

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN COUNCIL MEETING HELD ON THURSDAY, DECEMBER 17, 2009

1

I. CALL TO ORDER AND ROLL CALL

2

3 The Regular Town Council Meeting was called to order on Thursday, December 17, 2009, at
4 9:30 a.m., in the Emergency Operations Center, 355 South County Road, Palm Beach. On roll
5 call, all of the elected officials were found to be present.

6

II. INVOCATION AND PLEDGE OF ALLEGIANCE

7

8 Town Clerk Cunningham gave the invocation. President Rosow led the Pledge of Allegiance.

9

III. PRESENTATIONS

10

A. Presentations by Applicants for Shore Protection Board.

11

12 The following applicants spoke in alphabetical order regarding appointment:

13

- 14 • Mr. Kane K. Baker
- 15 • Mr. J. Patterson Cooper
- 16 • Ms. Mari Frankel
- 17 • Mr. Scott Hicks
- 18 • Mr. Richard Raffo

19

IV. COMMENTS OF MAYOR JACK McDONALD

20

21 Mayor McDonald wished everyone a Happy Holiday Season.

22

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

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24 Council President Pro Tem Coniglio offered the community her thanks during the season. She
25 recognized thirty-year loyal employee William Crouse, Human Resources Director for his
26 service. She stated that the past few weeks have been a celebration of volunteerism and giving in
27 the community. She acknowledged the outstanding heartfelt effort of the police volunteers. She
28 noted two were in the audience and Charlotte Morris who has dedicated every day to the Town
29 of Palm Beach and her service to the Police Department. Council President Pro Tem Coniglio

1 also thanked Former Professional Golfer and resident Raymond Floyd and the entire golf team
2 that has polished and renovated the crown jewel of Palm Beach Par 3 Golf Course. She hoped
3 that the Town will continue to support their efforts in the completion of the Phase II, the funds
4 for the clubhouse. She continued with the efforts of Joyce Vaughn, who extended a contribution
5 to the community by preserving answering the phones with her personal touch from the Town of
6 Palm Beach with a system of volunteers that she has put into place. And lastly, she thanked
7 Reverend Norris and the members of the Royal Poinciana Chapel. To celebrate their spirit of
8 giving to restore and preserve the Seagull Cottage for the Town of Palm Beach for she hoped
9 another one hundred years to come. She thanked everyone and again, echoed the Mayor's
10 comments by wishing that 2010 be safe, healthy and be the economic turn the Town needs.

11
12 Council Member Diamond stated that he understood that there have been divisive issues in front
13 of the Town Council and they were going to face them today. He believed that they would be
14 solved today. They will try to do it in the right way so that everybody understands and
15 everybody has something, and no one will go away disliking each other or disliking one end of
16 the Town to the other. He continued that they all would stick together and the Town would be
17 satisfied in the large part, as much as possible could be done. He wished everyone a Merry
18 Christmas and a Happy Hanukkah.

19
20 Council President Rosow announced that the vast majority of the large audience was there for
21 one particular item on the agenda, and he announced that they did not have the ability to change
22 the agenda, but asked the fellow Council Members if they could place Item XI.A.1. Second
23 Reading of Ordinance No. 18-09 as the first item of business after the Consent Agenda. This
24 would be heard immediately following approval of the Consent Agenda. The rest of the Town
25 Council was in agreement with that.

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VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE (Another
opportunity for communications from citizens will be offered immediately after the lunch
break.)

William Cooley, 8 Windsor Court, thanked Council President Rosow and Council Member
Wildrick for helping to raise money for the Town's holiday decorations. The Town looks
outstanding. Council President Rosow added several other residents should also to be thanked.

Arnold Hoffman, 150 Bradley Place, spoke of his 20 year old grandson and was in support of the
keeping the bars and restaurants open until 3:00a.m. *Cucina* is a lightning rod for the young
people who want to let off steam and he would rather his family stay on the island.

Attorney Brooks Ricca, 267 Dunbar Rd., who formally represented Club 251 before the Town
Council, acknowledged that the invocation mentioned peace and that the real issue is noise.
Code Enforcement should be enforcing the existing laws. He previously addressed the Club 251
issue and the previous permit, and should not resort to personal and divisive attacks that serve no
good purpose.

1 Erik Gilbertson 151 Chilean Ave. read a statement regarding Veteran's Day and Veterans. He
2 also stated the facelift of Town Hall is magnificent.

3
4 Denis Coleman, 662 Island Drive, spoke in support of the Coniglio family, and the keeping of
5 establishments open until 3:00 a.m. He stated that the Coniglio's have supported the community
6 for years and have raised their family of six children here as well. He added that the critics here
7 are always dour and never uplifting.

