

TOWN OF PALM BEACH

Office of the Town Clerk

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE HELD ON APRIL 30, 2007

I. CALL TO ORDER AND ROLL CALL

The Ordinances, Rules and Standards Committee Meeting was called to order on Monday, April 30, 2007, at 2:00 p.m., in the Town Council Chambers. On roll call, Chair Gail Coniglio and Committee Member Richard Kleid were found to be present.

Others present for all or a portion of the meeting were:

Mayor Jack McDonald
Council Member Brooks
Council Member Markin
Town Manager Peter Elwell
Town Attorney John Randolph
Kirk Blouin, Police Department - Support Services Captain
Veronica Close, Director Planning, Zoning and Building
Paul Castro, Zoning Director
Jeff Taylor, Acting Building Official
Charles Langley, Public Works Assistant Director
Susan Eichhorn, Town Clerk

II. APPROVAL OF AGENDA

The Agenda was approved as printed.

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE
HELD ON APRIL 30, 2007

III. CONSIDERATION OF POTENTIAL ORDINANCE AMENDMENTS AND OTHER ACTIONS INTENDED TO REDUCE THE IMPACT OF CONSTRUCTION PROJECTS UPON NEIGHBORING PROPERTIES.

Director of Planning, Zoning and Building Veronica Close referred to her memorandum to members of the Ordinances, Rules and Standards (ORS) Committee dated April 25, 2007, and included in the backup material, to discuss construction related matters as well as the Report on the Synopsis of Construction Procedures prepared by the Planning, Zoning, and Building Department. She commented as follows on the Report on the Synopsis of Construction Procedures prepared by Planning, Zoning, and Building (PZB):

1. **How Planning, Zoning, & Building currently applied the provisions of the administrative Section 1 of the Florida Building Code (Chapter 18 of the Town's Code of Ordinances). She summarized the following procedures:**

- Construction permitting process.
- Enforcement of contractors working without a permit.

In response to Committee Member Kleid, Ms. Close advised that if the Building Official refused to extend the commencement date of the permit or if he refused to extend a break in construction, the permit holder would have to reapply for the permit. The permit holder could go to the Building Board of Appeals if they wanted to appeal that decision. The Town had never refused to reactivate a permit, because if they did so, the job would remain idle longer than if the contractor continued. The applicant would be required to pay full permit fees again and would have to meet the current Building Code, if it went more than six months.

In response to Chair Coniglio, Ms. Close commented as follows:

- An owner was cited relative to code enforcement actions approximately once or twice a month.
- Only major construction and new construction were covered by construction time limits.
- The code currently stated that if a permit holder needed an extension of the time allowed for the job, they had between six months prior to the expiration and three months prior to the expiration to come before the Town Council to request that extension. She noted that if that was not done, the permit holder would automatically be referred to the Code Enforcement Board.
- A study had not been conducted that showed which particular contractors violated construction time limits.
- PZ&B was not able to determine whether or not it was limited to the size of a construction project either.

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE
HELD ON APRIL 30, 2007

Attorney Randolph stated that one of the problems was that contractors were not coming before the Town Council to request an extension and showing good cause as to why they should be allowed to have that extension. The contractors were going directly to the Code Enforcement Board, which was allowing them to extend further. The Board was requesting the contractors to present schedules as to the length of time they believed was needed to complete the job. He stated that it appeared to him to be somewhat of a glitch in the system, and he believed that what should happen was if a contractor wanted an extension, they would have to come to the Town Council and if they had not done so, they would then have to go before the Code Enforcement Board and be faced with a \$250 a day fine.

Ms. Close advised that she agreed it was a concern and PZ&B had addressed that. She explained that staff was going to suggest that time limits allowed should be readjusted and the establishment of a set of fines within Chapter 18, which would establish what happened when a project went over the time allowed. She noted that PZ&B had a suggested fine structure. The categories were subdivided instead of three general categories of allowable time limits, staff proposed that there be six categories, and if feasible, a set of daily fines for each of those categories.

In response to Chair Coniglio, Ms. Close advised that the Town had the ability to stop a project if a contractor went over the established time limit.

2. Proposed modifications to the Code or administrative actions which result in great conformance to its provision.

- a) Revoke or terminate the permit and require the applicant to reapply, and pay additional fees in accordance with construction value of the remaining work. (Administrative or Ordinance change)**

In response to Committee Member Kleid, Ms. Close advised that the suggestion of a reactivation fee of \$2 per square foot of the construction project would be based on the value of the original permit.

