

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON TUESDAY, OCTOBER 13, 2009

I. CALL TO ORDER AND ROLL CALL

1 The Regular Town Council Meeting was called to order on Tuesday, October 13, 2009, at 9:30
2 a.m., in the City of West Palm Beach Commission Chambers. On roll call, all of the elected
3 officials were found to be present.
4
5

II. INVOCATION AND PLEDGE OF ALLEGIANCE

6
7 Town Clerk Cunningham gave the invocation. President Rosow led the Pledge of Allegiance.
8
9

III. PRESENTATIONS

10
11 There were none.
12

13 *Council President Rosow announced that the West Palm Beach Audio system was not working*
14 *and apologized for the poor reception via the live internet.*
15
16

IV. COMMENTS OF MAYOR JACK McDONALD

17
18 Mayor McDonald acknowledged Deputy Town Manager Tom Bradford and commended him for
19 his hard work on the Worth Avenue Taxing District project. He has received numerous
20 favorable comments regarding the project.
21
22

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

23
24 Council Member Diamond stated that the proposed Royal Poinciana Way Zoning Overlay
25 Project which the Town Council would soon consider appeared to have given rise to much
26 controversy even though the proposal has been before the public in one form or another for the
27 past three years. Therefore, he asked the Town Manager to pull together all the costs to the Town
28 associated with the endeavor, including all payments to consultants, such as Treasure Coast and
29 Cambior Associates, as well as accounting for the enormous amount of staff time spent on the

1 issue. The Town Manger informed Council Member Diamond that he could provide the actual
2 dollars out-laid rather quickly, but estimated costs of the staff time would take more time and be
3 only approximate in nature. Because of the importance of the proposed zoning overlay, and for
4 the future of Palm Beach, he believed the public was entitled to know how much the Town has
5 spent so far on it, so that they can judge whether or not the zoning initiative is worth its costs.

6
7 Council President Pro Tem Coniglio announced that she had a brief coastal update. In the last
8 month, she attended both the Florida Shore Beach Preservation Association Conference in
9 Amelia Island and Council Member Kleid and she attended the USACOE seminar in Fort
10 Lauderdale two weeks ago. She has increasing concerns of ongoing deficits and environmental
11 regulation hurdles. The Beach Management Working Group that she reported as a part of the
12 Palm Beach County-wide Coastal Council has been working with DEP and presented legislative
13 initiatives that are coming forth. The ones that she was concerned about were changes in project
14 ranking criteria, changes in post construction monitoring, parking access and restroom criteria
15 requirements. All three of those would affect the monetary bottom line to the Town Council
16 decisions as a community in coastal protection. Those initiatives she again brought up at the
17 recent Countywide Coastal Council meeting held the past Friday. At which point, she was
18 hopeful that they can gather a unified voice in favor or in opposition of several of the initiatives.
19 Having spent the day at the USACOE's seminar, the outcome of that were mostly civil updates.
20 However, Mr. David Hobbie, the SE Florida representative assured both President Pro Tem
21 Coniglio and Council Member Kleid that they would be able to have a face to face meeting with
22 Jason Spinning, the project manager for the dredging events at the Port. She reported that was yet
23 to be completed, but she would not let that drop because as of January, the second dredging
24 event should include the Town's input and dry beach placement. Council President Pro Tem
25 Coniglio continued that there has been ongoing dialogue with Reef Rescue. She acknowledged
26 that the Town will send out divers, including Coastal Coordinator Rob Weber, NIMPS and
27 Cheryl Miller, to discern any additional data that could be collected to evaluate the Staghorn and
28 Alcorn Coral.

29
30 Council Member Kleid stated that he had no objection to Council Member Diamond's comments
31 but reminded everyone that the consultants were approved by the Town Council. He noted that
32 the Town Council recognizes that when they approved such proposals, it will cost the Town
33 money. The Town Council should not be deciding whether or not to go ahead on a particular
34 project, if it has been approved by the Advisory Committee and by the Town Council. They are
35 the ones who determine which organizations to hire and the costs of it. Unless there should be a
36 screeching halt to government, this is something that has to be done.

37
38 Council President Rosow stated that there was an article (table) that morning in the *Palm Beach*
39 *Post*, page 6B, that showed all the tax rates in the County. Recently, some of the Town Council
40 members received an email concerning Jupiter and their efforts to cut their budget. The Town of
41 Jupiter increased taxes 4.5%. The Town of Palm Beach was one of five entities that did not
42 increase taxes this year. He commended the staff for their great efforts for making that happen,
43 as well as Council Member Wildrick, Chairman of the Finance and Taxation Committee, and the
44 rest of the Town Council. Council President Rosow also mentioned that the Town Council
45 Members received an email noting that the Town Manager nor any employees took a salary
46 increase.

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

Patrick Flynn, Palm Beach Theater Guild, stated that the following day there would be a court hearing on the Playhouse referendum before Judge Crowe. There would be a party afterward at Trevini's and invited everyone to attend. He also informed the Town Council that he has asked the leaseholder to lease the Poinciana Playhouse Theater in compliance with the 1979 Agreement. Mr. Flynn stated that the Munder Group wants to destroy the historic theater. He cited many organizations that would use the theater. He also announced financial plans. Mr. Flynn also announced they will be publishing a book about the theater.

Peter Pettie, 3400 S. Ocean Blvd., spoke regarding the coastal projects. Since the audio was poor and difficult to hear, President Rosow asked him to submit his written comments to the Town Clerk. His comments are below:

Over the past 10 years the only coastal projects conducted in the south end of Town has been Reach 7 and it has been a disaster. As environmental opposition has grown, conditions on the ground have gotten more difficult to conduct cost-effective and long-term protective coastal projects. We must now acknowledge that Judge Meale's decision to deny the Reach 8 permit in March was a defining moment in our battle to rebuild our beaches. The taxpayers of this town have paid a high price for (2) coastal projects and the parade of consultants, while a majority of the residents living in the south-end of Town (Reaches 7&8) no longer have a beach or dune system.

