

TOWN OF PALM BEACH

Office of The Town Clerk

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE MEETING HELD ON TUESDAY, AUGUST 26, 2008

1 I. CALL TO ORDER AND ROLL CALL

2

3 The meeting of the Ordinances, Rules and Standards (ORS) Committee was called
4 to order by Chairman Rosow at 9:30 a.m. on Tuesday, August 26, 2008, in the Town Council
5 Chambers. On roll call, Chairman Rosow and Committee Member Coniglio were found to
6 be present. Others present for all or a portion of the meeting were: Town Manager Peter
7 Elwell, Director of Planning, Zoning & Building John Page, Assistant Director of Planning,
8 Zoning & Building Veronica Close, Zoning Administrator Paul Castro, and Town Clerk
9 Susan Eichhorn.

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13 II. APPROVAL OF AGENDA

14

15 The agenda was approved as printed.

16

17

18 III. ARCOM REQUIREMENTS FOR LANDSCAPING/EROSION CONTROL AT
19 PROPERTIES FOLLOWING DEMOLITION

20

21 Director of Planning, Zoning & Building John Page reported that for some time now,
22 the Architectural Commission (ARCOM) had traditionally required that owners of newly
23 vacant lots either seed them or sod them, and irrigate the lots, until such time as a new home
24 was built. For the most part, that worked, however, there were examples where it had not
25 worked well. There was some recent discussion as to whether seeding, sodding, or
26 something else altogether was preferred. ARCOM had given the opinion that they were
27 reluctant to absolutely demand sodding, and essentially were in agreement to leave the status
28 quo.

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1
2 Mr. Page noted that the Code Enforcement staff had indicated that they preferred
3 sodding, simply because it was easier for them to determine whether or not the site had been
4 adequately "greened" and made attractive.

5
6 In response to Committee Member Coniglio, Assistant Director of Planning, Zoning
7 & Building Close replied that the Landmarks Preservation Commission (LPC) also had a
8 landscape approval process.

9
10 Mr. Page added that usually the landscaped lot requirement applied only when
11 demolition occurred.

12
13 Chair Rosow commented that seeded lots deteriorate when summer arrives, and it
14 was difficult to find them in non-compliance, because the lots had been seeded according
15 to the requirement. He stated that he was in agreement that sod was the best solution,
16 however, in December, January, and February, sod would be hard to take hold, and would
17 not green the lot initially. He suggested the possibility of providing a two step plan to
18 owners who have demolished: If the demolition takes place, and the lot will be vacant in
19 December, January or February, the owner could seed, but then must sod on March 1st; or
20 the owner could sod immediately and maintain the sod and replace portions when necessary.

21
22 Committee Member Coniglio responded that she did not want to increase pressure
23 on residents; compliance was the issue and she suggested that a daily fine be added for
24 properties that did not remain in compliance, rather than sending them to Code Enforcement.

25
26 Mr. Don Skowron, Morgan Wheelock, Inc., addressed the Committee, commenting
27 that seeding was appropriate in certain time frames. He noted that he was an advocate for
28 sodding, only because of its permanence.

29
30 Mr. Page commented that the suggestions of Chair Rosow could work; staff would
31 need to monitor the precise date of the demolition and work together.

32
33 Chair Rosow requested that staff return with a proposed ordinance providing
34 that after demolition, vacant lots would be sodded, with the understanding that in
35 December, January, or February the sod would be catching and may not be entirely
36 green. He requested that the ordinance address only sodding, until further discussion
37 could be held, with expert testimony, resident comments, and builder comments. Chair
38 Rosow included the need for a Declaration of Use Agreement between the Town and
39 the owner to be included in the Demolition Permit, agreeing to a specific monetary fine
40 should the property not be maintained properly. He also included that, if there was

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1 noncompliance by the owner, and a refusal to pay the fine, the Town would be able to
2 maintain the property, put a lien against it, and a permit to construct would not be
3 given until the lien or fine had been satisfied.

4
5 Mr. Page advised that staff would prepare a draft ordinance and return to the ORS
6 Committee.

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10 IV. REGULATION OF LANDSCAPING CHANGES ON PROPERTIES WHERE NO
11 STRUCTURAL ALTERATIONS ARE OCCURRING

12
13 Chair Rosow stated that currently there were no regulations to control a vacant lot
14 being landscaped and maintained.

