TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON MONDAY, OCTOBER 13, 2008

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Monday, October 13, 2008, at 9:30 a.m., in the Town Council Chambers and continued on Tuesday, October 14, 2008, at 9:30 a.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President Richard M. Kleid
President Pro Tem Gail Coniglio
Council Member Denis P. Coleman
Council Member Susan Markin
Council Member David A. Rosow

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
William Amador - Fire-Rescue Chief
Kirk Blouin - Law Enforcement Major
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Jay Boodheshwar - Recreation Director
James Bowser - Town Engineer
Veronica Close - Planning, Zoning and Building Assistant Director
William Crouse - Human Resources Director
Jane Day - Historical Preservation Consultant
William Hanes - Pension Administrator
Charles Langley - Public Works Assistant Director
John Page - Planning, Zoning and Building Director

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480
Telephone (561) 838-5416 • Facsimile (561) 838-5417
E-mail: townclerk@townofpalmbeach.com • Website: www.townofpalmbeach.com

Michael Reiter - Police Chief
Daniel Szarszewski - Support Services Captain
Jane Struder - Finance Director
Jeff Taylor - Building Official
Rob Walton - Lead Code Compliance Officer
Spencer Wilson - Information Systems Manager
Susan Eichhorn - Town Clerk

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Eichhorn gave the invocation. President Kleid led the Pledge of Allegiance.

III. PRESENTATIONS

A. Presentations by Applicants for the Firefighter Retirement System Board of Trustees.

Town Manager Elwell advised that there were four applicants for the two citizen representative vacancies on the Firefighter Retirement System Board of Trustees.

The following applicants made a presentation to the Town Council for appointments to this Board.

J. Patterson Cooper
Sergio de Araujo

The following applicants were not present at the meeting:

R. Keith Elliott
Wilbur L. Ross, Jr.

(Please note that Mr. R. Keith Elliott telephoned William Hanes, Pension Administrator for the Firefighter Retirement System Board of Trustees, to advise that he was unable to attend today's meeting. Mr. Wilbur L. Ross, Jr. submitted a letter advising that he was unable to attend today's meeting.)

B. Presentations by Applicants for the General Employee Retirement System Board of Trustees.

Town Manager Elwell advised that there were two applicants for the one citizen representative vacancy on the General Employee Retirement System Board of Trustees.

Raymond C. O'Brien made a presentation to the Town Council for appointment to this Board.

Alvin Parven sent a letter advising that he was unable to attend today's meeting.

C. Presentations by Applicants for Police Officer Retirement System Board of Trustees.

Town Manager Elwell advised that there were two applicants for the two citizen representative vacancies on the Police Officer Retirement System Board of Trustees.

Raymond W. Snow (regular Member applying for reappointment) made a presentation to the Town Council for appointment to this Board and responded to questions and concerns of the members of the Town Council:

Council Member Markin requested a report regarding the eight per cent (8%) target rate of return, which would be discussed at a future Town Council meeting. At the suggestion of Town Manager Elwell, it was the consensus of the Town Council to place the report on the December Town Council meeting agenda. *(This item will be discussed at the November Retirement Board meetings and then at an upcoming Finance and Taxation meeting.)*

James McCartney Wearn (regular Member applying for reappointment) sent a letter advising that he was unable to attend today's meeting.

IV. BOARD/COMMISSION ANNUAL REPORT

A. Recreation Advisory Commission. [Milissa Agnello, Chair and Jay Boodheshwar, Director of Recreation]

Director of Recreation Jay Boodheshwar acknowledged the staff's appreciation for the guidance and support received this past year from the Recreation Advisory Commission. He introduced the Chair of the Recreation Advisory Commission Milissa Agnello.

Ms. Milissa Agnello provided a report of the Recreation Advisory Commission and reviewed the following:

- Seaview Tennis Center Renovation
- Seaview Park Multipurpose Field Improvements
- Par 3 Golf Course Restoration

Ms. Agnello concluded that this was a great year and looked forward to the upcoming year. She thanked the members of the Commission for their hard work and dedication; and thanked Mr. Boodheshwar and the Recreation Department staff, not only as a Commissioner but as a resident.

Mr. Boodheshwar responded to the questions and concerns of the members of the Town Council.

President Kleid, on behalf of the Mayor and Town Council, thanked Chair Agnello and the entire Recreation Advisory Commission for their hard work and dedicated service to the Town.

V. COMMENTS OF MAYOR JACK McDONALD

Mayor McDonald stated that he had some comments this morning on "Let Us Vote":

" 'Let Us Vote' also known as "Home Rule" will be on the November Presidential ballot, establishing true "Home Rule" for Palm Beach and the cities of Palm Beach County. It's a legacy issue for me and for this Town Council who passed and funded the resolution. This is not about any one issue. It is about placing decision making authority into the hands of municipal voters forever. Local voters should always make local decisions, and if we can place additional local control into the hands of Palm Beach residents, then we will have made a real difference for generations to come. All thirty-eight municipalities have approved the resolution: a rare unanimity in government. It appears as the County question and is the last item on your ballot. I ask everyone to vote yes. Local voters making local decisions, that is what our democracy is all about.

I appreciate the support of this Council and former Councilmen Bill Brooks in striving to leave a legacy unmatched by any previous Town Council, and I hope that on election night we celebrate our success."

VI. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Rosow:

- Questioned Mayor McDonald as to what the Town Council could do to encourage the passage of "Home Rule."
- Thanked the Garden Club for the plantings on Royal Poinciana Way.
- Thanked the Preservation Foundation for the palm trees on North Ocean Boulevard.
- Commented on the financial crisis and submitted a written document detailing seven recommendations he requested that the Town Council address during the new business section of today's meeting.

Council Member Markin:

- Thanked the members of the Retirement Boards.
- Commented on last minute items provided to the Town Council in particular a letter from Richters on Worth Avenue, noting that in these tough economic times, she hoped that the Town supported the businesses and employees of the Town and that they all worked together.

Council Member Coleman:

- Requested that the topic of status and performance of development review projects be heard before discussion of development review items. *(This item was added to the Agenda as X.A.)*
- Commented on the small group of citizens who make disproportionate demands on Town staff, noting that staff was terrific and jumped through hoops to be responsive to citizen inquiries.

President Pro Tem Coniglio:

- Addressed the comments made by Council Member Rosow.

Town Manager Elwell:

- Introduced the new Town Clerk, Joanna Cunningham, noting that Town Clerk Eichhorn would be retiring.

VII. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE (October 13, 2008)
(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

Laurel Baker, on behalf of the Palm Beach Chamber of Commerce, commented regarding consistency in beautification efforts.

Arnold Hoffman commented regarding the "Let Us Vote" issue, and the current financial situation.

Jack Maxey, 244 Nightingale Trail, commented regarding the height requirements for vegetation, and consideration of amending the related ordinance.

Town Clerk Eichhorn distributed documents submitted by Mr. Maxey to the Mayor and Town Council.

Discussion ensued and Council Member Coleman requested that staff provide a report on this matter at the November 13, 2008, Town Council meeting, which was agreed to by a consensus of the Town Council. The Code Enforcement Board was directed to defer this item until after the November 13, 2008, Town Council meeting. Town Attorney Randolph was directed to provide an opinion related to the appeal request of Mr. Maxey.

Council Member Coleman made a motion instructing the Code Enforcement Board to defer the cutting of Mr. Maxey's trees until this item was heard at the November 13, 2008, Town Council meeting. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

Pamela J. Henderson, Executive Director of the Rehabilitation Center for Children and Adults, President of the Chamber of Commerce, commented regarding re-visiting the Royal Poinciana Project.

COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE (October 14, 2008)

Palm Beach Police Department Detective Mike Lynch, Vice Chairman Police Department Retirement Board of Trustees, and Chairman Police Department Benefits Committee, commented at the Town Council meeting continued on October 14, 2008, relative to Resolution No. 85-08, amending the per hour fee for Special Assignment Overtime Deployments for the Police and Fire-Rescue Departments and the survey conducted by Police Chief Reiter.

VIII. APPROVAL OF AGENDA

The following modifications were made to the Agenda:

Request for deferral made for Item X.C.3.a., Variance #11-2008, 410 Seabreeze Avenue, would be heard when the item appeared on the Agenda because it was the second request for a deferral. As such, the applicant would personally appear before the Town Council to request the deferral.

ADD Item X.A., Status and Performance of Development Review Projects in the Town of Palm Beach.

ADD XII.B.11, Seven Matters Listed on Written Document Submitted by Council Member Rosow.

DEFERRED Item X.B.5., Request for Waiver of Section 42-198, Use of Certain Types of Equipment and Section 42-199 Hours of Construction, Palm Beach Inlet South Jetty Repair, Per Request from United States Army Corps of Engineers, to the November 12, 2008, Town Council meeting.
[Dr. Kuvin was granted permission to speak on this item when it comes up on the agenda as he will be out of the country on November 12, 2008.]