It is time to focus our limited financial resources on defending the dune system along Reach 7 & 8. And stop wasting time and money on project permits and feasibility studies that are too limited in scope to be effective and whose costs continue to escalate. The immediate emergency is rebuilding the dune system with quality off-shore sand.

The Loss of tax dollars and project sand in just 2-years is overwhelming

Mid-Town Beach

Mid-Town Beach received 1.3 million CY of off shore sand in 2003 and 70% or 900,000CY was replaced in 2006 following the 2004/2005 hurricanes.

Reach 7

The Reach 7 project placed 1.1 million CY of off-shore sand in 2006. The average project life expectancy was 7 yrs (+/-) and cost \$7.0 million.

Coastal Planning and Engineering (CPE) the engineer of record stated in 2008 (2-years after completion) that 40% or 440,000CY of the original 1.1 million CY had been lost due to sub-tropical storms in 2007/2008.

When do we rebuild Mid-Town Beach and Reach 7 and how do we pay for it?

Because Mid-Town Beach and Reach 7 were engineered and completed projects under Joint Coastal Permits, the Town announced that both projects would receive emergency funding from FEMA due to the damage from Faye in 2008. That beach and dune repair work is scheduled to begin in November 2009, with Mid-Town receiving 46,000CY and Reach 7 51,000CY. FEMA is not coming to our rescue. They are not funding the replacement of 440,000CY of sand for Reach 7. They are only funding the replacement of 51,000CY. Put in perspective. The Town rebuilt the Sloan's Curve dune system with 49,000CY of sand under the Reach 7 permit in 2006. Today there is little to no dune left along Sloan's Curve, and if repaired would require all 51,000CY of FEMA sand. After the loss of 440,000CY of sand by 2008, there are now over 600 private residences with no storm surge protective beach or dune system along the north-end of Reach 7. Today Reach 7 home owners need 440,000CY not 51,000CY. When the Town has to replace the balance of 389,000CY with inland sand on Reach 7 the cost will be **\$16.0 million** versus the initial 2006 cost of \$7.0 million for the placement of 1.1 million CY of off-shore sand.

The denied Reach 8 permit already cost \$3.5 million.

The Final 2008 Reach 8 Joint Coastal Permit called for the placement of only **724,000CY** for a partial beach and dune system. That was **34%** less sand than the adjacent Reach 7 and the estimated cost was double that of Reach 7 at **\$14 million** net of the Florida \$3.2 million project grant. During a coastal projects overview presentation before this Council in 2008, I asked Coastal Planning and Engineering, if the proposed placement of 724,000CY on Reach 8 would be considered the minimum volume threshold to achieve project stability and life expectancy", he responded that it was the minimum and that the project design would be further challenged due to Lake Worth Beach and pier. The 2008 Reach 8 Permit application was denied in March 2009 by Judge Meale based in large part on the quality of the off-shore sand to be placed on Reach 8. The cost to-date for the denied Reach 8 permit is \$3.5 million

Why propose Inland sand when quality Off-shore Sand is the only viable solution

In a 2009 written rebuttal to Judge Meale's decision regarding the quality of off-shore sand, co-written by the Towns engineer of record for Reach 7 and 8, Coastal Planning and Engineering and Dr. Dean the Town's lead scientist for the use of off-shore sand for Town of Palm Beach projects, their analysis reinforces the argument for the continued use of off-shore sand that was used on Mid-Town Beach and Reach 7 and all future Town projects. Mr. Brazil in the last few months stated that if the off-shore sand placed on Mid-Town Beach and Reach 7 was not the appropriate quality in 2003 and 2006, then the Florida Department of Environmental Protection would never have approved the permits. And the SPB has just recently allocated \$1.0 million for next year's budget to search for better quality off-shore sand.

Town staff offers inland sand for an ever smaller Reach 8 project

When the Reach 8 dune system was placed under a State of Emergency in 2006, the State of Florida paid \$3.0 million to rebuild the dune system. This most recent staff proposal is a Glorified Dune System for \$17.0 million. By setting the precedent of building only what the environmental groups support and using inland sand, we will have lost the ability to build what we believe we need, will work, will last and can afford. In the September 22, 2009 Town memo, staff proposed to the SPB and before this Council today, a new funding request in the amount of \$150,000 for a permit application for Reach 8 in order to retain the \$3.2 million Florida grant monies and retain ANOTHER project consultant Coastal Systems International. The proposal replaces the offshore sand source with inland sand costing four times as much. In order to hold the project cost at \$14.0 million, Mr. Brazil replaces 723,000Cy of off-shore sand with **293,000CY** of inland sand. This \$14.0 million proposal was not based on an engineering analysis using inland sand, but rather a formula gimmick to maintain the original \$14.0 million project price tag. To truck 293,000CY from the Lake Okeechobee inland sand site, it is estimated to take more than 15,000 truck loads and multiple years. If we know that 1.3 million CY failed on Mid-Town beach and 1.1 million failed on Reach 7 and that **724,000CY** would be the bare minimum sand volume for a partial Reach 8 project, then using the minimum volume calculation, what would be the cost for the inland sand for Reach 8? The answer is \$29,000,000. It is obvious that the Town could never afford to successfully renourish or repair any Reach using inland sand. So why bring the subject up for discussion? If the Town acquiesces to the Environmental Group proposal and the Town places inland sand for the "glorified sand dune" on Reach 8, we will have set a precedent that Inland sand will have to be used for future project approval. We need a professional Peer Group Review Board composed of qualified independent coastal engineering firms that review and sign off on all future permit proposals to the Council. This Peer Group would be the Councils official qualified "second opinion".