15
16 Mr. Page advised that there had been some concerns expressed that a property owner
17 had made landscaping improvements on private property and it had been questioned whether
18 that was permissible. He explained that there was no apparent code language preventing an
19 owner from landscaping in those circumstances, however, the owner was proceeding at his
20 own risk in the sense that if landscaping improvements were made to a vacant lot, and the
21 owner then proceeded to ARCOM for authorization to build a new home, a landscaping plan
22 would be required. ARCOM could allow whatever landscaping improvements had been
23 made, or ARCOM could require the owner to start from scratch.

24
25 Town Manager Elwell clarified that the question was whether there should be some
26 kind of review (landscaping permit) of landscaping changes on properties where there was
27 nothing structural taking place.

28
29 Chair Rosow commented that with a vacant lot, ARCOM approval was needed for
30 landscaping, beyond the requirement of sod.

31
32 Committee Member Coniglio suggested that a list of acceptable landscape material
33 be provided for owners to use, when lots were sitting unoccupied.

34
35 Town Manager Elwell explained that the Town had precedent for requiring certain
36 landscaping to remain in place; there could certainly be elements of an overall approved
37 landscape plan that were identified by ARCOM as items that would go into a Declaration
38 of Use Agreement..

39
40 Ms. Close noted that staff had been working on developing a landscape permit

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1 procedure, because in some instances, ARCOM approved landscaping had been removed.
2 There had also been major changes to landscaping that affected open space lot coverage,
3 drainage, and easements; there was currently no way to ensure that the owner was
4 conforming to the zoning code. The proposed landscape permit would regulate anything that
5 would have a major effect on either zoning conformance or ARCOM or LPC approval.
6

7 **Committee Member Coniglio clarified that the new procedure would include a**
8 **Declaration of Use Agreement that would be attached to the Certificate of Occupancy.**
9 **The Declaration of Use Agreement would be recorded in Palm Beach County records.**
10

11 Former Mayor Yvelene D. Marix commented that neighbors on her street had
12 proposed to build a house that had been opposed by many in the neighborhood. The owner
13 had eventually been required to put a certain number of trees on the property, as a condition
14 of building. Ten years later, the trees were cut back. The owners went back to ARCOM and
15 were given new rights that abolished the requirement to have trees, and required the hedge
16 to be a bit higher. The hedge requirement was now included in a lien on the property. She
17 suggested that she was providing these comments so that the Committee could see that
18 ARCOM requirements could be changed over time.
19

20 Town Manager Elwell clarified that under the new proposed Declaration of Use
21 Agreement, advice from the Town Attorney would be necessary to determine the procedure,
22 as to whether the approvals would come before ARCOM or before the Town Council.
23

24 **Chair Rosow requested that staff provide a memorandum including all of the**
25 **alternatives that had been discussed today, along with some proposed ordinances. He**
26 **noted that there would need to be a procedure whereby the owner of a property could**
27 **petition to replace required landscaping.**
28

29 **Committee Member Coniglio stated that she was in favor of having a removal**
30 **condition that would allow a homeowner to change the landscaping.**
31

32 Town Manager Elwell commented that the homeowner could always come back and
33 ask for a change; in the meantime there would be a formal procedure, which staff could
34 enforce until such time that the owner would come back and ask for a change. He reviewed
35 the steps that would be necessary from today's conversation forward: the full Town Council
36 will consider the ORS Committee Report at the September 8, 2008, Town Council Meeting;
37 after direction had been received from the full Town Council, staff would provide full
38 information at the October Town Council Meeting.
39
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V. ANTICIPATING AND REGULATING THE INFRASTRUCTURE IMPACTS OF
LARGE HOMES

Director of Planning, Zoning & Building Page reported that there had been some Town Council discussion regarding the possibility of regulating infrastructure impacts of large homes, and the issue had been sent to the ORS Committee.

Mr. Page explained that some very large structures were built from time to time, and those large structures likely imposed greater impacts upon the existing infrastructure, such as parking, drainage, storm sewers, sanitary sewers, electrical requirements, and concurrency requirements. He clarified that concurrency law required that there would be no adverse impact to the infrastructure prior to issuing a building permit. He noted that it was his understanding, from previous discussion, that most of the concern with large structures seemed to evolve around parking. He suggested that some sort of threshold could be created to address the number of off street parking requirements as homes get larger and larger in size. Currently, the parking standard for any home, regardless of its size, was two stalls per single family home or per residential unit..

