



# TOWN OF PALM BEACH

Office of The Town Clerk

## REPORT OF THE ORDINANCE RULES, AND STANDARDS COMMITTEE MEETING HELD ON AUGUST 11, 1999

### I. CALL TO ORDER AND ROLL CALL

Chairman Jack McDonald called the meeting of the Ordinances, Rules, and Standards Committee at 1:30 p.m. on Wednesday, August 11, 1999, in the Town Council Chambers. On roll call, Chairman McDonald and Committee Member Allen Wyett were present. Other Elected Officials attending the meeting were Town Council President Lesly Smith and Councilman Sam McLendon. Also attending for all or part of the meeting were: Town Manager Robert Doney; Town Attorney John Randolph; Assistant to the Town Manager David Jakubiak; Public Works Director Al Dusey; Town Engineer Jim Bowser; Facilities Maintenance Division Manager Joe Ugi; Recreation Director Russell Bitzer; Planning, Zoning, and Building Director Robert Moore; Zoning Administrator Paul Castro; Chief Code Compliance Officer Brian House; Captain Bob Price, Police Department, and Town Clerk Mary Polllit.

### II. APPROVAL OF AGENDA

The agenda was approved as written.

### III. PROPOSED MODIFICATION TO SECTION 10-4 OF THE TOWN CODE OF ORDINANCES REGARDING ANIMAL EXCRETA

Ned Barnes, Palm Beach Civic Association, explained that the Association had a Residents' Concerns Committee consisting of fifteen people that meets regularly, and this item is always on the agenda. He noted the big issue was the enforcement of people cleaning up after their pets.

Mr. Barnes suggested the following changes should be made to the Code of Ordinances:

Section 10-4(c) It shall be unlawful for any person to have any animal under their

## **REPORT OF THE O.R.S. COMMITTEE MEETING HELD ON AUGUST 11, 1999**

custody or control, while on any of the public or private sidewalks, parkways, or walkways, or parts of streets, or public parks, or ways on the oceanfront devoted to the use of the public, or upon the grassy area located between the Lake Trail and Lake Worth, or upon premises owned by any person, firm, or corporation other than the owner or custodian of such animal, without having on his person a device which would be capable of removing any offal, feces or excreta of such animal.

Section 10-4(d) This Section may be enforced by the Town's Code Enforcement Officers or Police Officers.

Section 10-4(e) Any person convicted of violating any provision of this Section for the first time shall pay a fine of \$50; for violating any provision of this Section for a second time, he shall pay a fine of \$250; and for violating any provision of this Section a third time, he shall pay a fine of \$500. The fine for each conviction after the third conviction shall be in an amount which is twice the amount of the fine for the immediately preceding conviction.

Attorney John Randolph said he thought the changes were reasonable provisions from a legislative standpoint, but he wanted to hear the Police Departments comments regarding the enforcement provisions. He added that the successive order of fine provisions, ranging from \$50 to \$250 to \$500, would have to be included under the Code Enforcement Provisions, Chapter Two.

Mr. Wyett said he thought the beaches should be incorporated into any changes as well as mentioning the Bike Trail specifically.

Police Department Captain Price suggested that enforcement could be difficult if an animal owner did not have the device visible, and it would be intrusive to confront the individual.

Mr. Randolph said he thought the ordinance could be drafted in such a way to specify the type of equipment that an individual would be required to carry. He said he had concerns that as long as someone had any type of bag or other materials that could be used to clean up, the individual was doing what they were required to do without purchasing a specific item. Mr. Randolph said he would like to research the feasibility of specifying specific devices.

**THE COMMITTEE RECOMMENDED THE ADDITION OF NEW SECTIONS IN THE TOWN'S ORDINANCE, 10-4(c) AND (e), AS STATED ABOVE, WITH THE ADDITION OF THE BICYCLE PATH AND THE BEACHES.**

Mr. McDonald requested that Mr. Randolph review the issue of specific devices and advise the Mayor and Town Council what his recommendation would be by memorandum before

## **REPORT OF THE O.R.S. COMMITTEE MEETING HELD ON AUGUST 11, 1999**

the September 14<sup>th</sup> Town Council meeting.