The Money Pit

For the 10's of millions of tax dollars spent over the past 10 years on coastal projects in the Town of Palm Beach and reviewing the individual project performances, the only clear winners have been the coastal engineers, consultants and contractors hired by Mr. Elwell and Mr. Brazil. We need an immediate change strategy and we need a change in leadership. And the thousands of taxpayers and voters on Reach 7 & 8 need a dune system now. Thank You.

* * * * *

Dick Spielberg, President of the Palm Beach Hotel Condominium Association, spoke regarding Club 251. He said that although it is designated a restaurant and lounge, he said it is nothing more than a disco and nightclub. 251 has caused many restless nights for many residents, and renters, and visitors. He said they operate on the onus of being a restaurant but they are open until 3 a.m. He asked the Town Council to take action. He noted that they too, are a commercial entity. They follow the rules. Because of the noise, and it occurs at night, it causes undue stress and problems. He noted that the Club owners claim to be spending thousands of dollars on soundproofing. The noise affects 15-18 apartments that cannot be lived in, rented out or sold.

Council President Pro Tem Coniglio asked if it was a restaurant operation and it is. Mr.

1 Spielberg noted that the club was cited the previous week for noise violations and other times as
2 well. There is an evidentiary hearing at Code Enforcement later on in the week. He said they stop
3 serving food at 10:30 p.m. and after that, they are strictly a nightclub.

4
5 Police Chief Kirk Blouin informed the Town Council about previous violations. Numerous noise
6 citations were an ongoing issue. Chief Blouin noted that some of the concerns of the Palm Beach
7 hotel concerns are civil matters. He also noted criminal arrests and parking violations (using the
8 Wachovia parking lot) that have occurred at 251.

9
10 Council President Pro Tem Coniglio asked about code enforcement and would the Club only be
11 fined. She asked about the procedure. Chief Blouin responded that once they pay the fine the
12 case is closed. Town Attorney Randolph announced that there was a civil suit pending between
13 the Palm Beach Hotel and 251. The Town can only enforce the Ordinances.

14
15 Council Member Wildrick asked Chief Blouin how many violations an entity may receive. Chief
16 Blouin stated that it is unlimited. There could be action on liquor license. **Chief Blouin was**
17 **directed to compile a list of the complaints and violations against Club 251 since they**
18 **opened as well as any other restaurants/establishments and the action taken in that same**
19 **time period and bring that back to the Town Council next month.**

20
21 Mayor McDonald directed Mr. Spielberg to inform the residents that he did the best efforts he
22 could do at this point. The Mayor was aware of litigation and the situation. Town Manager
23 Elwell confirmed based on the fullness of content and there will be an item for discussion at next
24 month's Town Council meeting.

25
26 Police Chief Blouin added that there are many complaints against 251. The situation was
27 predictable because it was a commercial established adjoined to a residential entity. The prior
28 establishment had the same issues with soundproofing, parking etc.

29
30 Council President Rosow asked Town Attorney Randolph to address the 3 a.m. closing issue in
31 the current ordinance, and if the ordinance needed to be amended.

32
33 Council Member Kleid commented on Mr. Peter Pettie's comments. He read an informational
34 letter for the public regarding the dune restoration from Public Works Director Brazil. He read
35 that the Town permit applications for FEMA dune work in Reaches 3, 4 (Midtown), Reach 7
36 (Phipps) and Reach 8 have been submitted to the FDEP and Corps of Engineers. The Town
37 received the first Request for Additional Information (RAI #1) from the FDEP late Friday. The
38 Town has met with the consultant and has begun preparing the response. Sand placement in
39 Reaches 3, 4, and 7 is possible this winter because the Town was asking for a modification of
40 existing permits. We continue to pursue the projects in these reaches. Additional RAI's or
41 outside objections could delay the project.

42
43 Council Member Kleid continued that this was similar to permitting a full Reach nourishment
44 project and the Town asked for a joint coastal permit application from FDEP for the work in
45 Reach 8. This was similar to permitting a full beach nourishment project and was necessary

because there were no existing permits for work in that area. This different permitting process would not allow the Town to place sand in Reach 8 this winter.

The Town Manager replied to that by stating that despite the setback, the Town is going full steam ahead for the three other reaches. Council Member Kleid stated that he had wanted to bring everyone up to date and tell the public that the town is proceeding. The Town is frustrated by environmentalists and is also precluded by the permitting process that is required by the various regulatory bodies.

Peter Pettie responded to Council member Kleid's comments and stated that the permits are harder and harder to get. While trucks were rolling down the road in Reaches 3, 4 and 7 in December 2005, Public Works Director Brazil and the Mayor held a Town Hall Meeting telling the Reach 8 residents why they could not get an emergency permit. That meeting ended. Within a month, the residents of Reach 8 applied and got from the State of Florida emergency permit and the State of Florida gave this Town almost three million dollars to build the dune system. That three million dollar dune system lasted four hurricane seasons, and through today. For two years, there were back to back tropical storms. There are always reasons why you cannot do something, but he is talking about the next hurricane season.

Council Member Kleid asked Public Works Director Brazil and Town Manager Elwell to clarify if the Town could get an emergency permit. Council President Rosow asked if they could delay the conversation until the Reach 8 item which was already on the agenda. Council Member Kleid was agreeable to that.