8
9 Brandy Miller, Muscular Dystrophy Association and on behalf of the firefighters in Palm Beach,
10 asked the Town Council for permission to collect monies on the streets of Palm Beach. She
11 handed out to the Town Council Members and the Mayor packets of information. Council
12 President Rosow informed her that it was inappropriate to hand out new information during the
13 meeting. She was directed to make her request to the Ordinance Rules and Standards Committee
14 at their next meeting to request an Ordinance change. She then stated her desire to seek an
15 exception to hold a boot drive the last two weekends in January 2010. Council President Rosow
16 indicated that she would not have an approval by then.

17
18 Jeff Rembaum, an attorney with Sigfried Rivera, and represented the Palm Beach Hotel
19 Condominium Association. Council President Rosow asked him to wait until the noise item was
20 addressed since he was an advocate for the Hotel. Attorney Rembaum indicated that he would
21 speak at the appropriate time and thanked Council President Pro Tem Coniglio for her many
22 wonderful meals over the years.

23
24 Dragana Connaughton, 267 Merrain Road, thanked Mr. Coleman because she agreed with his
25 statements and she supported the Coniglios' and town-serving nightclubs for their children. She
26 has raised four children on the island and has known and supported the Coniglios' for twenty
27 seven years. They are one of the finest families on the island. She also was in favor of keeping
28 the bars and restaurants open until 3:00 a.m.

29
30 Jerry Frank, 2784 S. Ocean Blvd., stated his children and grandchildren support the island bars
31 and restaurants on Royal Poinciana Way and are a great asset to the Town. He felt it is a
32 controlled environment and doing anything to change that would be a crime.

33 VII. APPROVAL OF AGENDA

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35 Item VIII.E.1. RESOLUTION NO. 119-09 was **MOVED** from the consent agenda by Council
36 member Diamond and moved to Item X.B.6.

37
38 Item VIII.E. 9 RESOLUTION No. 129-09 was **REMOVED** from the agenda at the request from
39 Town Manger Elwell.

40
41 Council President Rosow **ADDED** under ANY OTHER MATTERS a dredging discussion.

42
43 **Motion to approve the Agenda as Amended, made by Council Member Diamond and**
44 **seconded by Council Member Kleid. On roll call, the motion carried unanimously.**
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VIII. CONSENT AGENDA

A. MINUTES: NOVEMBER 10, 2009 APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

B. MINUTES: NOVEMBER 12, 2009 APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

C. MINUTES: DECEMBER 3, 2009 APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING

D. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON NOVEMBER 20, 2009.

E. RESOLUTIONS

1. RESOLUTION NO. 119-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Creating a Charter Review Commission. [John C. Randolph, Town Attorney]

This item was pulled from the consent agenda and moved to Item X.B.6.

2. RESOLUTION NO. 121-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Town of Palm Beach Police Department Edward Byrne Memorial Justice Assistance Grant (JAG) Program Application to the Florida Department of Law Enforcement and Authorizing the Mayor to Execute the Same on Behalf of the Town. [Kirk W. Blouin, Police Chief]

3. RESOLUTION NO. 122-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Approving an Agreement by and Between the Palm Beach County Supervisor of Elections and the Town of Palm Beach Relating to the Use of Vote Processing Equipment and Election Services; Providing an Effective Date. [Joanna Cunningham, Town Clerk]

4. RESOLUTION NO. 124-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing a Revised Contract Limit for Consultant Services for Town Hall Renovations Project. [H. Paul Brazil, Director of Public Works]

5. RESOLUTION NO. 125-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Granting an Easement Across Town Property to Bellsouth Telecommunications, Inc. D/b/a AT&T Florida, for Fiber Optic and Cross Connection Boxes Being Displaced by the Reconstruction of the Flagler Memorial Bridge. [H. Paul Brazil, Director of Public Works]

6. RESOLUTION NO. 126-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Granting an Easement Across Town Property to Florida Power & Light Company for Electrical Conduits, Switchcabinet, Electrical Panels and Transformers Being Displaced by the Reconstruction of the Flagler Memorial Bridge. [H. Paul Brazil, Director of Public Works]

7. RESOLUTION NO. 127-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing a Revised Contract for Fuel Tank Construction Management Services, a Fund 307 Project. [H. Paul Brazil, Director of Public Works]

8. RESOLUTION NO. 128-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing a Revised Contract Limit for E-11 Sanitary Sewer Pump Station, a Fund 307 Project. [H. Paul Brazil, Director of Public Works]

9. RESOLUTION NO. 129-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving an Award of Contract for D-9 Storm Water Pump Station Pumps, a Fund 307 Project. [H. Paul Brazil, Director of Public Works]

This item was deleted from the agenda.

F. Other

1. Approval of Report of the Finance and Taxation Committee Meeting of November 5, 2009. [Robert N. Wildrick, Town Council Member]

2. Approval of Selection Committee Recommendation for Retention of Civil Engineers. [H. Paul Brazil, Director of Public Works]

3. Approval of Additional Funding for Pension Related Consulting and Actuarial Analysis. [Peter B. Elwell, Town Manager]

Motion to approve consent agenda as amended made by Council President Pro Tem Coniglio, seconded by Council Member Diamond. On roll call, the motion carried unanimously.

