TOWN OF PALM BEACH

Town Manager's Office

**TENTATIVE-
SUBJECT TO
REVISION**

SPECIAL TOWN COUNCIL MEETING

AGENDA

TOWN COUNCIL CHAMBERS

August 12, 2010

1:00 PM

WELCOME!

The progress of this meeting may be monitored by visiting the Town's web site (www.townofpalmbeach.com) and selecting "Your Government" and then selecting "Live Meeting Audio". If you have questions relative to these two features, please contact the Office of Information Systems (561) 227-6315.

I. CALL TO ORDER AND ROLL CALL

II. PLEDGE OF ALLEGIANCE

III. APPROVAL OF AGENDA

IV. CONTINUED CONSIDERATION OF PROPOSED FY11 BUDGET

A. TOWN MANAGER'S RECOMMENDATION FOR ACHIEVING TOWN COUNCIL'S GOAL OF MAINTAINING A LEVEL MILLAGE RATE FROM FY10 TO FY11. [PETER B. ELWELL, TOWN MANAGER]

B. CONTINUED DISCUSSION AND TOWN COUNCIL DIRECTION REGARDING CHANGES TO FY11 PROPOSED BUDGET PRIOR TO BUDGET ADOPTION IN SEPTEMBER. [MAYOR AND TOWN COUNCIL]

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Telephone (561) 838-5410 * Facsimile (561) 838-5411 * townmanager@townofpalmbeach.com

V. ANY OTHER MATTERS

VI. ADJOURNMENT

PLEASE TAKE NOTE

Disabled persons who need an accommodation in order to participate in this 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 the meeting.

TOWN OF PALM BEACH

Information for Special Town Council Meeting on: August 12, 2010

To: Mayor and Town Council

From: Peter B. Elwell, Town Manager

Re: FY11 Proposed Budget -
Additional Expenditure Cuts and Revenue Increases to
Maintain FY10 Property Tax Millage Rate for FY11

Date: August 9, 2010

THE GOAL

At the Town Council meeting on July 12, 2010, the Town Council established a goal of maintaining the FY10 millage rate for FY11 (resulting in approximately $4.5 million less property tax revenue to the Town) and directed staff to identify a combination of expenditure cuts and revenue increases to accomplish this goal. The recommendations set forth below will achieve the $4.5 million goal without any use of General Fund balance.

USE OF FUND BALANCE (RESERVES)

If the Town Council decides not to implement all of staff's recommendations, General Fund balance could be used as a budget balancing revenue for FY11, but I urge the Town Council to be extremely cautious in considering that alternative. The Town annually recognizes some use of General Fund balance as a source of revenue for General Fund operations. This is already true for FY11, as well. However, the normal uses of General Fund balance are annual transfers from reserves that have been established for specific purposes and which are replenished annually, or the transfer of some "excess fund balance" (that portion of the fund balance that is unreserved and is in excess of the Town's minimum fund balance standard of 25% of each year's General Fund operating budget) for a one-time, non-recurring expenditure (such as a capital improvement to Town infrastructure).

Use of fund balance simply as a balancing revenue for FY11 operations will be a short term solution that will cause us to start the FY12 budget process with a deficit of recurring revenues vs. recurring expenses. The only exception to that would be to use General Fund balance within the policy definition of the "rainy day fund" for tax stabilization. But, use for that purpose would only be proper if we have a reasonable expectation that this year's substantial decline in property values will be an isolated and short-term phenomenon. Since we expect FY12 to be another challenging budget environment with an additional decline in Townwide property values, I do not believe it would be prudent to rely upon any substantial use of fund balance as a budget balancing revenue for FY11.

THIS IS NEITHER THE BEGINNING NOR THE END OF TOWN BUDGET REFORM

The recommendations contained in this memorandum (and attachments) should be considered in the context of an ongoing process of reforming Town policies and reducing Town expenses. We began this process in 2007 and accelerated it in 2009. This year's significant decline in total taxable property value Townwide and the Town Council's commitment to maintain an FY11 Town property tax rate equivalent to FY10 will require expenditure cuts deeper than what were originally anticipated when staff presented the 2010 Long Term Financial Plan in April and the original proposed FY11 budget in June. Therefore, the recommendations set forth in this memorandum identify actions that either (1) were already being considered but had not yet been finalized earlier this summer or (2) could be identified in a very short timeframe (approximately 3 weeks) to hold the line on FY11 taxes. While these cuts are deeper and more noticeable than those that have been made in the past three Town budgets, the current actions should be viewed as another interim step in an ongoing process. They are not "the end" or, in economic projection terminology, "the bottom." To complete some paradigm shifting processes the Town has already begun and to prepare for what is expected to be an equally challenging budget environment next year, we will continue to analyze, recommend, and implement Town budget reform measures throughout the upcoming months. A list of specific "to do" items is included under the heading "ACTION PLAN TO ACHIEVE ADDITIONAL SAVINGS IN PREPARATION FOR FY12" near the end of this memorandum.

SUMMARY OF IMPACT OF CURRENT RECOMMENDATIONS

If Town Council approves all of staff's recommendations set forth in this memorandum, the following will be true:

- Total General Fund expenditures will be reduced by approximately $3.5 million (5.2%) from FY10 to FY11. The FY11 expenditure budget of $63.4 million will be the lowest since FY06. With additional expenditure cuts already anticipated for FY12, next year's General Fund budget will be below $60 million for the first time since FY05.

- Total taxes paid to the Town by all Town property owners will be reduced by approximately $5 million (12.3%) from FY10 to FY11. Property taxes budgeted for FY11 will be $36.2 million. This is the lowest amount of property taxes in any Town budget since FY05 and is 16.0% below the Town's property tax peak of $43.1 million in FY07.

- Total Town staff (full-time equivalent personnel or FTEP) will be reduced by 42.65 positions (10.7%) from FY10 to FY11. The 357.33 authorized positions for FY11 will be the lowest FTEP complement since 25 years ago in FY86. Staffing will have been reduced by 57.9 positions (13.9%) from the Town's staffing peak of 415.23 FTEP in FY07.

- This is all being proposed with a keen concern for protecting and maintaining the high quality of life that makes Palm Beach special. While the more incremental cuts that have been made between FY07 and FY10 have been implemented through increased efficiencies and have been virtually invisible to Town residents, we cannot implement the much greater magnitude of cuts for FY11 without some more noticeable impacts. The most obvious of these would be the elimination of the Ocean Rescue unit that provides lifeguard services at the Town's two public beaches. That matter is addressed more fully below. However, aside from that one exception, the Town's management team believes we can implement all of the recommended changes with only minor and immaterial impacts to Town levels of service. (Primarily, this is because we have been functioning for months without most of the positions that are proposed for elimination and we are continuously finding ways to accomplish the core functions of the Town in a more efficient manner.) Some special events will be eliminated, some low priority tasks will not get done, and in some areas our responses will be slowed (from a superior level of service to one that is still above average), but the Town will not reduce its high standards for the quality of service provided to the community.

STAFFING

Staff recommends filling 10 current vacancies (in core functions and revenue producing positions) for reasons presented earlier in the FY11 budget process and we are prepared to discuss those positions further, if necessary, at the August 12 meeting. We recommend eliminating all other currently vacant positions from the Town's budget. In most cases this is by direct elimination, but in some cases we recommend that a current vacancy be filled from within the existing Town staff and that the position vacated by that promotion or transfer be eliminated. The details of any such proposed promotions/transfers/reorganizations are set forth in the attached memoranda from the applicable department directors. You will note that some of the reorganization actions described in those memoranda have been previously proposed by staff and approved by Town Council. The reason they are repeated at this time is because they are part of the overall reduction in staffing from FY10 to FY11 and omitting them would have made the overall math impossible to understand.

The 41 full-time positions that we recommend be eliminated include line level employees in both administrative and service delivery functions, as well as employees with varying levels of supervisory/management responsibility. Higher ranking positions proposed for elimination include the Assistant Town Manager; one Assistant Director of Public Works; one Captain, three Sergeants, the Business and Community Relations Manager, the Telecommunications Manager, and one Telecommunications Supervisor in the Police Department; the Administrative Lieutenant and one Assistant Fire Marshal in the Fire-Rescue Department (both via transfer of the incumbents back to operational duties "on shift" from their current positions "on days"); and one Parks Supervisor in the Public Works Department.

At the July 12 Town Council meeting, Council unanimously adopted a motion declaring that layoffs of incumbent employees might be necessary in order to achieve sufficient savings to address the Town's current and future financial circumstances. Without layoffs, staff's recommendations would reduce the Town's FTEP complement by 30.65, but we would fall almost $750,000 short of our $4.5 million goal for immediate property tax reduction. That is why our list includes the elimination of the Ocean Rescue unit and the lay-off of two firefighters. The Ocean Rescue matter is addressed in detail in the next section of this memorandum. The firefighter layoffs would occur as a result of the Administrative Lieutenant and an Assistant Fire Marshal returning to operational positions "on shift" and, in accordance with the applicable provisions of the collective bargaining agreements between the Town and the IAFF, "bumping" the two most recently hired firefighters. If the Town Council approves elimination of the Administrative Lieutenant and Assistant Fire Marshal positions but wishes not to layoff the two firefighters, we believe that reduction in staffing can be accomplished by attrition during FY11 (via the next two retirements/resignations of other firefighters). In the meantime, the two administrative positions would be eliminated immediately and the Town would achieve a reduction in overtime expenses by having more firefighters available to meet daily minimum staffing requirements.

All staffing changes proposed for all departments are listed on the attached table entitled "Summary of Staffing Recommendations."

OCEAN RESCUE

This was by far the most difficult decision for me as your Town Manager in identifying the actions I believe are necessary to achieve the $4.5 million goal, because it involves the complete elimination of a valuable Town function and the layoff of 10 existing Town employees. It is on the list because this is the only service provided by the Town at Town taxpayer expense for which the overwhelming majority of customers are not residents of Palm Beach. Ocean Rescue personnel estimate that of the more than 500,000 people who visit the Town's guarded beaches annually, 90% or more are from out-of-town.

It has been noted that elimination of this function could increase Town liability. Town Attorney Randolph's legal opinion on this matter (addressing both the basic liability issues and the question of sovereign immunity) is attached hereto in the form of a letter dated August 3, 2010 (with attachments).

Elimination of this function will result in increased workload for the Police and Fire-Rescue Departments and, at some times under some circumstances, decreased response time for calls for service at the Mid-Town and Phipps Ocean Park beaches. Unlike all other cuts proposed at this time, this one would result in real and visible reduction in level of service to the public. This real and visible reduction would occur in a public safety function, making this a particularly difficult recommendation for me and decision for you. Nevertheless, since the elimination of Ocean Rescue would have little direct impact on the overwhelming majority of Town taxpayers and since it would save the Town nearly $800,000 per year, I am recommending that you authorize us to immediately post the necessary warning signs and to discontinue this service, effective October 1, 2010.

If you choose not to eliminate the Ocean Rescue unit, there are alternative actions that could reduce the cost of providing this service. One would be to eliminate the service at Phipps Ocean Park and continue to provide it at Mid-Town. Only about 25% of the attendance at the Town's guarded beaches occurs at Phipps Ocean Park. Eliminating the lifeguard service at that location would allow the Town to reduce Ocean Rescue staffing by 40% (from 10 to 6). This would involve 3 layoffs on October 1, 2010, and the retirement of the current Ocean Rescue Supervisor by January 2011. Keeping the current supervisor in his position during the transition to a one location operation would be helpful. Upon his retirement, we would switch to an operational model where one of the Fire-Rescue Department's existing mid-level managers would supervise the Ocean Rescue Unit and there would be 6 lifeguards providing the service on the beach. Through attrition, we would replace 2 of those full-time lifeguard positions, leaving the Town with an operational model for the long term that would include a core group of 4 full-time lifeguards supported by a cadre of part-time (no benefits) lifeguards and/or volunteers. This alternative would save the Town approximately $200,000 in FY11.

A similar approach that does not provide as much cost savings would be to reduce the level of service at Phipps Ocean Park by not guarding it on Tuesday, Wednesday, and Thursday each week. I am much less comfortable with this alternative because of the ambiguity it creates for beachgoers. I am concerned that if this beach is guarded on some days but not on others, we might increase our liability to a far greater degree than if we completely stopped guarding that beach. Nevertheless, it is offered here as one more alternative to consider. If you select it, there would be 2 layoffs on October 1, 2010, and through attrition (beginning with the Ocean Rescue Supervisor's retirement) the 8 remaining full-time positions would be reduced to 5, who would be supported by the aforementioned cadre of part-time (no benefits) lifeguards and/or volunteers. This alternative would save the Town approximately $150,000 in FY11.

Ocean Rescue Supervisor Mark Hassell has provided me with a letter expressing concerns about the possible elimination of this service. That letter is attached for your consideration.

NON-STAFFING ITEMS

A number of non-staffing related cuts are recommended. Some of these are in accordance with the Council's direction at the July 12 Town Council meeting; others are staff initiated. In general, they amount to much smaller amounts of savings than the personnel related cuts because the governmental services provided by the Town are labor intensive and the majority of Town costs are for employee pay and benefits.

The following items are on the list in response to Town Council's direction at the meeting on July 12:

- Both Smith and Ballard (Tallahassee) and Greenburg Traurig (Washington) have agreed to reduce their fees by 50%, thereby reducing our annual lobbying expenses from $100,000 to $50,000.

- All of the Mayor and Town Council's intergovernmental memberships will be eliminated except the Palm Beach County League of Cities and the Interlocal Plan Amendment Review Committee (IPARC).

- Funding for the holiday tree at Bradley Park and for the annual 4th of July event has been eliminated.

- Funding for legal expenses related to telecommunications issues has been reduced.

- All Town taxpayer funding for Inside Palm Beach Government (IPBG), the Citizens' Police Academy, and the Citizens' Fire Academy has been eliminated. This involves a $5,000 direct cost savings by eliminating the line item for IPBG. It also will involve the redirection to other core tasks of hundreds of hours of employee time in preparing for and executing these programs, if the programs are eliminated. Per Town Council direction, the programs will only be offered in the future if 100% of all out-of-pocket and in-kind costs are covered either by donations or participant fees. (In-kind costs would include the pay and benefits valuation of all staff time and may involve other factors, as well.)

- Funding for Emergency Management has been reduced by cutting the contractual Emergency Management Coordinator's hours by 50% and by reducing related costs. Staff does not think it would be prudent to eliminate the contractual Emergency Management Coordinator position entirely, as we count on that position for essential oversight of the Emergency Operations Center and for interagency communications before, during, and after emergencies. We will be assigning additional responsibilities to staff in various departments to offset the reduction in the Emergency Management Coordinator's hours.

- The small line item for retirement gifts will be eliminated. Based on prior community support for employee recognition programs, we anticipate that this cut may be offset by a donation.

In addition, staff recommends the following:

- Elimination of all taxpayer-funded employee events (such as the annual picnic and holiday party). We will continue to allow a small committee of designated Town employees to organize "Town employee events" (such as group outings to athletic or cultural events) and to utilize Town time and Town communications for this purpose. However, as in the past, those events will be funded 100% by participant fees.

- Reduction of information systems expenditures for hardware purchases, software maintenance, and contractual programming.

- Reduction of recruiting expenses in the HR budget. These are small costs to the Town in any year, but will be even smaller in FY11 due to our expectation of fewer new hires.

- Reduction in audit fees and banking fees due to the successful results of recent RFPs for annual audit services and banking services.

- Reduction of line items in Planning, Zoning, and Building for contractual plan review, digital scanning of historical documents, GIS programming, and Comprehensive Plan updates.

- Reduction of fees for nighttime security at the Town Docks due to the successful result of a recent RFP process for those services.

- Level funding of the Society of the Four Arts Library (as the Town's public library) instead of increasing by 3% (which had already been reduced from a standing policy of increasing by 5%). I advised Ervin Duggan of my intention to make this recommendation.

- Reduction of Capital Improvement Program pay-as you-go funding. This would include (1) changing the Town's policy for street paving to require a commitment of $250,000 per year instead of $500,000 per year and (2) reducing pay-as-you-go funding for sanitary and storm sewer maintenance. The Capital Improvement Fund is carrying balances in both categories and the highest priority projects in both categories will be addressed through the Accelerated CIP and paid for with bond proceeds.

- Decrease in the General Fund Contingency account. We will still comply with the policy of setting aside 1.5% of the FY11 operating budget expenditures as contingency, but this number will be lower due to the other expenditure cuts described in this memorandum.

- The many cuts described above will be offset slightly by an increase in unemployment insurance costs if we proceed with the layoffs recommended by staff.

- I also recommend Town Council authorize a 50/50 cost share to help pay the health insurance premiums for laid off employees who choose to continue coverage for themselves and/or their dependents in accordance with Federal COBRA regulations.

Finally, there are two items of increased revenue for the General Fund which are included on the list of FY11 budget changes and a third which staff recommends for Town Council policy consideration, as follows:

- In the FY10 budget, $1.4 million was transferred from the General Fund balance to the Capital Improvement Fund as a "Reserve for Future Capital Improvements." This was done as a down payment on what we all knew would be a requirement for substantially increased capital improvement funding to complete the Accelerated Capital Improvement Program (ACIP). Subsequently, Town Council authorized the cost saving measure of issuing bonds to fund the ACIP, so this reserve in the pay-as-you-go portion of the Capital Improvement Fund is no longer necessary. Staff recommends that this $1.4 million be transferred back to the General Fund.

- As itemized elsewhere, staff is recommending expenditure reductions in staffing and security fees at the Town Docks. We recommend that these savings be used to increase the FY11 transfer from the Recreation Enterprise Fund to the General Fund by $89,000. We expect that when the full review of Recreation programming and related matters (as set forth in the Action Plan section below) has been completed, we will have identified additional ways to increase the annual transfer from the REF to the General Fund for future years.

- During exploration of alternatives to the total elimination of the Ocean Rescue function, several different people suggested increasing the fees for the parking kiosks along South Ocean Boulevard in the Mid-Town area to $5 per hour or more. (The kiosk fees Townwide currently are $2 per hour.) Increasing the fees in this manner would be a first step in managing the Town's on-street parking resources as a commodity, which is a concept the Town's elected officials and staff have been discussing for several years but have not yet implemented. It is hard to predict the impact that substantially raising these fees might have on the demand for those particular parking spaces, so we did not include an estimate for increased parking revenue on our list of changes for the FY11 budget. Nevertheless, the potential for increased revenue is real and, with or without a change in Ocean Rescue level of service, we believe Town Council should consider authorizing a parking fee increase for this location.