VII. APPROVAL OF AGENDA

The following modifications were made to the Agenda:

TIME CERTAIN 10:00 A.M. Item XI.A. PUBLIC HEARING Request by Prestige Transportation of Palm Beach for Issuance of License Permits. [Jane Struder, Director of Finance]

TIME CERTAIN 11:00 A.M. Item XII.B.2 Presentation of Report on Underground Utilities Conversion Assessment Methodology for Voluntary Neighborhood Projects. [Thomas G. Bradford, Deputy Town Manager]

TIME CERTAIN 2:00 P.M. Item X.A. Public Works Committee Meeting of October 5, 2009. [Gail Coniglio, Town Council President Pro Tem]

MOVED Item VIII.H.10 RESOLUTION NO. 112-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Aaron's Catering of the Palm Beaches for the Provision of Catering Services, RFP No. 2009-23; Authorizing the Town Manager to Take Further Action Necessary to Effectuate the Contract. [Jay Boodheshwar, Director of Recreation] to Item IX.B.

1 **MOVED** Item VII.I.1 Authorization to Implement an Automated Telephone Attendant. [Jane
2 Struder, Director of Finance] to Item XII.B.6.

3
4 **ADDED** Item XII.B.7. Discussion of November 18, 2009 Special Town Council Meeting.

5
6
7 **Motion made by Council President Pro Tem Coniglio, seconded by Council Member**
8 **Diamond, to approve the Agenda as Amended. On roll call, the motion carried**
9 **unanimously.**

10
11
12 VIII. CONSENT AGENDA

13 A. MINUTES: SEPTEMBER 9, 2009 APPROVAL OF THE MINUTES OF THE TOWN
COUNCIL MEETING

14 B. MINUTES: SEPTEMBER 10, 2009 APPROVAL OF THE MINUTES OF THE TOWN
COUNCIL MEETING

15 C. MINUTES: SEPTEMBER 10, 2009 APPROVAL OF THE MINUTES OF THE SPECIAL
TOWN COUNCIL MEETING CLOSED-DOOR SESSION-TOWN OF PALM BEACH
VS THE UNITED STATES OF AMERICA

16 D. MINUTES: SEPTEMBER 10, 2009 APPROVAL OF THE MINUTES OF THE SPECIAL
TOWN COUNCIL MEETING-FIRST BUDGET HEARING

17 E. MINUTES: SEPTEMBER 23, 2009 APPROVAL OF THE MINUTES OF THE SPECIAL
TOWN COUNCIL MEETING

18 F. MINUTES: SEPTEMBER 23, 2009 APPROVAL OF THE MINUTES OF THE SPECIAL
TOWN COUNCIL MEETING-FINAL BUDGET HEARING

19 G. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL
COMMISSION AT ITS MEETING ON SEPTEMBER 23, 2009

20 H. RESOLUTIONS

1. RESOLUTION NO. 91-09 A Resolution of the Town Council of the Town of Palm Beach,
Palm Beach County, Florida, Approving the Purchase of Annual Software Support and
Maintenance for the Town's Cartegraph Public Works System, Coleman Technologies
Cisco System and Tyler Technologies Eden System and Authorizing the Town Manager to
Execute the Purchases on Behalf of the Town. [Thomas G. Bradford, Deputy Town
Manager]

- 1
2. RESOLUTION NO. 92-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Upgrade Purchase of the Iseries Power 6 System from Midrange Support and Service and Authorizing the Town Manager to Execute this Purchase on Behalf of the Town. IS Upgrades/consolidation of Town Iseries system. [Thomas G. Bradford, Deputy Town Manager]
- 2
3. RESOLUTION NO. 99-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Final Contract Payment to SunGard OSSI Including the Purchase of the Additional Budgeted Police and Fire Rescue Modules and Authorizing the Town Manager to Execute this Purchase on Behalf of the Town. [Thomas G. Bradford, Deputy Town Manager]
- 3
4. RESOLUTION NO. 104-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Execute an Interlocal Agreement with the Solid Waste Authority of Palm Beach County for a Municipal Revenue Sharing Recycling Program; Providing an Effective Date. [Jane Struder, Director of Finance]
- 4
5. RESOLUTION NO. 105-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Condemning the Use of Anonymous Mailings Related to Elections and Campaigns for Election Within the Town; Providing Information for Filing Complaints with the Florida Commission on Ethics; Providing an Effective Date. [Joanna Cunningham, Town Clerk]
- 5
6. RESOLUTION NO. 106-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing a Revised Contract Limit For Royal Poinciana Way Sewer Improvements, a Fund 307 Project, for the Town of Palm Beach. [H. Paul Brazil, Director of Public Works]
- 6
7. RESOLUTION NO. 107-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Palm Beach Glass Specialities, Inc., for the Replacement of Window Sashes at the North Fire Facility of the Town of Palm Beach. [H. Paul Brazil, Director of Public Works]
- 7
8. RESOLUTION NO. 110-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Purchase of Globe Cairns Personal Protective Firefighters Wear from Bennett Fire Products Co, Inc., and Associated Safety Equipment. [William Amador, Fire-Rescue Chief]
- 8
9. RESOLUTION NO. 111-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Purchase of Locution Automated Dispatch System with the OSSI CAD Interface and Authorizing the Town Manager to Execute the Purchases on Behalf of the Town. [William Amador, Fire-Rescue Chief]

- 1
10. RESOLUTION NO. 112-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Aaron's Catering of the Palm Beaches for the Provision of Catering Services, RFP No. 2009-23; Authorizing the Town Manager to Take Further Action Necessary to Effectuate the Contract. [Jay Boodheshwar, Director of Recreation]

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

- 2
11. RESOLUTION NO. 113-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Concession Agreement for the Town of Palm Beach and Richard G. Dytrych and Authorizing the Town Manager to Execute the Same on Behalf of the Town. [Jay Boodheshwar, Director of Recreation]

3

I. Other

- 4
1. Authorization to Implement an Automated Telephone Attendant. [Jane Struder, Director of Finance]

5

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

- 7
2. Worth Avenue Streetscape and Infrastructure Improvements Approval of Contractor Selection Committee Recommendation and Authorization to Execute a Pre-Construction Agreement. [H. Paul Brazil, Director of Public Works]

