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REPORT OF THE ORDINANCES, RULES, AND STANDARDS COMMITTEE HELD ON MAY 11,2000

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 10:00 a.m. by Chairman William J. Brooks. On roll call, Committee Chairman Brooks and Committee Member Norman P. Goldblum were found to be in attendance. Other Elected Officials present were: Town Council President Jack McDonald and Town Council President-Pro-Tem Sam McLendon. Also attending for all or part of the meeting were: Town Manager Robert J. Doney; Assistant Town Manager Thomas Bradford; Town Attorney John C. Randolph; Fire-Rescue Chief Vincent K. Elmore; Public Works Director Albert P. Dusey; Assistant Police Chief Michael Reiter; Recreation Director Russell Bitzer; Director of Planning, Zoning & Building Robert L. Moore; Assistant Director of Planning, Zoning & Building Veronica Close; Zoning Administrator Paul Castro; Planner/Projects Coordinator Timothy M. Frank; Chief Code Compliance Officer Brian House; and Town Clerk Mary A. Pollitt.

II. APPROVAL OF AGENDA

The agenda was approved as written.

III. CODE ENFORCEMENT BOARD ISSUES REGARDING MAINTENANCE OF PROPERTY, CLEANLINESS OF CONSTRUCTION SITES, AND HURRICANE PREPARATION PLANS FOR CONSTRUCTION SITES

PZ&B Director Moore explained that the reason this was before the ORS Committee was at the request of the Town Council to review the current regulations regarding construction sites. He said there are two problems: the cleanliness issue and the hurricane preparation plans for

construction sites.

Mr. Moore said that the Town's Code of Ordinances has provisions that allow policing of the sites to keep them "in good working order". He continued that OSHA also has regulations that are not enforced by the Town but by inspectors who work for the federal government.

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Mr. Moore said, regarding the cleanliness issue, the general requirement is to have a dumpster placed on the site for collection of debris from the site. The dumpsters are emptied when full. Mr. Moore said the problem is really a policing issue rather than a need for additional regulations. He noted that currently construction site cleanups are handled on a complaint basis from a neighboring property owner, but he thought the only way to increase any policing action would be to hire additional manpower.

Mr. Brooks said his concern was during the hurricane season when or if the island were to be evacuated and how would the problem be handled?

Mr. Moore responded the Building Department had problems with the debris in dumpsters, roofing materials on the roofs, and stacks of materials such as plywood. He added trailers could be a problem in some cases. Mr. Moore said his department had telephone numbers for all of the construction companies who would be working on the island. The building inspectors and the Police Department notify all of the contractors to shut down the jobs.

Responding to Mr. Goldblum's question regarding site screening of job sites and/or dumpsters, Mr. Moore replied some residential job sites do have 4 ft. high fences and all commercial sites have to be site screened. He said the site screening of portable restrooms could be handled administratively and would not require ordinance changes.

Attorney Randolph questioned if the intention of the agenda item was broader than discussed. He said there was concern that properties in the Town that were not maintained properly take too long to go before the Code Enforcement Board and there are questions as to what, if anything, the Town can do about those properties.

Chief Code Compliance Officer Brian House stated the ordinance allows the violator to have fifteen days to comply with the ordinance, Section 42.91. An additional fifteen days is allowed to contest the violation before the Town Council.

Mr. House said after reviewing the ordinance, he is going to request that the Code Enforcement Board, after finding a violator guilty, not only order the violator to comply then but in the future for repeat violations.

Mr. Randolph clarified these types of orders, for abatement, do not have to go before the Code Enforcement Board except in the event to impose a fine, and Mr. House can order the work to

be completed. In the event the work is not completed, the Town can do the work and lien the property. Mr. Randolph said he may need to look at the ordinance and “beef” it up in regard to the process required to go before the Town Council, because it does not state exactly how many days they have before it goes to the Town Council; although he thought the authority was there presently. Mr. Randolph cited the present ordinance: “Any person, subject to an order under this division, who shall refuse to correct the offending condition within 15 days if ordered to do so by the Town Council or within 15 days from the Director of Planning & Zoning, shall be guilty of a violation. In such event, it shall be the duty of the Director to cause the condition to be corrected at the cost of the owner, occupant, or agent.”