IMPACT OF RECENT EVENTS ON THE TOWN'S LONG TERM FINANCIAL PLAN

The FY11 budget process has required deeper cuts than were anticipated in the 2010 Long Term Financial Plan. This has temporarily caused our long term projections to show operating deficits beginning in FY14 and exceeding $1 million per year in FY15 and thereafter. (Prior actions had pushed the anticipated start of future deficits back to FY18.) We will address this by completing the action plan set forth below and taking all other necessary actions to avoid future deficits. Staff will keep the Mayor and Town Council informed of our progress and will provide a fully updated Long Term Financial Plan early in 2011.

ACTION PLAN TO ACHIEVE ADDITIONAL SAVINGS IN PREPARATION FOR FY12

1. Take final action on reforming employee pension systems.

2. Continue to review all other aspects of employee compensation (pay and benefits) and initiate additional reforms, as needed.

3. Address the funding requirements of the Town's Coastal Protection Program.

4. Review all aspects of Recreation programming, including but not limited to service levels, staffing, fee structures, and the possibility of privatizing either service delivery functions or entire facilities.

5. Review all aspects of Fire-Rescue operations, including but not limited to service levels, management structure, staffing, equipment, the applicability of national service standards to local circumstances (particularly as it relates to EMS vs. fire staffing and levels of service), and the possibility of contracting for some of the resources necessary to meet Town approved standards.

6. Review staffing and functions in the administrative Town Hall offices (Town Manager's Office, Finance Department, Human Resources Department, and Town Clerk's Office) to determine whether additional teamwork could create cost savings, service improvements, or both.

7. Identify ways to improve the cost effectiveness of Town legal services, with particular emphasis on the question of in-house Town Attorney vs. contracted Town Attorney.

8. Review with all advisory boards and commissions the possibility of reducing the frequency of their meetings to quarterly or bi-monthly.

9. Analyze the Town's fleet and seize all opportunities to downsize both the number and the size of Town vehicles.

10. Extend life expectancies for all remaining Town vehicles and equipment within the Equipment Replacement Fund (to require the longest prudent useful life for each item and reduce the annual depreciation expense within the Town's budget).

11. Review the Town's recycling program to determine whether it would be cost effective and otherwise advisable to reduce or eliminate this service.

12. Review the pros and cons of reducing the frequency of Town residential garbage collection to twice per week.

13. Review various methods of capital improvement funding (operating budget vs. bond fund vs. pay-as-you-go capital fund) to eliminate redundancy, consolidate where appropriate, and streamline both the funding and the management of the Town's CIP.

14. Consider additional opportunities to manage on-street parking as a commodity, including but not limited to adding kiosks in locations where parking is currently free, increasing parking fees differentially based upon differences in demand, and modifying the Town's permit parking program that allows individuals to prepay for parking in certain areas.

15. Recommend other potential sources of non-tax revenue that do not merely shift a Townwide tax to being a Townwide fee.

16. Create a formal program for citizen volunteers to assist in applicable Town functions.

17. Continuously ask ourselves the following questions for all functional areas of Town government:
    What do we do?
    Why do we do it?
    Should we keep doing it (or not)?
    If we should keep doing it, is there a better way to do it?

ATTACHMENTS

- Table summarizing revenues and expenditures for the FY10 adopted budget, the FY11 budget originally proposed in June, and the FY11 budget as it is currently proposed in August.

- Table dated August 9, 2010, listing all proposed budget reductions (as compared to the FY11 budget originally proposed in June) for consideration at the special Town Council meeting on August 12.

- Table dated August 9, 2010, entitled "Summary of Staffing Recommendations" for FY11.

- Memorandum dated August 6, 2010, from Human Resources Director Danielle Olson, regarding "Lay-off Policy and Workforce Reduction Benefits."

- Memorandum dated August 6, 2010, from Fire-Rescue Chief William Amador, regarding "Additional Savings Through Position Elimination and Layoffs for FY11."

- Letter dated August 3, 2010, from Town Attorney John Randolph, regarding "Lifeguards and Liability for Public Beaches."

- Letter from Ocean Rescue Supervisor Mark Hassell.

- Memorandum dated August 6, 2010, from Police Chief Kirk Blouin, regarding " Fiscal Year 2011 Cost Savings Measures."

- Memorandum dated August 6, 2010, from Public Works Director Paul Brazil, regarding "Revised Staffing Recommendations - FY11 Budget."

- Memorandum dated August 6, 2010, from Director of Recreation and Special Projects Jay Boodheshwar, regarding "Elimination of Assistant Dockmaster Position."

- Table dated August 6, 2010, showing the revised pay-as-you-go portion of the Capital Improvement Program for FY11.

PBE:
cc: Thomas G. Bradford, Deputy Town Manager
All Department Directors

Town of Palm Beach, Florida
General Fund Revenues and Expenditures
Budget Comparison
Fiscal Years 2010 - 2011

	Adopted Budget FY2010	Original Proposed Budget FY2011	August Proposed Budget FY2011	Original vs. August $ Difference	FY10 vs. August $ Difference	FY10 vs. August % Change
Revenues						
Ad Valorem Taxes	$41,326,000	$40,769,456	$36,245,463	-$4,523,993	-$5,080,537	-12.3%
Non Ad Valorem Taxes	7,258,000	7,829,000	7,829,000	$0	$571,000	7.9%
Licenses & Permits	5,607,300	6,104,300	6,104,300	$0	$497,000	8.9%
Intergovernmental	1,156,700	1,129,000	1,129,000	$0	-$27,700	-2.4%
Charges for Services	2,987,900	3,151,803	3,151,803	$0	$163,903	5.5%
Fines and Forfeitures	1,149,200	841,000	841,000	$0	-$308,200	-26.8%
Investment Earnings	1,540,000	1,366,000	1,366,000	$0	-$174,000	-11.3%
Miscellaneous Revenues	299,400	287,500	287,500	$0	-$11,900	-4.0%
Interfund Transfers	550,000	550,000	639,000	$89,000	$89,000	16.2%
Transfer from CIP	0	0	1,400,000	$1,400,000	$1,400,000	100.0%
Transfer From Fund Balance	4,978,800	4,541,745	4,541,745	$0	-$437,055	-8.8%
Total Revenues	**$66,853,300**	**$66,569,804**	**$63,534,811**	**-$3,034,993**	**-$3,318,489**	**-4.5%**
Expenditures						
Department						
Legislative	$118,700	$118,000	$64,700	-$53,300	-$54,000	-45.5%
General Government	$1,372,600	$806,000	$890,800	$84,800	-$481,800	-35.1%
Town Manager	857,600	771,920	745,007	-$26,913	-$112,593	-13.1%
Advice and Litigation	402,500	414,100	407,800	-$6,300	$5,300	1.3%
Human Resources	690,800	665,149	634,149	-$31,000	-$56,651	-8.2%
Information Systems	1,900,600	1,785,463	1,715,463	-$70,000	-$185,137	-9.7%
Finance	1,871,100	1,900,690	1,891,390	-$9,300	$20,290	1.1%
Planning/Building/Zoning	3,903,600	3,946,911	3,677,990	-$268,921	-$225,610	-5.8%
Library	272,400	280,600	272,400	-$8,200	$0	0.0%
Fire-Rescue	12,397,580	14,002,467	12,907,829	-$1,094,638	$510,249	4.1%
Police	15,569,000	15,354,220	14,714,936	-$639,284	-$854,064	-5.5%
Emergency Management	82,400	80,200	48,900	-$31,300	-$33,500	-40.7%
Public Works	14,242,000	14,451,858	14,019,290	-$432,568	-$222,710	-1.6%
Contingency	967,000	973,000	925,853	-$47,147	-$41,147	-4.3%
Transfer to Other Funds	12,205,420	11,019,226	10,519,226	-$500,000	-$1,686,194	-13.8%
Total Expenditures	**$66,853,300**	**$66,569,804**	**$63,435,733**	**-$3,134,071**	**-$3,417,567**	**-5.1%**
Revenue Over Expenditures			**$99,078**			

Town of Palm Beach
Proposed Budget Reductions
Special Town Council Meeting on August 12, 2010

Department		FTE Reduction	Budget Reduction
Legislative			
Budget Reduction			
Lobbying Services	Negotiated Cut in Fees		50,000
Eliminate all Memberships except PBCLC and IPARC			3,300
General Government			
Budget Reduction			
Eliminate Holiday Tree at Bradley Park			2,200
Eliminate Employee Events	Town may lose $6,350 in deposits for Holiday Party		40,000
Eliminate Funding For 4th of July			15,000
Eliminate Citizens Academies			5,000
Town Manager			
Budget Reduction			
Eliminate Proposed PTNB Executive Assistant		0.50	26,900
Advice and Litigation			
Budget Reduction			
Reduce Budget for Telecom Attorney			6,300
Information Systems			
Budget Reduction			
Reduce Minor Hardware Expense	Extend Life of Computers by 1 Year		25,000
Reduce Software Maintenance Expense			25,000
Eliminate IS Programming			10,000
Reduce GIS Programming			10,000
Emergency Management			
Budget Reduction			
Reduce Funding for Emergency Preparedness			8,800
Reduce Emergency Management Coordinator Hours			22,500
Human Resources			
Budget Reduction			
Eliminate Funding for Retirement Recognition Gifts			8,000
Reduce Recruiting Expense			8,000
Finance			
Budget Reduction			
Reduce Audit Fees	New Contract with Nowlen Holt & Miner		5,000
Reduce Bank Fees	New Contract with Wells Fargo		25,500
Planning, Zoning & Building			
Budget Reduction			
Reduce Contractual Plan Review			50,000
Reduce Digital Scanning			15,000
Reduce GIS Programming			10,000
Reduce Comp Plan Expense			25,000
Fire-Rescue			
Budget Reduction			
Eliminate 3 Vacant Firefighter Positions		3.00	316,700
Eliminate Administrative Lieutenant Position	Requires layoff of least senior firefighter	1.00	86,665
Eliminate Assistant Fire Marshal Position	Requires layoff of least senior firefighter	1.00	67,665
Eliminate Ocean Rescue Unit	Requires 10 Layoffs. $48,000 would remain in budget for ongoing pension obligations	10.00	764,600
Police			
Budget Reduction			
Eliminate Vacant Telecommunications Manager Position		1.00	94,500
Reclassify Telecommunications Supervisor to "Lead" Position		-	(3,500)
Eliminate 1 Vacant Telecommunications Supervisor Position		1.00	67,000
Eliminate 1 Vacant Telecommunicator Position		1.00	52,800
Eliminate Vacant Support Services Captain		1.00	139,100
Eliminate Vacant Business Community Relations Sergeant		1.00	114,000
Eliminate Proposed PTNB Accreditation Coordinator Position	Eliminate Accreditation Program	0.50	30,300
Eliminate Other Accreditation Program Expenses			7,000
Eliminate 2 Vacant Police Officers		2.00	152,200
Reclassify Code Enforcement Officer to 2 PTNB		-	9,600
Eliminate Vacant Crime Scene Evidence Tech II		1.00	56,800
Public Works			
Budget Reduction			
Replacement of Facilities Maintenance Mgr.	Reduced budget from max to mid salary - hire from within	-	27,100
Eliminate Vacant Line Employee	Associated with Replacement of Facilities Maintenance Manager	1.00	64,500
Eliminate 2 Vacant Trash Services Laborers		2.00	96,900
Eliminate Vacant Sanitation Services Laborer		1.00	49,100
Eliminate Vacant Equipment Operator - Parks		1.00	50,900
Eliminate Vacant Asst. Public Works Director		1.00	126,500

Town of Palm Beach
Proposed Budget Reductions
Special Town Council Meeting on August 12, 2010

Department		FTE Reduction	Budget Reduction
Recreation Enterprise Fund			
Budget Reduction			
Eliminate Vacant Assistant Dockmaster		1.00	55,000
Reduction in Dock Security Budget	Due to lower than anticipated bids		34,000
	Savings from Recreation Cuts will be added to the Transfer to the General Fund ($89,000)		
Global and Other Cuts/Costs			
Budget Reduction			
Transfer $1.4 Million from CIP to General Fund	Balance of $2 million transfer in FY10		1,400,000
Reduce Funding for 4 Arts Library	Level Fund Four Arts		8,200
Reduce PAYGO Funding for CIP	Reduce Milling/Resurfacing, Stormwater and Sanitary		500,000
Contingency Reduction	Adjust based upon cuts		47,147
Increase Unemployment Compensation Expense			(132,000)
Health Insurance for Layoffs	50/50 Cost Share for 12 Months		(52,000)
Total Cuts for FY11 Budget		**31.00**	**4,627,277**

Town of Palm Beach
Summary of Staffing Recommendations
FY11 Proposed Budget

Department/Position Changes	FY10 Budgeted FTE	6/2010 FY11 Budget Changes FTE	6/2010 FY11 Budget Changes Amount	FY11 June Proposed Total FTE	8/2010 FY11 Budget Changes FTE	8/2010 FY11 Budget Changes Amount	Total FY11 FTE Reduction	FY11 August Proposed Total FTE	Current Vacant Positions to Fill FTE	Current Vacant Positions to Fill Amount
Town Manager	**6.00**	**(0.50)**	**(89,676)**	**5.50**	**(0.50)**	**(26,913)**	**(1.00)**	**5.00**	**0.00**	**-**
Eliminate Assistant Town Manager		(1.00)	(116,589)							
Add PTNB Executive Assistant		0.50	26,913							
Eliminate PTNB Executive Assistant					(0.50)	(26,913)				
Information Systems	**6.00**	**0.00**	**-**	**6.00**	**0.00**	**-**	**-**	**6.00**	**0.00**	**-**
Human Resources	**4.95**	**(0.38)**	**(52,626)**	**4.57**	**0.00**	**-**	**(0.38)**	**4.57**	**0.00**	**-**
Eliminate HR Assistant		(1.00)	(52,626)							
Reallocation of Staff between HR and Health Insurance		0.62								
Finance	**17.45**	**0.00**	**-**	**17.45**	**0.00**	**-**	**-**	**17.45**	**1.50**	**73,301**
Accounting Assistant									1.00	51,233
Driver/Warehouse (Staff with Temporary Labor)									0.50	22,068
Planning, Zoning, Building	**28.75**	**(0.50)**	**(22,837)**	**28.25**	**0.00**	**-**	**(0.50)**	**28.25**	**1.00**	**46,943**
Eliminate Part Time Permit Clerk		(0.50)	(22,837)							
Development Permit Coordinator									1.00	46,943
Fire - Rescue	**90.20**	**0.20**	**-**	**90.40**	**(15.00)**	**(1,172,168)**	**(14.80)**	**75.40**	**0.00**	**-**
Fund but Remain Vacant - 3 Firefighters										
Eliminate 3 Vacant Firefighter Positions					(3.00)	(316,688)				
Eliminate 1 Administrative Lieutenant Position (FF Layoff)					(1.00)	(86,695)				
Eliminate 1 Assistant Fire Marshal Position (FF Layoff)					(1.00)	(67,665)				
Eliminate Ocean Rescue Unit (Layoff 10 positions)					(10.00)	(764,600)				
Reallocated a Portion of Police Mechanic to Fire		0.20								
Police	**115.05**	**(3.70)**	**(278,506)**	**111.35**	**(8.50)**	**(712,486)**	**(12.20)**	**102.85**	**2.50**	**112,045**
Eliminate Administrative Coordinator		(1.00)	(57,456)							
Eliminate Business and Community Relations Manager		(1.00)	(93,518)							
Add BCR Sergeant *		1.00	104,323							
Eliminate Admin Sergeant Entry Level		(1.00)	(80,191)							
Eliminate BCR Sergeant					(1.00)	(113,947)				
Fund but Remain Vacant - 2 Sworn Positions Officers										
Eliminate Vacant Support Services Captain					(1.00)	(139,075)				
Eliminate Motorcycle Unit Sergeant		(1.00)	(80,191)							
Eliminate Code/Parking Sergeant *		(1.00)	(104,323)							
Eliminate 1 Police Officer Position Entry Level					*(1.00)*	*(68,077)*				
Eliminate 1 Detective Police Officer Position Step 5					(1.00)	(84,051)				
Add Civilian Code/Parking Manager *		1.00	52,513							
Fill Parking/Code Enforcement Specialist									1.00	50,597
Fund but Remain Vacant - Parking Enforcement Officer - PTNB									0.50	20,669
Add and Fill Accreditation Coordinator PTNB		0.50	30,295							
Eliminate Vacant Accreditation Coordinator PTNB					*(0.50)*	*(30,295)*				
Fund but Remain Vacant - Code Enforcement Officer Entry Level										
Reclassify Vacant Code Enforcement Officer to 2 PTNB					*0.00*	*(9,624)*			1.00	40,780
Fund but Remain Vacant - Telecommunicator Manager										
Eliminate Vacant Telecommuncations Manager					*(1.00)*	*(94,437)*				
Eliminate Vacant Telecommunicator Position					(1.00)	(52,784)				
Eliminate Vacant Supervisor Telecommunicator Position					*(1.00)*	*(66,935)*				
Reclassify Existing Telecommunications Supv. to Lead Telecommunicator					0.00	3,552				

Town of Palm Beach
Summary of Staffing Recommendations
FY11 Proposed Budget

		6/2010 FY11 Budget Changes		FY11 June Proposed Total	8/2010 FY11 Budget Changes		Total FY11 FTE Reduction	FY11 August Proposed Total	Current Vacant Positions to Fill	
Department/Position Changes	**FY10 Budgeted FTE**	**FTE**	**Amount**	**FTE**	**FTE**	**Amount**		**FTE**	**FTE**	**Amount**
Fund but Remain Vacant - Crime Scene Evidence Tech II										
Eliminate Vacant Crime Scene Evidence Tech II					(1.00)	(56,813)				
Eliminate Records Assistant		(1.00)	(49,958)							
Reallocated a Portion of Police Mechanic to Fire		(0.20)								
Public Works	97.75	(5.40)	(271,475)	92.35	(6.00)	(414,930)	(11.40)	86.35	5.00	254,514
Eliminate Equipment Operator - Parks (2)		(2.00)	(82,469)							
Eliminate Vacant Equipment Operator -Parks(1)Resulting from reassignment					*(1.00)*	*(50,858)*				
Eliminate Parks Supervisor I		(1.00)	(57,022)							
Eliminate Nursery Technician		(1.00)	(58,004)							
Eliminate Mechanic III		(1.00)	(65,960)							
Reduce Records Maintenance Assistant from 1.0 to .5		(0.50)	(20,455)							
Fill Mechanic I WRD									1.00	50,607
Fill Crane Operator/Trash									1.00	54,848
Fill Office Assistant II									1.00	45,674
Fill Wastewater Operator I positions (2)									2.00	103,385
Reclassify Laborer II WRD to Wastewater Operator			12,435							
Fund but Remain Vacant - Construction Manager										
Reclass Construction Manager to Sr. Proj. Engineer						3,475				
Eliminate Vacant Assistant Director					(1.00)	(129,931)				
Savings on Replacing retired Facilities Maintenance Manager						(27,082)				
Eliminate Vacant Line Employeeresulting from reassignment					*(1.00)*	*(64,472)*				
Eliminate Vacant Trash Services Laborer resulting from reassignment					(2.00)	(96,930)				
Eliminate Vacant Sanitation Services Laborer resulting from reassignment					(1.00)	(49,130)				
Reallocation of Staff to Recreation (.1)		0.10								
Recreation Enterprise Fund	29.03	(0.55)	-	28.48	(1.00)	(54,924)	(1.55)	27.48	0.00	-
Fund but remain Vacant - Assistant Dockmaster Position			-							
Eliminate Vacant Assistant Dockmaster Position					*(1.00)*	*(54,924)*				
Reallocation of Staff from Public Works (-.1)		(0.10)								
Change in Part Time Staffing Levels (-.45)		(0.45)								
Risk Fund	1.00	0.00	-	1.00	0.00	-	-	1.00	0.00	-
Health Fund	1.10	(0.57)	-	0.53	0.00	-	(0.57)	0.53	0.00	-
Reallocation of Staff between HR and Health Insurance		(0.57)								
Kreusler Park	2.20	(0.20)	-	2.00	0.00	-	(0.20)	2.00	0.00	-
Reduction in Part Time Staff		(0.20)								
OPEB Trust	0.50	(0.05)	-	0.45	0.00	-	(0.05)	0.45	0.00	-
Reallocation of Staff between HR and Health Insurance		(0.05)								
Total FTE	399.98	(11.65)	(715,119)	388.33	(31.00)	(2,381,420)	(42.65)	357.33	10.00	486,803

TOWN OF PALM BEACH

Information for Special Town Council Meeting on: August 12, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Danielle Olson, Human Resources Director Danielle Olson

Re: Lay-off Policy and Workforce Reduction Benefits

Date: August 6, 2010

GENERAL INFORMATION

The following information is provided in response to the potential lay-off of employees within the Town.