IX. COMMITTEE REPORTS

A. Finance and Taxation Committee Meeting of November 17, 2009.

This item was heard after Item X.B.6.

1. Recommendation to Retain Crowe Horwath as the Town's Internal Auditor. [Robert N. Wildrick, Town Council Member]

Council Member Wildrick presented the report and announced that the Committee met to review applications for the Internal Auditor. After the first ten were reviewed, there was a second meeting of the top five scored applicants. After the presentations, the Committee scored Crowe Horwath.

Motion to adopt the Finance Committee Report of November 17, 2009 made by Council Member Diamond, seconded by Council Member Wildrick. On roll call, the motion passed unanimously with Council President Pro Tem Coniglio absent.

Council Member Kleid asked for more information regarding what the firm would be doing. Council Member Wildrick stated that it was an RFP and that Council Member Kleid was at the meeting in which the qualifications were reviewed and rated.

Council President Rosow indicated that they have not received a plan yet on what is going to be done. He suggested a lower amount to develop a plan and come back later to approve the audit function. Town Manager Elwell suggested that in January, the Town Council could approve the funds for the plan.

Motion to retain Crowe Horwath as the Town's Internal Auditor not to exceed expenditures of \$25,000 made by Council Member Diamond and seconded by Council Member Wildrick. On roll call, the motion carried unanimously, with Council President Pro Tem Coniglio absent.

- B. Ordinances, Rules, and Standards Committee Meeting of December 7, 2009. [William J. Diamond, Town Council Member]

Council Member Diamond presented the Report and highlighted the recommendations from the Report.

Motion to adopt the Ordinance Rules and Standards Committee Report of December 7, 2009 made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the motion passed unanimously with Council President Pro Tem Coniglio absent.

- C. Water Committee Meeting of December 10, 2009. [David A. Rosow, Town Council President]

Council President Rosow presented the Water Committee Report. He noted that the meeting was very productive with Eduard Balbis, Assistant City Manager from the City of West Palm Beach presented the alternatives for future water usage and sources to the Town. He asked that the City

of West Palm Beach come back to the Town with a re-negotiated contract to include two elements that were not previously in the contract which is quality and quantity of water.

Council President Rosow also thanked the Civic Association for their concerted efforts with a water conservation program to reduce water consumption. He also mentioned that the State will require smart water irrigation systems in new construction and convert older systems by the fall of 2010.

Mayor McDonald indicated that the less water he uses, the higher his bill becomes. He also noted that the City of West Palm Beach has established a Water Advisory Board. The Mayor has made two appointments to that Board: Denis Coleman and Terry Levine. The Mayor directed the Water Committee to direct the policies that the Town wishes to achieve.

Motion to adopt the Water Committee Report of December 10, 2009 made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the motion passed unanimously with Council President Pro Tem Coniglio absent.

X. REGULAR AGENDA

A. Old Business

1. Bond Issue for Accelerated Capital Improvement Program and Potential Refinancing of Outstanding Town Debt. [Jane Struder, Director of Finance]

TIME CERTAIN: 10:00 A.M.

This Item was heard after Item XI.A.2.

A. Scope of Bonds. [Michael Hole, Citigroup Global Markets, Inc.]

Michael Hole, Citigroup Global Markets, Inc. provided the Town Council with a summary of what the refinancing and scope of the bonds would be:

- include \$40 million for some of the costs of the town's capital improvement program over the next 20 years. The improvements to be covered by the bond include replacement of the town's sanitary sewer force main system.
- refinance a \$10 million bank loan for Town Hall renovations, and nearly \$6 million from a 2003 bond that financed construction of the Central Fire Station.
- pay for \$15 million in improvements to the Worth Avenue business district and \$2 million for the recently completed restoration of the Par 3 Golf Course.
- The town would be reimbursed for the Par 3 through its recreation enterprise fund, which is mostly funded with Town Marina revenue and the Worth Avenue improvements through assessments to Worth Avenue property owners.
- The terms of the bonds would be 20 years and 30 years at an interest rate expected to be about 2 percent to 3 percent

Town Manager Elwell stated that the portion of the bonds covering the golf course restoration will be for a term of 20 years so it is consistent with the life of that project. The remainder of the bonds will be issued for a 30-year term. He also stated that all of the projects can be expected to last in the range of 30 to 50 years and it was appropriate to spread the costs out over the generations.

Council Member Wildrick stated that because of this plan, the good news was that they would enable the Town to have room in the budget to not raise taxes while funding projects. He commended Town Manager Elwell for a good job. Town Manager Elwell stated that there would be some additional expenses for smaller scale projects as pay go.