### **IV. ISSUES REGARDING BOARDS AND COMMISSIONS**

Mr. Wyett suggested the Town would benefit if the current requirement for Board and Commission members was lifted to make it possible for members to serve three-three year terms.

Zoning Commission member Martin Klein told the Committee he agreed with Mr. Wyett's suggestion and cited the example of the Zoning Commission and the recent completion of two terms by Chairman Robert Wood who had a wealth of knowledge to share with the Commission and the public.

Planning, Zoning, & Building Director Robert Moore said he supported three - three year terms for Boards and Commissions.

After discussion, **THE COMMITTEE RECOMMENDED INCREASING THE TERMS OF BOARD AND COMMISSION MEMBERS TO THREE TERMS OF THREE YEARS.**

The Committee discussed the circumstances pertaining to architects who serve on the Landmarks and Architectural Commissions. These members often have more conflicts of interest than other members because of the work they do in the Town. Discussion also took place regarding the possibility of having a non-resident architect or expert filling one seat on the Landmarks or Architectural Commissions.

After discussion regarding the number of conflicts of interest (10 are currently allowed) allowed for Board and Commission members for each calendar year, **THE COMMITTEE SPLIT ON A RECOMMENDATION TO DECREASE THE NUMBER OF CONFLICTS: MR. MCDONALD RECOMMENDED THE MEMBERS BE ALLOWED FIVE CONFLICTS AND MR. WYETT RECOMMENDED THE NUMBER ALLOWED BE THREE CONFLICTS.**

**THE COMMITTEE RECOMMENDED THAT THE CODE OF ORDINANCES BE AMENDED TO ALLOW ONE OUTSIDE EXPERT TO SERVE ON THE LANDMARKS AND ARCHITECTURAL COMMISSIONS OR ON THE ZONING COMMISSION, IF THE TOWN COUNCIL SO DESIGNATES.**

The Committee discussed the issue of attendance requirements for the Boards and

## **REPORT OF THE O.R.S. COMMITTEE MEETING HELD ON AUGUST 11, 1999**

Commissions. Mr. Moore said he knew no meeting had been canceled for lack of a quorum prior to the present attendance requirement. He recalled arrangements were made amongst the commission members to have alternates present to cover anticipated absences. He added that the disadvantage was that a deferred project could be heard and/or voted on by alternates who had not heard previous presentations.

Mr. Moore pointed out there was some confusion regarding the wording in the ordinance relating to attendance, i.e. failure to attend three or more meetings in any one calendar year or more than two consecutive meetings. He said some individuals interpret that as being one and the same. He requested Attorney Randolph comments on the interpretation of that wording.

Mr. Randolph replied that he thought there was a distinction, and there is a provision that states a member cannot miss two or more meetings consecutively. He said that has been interpreted to mean that a member cannot miss more than three meetings. If the two or more provision is deleted as has been suggested, and someone misses December, January, and February meetings, the member has not missed more than three consecutive meetings or three meetings in one year. Mr. Moore said he agreed with that interpretation.

Mr. Wyett said he thought if that provision were deleted, the boards and commission would have a problem during the summer months to have quorums at meetings.

Mr. Moore clarified that if a member missed two consecutive meetings, he or she would be off the commission or board, or missed a total of three meetings.

Mr. Randolph said the current language states, "lack of attendance is defined as failure to attend three or more meetings". He suggested the language could be changed to: "lack of attendance is defined as failure to attend more than two meetings".

After discussion, **THE COMMITTEE RECOMMENDED CHANGING THE LANGUAGE TO LACK OF ATTENDANCE IS DEFINED AS FAILURE TO ATTEND MORE THAN TWO MEETINGS PER CALENDAR YEAR .**

**THE COMMITTEE RECOMMENDED THE INCLUSION OF EXCUSED ABSENCES FOR BOARD AND COMMISSION MEMBERS THAT ARE DIRECTLY RELATED TO SEMINARS AS APPROVED BY THE TOWN COUNCIL.**

Mr. Doney noted that five ordinances will need to be amended to include that language.

