TOWN OF PALM BEACH

Office of The Town Clerk

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE HELD ON TUESDAY, SEPTEMBER 28, 2010

I. CALL TO ORDER AND ROLL CALL

The Ordinances, Rules and Standards Committee meeting was called to order on Tuesday, September 28, 2010, at 2:00 p.m., in the Town Council Chambers, Palm Beach. On roll call, Chairman Diamond and Committee Member Coniglio were present.

II. APPROVAL OF AGENDA

The Agenda was approved as printed.

III. PUBLIC COMMENT

There were none.

IV. REGULAR AGENDA

A. Old Business

1. Review of Staff Proposed Amendments to Chapter 66, Natural Resource Protection

Coastal Coordinator Rob Weber provided the Public Works Department's proposed changes to Chapter 66 of the Town's Code of Ordinances. He indicated that in the suggestions, the removal of discussions about mangroves would eliminate the need for a shoreline management plan. He noted that the Town had to issue letters of compliance to the State of Florida for individual permit requests that homeowners and others request for state permits. Staff receives information and makes a determination, a letter is sent to the State indicating that the project was being reviewed and is within the criteria. Currently, there was not a checklist of information that is received in order to make the determination; rather than using the shoreline management plan as a tool to receive information for just mangrove trimming, the suggestion was to receive the information for other actions that the Town needs to make.

Committee Member Coniglio made several comments.

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Sec. 66-39, Requirements and Sec. 66-40, shoreline management plan: Coastal Coordinator Weber noted that the items he put in the shoreline management plan were the same items that the State requests that the permittee submits to them. It is mimicking the thoughts that the State requires and the Town would make sure that staff would review the documents as well, in order to write the written evidence.

Coastal Coordinator Weber answered Committee Member Coniglio's questions by stating the process will remain the same, the documentation and definitions will remain the same to comply with existing State Statutes.

Mr. Weber responded that they were not new to the State's guidelines. Mr. Weber responded that currently, any work that is to be done, a permit application would be submitted to the State and one of the requirements in the application was to provide a local approval letter from the Town. Mr. Weber indicated that the State's fee is based on what type of activity is being permitted, as there are different levels of review.

Town Attorney Randolph commented that Mr. Weber was asking about an additional fee proposed to the Town or any administrative work the Town was doing. Mr. Bradford indicated if a fee was charged it would be according to the Town's costs. Committee Member Coniglio was comfortable with the fee to come back at a later date. Deputy Town Manager directed Rob Weber to go back and research the administrative costs.

Sec. 66-39(3) and (4): Town Attorney Randolph advised adding, the language "to the entity" as follows: "Written evidence is to be provided by the Town of Palm Beach to the entity having jurisdiction…"

Committee Member Coniglio said, going back to **Sec. 66-40(5),** that she agreed to a fee commensurate with what was involved, but said that she did not want to make it so onerous that there was a lack of compliance. She indicated that as long as there was a sense of fairness, she was in agreement.

Sec. 66-43, Mangrove trimming: Town Attorney Randolph noted that the state law provided for mitigation and was very specific about what needed to be done regarding the trimming. He stated that it provided the penalties: up to $100 for each mangrove illegally trimmed and up to $250 for each mangrove illegally altered. In addition to the penalty provisions, the department or delegated local government, which would be the Town, may impose a second penalty upon the professional mangrove trimmer up to $250 for each mangrove illegally trimmed. Chairman Diamond said that the question was: does the Town add to the penalties. Committee Member Coniglio noted that she was 100% behind mitigation, but she was opposed to adding on penalties from the Town in addition to the State.

Responding to Chairman Diamond, Rob Walton, Code Enforcement, stated that three months ago there was some illegal trimming, but that it happened only two to three times a year, which was reported to the State. He agreed to follow up with the State as to the result of the findings of the report. He also indicated that a citation was not provided, as the Town did not have a mangrove trimming law, but he advised the landscaper to stop trimming the tree. Deputy Town

Manager Bradford noted that the Town chose not to be a delegated authority on mangrove trimming, as the Town would have to have equal to or stricter than the State's rules. Town Attorney Randolph indicated that Code Enforcement would reserve the right to enforce the trimming.

Article III. Sand and Dune Removal or Alteration, Sec. 66-81., Definitions: Mr. Weber stated that the current definition was not consistent with the state's definition, which caused confusion for enforcement, especially for the setback line from the dune for activities that may not be allowed in certain areas. The proposed changes correct the Town's Code of Ordinances and provide consistency with the State.

Sec. 66-47, Maintenance: Code Enforcement Officer Walton explained that the Section referred to the shoreline management plans, which there were certain requirements to remove exotics. There is an opportunity to perform periodic inspections, as required by the shoreline management plan.