Council Member Diamond asked what it would do to tax base and Town Manager Elwell responded that it would not increase millage rate. Council President Rosow commended Town Manager Elwell and Finance Director Struder for their hard work.

Resident Lee Goldstein suggested the two million dollar infrastructure be replaced when the streets are torn up.

B. RESOLUTION NO. 130-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Declaring the Town's Official Intent to See Reimbursement for Expenditures Made or to Be Made with Respect to its Capital Improvement Plan to Include Drainage, Sanitary Sewer and Water System Improvements, Street Lighting, Signage and Other Road Improvements, and Public Capital Improvements Within the Worth Avenue Commercial District From the Proceeds of its Not to Exceed \$82,000,000 Principal Amount of Revenue Bonds and Providing for an Effective Date. [Richard J. Miller, PA, Edwards, Angell, Palmer, and Dodge, LLP]

Town Attorney Randolph read Resolution No. 130-09 by title, as printed above.

Mr. Hole asked the Town Council if they wanted to consider Build America Bonds, and after discussion, they decided against it.

Motion made by Council Member Diamond, seconded by Council Member Wildrick, to approve Resolution No. 130-09. On roll call, the motion carried unanimously.

The Town Council recessed for lunch at 12:00 p.m. and resumed at 1:45p.m.

2. Noise Ordinance Regarding Restaurants and Nightclubs. [John C. Randolph, Town Attorney]

1 Council President Pro Tem Coniglio and Council Member Wildrick both declared conflicts,
2 recused themselves from the discussion, and left the dais. Form 8B's were filed with Town Clerk
3 Cunningham.

4
5 Town Attorney Randolph described the memo that he included in the back-up and distributed the
6 current ordinance. He provided a brief history of the definitions in the ordinance regarding
7 entertainment establishments. He said the noise provision does not pertain to 251 because it does
8 not abut a residential district. He proposed amending one of the sections to expand a provision
9 to include those establishments that abut an abundance of residences.

10
11 Council President Rosow asked about the letter received from Attorney Peter Broberg citing
12 Section 22-272 and Town Attorney Randolph described litigation concerns. He described a
13 public nuisance and that the Town could enforce the noise issue by retracting a license. He
14 stressed that doing so would lead to litigation.

15
16 Council Member Diamond was in favor of the 3:00 a.m. closings. He proposed that the thought
17 he had, that also would be discussed with his ORS report, was that he proposed having a three
18 strikes and you are out rule similar to construction vehicles, and conflicts of interests. If there
19 were three convictions, not just complaints, could there conditions be changed to close at 1:00
20 a.m.

21
22 Town Attorney Randolph responded further to the legalities and constraints that the code
23 enforcement could enforce.

24
25 Council Member Kleid stated that the problems with 251 have led the entire discussions. Very
26 clearly the residents want the bars and restaurants to stay open until 3:00 a.m. From a legal point,
27 he is tired of the scorecard needed to keep tabs. There is a code enforcement board that is
28 operating correctly. He suggested making no changes to the Ordinance

29
30 Council President Rosow stated that Council Member Kleid was right on. He did feel that some
31 of the language was vague and would be difficult to enforce, but wanted to wait until the civil
32 action was settled.

33
34 Alan Golboro, Chairman of the Planning and Zoning Commission, stated that there had been
35 changes made to the regulations in the past. He did not see why the Town was discussing this
36 matter when it really was a landlord/tenant issue.

37
38 Council Member Diamond stated that he had received a letter from former Council Member
39 Susan Markin asking if the 3:00 a.m. closings were a strain on the department and police Chief
40 Kirk Bluion responded that it was not and his officers are doing their jobs. He added that the
41 noise was not a daily occurrence either.

42
43 Marion Gorelick, 173 Main St., east of Nick and Johnnie's, stated that people do not realize that
44 the roof there is a noise permeable retractable roof and when there is a DJ, she hears noise when
45 the wind is from the west. She made a complaint in November to the Police Department.
46 Captain Hess responded. She stated that Nick Coniglio came to her home at 1:00 a.m. in

November and assured her that he would try to keep the noise down. He had provided her with his cell phone number. It has improved somewhat but it does still wake them up occasionally.

Attorney Jeff Rembaum, represented the 250 units in the Palm Beach Hotel and 18 units are above the club. He invited them to all stay in the hotel for one night and see if they change their minds. The club is in a residential hotel. He stated that the noise is decreasing the property values for the 18 people trying to sell their homes without disclosing the noise issue. The decibel levels were brought to the club's attention prior to the civil suit having been filed. The Club knew there were residents nearby when they began operating in the building. Council President Rosow asked him to meet with Town Attorney Randolph to discuss alternative changes to the code to remedy the situation and then the Town Attorney would bring a proposed Ordinance change to the Town Council at a later date.

There was no further discussion.

B. New Business

1. Worth Avenue Business Improvement District.[Thomas G. Bradford, Deputy Town Manager]

This item was heard immediately following the lunch recess.