DEFERRED Item X.C.4.b., Variance #17-2008, 300 Polmer Park, to the November 12, 2008, Town Council meeting.

WITHDREW Item X.C.2.c., Variance #16-2008, 1000 Indian Road.

01/29/2010

TIME CERTAIN Item X.D.3, Presentation by The Breakers Regarding its Future Redevelopment Plans, to time certain of 11:30 A.M., October 13, 2008, Town Council meeting.

TIME CERTAIN Item XII.A.1.a.b.c.d., Coastal Issues, to time certain of 9:30 A.M., October 14, 2008. ***[Item XII.A.1.c. will be heard first, followed by items II.A.1.a., XII.A.1.b., XII.A.1.d.]***

MOVED from the Consent Agenda, Item IX.F.2., Resolution No. 82-08, to the Regular Agenda, Item XII.B.12.

MOVED from the Consent Agenda, Item IX.F.1., Resolution No. 81-08, to the Regular Agenda, Item X.D.5.a.

MOVED from the Consent Agenda, Item IX.F.3., Resolution No. 83-08, to the Regular Agenda, Item XII.B.13.

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

IX. CONSENT AGENDA

A. MINUTES: SEPTEMBER 8, 2008
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

B. MINUTES: SEPTEMBER 8, 2008
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING-CLOSED-DOOR SESSION-ROYAL POINCIANA SOUTH VS TOWN OF PALM BEACH

C. MINUTES: SEPTEMBER 9, 2008
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING

D. MINUTES: SEPTEMBER 24, 2008
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON SEPTEMBER 24, 2008.

F. RESOLUTIONS

1. RESOLUTION NO. 81-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Renewal of the Contract Between the Town of Palm Beach and Research Atlantica, Inc. as Historic Landmarks Preservation Consultant and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[John S. Page, Director of Planning, Zoning, and Building]
[Removed from Consent Agenda and added to the Regular Agenda as Item X.D.5.a.]

2. RESOLUTION NO. 82-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Ranger Construction Industries, Inc. and North Florida Emulsions, Inc. for the Annual Roadway Paving and Resurfacing. [H. Paul Brazil, Director of Public Works]
[Removed from Consent Agenda and added to the Regular Agenda as Item XII.B.12.]

3. RESOLUTION NO. 83-08 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 Microsoft, Sungard HTE, Cartegraph, Coleman Technologies and Tyler Technologies and Authorizing the Town Manager to Execute the Purchases on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]
[Removed from Consent Agenda and added to the Regular Agenda as Item XII.B.13.]

4. RESOLUTION NO. 84-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Purchase of the Laserfiche Document Imaging Software System with MCCi (Municipal Code Corporation) and Authorizing the Town Manager

to Execute this Purchase on Behalf of the Town. [Thomas G. Bradford, Deputy Town Manager]

5. RESOLUTION NO. 87-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Declaring Zoning in Progress Relating to Zoning Items under Study by the Town as Enumerated on Exhibit "A" Attached Hereto; Requiring That No Building Permits Be Issued by the Department of Planning, Zoning and Building During the Period That Zoning Is in Progress for Any Project Which Is in Contravention of Any Proposal under Study; Providing an Effective Date. [John S. Page, Director of Planning, Zoning, and Building]

6. RESOLUTION NO. 88-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Spector Manufacturing for the Purchase of One Aluminum Compaction Transfer Trailer Bid No. 2008-27. [H. Paul Brazil, Director of Public Works]

7. RESOLUTION NO. 89-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Entering into an Interlocal Agreement with the Solid Waste Authority of Palm Beach County for Delivery of Municipal Solid Waste to Designated Facilities and for Municipal Recycling. [H. Paul Brazil, Director of Public Works]

8. RESOLUTION NO. 90-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Waste Management, Inc. for Compacted Garbage Collection Services. [H. Paul Brazil, Director of Public Works]

G. OTHER

1. Approve Rescheduling of the November 2008 Town Council Meeting. [Peter B. Elwell, Town Manager]

2. Approval of Decision to Not Provide Valet Parking Service on Worth Avenue in the Upcoming Season. [Thomas G. Bradford, Deputy Town Manager]

3. Appointment to the Public Employees Relations Commission (Mini-PERC). [William C. Crouse, Director of Human Resources]

4. Appointments to the Police Officer Retirement System Board of Trustees. [William Hanes, Pension Administrator]

Motion made by Council Member Coleman, seconded by Council Member Rosow, to approve the Consent Agenda as amended. On roll call, the motion carried unanimously.

X. DEVELOPMENT REVIEWS

Town Clerk Eichhorn administered the oath to all those who would be providing testimony in the following matters:

A. Status and Performance of Development Projects in the Town of Palm Beach. [Denis P. Coleman, Town Council Member]
[This item was heard immediately prior to Item X.B.]

The Town Council discussed options regarding consequences of projects that had been approved but were not completed.

It was the consensus of the Town Council to place this item on the November 12, 2008, Town Council Agenda for discussion and that Town Attorney Randolph and staff would report on how to raise the standard for the completion of projects by private builders and residents, and the potential for the Town to take control of a property and actively intervene.

B. Time Extensions

1. Request for Waiver of Section 42-199, Hours of Construction, at 150 Worth Avenue, Units 108, 210 and 211 - Saks Fifth Avenue (Per Letter Dated September 11, 2008, From James R. Brindell).

Ex-parte communication was declared by President Kleid and Council Member Rosow with Attorney James Brindell.

Attorney Brindell, on behalf of the Esplanade and Saks Fifth Avenue, provided an explanation of the applicant's request for an extension of work hours.

Staff Comments:

Planning, Zoning, and Building Director Page commented that all the work was being done on the interior and not the exterior of the buildings. He noted that staff recommended the following construction work hours:

- 8:00 a.m. to 6:00 p.m., Monday through Saturday, until the end of November;
- During the season, starting December 1, 2008, 8:00 a.m. to 5:00 p.m., with no work to occur on Saturday or Sunday.

Motion made by President Pro Tem Coniglio to approve the conditions enumerated by staff in the memorandum dated September 22, 2008, provided in the back-up material by Planning, Zoning, and Building Director Page. Council Member Coleman seconded the motion.

Responding to the concerns by the Town Council, Robert Saffran of The Goodman Company, noted that the materials would be delivered before the stores open, at 10:00 a.m., in the valet area, and would be brought up in the freight elevator.

Council Member Rosow requested that the delivery time would be included as a condition of approval.

The maker and seconder agreed.

Town Manager Elwell indicated that the provision of no loitering in the via area of the Esplanade would be added as a condition of approval.

Discussion occurred among the Town Council, staff, and Mr. Saffran regarding work on an occasional Saturday.

Council Member Rosow suggested including, as a condition of approval, that deliveries would be allowed on only three Saturdays during the season, to be completed before 10:00 a.m. The three Saturdays would be approved at the discretion of staff upon request by the applicant.

The maker and seconder agreed.

Amended motion made by President Pro Tem Coniglio, seconded by Council Member Coleman to approve the conditions enumerated by staff in the memorandum dated September 22, 2008, provided in the back-up material by Planning, Zoning, and Building Director Page, with the following additions:

- **Work hours from 8:00 a.m. to 8:00 p.m., November 1, 2008, through November 29, 2008, Monday through Saturday, with the exception of the Thanksgiving Holiday weekend.**

- **The condition related to workers congregating or loitering on Worth Avenue would include the Esplanade via.**

- **Deliveries would be made in the valet area, and taken up in the freight elevator before 10:00 a.m.**

- **The applicant would be required to request and obtain approval from staff which three particular Saturdays, when deliveries could be made before 10:00 a.m.**

2. Request for Modification to the Approved Construction Management Agreement for 215 Brazilian Avenue (Per Letter Dated September 15, 2008, From Maura A. Ziska).

Ex-parte communication was declared by Council Member Rosow.

Attorney Maura Ziska, on behalf of the owner of 215 Brazilian Avenue, provided an overview of the request.

Motion made by President Pro Tem Coniglio, seconded by Council Member Markin to approve moving the excavation date to April 19, 2009.

Discussion occurred regarding the financial commitment of the applicant, to ensure completion of the project.

Motion withdrawn.

Motion made by President Pro Tem Coniglio, seconded by Council Member Markin to approve deferral of the Request for Modification to the Approved Construction Management Agreement for 215 Brazilian Avenue to the November 12, 2009, Town Council meeting. On roll call, the motion carried unanimously.

3. Request for Waiver of Section 42-199, Hours of Construction,

SR A1A Revetment, Per Request from Florida Department of Transportation. [H. Paul Brazil, Director of Public Works]

Public Works Director Brazil provided an overview of the request from the Florida Department of Transportation for a waiver for periodic lane closures on State Road A1A to restore the slope along the Intracoastal, directly across from Sloan's Curve.
Motion made by President Pro Tem Coniglio, seconded by Council Member Coleman to approve the Request for Waiver of Section 42-199, Hours of Construction, State Road A1A Revetment, from January 5, 2009, until February 27, 2009, from 9:00 a.m. to 4:00 p.m., Monday through Friday. On roll call, the motion carried unanimously.