In response to Chair Coniglio, Ms. Close explained how that compared with the original permit and how it was calculated.

Ms. Close stated that staff recommended the Committee approve today changing the fee that the Town charged to reactivate the permit. Staff did not recommend that the reactivation fee should be terminated.

- b) Modifying the amount of time allowed for construction and creating additional categories by square footage. (Ordinance change)**

- Six categories instead of three:

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE
HELD ON APRIL 30, 2007

Under 4,000' - currently 13 months, proposed 16 months
4,000 - 6,000' - currently 22 months, proposed 24 months
6,000' - 10,000' - currently 22-30 months, proposed 30 months
10,000' - 20,000' - currently 30 months, proposed 36 months
20,000' - 40,000' - currently 30 months, proposed 42 months

Over 40,000' - required Town Council approval and the months allowed would be determined at that time.

Ms. Close advised that in conjunction with that a per day fine if the contractor did not meet those, which would be built into Chapter 18, if determined by the Town Attorney that was allowable.

Ms. Close advised that staff strongly recommended that ORS approve the increase of time allowed.

In response to Chair Coniglio, Ms. Close advised that they had not addressed the one extension allowed per permit and did believe it should be addressed and would come to the Town Council. The \$250 per day fine was taken from the Code Enforcement State Statute, which restricted fines to \$250 per day for any violation of the Town's Code for the first offense and a maximum of \$500 per day for a repeat offense. Staff was suggesting that the recommended fine would supercede that.

Town Manager Elwell clarified that the two issues come together as a package: The recommendation to consider adoption of more realistic construction time limits in conjunction with a tougher fine schedule.

Ms. Close advised that if these recommendations were adopted, the Town would have to be very diligent about notifying residents as well as contractors as far as what this means in terms of fines.

In response to Chair Coniglio, Mr. Elwell clarified that the permit holder was entitled to come before the Town Council to ask for an extension but they were not entitled to that extension. The Town Council would determine whether or not that extension should be granted.

Ms. Close advised that in smaller projects, the Building Official had the right to grant an extension, but in major projects, only the Town Council had the right to do that.

c) Increasing the penalty for working without a permit. (Ordinance change).

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE
HELD ON APRIL 30, 2007

In response to Committee Member Kleid, Ms. Close advised that he was correct. Staff was stating that the Town should follow through on enforcement procedures, which they presently were not doing as well as they should be.

In response to Chair Coniglio, Ms. Close explained what the time frame was from the time of this violation before Code Enforcement and the granting of the application permit. The violator had to come in, once informed by the Town, usually the next day. It could take anywhere from two days to ten days, sometime longer, to get their permit. If they did not respond to the Town, they would be brought before the Code Enforcement Board; she explained the procedure the Code Enforcement Board was required to take. The project would be red tagged.

Ms. Close advised that she would provide the basic fine structure to Ms. Coniglio.

- d) Restrict the ability of a contractor to get permits on a property if the contractor is in violation on another property.**

Staff did not recommend, at this time, that this situation be addressed.

- e) Restrict ability to work in Town for excessive violations. (Ordinance change)**

Ms. Close advised that staff believed the "3 Strikes and You're Out" Program might be effective and that some of the suggestions discussed under "a" might also apply. She noted that Mr. Bradford as well Mr. Langley, Assistant Public Works Director were both working on drafting a "3 Strikes and You're Out" Program. The program would basically address construction parking violations and if cited three times for violating parking requirements, Public Works would notify PZB who would suspend the permit. The contractor/owner would have to pay a fine, which ranged from \$1,000 to \$5,000. If violated again, after that, the permit would be suspended, and the contractor/owner would have to appear before the Town Council to request reactivation or they could face the possibility of coming in and paying all new permit fees and starting the project over again. The program was still being refined and worked out with Town Attorney Randolph who had not yet had an opportunity to closely review the program.

Town Manager Elwell explained that this particular item was distinguishable from the other items discussed. He noted that the Town believed that with a program such as this, the Town could hold the contractors directly accountable.

In response to Chair Coniglio, Director of Public Works Brazil responded that repeat offenses occur frequently and Public Works was responsible for enforcing construction parking by monitoring it daily in the field. He noted that the contractor was required to apply for parking

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE
HELD ON APRIL 30, 2007

passes and were allowed a minimum of three for themselves, and one to the owner. The total of number of four parking passes was allowed for commercial as well as residential projects.