## **REPORT OF THE O.R.S. COMMITTEE MEETING HELD ON AUGUST 11, 1999**

### **V. PROPOSED CHANGES TO CHAPTER 62, "MARINE STRUCTURES," OF THE TOWN CODE OF ORDINANCES RELATED TO PROVISIONS FOR REGULATIONS OF DOCKS, PIERS, AND BULKHEADS**

Zoning Administrator Paul Castro reported these were issues that needed to be addressed in the Town Code. Mr. Castro said he had met with the Mr. Randolph and Mr. Moore and after consultation, the proposed changes, in draft form, were being presented to the O.R.S. Committee at this meeting. *(See attached memorandum dated April 8, 1999, from Robert L. Moore to Robert J. Doney, Official Bulkhead and Pierhead Lines on Lake Worth and the Atlantic Ocean)*

Attorney Randolph pointed out that the issues of where a boat is on private property and Department of Environmental Protection laws related to riparian rights need to be investigated.

Mr. McDonald said that the recommendations of the Committee would be subject to Attorney Randolph's review and approval.

Mr. Wyett said he did not want to interfere with neighbors who wanted to work out differences regarding limiting views caused by boats hanging over on neighboring properties.

After discussion, **THE COMMITTEE RECOMMENDED ACCEPTANCE OF THE RECOMMENDATIONS AS OUTLINED IN MR. MOORE'S APRIL 8, 1999, MEMORANDUM WITH THE CONDITION THAT THE TOWN ATTORNEY INVESTIGATE THE ISSUES AS DISCUSSED AT THIS MEETING.**

### **VI. PROPOSED REVISIONS TO WORTH AVENUE CONSTRUCTION WORK HOURS**

Mr. Moore said the Worth Avenue Association requested changes in the construction work hours allowed on Worth Avenue. The Association suggested changing the November 15<sup>th</sup> date for the cessation of work on the Avenue to November 1<sup>st</sup>. Mr. Moore said it was his recommendation to change the date (May 1 to November 1); however, to allow needed construction during the off-season, he recommended increasing the hours construction would be allowed on the Avenue, either 8:00 a.m. to 8:00 p.m. or 7:00 a.m. to 7:00 p.m. He noted that the construction industry would prefer the earlier time, but he thought the residents who live in the area would prefer the 8:00 a.m. to 8:00 p.m. time period.

Mr. Moore said the staff is allowing for interior demolition, plans and reconstruction of the

## REPORT OF THE O.R.S. COMMITTEE MEETING HELD ON AUGUST 11, 1999

interior while the applicant waits to appear before the Architectural Commission for exterior changes. He said the Building Department requires "Hold Harmless" agreements from the owner stating that they are proceeding on their own volition.

After discussion, **THE COMMITTEE RECOMMENDED REVISING THE ORDINANCE TO ALLOW THE CONSTRUCTION PERIOD FOR WORTH AVENUE TO BE FROM MAY 1<sup>ST</sup> TO NOVEMBER 1<sup>ST</sup>, WITH WORKING HOURS BETWEEN 8:00 A.M. AND 8:00 P.M. WITH NO SUNDAYS OR HOLIDAYS.**

Public Works Director Al Dusey said another concern on Worth Avenue is the parking regulation. Currently, the regulation allows up to three spaces for each contractor for a fee of \$150. Mr. Dusey said he had two suggestions: one was to lease individual spaces rather than up to three spaces and to also look at more competitive pricing for the spaces. Mr. Dusey suggested \$75.00 per space, per month; however, if that fee is increased, he thought it should apply to the entire Town.

Mr. Wyett said he thought the fee should be sufficient to discourage trucks parking on the street. He cited the example of the summer of 1998 when a number of construction projects were underway on Worth Avenue and the difficulties that resulted for residents during that summer. He said he thought the intent of the parking is violated with the use of three spaces when they are not needed. He suggested \$200 per space, and the spaces may be used only for loading and unloading. The Police Department would be authorized to ticket vehicles that were not being used for loading and unloading. He added that it should be part of the building permit requirement that the contractor states non-Worth Avenue parking has been provided for their workers.