Jerry Frank commented about deferring, to the summer, the revetment work that would occur on the north and south road through the Town from January 5, 2009, to February 27, 2009.

It was the consensus of the Town Council to defer Item X.B.3., to tomorrow's meeting for further discussion and reconsideration of the motion.

Motion made by Council Member Rosow, seconded by President Pro Tem Coniglio to reconsider the motion for Item X.B.3., and defer until tomorrow's meeting. On roll call, the motion carried unanimously.

Discussion occurred among the Town Council members and Mr. Brazil regarding the importance for the Florida Department of Transportation (FDOT) to complete the work within 60 days, which was during season, and that the hours of work would terminate at 4:00 p.m.

Motion made by President Pro Tem Coniglio, seconded by Council Member Rosow to maintain the discussion and motion of yesterday, October 13, 2008, to approve the Request for Waiver of Section 42-199, Hours of Construction, SR A1A Revetment, from January 5, 2009, until February 27, 2009, from 9:00 a.m. to 4:00 p.m., Monday through Friday, and go forward. On roll call, the motion carried unanimously.

4. Request for Waiver of Section 42-198 Use of Certain Types of Equipment and Section 42-199, Hours of Construction, Par 3 Golf Course Renovation and Floridan Water Well Construction.
[H. Paul Brazil, Director of Public Works]

Public Works Director Brazil provided an overview of the request for well construction work to occur between December 1, 2008, and February 28, 2009, 24 hours a day operation for a 5 to 7 day period for well casing work, with the remainder of the construction work hours of

8:00 a.m. to 6:00 p.m., Monday through Saturday. This request pertained to renovation work on the Par 3 Golf Course.

Discussion occurred among the Town Council members and Mr. Brazil regarding the noise impact on the neighbors versus an increased project cost.

Jerry Frank, 2784 S. Ocean Boulevard, commented that he was in favor of the project being done off-season.

Alan Golboro, director of Citizens' Association of Palm Beach, commented that pouring and drilling would not be done at the same time, which would be less noise, but not quiet.

It was the consensus of the Town Council to defer this item until tomorrow, October 14, 2008, for discussion.

After discussions with the hydro geologist involved with the well construction, and Recreation Director Jay Boodheschwar, Mr. Brazil provided a report on the additional expenses involved in delaying construction of the well.

Discussion occurred among the Town Council members, the Mayor, and Mr. Brazil regarding making up $100,000 by drilling 24 hours a day during the summer months, which would give a shorter time to complete the well or finding $100,000 in cost savings in the remainder of the project.

Motion made by Council Member Rosow, seconded by President Pro Tem Coniglio to approve delaying well construction work during the off-season and that the Public Works Department would determine whether to drill in the accelerated schedule and save $100,000 or find $100,000 in cost savings from the project to make up for the additional costs, and drill on the normal daytime schedule.

Discussion continued regarding the impact to the year-round residents of drilling 24 hours a day for 54 days in off-season.

Amended motion made by Council Member Rosow, seconded by President Pro Tem Coniglio to approve delaying well construction work, proceeding with drilling during the off-season, with a 24/7 operation for a 5-7 day period for well casing work, and directed the Public Works and Recreation Departments to find $100,000 in cost savings to offset increased project costs due to not constructing the well during the season. On roll call, the motion carried unanimously.

5. Request for Waiver of Section 42-198, Use of Certain Types of Equipment and Section 42-199 Hours of Construction, Palm Beach Inlet South Jetty Repair, Per Request from United States Army Corps of Engineers. [H. Paul Brazil, Director of Public Works]

Public Works Director Brazil provided an overview of the request for a waiver from the United States Army Corps of Engineers (USACE) for permission to work from December 1, 2008, until December 24, 2008. Mr. Brazil indicated that the USACE requested a deferral to the November 12, 2008, Town Council meeting.

Discussion occurred among the Town Council members, Mr. Brazil, and staff regarding delaying the repair of the jetty until off-season, as the USACE had not done it in the previously approved time frame.

Motion made by Council Member Rosow to approve postponement of the repair of the south jetty until off-season.

Discussion continued regarding several of the following issues:

- The Town Council was not in favor of approving the request;
- The issue of conducting work during turtle season and other issues were a factor;
- The USACE would be required to convey the absolute required time frame, that the repair would need to be done; and
- The Town Council's preference was that the repair would occur after May 1, 2009.

Motion failed for lack of a second.

Motion withdrawn.

It was the consensus of the Town Council to defer Item X.B.5., to the November 12, 2008, Town Council meeting.

Dr. Sanford Kuvin, 149 E. Inlet Drive, commented on behalf of himself and three winter-only residents, who lived proximal to the proposed site of the jetty. He indicated that the repair of the jetty was not urgent, as it was on again, off again for five years, and that the waiver should be denied and rescheduled in the off-season.

****

The luncheon recess was taken at 12:45 p.m.

The Town Council Meeting of October 13, 2008, was reconvened at 1:40 p.m.

****

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

a. VARIANCE #14-2008 The application of 170 Barton Avenue, LLC (Georgiana J Slade, Manager); relative to property described as All of Lot 25 and the East 6.0 feet of the South 40.00 feet of Lot 23 of PRIMAVERA ESTATES (OCEAN SECTION) Town of Palm Beach, Palm Beach County, Florida, as recorded in Plat Book 6, Page 82, Palm Beach County Public Records; commonly known as 170 Barton Avenue; located in the R-B Zoning District. The applicant requests a variance to permit installation of a Baltimore Aircoil, model VFL-024-22H cooling tower that is 8' 11 1/4" tall, 12' 3/16" long and 4' 1 1/4" wide providing a rear yard setback of 8 feet in lieu of 15 foot minimum required. [Attorney: Timothy Hanlon]

Ex-parte communication was declared by President Kleid through a telephone conversation, and Council Member Rosow with Attorney Timothy Hanlon.

Attorney Hanlon, on behalf of the applicant, provided an overview of the request. He noted that the hardship that runs with the property was the location of the existing swimming pool and enclosing wall, which restricted the cooling tower from being located anywhere else.

Architect Gene Lawrence provided an architectural presentation.

Staff Comments:

Zoning Administrator Castro made the following comments:

- There were two air conditioning units in the same location as the generator;

01/29/2010

- Directly across the alley was a large, quiet source generator, which was installed before the generator ordinance was adopted;

- The neighbors had a tall wall, that was about 8', their wall was the same height, with a hedge that was about 35' tall on inside of the wall;

- It appeared to be the best or only location for the cooling tower; and

- The hardship needed to be demonstrated.

Motion made by Council Member Rosow, seconded by Council Member Coleman that Variance #14-2008, was granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. On roll call, the motion carried unanimously.

b. <u>VARIANCE #15-2008</u> The application of Cathleen McFarlane; relative to property described as a parcel of land situate in Block 20, Royal Park, Town of Palm Beach, Palm Beach County, Florida, as recorded in Plat Book 4, Page 1, of the public records of said Palm Beach County, more particularly described as follows: All that land described in Official Records Book 5428, Page 761, together with Parcel Two as described in Official Record 5756, Page 673, and together with that parcel described ain Official Record Book 8396, Page 1418, less that parcel described in Official Record Book 8555, Page 1069, all in the public records of Palm Beach County, Florida; commonly known as 456 Worth Avenue; located in the R-B Zoning District. The applicant requests a variance to allow the addition of a new one-story garage to an existing one and two story non-conforming building with a front yard setback for the addition of 12.5 feet in lieu of the 35 foot minimum required; a variance to allow a side yard setback for the addition of 6.25 feet in lieu of the 12.5 foot minimum required; a variance to allow an overall cubic content ratio of 4.11 in lieu of the 3.91 maximum allowed.
[Attorney: L. Frank Chopin]
[Landmark Preservation Commission Recommendation: Approval of the variances to the Town Council carried unanimously.]

Ex-parte communication was declared by Council Member Rosow with the owner at the site, last spring; President Pro Tem Coniglio with the owner at the site a year ago, and Council Member Markin with the owner.

Attorney Frank Chopin, representing Cathleen McFarlane, owner of the property, provided an overview of the request. The landmarking was the issue of the hardship.

Staff Comments:

Zoning Administrator Castro made several of the following comments:

- The Landmarks Preservation Commission voted unanimously to recommend that the Variances were consistent with the landmarked property;

- The lot was atypical and unusual in shape and history; and

- The applicant needed to demonstrate the hardship relative to the Variances being requested.