- 8
3. Approval of Health Insurance Premium Rates for 2010. [William C. Crouse, Director of Human Resources]

- 9
4. Authorization for Staff to Execute a Joint Stipulation and Motion of the Parties to Cancel Certification Hearing and to Relinquish Jurisdiction to the Department of Environmental Protection for Entry of Final Certification Order In Re: Florida Power and Light Company Riviera Beach Energy Center Applicant No. PA09-54; DOAH Case No. 09-1003EPP; DEP OGC Case No. 09-262. [Thomas G. Bradford, Deputy Town Manager]

10

11 **Motion to approve the Consent Agenda as Amended made by Council President Pro Tem**

12 **Coniglio, and seconded by Council Member Kleid. On roll call, the motion carried**

13 **unanimously.**

14

15

16 IX. BOARD/COMMISSION ANNUAL REPORT

- A. Recreation Advisory Commission. [Stuart Shulman, Chair and Jay Boodheshwar, Director

of Recreation]

Department of Recreation Director Jay Boodheshwar introduced Mr. Stuart Shulman, Chairman of the Recreations Advisory Commission. Mr. Shulman provided the Recreation Advisory Commission Annual Report.

Mr. Shulman announced that the Town was recently awarded one of the highest honors from the United States Tennis Administration. He presented the Outstanding Facility Award to Mayor McDonald and the Town Council Members.

The Town Council made comments regarding the increased tennis fees and asked Mr. Shulman to reconsider them at their next meeting. Council President Pro Tem Coniglio congratulated Mr. Shulman on the phenomenal improvements in the past two years around town. She has had positive reactions and feedback about the new tennis pro Dejan Minic. There was concern about the dock occupancy and if the new West Palm Beach docks would impact the Town Dock business.

Council Member Kleid commended the Recreation Commission and Department for what he felt are exemplary facilities at the Par 3 Golf Course and the Seaview Tennis Center.

Recreation Director Boodheshwar informed the Town Council that the dock leasing was not at 100%, but what they were able to achieve for the upcoming year was more than comparable to last year.

Council Member Wildrick asked what the competition was with regard to other yacht facilities. Director Boodheshwar responded that Palm Harbor has been closed for a year and will re-open this fall. When they closed, there were no new customers to Palm Beach. With regard to Rybovitch and the Riviera Beach Marina, Director Boodheshwar responded that the Riviera Marina caters to smaller vessels; Rybovitch and Old Port Cove have different operations and cater to captains and vessel crews and not necessarily the owners. The Town's focus should be quiet, low profile etc. and that is what the owners are looking for in Palm Beach.

B. RESOLUTION NO. 112-09 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Aaron's Catering of the Palm Beaches for the Provision of Catering Services, RFP No. 2009-23; Authorizing the Town Manager to Take Further Action Necessary to Effectuate the Contract. [Jay Boodheshwar, Director of Recreation]

This item was pulled from the Consent Agenda by Council Member Diamond.

There was discussion among the Town Council Members whether the caterer was truly needed, the location of the tent, and the use of the golf course for non-golfing events. There was also discussion about noise, hours of operation and restrooms. Town Manager Elwell informed the Town Council, that ultimately they could put whatever restrictions they wanted to on it. An applicant would have to apply for a Special Event Permit through the Town Clerk's office which

is approved by various departments. Recreation Director Boodheshwar also indicated that there were representatives of Aaron's catering in the audience to answer any questions.

Council President Rosow stated the lengthy discussion was much ado about nothing. The new golf course was spectacular. As a golf course manager, he knew that golfers are difficult to keep as repeat customers. He suggested trying the caterer for a year, and if it did not work out, try something else.

Motion made by Council Member Diamond to approve the golf catering contract be awarded to Aaron's Catering, but not to include any additional non-golfing events.

Jere Zenko, 232 Tangier Ave., asked about the \$18,000 amount mentioned and was informed that was potential revenue and did include insurance.

Council President Pro Tem Coniglio seconded Council Member Diamond's motion.

Council President Pro Tem Coniglio asked resident Lee Goldstein to come forward on behalf of the Citizens Association. He noted that they raise money from the south end residents and use Town Serving Businesses to serve the food (Too Jay's) when they have a golf event.

Town Manager Elwell asked for additional clarification if the Resolution was to have an additional stipulation. It did not change the resolution regarding non-golf events. Town Manager Elwell read Resolution No. 112-09 by title, as printed above.

On roll call, the motion carried unanimously.

Council President Rosow stated that the second **motion made by Council Member Diamond was to not allow non-golf related events at the Par 3 golf course.** Council Member Wildrick felt there needed to be more control and an approval process for outside events. Town Manager Elwell indicated that there is control with the Special Event Permit and is limited to three hours.

Motion died for lack of a second.

Council President Rosow opted to defer the discussion until a later meeting since there was not much enthusiasm by the Council. Town Manager Elwell indicated it may not come back, if the issue does not arise and no further action was required today.

* * * * *

After the lunch recess, President Rosow announced that the Town Council, at the recommendation of the Town Manager, had decided that beginning with the next Regular Town Council Meeting, all meetings would be held in Palm Beach, as the sound system in the City of West Palm Beach was unreliable. He noted that state law required that if there was a Council meeting with more people in attendance than could be accommodated, the meeting would have to be recessed until a later date and a larger space must be found.

Secondly, President Rosow announced that beginning in January, the Town Council meetings would be held one day a month, instead of the current two days a month.

X. COMMITTEE REPORTS

A. Public Works Committee Meeting of October 5, 2009. [Gail Coniglio, Town Council President Pro Tem] TIME CERTAIN: 2:00 P.M.

President Pro Tem Coniglio provided a status report on the Public Works Committee Meeting held on October 5, 2009.