Town Attorney Randolph and Mr. Walton would look at Sec. 66-47 further in order to ensure maintenance of the management plan.

Sec. 66-177(c), Setback lines: Assistant Planning, Zoning and Building Director Close noted that in the zoning districts, the existing seawall height was for any development, which is reviewed by the Public Works Department during the Development Review Committee meeting.

Additional Considerations, Under Article I, In General, Sec. 18-1, Datum plane adopted, and Article V, Coastal Construction Code, Sec. 18-278, Definitions: Mr. Weber noted that the only difference was the addition of NAVD, North American Vertical Datum, which was increasingly being included in the plans over the years. Historically, projects reviewed for the permitting process were being reviewed with NGVD (National Geodetic Vertical Datum) elevations and currently, certain sections of the state are using NAVD. Some plans will have NGVD elevation and in parenthesis have NAVD. It provides consistency with the State.

Assistant Planning, Zoning and Building Director Close presented Planning, Zoning and Building Department's proposed changes to Chapter 66. Ms. Close discussed the institution of a new landscape permit that was by the directive of the Town Council, and that the landscape permit requirements had been reviewed by ARCOM. She noted that a number of landscape architects provided input during the drafting of this section, and added that the Executive Director of Mounts Botanical Garden Allen Sistrunk would help explain concepts and answer any questions that the Committee may have.

Section 66.262 (b), Components of landscape plan: Deputy Town Manager Bradford pointed out that the language should be amended as: "Landscaping plans ~~should~~ shall identify:"

Division 4, Design Requirements: Sec. 66-285: Ms. Close said that the proposed minimum standards would capture sites that do not have adequate or have no landscaping. She stated that there could be a caveat that requires that there would be no guarantee that just meeting the

minimum would be allowed; more landscaping may be required. She expressed that the concern was for existing lots that did not have any landscaping. Committee Member Coniglio expressed concern for the owners by changing the rules without a grandfathering rule. Mr. Bradford asked if the owners were out of compliance with the plan that was approved by the Town Council, or never had any landscape requirements imposed at all? Ms. Close responded that she suspected some did not have an approved landscape plan and probably had not been required. Town Attorney Randolph said that unless there is a five or ten year compliance, it would not be acceptable to cite an owner for noncompliance, as there was never a previous definition relative to landscaping.

Discussion followed regarding the landscaping requirement. Committee Member Coniglio stated that she believed it to be under the purview of Landmarks Preservation Commission, and the Architectural Commission (ARCOM). Mr. Bradford explained that he had experienced it in other communities and it is a burdensome process. Ms. Close commented that staff could leave the section out and/or find another mechanism. Chairman Diamond said that he had no problem with the table as long as a disclaimer was put in that it was not the maximum requirement.

Division 4, Design Requirements, Sec. 66-285(2), Minimum number of canopy trees: Mr. Bradford provided the following amended language in the table inset of the last three rows to add the language "of lot size":

- Commercial Zoning District, "one tree for each 2,000 sq. ft. of lot size or fraction thereof"
- R-D, PUD Zoning District, "one tree for each 1,500 sq. ft. of lot size or fraction thereof"
- All Other Uses Zoning District "one tree for each 1,200 sq. ft. of lot size or fraction thereof"

Ms. Close will come back to the Committee with revised language of Section 66-285.

Sec. 66-286, Water conserving landscape design: Ms. Close noted that the concept was very restrictive, and that **(c) Required vegetation,** should be reviewed to ensure alternative solutions are allowed. She requested more time in order to meet with landscape architects. Chairman Diamond requested that Ms. Close come back with a practical answer as to what would be required of the property owner regarding solutions for the lawn.

Sec. 66-286(3)(b)(1): Discussion occurred regarding Smart Irrigation Systems that required ET (Evaportranspiration-based) Controllers on automatic landscape irrigation systems subject to July 15, 2010. Committee Member Coniglio said that State legislation information would be coming and suggested moving slower. Town Attorney Randolph said this was a newly adopted ordinance and that it was adopted by the Town Council prior to the July 15, 2010 deadline by the State. Committee Member Coniglio commented that the July 15, 2010, deadline by the state should remain as a benchmark.

Committee Member Coniglio commended Ms. Close for working with the landscape architects and businesses and having their feedback.

Section 66-289, Tree Trimming Standards and Sec. 66-290, Hatracking/Topping Prohibited: Ms. Close commented that Palm Beach and Broward County prohibits hatracking trees, as it is against the tree care industry association standards. She demonstrated and provided the definition of hatracking the trees. Committee Member Coniglio suggested education as a means of eliminating hatracking. Ms. Close indicated that landscapers were the largest group of unlicensed workers in the Town. Committee Member Coniglio asked if a period of citations would be burdensome to Code Enforcement. Mr. Walton responded that the best way was educating the landscaper; once the trees were hatracked, the violation existed. Ms. Close suggested a series of meetings to introduce the idea and encourage the landscapers to get the proper certifications and also to advise of the landscape permits.