Motion made by Council Member Markin, seconded by President Pro Tem Coniglio to approve Variance #15-2008. On roll call, the motion carried unanimously.

c. VARIANCE #16-2008 The application of Joseph and Karin Luter; relative to property described as Lot A and the Southwesterly 10 feet of Lot 46, REVISED PLAT OF LAKE FRONT ADDITION TO BOCA RATONE COMPANY'S INLET SUBDIVISION, according to the Plat thereof recorded in Plat Book 18, Page 5 of the Public Records of Palm Beach County, Florida; commonly known as 1000 Indian Road; located in the R-A Zoning District. The applicant requests a variance to allow two driveway gates with an eight (8) foot and an eight foot two inch (8'2") setback from the edge of pavement in lieu of the eighteen (18) foot minimum required.
[Attorney: Maura Ziska]
[ARCOM Recommendation: Defer to the October 22, 2008, Architectural Commission meeting.]
Request for Withdrawal Per Letter Dated October 6, 2008, From Maura A. Ziska.

Item X.C.2.c., Variance #16-2008 was withdrawn.

d. SITE PLAN REVIEW #9-2008 The application of 167 Dunbar Road, LLC; relative to property described as Lot 43, ADAMS ADDITION TO PALM BEACH, according to the Plat thereof, as recorded in Plat Book 7, Page 68, Palm Beach County, Florida, Public Records; commonly known as 167 Dunbar Road; located in the R-B Zoning District. The applicant requests a site plan review to allow the construction of a 8,383 square foot, two story single family residence in the R-B Zoning District on a non-conforming platted lot which is 90 feet in width in lieu of the 100 foot minimum required. [Attorney: Maura Ziska]

Attorney Maura Ziska provided an overview of the request.

Architect Harold Smith displayed architectural renderings of the project.

Staff Comments:

Zoning Administrator Castro made several of the following comments:

- The site plan met all of the lot yard and bulk requirements; and
- Staff requested, as a condition of approval, that the owner provide whatever easements were necessary in order to facilitate undergrounding, if it were to occur.

Discussion occurred among the Town Council members, Architect Smith, and staff regarding the parking of construction vehicles on the site and making it a precedent on all properties of this type; that, as a condition of approval, the applicants would conform with providing assurances of their financial capability; the future generator would meet the code requirements, and would be approved at this time.

Motion made by Council Member Rosow to approve Site Plan Review #9-2008, with the following conditions: that the parking of construction vehicles on the site would be a precedent made on all properties of this type; that the Town Council would decide at a later meeting, the requirements placed upon developers and their financial capability to complete the project; staff's recommendation that the owner provide whatever easements

were necessary in order to facilitate undergrounding, if it were to occur. Motion seconded by Council Member Markin.

Council Member Coleman expressed concern regarding the timeliness of the completion of the project.

Amended motion made by Council Member Rosow to approve Site Plan Review #9-2008, with the following conditions: that the parking of construction vehicles on the site would be a precedent made on all properties of this type; that the Town Council would decide at a later meeting, the requirements placed upon developers and their financial capability to complete a project; staff's recommendation that the owner would provide whatever easements were necessary in order to facilitate undergrounding, if it were to occur; a $2,000 a day fine would be added for every day that the 36 months of completion was exceeded.

The seconder agreed.

Discussion occurred among Town Attorney Randolph and the Town Council members regarding the conditions of approval, and the proposed fines.

Motion withdrawn.

Council Member Rosow requested that the developers be placed on notice that the Town would require financial standards going forward on a variety of different projects in the Town.

Motion made by Council Member Coleman, seconded by President Pro Tem Coniglio to approve Site Plan Review #9-2008, with the following conditions: a $2,000 a day fine would be added for every day that the 36 months of completion was exceeded; that the parking of construction vehicles on the site would be a precedent made on all properties of this type; staff's recommendation that the owner would provide whatever easements were necessary in order to facilitate undergrounding, if it were to occur. On roll call, the motion carried unanimously.

e. <u>SPECIAL EXCEPTION #13-2008 WITH VARIANCE</u> The application of Designers to You; relative to property described as lengthy legal description on file; commonly known as 340 Royal Poinciana Way, Suite 328; located in the C-PC Zoning District. The applicant requests a special exception to change a use from office space to retail space which involved gross leasable area

01/29/2010

exceeding 2,000 square feet; a variance from the requirement to provide two (2) additional off-street parking spaces above the amount calculated by the principal of equivalency zoning requirement to convert a 2,218 square foot space from office use to retail use in the C-PC Zoning District.
[Attorney: Maura Ziska]

Attorney Maura Ziska, on behalf Brian Kosoy, provided an overview of the request.

Discussion occurred among the members of the Town Council, Attorney Ziska, and Mr. Kosoy regarding the conditions of approval from last month of repainting the building and restriping the parking lot, and removal of the parking signs in front of several of the offices.

Motion made by Council Member Markin, seconded by Council Member Coleman to approve Special Exception #13-2008 with Variance, with the condition that this would be the final request for a parking variance. On roll call, the motion carried unanimously.

Public Comment:

Anita Seltzer, 44 Cocoanut Row, commented regarding the Royal Poinciana Plaza.

3. Old Business- More Than 15 Minutes

a. VARIANCE #11-2008 The application of William A. Miller, As TRUSTEE of the William A. Miller 2005 Trust; and, Elaine G. Miller, As TRUSTEE of the Elaine G. Miller 2005 Trust; relative to property described as Lots 37, 39 and 41 POINCIANA PARK, according to the Plat thereof recorded in Plat Book 6, Page 1, of the Public Records of Palm Beach County, Florida; commonly known as 410 Seabreeze Avenue; located in the R-B Zoning District. The applicant requests a variance to permit a Cubic Content Ratio of 4.77 in lieu of the 4.29 existing and 4.08 maximum permitted by code, to allow the construction of a 422.98 square foot second story addition to accommodate a new bedroom and 67.54 square foot addition on the first floor to accommodate an expansion of the living room; a variance to allow the 67.54 square foot addition on the first floor consistent with the existing east side yard setback of 11.39 feet, in lieu of the 12.5 foot minimum required; a variance to allow the 422.98 square foot second story addition, with a second story west side yard setback

01/29/2010

of 9.6 feet, in lieu of the 15 foot minimum required. [Attorney Maura Ziska]
[ARCOM Recommendation: Defer to the October 22, 2008, Architectural Commission meeting.]
Deferred from the September 8, 2008, Town Council Meeting.
Request for Deferral to the November 12, 2008, Town Council Meeting Per Letter Dated September 25, 2008, From Ronald K. Kolins.

Attorney Ron Kolins requested a second deferral, as the Architectural Commission (ARCOM) had not completed their review of the case.

Motion made by President Pro Tem Coniglio, seconded by Council Member Coleman to approve deferral of Variance #11-2008 to the November 12, 2008, Town Council meeting.

Mayor McDonald suggested that exceptions be made for deferrals that were awaiting ARCOM review.

Upon roll call, the motion carried unanimously.

Motion made by Council Member Coleman, seconded by President Pro Tem Coniglio to approve second deferrals that were beyond the applicants' control (from any commission), and those would not be required to come before the Town Council. On roll call, the motion carried unanimously.

b. <u>SITE PLAN REVIEW #7-2008 WITH VARIANCES</u> The application of CSC Brazilian LP, by CSC Brazilian GP Corporation, by Adam Schlesinger, President; relative to property described as lengthy legal description on file; commonly known as 300 and 301 Australian Avenue; located in the R-C Zoning District. The applicant requests a site plan review for a hotel; a variance to allow lot coverage of 55.23% in lieu of the maximum of 30% allowed and 54.87% existing for the Brazilian Court Hotel; a variance to allow a front setback of 20.11 feet in lieu of the minimum 21 feet allowed and 24.11 feet existing for the new awnings on the north side of the Ohio House; a variance to allow a street side (front) setback of .30 feet (less than 1 foot) in lieu of the

21 feet allowed for the new awnings on the east side of the Brazilian Court Hotel; a variance to allow a street side yard setback of 20.08 feet in lieu of the 21 feet allowed for the new awnings on the east side of the Ohio House; a variance to allow a side setback of 2.0 feet in lieu of the 20 feet allowed for the new awnings on the west side of the Brazilian Court Hotel. [Attorney: James Brindell]
[Landmark Preservation Commission Recommendation: Approval of the variance to Town Council carried 6-1. Mr. Gene Pandula opposed.]
Deferred from the September 8, 2008, Town Council Meeting.

Ex-parte communication was declared by President Kleid, and Council Member Rosow through a telephone conversation.

Attorney James Brindell, on behalf of the Brazilian Court Hotel, provided an overview of the request.

Staff Comments:

Zoning Administrator Castro made several of the following comments:

- The Landmarks Preservation Commission recommended approval of the project; and

- The hardship for the variance for the awnings needed to be demonstrated.

Motion made by Council Member Coleman, seconded by Council Member Markin to approve Site Plan Review #7-2008 with Variances. On roll call, the motion carried unanimously.