Application and Engagement of the Layoff Policy

The lay-off policy applicable to non-union employees is that found within the Employee Personnel Manual Sections 5-26 and 6-4, entitled Lay-Off Benefits and Lay-Offs, respectfully. These sections are excerpted as follows:

> Section 5-26, Lay-Off Benefits
> The Town of Palm Beach will pay lay-off benefits in the form of unemployment compensation to all employees who are laid off through no fault of their own. Unemployment Compensation benefits are governed by the Florida Unemployment Compensation Law, Chapter 443 of the Florida Statutes. The Director of Human Resources will investigate all unemployment claims to ensure their compliance with Florida Statutes. For more information on lay-off procedures, see Section 6-4 of this manual.
>
> Section 6-4, Lay-Offs
> When it is necessary to reduce the number of employees on the Town payroll because of lack of work or funds, the Town Manager will request the Director of Human Resources to make a thorough investigation of the problem. Any analysis of proposed lay-offs will consider first the types of activities to be curtailed and the classes of positions thereby affected, and will then proceed to the selection of individual employees to be released. This selection, should it occur, will be based on job performance, unless otherwise stated by any labor agreement as approved by the Town Council. When performance factors are essentially equal, seniority will be considered. Employees who are separated from the service through no fault of their own will be placed on the Re-Employment Register, as outlined in Section 4-1.3 of this manual.
>
> An employee will be given a two (2) week notice of any lay-off. When a two (2) week notice is not possible, the Town will provide two (2) weeks of pay in lieu of a two (2) week notice of lay-off.

> Employees who are separated from service through no fault of their own will be paid for all hours worked, including overtime, any compensatory time documented by the department, and accumulated leave as defined under Section 3-12, Payment of Accumulated Leave.

Town Manager Elwell and I have conferred regarding the investigative requirement set forth above and we believe that documentation presented within his cover memorandum and the budget information prepared by the department directors will satisfy the requirement.

As a union contract does not currently exist for the members of the Fraternal Order of Police (FOP) bargaining unit, status quo exists, meaning that lay-off procedures for this unit are reflected within existing Town Policy (Sections 5-26 and 6-4 of the Employee Personnel Manual) until such time that a ratified contract is in existence, then any provisions related to lay-offs within that agreement would apply at that time.

The lay-off policy for members of The Professional Firefighters/Paramedics of Palm Beach County, Local 2928, IAFF, Inc., bargaining unit is reflected within Article 9, entitled Personnel Reduction [Exhibit A], of the 2009/2010 union contract. The parameters of Article 9 within the 2009/2010 agreement are in effect until the time a subsequent contract becomes ratified and any resulting changes to the article would apply at that time.

Workforce Reduction Benefits

Unemployment Compensation

Employees laid off will be eligible to apply for unemployment benefits. The Town's obligation is to reimburse the state dollar for dollar for unemployment compensation for up to 2.5 years from loss of employment. There may be a reduction of the obligation during that time if the displaced employee finds work elsewhere. However, the reduction may be partial as our obligation is partially based on the earnings of the displaced employee from the Town compared to what they would earn in the new position. A displaced employee may also apply for “emergency unemployment” which provides additional benefits over the same 2.5 years. Currently the annual unemployment costs for the Town per displaced employee would be $10,724. This cost could change due to pending federal legislation.

Upon notification of potential lay-offs, the Town may contact the Profession Placement Network within Workforce Alliance, Inc. to schedule a group employee session with the affected workers. At that time Workforce Alliance, Inc. will provide information for each employee including details about filing for unemployment and their services. Services offered by Workforce Alliance, Inc., described within Exhibit B, are provided at no charge to the employer or displaced employee.

Employee Assistance Program

Our current contracted Employee Assistance Program services provide benefits to employees and their dependents until separation from employment. However, we have been provided with an amended agreement to provide extended benefits to displaced employees beyond employment for three months but not to exceed six months from date of employment separation with the

Town. The cost to extend the services is de minimis at $3.50 per employee per month of coverage. If displaced employees access services within three months they may continue to receive EAP services for up to 6 months from the date of employment separation with the Town. When EAP benefits expire (maximum services of six months if applied for within three months from employment separation) but the need for services still exists then the displaced employee will be offered the option of continuing services under a sliding fee scale to pay out of pocket. Services available are specifically for the purpose of assisting employees with any immediate emotional reactivity to their situation, help with access to community support and resources, adjustment counseling, stress management, and general mental health counseling as needed.

Individuals will be provided with specific information that may be used to contact the EAP center directly for assistance, or a group session for four or more employees may be scheduled by the Town with the EAP counselor and/or facilitator as needed.

Employee Insurance Coverage/COBRA

According to Town policy insurance related employee benefits terminate upon the last day of active employment. Whether or not a displaced employee is provided the opportunity to elect insurance benefits through the Consolidated Omnibus Budget Reconciliation Act (COBRA) depends on their status as an active retiree upon separation from employment.

Displaced Employee Retirement Status	Insurance Options	Pension Options
Non-Vested (<10 yrs Service)	May elect COBRA coverage.	Will have their contributions paid out plus interest as desired (options include direct check less applicable taxes, roll-over payment to a tax deferred account).
Vested / Not Eligible to Retire	May elect COBRA coverage. Once eligible to retire, may elect Town insurance coverage with a premium set according to the sliding scale in place at that time. If election for Town coverage is denied, it may not be elected again at any point in the future.	May defer pension until eligible to retire, or have their contributions paid out plus interest and have no pension plan in the future (options include direct check less applicable taxes, roll-over payment to a tax deferred account).
Vested / Eligible to Retire	May elect Town insurance coverage with a premium set according to the sliding scale in place at that time. If election for Town coverage is denied, it may not be elected again at any point in the future.	Begins to collect pension benefits as earned per existing Code of Ordinances.

The medical insurance premiums for the Vested / Eligible to Retiree displaced employee, as an active retiree, are partially subsidized by the Town according to years of service, monthly pension earnings, and maximum premium allowable to be charged per Florida State Statute [Exhibit C – 2010 Retiree Premium Sliding Scale]. Retirees may elect dental and life insurance coverage that are not subsidized by the Town. Vision insurance is not offered to retirees.

Displaced employees who are Not Vested or are Vested / Not Eligible for Retirement and already enrolled with Town insurance coverage may elect to continue their medical/prescription, dental, and/or vision insurance by electing COBRA coverage. The Town uses Ceridian Benefit Services as our COBRA administrator. The Town must notify Ceridian of the qualifying event (lay-off) no later than 30 days from occurrence. Ceridian has 14 days from the qualifying event notification to provide COBRA coverage information by first class mail to the displaced employee. The displaced employee has 60 days to elect coverage for themselves and/or their qualified dependents. If elected, the COBRA coverage effective date is retroactive to the date coverage was lost, the day after the last day of active employment.

The U.S. Department of Labor (DOL) issued a statement regarding the COBRA premium reduction under the American Recovery and Reinvestment Act (ARRA) on July 6, 2010. A COBRA premium reduction for eligible individuals was provided to those who were involuntarily terminated from employment through the end of May 2010. According to the DOL news release, "Due to the statutory sunset, the COBRA premium reduction under ARRA is not available for individuals who experience involuntary terminations after May 31, 2010." The ARRA COBRA subsidy shifted 65% of the premium cost from the displaced employee to the employer. Employers then received a 65% tax credit from the federal government. The Town would have received this credit quarterly and be applicable toward payroll taxes. There is no indication from the federal government at this time for reactivation of the ARRA COBRA subsidy.

COBRA coverage is 102% of the full premium. Exhibit D provides the current COBRA rates for the insurance coverage offered, in addition to various scenarios should the Town elect to subsidize the cost of COBRA coverage for displaced employees. Any of these scenarios would be a reduction in cost of the Town's current cost for the affected individuals covering medical insurance premiums at 100% for employees and 75% for eligible dependents. COBRA rates increase annually on January 1 according to Town-wide premium rates.

FUNDING/FISCAL IMPACT

Currently the annual unemployment costs for the Town per displaced employee may be $10,724. Providing the extended EAP services to displaced employees for a maximum of six months would cost approximately $21 per displaced employee. COBRA benefits are typically fully paid by the employee following separation of employment; however, varying cost sharing scenarios are provided within Exhibit D for consideration.

Attachments

- Exhibit A – Article 9 of the 2009/2010 IAFF/TOPB Agreement
- Exhibit B – Workforce Alliance Services
- Exhibit C – 2010 Retiree Premium Sliding Scale
- Exhibit D – 2010 COBRA Premiums and Cost Sharing Scenarios

ARTICLE 9

PERSONNEL REDUCTION

9.1 In the event it is necessary to reduce the number of bargaining unit employees, the Town shall first identify the classification(s) to be impacted. Probationary employees in such classification(s) shall be laid off first. Thereafter, the employee in the classification to be reduced with the least seniority shall be laid off first.

9.2 Employees who are laid off from their classifications may bump into the next lower classification in which they previously served or for which they are qualified. The employee(s) to be bumped shall be determined by seniority, i.e., an employee may bump the most junior employee in the classification if that junior employee has less seniority.

9.3 Employees who are laid off shall be recalled to the classifications from which they were laid off in the reverse order of their layoff (last laid off, first recalled); provided that they meet all of the requirements of the classification at the time of the recall. Laid off employees eligible for recall shall be offered recall before new employees are hired into their classification or shall be offered a position in a lower classification for which they are qualified before new employees are hired into such lower classification. An employee's recall rights hereunder shall expire in twelve (12) months from the date of his/her layoff.

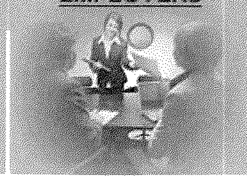
Exhibit B

Home | About Us | Employers | Job Seekers | Labor Market Info | Doing Business With Us | ARRA | Disaster Plans

JOBSEEKERS

YOUTH AND YOUNG ADULT PROGRAMS

EMPLOYERS



STIMULUS NEWS

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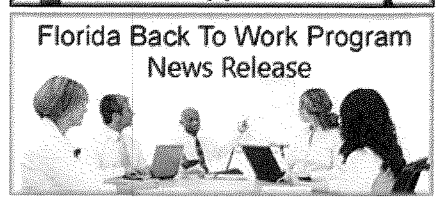
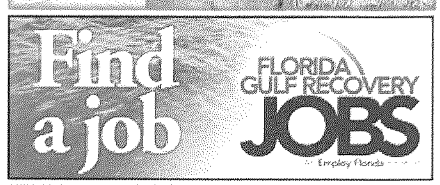
CENTRAL CENTER & PPN | SOUTH CENTER | BOCA PPN | WEST CENTER

Search.. Search

Latest Unemployment Data for PB County





Services to Jobseekers

As the county's workforce catalyst, our goal is to help job seekers with one or a combination of the following:

- Obtaining employment
- Securing services to help gain self-sufficiency
- Gaining work skills to obtain employment
- Upgrading skills to maintain employment

We offer a wide variety of resources through both the Career Centers in Palm Beach County and this web site. These include:

- Online Job Search & Career Information giving you access to an **assortment of job banks,** covering a multitude of occupations
- Local Labor Market Information for Palm Beach County/Region 21, helping you research what jobs are in demand and how much they pay
- Career Centers with PCs, Internet connections, printers, copiers, fax machines, and phones for conducting a job search
- Professional Placement Centers where unemployed professionals can attend seminars, network, and obtain counseling while conducting a job search
- Training opportunities that help you gain in-demand skills or upgrade your skills
- Unemployment online, allowing you to file quickly and conveniently from home, a Career Center, or your local library

Employer Links — Services to Businesses | Post Open Positions | Tax Credits & Training Grants/Incentives | Professional Placement Network | Recruitment Services | Hiring Veterans | Business Resources | Links

Jobseeker Links

Stimulus Links

Rxhibit C

PPO 702

Retiree Sliding Scale Insurance Premium Rates 2010

Years of Service		Q1		Q2		Q3		Q4	
25 + years		50%		52%		56%		Maximum	
		Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare
	Retiree	$ 343.63	$ 183.66	$ 357.37	$ 191.01	$ 384.86	$ 205.70	$ 434.87	$ 232.43
	1 Dependent	$ 399.40	$ 214.49	$ 415.37	$ 223.06	$ 447.32	$ 240.22	$ 530.97	$ 271.44
	2 Dependents	$ 608.50		$ 632.84		$ 681.52		$ 844.34	
	3 Dependents	$ 817.60		$ 850.30		$ 915.71		$ 1,285.31	
20 - 24 years		52%		56%		58%		Maximum	
		Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare
	Retiree	$ 357.37	$ 191.01	$ 384.86	$ 205.70	$ 398.61	$ 213.05	$ 434.87	$ 232.43
	1 Dependent	$ 415.37	$ 223.06	$ 447.32	$ 240.22	$ 463.30	$ 248.80	$ 530.97	$ 271.44
	2 Dependents	$ 632.84		$ 681.52		$ 705.86		$ 844.34	
	3 Dependents	$ 850.30		$ 915.71		$ 948.42		$ 1,285.31	
15 - 19 years		56%		58%		60%		Maximum	
		Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare
	Retiree	$ 384.86	$ 205.70	$ 398.61	$ 213.05	$ 412.35	$ 220.39	$ 434.87	$ 232.43
	1 Dependent	$ 447.32	$ 240.22	$ 463.30	$ 248.80	$ 479.27	$ 257.38	$ 530.97	$ 271.44
	2 Dependents	$ 681.52		$ 705.86		$ 730.20		$ 844.34	
	3 Dependents	$ 915.71		$ 948.42		$ 981.12		$ 1,285.31	
10 - 14 years		Maximum		Maximum		Maximum		Maximum	
		Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare
	Retiree	$ 434.87	$ 232.43	$ 434.87	$ 232.43	$ 434.87	$ 232.43	$ 434.87	$ 232.43
	1 Dependent	$ 530.97	$ 271.44	$ 530.97	$ 271.44	$ 530.97	$ 271.44	$ 530.97	$ 271.44
	2 Dependents	$ 844.34		$ 844.34		$ 844.34		$ 844.34	
	3 Dependents	$ 1,285.31		$ 1,285.31		$ 1,285.31		$ 1,285.31	

Monthly Pension Earnings		
Quartile	Minimum	Maximum
Q1	$ -	$ 1,315.85
Q2	$ 1,315.86	$ 2,306.75
Q3	$ 2,306.76	$ 3,603.75
Q4	$3,603.76 or greater	

Exhibit C

PPO 719

Retiree Sliding Scale Insurance Premium Rates 2010

Years of Service		Q1 Non-Medicare	Q1 Medicare	Q2 Non-Medicare	Q2 Medicare	Q3 Non-Medicare	Q3 Medicare	Q4 Non-Medicare	Q4 Medicare
25 + years		50%		52%		56%		Maximum	
	Retiree	$ 305.65	$ 162.68	$ 317.88	$ 169.18	$ 342.33	$ 182.20	$ 391.03	$ 205.87
	1 Dependent	$ 354.42	$ 189.63	$ 368.60	$ 197.22	$ 396.95	$ 212.39	$ 476.17	$ 239.98
	2 Dependents	$ 541.94		$ 563.62		$ 606.97		$ 757.19	
	3 Dependents	$ 729.46		$ 758.64		$ 817.00		$ 1,152.64	
20 - 24 years		52%		56%		58%		Maximum	
	Retiree	$ 317.88	$ 169.18	$ 342.33	$ 182.20	$ 354.55	$ 188.70	$ 391.03	$ 205.87
	1 Dependent	$ 368.60	$ 197.22	$ 396.95	$ 212.39	$ 411.13	$ 219.97	$ 476.17	$ 239.98
	2 Dependents	$ 563.62		$ 606.97		$ 628.65		$ 757.19	
	3 Dependents	$ 758.64		$ 817.00		$ 846.17		$ 1,152.64	
15 - 19 years		56%		58%		60%		Maximum	
	Retiree	$ 342.33	$ 182.20	$ 354.55	$ 188.70	$ 366.78	$ 195.21	$ 391.03	$ 205.87
	1 Dependent	$ 396.95	$ 212.39	$ 411.13	$ 219.97	$ 425.30	$ 227.56	$ 476.17	$ 239.98
	2 Dependents	$ 606.97		$ 628.65		$ 650.33		$ 757.19	
	3 Dependents	$ 817.00		$ 846.17		$ 875.35		$ 1,152.64	
10 - 14 years		Maximum		Maximum		Maximum		Maximum	
	Retiree	$ 391.03	$ 205.87	$ 391.03	$ 205.87	$ 391.03	$ 205.87	$ 391.03	$ 205.87
	1 Dependent	$ 476.17	$ 239.98	$ 476.17	$ 239.98	$ 476.17	$ 239.98	$ 476.17	$ 239.98
	2 Dependents	$ 757.19		$ 757.19		$ 757.19		$ 757.19	
	3 Dependents	$ 1,152.64		$ 1,152.64		$ 1,152.64		$ 1,152.64	