Mr. House suggested posting the property in lieu of or in addition to sending a certified letter by mail.

Attorney Randolph said he did not think the problem was with the time an issue takes to go to the Code Enforcement Board, and the problem was using the section of the Code to enable the Town to do the work and lien the property without having to take 60 - 90 days to go before the Code Enforcement Board. Responding to questions regarding the notification of violations to property owners, Mr. Randolph replied if the ordinance reads: “notice will be given to the owner of record in the Palm Beach County Courthouse”, the Town would be protected. He said the property could be noticed in addition to mailing notification.

Chairman Brooks requested, and Mr. Moore agreed, that a listing of the hours of construction allowed in Palm Beach be mailed to property owners when any ARCOM or Zoning notices are mailed to property owners within a 200 ft. radius of a project.

After discussion, **THE COMMITTEE RECOMMENDED THE TOWN ATTORNEY REVIEW THE SECTION IN THE ORDINANCE THAT WOULD ALLOW PROBLEMS TO BE CORRECTED, ALLOW THE VIOLATOR THE DUE PROCESS THEY ARE ENTITLED TO BEFORE THE TOWN COUNCIL, AND ALLOW THE TOWN TO DO THE WORK AND THEN LIEN THE PROPERTY.**

IV. PROPOSED AMENDMENTS TO THE ARCHITECTURAL COMMISSION ORDINANCE NO. 5-00

Attorney Randolph explained that he drafted Ordinance No. 5-00 that was prepared as a result of discussions relating to getting the Architectural Commission out of the size business. He said the Town’s zoning ordinance was amended to be more specific regarding this item, and the Town Council then gave the direction to consider amending the Architectural Commission ordinance once the issue was taken care of by the zoning ordinance.

Mr. Moore said he thought it would be easier if the Architectural Commission were relieved of the burden of judging size and having to make comparisons within 200 feet.

Mr. Goldblum said he would like to hear the report of the experts, hired by the Town to analyze the R-B zoning district, before any decisions were made.

Mr. Brooks clarified that the proceedings from this meeting will not materially impact on the R-B zoning report to be made by the consultant before November, 2000.

John Schuler, Chairman of the Architectural Commission, said the Town needs to maintain a strong Code to ensure that Palm Beach does not suffer the same fate as have other communities to the south of Palm Beach. He said the recently revised zoning scale for the R-B district specifies the allowed size and does not allow for any change on behalf of the Architectural Commission; thus that problem is virtually solved.

Mr. Schuler said he thought the Code should be left intact, as it is written, because it works well with other zoning districts of the Town. He suggested some changes could be made to further define provisions of the Code.

He proposed changing the Code: Section - 205 (a)(6) as follows:

The proposed building or structure is not excessively dissimilar in relation to any other structure existing or for which a permit has been issued or to any other structure included in the same permit application within 200 feet of the proposed site in respect to one or more of the following features:

- a. Cubical contents. (Taken care of by the sliding scale.)
- b. Gross floor area.
- c. Height of building or height of roof.
- d. Other significant design features such as appropriate materials harmonious to the neighborhood or quality of architectural design.

adding the following:

- e. Architectural compatibility in the neighborhood.
- f. Arrangement of the structure components relative to the architecture of the house.
- g. The appearance of mass from any perspective.
- h. Diversity of design is complimentary with size and massing of adjacent properties.
- i. Promote design features that will avoid the appearance of mass through improper proportions.
- j. Approve design elements that protect the privacy of the neighboring properties.

Mr. Schuler summarized that the authority of the Commission has worked, and the function of the Commission insures quality and good architecture. This is important to maintain the desirability and popularity of Palm Beach.

Attorney Randolph said he understood Mr. Schuler's presentation to be in line with Ordinance No. 5-00 as proposed except that he added criteria.