4. New Business- More Than 15 Minutes

a. <u>VARIANCE #13-2008</u> The application of Cement Pond Holdings, LLC (Lorne and Wendy); relative to property described as lengthy legal description on file; commonly known as 695 South County Road; located in the R-A Zoning District. The applicant requests three variances to allow construction of a 2,484 square foot second story addition with a point of measurement of 12.77 feet National

Geodetical Vertical Datum mean sea level (NGVD) for building height plane, height and overall height of the proposed addition in lieu of the 8.36 feet NGVD required. [Attorney: Maura Ziska] [ARCOM Recommendation: The architecture of the project meets the variances carried 6-1. Mr. Jeffery Smith opposed.]

Attorney Maura Ziska, on behalf of the applicant, provided an overview of the request.

Architect Harold Smith provided a presentation of the architectural drawings and photographs.

Staff Comments:

Zoning Administrator Castro made several of the following comments:

- Because the corner lot situation in the existing house was at a higher elevation than the averages of the street elevations, the point of measurement variance was needed in order for the existing second floor to match the second floor on the rear of the house.

- Jungle Road was very narrow at the location where it intersects with County Road.

- The site visibility issues were met.

- If there was a hardship to be granted, it would be the narrowness of Jungle Road, as it was almost impossible to get down that street.

Discussion occurred among the members of the Town Council, Town Attorney Randolph, Attorney Ziska, and staff regarding: the addition to the standard conditions of a $2,000 per day fine for every day that the project was not completed, and the homeowner was not exempt from the fine; the addition of $200 fine for parking violations and the homeowner would be exempt.

Motion made by Council Member Rosow, seconded by Council Member Markin to approve Variance #13-2008 with conditions as set forth by staff; a $200 fine for parking violations; a $2,000 fine per day for violations that exceeded the completion of a project; to be made as part of the standard conditions. On roll call, the motion carried unanimously.

Discussion continued regarding the fines set forth in the ordinance, setting fines for standard conditions, and the differences between them; harsher fines could be imposed on an individual basis if necessary. Planning, Zoning, and Building Director Page noted that last month the fines imposed for parking violations were $250, rather than $200.

b. <u>VARIANCE #17-2008</u> The application of Darrel Ross and Susan S. Ross; relative to property described as Lot 10, of the Plat of POLMER PARK, according to the plat thereof as recorded in Plat Book 27, Page 53, of the Public Records of Palm Beach County, Florida; commonly known as 300 Polmer Park; located in the R-B Zoning District. The applicant requests a variance to permit lot coverage of 31.74% in lieu of the 30.97% existing, and the 30% maximum permitted by code for a two-story house, for the construction of a 138.4 square foot addition on the first floor; a variance to allow the point of measurement for the purposes of calculating cubic content ratio of 17.5 feet National Geodetical Vertical Datum (NGVD) in lieu of the lowest floor slab of 14.5 feet NGVD as required by code.
[Attorney: Ronald Kolins]
[ARCOM Recommendation: Defer to the October 22, 2008, Architectural Commission meeting.]
Request for Deferral to the November 12, 2008, Town Council Meeting Per Letter Dated September 25, 2008, From Ronald K. Kolins.

Item X.C.4.b., Variance #17-2008, 300 Polmer Park, was deferred to the November 12, 2008, Town Council meeting.

D. Other

1. Clarification of Condition #4 Regarding Painting of the Buildings on Variance #12-2008.
[John S. Page, Director of Planning, Zoning, and Building]

Discussion occurred among the Town Council members, Attorney Ziska, and staff regarding clarification of the motions relative to painting the building and restriping the parking lot.

Motion made by Council Member Coleman, seconded by Council Member Markin to approve deletion of the painting and restriping from last month's conditions of approval.

Discussion continued regarding clarification of the designation and location of the parking spaces.

Upon roll call, the motion carried unanimously.

2. Hearing on Issues Related to 995 South Ocean Boulevard.
[John S. Page, Director of Planning, Zoning, and Building]
Deferred from the September 8, 2008, Town Council Meeting.

Planning, Zoning, and Building Director Page provided a brief explanation of the issues related to the property owned by Mrs. Conrad on 995 South Ocean Boulevard. He indicated that the Planning, Zoning, and Building (PZB) Department allowed the building, which had been completed, to be occupied before final resolution of the landscaping. As a result, the neighboring property owner, Attorney Frank Chopin, argued that PZB had mistakenly issued a certificate of occupancy (CO) permit. PZB endeavored to correct the problem by revoking the permanent occupancy permit and issuing a conditional permit instead.

Ex-parte communication was declared by Council Member Markin with Mrs. Conrad, Attorney Chopin, and one of the neighbors; Council Member Coleman with neighbors, Attorney Chopin, and receipt of legal comments; President Kleid with Attorney Chopin; Council Member Coniglio with Attorney Chopin, and Ned Monell; Council Member Rosow with Mrs. Conrad.

Discussion occurred between Attorney Chopin and President Kleid regarding ex-parte communication.

President Kleid declared ex-parte communication with Town Attorney Randolph in his capacity as Attorney to the Town Council, which was in addition to the previous statement. Council Member Rosow added that he also had ex-parte communication with Town Attorney Randolph.

Attorney Roy Fitzgerald, on behalf of certain residents of Via Del Lago, commented that Mrs. Conrad came forward with a landscape plan, that was questionable. He indicated that Mrs. Conrad never followed up on the approved plan, which would have provided the buffer that Mr. Chopin was seeking.

Attorney Frank Chopin, 977 S. Ocean Blvd., made several of the following comments:

- The CO should not have been issued, as ARCOM's approval included a landscape plan, which had not been done.
- The Town's code required that when a nonconforming property was added onto a reconstructed property, construction was required to be completed (including the landscaping) within 13 months, as it pertained to this case.

Attorney Manuel Farach commented on Mrs. Conrad's behalf, and provided an explanation that the landscaping had not been done because the matter was in litigation, and that she had been advised by ARCOM to wait for the appellate court's decision. He addressed the issues raised by Attorneys Fitzgerald and Chopin.

Town Attorney Randolph noted that he wanted to make a correction regarding a conversation that he had with a Council Member, that it was not in regard to the subject matter of the briefs. He indicated that it was premature for the Council to deal with this matter until it was resolved by ARCOM and the courts.

Ned Monell, resident of Via Del Lago, commented on the fact that the Conrad's were informed that there were legal issues pending should they become involved with the property. He suggested that a variance be allowed in order for Mrs. Conrad to build a wall higher than four feet.

Rebuttals by the Attorneys were heard.

President Kleid announced that comments from the public were now closed and the Town Council was entering into an Executive Session.

Discussion occurred regarding the following: the adherence to the original landscape plan approved by ARCOM, the appellate court's decision, and the feasibility of building a wall.

Motion made by Council Member Coleman, seconded by President Pro Tem Coniglio to affirm that the applicant complete the landscape plan approved by ARCOM; upon completion, staff would release the bond and issue the final Certificate of Occupancy. On roll call, the motion carried unanimously.

3. Presentation by The Breakers Regarding its Future Redevelopment Plans. [Paul N. Leone, President, and Jim Keenan, Owner and Board Chair]

TIME CERTAIN: OCTOBER 13, 2008, 11:30 A.M.

Chief Executive Office Jim Keenan, owner and board chair of the Breakers Hotel and Resort, and Paul Leone, president and chief executive officer of the Breakers, provided a presentation of future redevelopment plans.

Discussion occurred with the Town Council members, Mr. Keenan, and Mr. Leone. Mr. Keenan assured the Council that there were no current plans for development or plans to sell the property.

Staff was requested to provide an update regarding the completion of the Breakers' antennae to determine the distance of a frequency signal on the north end of the Town.

Arnold Hoffman, 150 Bradley Place, commented that he did not favor redevelopment and wanted to preserve the grace of the Town.

Motion made by President Pro Tem Coniglio, seconded by Council Member Rosow to approve placing the Royal Poinciana Area Citizen Master Plan on the December 8, 2008, Town Council Meeting Agenda for discussion regarding the Code, hiring a firm to create land regulations, and inviting Publix and the Breakers for input. On roll call, the motion carried unanimously.

4. Possible Ordinance Provisions to Limit and Control the Use of Artificial Turf.
   [John S. Page, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Director Page provided an overview of ARCOM's final recommendation regarding the use of artificial turf in the Town.

Motion made by President Pro Tem Coniglio to deny the use of artificial turf, unless it met the stipulations currently set forth in the code.

President Kleid clarified that if the applicant met the requirements of the landscape open space, other material, such as artificial turf, would be permitted.

Motion seconded by Council Member Rosow. On roll call, the motion carried unanimously.

5. List of Properties for Potential Landmarking.
[John S. Page, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Director Page provided a brief history of landmarking properties and reported that there were currently ten properties under consideration of being landmarked. He noted that there was a limit as to how many designations could be added on an annual basis, as it created a logistical and resource problem. Staff recommended that the Town continue with the existing procedures.