Monthly Pension Earnings		
Quartile	Minimum	Maximum
Q1	$ -	$ 1,315.85
Q2	$ 1,315.86	$ 2,306.75
Q3	$ 2,306.76	$ 3,603.75
Q4	$3,603.76 or greater	

Exhibit C

HMO

Retiree Sliding Scale Insurance Premium Rates 2010

Years of Service		Q1		Q2		Q3		Q4	
25 + years		50%		52%		56%		Maximum	
		Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare
	Retiree	$ 298.37		$ 310.30		$ 334.17		$ 372.46	
	1 Dependent	$ 349.24		$ 363.20		$ 391.14		$ 454.77	
	2 Dependents	$ 528.33		$ 549.46		$ 591.73		$ 723.17	
	3 Dependents	$ 707.43		$ 735.72		$ 792.32		$ 1,100.86	
20 - 24 years		52%		56%		58%		Maximum	
		Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare
	Retiree	$ 310.30		$ 334.17		$ 346.11		$ 372.46	
	1 Dependent	$ 363.20		$ 391.14		$ 405.11		$ 454.77	
	2 Dependents	$ 549.46		$ 591.73		$ 612.86		$ 723.17	
	3 Dependents	$ 735.72		$ 792.32		$ 820.61		$ 1,100.86	
15 - 19 years		56%		58%		60%		Maximum	
		Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare
	Retiree	$ 334.17		$ 346.11		$ 358.04		$ 372.46	
	1 Dependent	$ 391.14		$ 405.11		$ 419.08		$ 454.77	
	2 Dependents	$ 591.73		$ 612.86		$ 634.00		$ 723.17	
	3 Dependents	$ 792.32		$ 820.61		$ 848.91		$ 1,100.86	
10 - 14 years		Maximum		Maximum		Maximum		Maximum	
		Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare	Non-Medicare	Medicare
	Retiree	$ 372.46		$ 372.46		$ 372.46		$ 372.46	
	1 Dependent	$ 454.77		$ 454.77		$ 454.77		$ 454.77	
	2 Dependents	$ 723.17		$ 723.17		$ 723.17		$ 723.17	
	3 Dependents	$ 1,100.86		$ 1,100.86		$ 1,100.86		$ 1,100.86	

Monthly Pension Earnings		
Quartile	Minimum	Maximum
Q1	$ -	$ 1,315.85
Q2	$ 1,315.86	$ 2,306.75
Q3	$ 2,306.76	$ 3,603.75
Q4	$3,603.76 or greater	

Medical & Prescription Coverage	Cost to Displaced Employee			Town Cost		
	PPO 702	PPO 719	HMO	PPO 702	PPO 719	HMO
Individual	$ 389.52	$ 350.25	$ 329.82	$ -	$ -	$ -
Individual + 1 Dependent	$ 816.09	$ 732.79	$ 695.17	$ -	$ -	$ -
Individual + 2 Dependents	$ 1,242.66	$ 1,115.33	$ 1,060.52	$ -	$ -	$ -
Individual 3+ Dependents	$ 1,669.23	$ 1,497.87	$ 1,425.88	$ -	$ -	$ -
Scenario A: 65% Town Subsidy to Displaced Employees						
Individual	$ 136.33	$ 122.59	$ 115.44	$ 253.19	$ 227.66	$ 214.38
Individual + 1 Dependent	$ 285.63	$ 256.48	$ 243.31	$ 530.46	$ 476.31	$ 451.86
Individual + 2 Dependents	$ 434.93	$ 390.37	$ 371.18	$ 807.73	$ 724.96	$ 689.34
Individual 3+ Dependents	$ 584.23	$ 524.25	$ 499.06	$ 1,085.00	$ 973.62	$ 926.82
Scenario B: 50% Town Subsidy to Displaced Employees						
Individual	$ 194.76	$ 175.12	$ 164.91	$ 194.76	$ 175.12	$ 164.91
Individual + 1 Dependent	$ 408.05	$ 366.39	$ 347.59	$ 408.05	$ 366.39	$ 347.59
Individual + 2 Dependents	$ 621.33	$ 557.66	$ 530.26	$ 621.33	$ 557.66	$ 530.26
Individual 3+ Dependents	$ 834.62	$ 748.94	$ 712.94	$ 834.62	$ 748.94	$ 712.94
Scenario C: 35% Town Subsidy to Displaced Employees						
Individual	$ 253.19	$ 227.66	$ 214.38	$ 136.33	$ 122.59	$ 115.44
Individual + 1 Dependent	$ 530.46	$ 476.31	$ 451.86	$ 285.63	$ 256.48	$ 243.31
Individual + 2 Dependents	$ 807.73	$ 724.96	$ 689.34	$ 434.93	$ 390.37	$ 371.18
Individual 3+ Dependents	$ 1,085.00	$ 973.62	$ 926.82	$ 584.23	$ 524.25	$ 499.06

Dental (Single Plan Type Available)*	Cost to Displaced Employee	Town Cost
Individual	$ 41.53	$ -
Individual + 1 Dependent	$ 77.93	$ -
Individual 2+ Dependents	$ 101.63	$ -
**Coverage not subsidized by the Town for retirees*		
Vision (Single Plan Type Available)**	**Cost to Displaced Employee**	**Town Cost**
Individual	$ 6.56	$ -
Individual + Spouse	$ 11.81	$ -
Individual + Children	$ 12.46	$ -
Family	$ 17.06	$ -
*** Coverage not offered to retirees*		

TOWN OF PALM BEACH

Information for Special Town Council Meeting on: August 12, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: William Amador, Fire Rescue Chief

Re: Additional Savings Through Position Elimination and Layoffs for FY11

Date: August 6, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council eliminate the Administrative Lieutenant position and one Assistant Fire Marshal position in the FY11 budget for cost savings.

GENERAL INFORMATION

The Fire-Rescue Department is proposing to eliminate the Administrative Lieutenant position in program 411. The salary range is $69,554 to $102,957 with a current salary for this position at $102,957. In addition, this position has a cell phone stipend of $50 per month and the daytime use of a town vehicle which can also be eliminated. The eliminated position will cause the reassignment of a Lieutenant back to shift, demotion of Lieutenant with a pay reduction, and the layoff of one firefighter position. There is no level of service impact with the elimination of this position. Other members of the department's management team will have an increased workload to offset the loss of this position.

We are also proposing the elimination of an Assistant Fire Marshal position in program 215. The salary range is $69,554 to 102,957 with a current salary for this position at $69,554. There is a cell phone stipend of $50 per month which will need to be converted to a function cell phone expense instead because this function will be accomplished by utilizing existing shift personnel who will share a phone. The assigned vehicle will continue to be utilized by the shift personnel to complete this task. The eliminated positions will cause the reassignment of a Driver Engineer back to shift and the layoff of one firefighter position. There is a level of service impact due to the fourth firefighter at the North Fire Station being assigned to conduct fire inspections Monday through Friday from 8:00 a.m. to 5:00 p.m. (from which they would leave to respond to any major emergency). The elimination of this position would not impact compliance of Florida State Statutes regarding Fire Inspections and would have little to no impact to revenue collection.

If the Town Council wants to implement these changes without a layoff and a demotion, the Fire-Rescue Department is anticipating the retirement of a Lieutenant in December 2010 and would expect to experience at least one more retirement or resignation during FY11.

JONES
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JOHNSTON
& STUBBS, P.A.
Attorneys and Counselors

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August 3, 2010

Mr. Peter B. Elwell
Town Manager
Town of Palm Beach
Post Office Box 2029
Palm Beach, Florida 33480

Re: Town of Palm Beach
Lifeguards and Liability for Public Beaches
Our File No. 13156.8

Dear Peter:

As you are aware, the question as to the increased liability of the Town, if any, in the event of a legislative decision by the Town Council, based on budgetary concerns, to no longer provide lifeguards on public beaches has been previously addressed by my office. A copy of our memorandum of law regarding that issue is attached.

Of particular significance is a case decided by the Supreme Court of Florida, Breaux vs City of Miami Beach, 899 So.2d 1059 (Fla. 2005), a copy of which I have attached. Please note particularly the following language as it relates to the issue of sovereign immunity as cited by the Court in the Garcia case:

> "the fact that the [governmental entity] never formally "designated" the beach as a public swimming area is not dispositive of whether the government owes an operational-level duty to safely operate a public swimming area if sufficient facts exists to demonstrate that the area was held out to the public as a public swimming area. The focus of the inquiry is not whether a formal designation occurred. *Rather, . . . the actions of the government entity must be examined to determine whether, based on all the circumstances, the government entity held the area out to the public as a swimming area or led the public to believe the area was a designated swimming area.*"
>
> "[T]he "common use" of an area for swimming may be one factor to consider in order to determine if a governmental entity held out the area as a public swimming area or, as in Andrews [v. Department of Natural Resources, 557 So.2d 85 (Fla. 2d DCA 1990)], led the public to believe that the area was designated as a swimming area. At one end of the

> spectrum is the circumstance where the government entity formally designates an area for public swimming. At the other end of the spectrum are circumstances where either the government entity actively attempts to prohibit swimming or has no knowledge that some part of an undesignated beach is being used by swimmers. "

It appears, on the basis of the above, that a determination by a court as to whether a governmental entity has sovereign immunity in regard to these matters will be determined on a case by case basis on the totality of the circumstances in the case. In the event that it is determined that sovereign immunity does not exist, then the governmental entity owes an operational-level duty of care to those using the swimming area. That duty of care is the exercise of reasonable care under the circumstances to those foreseeable users of that swimming area.

I hope this information is helpful. If you have any questions or comments or would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.

John C. Randolph
JCR/ssm
Enclosures

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JONES
FOSTER
JOHNSTON
& STUBBS, P.A.

Attorneys and Counselors

Memo

To: John C. Randolph
From: Stirling C. Halversen
Date: December 13, 2007
Subject: Lifeguards and Liability for Public Beaches
Town of Palm Beach
Our File No. 13156.8

I. Issue:

Whether the Town would be liable for a person's injuries occurring at the Town's public beaches in the event that the Town makes a determination based upon budgetary constraints to no longer provide lifeguards.

II. Short Answer:

Yes, as long as the beaches were still operated as public swimming areas. However, the Town's liability would be limited by the cap in the State's waiver of sovereign immunity set forth in Section 768.28, Fla. Stat.

If, on the other hand, the Town legislatively determines to close the beaches to the public as swimming areas, then the Town's liability for a decision to discontinue the provision of lifeguards would be barred by the sovereign immunity doctrine. The Town would have to make clear that the area is no longer designated as a public swimming area by posting signs, etc. The Town should also post signs warning of any known dangers.

III. Discussion:

Section 375.251, Fla. Stat., provides that an "owner or lessee who provides the public with a park area or other land for outdoor recreational purposes owes no duty of care to keep that park area or land safe for entry or use by others, or to give warning to persons entering or going on that area or land of any hazardous conditions, structures, or activities thereon." "Recreational purposes" includes swimming. However, Florida courts have held that this statute does not apply to municipalities and counties which own and operate public parks. See Cox v. Community Services Dept., 543 So. 2d 297 (Fla. 5th DCA 1989).

In the absence of any other statutory authority concerning a municipality's duty of care with regard to operating public parks or beaches, Florida case law on this subject will control.

Earlier cases held that the presence or non-presence of warning signs or other devices, lifeguards or other type of protection, or rescue or safety equipment falls wholly within the concept of a "judgmental, planning-level function," immune from consequential liability, in contrast to an "operational-level" activity which can result in the loss of such immunity. Sarasota County v. Butler, 476 So. 2d 216 (Fla. 2d DCA 1985); Cutler v. City of Jacksonville Beach, 489 So. 2d 126 (Fla. 1st DCA 1986) (allegation of failure to provide an adequate number of lifeguards is barred by the doctrine of sovereign immunity). See also Jenkins v. City of Miami Beach, 389 So. 2d 1195 (Fla. 3d DCA 1980); Relyea v. State, 385 So. 2d 1378 (Fla. 4th DCA 1980) (held that decision not to provide supervisory personnel at government facilities was discretionary and therefore protected by sovereign immunity).

However, the Supreme Court's holding in Avallone v. Board of County Commissioners of Citrus County, 493 So. 2d 1002 (Fla. 1986) overruled those decisions. In Avallone, a patron of a swimming area was injured when she was pushed from a dock by other patrons and brought an action against the county for failure to provide supervisory personnel at the swimming area. Avallone held:

> **A government unit has the discretionary authority to operate or not operate swimming facilities and is immune from suit on that discretionary question. However, once the unit decides to operate the swimming facility, it assumes the common law duty to operate the facility safely, just as a private individual is obligated under like circumstances.**

493 So. 2d at 1005. On remand to the Fifth District, the court held that whether the county had constructive notice of long-standing roughhousing in the swimming area, whether it was thus foreseeable that a patron of the swimming area would be injured by roughhousing, and whether the county's failure to provide supervisory personnel at the swimming area was the proximate cause of the patron's injuries presented questions for the jury. Avallone v. Board of County Commissioners of Citrus County, 497 So. 2d 934 (Fla. 5th DCA 1986).

After Avallone, the Supreme Court disapproved the decision in Sarasota County v. Butler, 476 So. 2d 216 (Fla. 2d DCA 1985) and held that the county was not immune from suit under the doctrine of sovereign immunity. Butler v. Sarasota County, 501 So. 2d 579 (Fla. 1986). "The duty of care is no different for a public owner than a private owner. In this instance, the public owner did not create the specific dangerous condition but did create a designated swimming area where the dangerous condition existed." Id.

In Butler, Chief Justice McDonald dissented stating that "Sarasota County should not be held liable for providing access to the Gulf of Mexico without also providing lifeguards...Once again the judiciary is trespassing on the legislative prerogative of how to expend a governmental entity's funds by mandating, in effect, that lifeguards must be hired when access to natural bodies of water is provided." Although Justice McDonald's dissent has been cited in other cases, it has been rejected by the Supreme Court. See Fla. Dept. of Natural Resources v. Garcia, 753 So. 2d 72 (Fla. 2000); Breaux v. City of Miami Beach, 899 So. 2d 1059 (Fla. 2005).

Based upon the holdings in Avallone and Butler, if a governmental entity has designated a certain area as a swimming area, then the governmental entity is obligated to operate the facility safely. See Andrews v. Dept. of Natural Resources, 557 So. 2d 85 (Fla. 2d DCA 1990) (material question of fact whether state operated beach as swimming area or at least caused public to believe that swimming was permitted where signs were posted "No lifeguard on duty" and "Swim at own risk").

In Fla. Dept. of Natural Resources v. Garcia, 753 So. 2d 72 (Fla. 2000), the Supreme Court held that "a government entity operating a public swimming area will have the same operational-level duty to invitees as a private landowner—**the duty to keep the premises in a reasonably safe condition and to warn the public of any dangerous conditions of which it knew or should have known**."

The most recent Florida Supreme Court case, Breaux v. City of Miami Beach, 899 So. 2d 1059 (Fla. 2005), held:

> When a municipality operates a public beach as a swimming area by having public restrooms, showers, water fountains, parking, and a beach concessionaire from which it derives revenues, the municipality has a duty to exercise reasonable care under the circumstances to those foreseeable users of that swimming area.

This duty includes keeping the premises in a reasonably safe condition and warning the public of any dangerous conditions of which the governmental entity knew or should have known. Id. Although the operator of a swimming area generally has a duty to keep the premises in a reasonably safe condition, this applies only to the extent the premises are improved or maintained by the operator. Id. An operator cannot be charged with keeping an unaltered natural body of water safe because a natural body of water contains inherent natural hazards. Id. However, the natural character of a hazard does not relieve a swimming area operator of the duty to warn if it knew or should have known the hazard was present. Id. In Breaux, the Supreme Court held there was a material issue of fact as to the city's actual or imputed knowledge regarding rip currents at the beach area. Id.

However, a municipality will not typically be held liable for injuries sustained by a person swimming after dark, after the county's park had closed, and after the lifeguards had gone off duty. See McPhee v. Dade County, 362 So. 2d 74 (Fla. 3d DCA 1978). In addition, a municipality would not have a duty to supervise swimming in an area which is not designated as a public swimming area. See Cruz v. Metro. Dade County, 350 So. 2d 533 (Fla. 3d DCA 1977).

IV. Conclusion:

The decision of whether to continue maintaining the beaches as public swimming facilities is probably a discretionary, judgmental or planning one. Thus, the Town may determine that it should stop operating the beaches as public swimming areas due to budgetary concerns. If the beach is no longer a public swimming facility, the Town's decision to discontinue the provision of lifeguards is probably a discretionary one as well, and liability would be barred by the doctrine of sovereign immunity.

However, if the Town decides to stop operating the beaches as public swimming areas, it should be careful to make clear that the areas are no longer designated as such. For example, it should post warning signs at public access points to warn people that the beach is not suitable for swimming (or prohibit swimming altogether), the beach is unguarded, people should swim at their own risk, etc. The Town would still owe a duty to warn of any known dangerous conditions that are not readily observable.

On the other hand, if the Town continues to maintain the impression that the beaches are public swimming facilities, then it may be liable for failing to provide lifeguards there. Whether a lifeguard should be provided, as part of the Town's reasonable duty to operate the swimming facility safely, depends on the circumstances of the case. These areas have been held out to the public as swimming areas and have been used by the public as swimming areas for many years. The beaches have lifeguard stands, parking, and other facilities for the public. Therefore, the Town is obligated to maintain the beaches in a safe condition. Even if the Town were to post "Swim at your own risk" and "Lifeguard not on duty" signs, the Town could be liable because it is still holding the beaches out as swimming areas. The Town is also obligated to warn the public of any unsafe conditions, including rip currents.

