the "Critically Eroded Beach" designation for our southern most beaches.

The Task Force of the Citizens' Association believes it is essential that whatever final design our town gets permitted, we receive a well designed beach re-nourishment project that maximizes storm protection against at the very least, Category 2 hurricanes for the safety of our residents and the infrastructure on this barrier island. We believe that the town shares in this desired result.

We support proceeding with the permitting process, but The Task Force is greatly concerned with some aspects of the currently proposed plan.

It is of paramount importance to us that projects like the Reach 8 one are well designed from the standpoint of shore protection, which would include protection from hurricanes. For those of us living here in Palm Beach, it was not that long ago that Frances, Jeanne and Wilma tore through our town. It is the opinion of our Task Force that there needs to be a thorough review of alternatives considered for this project, especially looking at the ratio of cost to the amount of hurricane protection. It is very important that this be completely explored before going too far with this present plan.

The reduced volume of sand in this current Small Scale Reach 8 Truck/Haul Project provides a corresponding reduction in storm protection and causes a shorter re-nourishment interval. It is the understanding of The Task Force of the Citizens' Association of Palm Beach that the volume of sand being proposed will likely protect against a tropical storm, but will not afford protection against a Category 2 hurricane as has been done for other town projects. That combined with the high cost for the truck hauled sand places the project presented at this time in the position that costs appear to exceed the benefits. We believe the town's design team must aggressively strive to improve the cost/benefit ratio of the Reach 8 project.

My speaking to you today is not only to express the concerns of the Task Force of the Citizens' Association relating to the proposed Reach 8 project but also is in response to the Town Council and Shore Board's request that the Citizens' Association do a thorough and detailed survey of the south end residents to determine if they support the currently proposed Small Scale Reach 8 Truck/Haul Project.

If it is considered appropriate to undertake a survey of the residents, we believe this is a responsibility of the town. We are not in a position to conduct such a survey. Our decision in this regard doesn't, of course, preclude the Town from doing so, if it wishes.

There is one additional matter that the Task Force of The Citizens' Association believes must be addressed at this time. It has been noted at the Shore Board Meetings that the two south end bridges, the Lantana Bridge and the Lake Worth Bridge, will be used to transport 261 sand trucks a day during the implementation period of the Small Scale Reach 8 Truck/Haul Project. It is our understanding that the Lantana Bridge is scheduled to be closed for repairs during a period of approximately two years. For those who live on the south-end of the Town of Palm Beach and also in the Towns of South Palm Beach and Manalapan, the Lantana and Lake Worth Bridges are used for many of our daily excursions off the island. There is a real possibility of the two projects, the closing of the Lantana Bridge and the Reach 8 Project, occurring simultaneously and creating serious safety issues for the residents. For example, the increased truck traffic and bridge closing would negatively impact emergency vehicles trying to get to condominiums and off the island when the Lake Worth Bridge becomes the main on and off route. This issue needs to be considered carefully in planning the Reach 8 project if South Ocean Blvd. is used to transport the sand by truck as is now being proposed. We are bringing this matter to your attention because we know that the safety of residents is a priority in our fine town.

We believe there are a number of technical issues concerning sources of sand, delivery methods, amount of sand and cost/benefit ratios that presently are under review by the Town's staff. With your approval, the task force would like to have Dave Decker, our technical advisor comment on these issues at this time.



STATE REPRESENTATIVE ★ ★ ★ ★ ★
MARY BRANDENBURG
DISTRICT 89



DISTRICT OFFICE: 305 LAKE AVENUE, LAKE WORTH, FL 33460-3906 - (561) 540-1157 - MARY.BRANDENBURG@MYFLORIDAHOUSE.GOV

REPRESENTING: BOYNTON BEACH, CLOUD LAKE, GLEN RIDGE, GREENACRES, HYPOLEXO, LAKE WORTH, LANTANA, PALM BEACH,
PALM SPRING, SOUTH PALM BEACH, WEST PALM BEACH, WESTGATE, AND PART OF UNINCORPORATED PALM BEACH COUNTY

Rep. Mary Brandenburg passed 4 bills in 2010

The annual legislative session in Florida that ended April 30 was dominated by major issues: the Gulf of Mexico oil spill, inadequate revenue to plan an adequate budget, partisan feuds over redistricting, and the Governor's political plans. Despite these shadows, it was possible to accomplish some good things for the people of Florida. I passed four bills that will make a difference in the everyday lives of Floridians.