Town Manager Elwell commented that earlier the \$6 million per year funding would have been obtained through the 20 Year Capital Improvement Plan, as a "pay as you go" method. However, the focus had shifted to bonding the entire projects due to the low bonding rates.

The Town Council Members discussed several of the following issues:

- A townwide replacement of the sanitary sewer system was needed;
- Interest rates for bonds should be locked in, as they were very low;
- The 20 Year Capital Improvement Plan;
- The 5 Year Financial Plan; and
- Millage rate.

Paul Brazil introduced Kevin Schanen, of Kimley Horn & Associates, Inc., who provided a brief PowerPoint presentation on the force main study of the sewage system. A copy of his presentation was submitted into the record.

Discussion occurred among the Town Council, Town Manager Elwell, and staff regarding the costs and timelines necessary for the replacement of the sewage system.

President Rosow directed staff to provide a plan for the cost of infrastructure over the next three to seven years coupled with the Five Year Plan's capital expenditures, overlaid with the cost of borrowing the funds, as all of the borrowed money would not be spent, but would offset the interest cost for a period of time, to be shown along with an amortization schedule.

Mr. Elwell responded to President Rosow that the information would be provided at the November 10, 2009, Town Council Meeting.

XI. PUBLIC HEARING

- ##### A. Request by Prestige Transportation of Palm Beach for Issuance of License Permits. [Jane Struder, Director of Finance]

1 **TIME CERTAIN: 10:00 A.M.**

2
3 ***This item was heard after Item IX.B.***

4
5 Finance Director Jane Struder presented the item. She noted that the Public Hearing was
6 advertised and two letters of protest were received. Council president Pro Tem Coniglio asked at
7 what time in Palm Beach were the limo drivers capped at 50 permits. Mayor McDonald
8 responded that historically, it was 10-12 years ago and he personally suggested that the Town
9 Council scrutinize the request.

10
11 John Campagnuolo, Jr. from Park Limousine spoke regarding the issue and stated that his
12 company had been on island for over 30 years. Park Limousine had accumulated permits by
13 purchasing permits from businesses going out of business. He did not feel that there was a need
14 for more permits to be issued.

15
16 There was discussion regarding the Ordinance and if all of the permits were ever used at any
17 given time. There was no representative from Prestige Limousine present to plead their case.
18 Former Planning and Zoning Director Robert Moore gave a historical perspective to the permits.

19
20 Council President Rosow asked if anyone from the public wished to speak, and there were no
21 comments.

22
23 **Motion to deny Prestige Limousine's request for two additional permits made by Council**
24 **President Pro Tem Coniglio, seconded by Council Member Diamond. On roll call, the**
25 **motion carried unanimously.**

26
27
28 XII. REGULAR AGENDA

29 A. Old Business

- 30
31 1. Estimate of Cost for Studying Potential Secession from Palm Beach County. [Peter B.
32 Elwell, Town Manager]

33 ***This item was heard after Item XII.B.2.***

34 Town Manager Elwell indicated there was a report in the Town Council back-up. The initial
35 cost to perform a study on the costs for potential secession would cost the Town approximately
36 \$150,000.

37 **Motion made by Council Member Diamond to spend \$150,000 on a Secession study and the**
38 **motion died for lack of a second.**

39
40 Council Member Diamond expressed his disappointment. There was a brief discussion
41 regarding the amount in taxes that the Town of Palm Beach gives to Palm Beach County. The

Town would attempt to be more engaged in the County budget process, as well as the School District. Council President Rosow identified the cost breakdown of county dollars.

B. New Business

1. Alternative Reach 8 Beach Restoration Project Permitting. [H. Paul Brazil, Director of Public Works]

Gerry Frank, Vice Chair of the Shore Protection Board, provided comments regarding Reach 8 Beach.

Public Work Director Paul Brazil provided an overview regarding Alternative Reach 8 Beach Restoration Project Permitting. He noted that staff recommended a scaled back project with Coastal Systems International to prepare a Joint Coastal Permit Application in an amount of \$150,000. The funds were available in the Coastal Program budget for Fiscal Year 2010. If the Florida Department Environmental Protection (FDEP) grant funding was received, and the Reach 8 restoration project was completed, the cost to the Town was estimated at \$13.7 million.

Discussion occurred among the Council Members, Mayor McDonald, Town Manager Elwell, and staff. Several of the following issues were addressed:

- If a sand source was available, the Town should support the project by providing the funding;
- Staff would need to present the project, such as: the type of work, the length of time to complete it, and cost, which would help to determine whether the Council would want to proceed;
- As there were not very many alternatives, the Council should move forward;
- It was not a solution but a depreciating expenditure of \$10 million per year.
- The Council would need to see what the state was planning, before spending \$150,000 on a guess;
- Funding from the state would be lost if the Town had not yet started a project; if a project was started, the funds may or may not be there;
- In the past, the Shore Protection Board did not have a successful plan, as the criteria kept changing;
- The Shore Protection Board had spent \$70 million and not solved the problem, just debated it; the Town Council should decide on a solution and implement it.

The following people provided input and comments:

- Lee Goldstein, 3120 S. Ocean Boulevard, who was a member of the Shore Protection Board;
- Peter Pettie, 3400 S. Ocean Boulevard;
- Jerry Frank, 2784 S. Ocean Boulevard; and
- Larry Goldberg, 3360 S. Ocean Boulevard.

Motion made by Council Member Wildrick, seconded by Council Member Diamond to proceed with \$20,000 for a preliminary design for a Reach 8 restoration project.

A lengthy discussion occurred among the Council Members, Peter Pettie, Mr. Brazil, Mayor McDonald, Larry Goldberg, the Shore Protection Board Members, and Town Manager Elwell regarding seawalls, protection of the dunes, and the cost.

Upon roll call, the motion carried unanimously.

President Rosow commented that staff would return in December for further review of the project.