Motion made by President Pro Tem Coniglio, seconded by Council Member Coleman to approve continuance of the landmark designation procedure currently in place, and the recommended landmark consideration list. On roll call, the motion carried unanimously.

a. RESOLUTION NO. 81-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Renewal of the Contract Between the Town of Palm Beach and Research Atlantica, Inc., as Historic Landmarks Preservation Consultant and Authorizing the Town Manager to Execute the Same on Behalf of the Town.
[John S. Page, Director of Planning, Zoning, and Building]
[Removed from Consent Agenda]

Responding to Council Member Markin, Historical Preservation Consultant Jane Day indicated that her contract price was down 11% from last year; in 2007-2008, two designations were made. She then discussed her other responsibilities with the Town.

Motion made by Council Member Markin, seconded by Council Member Rosow to approve Resolution No. 81-08. On roll call, the motion carried unanimously.

6. Status Report Regarding Enforcement of On-site Construction Parking Regulations.
[John S. Page, Director of Planning, Zoning, and Building]

Planning, Zoning, and Building Director Page provided a status report of the on-site construction parking.

Council Member Rosow received direction to discuss the differentiation in parking between service and construction vehicles at the October 27, 2008, Ordinances, Rules, and Standards Committee meeting and the number of permits per construction site.

Discussion occurred among the Town Council members and staff regarding the 3 + 1 construction parking for the property owners and the issuance of parking placards for regular service people. The number of permits per construction site would be discussed at the October 27, 2008, Ordinances, Rules, and Standards Committee meeting.

Public Comment:

Yvelyne D. Marix commented on permit parking that was not allowed on no-parking streets.

XI. ORDINANCES

A. Second Reading

1. <u>ORDINANCE NO. 24-08</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 46, Fire Prevention and Protection, Article III, Fire Prevention Code, at Section 46-67, Permits, and at Section 46-68, Annual Fire and Life Safety Inspections; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[William Amador, Fire-Rescue Chief]

Town Attorney Randolph read Ordinance No. 24-08 by title, as printed above.

Motion made by Council Member Markin, seconded by Council Member Rosow, to adopt Ordinance No. 24-08 on second reading. On roll call, the motion carried unanimously.

2. <u>ORDINANCE NO. 26-08</u> An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter

130 of the Town Code of Ordinances Relating to Automobile Insurance Requirements for Vehicle for Hire Permit Holders, Section 130-71, so as to Increase the Dollar Limits of Liability to be Provided; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[Thomas G. Bradford, Deputy Town Manager]

Town Attorney Randolph read Ordinance No. 26-08 by title, as printed above.

Motion made by Council Member Rosow, seconded by President Pro Tem Coniglio, to adopt Ordinance No. 26-08 on second reading. On roll call, the motion carried unanimously.

B. First Reading

1. <u>ORDINANCE NO. 16-08</u> 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 42-230 Relating to Lawn Maintenance Equipment Noise; Providing For Severability; Providing For Repeal of Ordinances in Conflict; Providing For Codification; Providing an Effective Date. [Michael S. Reiter, Chief of Police]
Deferred from the April 8, 2008, Town Council Meeting.

Town Attorney Randolph advised that Ordinance No. 16-08 had been deferred at the April 8, 2008, Town Council meeting.

In response to Town Attorney Randolph, Town Manager Elwell provided a brief history of Ordinance No. 16-08 referring to the following items, which were included in the backup material:

- Memorandum to the Mayor and Town Council dated August 27, 2008;
- Staff Recommendation and General Information presented in the memorandum dated April 3, 2008, from John Randolph for the April 8, 2008, Town Council meeting.

Town Manager Elwell and Police Chief Reiter responded to questions and concerns of the members of the Town Council regarding the ordinance.

Town Attorney Randolph read Ordinance No. 16-08 by title, as printed above.

Motion made by Council Member Markin, seconded by Council Member Rosow, to approve Ordinance No. 16-08 on first reading. On roll call, the motion carried 4/1:

Council Member Markin:	**Yes**
Council Member Rosow:	**Yes**
President Pro Tem Coniglio:	**No**
Council Member Coleman:	**Yes**
President Kleid:	**Yes**

2. ORDINANCE NO. 25-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 78, Peddlers and Solicitors; Article III, Charitable Solicitations, at Section 78-77, Definitions, by Deleting the Definition of Canister and Amending the Definition of Solicit and Solicitation; Amending Section 78-102, Application, So as to Delete Paragraphs 12, 13 and 17 Thereunder and Renumbering the Paragraphs; Amending Section 78-103, Relating to Information Contained in Application to Be Public; Rescinding Section 78-104, Investigation of Application; Amending Section 78-105, Relating to the Issuance of the Permit; Amending Section 78-106, Relating to Fees, by Providing for an Administrative Fee of $460.00 for Applications; Amending Section 78-107 So as to Provide That There Be Two Events During a Twelve Month Period of a Permit and Exempting Organizations Which Receive Financial Support from the Town Through its Budgeting Process from Said Limitation; Rescinding Section 78-110, Relating to Solicitation Through Media; Rescinding Section 78-113, Relating to the Requirement of Reports; Rescinding Section 78-114 Relating to Use of Canisters; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Jane Struder, Director of Finance]

Town Attorney Randolph read Ordinance No. 25-08 by title, as printed above.

Motion made by Council Member Markin, seconded by President Pro Tem Coniglio, to approve Ordinance No. 25-08 on first reading. On roll call, the motion carried unanimously.

3. ORDINANCE NO. 27-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 18, Buildings and Building Regulations, of the Town Code of Ordinances at Article IV, Section 18-242, So as to Modify Section 18-242, Providing Amendments Related to the Adoption of Fees in the Manner and Form Attached; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 27-08 by title, as printed above.

Motion made by Council Member Rosow, seconded by Council Member Markin, to approve Ordinance No. 27-08 on first reading. On roll call, the motion carried unanimously.

4. ORDINANCE NO. 28-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 46, Fire Prevention and Protection, Article III, Fire Prevention Code, Section 46-66, Codes Adopted, Copies on File, So as to Adopt by Reference the Florida Fire Prevention Code, 2007 Edition, NFPA 1, 2006 Edition, and the National Fire Protection Association (NFPA) Life Safety Code, 2006 Edition; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Herewith; Providing for Codification; and Providing for an Effective Date. [William Amador, Fire-Rescue Chief]

Town Attorney Randolph read Ordinance No. 28-08 by title, as printed above.

Motion made by President Pro Tem Coniglio, seconded by Council Member Markin, to approve Ordinance No. 28-08 on first reading. On roll call, the motion carried unanimously.

5. ORDINANCE NO. 29-08 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 118, Traffic and Vehicles, Article III, Parking, Stopping and Standing, at Section 118-95, Responsibility for Violations, Authority of Police to Immobilize Vehicle, Item (B) (2), So as to Amend Said Section to Specify a Charge for the Removal of the Immobilizing Device; Providing for

01/29/2010

Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [Jane Struder, Director of Finance]

Town Attorney Randolph read Ordinance No. 29-08 by title, as printed above.

Motion made by Council Member Rosow, seconded by Council Member Coleman, to approve Ordinance No. 29-08 on first reading. On roll call, the motion carried unanimously.

XII. REGULAR AGENDA

A. Old Business

1. Coastal Issues

TIME CERTAIN: 9:30 A.M. ON OCTOBER 14, 2008

Director of Public Works Paul Brazil presented an overview and history of the coastal management program. He explained that there had been some questions recently, from the Town Council and from residents, regarding what was being done and whether it was the right way to proceed with the coastal program.

He began with the history of the coastal management program:

- The program started in the 1920's in response to a set of hurricanes in the '20's, '30's, and '40's. In the early 1920's a seawall and groyne construction program, in order to offset beach erosion;

- In 1925, local concerns built the Lake Worth Inlet - the jetties were constructed, and it became a federal project in 1934.

- By 1932, the Town had adopted a formal groyne and bulkhead ordinance, and the Town was underway with construction of both seawalls and groynes, starting at the north end of the Island and working south.

- In 1935, Public Works completed a long term plan for shore protection; in 1936, the impacts of the jetties to the Island were already being studied. Beaches were starting to recede and the U.S. Army Corps of Engineers (USACE) was studying how much of that could be attributed to the Inlet.

- In 1937-46 there was a long term study on the performance of the groynes that the Town had built at their own expense. A joint USACE and University of Florida study in 1941 outlined the fact that the Town was being negatively impacted by the Inlet, not just by storms; that the seawalls and groynes were effective to a certain degree. The outcome was that the Town needed to actually place sand.

- In 1944, the USACE did a beach nourishment project for the first time - 282,000 cubic yards of sand were placed near the north end.

- In 1948, an additional 2.3 million cubic yards of sand were placed.

- In 1953 an additional 500,000 cubic yards of sand were placed. In 1959, the Sand Transfer Plant went online.

- From 1959 until 1985, approximately 2.7 million cubic yards of sand were bypassed via the Sand Transfer Plant.