William Cooley said he found the Architectural Commission ordinance and the process somewhat confusing. He suggested that one document be handed out to a potential home builder or someone improving his home that included all of the instructions and all of the limitations – including both Zoning and ARCOM. Mr. Cooley said his suggestions were intended to strengthen the ordinance, not weaken it. He mentioned that he presented the existing ordinance to other law firms whose opinions were that the present ordinance could be attacked successfully in a court of law.

Mr. Cooley referred to Ordinance No. 5, Sect. 18-205.(a)(6) - b. Other Significant design features such as materials or quality of architectural design. He said without a comma after “such”, the word “such” becomes operative and limits the other significant design features “such as materials or quality of architecture” to two choices. The Architectural Commission uses that particular item to criticize many architectural features and, in theory, they cannot. He suggested to toughen up the ordinance, the wording be changed to “... other significant design features (colon, comma, or semi-colon) including but not limited to materials or quality of architectural design”.

After discussion, **THE COMMITTEE RECOMMENDED THE TOWN ATTORNEY REDRAFT ORDINANCE NO. 5-00 TO CONSIDER SUGGESTIONS MADE BY MR. SCHULER.**

Mr. Moore said several suggestions were made by Councilman Wyett:

- A. Diversity of design
- B. Avoid the appearance of excessive mass
- C. Protect privacy of neighboring property
- D. Promote authentic design
- E. Use appropriate material
- F. Avoid box like and pill box design
- G. Utilize side or rear loading garage and storage areas
- H. Avoid harsh or glaring colors
- I. Use xeriscape landscape principles
- J. Utilize water saving irrigation systems

Mr. Moore requested that the staff be able to consider these when redrafting the ordinance. Chairman Brooks agreed that those suggestions should be reviewed by staff.

V. TOWN BOARDS AND COMMISSION:

A. CONFLICTS OF INTEREST ISSUES

Attorney Randolph said he had addressed this at length in a previous memorandum and thought the issue was taken care of. He said he submitted a memorandum in which he indicated that, on the Architectural Commission, based upon Ethics Commissions' opinions that he reviewed, that because the Town's ordinance requires two architects as commissioners and because almost every project in Town has to go before the Architectural Commission, that the Ethics Commission in previous opinions has ruled that it is indeed appropriate for a person who is an architect on a commission to represent clients before that board. He said the general rule was that, not only should such a professional declare a conflict of interest and not vote, but that particular professional should not be engaged in representing clients or take on business which would require that individual to go before the board. He said he thought there was a particular exemption for that on the Architectural Commission.

Mr. Randolph said the Town Council expressed a concern that a similar exemption should apply to the Landmarks Commission, because of the importance of having architects on the Landmarks Commission. He said the Town Council requested him to write an opinion to the Ethics Commission to determine if that same exemption could apply to the Landmarks Commission.

William Cooley said he had hired the law firm of Carlton Fields to review three years of minutes and agendas from the Architectural Commission and the Landmarks Commission to produce a matrix of votes and conflicts of interest. Mr. Cooley said his lawyers found the report listing the resulting conflicts from the two commissions not only excessive but in conflict with the State law that said no public officer or employee shall have or hold any employment or contractual relationship in any business entity which is subject to the regulation or doing business with the commission upon which that person sits.

Mr. Cooley continued that his lawyers sent a letter to Town Attorney Randolph stating that the Town ordinance was more permissive than the State statute which it is not allowed to be. He cited State statute 112.326 that permits local governments to create more stringent restrictions but not to loosen them up. Mr. Cooley concluded that architects on the Landmarks Commission are great, and the Town Council has the authority, presently, to appoint them, but he did not think that by changing the local ordinance that an architect can be re-appointed to that commission and continue to have 10, 11, or 15 conflicts per year and still comply with the State law. Mr. Cooley suggested the Town consider tightening up the conflict of interest ordinance to allow the occasional conflict but to prohibit people from using the public office to further their businesses and to make a living from volunteer work.