After discussion, **THE COMMITTEE RECOMMENDED THAT THE FEE, PER NON-METERED SPACE, FOR ALL NON-METERED SPACES BE \$100 PER SPACE PER MONTH FOR A TOTAL OF TWO SPACES AND NO PARKING OF VEHICLES NOT INVOLVED IN LOADING AND UNLOADING PROCESS.**

*V.  
activity*

## **VII. PROPOSED REVISIONS TO TOWN'S RIGHT-OF-WAY STANDARDS MANUAL**

*This item was address under VI. The Right-of-Way Manual will be amended as provided at this meeting. Additionally, Resolution Number 15-99 was approved at the August 10, 1999, Town Council meeting, and Resolution Number 17-99 was deferred to the September 14, 1999, Town Council meeting.*

## **REPORT OF THE O.R.S. COMMITTEE MEETING HELD ON AUGUST 11, 1999**

### **VIII. HISTORIC/SPECIMEN TREES:**

#### **A. ISSUES RELATED TO MEMORANDUM DATED JANUARY 7, 1999, FROM PUBLIC WORKS DIRECTOR DUSEY**

Mr. Dusey explained the problems that had arisen with eight trees in the Town that are in various stages of deterioration to the point that the Town's horticultural expert considers them not to be of specimen quality. He pointed out that the trees cannot be brought back to specimen quality, and two of the pink trumpet trees in the Four Arts Garden have been removed after de-designation.

Mr. Dusey said the question was what to do with trees as they age and become diseased or have deteriorated after severe trimming?

Mr. Wyett said his concern was that a specimen tree can be removed by neglect, and he thought the owner had a responsibility to maintain the trees and should not benefit from the de-designation. He suggested that a replacement program may be the answer.

Mr. Dusey said the Town cannot take action to prevent neglect, but can refer problems to Code Enforcement after damage has been done. He noted that finding replacement trees can be very difficult, because of the size of the replacements.

Mr. Wyett suggested that a transfer program could be implemented, either moving the specimen tree or planting a replacement tree in another location.

Mr. Randolph suggested a mitigation program, such as is used with wetlands, may work with specimen trees. If someone destroys wetlands or has to move forward with a project, wetlands ordinances have mitigation plans that may require larger areas to be planted to replace a smaller area in question. Mr. Randolph said that Public Works or another department within the Town would authorize the mitigation, or the ordinance could contain certain criteria that would indicate in the event of removal of such a tree that two such trees would be planted somewhere in the Town.

Mr. McDonald said he liked the idea of a mitigation program and questioned if the program would be based on a specific number of trees?

Mr. Randolph replied that would have to be investigated; however, the program could involve both numbers of trees and/or monetary measures.

## **REPORT OF THE O.R.S. COMMITTEE MEETING HELD ON AUGUST 11, 1999**

Town Council President Lesly Smith suggested that if a mitigation plan for historic and specimen trees was being discussed, perhaps a larger program could be implemented including an annual inspection by Mr. Ugi and the horticulturist where trees would be identified if they are in jeopardy. The inspections could be increased to quarterly for those trees in jeopardy and could be done in coordination with the Garden Club to prevent surprises at Town Council meetings at the last minute.

Mrs. Smith suggested the Committee not make a final decision at this time but have the Garden Club meet with Mr. Ugi to develop a workable plan for mitigation.

After discussion, **THE COMMITTEE RECOMMENDED DEFERRING A DECISION ON THIS ISSUE TO HAVE THE TOWN COUNCIL AUTHORIZE PRESIDENT LESLY SMITH TO REPRESENT THE TOWN WITH THE GARDEN CLUB TO DEVELOP A WORKABLE PLAN TO BE CONSIDERED BY THE TOWN COUNCIL.**

### **B. SURVEY RESULTS REGARDING POSSIBLE TOWN MAINTENANCE OF HISTORIC/SPECIMEN TREES**

Mr. Dusey explained that annual inspections are done on all historic/specimen trees, and the property owner receives a list of recommendations indicating specific actions for maintenance; however, there is nothing in the ordinance requiring a homeowner to comply with these recommendations. Mr. Dusey said until the Town has something in the ordinance requiring maintenance or allows the Town to intercede to maintain the tree, not much will be accomplished.