In the event that the Town is held liable for failing to provide lifeguards, the Town's liability would be limited by the cap in the State's waiver of sovereign immunity set forth in Section 768.28, Fla. Stat.

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Supreme Court of Florida.
Frederica E. BREAUX, etc., Petitioner,
v.
CITY OF MIAMI BEACH, Respondent,
Rabbi Israel Poleyeff, etc., Petitioner,
v.
City of Miami Beach, Respondent.
Nos. SC02-1568, SC02-1569.

March 24, 2005.

Background: Estate of swimmer who drowned when caught in a riptide in ocean off public beach adjacent to hotel and estate of hotel guest who also drowned while attempting a rescue brought separate wrongful death actions against the city. The Circuit Court, Miami-Dade County, David L. Tobin, J., entered summary judgment for the city. Estates appealed. The District Court of Appeal, 818 So.2d 672, affirmed. Review was granted based on direct conflict of decisions.

Holdings: The Supreme Court, Pariente, C.J., held that:
(1) city was operating a public swimming area on beach and, therefore, had an operational-level duty of care to warn the public of any dangerous conditions of which it knew or should have known, and
(2) factual issues as to city's actual or imputed knowledge regarding rip currents at beach area precluded summary judgment on city's duty to warn swimmers.

Quashed and remanded.

Lewis, J., concurred and filed opinion joined by Pariente, C.J., and Anstead, J.

Wells, J., dissented and filed opinion in which Cantero and Bell, JJ., concurred.

West Headnotes

[1] Municipal Corporations 268 851

268 Municipal Corporations
268XII Torts
268XII(E) Condition or Use of Public Buildings and Other Property
268k851 k. Parks and Public Squares and Places. Most Cited Cases
When a municipality operates a public beach as a swimming area by having public restrooms, showers, water fountains, parking, and a beach concessionaire from which it derives revenues, the municipality has a duty to exercise reasonable care under the circumstances to those foreseeable users of that swimming area.

[2] Municipal Corporations 268 851

268 Municipal Corporations
268XII Torts
268XII(E) Condition or Use of Public Buildings and Other Property
268k851 k. Parks and Public Squares and Places. Most Cited Cases
Once a governmental entity decides to operate a swimming facility, its duty to operate the facility safely includes keeping the premises in a reasonably safe condition and warning the public of any dangerous conditions of which the governmental entity knew or should have known.

[3] Negligence 272 1037(2)

272 Negligence
272XVII Premises Liability
272XVII(C) Standard of Care
272k1034 Status of Entrant
272k1037 Invitees
272k1037(2) k. Who Are Invitees. Most Cited Cases

Negligence 272 1037(6)

272 Negligence
272XVII Premises Liability
272XVII(C) Standard of Care
272k1034 Status of Entrant
272k1037 Invitees
272k1037(6) k. Implied Invitation.

Most Cited Cases
An "invitee" is a licensee on the premises by invitation, either express or reasonably implied, of the owner or controller of the property.

[4] Municipal Corporations 268 ⚷851

268 Municipal Corporations
268XII Torts
268XII(E) Condition or Use of Public Buildings and Other Property
268k851 k. Parks and Public Squares and Places. Most Cited Cases
If the governmental entity holds the area out to the public as a swimming area or leads the public to believe the area is a designated swimming area, the governmental entity owes an operational-level duty of care to those using the swimming area.

[5] Municipal Corporations 268 ⚷851

268 Municipal Corporations
268XII Torts
268XII(E) Condition or Use of Public Buildings and Other Property
268k851 k. Parks and Public Squares and Places. Most Cited Cases
City was operating a public swimming area on beach and, therefore, had an operational-level duty of care to warn the public of any dangerous conditions of which it knew or should have known, even though city had not formally designated the area for swimming or posted lifeguards; city provided public restrooms, showers, water fountains, parking, and a beach concessionaire, and the city thus held the beach area out to the public as a swimming area or led the public to believe the area was a designated swimming area.

[6] Negligence 272 ⚷1033

272 Negligence
272XVII Premises Liability
272XVII(C) Standard of Care
272k1033 k. Reasonably Safe or Unreasonably Dangerous Conditions. Most Cited Cases
Although an operator of a swimming area generally has a duty to keep the premises in a reasonably safe condition, this applies only to the extent the premises are improved or maintained by the operator; an operator cannot be charged with keeping an unaltered natural body of water safe because a natural body of water contains inherent natural hazards.

[7] Negligence 272 ⚷1020

272 Negligence
272XVII Premises Liability
272XVII(B) Necessity and Existence of Duty
272k1020 k. Duty to Warn. Most Cited Cases
Natural character of a hazard does not relieve a swimming area operator of the duty to warn if it knew or should have known the hazard was present.

[8] Municipal Corporations 268 ⚷849

268 Municipal Corporations
268XII Torts
268XII(E) Condition or Use of Public Buildings and Other Property
268k849 k. Water Frontage, Landings, Wharves, and Docks. Most Cited Cases
The transient nature of rip currents is not dispositive of city's duty to warn swimmers; focus is not on the nature of the dangerous condition but on whether the governmental entity knew or should have known of the dangerous condition.

[9] Judgment 228 ⚷181(33)

228 Judgment
228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(33) k. Tort Cases in General. Most Cited Cases
Genuine issues of material fact as to city's actual or imputed knowledge regarding rip currents at beach area precluded summary judgment on city's duty to warn swimmers.
***1061** Nancy Little Hoffmann, Pompano Beach, Florida and Howard L. Pomerantz of Abramowitz and Pomerantz, P.A., Sunrise, Florida on behalf of Frederica E. Breaux, etc.; and Joel D. Eaton of Podhurst, Orseck, Josefsberg, Eaton, Meadow, Olin and Perwin, P.A., Miami, Florida on behalf of Rabbi Israel Poleyeff, etc., for Petitioner.

Christopher N. Bellows and Daniel S. Pearson of

Holland and Knight, Miami, Florida, and Murray H. Dubbin, City of Attorney, Miami Beach, Florida on behalf of City of Miami Beach, for Respondent.

Edward G. Guedes of Weiss, Serota, Helfman, Pastoriza, Guedes, Cole and Boniske, P.A., Miami, Florida on behalf of Village of Key Biscayne and Bal Harbour Village; John C. Dellagloria, City Attorney, North Miami, Florida, Stephen H. Cypen, Town Attorney, Miami Beach, Florida, and Lynn M. Dannheisser, City Attorney, Sunny Isles Beach, Florida on behalf of City of North Miami and Town of Surfside, As Amici Curiae.

PARIENTE, C.J.

[1] We have for review the Third District Court of Appeal's decision in *Poleyeff v. City of Miami Beach*, 818 So.2d 672 (Fla. 3d DCA 2002) (*Poleyeff II*), which expressly and directly conflicts with this Court's decision in *Florida Department of Natural Resources v. Garcia*, 753 So.2d 72 (Fla.2000). FN1 We hold that when a municipality, such as the City of Miami Beach, operates a public beach as a swimming area by having public restrooms, showers, water fountains, parking, and a beach concessionaire from which it derives revenues, the municipality has a duty to exercise reasonable care under the circumstances to those foreseeable users of that swimming area. This holding is based on our longstanding and well-settled precedent addressing governmental entities that operate public swimming areas. We make no determination about whether the City of Miami Beach was negligent or whether any such negligence was the legal cause of the plaintiffs' damages. Nor do we determine what effect, if any, the principle of comparative negligence has on the plaintiffs' claims. Moreover, we note that as with all governmental entities, the City's liability is limited by the cap in the State's waiver of sovereign immunity set forth in section 768.28, Florida Statutes (2004). FN2 ***1062** Accordingly, we quash the Third District's decision and remand for further proceedings.

> FN1. We have jurisdiction. *See* art. V, § 3(b)(3), Fla. Const.

> FN2. The Legislature has set a cap on damages recoverable from a governmental entity at $100,000 per person and $200,000 per accident. *See* § 768.28(5), Fla. Stat. (2004). So, although a judgment may be obtained for a larger amount, the statutory caps make it impossible, absent a special claims bill passed by the Legislature, for a claimant to collect more than the caps provide.

FACTS AND PROCEDURAL HISTORY

On February 20, 1997, Eugenie Poleyeff and her husband, who were guests at the Saxony Hotel in Miami Beach, walked three blocks to the beach area behind the Seville Hotel at 29th Street to rent a beach chair and umbrella from a concessionaire, Hurricane Beach Rentals. While swimming in the Atlantic Ocean adjacent to the 29th Street beach area, Ms. Poleyeff was caught in rip currents. Upon hearing Ms. Poleyeff's calls for help, Zachary Breaux, who was a guest at the Seville, attempted to save her. Tragically, they were both overcome by the rip currents and drowned.

The estates of Ms. Poleyeff and Mr. Breaux brought wrongful death actions against multiple defendants, including the City of Miami Beach, the Seville Hotel, the Saxony Hotel, and Hurricane Beach Rentals. The trial court dismissed the complaints against the Seville Hotel, the Saxony Hotel, and Hurricane Beach Rentals with prejudice, and the Third District affirmed. *See Poleyeff v. Seville Beach Hotel Corp.*, 782 So.2d 422 (Fla. 3d DCA 2001) (*Poleyeff I*), *review denied*, 817 So.2d 849 (Fla.2002).

With regard to the City, the complaints alleged that the City controlled the beach under a lease agreement with the State of Florida and was negligent in failing to warn swimmers of the danger of rip currents or take other action to safeguard swimmers who used the beach. The City filed a motion for summary judgment, arguing that it was entitled to sovereign immunity.

The record contains evidence that the City was aware that the public was using the beach area at 29th Street for swimming. The Poleyeffs saw other people swimming and wading in the ocean, and believed the area was a swimming area. The Poleyeffs saw no signs warning that the area was not a swimming area or that there were no lifeguards in the area. Similarly, the Breaux family saw many people swimming there on that day and the previous day, and believed the area was a swimming area.

Evidence was also presented to the trial court that at the 29th Street beach area, the City provided public restrooms with showers, water fountains, telephones, and picnic tables, and that there was metered parking adjacent to the beach on 29th Street. In addition, the City licensed Hurricane Beach Rentals to operate at that location. Hurricane Beach Rentals rented to beach users a variety of equipment, including lounge chairs, umbrellas, and watercraft. The City required the concessionaire and its employees to wear identification badges issued or approved by the City.

Although the City provided lifeguards at various other locations along the beach, at the time of the accident the beach area at 29th Street did not have a lifeguard station. The City's Parks and Recreation Director testified during a deposition that the 29th Street beach area was the only beach area that had public restrooms, showers, water fountains, and a beach concessionaire but not also a lifeguard station.

At those beaches where the City provided lifeguards, the public was warned of rip currents in the area. On the day of the accident, the lifeguard at the 21st Street beach area, which is eight blocks from the 29th Street beach area where the decedents were swimming, posted rip current warning flags.

***1063** The trial court granted the City's motion for summary judgment, finding that the City was immune from suit, and the estates appealed to the Third District. The district court affirmed the trial court's grant of summary judgment, but not on the basis of sovereign immunity. Instead, relying exclusively on its prior en banc decision in *Poleyeff I,* the Third District held that the City had no duty to warn the decedents of, or safeguard them from, the naturally occurring rip currents because it did "not control the area or undertake a particular responsibility to do so." *Poleyeff II,* 818 So.2d at 673 (quoting *Poleyeff I,* 782 So.2d at 424). This holding conflicts with *Garcia,* both on the issue of the City's control of the beach area and on the issue of whether the City was operating a swimming area so that a duty of reasonable care arose.

ANALYSIS

We begin by resolving the conflict between the Third District's decision in this case and *Garcia* on the issue of control of the beach area. The Third District affirmed the trial court's order granting the City summary judgment on the authority of its en banc decision in *Poleyeff I.* In that case, the district court concluded that the Seville Hotel, the Saxony Hotel and Hurricane Beach Rentals had no "duty to warn, correct, or safeguard others from naturally occurring, even if hidden, dangers common to the waters in which they are found" because they did "not control the area or undertake a particular responsibility to do so." *Poleyeff I,* 782 So.2d at 424 (footnotes omitted).

Unlike the hotels and concessionaire dismissed as defendants in *Poleyeff I,* the City does control the area of Miami Beach, based upon a 1982 management agreement with the State. As we explained in *Garcia,*

> [t]he management agreement: (1) provided that the State "holds title" to the beach property; (2) granted the City "management responsibilities" of the beach for twenty-five years; (3) required the City to submit a "management plan" providing for "the limitation and control of land and water related activities such as boating, *bathing,* surfing, rental of beach equipment, and sale of goods and services to the public;" and (4) required the City to pay the State twenty-five percent of revenues collected from private concessionaires.

753 So.2d at 74. We therefore conclude that the Third District erred to the extent it held that the City does not control the beach of Miami Beach.

[2][3] We next turn to the issues of duty and sovereign immunity. In cases involving governmental tort liability, we generally determine whether the defendant owes a duty of care to the plaintiff before we address whether the governmental entity is immune from liability. *See Henderson v. Bowden,* 737 So.2d 532, 535 (Fla.1999) ("A threshold matter is whether the [defendant] had a duty to act with care toward the decedents.... Assuming a duty is owed, we must then determine whether sovereign immunity bars an action for an alleged breach of that duty."); *Kaisner v. Kolb,* 543 So.2d 732, 734 (Fla.1989) ("Conceptually, the question of the applicability of ... immunity does not even arise until it is determined that a defendant otherwise owes a duty of care to the plaintiff and thus would be liable in the absence of such immunity.") (quoting *Williams v. State,* 34 Cal.3d 18, 192

Cal.Rptr. 233, 664 P.2d 137, 139 (1983)). However, in cases that involve injuries suffered while swimming, the issues of duty and sovereign immunity merge because the determination of both questions turns on the same inquiry-whether the governmental ***1064** entity was operating a public swimming area when the accident occurred. We have explained that

> [a] government unit has the discretionary authority to operate or not operate swimming facilities and is immune from suit on that discretionary question. However, once the unit decides to operate the swimming facility, it assumes the common law duty to operate the facility safely, just as a private individual is obligated under like circumstances.

Avallone v. Board of County Comm'rs, 493 So.2d 1002, 1005 (Fla.1986); *see also* *Butler v. Sarasota County,* 501 So.2d 579, 579 (Fla.1986) (quoting *Avallone*). This duty includes "keep[ing] the premises in a reasonably safe condition and ... warn[ing] the public of any dangerous conditions of which [the governmental entity] knew or should have known." *Garcia,* 753 So.2d at 75.[FN3]

> FN3. This is the duty an owner or controller of property owes an invitee. *See* *Garcia,* 753 So.2d at 75. An invitee "is a licensee on the premises by invitation, either express or reasonably implied, of the owner or controller of the property." *Barrio v. City of Miami Beach,* 698 So.2d 1241, 1243 (Fla. 3d DCA 1997).

On the issue of whether a governmental entity is operating a public swimming area, *Garcia* held

> that the fact that the [governmental entity] never formally "designated" the beach as a public swimming area is not dispositive of whether the government owes an operational-level duty[FN4] to safely operate a public swimming area if sufficient facts exist to demonstrate that the area was held out to the public as a public swimming area. The focus of the inquiry is not whether a formal designation occurred. *Rather, ... the actions of the government entity must be examined to determine whether, based on all the circumstances, the government entity held the area out to the public as a swimming area or led the public to believe the area was a designated swimming area.*
>
> FN4. We have distinguished between a governmental entity's "planning-level" activities, which are immune from suit, and a governmental entity's "operational-level" activities, which are subject to traditional tort liability. *See* *Commercial Carrier Corp. v. Indian River County,* 371 So.2d 1010, 1021 (Fla.1979).
>
> ....
>
> ... [T]he "common use" of an area for swimming may be one factor to consider in order to determine if a governmental entity held out the area as a public swimming area or, as in *Andrews [v. Department of Natural Resources,* 557 So.2d 85 (Fla. 2d DCA 1990)], led the public to believe that the area was designated as a swimming area. At one end of the spectrum is the circumstance where the government entity formally designates an area for public swimming. At the other end of the spectrum are circumstances where either the government entity actively attempts to prohibit swimming or has no knowledge that some part of an undesignated beach is being used by swimmers.
>
> 753 So.2d at 76-77 (emphasis supplied).

[4] Although the facts presented in *Garcia* are different from the facts of this case, the general principle of law *Garcia* established is applicable to all cases dealing with governmental tort liability for swimming accidents. If "the government[al] entity held the area out to the public as a swimming area or led the public to believe the area was a designated swimming area," the governmental entity owes an operational-level duty of care to those using the swimming area. *Garcia,* 753 So.2d at 76.

***1065** [5] In concluding that the City was not operating a swimming area at the 29th Street beach location, the dissent narrowly focuses on the city council's decision not to formally designate the area for swimming or post lifeguards there. However, under *Garcia* these facts are not dispositive. Indeed, *Garcia* expressly rejected the requirement of formal designation, *see* 753 So.2d at 76 ("The focus of the inquiry is not whether a formal designation occurred."), and relying on the presence of a lifeguard station as a litmus test for establishing a public swimming area is even more exacting than requiring "formal designation." Instead, we must consider all of the circumstances to determine whether the City was operating a swimming area at the 29th Street beach location.

We conclude that the totality of the circumstances in this case demonstrates that the City was operating a "public swimming area" at the 29th Street location. The City knew that the public was using this location for swimming. There were no signs warning the public not to swim and both the Poleyeff family and the Breaux family saw people using the area for swimming. Moreover, although the City did not have a lifeguard station at the 29th Street beach area, the City built beach facilities at this location and provided metered parking at the end of 29th Street. Of even greater significance, the City licensed a concessionaire to rent beach chairs, umbrellas, and watercraft at this location, thereby deriving revenue from the public's use of this particular beach area.

Thus, contrary to the dissent's assertion, it is not the City's decision to open the beach to the public that creates the duty in this case. *See* dissenting op. at 1071-72. The City did more at the 29th Street location than simply allowing access to the water. By providing parking, public facilities, and concessions, the City created more than just a "chance that residents of the State may, on their own, select" the 29th Street location "to enjoy the ocean." Garcia, 753 So.2d at 77. In fact, at the time of the drownings, the 29th Street beach area was the only beach area along Miami Beach that had public restrooms, showers, water fountains, and a beach concessionaire, but had not been formally designated a swimming area by the City.