2. Presentation of Report on Underground Utilities Conversion Assessment Methodology for Voluntary Neighborhood Projects. [Thomas G. Bradford, Deputy Town Manager] TIME CERTAIN: 11:00 A.M.

This item was heard after item XI.A.

Deputy Town Manager Tom Bradford presented the item. Mr. Habib Isaac of Willdan Financial Services, Lee Evvit Vice President of Willdan services and Susan Schoettle-Gumm, legal counsel presented a power point to the Town Council. A copy was submitted for the record.

Council Member Diamond asked where else this methodology has been used. Mr. Isaac responded that he was not aware of any others in Florida. Ms. Schoettle-Gumm stated that there are other cities using it. Town Attorney Randolph added that Jupiter Island did underground utilities but did not use special assessments. Council Member Kleid asked about the parcels and going into adjacent properties with undergrounding and if there would also be a special assessment on adjacent properties. Mr. Isaac said they have done this in the State of California: Laguna Beach and Newport Beach. Council Member Kleid opined that if 66% of residents are in favor then the adjacent neighbors would be assessed. Tom Bradford said that they described process but the Town does it a bit differently. The petition would include the adjacent properties in totality. Bradford would not submit a petition to TC until all of the areas of benefits have had opportunity to review.

Council Member Wildrick asked if 66% of the people approve the petition, then it would come to Town Council for approval. His concern was one of precedent. If it is done for

1 undergrounding utilities, should the Town also need to do it when sewer lines need
2 improvements, or sand needs to be placed on the beaches, or roads need to be paved? If this
3 methodology was approved, there needs to be consistency and need to know that in his opinion,
4 the Town Council was opening a can of worms.

5
6 Town Manager Elwell said it was a good point and what distinguished this from the capital
7 improvement program. He noted that the Town Council made a policy decision that this was not
8 a town-wide necessity and this was a preferred utility that certain neighborhoods want. Council
9 Member Wildrick was concerned with the 66%. He said it would be forcing a tax on the 1/3 of
10 the people that do not want it. Town Manager Elwell said that if the Town Council wanted, it
11 could change the required threshold to 100%. Council Member Wildrick was very concerned
12 about the residents on limited income. Many residents feel sand should be an assessment as
13 opposed to a millage rate.

14
15 Deputy Town Manager Bradford offered his opinion and believed there was no precedent
16 relative to the 66%. The Town Council has authority to use assessments for a wide variety of
17 projects. The extra step in this process is a check and balances to show an overwhelming want
18 for a service. Council President Rosow stated that the Town had looked at undergrounding, it
19 was studied and was determined that the Town could not afford it. In the meantime, individual
20 neighborhoods have approached the Town and wanted it done. This process was in response to
21 that. Deputy Town Manager Bradford indicated that this is a *want* and not a *need*.

22
23 Council President Pro Tem Coniglio had 2 comments. It seemed to her that more EDU's would
24 go to reliability rather than aesthetics. Mr. Isaac responded that this project was looking at the
25 entire town in general, and said it would change based on neighborhood request. Her next
26 question related to vacant properties commercial vs. residential.

27
28 Council Member Wildrick was aware of the neighborhood that wants the undergrounding. He
29 has a concern on this situation and has a problem with the 1/3 of the people that do not want it
30 would be forced to pay for it. He said there are poor people on fixed income, and not impose a
31 want on something vs. a need. One of the reasons he has tried to keep taxes low is to protect
32 those that cannot help themselves. Not everyone can afford to spend the additional money. He
33 likes the methodology but feels it should be 100%. Council Member Kleid stated that he had a
34 similar situation at his condominium when they wanted glass doors on cabanas and those who
35 wanted it picked up the tab for those that could not pay. He agreed with Council Member
36 Wildrick and said the approval should be higher than 66%. Council Member Diamond asked
37 about costs. Deputy Town Manager Bradford responded that areas like Worth Avenue are
38 extremely expensive and more residential lots would be sparser and less expensive.

39
40 Tony Dowell, 101 E. Inlet Drive, said it was a lot of information to absorb. Mr. Dowell is one of
41 the residents that would like to have undergrounding in his neighborhood.

42
43 Peter Pettie, 3400 S. Ocean Blvd., asked about undergrounding the electrical system and the cost
44 of project to bury one line vs. the rest of Town where there may be hundreds of lines. Deputy
45 Town Manager Bradford responded that generally speaking, it would be cheaper to bury lines
46 south of Sloan's Curve.

Jerry Frank, 2784 S. Ocean Blvd. stated that Palm Beach tries to re-invent the wheel and not look at other places that have done similar projects. Where he also lives up north, they buried the lines, and worked with the electrical company directly.

Town Manager Elwell indicated that the history of this had been addressed previously and if the Town does the undergrounding, they get a 25% discount from FPL. He offered a different perspective than Peter Pettie's comment. The incremental impact comes into play if they were doing a town-wide project. Because of how the Town was approaching it in pockets around town and there would be no impact on costs in other areas. Deputy Town Manager also addressed Mr. Frank's comments by stating that in Florida, the local governments must finance the undergrounding projects.

Motion to adopt a tax assessment methodology for property owners in neighborhoods that petition to bury their utility lines made by Council Member Diamond, seconded by Council Member Wildrick. On roll call, the motion carried unanimously.

Motion to require an 80% participation rate of property owners before an assessment can be conducted and presented to the Town Council for approval made by Council Member Diamond, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried 4-1, with Council Member Wildrick dissenting.

3. Holiday Decorations. [David A. Rosow, Town Council President and H. Paul Brazil, Director of Public Works]

This item was heard after Item XII.A.1.

Council President Rosow stated that the Town Council previously reviewed at two different meetings the funding for holiday decorations in the Town. Due to the economic times, it was not feasible for the Town to pay for the decorations and Council President Rosow offered to initiate a donations campaign. If enough money was privately raised, the Town would place LED lights on every other palm tree.