Committee Member Coniglio commented that she favored the suggestion of Town Attorney Randolph in his memorandum included in the back-up material: when owners were joining two large properties, the Town would be able to oversee that with additional requirements, such as a subdivision plan.

Chair Rosow commented that the concurrency requirements probably would take care of the sewage, drainage, etc. Mr. Page replied that was correct.

Town Council Member Susan Markin commented that her concern was that, currently, there was not a differentiation between a smaller home and a larger home. She noted that many of the larger homes were comparable in size to smaller hotels; some 5,000 sq. ft. homes were being replaced with 20,000 sq. ft. homes. She explained that the current requirement was a two car garage, however, large homes would require at least four cars a day, just for staff alone; her goal was to have some differentiation to facilitate an extra checkpoint for a larger home, as that would require more staff and more parking.

Relative to demolition permit applications, Ms. Markin suggested that there be a checkpoint on the demolition permit that would require a landscape plan. Town Manager Elwell clarified that was already the recommendation of the ORS Committee, from the conversation that had taken place today.

Mr. Page suggested that, since it looked as though there would be a subsequent ORS

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1 Committee Meeting, to discuss some of the issues that had been covered today, staff would
2 research how large the newer homes being built were, and the size of homes that were being
3 permitted in the community. Factual information could then be used in order to establish
4 a definition of "large home."

5
6 **Chair Rosow requested that staff research other communities, such as Jupiter,**
7 **Hobe Sound, to determine the requirements in place for larger homes.**
8

9 Zoning Administrator Paul Castro commented that the American Planning
10 Association (APA), as well as the American Institute of Transportation Engineering
11 collected data from other high-end communities, that staff could utilize. He suggested that
12 subdivision may be going too far in changing the zoning code in terms of parking
13 requirements. He also suggested that staff could look at requiring homes that come before
14 the Town Council for site plan review, that were three or four times of the minimum
15 required for the zoning district, to review all of the impacts that may occur to surrounding
16 property owners, and also provide requirements for off-street parking.
17

18 **Chair Rosow requested the inclusion of considerations related to the joining of**
19 **properties as well.**
20

21 Discussion took place regarding the zoning study process. Mr. Castro explained that
22 there were several study items that the Town Council had directed staff to review, and if the
23 ORS Committee and Town Council decided to move forward on the items that had been
24 discussed today, staff would advertise a study item, so that all property owners would
25 receive notice of a legislative change that would be considered by the Town Council.
26

27 Town Manager Elwell clarified that the landscaping permit would be included in the
28 ARCOM ordinance, or elsewhere in the Town Code, but not in the zoning code.
29

30 Mr. Page noted that staff would approach all issues discussed today, with the idea
31 that it would be streamlined so that staff could process much of it, and clear cut lines would
32 be identified that would need to come to the Town Council.
33

34 **Chair Rosow requested that staff review, as part of the demolition/construction**
35 **permit, the large home that was under construction and had no requirement for**
36 **"greening" the property. He cited several large homes that were under construction,**
37 **with only a dirt pile between the edge of the property and the house.**
38

39 Town Manager Elwell asked if a high hedge would be considered a minimum of
40 "greening," so that it simply screened the whole site for the term of the construction. Chair

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1 Rosow replied affirmatively, noting that it could be based upon the time frame that the
2 owner was allowed to construct.

3
4
5 **VI. ORDINANCE ESTABLISHING A BOARD OF ADJUSTMENT FOR**
6 **PROCESSING CERTAIN VARIANCE REQUESTS**
7

8 Committee Member Coniglio stated that she was in favor of establishing a board, if
9 there was a set of criteria. She referred to the information submitted by Town Attorney
10 Randolph with the Land Development Regulations of Jupiter Island (page 1297 - Sec. 5.03).
11

12
13 Mr. Page responded that, the Board of Adjustment was involved with reviewing and
14 making recommendations on subdivisions, which was not typical; that particular Board of
15 Adjustment was specifically unique to that community. He noted that he would obtain
16 further information from Jupiter Island, as to criteria, etc.
17

18 Mr. Page addressed the idea of separating the approvals for commercial and
19 residential variances, which would mean that there would be two legislative groups making
20 decisions about variances. He noted that the Siemon & Larsen Study had indicated that well
21 over 90% of variances were being approved by the Town Council. If a Board of Adjustment
22 was created to consider residential variances, and took a more hard line approach, many of
23 the variances may be denied, and that may create some disparity. He suggested thoughtful
24 consideration prior to bifurcating the approval process.
25