Council President Rosow announced that Council president Pro Tem Coniglio would be leaving the meeting shortly.

Deputy Town Manager Thomas Bradford provided an update that most of the property owners and business owners on Worth Avenue understood logically the benefit of a business improvement district. However, in the past few days, they have expressed concerns over the logistics of how it will be implemented. It would not be put together on the timeframe that he previously presented in the back-up.

Deputy Town Manager Bradford suggested postponing the project for a year. There still is the ability to assess for the maintenance. More time was needed to determine how to do a bid on the project.

Ron Kolins spoke and asked for a different request than what Deputy Town Manager Bradford proposed. Mr. Collins indicated that the Town Council passed a bond issue which included the Worth Avenue Improvements and he personally represents the Goodman Companies, he was stating what most of the business owners agree with. The owners went along with the plan as it was conveyed to them by Mr. Bradford that substantial financial ramifications and time issues associated with the project were concerns.

Mr. Kolins continued with other issues that were related to the renovation and restoration of Worth Avenue: financial and maintenance. Mr. Kolins also asked for more time on those issues before the Town Council created the business development district. He said he was surprised to

1 just hear for the request for a year's delay. Mr. Kolins asked to delay any decisions until the
2 March meeting to attempt to resolve the outstanding issues.

3
4 Council President Rosow stated that when he asked prior to the vote on the Bond this morning he
5 was informed by Deputy Town Manager Bradford that they were all set. Mr. Kolins responded
6 that there are still issues regarding the maintenance.

7
8 Council Member Wildrick stated that he recalled during previous discussions that his
9 recollection was that the Town would pay for what they always have, and anything additional
10 would be paid for by the improvement district. Mr. Kolins said he did not who made that
11 statement, but that was not his understanding. Deputy Town Manager Bradford was asked to
12 clarify and he stated that the Town Council made it clear that the enhancements were to be paid
13 for by the people that benefited from them.

14
15 Town Manager Elwell said they would research the minutes, but the understanding was based
16 upon the way the costs would be split as Deputy Town Manager Bradford described. Council
17 Member Wildrick was upset that there is a change in the rules of the game, and it should not cost
18 the Town a nickel more. The burden cannot be shifted at this point.

19
20 Mayor McDonald stated that the Town has a maintenance expense on the Avenue and has had
21 for some time and he was informed that would remain the same.

22
23 Bob Moore, 420 Santa Fe Road, represented the Goodman Company as well as Jane Holzer,
24 Worth Avenue Restoration Association, and they have been working with Town Manager Elwell
25 for a long time. There were several owners there this morning but had to leave such as a John
26 Moss, Stephen Richter, Murray Goodman, as well as others. He cited the living wall on Mr.
27 Goodman's property which would be paid for by the improvement district. The cost was
28 \$250,000 but he asked who would be responsible if the wall dies, or there is a problem with it.
29 Mr. Goodman does not want that as his personal responsibility. He voiced some of the owners
30 other concerns.

31
32 Council Member Wildrick said it was very clear that the Town would not incur any further costs
33 and the rest was the responsibility of the Worth Avenue Association. The details should have
34 been figured out at the front end.

35
36 Town Manager Elwell responded directly to Mr. Moore's concerns by saying that the Town
37 never intended to pay a penny towards maintenance. The town also did not expect Mr. Goodman
38 to bear the full costs either. The collective beneficiaries of the projects would all pay through the
39 assessments. If the property owners divide up the costs in a different manner, he did not feel the
40 Town would object as long as it was fair to the property owners.

41
42 Council President Rosow summarized the discussion by saying that the deal the Town Council
43 made was that the Town was not going to incur any additional expense for the project or the
44 maintenance of the project. The way it was proposed that those costs be allocated was through
45 and assessment methodology. The Town will continue to pay for their share but not one dime

1 more. As Town Manager Elwell explained, the living wall would be a common element and
2 shared by all of the property owners within the district.

3
4 More discussion ensued and it was decided that the item would be deferred until the January
5 Town Council Meeting and the details need to be worked out by that date. Mr. Collins indicated
6 he would work with staff and was agreeable to coming back next month. Mr. Moore said the
7 timing issues were significant and originally were supposed to be a May 2010 start and November
8 2010 finished now it is being discussed that it will be two summers and the owners do not want
9 that. Council President Rosow instructed all parties to settle this prior to the January meeting.

10
11
12 2. El Pueblo Way Beach Access Improvements.[H. Paul Brazil, Director of Public Works]

13 Council President Rosow indicated that everyone had read the memorandum from Public Works
14 Director Paul Brazil and read the letter of objection. Public Works Director Brazil responded that
15 there is not a formal HOA but there are a group of homeowner's that do want to fund the project.