Attorney Randolph replied he was not sure that Town codes need to be amended to comport with State statutes, and the Town has provisions in the codes that provide if excessive conflicts of interest arise during any one calendar year, the commission member shall be subject to removal from the commission by the Town Council or in the event of excessive conflicts of interest during any one term, a commission member may not be reappointed to a successive term. Mr. Randolph said that excessive conflicts of interests were defined as ten or more conflicts in any one calendar year, and that may or may not be excessive under the State statute. The Ethics Commission would have to look at it and make a determination if that were excessive. He added the number of conflicts of interests was amended from ten to five. Mr. Randolph concluded he was asked to get a ruling from the Ethics Commission regarding whether or not an architect on the Landmarks Commission could do business before the board, and he did not know how the Ethics Commission would rule on that issue.

B. VOTING PROCEDURES FOR COMMISSIONS

Mr. Brooks recalled this issue was discussed at the Town Council meeting and the motion died for lack of a second. He said the item should have been removed from this agenda.

After a brief discussion, **THE COMMITTEE RECOMMENDED THE VOTING PROCEDURES NOT BE CHANGED AND CONTINUE AS DIRECTED BY THE TOWN COUNCIL.**

VI. SOUTH OCEAN BOULEVARD ISSUES - TRAFFIC PROBLEMS RELATING TO CONSTRUCTION PROJECTS - *(Deferred from May 9, 2000, Town Council Meeting)*

Attorney Randolph said he thought an ordinance could be drafted addressing the flagmen issue which would require a permit through the Police Department to use flagmen. He said Mr. Dusey indicated that was too restrictive an opinion and that opinion would be considered when he drafted an ordinance related to the use of flagmen.

Assistant Police Chief Mike Reiter said he thought the main issue was the flagmen that were hired by construction sites work towards the best interest of the construction sites, stopping the traffic at 5:00 p.m. to allow all of their employees to leave and facilitating the traffic on and off the construction sites during the day. This traffic control is most often contrary to the interests of the motoring public.

Assistant Chief Reiter said he did not think the Town could supply enough police officers to be utilized to control construction traffic. He questioned the legalities of permitting flagmen and referred to Attorney Randolph's opinion that it may not be as it may be a power than cannot be delegated. He asked what the permitting would accomplish?

Attorney Randolph responded he understood that because of an existing lack of control in that area, that anyone directing traffic in the roadway should be required to go to the Police Department to receive a permit. The Police Department would then know where all the activity was taking place, and there would be better control over the situation than exists presently. The issue of delegation will be investigated.

Assistant Chief Reiter replied the department was aware of the areas where construction caused traffic problems and he thought it would be unnecessary to devise a permitting system to advise the Police Department of the flagmen.

Al Dusey said the Town has a system for permitting presently and that was the right-of-way manual that was authorized by Town Council by ordinance and is amended from time to time by resolution. He said that controls traffic related to street construction when confined to the rights-of-way. Mr. Dusey said construction sites have abused the privilege of having flagmen and have utilized them for their own purposes disregarding traffic needs.

Mr. Moore said the Town has required construction sites have flagmen and the privilege has been abused. He said there are four current construction projects on South Ocean Boulevard that would require flagmen, and not every job needs a flagman.

Mr. Brooks summed up the remarks by saying that regulations are in place that will control situations, and it is the 2 or 3% that abuse the practice.

Mr. Moore said if all the parties agreed, the present practice could continue. and if there were abuses, an off duty police officer would be required.

After the committee discussed the possible certification of flagmen for construction sites, **THE COMMITTEE MADE NO MOTION BUT ATTORNEY RANDOLPH WILL FOLLOW UP ON THE ISSUE REGARDING THE DELEGATION OF TRAFFIC CONTROL TO FLAGMEN.**

VII. ANY OTHER MATTERS

There were none.

VIII. ADJOURNMENT

The meeting was adjourned at 12 noon.

William J. Brooks, Committee Chairman

Norman P. Goldblum, Committee Member