- From 1970 to 1977, in various projects, another 800,000 cubic yards of sand were placed.

- In summary, from 1920 through the late 1970's, a lot of sand was placed; there was a set of groynes in place; the Sand Transfer Plant was working, and the USACE and the Town were studying the effects of the Inlet on the Town.

- In the 1980's the Town completed its first Comprehensive Coastal Management Plan.

- In 1990-1996, the Sand Transfer Plant went off line; the Plant had been running cooperatively between Palm Beach County and the Town; there was then a disagreement about responsibility and a court battle ensured. It was determined that the Town was financially responsible, and the Town now pays for the operation and maintenance of the Sand Transfer Plant, with the County overseeing the work.

- In 1986-1992, the permitting process for the first mid-Town project was begun.

- In 1992-1993, it was decided by the Town Council to install an experimental pre-fabricated reef, the PEP reef. That was installed in 1983 and was monitored through 1995. It turned out that the PEP reef was actually causing negative effects. In 1995-96, the PEP reef was removed and the first mid-Town project was built– both beach nourishment and a groyne field. That was still in place, and it had been stable over time.

- In 1995, while all of this other work was going on, the Town Council appointed the first Shore Protection Board to review the plan, and to come up with a set of recommendations for a long term plan. In 1998, the Comprehensive Coastal Management Plan was updated, based on input from the Shore Protection Board, the Town Council, and the community. That plan was current and was the plan that was being reconsidered now, and needed to be updated. Another Shore Protection Board has been appointed to work on that update.

- In 2003, the mid-Town project was expanded via placement of another 1.2 million cubic yards of sand.

- In 2004-2005, Hurricanes Frances, Jeanne, and Wilma occurred, and severe erosion was seen on the south end of Town The Reach 7 project was completed in that same time frame; emergency work was done on the south end in that same time frame; the dunes in Reaches 7 and 8 were reconstructed as well. The permitting process was begun for Reach 8, and that was directly in response to the effects of the hurricanes. Prior to that, Reach 8 had been relatively stable. Now, the Town was still in the permitting process, and in litigation over trying to get the permit.

Mr. Brazil provided a PowerPoint presentation, indicating the limits and status of all of the Reaches:

Reach 1: North end of the Island - the Sand Transfer Plant discharged directly into that Reach. When material was dredged from the Inlet, it went into that Reach and into the north end of Reach 2.

Reach 2: There is a great deal of near shore hard bottom exposed, similar to the south end of Reach 8. Getting a permit to directly fill would be very difficult. Discussion has occurred regarding expanding the USACE disposal area for dredge material from Reach 1 into Reach 2. When the Sand Transfer Plant is renovated, the second phase of that renovation would extend the discharge into the north end of Reach 2. Hopefully, over time, Reach 2 would build on its own and start feeding the north end of Reach 3.

Reaches 3 & 4: Mid-Town projects - are being maintained over time. The initial projects are finished, and any other permitting would be for renourishment.

Reach 5: Has done well because of all of the sand put into Reaches 3 & 4. As of now, there was not a project plan for that area. It is continually monitored, and if something changed, a different recommendation would be made.

Reach 6: The Florida Department of Transportation (FDOT) revetment was installed to protect the roadway, because of the loss of beach over time.

Reach 7: The north end of Reach 7 is of concern. The northern 2,000 feet of the project has been eliminated as a settlement agreement with USACE. Unraveling of the north end has been seen at a faster rate than anticipated.

Reach 8: The north end of Reach 8 is much wider than when the permitting process was stared. South of the Pier, the beach gets narrower, and is not recovering on its own. The area had not been designated as critically eroded in the past, however, it is an area that staff is trying the hardest to improve.

Mr. Brazil summarized that a great deal of work had been done on the Island, with sand placed in response to the Inlet and storm erosion. The projects had generally been successful, although there was still a lot of work ahead.

Mr. Brazil introduced Dr. Robert Dean, a foremost authority in beach nourishment, who explained the technical side of the program, and responded to questions from the Town Council.

Dr. Dean provided his credentials and his background with the Town of Palm Beach. He discussed the function of the beach, the coastal setting of the Town of Palm Beach, causes of erosion in the Town, the impact on the beaches, and the various options for addressing erosion.

Several of the issues pointed out by Dr. Dean were:

- The Lake Worth Inlet was cut in 1917, and the jetties were completed in 1925. The Inlet had contributed a great deal to the erosion of the Town. The State of Florida maintained a database that he had studied, and it was his interpretation that almost all of the erosion in the Town was due to the interruption of the net long shore sediment transport, which was from north to south along the coast. The Inlet basically blocks the natural flow of sand transport

- Prior to installation of the Sand Transfer Plant, there had been no sand transfer around the Inlet; furthermore, there had been a considerable amount of sand taken off shore and placed in deep water, and on Peanut Island.

- Storms also contribute to erosional impact, however, the beaches are already weakened by the interruption of sand by the Inlet.

Options for addressing beach erosion:

- Inlet by-passing is an option for addressing beach erosion. The Town has played catch up over the years, and has caught up by more than 50% of the sand loss. The Town is positioning itself to go into more of a maintenance mode for its beaches, rather than a catch-up. The catch-up is due to the impoundment north of Lake Worth Inlet, and is also due to the sand that has been taken off shore and placed on Peanut Island.

- Structural methods - off shore breakwaters, groynes, revetments, and seawalls. Dr. Dean mentioned that he had been very impressed with the work of Coastal Planning and Engineering.

Dr. Dean responded to the following issues raised by members of the Town Council:

- Beach nourishment versus groynes, breakwaters, etc.

- The effectiveness of the mid-Town project.

- Studies indicating that if sand was in the system, whether it be off shore or on the beach, it still provided upland protection during storms, however, it was much more effective it if was ON the beach, rather than off shore.

- His opinion that the Town of Palm Beach had done an outstanding job of coastal management.

- The conditions under which groynes had been permitted, and their effect on stabilizing the beach.

- The sand transport from north to south; the macro sediment transport process.

- Explanation of why the PEP reef project failed.

- Off shore submerged break walls.

- The cause of erosion is the Lake Worth Inlet.

- The Town had made a great deal of progress with beach nourishment.

- Regional approaches to beach nourishment.

Mayor McDonald commented that the Town did not do any renourishment for approximately 50 years, and that obviously drained the entire system. Putting all of the sand back on the beach and getting it on a maintenance schedule had fallen to Town of Palm Beach Town Councils since 1995 to appropriate the dollars to do that. He noted that discussions had taken place with the USACE and U.S. Fish and Wildlife about creating a regional, inlet to inlet restoration, and suggested that was something that could be discussed when Dr. Dean attended the committee meetings.

Mayor McDonald asked if Dr. Dean had any experience with solutions to nourishment of hard bottom areas. Dr. Dean responded that issue was part of the agenda for the committee to address. He noted that the issue of hard bottom would not go away if groynes were installed. He expressed the opinion that the state was very reluctant to permit groynes. Mayor McDonald urged consideration of regional approaches to beach renourishment.

In response to Council Member Rosow, Dr. Dean explained that his recommendations for action for the Town to have enough sand would be to review the shoreline changes that had occurred since 1883, find good sand to renourish with, and ensure that the Sand Transfer Plant is bypassing the necessary amount of sand.

Dr. Dean responded to questions regarding the availability and quality of borrowed sand, noting that the quality was different from the original sand, however, it would intermix. He opined that the Singer Island breakwater project should also be considered carefully.

In response to the impacts related to a deepened inlet, Dr. Dean explained that it should not cause an additional deficit of sand in the Town, because the purpose of the Sand Transfer Plant was to capture sand before it got into the channel. Regarding tidal surge issues, relative to a deepened inlet, there were some very fine numerical models that could be run prior to reaching an assessment.

Dr. Dean explained the reasoning behind relocating the Sand Transfer Plant discharge point.

Dr. Dean responded to the comments of Dr. Sanford Kuvin, 149 E. Inlet Drive, that in the 44 years he had lived at that point, there had never been an accretion of sand at the south jetty, and that five years ago there was sand tightening at the jetty, because there was a study indicating that sand was leaking from the south side into the jetty. Dr. Kuvin noted that the Sand Transfer Plant, of late, had been doing an extraordinary job of pumping sand. He referred to the proposed Sand Transfer Plant pipe extension report, citing the concept of the nodal point as the main feature as to why an extension of the pipe may be necessary.

Dr. Dean indicated that the data showed that the shoreline immediately south of the south jetty had built out. He noted that once the jetty was installed, then there would be a nodal point, with some of the sand going north and some going south. At the point where sand went both ways, the beach would erode. In the case of a jetty, that may reach an equilibrium, such that there is no longer a nodal point and conditions were stable. He suggested that all of the data be reviewed before the Town would consider the fight to relocate the discharge point.

a. Potential Litigation Regarding Downdrift Impacts of Lake Worth Inlet. [John C. Randolph, Town Attorney]

Town Attorney Randolph noted that, for the record, the Attorney/Client meeting that was called earlier, was called because he desired the advice of the Mayor and Town Council concerning the litigation that was announced.