HB 729 deals with tattooing. Although tattooing is an invasive procedure, until now it has been unregulated. There were no requirements for tattoo artists or studios, not even for basic sanitation such as washing hands and using clean needles, although responsible professional tattoo artists take sensible precautions anyway. One study linked 60% of the new Hepatitis C cases to tattooing, and there have been many cases of serious skin infections, including MRSA. My legislation will change that. The Florida Department of Health will set health standards for the industry, and will license and inspect tattoo artists and studios. In addition, children under the age of 16 cannot obtain tattoos, and those 16 and 17 must have parental permission. My legislation was designed solely to protect the public health, and includes no artistic standards.

HB 615 deals with criminal law, and I filed it at the request of Palm Beach County State Attorney Michael McAuliffe. This legislation will allow State Attorneys to offer reduced sentences to criminals who provide substantial assistance to the police and State Attorneys that leads to catching and convicting other criminals. There is a similar law that applied only to drug-related crimes; this extends that option to other crimes. It is my hope that this will help eliminate gang activity in our communities. Senator Dave Aronberg was the Senate sponsor.

HB 289 creates a specialty license plate for the Florida Fraternal Order of Police. The funds raised will go to their foundation, which builds and maintains memorials to police officers who die while performing their duty. We all owe a great debt to these officers and to their families.

HB 1045 affects Palm Beach County's zoning regulations, and I filed this bill at the request of the Palm Beach County Commissioners. This bill affects home-based day care for children.

I filed four other bills that did not pass. For each of the eight years that I have served in the Florida House of Representatives I have sponsored or co-sponsored a bill to remove the prohibition against gay and lesbian people from adopting children. Again this year I filed HB 3, and again this year the House Speaker refused to allow it to be discussed and voted on. Right now Florida has more than 3000 children in foster care who could be adopted. It breaks my heart to deny those children the chance at a forever home. Gay and lesbian singles and couples are permitted under Florida law to serve as foster parents, so it makes no sense to forbid them from becoming permanent parents.

I also filed HB 621, which would have made the possession of a stolen credit or debit card a felony. Right now, mere possession is not a crime, and police officers would be better able to arrest and convict thieves if my bill had passed. I filed this bill at the request of the Florida Law Enforcement Property Recovery Unit, a state-wide professional organization of police officers who

deal with stolen property. My effort to reduce identity theft and prevent financial losses passed the House of Representatives but failed to pass the Senate.

HB 1577 would have allowed the Florida Department of Community Affairs to create a waiver system for small cities such as Glen Ridge and Cloud Lake, so they would have to update their comprehensive land use plans only when changes were made. Regular updates, normally needed by developing cities, are so expensive that their cost is a burden on small governments.

Finally, HB 1579 would have allowed military veterans to purchase credit for their time in the military to count toward their government retirement pension. Locally, this would have affected veterans working for the State of Florida, for Palm Beach County, and for the Palm Beach County School Board.

If you would like more information about these or any other bills filed during the 2010 legislative session that just ended, please let me know.

Mary Brandenburg

If you would like to receive updates from Representative Brandenburg, please send her an email with your request to be added to her email list at Mary.Brandenburg@myfloridahouse.gov

Statement About Charter Amendment

patrick henry flynn

to:

council, David A Rosow, Dick and Rhoda Kleid, Gail, Bill, Robert Wildrick

06/21/2010 05:49 PM

Show Details

Statement of Preserve Palm Beach P.A.C.

June 21st, 2010

As the town counsel has aptly observed, according to the laws of Florida, "The governing body of the municipality **shall** place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose." (Ch. 166, FL ST 166.031) If the amendment is adopted by the voters, "The governing body of said municipality **shall** have the amendment incorporated into the charter." (Ch. 166, FL ST 166.031) The charge to the town council unequivocal; you shall put a certified petition on the ballot.

The only apparent exception is when "...the governmental agency in good faith questions the constitutionality of the ordinance in its entirety and on its face" ... a court "may consider the question in advance of the election concerning its approval." (West Palm Beach Association of Firefighters v. West Palm Beach, 448 Southern Reporter, 2d Series, Pg. 1214)

The Florida constitution reserves all rights not designated to government to the people. To wit: "All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people." (Constitution 1968, Art 1, Sec 1) Additionally the constitution safeguards the people's right to petition for redress. "The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances." (Constitution 1968, Art 1, Sec 5)

Landmarking has only a tangential speculative and a possibly prospective relationship to zoning and the issuance of development orders, which are the province of the Planning and Zoning Commission and the Town Council. Besides any appeal of denial of a certificate of appropriateness can be reconsidered by the town council before the referendum would operate.