[6][7] Under the analysis we set forth in *Garcia,* we conclude the City "held the [the 29th Street beach] area out to the public as a swimming area or led the public to believe the area was a designated swimming area." *Id.* at 76. The City therefore had an operational-level duty of care "to warn the public of any dangerous conditions of which it knew or should have known" at the 29th Street beach area. *Id.* at 75.[FN5]

FN5. Although an operator of a swimming area also generally has a duty to keep the premises in a reasonably safe condition, *see Garcia,* 753 So.2d at 75, we conclude that this applies only to the extent the premises are improved or maintained by the operator. An operator cannot be charged with keeping an *unaltered* natural body of water "safe" because a natural body of water contains inherent natural hazards. The natural character of a hazard does not, however, relieve the operator of the duty to warn if it knew or should have known the hazard was present.

In reaching this conclusion, we expressly disagree with the Third District's statement that "drowning because of a natural characteristic of the very waters in which it occurs is simply one of the perhaps rapidly diminishing set of circumstances for which, without more, no human being or entity should be ... held civilly liable." *Poleyeff II,* 818 So.2d at 673 n. 2 (quoting *Poleyeff I,* 782 So.2d at 425). Rather, we agree with Judge Cope's conclusion that ***1066** the City's argument "that it has no duty to warn ... [of] naturally occurring conditions in the water" is contrary to our controlling precedent in *Garcia. Id.* at 677 (Cope, J., dissenting). The analysis set forth in *Garcia* is not limited to man-made dangers. *Garcia* cites with approval the Second District Court of Appeal's decision in *Andrews,* which involved natural dangerous currents. *See Garcia,* 753 So.2d at 75-76. Moreover, as noted by Judge Cope, in *Butler,* which is also cited with approval in *Garcia,* a majority of this Court rejected Chief Justice McDonald's assertion that "[g]overnmental entities should not be liable for naturally occurring dangerous conditions in bodies of water adjacent to public beaches." *Butler,* 501 So.2d at 580 (McDonald, C.J., dissenting), *quoted in Poleyeff II,* 818 So.2d at 678 (Cope, J., dissenting).

[8] Lastly, the fact that rip currents are transient in nature is not dispositive on the issue of the City's duty to warn. Under *Garcia,* the focus is not on the nature of the dangerous condition but on whether the governmental entity knew or should have known of the dangerous condition. Whether the City knew or should have known of the dangerous rip currents at the 29th Street beach location on the day of the accident is an issue of fact to be decided by a jury.

[9] Evidence was presented to the trial court that most people do not know the danger that rip currents pose, that the presence of rip currents is not obvious to the untrained observer, and that people tend to enter the water where a rip current exists because the

water looks calmer than the surrounding area. Further, on the day that the decedents were killed, the City's lifeguard at the 21st Street beach identified rip currents at that location and posted a warning flag. Thus, the City warned beachgoers at a nearby location of a known dangerous condition while neglecting to similarly warn beachgoers at the 29th Street beach where the same condition existed. Considering the evidence in the record, the question of the City's actual or imputed knowledge regarding rip currents at the 29th Street beach area raises genuine issues of material fact not properly decided as a matter of law.

CONCLUSION

We hold that based on the undisputed facts, the City controls the beach area and was operating a public swimming area at the 29th Street location at the time of the accident. Thus, the City had a duty of care to warn of dangers that were known or should have been known, and is not shielded from liability as a matter of law based on sovereign immunity. We expressly do not decide the issues of whether the City knew or should have known of the rip currents at the 29th Street location on the day the decedents drowned or whether the City breached its duty of care to the decedents. Nor do we decide any issues regarding causation or damages. We quash the Third District's decision in *Poleyeff II* and remand for further proceedings not inconsistent with this opinion.

It is so ordered.

ANSTEAD, LEWIS, and QUINCE, JJ., concur.
LEWIS, J., concurs with an opinion, in which PARIENTE, C.J., and ANSTEAD, J., concur.
WELLS, J., dissents with an opinion, in which CANTERO, and BELL, JJ., concur.LEWIS, J., concurring.

While I fully concur in the majority opinion, I write separately to address the legitimate concerns and issues presented ***1067** by the dissent that have been considered in the past and cannot be simply lightly disregarded today. Importantly, the rule of law utilized by the majority today to recognize that the City of Miami Beach is subject to the same duty that would be applied to a private entity with regard to operational aspects of a swimming area at the 29th Street beach location is not at all new or novel and has actually been a part of Florida jurisprudence since the 1940s. *See Ide v. City of St. Cloud,* 150 Fla. 806, 8 So.2d 924, 925 (1942) (determining that when a city maintains a bathing beach pursuant to its charter power, it is held to the same degree of care to ensure the safety of those invited to the beach as a private person). The majority's discussion today relies upon the Court's most recent articulation of that rule in *Florida Department of Natural Resources v. Garcia,* 753 So.2d 72 (Fla.2000). The dissent seeks to distinguish *Garcia* from the instant matter on the basis that the injury in *Garcia* was caused by an artificial condition (debris left on the ocean bottom after destruction of a South Beach pier), whereas the drownings in the instant matter resulted from rip currents, a natural transient danger inherent in the ocean. There is a factual difference in the controlling precedent; however, such difference does not require or support a distinction with regard to the existence of an underlying duty.

This Court considered a factual scenario almost identical to that presented in the instant matter in the 1986 case of *Butler v. Sarasota County,* 501 So.2d 579 (Fla.1986). There, Sarasota County controlled an area known as South Lido Beach, and had improved and maintained the area as one open for swimming activity. *See Sarasota County v. Butler,* 476 So.2d 216, 216 (Fla. 2d DCA 1985), *quashed,* 501 So.2d 579 (Fla.1986). A nine-year-old boy drowned at the beach due to strong currents and a naturally occurring drop-off in the ocean floor. *See id.* The complaint alleged that Sarasota County was negligent in failing to post warning signs or other devices alerting beachgoers to the dangerous conditions, failing to provide lifeguards or other protection, and failing to provide safety rescue equipment. *See id.* at 217. In a brief opinion, this Court quashed the district court decision which had held that the county possessed sovereign immunity in the operation of the swimming area. Relying on *Avallone v. Board of County Commissioners,* 493 So.2d 1002 (Fla.1986), this Court stated:

> The duty of care is no different for a public owner than a private owner. In this instance, the public owner did not create the specific dangerous condition but did create a designated swimming area where the dangerous condition existed.

Butler, 501 So.2d at 579.

Then Chief Justice McDonald dissented from the majority opinion in *Butler,* positing many of the same arguments offered by the dissent today, including that a governmental entity's responsibility should be limited to those conditions of the water that result from improvements or changes it has made, and should not extend to variable circumstances which are not under its control. *See id.* at 580 (McDonald, C.J., dissenting). Thus, even in the face of many of the same arguments advanced by the dissent today, this Court nearly twenty years ago determined that the harmony between public and private entities in the existence of a duty with regard to such swimming areas applies even in matters involving injury attributable to natural, transient water conditions such as that presented here.

In my view, the dissent overstates the holding and scope of the majority opinion for purposes of expressing discord. For I, ***1068** too, would dissent if the majority opinion had the effect of requiring governmental entities to post lifeguards at points of open beach not effectively or formally designated as swimming areas, to survey thousands of miles of ocean bottom adjacent to such beaches to discover and make safe hazardous conditions, or to protect any individual entering the water from any point along Florida's thousands of miles of coastline against the numerous transient hazards existing in the ocean water. I would also dissent if the majority opinion cast aside traditional notions of comparative negligence and assumption of risk that engender equity in the resolution of tort claims in this state. However, the decision of the majority today neither compels nor even contemplates such outcomes.

The dissent also fails to adequately account for the commercial nexus between the City of Miami Beach and the beach area located at 29th Street. The concessionaire licensed to operate at the beach area offered for rent beach chairs, umbrellas, and watercraft-not items unrelated to water sport activities that may be offered for sale along any Miami Beach city street. The City also had installed bathroom facilities complete with showers at this location. Such facilities serve a specific purpose-to draw beachgoers to this spot and to enable them to change into their swimming clothes and to rinse or cleanse after swimming in the ocean. Such public bathing facilities and rental activities are notably absent from general inland commercial and shopping districts such as the popular Lincoln Road, which do not serve as portals to Florida's coastal waters nor to draw beachgoers. As underscored by these facts, this is not a case in which the duty of the City of Miami Beach stems from the mere fact that the City has beaches and coastline within its geographical bounds or that access is open to all. Here, the City engaged in affirmative actions that effectively designated the beach located at 29th Street as a public swimming area and derived revenue from that activity. It is from that activity of designating this swimming area that the source of the government's duty arises.

As noted by the dissent, a few other states have established different principles which govern the underlying duty of public entities with regard to the operation of swimming areas. Public entities in California apparently do not have a duty to provide safe beaches or warn beachgoers of natural hazards such as breaking waves and uneven ocean floors. *See Lupash v. City of Seal Beach,* 75 Cal.App.4th 1428, 89 Cal.Rptr.2d 920 (1999). In *Lupash,* a 13-year-old boy was rendered a quadriplegic when he fell after stepping into a depression in the ocean floor during a junior lifeguard competition, and an adverse final summary judgment that was entered against him in an action against the City was upheld. *See id.* at 922.

However, *Lupash* and other similar California cases have little persuasive impact in the current Florida context because the California jurisprudence concerning the duty of public entities with regard to swimming areas is informed by the California Tort Claims Act, which specifically provides absolute immunity for public entities against claims for injuries caused by the natural condition of unimproved public property, including, but not limited to, any natural condition of any lake, stream, bay, river, or beach. *See id.* at 925 n. 3 (stating that the statutory immunities "buttress" the court's conclusion regarding duty); *see also Arroyo v. State,* 34 Cal.App.4th 755, 40 Cal.Rptr.2d 627 (1995) (holding that statutory immunity created an exception to the general duty to warn of known dangerous conditions such as mountain lions in hiking areas even where the State had distributed brochures indicating the area ***1069** was free from significant dangers and posted warning signs concerning the existence of snakes and ticks). The California courts have interpreted the absolute immunity with regard to wild and unimproved public property very broadly, and have determined that such immunity applies notwithstanding the presence or absence of lifeguards, warning signs, or other public safety services, *see* City of Santa Cruz v. Superior Court, 198 Cal.App.3d 999, 244 Cal.Rptr. 105 (1988), or the placement of such amenities as restrooms, lifeguard towers, fire circles, food concessions, promenades, parking lots and piers. *See* Geffen v. Los Angeles, 197 Cal.App.3d 188, 242 Cal.Rptr. 492 (1987). Florida law does not and has not contained a similar provision granting absolute immunity for natural conditions of wild and unimproved public property, and certainly not with regard to the operation of areas involved in for-profit activities.

The dissent also refers to a New York decision, *Herman v. State,* 94 A.D.2d 161, 463 N.Y.S.2d 501 (1983), in which the court held that the State did not have a duty to post signs warning beachgoers of the presence of sandbars. The New York court recognized that a public entity could be held liable for the failure to warn when the entity creates or substantially contributes to the creation of a hazardous condition, or in situations in which naturally occurring hazards are fixed and susceptible to remedy or isolation from the public. *See id.* at 502 (citing cases imposing a duty to warn of dangerous cliffs, falling rocks, submerged rocks on a lake bottom, and fixed drop-offs on a lake bottom). However, the court determined that such standards did not impose a duty to warn of the existence of sandbars, which may change location within hours and are impossible to monitor. *See id.*

However, like the California decisions, the New York result has little application here. The matter before the Court today involves the City of Miami Beach failing to provide any warning of the danger posed by rip currents or to take any safety precaution whatsoever in this area. While the transience of some natural dangers may and should certainly inform and shape the standard of care necessary to adequately dispatch one's duty under these circumstances, it cannot-consistent with long-established Florida jurisprudence-totally negate the existence of that duty, nor is absolute immunity afforded for a breach of that duty. The majority's decision today will not have the effect of imposing onerous burdens on local governments that will reduce the public's access to beaches in this state. This decision has absolutely no impact on the thousands of miles of open beach access coasts even if they extend through local government areas. To the contrary, the majority's decision simply recognizes that a duty arises in these designated swimming areas and beachgoers will benefit from that reasonable conduct required in these areas.

PARIENTE, C.J., and ANSTEAD, J., concur.
WELLS, J., dissenting.
I dissent because I conclude that the majority's decision is an erroneous extension of this Court's decision in *Florida Department of Natural Resources v. Garcia,* 753 So.2d 72 (Fla.2000), is in conflict with this Court's long-standing precedent in respect to sovereign immunity, and will have serious adverse consequences for the State, county, and municipal beach areas of Florida.

The present case is substantially factually distinct from *Garcia,* and the legal analysis should recognize that difference. Garcia was injured when he dove into the ***1070** ocean adjacent to an area of Miami Beach in which the City of Miami Beach (City) had demolished a pier. Garcia struck his head on the debris on the ocean bottom that remained after the demolition. Thus, Garcia's case involved an injury resulting from a known stationary hazard which the City had created in an area controlled and operated by the City as a swimming area. There was a lifeguard stationed by the City in the area. In *Garcia,* there was no issue raised as to whether the City had decided to operate the area as a swimming area. The issues which were before the Court and which were for decision by the Court in *Garcia* were about the liability of the State of Florida-not the liability of the City of Miami Beach. *Id.* at 75. The majority opinion in *Garcia* states that the core question presented was whether "a formal designation as a swimming area by the State [was] a prerequisite to the State's liability." *Id.* at 75.

In the present case, rather than the injury resulting from a known stationary hazard created by the governmental entity, the deaths were caused by a natural transient danger inherent in the ocean. The area of the ocean where the deaths occurred had in no way been changed or improved by the City, and the area was in no way marked off or otherwise designated as a swimming area. There is no evidence in the record showing that the City had "decided" to operate the area as a swimming area. The City had not posted a lifeguard in the area, a fact which was open and obvious. What the City had done was to allow the public to enter the ocean through the entirety of the beach area which the City controlled, but the City had not improved or changed the ocean bottom or marked the 29th Street area for swimming. The core question in this case did not involve whether there was "a formal designation of a swimming area"; the question was whether the City had "decided to operate and was operating" a swimming area in the particular area of Miami Beach where the drownings occurred and could be held liable in tort for transient natural hazards in the ocean.

Garcia cites to, as does the present majority opinion, this Court's 1986 case concerning a governmental entity's liability for an injury in a swimming area, *Avallone v. Board of County Commissioners,* 493 So.2d 1002 (Fla.1986). *Avallone* was a case in which the injury occurred when Avallone was pushed from a dock at a public park and swimming area that was owned and operated by Citrus County. The basis of Avallone's claim against the county was the failure of the county to provide supervisory personnel at the park. In its opinion in *Avallone,* this Court based it decision on its earlier landmark sovereign immunity decision in *Trianon Park Condominium Ass'n v. City of Hialeah,* 468 So.2d 912 (Fla.1985), and stated:

> Section 768.28 and *Cauley v. City of Jacksonville,* 403 So.2d 379 (Fla.1981), abolished the distinction which once existed between municipalities and counties. The common law duty which [*Pickett v. City of Jacksonville,* 155 Fla. 439, 20 So.2d 484 (1945),] and [*Ide v. City of St. Cloud,* 150 Fla. 806, 8 So.2d 924 (1942),] recognized was also applicable to counties even though the counties were sovereignly immune from suit at the time *Pickett* and *Ide* issued. We addressed this point in *Trianon Park* when we emphasized "that section 768.28, Florida Statutes (1975), which waived sovereign immunity, created no new cause of action, but merely eliminated the immunity which prevented recovery for common law torts committed by the government." *Trianon Park,* 468 So.2d at 914. A government unit has the discretionary authority to operate or not operate swimming facilities and is ***1071** immune from suit on that discretionary question. However, once the unit decides to operate the swimming facility, it assumes the common law duty to operate the facility safely, just as a private individual is obligated under like circumstances.

Avallone, 493 So.2d at 1005. I agree with the majority that in this holding in *Avallone,* we held that a governmental entity operating a swimming facility has a common law duty to users of the swimming facility. However, the key threshold to the existence of this operational-level duty is that the governmental entity made a discretionary decision to operate a swimming facility and is operating a swimming facility.

As stated earlier, the record in this case does not show that the City had made the decision that the ocean adjacent to the 29th Street area was to be a swimming area. The Miami Beach City Council made the decision that the entire length of the City's beach would be open to the public, and it would not prohibit the public from having access to the ocean through its beaches. The 29th Street area was simply an area within that decision. Included in the record of this case are the depositions of Kevin Smith, the Director of Parks and Recreation for the City of Miami Beach, Vincent Andreano, the Captain of the City of Miami Beach Patrol, and William Morrison and James Krupka, who were both lifeguards for the City. The record shows that the City provided lifeguards at various station locations on the beach. Decisions as to the number and placement of lifeguard stations were also made by the vote of the Miami Beach City Council upon the recommendations of the Director of Parks and Recreation and the Captain of the Beach Patrol. On February 20, 1997, the City had lifeguard stations at the Sunshine Pier beach area and at 1st, 3rd, 6th, 8th, 10th, 12th, 13th, 14th, 17th, 21st, 35th, 46th, 53rd, 64th, 72nd, 79th, 81st, and 83rd Streets. A lifeguard could guard approximately 500 yards of beach front-250 yards on either side of the lifeguard station. But because of budgeting constraints, a lifeguard could not be placed on every five hundred yards along the entirety of the City's beaches. On the date of the drownings, the City Council had neither put a lifeguard station at the 29th Street area nor decided that the ocean adjacent to this area of beach was to be treated as a swimming area. The City had not changed or improved the ocean or ocean bottom in this area. The City had in no way marked the area for swimming.

The decision as to the number and placement of lifeguards has budgeting implications which are plainly legislative in nature. *See Dennis v. City of Tampa,* 581 So.2d 1345 (Fla. 2nd DCA 1991); *City of Daytona Beach v. Palmer,* 469 So.2d 121 (Fla.1985); *Wong v. City of Miami,* 237 So.2d 132 (Fla.1970). Such decisions are not the basis for governmental tort liability. Dep't of Health & Rehab. Servs. v. B.J.M., 656 So.2d 906, 911 (Fla.1995). On the basis of these record facts, the majority's decision reduces to a holding that by the City's opening of the entire length of the beach to the public, the City was operating a swimming area for the entire length of the beach.