Mr. Randolph suggested using the Code Enforcement system of fines and Notices to Appear. He added that other suggestions included involving the Town in the maintenance of the trees in the event the property owner is not properly maintaining the trees and increasing the present annual inspections.

Mrs. Smith questioned if it would be possible for Mr. Dusey to include the following in his letter to a homeowner: "Upon inspection, it has been determined under the annual inspection that your tree is in jeopardy, such and such things should be done to restore this tree. The Town will be doing a quarterly inspection on this tree to see whether or not it is done and, if it is determined by the Town that after three months that no procedure has taken place to maintain or bring back the quality of this tree,

## **REPORT OF THE O.R.S. COMMITTEE MEETING HELD ON AUGUST 11, 1999**

the Town will move ahead to do it and bill the owner accordingly."

Robert Haehle, horticulturist, identified the best months for fertilization and said the growing season is during the wet season.

Mr. Wyett referred to the five suggestions suggested by The Garden Club in rewriting the Historic and Specimen Tree Ordinance as listed below:

- 1) For properties where the owner voluntarily requests the Town to assume the maintenance of his historic or specimen tree, the Town should do so at its own expense;
- 2) For those properties where the trees are well maintained, there should be no Town interference other than an annual inspection by the Town horticulturist to recommend pruning, trimming, feeding, etc. as well as a follow up inspection after 6 months;
- 3) For properties where the owner has indicated his or her desire for the Town not to do the work, preferring to do it himself or contract it out, after the tree has been inspected and recommendations made, and if a six months later inspection reveals that the work has not been done, the ordinance should mandate, that the Town go onto the property, perform the work, and bill the owner;
- 4) If any tree has been pruned, cut, trimmed, neglected, etc. without permission of the Town, or in such a way as to destroy its specimen characteristics, the owner should be fined to the extent of the law, and any outside contractor should have "black marks" on future permit applications
- 5) Properties to be cleared for construction should have all specimen and historic trees located and labeled on the plot plan by the Town. A circle around the tree should indicate a perimeter inside which there will be no building of any structure, nor any paving that would destroy the root system. Nor would it be allowed to place any construction material or park any vehicles inside that circle during construction. The radius of the circle would be determined by the Town horticulturist according to the needs of the tree. Contractors violating that circumference may jeopardize their permits to work in the Town.

Mr. Wyett suggested that Mr. Dusey meet with Town Attorney Randolph to develop a comprehensive draft ordinance incorporating items one through four (above).

## **REPORT OF THE O.R.S. COMMITTEE MEETING HELD ON AUGUST 11, 1999**

**THE COMMITTEE RECOMMENDED THAT ITEM NUMBER 5 ON THE GARDEN CLUB'S LIST BE MADE PART OF THE ORDINANCE.**

Mr. Randolph said that had been done, but he would take a look at the ordinance.

Mr. Moore suggested a fine for destruction of a tree in the neighborhood of \$25,000.

Mr. Randolph replied that the ordinance provided for a replacement tree of like size and kind.

Mrs. Smith added that it is often impossible to find a replacement tree of the size and kind to replace a specimen tree, and this argument has gone on for twenty-five years.

Mr. McDonald said the Town Attorney needs to identify a "hammer" that will make an owner of a tree fearful so that they will take care of the tree.

Mr. Randolph replied he would meet with The Garden Club and Mr. Dusey to attempt to come up with a mitigation plan to include the concerns as discussed at this meeting.

**THE COMMITTEE RECOMMENDED ITEMS 1 THROUGH 4 ON THE GARDEN CLUB LIST BE DEFERRED TO ALLOW THE TOWN ATTORNEY TO MEET WITH THE GARDEN CLUB AND PUBLIC WORKS TO WORK OUT A MITIGATION PLAN.**

Mr. Dusey addressed the issue of the \$25,000 amount allowed for tree maintenance by the Public Works Department and reviewed the current procedure done by the Public Works Department.