16
17 Council President Pro Tem Coniglio asked if this was a blanket commitment or if the
18 improvements could be done in phases and she was informed that staff was seeking approval of
19 this as a public/private partnership. It is a public beach access and the homeowners were bearing
20 the bulk of the expense with continued maintenance and the Town would pay up to \$1500.00.

21
22 Town Manager Elwell differentiated this project from several others recently, since the residents
23 want to do this or whether only one or two residents pay. Council Member Wildrick commended
24 the citizens for improving the Town and said this was a win/win. Council Member Kleid was
25 concerned about the maintenance.

26
27 **Motion to approve El Pueblo Way Beach Access Improvements made by Council member**
28 **Diamond and seconded by Council Member Wildrick. On roll call, the motion carried**
29 **unanimously.**
30

31
32 3. Town of Palm Beach Centennial Celebration Planning Update.[Jay Boodheshwar, Director
33 of Recreation]

34 Council President Rosow indicated that everyone had read the memorandum and asked
35 Recreation Director Boodheshwar to present the requests of the Centennial Committee. The
36 Committee is looking for:

- 37 • Approval to restructure the Committee
- 38 • Accept the offer from the Civic Association to use their 501c3 status and create a
39 centennial fund to accept donations
- 40 • Continue to provide staff support

41 **Motion to approve the recommendations of the Centennial Committee was made by**
42 **Council President Pro Tem Coniglio, seconded by Council Member Diamond.**
43

Council Member Diamond asked for further clarification on the restructuring of the Committee. Council Member Kleid added, that as a Member of the Committee, that Director Boodheshwar has done a magnificent job in bringing the Committee through its gestation period and he should be commended for it. Council Member Kleid is very excited about what will be done, they are very hardworking and inventive, and it's a high caliber group.

On roll call, the motion carried unanimously.

4. Catering for Non-Golf Events at the Par 3 Golf Course.[Jay Boodheshwar, Director of Recreation]

Council President Pro Tem Coniglio spoke to Raymond Floyd and was concerned about the golf course after spending four million dollars on it and Mr. Floyd was behind the recommendation of the Recreation Committee.

Motion made by Council President Pro Tem Coniglio to approve the catering for non-golf events at the Par 3 Golf Course, seconded by Council Member Diamond.

Council Member Wildrick asked if there would ever be an opportunity for the course to be closed for an even and if there were events that were strictly closed to either men or women. His concern was to be open to everyone and not be discriminatory and constantly available to the public.

Council Member Kleid asked for signed approval from the neighboring Condominium Boards. **Council President Pro Tem Coniglio added that to her motion.**

Council President Rosow added that the only way to have the golf course be successful is to have outings.

On roll call, the motion carried unanimously.

5. Shore Protection Board Appointments. [Peter B. Elwell, Town Manager]

Council President Rosow announced the following appointments to the Shore Protection Board for a three year term as a regular member:

- Kane Baker
- J. Patterson Cooper

Motion to ratify the appointments was made by Council President Pro Tem Coniglio, seconded by Council member Diamond. On roll call, the motion carried unanimously.

6. RESOLUTION NO. 119-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Creating a Charter Review Commission. [John C. Randolph, Town Attorney]

This item was pulled from the consent agenda at the request of Council Member Diamond.

Council Member Diamond stated that he wished the Town Council to reconsider the need for the expense with a Charter Review Commission. He noted that they all received a letter from former Mayor Deede Marix, who had served on the last Commission. He did not feel it necessary to spend the hundreds of hours of time on attorneys and the numerous meetings held, witnesses, and a two year process that was very divisive.

Council President Pro Tem Coniglio announced that she was in total disagreement. She stated that in the Strategic Plan it directs the Town Council to appoint a Commission to revisit the Charter by the end of 2010. She did not feel the review should be conducted by the Town Council. She has made copied of Mayor Marix's suggestions since many of them have great merit and certainly could be something to follow.

Council Member Wildrick indicated that the Strategic Plan did not state "must". Town Manager Elwell clarified that the Strategic Plan said the Council "must consider" reviewing the Charter. Council Member Wildrick stated that there has been so much disharmony in the community that this would create more disharmony. If there was some tremendous need and something that was so bad that needed to be changed, then it should be discussed. He would like to make peace in the Town. He feels now was not the right time.

Mayor McDonald asked Council Member Wildrick if having a Charter Review Commission was a divisive issue and he responded that he felt it was. Mayor McDonald stated that having been through the process a few times, he did not recall it being that divisive.

Council Member Wildrick stated that everyone knew what the Commission would be looking at: strong mayor vs. weak, term limits, changing the composition of the Council and people will argue and it would not be a pleasant experience.

Mayor McDonald stated that debate was good. Council Member Wildrick stated that if there is nothing wrong with the current way things are run, then do not change it.

Motion by Council Member Diamond that the need for a Charter Review Commission in 2010 be dispensed, seconded by Council Member Wildrick.