The majority does place emphasis on the City providing public restrooms in the 29th Street area and licensing concessionaries in the area, with the implication being that this made this area into a swimming area. However, it simply does not follow that the providing of these public conveniences equates to a decision by the City to operate a swimming area in the ocean adjacent to the restrooms. The restrooms have been in this place since the middle of the last century, and there is no indication in *1072 the present record that when they were long ago constructed, the City had decided to make the water adjacent to this area of beach any different than the unimproved areas of water along the entire beach.

The concurring opinion cites to two cases in support of liability on the part of the City: *Ide v. City of St. Cloud,* 150 Fla. 806, 8 So.2d 924 (1942); and *Butler v. Sarasota County,* 501 So.2d 579 (Fla.1986). However, I believe those cases highlight why the present situation of Miami Beach opening its entire beach to the public is different from the swimming liability cases in which this Court has held that the governmental entity could have liability for operating a swimming facility.

The facts of *Ide,* as set forth in the opinion, were:

> The substance of the declaration was that defendant maintained a bathing beach outside the city limits; that for some time the city had knowingly allowed a deep hole out in the lake to remain hidden and unguarded; that the city had invited the general public on the premises and plaintiff's husband and minor son entered in response to the invitation and were drowned by reason of the city's negligence aforesaid.

8 So.2d at 925. As is seen, the City of St. Cloud's liability was from the operation of a beach area for swimming at a lake in which there was a known stationary hazard. I simply have to conclude the factual difference is self-evident, as is the logic of there being a duty on the part of St. Cloud to warn of the hole which it knew existed at the time and place of the *Ide* drownings and there not being a duty on the part of Miami Beach to warn of transient rip tides which the City did not know were existent at the time and place of the drownings in this case.

Butler was a case in which the drownings occurred in an area which had been marked for swimming. Both the majority and concurring opinions here fasten upon the statement by Justice McDonald in his dissent that "[g]overnmental entities should not be liable for naturally occurring dangerous conditions in bodies of water adjacent to public beaches." 501 So.2d at 580 (McDonald, C.J., dissenting), as indicating that in *Butler* this Court concluded that governmental entities have liability for naturally occurring conditions. However, in focusing upon what Justice McDonald said, the majority and concurring opinions overlook the point of what this Court actually held in *Butler,* which was:

> In this instance, the public owner did not create the specific dangerous condition *but did create a designated swimming area where the dangerous condition existed.*

501 So.2d at 579 (emphasis added). Unlike the circumstances of the present case, in *Butler* there was a specific swimming area where the currents and the bottom combined and were known to be dangers. When Sarasota County created the swimming area at that particular location, it had a duty to warn of the known hazard which existed at that location. Again, I believe the distinction in the duty of the governmental entities in the two situations is self-evident.

I cannot agree with the majority that the fact that these deaths resulted from a transient natural hazard makes no difference in the City's liability. Florida is unique in the broad expanse of beaches that it has adjacent to the Atlantic Ocean and the Gulf of Mexico. We have hundreds of miles of beaches adjacent to these waters. These beaches are within state, county, and municipal areas. Throughout the history of Florida dating to 1845, there has been an emphasis on these beaches being open to the public so that the public can freely swim, fish, sunbathe, and engage*1073 in general recreation. Miami Beach, by opening to the public for free the entire length of the beach under that City's control, followed what I believe to be an exceedingly beneficial tradition and service.

The majority appears to attempt to minimize its holding by first stating, "We make no determination about whether the City of Miami Beach was negligent or whether any such negligence was the legal cause of the plaintiffs' damages." Majority op. at 1061. However, this statement does not withstand the scrutiny of the present record. The present record makes clear that the only way the City could have reasonably safeguarded the plaintiffs' decedents would have been to have placed a lifeguard at the location where the drownings occurred. Candidly, the majority's present holding is that the City had the duty to protect against the transient rip currents, and since it did not provide the only reasonable safeguard against the rip currents, the City breached its duty. The damages resulted from the drownings in the riptides, and therefore the City was negligent. The majority's statement obfuscates that the issue here is not an issue of fact-the issue here is an issue of law, i.e., whether the City had the duty to place a lifeguard at the location where the drownings occurred. The majority cannot avoid that the effect of its holding is that the discretionary decision by the City Council not to place a lifeguard at 29th Street was negligent.

The majority secondly attempts to minimize its holding by stating, "[W]e note that as with all governmental entities, the City's liability is limited by the cap in the State's waiver of sovereign immunity provisions set forth in section 768.28, Florida Statutes (2004)." Majority op. at 1061. I read this to mean that the City's financial exposure is not of great financial consequence to the City since section 768.28(5) limits the payment of claims to $100,000 per individual and $200,000 per incident. However, this is incorrect. As then Judge Pariente wrote for the Fourth District Court of Appeal in *Paushter v. South Broward Hospital District*, 664 So.2d 1032, 1033 (Fla. 4th DCA 1996):

> However, while section 768.28(5) limits recovery against a governmental entity absent a claims bill, it does not limit the right of a party to proceed to judgment for the full amount of damages against the state or its agencies.

The City's financial exposure is great under these circumstances.

Rather than exposing Florida's governmental entities where our beaches are located to tort liability, this Court should respect that the ocean and gulf waters adjacent to these beaches are filled with natural dangers which are controlled only by nature and that these dangers are simply inherent in the use of these waters. There are sharks, barracudas, stingrays, jelly fish, undertows, riptides, sandbars, coral reefs, lightning, and literally thousands of other natural dangers. Courts in other states with extensive beaches have recognized that there can be no tort recovery against the government from injuries caused by these natural transitory dangers in the ocean. *Lupash v. City of Seal Beach*, 75 Cal.App.4th 1428, 89 Cal.Rptr.2d 920, 926 (1999) (ocean can have high points, low points, riptides, rip currents, swirls, splashing waves, sand crabs, driftwood, seashells, and all kinds of danger, and there is no duty to protect anyone against these dangers.); *Herman v. State*, 94 A.D.2d 161, 463 N.Y.S.2d 501 (N.Y.App.Div.1983) (no duty to protect against shifting sandbars). In *Garcia*, this Court acknowledged this by stating:

> [I]t would be an intolerable and unnecessary burden to expect the State to post "No Swimming" signs up and down ***1074** its expansive coastline on the chance that residents of the State may, on their own, select a particular area to enjoy the ocean or other waterways.

Garcia, 753 So.2d at 77.

To hold a governmental entity liable for hazards it creates or hazards which are stationary in an area where the government puts a park is one thing. It is wholly different to make the government liable for transient natural hazards in the ocean or gulf.

Unfortunately, the result of placing this burden of liability on the governmental entities in which Florida's beaches are located will predictably result in seriously reducing public access to beaches because governmental entities conclude that they cannot practically or financially afford to protect users against the unlimited natural hazards of the ocean or gulf. Certainly, a foreseeable consequence of this decision will be the closing of public restrooms and public concessions [FN6] in areas in which the governmental entity makes a budgetary decision not to place lifeguards. I believe this is a very bad result for Florida and for the public.

FN6. The majority and concurring opinions' finding of great significance the City's deriving of revenue from the beach rentals appears to me to be a very weak basis upon which to justify a basis for liability. The licensing of concessions by the City is primarily in order to regulate the concessions in the interest of the public. There is no claim here that the drownings were related to the use of any rentals or that by allowing a concessionaire to be at the 29th Street area that the City decided that area was a "swimming area" different than other areas of water adjacent to the entire length of beach.

The tragedies of these deaths were unfathomable, and I in no way wish to diminish the extent of those tragedies. But I must dissent to the majority's holding that the City could have liability for the deaths.

CANTERO and BELL, JJ., concur.
Fla.,2005.
Breaux v. City of Miami Beach
899 So.2d 1059, 30 Fla. L. Weekly S219, 30 Fla. L. Weekly S176

END OF DOCUMENT

Peter Elwell
Town Manager
Town of Palm Beach

I respectfully request that you forward this letter onto the members of the Town Council so as to provide them with additional information about the Ocean Rescue Unit as they face the difficult task that lies before them.

I fully understand the financial situation that the Town faces, not only today but also in the years ahead. While elimination of the Ocean Rescue Unit may help solve some of the immediate concerns it is short sited and will most likely cost the Town substantially.

As of this writing, Ocean Rescue lifeguards have performed 40 rescues. Now I'll be the first to admit that not all of them would have resulted in a drowning but what number is acceptable; 2, 5, 10? And with each drowning comes the threat of a lawsuit or negative publicity that the Town and its residences lack concern or compassion for the 500,000 people who visit its beaches each year. I have worked on the Town's beaches for 26 years. I have risked my own life on numerous occasions. I have looked a drowning person in their eyes. I have felt what might be their last breath on my cheek. In that moment, Town resident or not, you can live or you can die. A lifeguard can make the difference in that moment.

A successful year is a year with few rescues because that means we are doing our jobs....protecting the beaches. So far this year there have been 2,464 preventive actions. These are actions where lifeguards intervened in dangerous and hazardous situations before a person could get into trouble. Who knows how many of those would have a led to a rescue situation or even worse, death. Lifeguards also responded to 220 medical calls that did not require the assistance of Fire/Rescue paramedics. Lifeguards have performed 2,580 enforcements of Town Ordinances; that's an average of 12 a day.

Imagine if a police officer (or two) had to respond to each of these calls. Would they be available to respond to a residential burglary or a theft in progress on Worth Avenue and if so, how much slower would the response time be? Can you imagine the impact on response time (assuming of course a rescue truck is even available) to a resident having a heart attack if a fire crew was sent to every one of these calls at the beach that the lifeguards handle. You would end up having to assign a police officer and fire truck to sit at the beach all day, every day. And on weekends and holidays the attendance can triple. The bottom line here is simple: The more time police officers and firefighters spend at the beach protecting and/or responding to calls for service, the less time they will have to respond to the needs of the residences.

There are also safety and liability issues regarding police officers and firefighters entering the water and attempting to make a rescue. Case in point; on April 16th of this year, lifeguards responded to Clarke Avenue for a call of multiple victims trapped in a rip current. One of those "victims" in need of rescuing was a police officer who entered the surf to assist. In fact, the last Town police officer to die in the line of duty was the result of drowning. He entered the surf to save a swimmer in distress. Without the members of the Ocean Rescue Unit, this scenario is likely to be repeated. And more frequently than any of us will find acceptable I imagine. And at what cost to the Town?

The reality is that lifeguards don't make a lot of money and have a minimal impact on the pension plan. In the past 50 years only eight (8) lifeguards have actually retired with a pension from the Town, and yet we contribute the highest percentage of our pay to the plan. When a lifeguard is lucky enough to retire from the Town, he doesn't get to sit back, relax and take the boat out…he has to go out and as my dad would say, "get a real job" just to be able to continue to provide for his family. Lifeguards do the job of police officers and firefighter/EMTs at about a third of the cost. To the best of my knowledge, the Town has never lost a lawsuit for incidents that have occurred in the guarded area of the public beaches. We are the Town's best insurance policy and provide the highest return on tax dollars.

Someone suggested that if the beaches didn't have lifeguards, less people would visit them. Initially this may be true. Maybe some families with children will want to take their children to beaches that are safe and guarded. But others will take their place. They may be replaced by the rowdy, beer drinking crowd who want the freedom of an unguarded, unenforced beach. Lifeguards were first on scene 21 times this year for incidents involving car crashes on South Ocean Boulevard, intoxicated persons on the beach, medical waste washing ashore, and even identifying subjects involved in a theft. Lifeguards are first line of defense.

The Town was one of the first municipalities in the State of Florida to recognize the need for professional ocean lifeguards. In 1932, Sam Burroughs was hired as the Town's first paid lifeguard and the Town has employed ocean lifeguards ever since. The Town has a long history and tradition of providing ocean lifeguards, from Sam Burroughs, to Norm Owens in the 70's to todays highly trained and dedicated professional lifesavers. The lifeguards of today are family oriented people, with wives and children who depend upon them to provide for their security. They have been working toward a goal, a goal that was offered and promised to them on the first day they started working here. For some, that was more than 20 years ago.

Respectfully, I ask that you think hard about the lives that will be affected. Not just the lives of the lifeguards, but the unknown lives of people that we are supposed to be there to protect.

Sincerely,

Mark Hassell
Ocean Rescue Supervisor

TOWN OF PALM BEACH

Information for Special Town Council Meeting on: August 12, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Kirk W. Blouin, Chief of Police

Re: Fiscal Year 2011 Cost Savings Measures

Date: August 6, 2010

Based on direction given at the July 12th, 2010 Town Council Meeting, attached is a detailed description of my recommended cost savings measures.

I feel confident that the estimated $1.3 million dollars in cost savings can be implemented by the police department without materially reducing services to the community.

For your reference, I have also attached an updated Organizational Chart depicting the revised structure of the department.

If you have any questions, please do not hesitate to contact me.

KWB:lsg
Attachments

Program 421 Administration

Action: The original cost saving measure for this program was to eliminate the Administrative Coordinator position ($53,373) which had become vacant due to resignation, and replaced it with a part-time Accreditation Coordinator ($28,142) with no benefits. This reorganization was approved at the June 2010 Town Council meeting.

Action: After further discussion with the Town Manager, it is recommended that the approved part-time position be eliminated, along with the state and national accreditation processes for an additional savings of $28,142 plus yearly accreditation expenses estimated at $7,000 which includes out of pocket expenses such as an annual assessment fees, travel/training for re-accreditation confirmation, assessor/accreditation manager training, on-site and mock assessments, etc. Other personnel cost is estimated at $30,000 to $40,000 in staff hours associated with completing the required reports, inspections, analysis, reviews, etc. necessary to retain accredited status.

Impact to department/services:

- As previously stated during the June 2010 Town Council meeting, the duties of the Administrative Coordinator were reviewed and distributed to the Police Planner and other administrative personnel.

- The implementation of national accreditation in 1989 (and subsequently state accreditation in 1996) helped assist the department in developing “best practices” in providing law enforcement services. Tri-annually the department participates in voluntary on-site assessments to encourage development of “best practices” as national and state standards evolve to reflect current laws, technology and opinion.

- While the elimination of the process would reduce direct cost, its biggest impact would be on personnel time. The self-assessment phase of accreditation is an on-going endeavor consisting of documenting and maintaining “proofs of compliance” and building files for review. This is very time consuming and not only involves the dedication of a single position, at minimum, but that of a substantial amount of other department employees at all levels of rank and at varying scales of time.

- **Estimated Cost Savings (including benefits): $117,604**

Program 423 - Records Information Systems Unit

Action: One Records Assistant was eliminated during the fiscal year 2010 for a cost savings of $46,408.

Impact on Department/Services:
Due to the recent implementation of new software programs (OSSI and Eden), the responsibilities of the unit are being handled by the two (2) full time positions. The person filling the position was transferred to a vacant position in Program 426/429.

Estimated Cost Savings (including benefits): $46,408

Program 424 Business and Community Relations Unit

Action: In April 2010, upon the retirement of the Manager of the Business and Community Relations Unit (BCR), this civilian position was eliminated and the Sergeant in the Parking/Code Enforcement Unit was transferred to BCR. The cost savings associated with this original reorganization are shown in Programs 430 and 216.

Action: After further discussion and review by management, it is recommend that the position of Sergeant be eliminated from the Business and Community Relations Unit resulting in a cost savings for this unit of $94,256. The sergeant in this position will fill a vacant sergeant position in the Patrol Unit.

Action: Other costs savings would be the result of reducing the number of Citizen and Teen Police Academies from two to one each year and eliminate the annual Citizen Police Academy Alumni Event. It is estimated that these community involvement activities require 1,020 staff hours with an estimated cost of $36,566 plus materials such as academy binders, shirts, bags, food, etc. which are paid for by the Crime Watch Program.

Note: We are considering solicitation of a private funding source to subsidize the personnel cost and an attendance fee so we can continue to offer one of each of the academy events each year.

Impact on Department/Services:

With the elimination of the Sergeant position, the Public Information Officer responsibilities will be overseen by the Training Sergeant, but will primarily fall to that of the Crime Prevention Specialist. All other unit activities will remain virtually unchanged.

Estimated Cost Savings (including benefits): $**190,360**

Program 425 - Communications

Action: The Communications Unit has been reorganized and reduced by the following positions: One manager ($78,786), one supervisor ($50,643)), and one telecommunicator ($40,093). Each of these positions were vacant at the time of the reorganization.

Action: Due to the above eliminations, it is requested that the Town Council approve the development of a "Lead" Supervisor who will take on the responsibilities of a manager and also serve as a Telecommunicator for set periods of time and as staffing levels require. The initial cost for this reclassification is 5% above the current salary of the selected employee. A new pay range has been determined by the Human Resource Department and is approximately 17% lower than the Manager's salary range.

Impact on Department/Services:

Overall the unit will function as normal. The "Lead" will assume the responsibilities of the manager and a supervisor. The "Lead" will be a working supervisor capable of performing the duties of a telecommuicator. With the review and elimination of some of the administrative duties; the recent completion of the transition to the new radio system; the implementation of new software (OSSI); limited participation in job related outside agency activities; and reduced Shift levels; it is believed that the unit can provide the same high quality emergency services to the public with a significant cost savings to the Town. There will be a need for management to monitor the effect reduced staffing will have on overtime costs to ensure the reorganization is a cost effective measure and that personnel is not stretched beyond a reasonable capacity for safety factors. The unit now uses former department telecommunicators, on a part-time/no benefits temporary basis, as needed, to help manage overtime and shift coverage.

Estimated Costs Savings (including benefits): $250,801

Program 426 Crime Scene/Evidence Unit

Action: It is recommended that the vacant Crime Scene Evidence Technician II position be eliminated resulting in an estimated savings of $43,836.

Impact on Department/Services:

In FY 2010, the vacant Property/Evidence Specialist position was eliminated and replaced with an Office Assistant whose time is split performing administrative duties for all of the Criminal Investigative Units (Detective Bureau, Crime Scene Evidence Unit, and Organized Crime, Vice, and Narcotics Unit). Eliminating one of the two CSEU Technician positions may require staff to reduce the time for public access to services and will require the continuation of supplementing personnel with volunteers in order to provide the necessary services to the community and respond to the scenes of crime for purposes of gathering evidence as needed.

Estimated Costs Savings (including benefits): $64,738

Program 428 - Patrol

Action: In addition to the elimination of the Administrative Sergeant and Motorcycle Patrol Sergeant which were previously addressed ($148,984), it is recommended that patrol officers be reduced by one resulting in an additional cost savings of $54,299.