In response to Committee Member Kleid, Mr. Brazil advised it was regardless of how many construction projects were occurring on a block. He noted that they had tried to limit based on the capacity of the street.

In response to Chair Coniglio, who questioned how Public Works detected violations, Mr. Brazil advised that they attempt to distinguish in the field the difference between a service vehicle that would be associated with construction. He explained that it was not always easy to do, but staff spent a great deal of time at the construction site interviewing people and talking to the neighbors. It was very time consuming.

In response to Committee Member Kleid, Mr. Brazil explained that a construction vehicle was any vehicle that was directly associated with a construction project. He advised that most of the permits issued were for the construction workers.

Discussion ensued relative to enforcement of construction parking violations, and Mr. Elwell advised that the process was very difficult.

In response to Chair Coniglio, Mr. Elwell advised that the Town would be discussing, as part of the Traffic and Parking Improvement Plan, further implementation of "No Parking" signs. The strict enforcement of "No Parking" has always been very difficult to enforce and there were ramifications that were unacceptable to a significant portion of the residents. Staff was working on a set of regulations that they believed was both defensible and would indeed protect the quality of life in the residential areas of Town, which was for ALL parking, not just construction. He noted that there was a subset to that relative to distinguishing properly what was a construction vehicle.

Discussion ensued relative to the ability to determine construction vehicles relative to size. Mr. Brazil advised that very large construction equipment needed a right-of-way permit, needed to provide a maintenance and traffic plan, and were limited to the number of hours they could be there and what hours they could operate, etc.

Town Manager stated that from staff's perspective, it would be very much simpler to enforce and much more effective if it was a blanket "No Parking Anytime." The problem with that was there were a lot of other consequences that came along with that.

Committee Member Kleid noted that it was not an easy problem to solve.

Ms. Close advised that one of the proposals on the "3 Strikes and You're Out" Program was for the contractor to maintain a vehicle parking log on that property, which the enforcer

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE
HELD ON APRIL 30, 2007

could review. She noted that a possible solution the Town was looking at was permitting all vehicles on a street, not just construction vehicles but service vehicles as well.

In response to Chair Coniglio, Ms. Close noted that the only exception for a large vehicle that did not require a permit was a large vehicle for landscaping. The only other exceptions would be vehicles delivering provisions to restaurants.

Town Manager Elwell explained that a moving van would not require a permit other than a right-of-way permit.

Mr. Brazil commented that the restrictions on public roadways were generally by weight and not necessarily width. He noted that he was only aware of two weight limits in Town and they were related to bridges.

Acting Building Official Taylor commented many of the large vehicles needed to park on side streets in order to deliver construction materials to the site.

PUBLIC COMMENT:

Henry McIntosh, 124 Via Bethesda, commented that large construction vehicles, such as 18 wheel trucks, should offload onto smaller vehicles, which would then bring the materials onto the Island.

Jere Zenko, 232 Tangier Avenue, commented as follows:

- The notification of property owners within 500 feet of construction projects. The burden should be put on the petitioner rather than the Town to make the notification.

Committee Member Kleid advised Ms. Zenko that this issue had not as yet discussed.

- Notifications with regard to inspection procedures. Contractors receive notification of whether an inspection passed or not and the property owner would have no way of knowing what passed or did not pass. Suggested that a copy of the inspection should go to the homeowner.
- Referred to Section d - restricting contractor to get permits on a property if in violation.
- Homeowners should not be blamed for violations. It was the fault of contractors.

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE
HELD ON APRIL 30, 2007

- Delays between ARCOM approvals and granting permits. Referred to project, she brought up to the Code Enforcement Board, regarding a spec builder in Town.

Robert Andrew Roddy, 231 Kenlyn Road, commented on the following:

- Time limits on construction under 4,000'.
- Retroactive fines were unjust and unfair.
- Trucks - large loads should be placed on smaller trucks.
- Notice to residents on projects, such as re-roofing, pesticide activities, etc. on neighboring properties.
- The Town should place all information onto the internet.

Mr. Roddy responded to questions from the Committee and staff.

Yvelyne D. Marix, 1570 North Ocean Boulevard, commented on the Hi-Mount Road generator; and enforcement of parking regulations and the nearness of streets.

Greg Batten, Batten Construction, addressed remodeling projects from a contractor's point of view; construction scheduling being contingent on parking; construction parking passes; enforcement of construction parking; fines; increasing construction time limits.

Mr. Batton responded to questions from the Committee.