Steve Brown?? (Per Rosow, but no name given), Stated that this morning was a good example of what can happen when the Town Council starts moving ahead on something without sufficient input from the residents. Once that was received, it changed things entirely. He felt that the whole purpose of the Charter Review Commission was to make sure that the citizens have a chance to look at all of the key things that are in the Town Constitution. It does not have to be in the tenth year as suggested in the Strategic Plan, but could be deferred. The process is good, and it is good to have a group of citizens to meet like the Shore Board and Planning and Zoning Commission does, and then come to the Town Council with recommendations. He answered questions about being divisive and the issues that would be discussed.

On roll call, the motion passed 3-2.

Council President Rosow	yes
Council President Pro Tem Coniglio	no
Council Member Diamond	yes
Council Member Kleid	no
Council Member Wildrick	yes

XI. ORDINANCES

A. Second Reading

This item was heard after Item VIII.F.3.

1. ORDINANCE NO. 18-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Relating to the Provision of Erosion Control Services, Facilities, Programs, and Local Improvements in the Town of Palm Beach, Florida; Amending Sections 90-31, 90-101, 90-102, 90-104, 90-106, and 90-156 of the Town Code of Ordinances to Remove Erosion Control Services as a Function of the Palm Beach Municipal Services Special District and All Reference Thereto; Creating a New Town of Palm Beach Erosion Control District and Providing for the Authority and Functions of Said Special District, Including the Authority to Levy Special Assessments; Providing for Severability; and Providing an Effective Date.[Peter B. Elwell, Town Manager]

Council President Rosow announced that the item was moved out of sequence to allow the majority of the audience to hear the item and make their comments without having to sit through the rest of the agenda.

Council President Rosow added that after he made the motion for this Ordinance approximately four weeks ago, he had heard from hundreds of residents and 99% of them were opposed to an assessment approach. He also has seen the various petitions that are circulating around Town. He announced that he would be changing his vote today on second reading and no longer would support an assessment methodology for an erosion control district.

Council Member Kleid applauded Council President Rosow in changing his position, because he also felt assessments should be removed. He provided a history of the Ordinance and read from the October 13, 2009 Town Council Minutes and the back-up that staff provided that in the first year of the levy, the millage rate would not be subject to the state mandated cap. He has since learned from Finance Director Struder, that would not be the case and would be added to the regular Town millage. It will take a long time to do shore protection work and advised not rushing into the creation of the Erosion Control District.

Council Member Kleid made a motion to cease any further consideration of Ordinance No. 18-09. Seconded by Council president Pro Tem Coniglio.

Further discussion ensued.

Council Member Wildrick stated that Council President Pro Tem Coniglio has often pointed out that government is a process. He gave the example of the Royal Poinciana Way Redevelopment Project. The Erosion Control District is also a process. He commended Council President Rosow and Mr. Lee Goldstein of the Citizens Association for their efforts and hard work. The Town Council is elected to do the will of the people, and not to dictate to the people. He announced that he also would be changing his vote because we are all one Town and he agreed with Council Member Kleid.

Council Member Diamond stated that he wanted to address how the Town got their and to address the true problem and that was how the Town would pay for the beaches. In times of economic stringency, with pensions and shore protection, the Shore Protection Board came up with a ten year plan, that could cost the Town up to \$100 million dollars. That was a shock to the body politic because there was no money to fund the projects. He announced that he also was going to change his previous vote and go along with the majority on ceasing further discussion of the district.

Town Attorney Randolph read Ordinance No. 18-09 by title, as printed above.

On roll call, the motion to cease any further consideration of Ordinance No.18-09, carried unanimously.

Council President Rosow announced there would be public comment. The following people spoke in support of the Town Council's vote to cease further consideration of Ordinance no. 18-09.

- Steve Brown, 184 Bradley Place
- Lee Goldstein, 3120 S. Ocean Blvd and Co-Chairman of the Citizens Association. He asked everyone to come to the Flagler Museum on December 21, 2009 at 10 am and hear State Senator Jeff Atwater.
- William Cooley, 8 Windsor Court
- Dan McDonnell, 2784 S. Ocean Blvd. Co-Chairman Citizens Association submitted a petition with over 1400 signatures to the Town Council regarding opposition of the erosion control district. Council Member Wildrick commended him for his efforts.
- Peter Pettie, 3400 S. Ocean Blvd. provided a history of the shoreline issues.
- Larry Goldberg, 3360 S. Ocean Blvd., thanked the Town Council and noted that the Town has spent \$70-80 million on shore protection in the past ten years and it has been well spent. He suggested a government liaison officer to help obtain permits as recommended by the Shore Protection Board.
- Jack Cohen 2450 S. Ocean Blvd. (Patrician) was elated by the Town Council decision.
- Sue Shapiro 2660 S. Ocean Blvd, thanked the Town Council for the vote today and suggested a shore protection fund obtained from donations.
- Carla Herwitz, 2275 S. Ocean Blvd., continued reading Mr. Pettie's comments.