26 Town Manager Elwell commented that the statistics for variance approval for the
27 past several years would look quite differently from the statistics in the Siemon & Larson
28 Study. It was a valid point to give thoughtful consideration to two separate groups of people
29 who may function differently in terms of the thresholds they would be looking for in giving
30 approval.
31

32 Committee Member Coniglio commented that, even though she agreed with the
33 idea of streamlining, she believed that every resident should have the ability to come
34 before the Town Council and request a variance exception. A Board of Adjustment
35 would need to have a specific set of criteria, and if such a board was created, the
36 proposed members would need to sit in Town Council, Planning & Zoning, and
37 ARCOM meetings to see the process of approval, and the flexibility that would enter
38 into the process.
39

40 Chair Rosow advised that the Town Council would need to give further

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1 direction in this regard.

2
3 In response to Chair Rosow, Town Manager Elwell commented that it would not be
4 advisable to create a board via ordinance, without defining its role and scope.

5
6 Chair Rosow requested that staff provide the last two years of history of variance
7 approvals, and how much time it had taken the Town Council to deal with them.

8
9 Town Manager Elwell advised that Town Attorney Randolph could speak at the
10 September 8, 2008, Town Council Meeting in regard to the Board of Adjustment at Jupiter
11 Island.

12
13 Zoning Administrator Castro commented that he had reviewed the variances from
14 January 2007 to date, and there were 36 variances that were strictly single family, with only
15 6 taking a large amount of time from the Town Council. It may take another board more
16 time or less time, depending upon the approach and the criteria.

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22 **VII. DISCUSSION OF CRITERIA FOR CHANGES TO ARCOM DEMOLITION**
23 **PERMITS**

24
25 Committee Member Coniglio suggested that a change be made to the demolition
26 permit, that would allow latitude as to whether it would go to ARCOM and/or be referred
27 to the Landmarks Preservation Commission (LPC), if it would be architecturally historical
28 or significant.

29
30 Chair Rosow referred to the memorandum from Jane Day, Historical Preservation
31 Consultant, dated August 21, 2008, and included in the back-up material. He referred to the
32 Cohen house, and whether the demolition permit procedure should be amended to include
33 the potential of looking for historical records on any particular home.

34
35 Mr. Page explained that, at present time, if a property owner wanted to demolish a
36 home, an application must be submitted to ARCOM (a request to demolish). As part of the
37 application process, the applicant must submit a demolition report, which was intended to
38 be a tool to allow ARCOM to determine whether a structure had significant architectural
39 value and may be of landmark quality. The difficulty with the existing ordinance was that
40 the specificity required in the demolition report was loose. Ms. Day and Town Attorney

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1 Randolph had discussed a very simple tweak that would fill the loophole, which would entail
2 incorporating the Historical Structure Forms, completed by Ms. Day, into the demolition
3 report that is already required of applicants.

4
5 Ms. Coniglio stated that she was in favor of that, although she was concerned
6 regarding the added length of process to the home owner.

7
8 Chair Rosow commented that potential landmarkable homes that were identified
9 should be noted publically, so that any potential homeowner would know prior to purchasing
10 a home.

11
12 Mr. Page replied that he would review the issue with Ms. Day, to determine what,
13 if any, notification is presented to a property owner prior to purchase.

14
15 Town Manager Elwell clarified that staff would look into the issue, and confer with
16 Town Attorney Randolph to provide further information at the September 8, 2008, Town
17 Council Meeting.

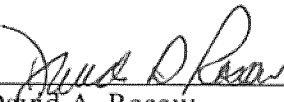
18 He noted that if staff found that trying to provide proper notice became too much of a hurdle,
19 staff could operationally bring forward a number of homes that were considered worthy of
20 landmarking.

21
22
23 **VIII. ANY OTHER MATTERS**

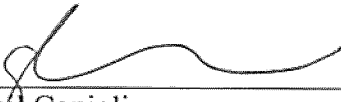
24
25 There were none.

26
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29 **IX. ADJOURNMENT**

30
31 There being no further business, the ORS Committee Meeting adjourned at 10:55
32 a.m.

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37 

38 David A. Rosow
39 Chairman

40


Gay Coniglio
Committee Member