Committee Member Coniglio asked if citing the landscaper would be the fastest way of education. Mr. Walton said his understanding was that it cites the property owner, not the landscaper, unless the landscaper was caught during the course of trimming the tree. Town Attorney Randolph said that if all that was seen was the results of the hatracking, the landscaper would not be cited. Chairman Diamond noted that education would be necessary to the landscapers and property owners. Mr. Bradford said that there were places in Town where the Town approved, as part of a site plan, ornamental trees that were technically hatracked and that if the hatracking was halted, it would not be in compliance. Ms. Close noted that staff will come back with amended language and criteria.

Mr. Bradford asked for clarification regarding whether the trimming must be done according to American Arborists, and did it mean that the person doing the trimming had to be certified? Ms. Close said that the Town was not requiring it.

Committee Member Coniglio asked if use of organic mulches would be enforced. Ms. Close responded that it would be done at the time of the inspections of the landscaping permits.

Section 66-287, Vegetation Maintenance Requirements: Ms. Close noted that some people were not maintaining their landscaping and Code Enforcement did not have a standard to apply, and that this is the industry standard. Chairman Diamond noted that it covered everything. Mr. Bradford asked for clarification about "pervious areas" in the second paragraph; Mr. Diamond asked Ms. Close to make it more specific. Mr. Walton indicated that there were frequent violations of this issue; the property owner always receives a warning first, and sometimes two. If there is no sod, the citation is for fugitive dust (dirt) in the Code, where maintenance of mulch or grass in the yard is required. Town Attorney Randolph said that this is another grandfathering problem. The Town cannot force people to comply with a new code, without an amortization clause. Chairman Diamond asked Ms. Close for more comments from the industry and property owners who would be affected and to return to the Committee with the results. Ms. Close responded that as the landscape provisions had been in the code for a long time, most properties had been developed under a landscape requirement.

Sec. 66-311, Prohibited plants: Mr. Diamond had no issue with this section.

Committee Member Coniglio asked about the table of the removal of the invasive non-native vegetation. Ms. Close responded that she would ascertain if the removal was complete and update the table.

Chairman Diamond asked if the Sample Legend for Landscape Plan had been approved by the landscapers. Ms. Close indicated that it was the industry standard and there were some additions that would be incorporated.

Responding to Chairman Diamond regarding the future of the Ordinances, Standards and Rules Committee, Mr. Bradford indicated that many ordinances would be produced for the Committee, and staff would review Chapter 66 on the issues brought up today; it is the only Chapter that is still open. Staff will proceed to systematically process and draft ordinances to be brought back for review by the Committee.

Allen Sistrunk, Mounts Botanical Garden, said that trees had to be viewed as an extremely large piece of architecture and if hatracking was allowed, it creates a safety issue, especially during a storm. Hatracking removed all the leaves on a tree. He noted that he receives calls from residents about hurricane pruning of palm trees, which was a racket in the industry, as it was almost equal to the hatracking. He added that the University of Florida standard was pruning fronds from 9:00 a.m. to 3:00 p.m. Mr. Walton said the Town has gone to the 9:00 a.m. to 3:00 p.m. trim, which is done twice a year. Chairman Diamond has noticed the difference and asked about the removal of coconuts before hurricane season. Mr. Sistrunk said that the coconuts need to be removed, as they become projectiles during a hurricane.

Mr. Sistrunk mentioned that he provides education to the Town on how to maintain the trees, and Ms. Coniglio asked that he continue to do so.

Ms. Close noted that the architects requested a list of beneficial trees to be used as a guide.

Edward Cooney, 495 N. Lake Way, asked how the hatracking provision applied to the ficus hedges. Mr. Sistrunk noted that it would not apply to hedges, or to trees that were intended to be used as "topiaries" or as shaped pieces of "sculpture". His opinion was that the responsibility should be on the contractor and not on the homeowner. He said that the fining would be a quick education. Chairman Diamond asked if Committee Member Coniglio agreed, Ms. Close could be instructed to do that. Mr. Sistrunk suggested diverting the attention from hurricane pruning palm trees to the canopy trees to thin them to better tolerate the wind; they could still keep the income, and the Town would have healthier palm trees.

Ms. Close added that although hatracking is prohibited, an exemption could be included for thinning canopy trees.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

There being no further business, the Ordinances, Rules and Standards Committee Meeting of Tuesday, September 28, 2010, was adjourned at 3:24 p.m.

APPROVED:

William J. Diamond
Chairman

Backup Documents