- Harold Abrams, 3456 S. Ocean Blvd, thanked the Town Council for their vote and also thanked Council President Pro Tem Coniglio, Council Member Kleid and the Mayor for their votes on the first reading.

B. First Reading

1. ORDINANCE NO. 21-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 10, Animals, Article I, in General, Section 10-1, Definitions, Regarding Domesticated Household Pets or Domesticated Animals and Livestock; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date[John C. Randolph, Town Attorney]

This item was heard after item IX.C.

Town Attorney Randolph read Ordinance No. 21-09 by title, as printed above.

Motion to approve Ordinance No. 21-09 made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the motion carried unanimously with Council President Pro Tem Coniglio absent.

2. ORDINANCE NO. 23-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 42, Environment, Article V, Noise, Section 42-196, Providing a Definition for a Considerable Number of Persons; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.[John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance No. 23-09 by title, as printed above.

Motion to approve Ordinance No. 23-09 made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the motion carried unanimously with Council President Pro Tem Coniglio absent.

XII. ANY OTHER MATTERS

Council President Rosow added the item on dredging. The dredging by the USACOE will occur in January. He announced that the Mayor had sent some well-done letters but it appeared that the Town could do more. It seems to be the policy of the USACOE and the State of Florida, to save beach quality sand, and put it on dry beaches. He asked if the Town could ask them to put the sand on the Town beaches.

Town Manager Elwell informed the Town Council that the barges they are seeing moving around now are actually transporting pipe down to Boca Raton and are staged at the Port of Palm Beach.

Council Member Wildrick asked how far out the sand is placed and Town Manager Elwell responded that it is placed in 17 feet of water. Council Member Wildrick suggested contacting the CEO of the Great Lakes Dredging Company to pay them the difference to place the sand on the Town Beaches.

Mayor McDonald that there are some issues with that idea, first of all, there is a contract between the USACOE and the company. And secondly, the Town is litigating with the USACOE.

Council Member Diamond suggested having a separate contract with the Great Lakes dredging Company. Town Attorney Randolph indicated that may be contract interference.

After further discussion, the Town Manager will obtain the contact information for Great Lakes dredging company and the Town's Attorney, Jerry Stouck can review the situation and ask the USACOE for the sand and the Town is willing to pay for it.

XIII. ADJOURNMENT

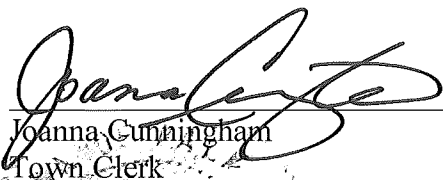
There being no further business, the Thursday, December 17, 2009, Regular Town Council Meeting was adjourned at 3:28 p.m.

APPROVED:



David A. Rosow
Town Council President

ATTEST:



Joanna Cunningham
Town Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Wildrick Robert</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Palm Beach Town Council</i>	
MAILING ADDRESS <i>220 Nightingale Trail</i>		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY <i>Palm Beach</i>	COUNTY <i>Palm Beach</i>	☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY NAME OF POLITICAL SUBDIVISION: <i>Town Council</i>	
DATE ON WHICH VOTE OCCURRED <i>12/17/09</i>		MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE	

RECEIVED

WHO MUST FILE FORM 8B

DEC 18 2009

TOWN CLERK

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Robert N. Wildrick, hereby disclose that on December 17, 20 09:

(a) A measure came or will come before my agency which (check one)

- ☒ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by
whom I am retained; or
- ☐ inured to the special gain or loss of _____, which
is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Noise Ordinance Discussion & 3 A.M. Closings

*Previously
Declared
Conflict*

12/17/09

Date Filed

[Signature]

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Coniglio Garl</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Palm Beach Town Council</i>	
MAILING ADDRESS <i>360 S. County Rd.</i>		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY <i>Palm Beach</i>	COUNTY <i>Palm Beach</i>	☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY	
DATE ON WHICH VOTE OCCURRED <i>12/17/09</i>		NAME OF POLITICAL SUBDIVISION: <i>Town Council</i>	
		MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE	

WHO MUST FILE FORM 8B

RECEIVED

DEC 18 2009

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

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For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; and

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

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- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Gail Coniglio, hereby disclose that on December 17, 2009:

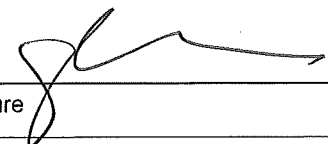
(a) A measure came or will come before my agency which (check one)

- ☒ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☒ inured to the special gain or loss of my relative, owns restaurants being affected;
- ☐ inured to the special gain or loss of _____, by
whom I am retained; or
- ☐ inured to the special gain or loss of _____, which
is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

*Noise Ordinance Discussion at 8:30 AM Closely
Previously Declared Conflict*

12/17/09
Date Filed


Signature

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