President Kleid made the following recommendations to the full Town Council:

- **To change, by increasing the fee structure, the right to reactivate permits and obtain a specific time extension.**
- **Modify the time span allowed for construction:**
 - ▶ **Under 4,000' - 16 months**
 - 4,000 - 6,000' - 24 months**
 - 6,000' - 10,000' - 30 months**
 - 10,000' - 20,000' - 36 months**
 - 20,000' - 40,000' - 42 months**
 - Over 40,000' - required to come before the Town Council for approval**
- **Change the penalty structure by increasing it, if the new construction schedule was not met.**
- **Staff should study further, in order to bring back to the Town Council, a plan to restrict the ability to work in the Town for excessive violations. The Town could put in place some type of ordinance or plan to cover that requirement.**

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE
HELD ON APRIL 30, 2007

Town Manager Elwell advised that staff's recommendation on that issue was the "3 Strikes and You're Out" Program. It was 3 strikes and receive a substantial fine, as opposed to 3 strikes and you were out of Town.

Committee Member Kleid advised that he would add substantial fines to what he was recommending. He noted that it was just to see the plan and to study it.

Town Manager Elwell stated that he understood that and commented that all of this was to go to the next step in the review, but he wanted to be certain that staff brought back the information that was being included in the recommendation. He requested clarification as to if it was 3 strikes would place the contractor into the more substantial fine structure and whether it would then result, at some point, ultimately, the restriction of the ability to work in Town.

Committee Member Kleid advised that he was requesting that ultimate provision. It could then be reviewed and softened, if so desired. He stated that was his motion.

In response to Chair Coniglio, Committee Member Kleid advised that he was not going to address parking at this time.

Chair Coniglio concurred with Committee Member Kleid.

In response to Chair Coniglio, Mr. Elwell advised that with the concurrence of the Committee, it was sufficient to have those three items become part of the Committee's recommendation to the Town Council.

Town Attorney Randolph reviewed his letter to Town Manager Elwell dated April 23, 2007, and the draft ordinance, as provided in the backup for the consideration of the Committee. He noted that it was the culmination of studying the issue of multiple construction projects that was raised by Council Member Brooks and others. He noted that the figures included in the document were figures put forth for consideration. The intent of the ordinance was to deal with simultaneous construction projects, which took place within 500 lineal feet of another construction project. It did not specifically preclude such projects rather it indicated that if someone came in and wanted to construct such a project within 500' of another, a building permit would not automatically be granted for that project. The applicant would have to appear before a Nuisance Abatement Board to prove that their project would not cause additional nuisances on the street. He explained that he tried to set forth in the proposed ordinance the types of provisions that the Board would consider in determining whether or not to grant, deny, or grant the permit with conditions.

Attorney Randolph discussed further the proposed ordinance as well as many issues that were raised by PZB as noted in his letter.

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE
HELD ON APRIL 30, 2007

Chair Coniglio expressed her concerns relative to the proposed ordinance. She noted that it was not a resident friendly ordinance and would change the view on purchasing property in Town. She advised that she believed in the good neighbor policy. She commented that she was not certain as to what a Noise Abatement Commission would achieve and she believed Code Enforcement Board should be handling some of those difficulties.

Committee Member Kleid commented that he realized the ordinance was written to evoke discussion, and advised that there was nothing he liked about the ordinance. Staff's criticisms were justified and he did not like the idea of creating another review board. The ordinance would just add more government, and he noted that a decision by the Nuisance Abatement Board could then be appealed to the Town Council. All who received unfavorable rulings would likely do so. He stated that he would not adopt anything placed in the proposed ordinance. He noted that it was not a criticism to Attorney Randolph because he knew it was prepared to engender discussion.

William Brooks, 240 Seabreeze Avenue, advised that he had lived in the same home for thirty-one years and was a member of the Town Council. He explained that he had requested Town Attorney Randolph to draft an ordinance relating to simultaneous construction and he discussed the reasons for his request.

Mr. Brooks drew the Committee's attention to what Attorney Randolph crafted. He pointed out the adverse affects on public health, safety and welfare of residents on the street and on the use of the street itself because of the congestion, impact, noise, dust created by construction of two or more structures within a limited area. He stated that it was the Town Council's obligation within the law to do what was best for the citizens of the Town. He noted that the Committee was now, at least, looking at an ordinance for discussion so that the full Town Council might become involved.

Committee Member Kleid explained that he was stating that this ordinance had been presented for discussion purposes.