Action: Eliminate the Bomb Team for an annual estimated savings (FY11 $15,100) of approximately $15,000 to $20,000 in maintenance, equipment, materials and supplies, and uniform/gear for team members. Training is typically funded through the FBI.

Many pieces of equipment utilized by the bomb team are fully depreciated. However there are a few substantial items that will not be completely depreciated until FY2022 with other items maturing in fiscal years 2012, 2013, 2015 and 2022. The reduction to the depreciation account for each of those years will be approximately $9,440, $7,914, $20,189, and $117,084, respectively.

Impact to Department/Services:

As part of the department reorganization, the motorcycle patrol officers were assigned to separate Patrol Teams reporting directly to the Team Captain thereby providing appropriate supervision and coverage during peak hours and allowing for the elimination of one vacant patrol officer position. During community events, patrol officers may be scaled back but assigned to strategic locations, thereby not impacting community safety. This may result in less visibility and may not provide the optimum officer presence during these community events as previously desired. The core function of patrol will remain unaffected by these staffing changes and it is unlikely that this slight reduction in patrol staffing will be recognized by Town residents or the business community.

Future incidents experienced by the department that would typically require a Bomb Team response, which include bomb threats, suspicious packages/IEDs, hazardous materials, and dignitary protection bomb sweeps, will be handled through Mutual Aid Agreements.

Estimated Costs Savings (including benefits): $362,826

Program 429 - Detective Bureau

Action: Eliminate one Detective position ($66,063).

Impact on Department/Services:

The Detective Unit has operated with a vacancy for approximately four (4) years. The vacancy is a result of a large turnover in the department in recent years due to a number of senior staff retirements and the need to hire and train new officers and to ensure patrol teams are adequately staffed. During this time period the community and department have experienced an unusually low crime rate and the unit has functioned adequately at a reduced staff level. However, there may come a time when detectives will need to evaluate and prioritize investigative duties should serious crime increase.

Estimated Costs Savings (including benefits): $109,198

Program 216/430 - Code & Parking Enforcement Units

Action: The original cost saving measure for these units was to convert the sworn manager (Sergeant $94,256) position to a civilian manager ($48,781). The assigned Sergeant was transferred to the BCR unit.

Action: After further direction and review by management, and in light of a recent retirement of a Patrol Captain (June 2010), the Support Services Captain position, which had overseen both the Parking & Code Enforcement Units (and recently the Communications Unit), was eliminated from this unit for an additional cost savings of approximately $107,216. The assigned Captain was transferred to Patrol to fill the vacancy created by the retirement.

Action: Convert the current full-time Code Enforcement Officer position to two (2) part-time (no benefits) Code Enforcement Officer positions with no benefits.

Impact on Department/Services:

The Code Enforcement Unit was transferred to the police department on March 1, 2007. During the first few years of developing the Code Enforcement Unit within the police department, it was imperative that management provide the direction and support necessary to ensure the success of the unit. The reorganization of the unit eliminates two (2) sworn positions and its continued success relies heavily on the knowledge of the current civilian manager, the filling of the Parking/Code Enforcement Specialist (which was approved at the June 2010 Town Council Meeting) and the ability to fill the two (2) vacant part-time Code Enforcement Officer positions immediately.

Estimated Cost Savings (including benefits): $236,549

Summary:

Through reorganization, elimination or consolidation of supervisory and administrative duties, downsizing of some community relations functions, and the implementation of Town purchased software programs, the Police Department is confident that the we can implement the above listed cost saving measures (with benefits) estimated at over $1.3 million dollars, without materially reducing our level of service to the community. Implementing these cost saving measures will result in a staff level of 71 sworn positions and 41 civilian positions (36 full-time and 5 part-time) compared to the 2008 staff level of 80 sworn and 48 civilian positions (45 full-time and 3 part-time) (not including Ocean Rescue).

Despite the changes in staff levels, with historically low crime rates, Town's residents, the business community, and visitors can be assured that police services will remain exceptional. Furthermore, the department is committed to the continuous evaluation of operations and management of each of it's units and will strive to find the most effective and efficient way to continue to provide a high level of service to residents and businesses in the Town of Palm Beach.

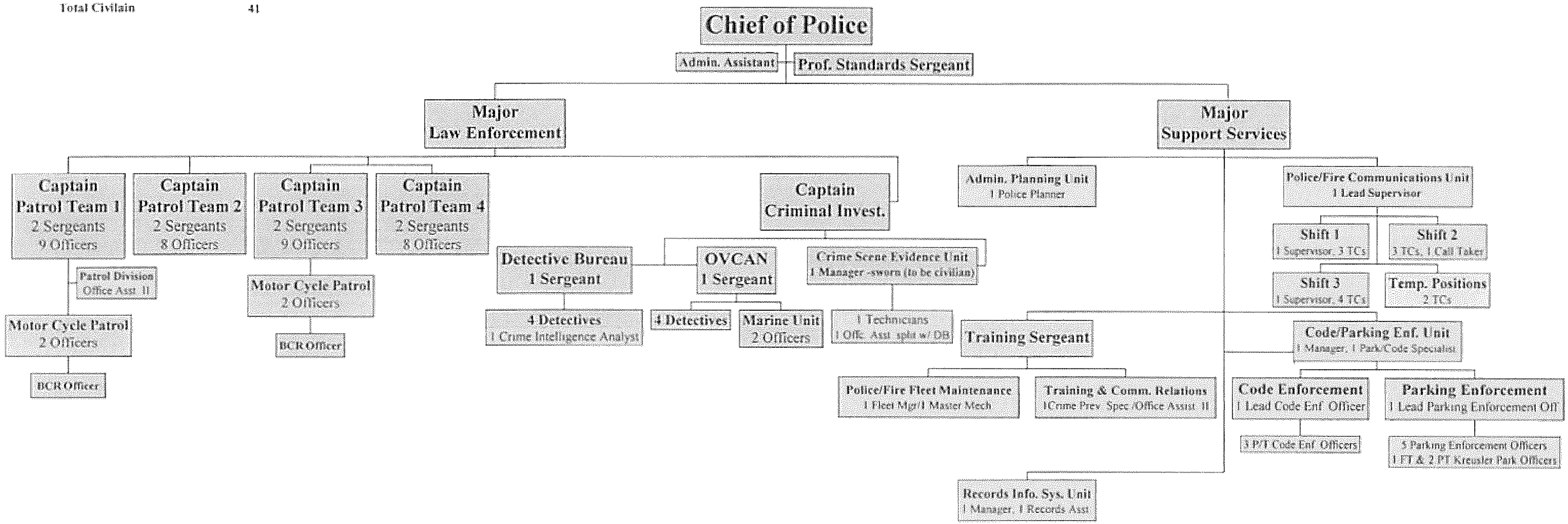
Below is a summary of the personnel changes that are a substantial part of these cost savings.

Sworn Position	**FTEP Change**	**Time Frame**
Captain Code/Parking Unit	- 1.00	July 2010
Administrative Sergeant	- 1.00	May 2010
Sergeant Code/Parking Unit	.00 Transfer to BCR	May 2010
BCR Sergeant	.00 Transfer from Code	May 2010
BCR Sergeant	- 1.00	August 2010
Motorcycle Patrol Sergeant	- 1.00	May 2010
Detective (Police Officer)	- 1.00	August 2010
Police Officer	- 3.00	October 2008
Police Officer	- 1.00	August 2010
Net Sworn FTEP Change	**- 9.00**	
Civilian Position	**FTEP Change**	**Time Frame**
BCR Manager	- 1.00	May 2010
Code/Parking Manager	+1.00	May 2010
Communications Manager	- 1.00	June 2010
Communications Supervisor	- 1.00	July 2010
Telecommunicator	- 1.00	August 2010
Lead Supervisor Communications	0.00 (Reclassification)	August 2010
CSEU Tech II	- 1.00	August 2010
Property/Evidence Specialist	- 1.00	January 2008
Administrative Coordinator	- 1.00	March 2010
P/T Accrd. Coordinator	+ .50	June 2010
P/T Accrd. Coordinator	- .50	August 2010
Records Assistant	.00 (Transfer to CSEU)	June 2009
Office Assistant (Det. Bureau)	- 1.00	January 2008
Office Asstistant (CSEU)	0.00 (Transfer from RIS)	January 2009
Full-time CEO (converted to 2 P/T)	0.00	August 2010
Net Civilian FTEP change	**- 7.00**	

PALM BEACH POLICE DEPARTMENT
ORGANIZATIONAL CHART
FY 2011 Proposed Budget
July 29, 2010

Staffing Level

Position	Authorized #
Police Chief	1
Majors	2
Captains	5
Sergeants	12
Police Officers	51
Total Sworn	71
Total Civilain	41



TOWN OF PALM BEACH

Information for Special Town Council Meeting on: August 12, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: H. Paul Brazil, Director of Public Works

Re: Revised Staffing Recommendations - FY11 Budget

Date: August 6, 2010

GENERAL INFORMATION

Public Works had originally proposed to eliminate the following positions:

- Eliminate Equipment Operator - Parks (2)
- Eliminate Parks Supervisor I
- Eliminate Nursery Technician
- Eliminate Mechanic III
- Eliminate .5 Records Maintenance Assistant

Also, we had requested that the following positions be filled immediately:
- Fill Crane Operator/Trash
- Fill Office Assistant II
- Fill Wastewater Operator I positions (2)

Lastly, we requested the following positions be funded but remain temporarily vacant:
- Fund but remain vacant: Laborer I/Trash
- Fund but remain vacant: Construction Manager

Due to budget constraints we have modified our request as follows:
- All positions originally proposed to be eliminated are still recommended for elimination (5.5 FTE)
- Fill Crane Operator position by reassigning an existing employee, resulting in the elimination of a Trash Laborer position (1 FTE)
- Fill the Office Assistant II position by reassigning the employee currently in the Records Maintenance position. This corresponds to the elimination of ½ of the Records Maintenance Position noted in the first section of this memo (0 FTE)
- Fill two Wastewater Operator positions by reassigning two existing employees, resulting in the elimination of a Trash Laborer position and a Sanitation Laborer position (2 FTE)
- Eliminate the vacant Laborer 1/Trash position (1 FTE)

An additional reassignment and additional vacancy have occurred since our last budget submission.

- Fill the Mechanic I WRD position by reassigning an existing employee, resulting in the elimination of a Parks Equipment Operator position (1 FTE)
- The Construction Manager has been reclassified to Senior Project Engineer and this position is filled (0 FTE)
- The Assistant Director (Engineering) is vacant and we recommend elimination of the position. Funding for additional contractual resources is included in the Accelerated Capital Improvement program (1 FTE)
- Fill Facilities Maintenance Manager by reassigning an existing employee, resulting in the elimination of a building maintenance worker (1 FTE)

This plan involves the retention of existing employees to work in areas they were not originally hired for. In some cases the transfer will be lateral and promotions will not be involved. However, in other cases promotions will be necessary and a lower level position will become vacant and will be eliminated. As a hypothetical example: An equipment operator from Trash would be transferred to Water Resources. This may or may not involve a pay raise depending upon the current pay of the employee being transferred. We can not run the trash service operation with out a proper number of equipment operators (truck drivers and crane operators). The vacancy caused by the previous transfer will need to be filled by one of our existing trash laborers (already trained to fill in for the equipment operator). This would be promotion and a 5% pay raise. The vacated laborer position would be eliminated. We currently out source unskilled labor needs and propose to continue that as necessary. This example will be typical for the vast majority of the positions outlined above including the recently vacated Facilities Maintenance Manager. The bottom line will be a cost savings to the Town and a reassignment of various personnel to avoid a scenario where existing employees would be laid off and other employees would be recruited from outside.

We know the positions that will be impacted but we do not know the individuals that will be involved in these transfers. It will take some time to find the best candidates based on previous experiences and skills. The cost savings to the budget is based upon the midpoint of the salary ranges involved. These are therefore conservative estimates and actual cost savings could be greater.

One exception to this approach is the recently vacated Assistant Director of Public Works. It is our recommendation to eliminate the position. We will be requesting authorization from Town Council to retain the services of a consulting engineering firm to assist us with the oversight of the Accelerated Capital Improvement program. This effort has been underway for several months and was included in the original budget for the program. This will allow us flexibility for staffing levels and differing skill sets as the program progresses.

Employees will be asked to do more work within the same number of hours. It is not possible to determine the extent of impact to overtime at this point. This will require close monitoring to manage it within the budget. Also, additional contractual help will be required to fill in for the vacated positions. Because the vacated positions recommended are mostly labor positions, it will be relatively inexpensive and accommodations will be made within the existing budget.

The proposed changes will not eliminate any of the services provided to the community. However, Public Works does anticipate an impact to the community. Some services may take longer to provide. Trash and sanitation routes will take longer to complete, and service cannot be guaranteed at the same time every day. Also, response time for complaints (trash piles put out early, special pick up requests, palm fronds in the right of way, etc.) will be longer because of reduced manpower. The number of employees available to respond to rainfall events and utility failures will also be reduced. The Public Works department will always respond, but it may take longer than residents are accustomed to.

HPB/mrs

cc: Eric B. Brown, P.E., Assistant Director of Public Works
Cheryl Somers, Assistant Director of Finance

TOWN OF PALM BEACH

Information for Special Town Council Meeting on: August 12, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: Jay Boodheshwar, Director of Recreation and Special Projects

Re: Elimination of Assistant Dockmaster Position

Date: August 6, 2010

STAFF RECOMMENDATION

Staff recommends that Town Council eliminate the vacant position of Assistant Dockmaster.

GENERAL INFORMATION

The Assistant Dockmaster position has remained vacant since April 6, 2010. Following standard practice after positions become open, staff has thoroughly analyzed the need to refill this position and has come to the conclusion that it can be eliminated without significant impact to the level of service at the Town Docks. Therefore, staff is recommending the elimination of this position, which will further reduce expenses in the Recreation Enterprise Fund by approximately $55,000. The approximate savings includes base salary, FICA and longevity pay only. The savings achieved by this action will benefit the General Fund through an additional transfer of monies from the Recreation Enterprise Fund in addition to the $550,000 transfer already planned for FY2011.

The responsibilities previously held by the Assistant Dockmaster have been re-distributed to the Dockmaster and existing part-time employees. Staffing schedules have been adjusted to allow for maximum staff presence during the busier hours of the peak season. Understanding that there may be some minor impact to customer service during periods of staff vacations, the use of seasonal part-time staff (without benefits) will be considered during the peak season, but only if customer service becomes measurably diminished.

SPECIAL CONSIDERATIONS

As previously directed by Town Council, staff will work with the Recreation Advisory Commission in the upcoming months to complete a thorough analysis of the Recreation Department, which may result in further cost savings and/or additional revenue in the Recreation Enterprise Fund. This process will include review of possible privatization of facilities and/or programs and will be framed by several questions, including 1) what are our services? 2) why do we provide them? 3) should we continue providing them? 4) if we continue to provide them, can we deliver them differently and/or more efficiently?

c: Recreation Advisory Commission
Danielle Olson, Director of Human Resources

Capital Improvement Program
Proposed FY11 (Including FY10 Carry-over) and Five Year Plan - Fund 307

Expenditure Budget - Project Description	FY10 Carry-over Budget	Proposed Year 1 FY2011	Subtotal	Projected Requirements Year 2 FY2012	Year 3 FY2013	Year 4 FY 2014	Year 5 FY 2015	Thru FY2015
Reserve for 20 year CIP	1,422,000	0	1,422,000	0	0	0	0	1,422,000
Storm Water System	2,176,200	25,000	2,201,200	150,000	150,000	150,000	150,000	2,801,200
General Improvements	1,697,000	25,000	1,722,000	150,000	150,000	150,000	150,000	2,322,000
Rehabilitate Storm Pump Structures	479,200	0	479,200	0	0	0	0	479,200
Sanitary Sewer System	1,893,200	75,000	1,968,200	200,000	200,000	200,000	200,000	2,768,200
General Improvements	1,000,200	25,000	1,025,200	150,000	150,000	150,000	150,000	1,625,200
WPB Central Pump Bypass & Reserve	200,000	50,000	250,000	50,000	50,000	50,000	50,000	450,000
Rehab Sanitary Sewer Pumping Stations	693,000	0	693,000	0	0	0	0	693,000
Lake Worth Sub-Regional System	0	0	0	0	0	0	0	0
ECRWRF Upgrades	0	0	0	0	0	0	0	0
Streets and Roads	264,200	250,000	514,200	500,000	500,000	500,000	500,000	2,514,200
Milling & Resurfacing Program	264,200	250,000	514,200	500,000	500,000	500,000	500,000	2,514,200
Lake Worth Lagoon Bulkheads	27,200	0	27,200	0	0	0	0	27,200
Bury FPL Overhead Lines	285,300	0	285,300	0	0	0	0	285,300
Refurbish Memorial Fountain	46,000	0	46,000	0	0	0	0	46,000
Water Main Improvements WPB (1)	0	800,000	800,000	800,000	800,000	800,000	800,000	4,000,000
Fuel Tank Replacement Program	44,100	0	44,100	0	0	0	0	44,100
Facilities	87,500	210,000	297,500	210,000	160,000	175,000	200,000	1,042,500
North Fire Station Replacement of Windows	17,500	0	17,500	0	0	0	0	17,500
North Fire Station Flashing Beacon	70,000	0	70,000	0	0	0	0	70,000
North Fire Station Emergency Generator	0	0	0	0	0	175,000	0	175,000
Pinewalk Repairs	0	135,000	135,000	0	0	0	0	135,000
Skees Road Paving	0	75,000	75,000	0	0	0	0	75,000
Police Facility Air Conditioning Piping	0	0	0	210,000	0	0	0	210,000
Phipps Ocean Park North Restroom Replacement	0	0	0	0	160,000	0	0	160,000
Old Purchasing	0	0	0	0	0	0	200,000	200,000
Total Expenditures	6,245,700	1,360,000	7,605,700	1,860,000	1,810,000	1,825,000	1,850,000	14,950,700
Offsetting Revenues:		**FY2011**		**FY2012**	**FY2013**	**FY2014**	**FY2015**	**Total**
Interest	0	60,000		60,000	60,000	60,000	60,000	300,000
Water Main Improvements WPB (1)	0	800,000		800,000	800,000	800,000	800,000	4,000,000
Total Offsets	0	860,000		860,000	860,000	860,000	860,000	4,300,000
Transfer from General Fund - FY11	6,245,700	500,000		1,000,000	950,000	965,000	990,000	10,650,700

(1) Offsetting revenue from WPB

August 6, 2010