Council President Rosow was pleased to report \$350,000 raised for the Town. He stated that everyone he asked contributed and no one said no. He noted that Gerry Goldsmith helped and one donation was symbolic. One donor wrote a check for \$100,000 and wanted to bring bright lights and cheer to the Town of Palm Beach because he loves the town and the people in it. That donation was from Town resident Rush Limbaugh and his fiancé Kathryn Rogers. He would like to see the amount raised be \$500,000. He also announced he had made a personal contribution of \$25,000.

Public Works Director Brazil noted that the normal procedure is to hire a contractor and bring it to the Town Council for approval. In lieu of time, Director Brazil asked if he could have Town Manager Elwell authorize, along with the Chair of the Public Works Committee (Council President Pro Tem Coniglio) to hire the contractor to install the decorations.

Council Member Wildrick said that Council President Rosow should be lauded on this project for his efforts and was applauded. Council Member Wildrick announced he would match Council President Rosow's donation of \$25,000.00

Motion made by Council Member Wildrick, seconded by Council Member Diamond, to allow Public Works Director Brazil and Public Works Chair Coniglio the authority to hire a consultant and engineer to install the holiday decorations, and allow expenditure of the pledged funds. On roll call, the motion carried unanimously.

The Town Council Meeting recessed for lunch from 12:30p.m. – 2:00p.m.

4. Town Hall Renovations Video Conferencing. [H. Paul Brazil, Director of Public Works]

Public Works Director Brazil provided an overview of the video-conferencing options in the Town Council Chambers as part of the Town Hall Renovations project. He noted that the cost of the systems would be approximately \$40,000 in the Conference Room and \$100,000 in the Council Chambers.

President Pro Tem Coniglio and Council Member Kleid indicated that video-conferencing was not necessary, as the meetings could be heard on line.

Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond not to opt for either option for the installation of video conferencing. On roll call, the motion carried unanimously.

5. Request for the Ordinances, Rules, and Standards (ORS) Committee to Review Section 10-9 of the Town's Code of Ordinances, "Keeping Certain Animals Prohibited". [Richard M. Kleid, Town Council Member]

Council Member Kleid related that, as a result of the Code Enforcement Board's issue of having a pig as a pet, there were many questions asked about what would be considered a domesticated animal, for example, a reptile, such as a python. He indicated that it would be worthwhile to refer the issue to the Ordinances, Rules, and Standards (ORS) Committee for further review

It was the consensus of the Town Council to refer it to the ORS Committee for review.

Town Manager Elwell commented that earlier this year, the entire code had been revamped and would be discussed at the next ORS Committee Meeting.

6. Authorization to Implement an Automated Telephone Attendant. [Jane Struder, Director of

Finance]

Item VIII.I.1. was pulled from the Consent Agenda.

Finance Director Jane Struder provided an overview of the reasoning for the request to implement an automated telephone attendant.

Discussion occurred among the Town Council and Mayor McDonald regarding the pros and cons of the Town having an automated attendant.

Jere Zenko 232 Tangier Avenue, commented that the current system was unacceptable.

Motion made by Council Member Kleid to approve the implementation of an Automated Telephone Attendant on a trial basis for six months. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

7. Discussion of November 18, 2009, Special Town Council Meeting.

President Rosow announced that on November 18, 2009, a Special Town Council Meeting would not be held, as staff was not ready for the meeting, and it was being taken off the calendar.

XIII. ORDINANCES

A. Second Reading

ORDINANCE NO. 15-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for an Amendment to the Town's General Fund Budget Adopted for the Fiscal Year Commencing October 1, 2008, Providing an Effective Date. [Jane Struder, Director of Finance]

Town Attorney Randolph read Ordinance No. 15-09 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid to adopt Ordinance No. 15-09. On roll call, the motion carried unanimously.

B. First Reading

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 Special District and Providing for the Authority and Functions of Said Special District, Including the Authority to Levy Special Assessments and Ad Valorem Taxes; Providing for Severability; and Providing an Effective Date. [Jane Struder, Director of Finance]

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

Motion made by Council Member Kleid to approve on first reading, and eliminating any language about Special Assessments. President Pro Tem Coniglio seconded the motion.

Jere Zenko, 232 Tangier Avenue, commented regarding residents who did not pay taxes and would benefit from the Ordinance.

Discussion occurred among the Town Council regarding funding, and annual raises in taxes.

Dan McDonnell, 2780 S. Ocean, commented that the people that did not pay taxes were recipients of a Purple Heart.

Lee Goldstein repeated that the Shore Protection Board's recommendation was \$5 million per year and that it could escalate to \$10 million per year in the event of hurricanes.

Town Attorney Randolph advised that, for the record, the title of the Ordinance was read as ...Including the Authority to Levy Special Assessments... He said he would conclude that the motion to amend that title would delete the words "Special Assessments" and that the body of the Ordinance would be amended accordingly.

Town Attorney Randolph read Ordinance No. 18-09 by title, with the modification.

Amended motion made by Council Member Kleid to approve on first reading Ordinance No. 18-09 with the deletion of the language "Special Assessments". On roll call, the motion carried 4-1, with Council Member Diamond dissenting.

XIV. ANY OTHER MATTERS

There were none.

XV. ADJOURNMENT

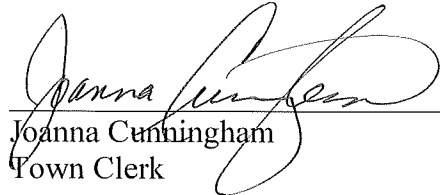
There being no further business, the October 13, 2009, Regular Town Council Meeting was adjourned at 4:52 p.m.

APPROVED:



David A. Rosow
Town Council President

ATTEST:



Joanna Cunningham
Town Clerk