Committee Member Kleid then commented on the following:

- Controls needed to be addressed - address the signage, which was being reviewed in the Traffic and Parking Study. The streets with absolutely no parking should be reviewed.
- Enforcement
- No parking permits issued and require people to be bussed to the site.
- Size of vehicles, construction or otherwise, coming into Town.
- Car pooling and bringing people onto the site.

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE
HELD ON APRIL 30, 2007

Committee Member Kleid noted that those were measures the Town Council should be looking at to control parking and reiterated that he did not believe this particular ordinance met the requirements. It would just set another layer of government and would not be effective.

Chair Coniglio commented that she was in full agreement with Mr. Kleid.

Town Manager Elwell assured the Committee that the issues Mr. Kleid reviewed relative to the parking situation were continuing to be addressed with the Traffic and Parking Improvement Plan. He advised that it was not staff's intent to bring additional work, however, because of the complexities involved, he suggested that part of the recommendation to the Town Council be that the additional refining part of this work be brought back to the Committee first, for the Committee to review, before making very specific recommendations for action to the Town Council.

In response to Chair Coniglio, Mr. Elwell advised that the Town Council had made recommendations related to the strategies. He noted that further actions the Town Council might take would be discussed at the June 11th Town Council Meeting. He suggested that the Committee allow the parking piece to move along its present path, but as it related to the issues raised today, those items would be recommended to the Town Council that staff would conduct the research, but that it would go before the ORS first, before going to the Town Council for action.

Committee Member Kleid stated that it was very important that when the Committee went back to Town Council with their recommendation that it was made very clear that this report was only part of the equation. It was a small part of the package.

Attorney Randolph requesting clarification relating to the draft ordinance and asked if what the Committee was stating was that they would like to examine other ways of dealing with this problem other than having a limitation of the number of permits on the street by virtue of enforcement, regulation, etc. He wanted to clarify that the Committee was not stating that their primary concern with this ordinance was the creation of another Board and the creation of appeals to the Town Council.

Chair Coniglio advised that they were not making that assumption.

Committee Member Kleid stated that, for himself, that was part of it. He noted that he was not in favor of that method, and that he was also opposed to the 500' radius.

Susan Markin, 1450 North Lake Way, Town Council Member, commented on the following four points:

- Size of vehicles coming on the Island. Height of vehicles needs to be studied.

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE
HELD ON APRIL 30, 2007

- Informational sessions with contractors to inform them of the policies and procedures of the Town of Palm Beach.
- Enforcement of parking regulations in Town.
- Whether an ordinance for multiple construction sites was needed; procedures could be put in place to address that issue.

Ms. Markin responded to questions and comments of the Committee members and staff. Both Committee Member Kleid and Town Manager Elwell agreed that input from the contractors was important.

Jere Zenko, 232 Tangier Avenue, suggested that there should be a separation between Code Enforcement and parking issues. The police used to be omnipresent, and they no longer were.

Yvelyne D. Marix, 1570 North Ocean Boulevard, commented that she was in agreement with Ms. Markin. She stated that the bottom line were the streets she had discussed, which were the most dangerous streets, did not allow parking. She stated that if people were to be allowed to park on those streets, the signs should be removed.

Town Manager Elwell responded that staff agreed that streets that were signed no parking should be strictly enforced for no parking for everybody - no vehicles at all should be allowed to park.

Ms. Marix responded to comments of the Committee and staff.

Town Manager Elwell advised that the problem was that the Town needed to have a system that could be put into place shortly, after some additional review; a system which was very clear as to which streets could handle parking, which streets could not, and that no parking really meant no parking. The Town was on the verge of implementing that system, but it could not be done overnight.

Ms. Marix responded that the Town should be looking at the safety and the lives of the residents.

Town Manager Elwell stated that the Committee recommendations to the Town Council were clear and staff would prepare the report for next week's Town Council Meeting.

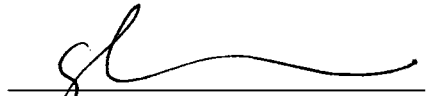
IV. ANY OTHER MATTERS

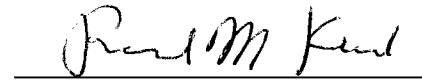
There were no other matters.

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE
HELD ON APRIL 30, 2007

V. ADJOURNMENT

There being no further business, the Ordinances, Rules & Standards Committee Meeting of April 30, 2007, was adjourned at 4:17 p.m.



Gail Coniglio
Chairman

Richard M. Kleid
Committee Member