After discussion, **THE COMMITTEE RECOMMENDED ACCEPTANCE OF A MAINTENANCE PROGRAM AS OUTLINED IN MR. DUSEY'S FEBRUARY 26, 1999, MEMORANDUM AS FOLLOWS:**

- 1. THE TOWN SHOULD OFFER THE MAINTENANCE PROGRAM TO EACH PROPERTY OWNER AND ONLY MAINTAIN THE SPECIMEN TREES OF OWNERS THAT WANT TOWN MAINTENANCE.**
- 2. THE TOWN SHOULD ONLY OFFER ROUTINE MAINTENANCE SUCH AS FERTILIZATION, REMOVING DEAD BRANCHES,**

## **REPORT OF THE O.R.S. COMMITTEE MEETING HELD ON AUGUST 11, 1999**

**FILLING HOLES CAUSED BY ROTTING, REMOVING INVADER SPECIES SUCH AS FICUS, INSECT TREATMENTS, AND SIMILAR MINOR TREE WORK. MAJOR TRIMMING AND CUTBACKS SHOULD BE PERFORMED BY THE PROPERTY OWNER UNDER TOWN SUPERVISION, AS IS NOW THE CASE.**

- 3. THE TOWN MAY REQUIRE SOME SORT OF AGREEMENT WITH THE PROPERTY OWNER TO PERFORM THIS MAINTENANCE SO THAT THERE IS LESS ROOM FOR MISUNDERSTANDINGS.**

### **VII. ANY OTHER MATTERS**

Chief Code Enforcement Officer Brian House said that during the recodification procedure for the Town's Code of Ordinances, two ordinances, Sections 19-6 and 19-7, were repealed that were very necessary for the enforcement of the clearing of vegetation for unobstructed passage of pedestrians and eighteen feet clearance above the roadway. He said that currently there is no ordinance that requires a property owner to cut back overhanging vegetation.

Attorney Randolph said he thought those sections should be reincorporated.

**THE COMMITTEE RECOMMENDED THAT SECTIONS 19-6 AND 19-7 IN THE 1982 CODE OF ORDINANCES BE INCORPORATED INTO THE 1998 CODE OF ORDINANCES.**

Attorney Randolph said that another issue was a provision under the same section that it was a violation of Town law for trees of neighbors to overhang neighboring properties that was a concern to private property owners. He said that Mr. House has attempted to enforce that provision, but a situation evolves where neighbors are involving the Town in neighborhood concerns as opposed to Town concerns.

Mr. House said this is a civil matter and has been considered as such in other municipalities.

Responding to Mr. McDonald's question regarding repealing that section of the Code, Mr. Randolph said that was the suggestion, and he was not sure that the Town should be involved in those situations since the ordinance was not for the benefit of the Town as a whole but was interference with private property owners.

After discussion, **THE COMMITTEE RECOMMENDED THE REMOVAL OF THAT PROVISION OF THE CODE REGARDING THE VIOLATION OF TOWN LAW FOR TREES TO OVERHANG THEIR NEIGHBORS' PROPERTY.**

## REPORT OF THE O.R.S. COMMITTEE MEETING HELD ON AUGUST 11, 1999

Mr. House said he had some problems with garbage areas that are not clean, and there is no provision in the ordinance that allows Code Compliance Officers to write a "Notice to Appear" with a standard fine. He requested the Committee's recommendation to place that in the ordinance to allow citations to be written.

After discussion, **THE COMMITTEE RECOMMENDED THE INCLUSION OF A PROVISION IN THE ORDINANCE TO ALLOW CODE COMPLIANCE OFFICERS TO WRITE A "NOTICE TO APPEAR" WITH A STANDARD FINE FOR VIOLATORS WHO DO NOT KEEP GARBAGE AREAS CLEAN.**

### VIII. ADJOURNMENT

The meeting was adjourned at 4:00 p.m.

Attachment (1)



---

Jack McDonald, Committee Chairman



---

Allen Wyett, Committee Member