Furthermore, the charter amendment is not a development order; it neither grants nor denies an application for development permit. At best the proposed charter amendment could indirectly affect the developer's plan to redevelop the property. Moreover, there are presently no properties that are both landmarked and subject of a development application in the town of Palm Beach. The development orders have issued.

Prospectively the Royal Poinciana Plaza may seek redevelopment, but that property is landmarked not only by the Landmarks Preservation Commission but also in effect by the 1979 Deed Covenant and Agreement that limits overall density and use of the theater building.

Town Counsel's arguments are statutory (that there is a conflict with statute)—not constitutional; and hypothetical. There is nothing presently in the proposed charter amendment that would conflict with statute. Counsel has to construct a scenario in the future to justify his and the council's proposed intervention to deny ballot access.

The referendum affects public and private landmarked group structures in Palm Beach. These are more numerous than five, so the statute that counsel complains of does not concretely and actually apply at this time. The referendum may conflict with FL Statute Sec 163.3167 (12) at some later date. Town Counsel says, "...what the proposed Charter amendment establishes is the *potential for a situation* which falls squarely in violation of state statute." But this is not substantial enough reason to make the claim in light of the people's reserved right of political power and their specified constitutional right to petition for redress.

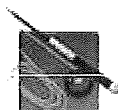
There is only one advisory opinion of the attorney general that opines that the charter initiatives should go forward no matter what argument is speculatively raised. We submit further that the actions of the counsel are purely ministerial in nature, and create no liability if in fact the governing statute 166.031 is followed. Finally, in weighing the rights of ten percent of the electorate against a hypothetical conflict either with the charter referendum constituting a violation of any "development order," or some future action brought under the Bert Harris Private Property Act, this council must vote for the people.

Pat

Patrick Henry Flynn
Chairman, Preserve Palm Beach P.A.C.

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Patrick Henry Flynn, President
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www.pbtheaterguild.org
www.pbtheaterguild.blogspot.com



Fw: Cartier Time Extension - 214 Worth Avenue

Veronica Close to: Cheryl Kleen

This message is digitally signed.

06/21/2010 05:31 PM

Cheryl - we have been asked to defer this to next month. They were asked to submit a clearer memo, but this is all we have...

Veronica B. Close, Assistant Director
Planning, Zoning & Building Department
office: (561) 227-6401
fax: (561) 835-4638

PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from the Town of Palm Beach officials and employees regarding public business are public records available to the public and media upon request. Under Florida law e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. If you have received this message in error, please notify us immediately by replying to this message, and please delete it from your computer. Thank you.

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----- Forwarded by Veronica Close/PalmBeach on 06/21/2010 05:30 PM -----

From: Kathleen Ruderman/PalmBeach
To: Veronica Close/PalmBeach@PalmBeach
Date: 06/18/2010 08:24 AM
Subject: Fw: Cartier Time Extension

Veronica,

I hadn't heard that this was so. Are you aware of this?

Help Save Paper - Do you really need to print this email?



----- Forwarded by Kathleen Ruderman/PalmBeach on 06/18/2010 08:23 AM -----

From: "R & R Professional Services, Inc.." <rnpr01@yahoo.com>
To: KRuderman@TownofPalmBeach.com
Date: 06/17/2010 04:50 PM
Subject: Re: Cartier Time Extension

I spoke to Jeff Taylor at the beginning of the week and took us off the agenda for this month. We may need to do this next month, I will inform.

Thank you

Roberta

R & R PROFESSIONAL SERVICES, INC.
561-966-7882 OFFICE
561-433-1223 FAX

From: "KRuderman@TownofPalmBeach.com" <KRuderman@TownofPalmBeach.com>
To: JTaylor@TownofPalmBeach.com; PCastro@TownofPalmBeach.com;
RHouston@TownofPalmBeach.com; JBoodheshwar@TownofPalmBeach.com
Cc: rnrpro1@yahoo.com
Sent: Thu, June 17, 2010 12:50:43 PM
Subject: Cartier Time Extension

Everyone,

You are listed as a copyholder on the attached Town Council agenda item.

(See attached file: Cartier 1 of 2.doc)(See attached file: Cartier 2 of 2.pdf)

Kathleen
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P