Town Attorney Randolph referred to his memorandum, dated October 1, 2008, included in the back-up material, which brought the Town Council up to date, in order to discuss whether they wished to pursue the matter of litigation regarding downdrift impacts.

President Kleid reviewed the four options:

1. Hire Attorney Jerry Stouck or Attorney Stumpy Harris.
2. Expand the search to find another law firm.
3. A straw vote of the electorate to determine whether litigation should be pursued.
4. Do nothing at all.

He suggested that, in the current economic circumstances, option four may be more appropriate.

Council Member Coleman commented that the Town Council represented the people, and would have more information regarding litigation and potential strategies than would be available to the public, and did not favor a straw vote. He stated that he was prepared to make a decision, and was in favor of litigation.

President Pro Tem Coniglio commented that the Federal government had admitted that the Inlet had caused the erosion of the beaches, and that the Town had worked with its own money endlessly to maintain the beaches. She noted that the Town would need to understand the impacts of a lawsuit on the regulatory agencies.

Council Member Markin commented that the problem was at the Federal and State level, and stated that she believed that there was no choice but to explore litigation.

Council Member Rosow suggested that a lawsuit be filed through Town Attorney Randolph, which would then give the opportunity to interview other counsel in a form that was much more acceptable than trying to accomplish that in a public meeting. He stated that he was not comfortable with hiring anyone right now, until the Town really knew how it was going to get the job done.

Discussion continued relative to litigation. Town Attorney Randolph advised that he would research the costs to file a lawsuit, whether as co-counsel, or as counsel, and report back to the Town Council.

President Kleid summarized the considerations before the Town Council:

- Not to pursue the straw vote.
- Whether to expand search for legal counsel
- To move forward at all.

After further discussion, **motion made by Council Member Rosow, seconded by Council Member Coleman to retain counsel to prepare the information necessary to enact a lawsuit against the U.S. Army Corps of Engineers and any other party with respect to the sand deficiency in Palm Beach, to include an allocation of $300,000 from the fund established for this matter. On roll call, the motion carried unanimously.**

Discussion took place regarding whether counsel would include one of the two attorneys that had expressed interest, or whether to expand the search.

Town Attorney Randolph advised that Attorney Jerry Stouck had made a presentation to the Town Council, had done some work quite some time ago in this regard, and had been selected by a previous Town Council to prepare a report in regard to potential litigation. Mr. Stouck had indicated that he would now need to update that work, and that the costs would not be substantial. Mr. Stouck had presented an impressive resume in regard to work against the Federal government.

Mr. Randolph indicated that Attorney Stumpy Harris had provided a presentation, and the reason he had been sought out was because he was the attorney in the Applegate Case, which was at the Canaveral inlet. He had ultimately reached what he considered a very favorable settlement. Mr. Harris had indicated that he would need to expend approximately $250,000 to research for the filing of a lawsuit. Attorney John DeVault was approached, however, he ultimately had decided that he was not interested. Attorney Andy Anderson was approached, however, he had not replied with an interest.

Council Member Rosow moved that Attorney Jerry Stouck, of Greenberg Traurig, LLP, be hired, on the basis that he had previously prepared background information; costs would be less than the $300,000 allocated,, and the law firm was a very large firm in Washington, D.C. The motion was seconded by Council Member Markin. On roll call, the motion carried unanimously.

Town Attorney Randolph advised that he would contact Attorney Stouck, and report to the Town Council as to what will be required to go forward.

Council Member Rosow amended his previous motion as to the portion regarding the allocation of funds for the preparation of litigation, to reduce the amount of allocation to $100,000. The motion was seconded by President Pro Tem Coniglio.

Town Manager Elwell clarified that the direction was to direct Attorney Stouck work within the confines of the $100,000 to prepare and file a complaint.

On roll call, the motion carried unanimously.

President Pro Tem Coniglio clarified that Attorney Stouck would prepare and file a complaint. At that point, the Town Council, in an attorney/client position, would have the option of deciding whether this was an effective way to move forward.

Peter Pettie congratulated the Town Council on its decision, and provided his comments.

b. Report on Communications with Senator Mel Martinez Regarding Opposition to Port of Palm Beach Expansion. [David A. Rosow, Town Council Member]

Council Member Rosow reported that he had not yet had the opportunity to speak directly with Senator Martinez, and continued to work towards speaking with the Senator.

Mayor McDonald thanked Mr. Rosow for his willingness and efforts.

c. Report from Coastal Planning and Engineering Regarding Beach Renourishment and the Town's Comprehensive Coastal Management Plan.
[H. Paul Brazil, Director of Public Works]
Deferred from the September 8, 2008, Town Council Meeting.

Rick Spadoni, Sr. Vice President, Coastal Planning and Engineering, provided a PowerPoint report regarding the nuts and bolts of a beach nourishment project, what it would take to get the permit, and the future challenges of the Town. He responded to questions from the Town Council.

Regarding information on seawalls, Mr. Spadoni, explained that there were two impediments to a homeowner building his own seawall:

- Environmental. Seawalls were the last line of defense in protecting upland structure. When seawalls were installed, waves would hit the seawall and scour sand off of the beach; often very low or non-existing beaches were found with seawalls; it was also a concern for sea turtle nesting.

- Seawalls tended to lock up sand behind them, but that also takes a lot of the sediment out of the system; it effectively removes that segment of contributing sediment to the system in the event of a storm event.

Council Member Coniglio commented that on the flip side, the ocean would continue to eat away at the dune system, which then could not act as a barrier; if there was no seawall, there would be no sand for a turtle habitat anyway.

Peter Pettie, 3400 South Ocean Blvd., commented that the idea of building the beaches was to provide a buffer zone, to stop storm surge from damaging the upland properties. He noted that the shoreline had not been challenged from a tropical storm or hurricane since 2005, although uncommon seasonal weather had done damage to the shoreline. He stated that mid-town beach was a budget item, and would always be financed by the Town, and questioned whether Reach 7 or Reach 8 would be one time projects. He suggested that discussion take place regarding financing, as investigation takes place regarding Reach 7, so that different levels of construction can be considered.

Director of Public Works Brazil replied that the geometry of Reach 8, as proposed, would impact its performance; the geometry of Reach 7 had impacted its performance. That was inevitable. Combining Reach 7 and 8 in the future, in terms of maintenance, would result in a larger project, and the future performance would improve. With Reach 8, half of the project costs were for environmental mitigation. Structures would need to be examined for the future, however, there was no silver bullet – there was not one structure that could stop all beach erosion and guarantee that there would never need to be maintenance.

President Kleid commented that it must be understood that the Town was working within a system, and must adhere to the rules and regulations of many regulatory bodies, and that the

Town was also subject to attack by environmental groups. He explained that there was no easy solution, and everyone seemed to be in agreement that the Town must renourish its beaches before going to structures, when there were problems with beach renourishment.

Stuart Shulman, 2280 South Ocean Blvd., commented that both the Reef and the Harbor House were in bad shape, and the picture of Reach 7 did not depict exactly what was happening at the Harbor House.

President Kleid announced that the Town Council would meet on October 16, 2008, for a boat ride along the entire shoreline of Palm Beach to see the problems first hand.

Mr. Brazil noted that staff had reviewed the beach at the Reef and the Harbor House, and if there was something that had to be done, staff would return to the Town Council to request further direction. He explained that those condominiums were at the very north end of the project, and was within the "taper." If there was something unusual in terms of accelerated erosion in that area, staff would find out, because the area was being monitored.

Ralph Rafanello, Board of Director member at the Reef, expressed concern for the residents, and commented that the timing was becoming more and more critical.

President Kleid and Council Member Coleman commented that the Town was doing everything that could be done, and that was the reason that the consultants had been invited today, so that everyone could understand the history of beach nourishment and the amount of money that had been spent.

In reply to Council Member Rosow, in regard to Reach 7, Mr. Brazil explained that the beach nourishment project was an anomaly on the shoreline; a section of that area was pushed out into the ocean, and the natural shoreline was back further. Therefore, the transport of sand from north to south was working on the northeast corner of what had been built out into the ocean. A second part of the problem was the Florida Department of Transportation (FDOT) revetment in Reach 6, which projected out even further than the project area. Normally, sand would move from north to south, however, the very end of Reach 7 did not get fed well. The two things going on in that one location may beg for an isolated structure.

Council Member Rosow commented that the buck stops with the Federal and State agencies. He suggested that those agencies ultimately negotiate down the Town projects, ultimately dictate where sand can come from, and allow the Town to have very little influence, except with dollars. He referred to the letter recently received by the Town regarding the Sand Transfer Plant, stating that he was baffled that any agency could deal with a real issue in such a pedantic way; he suggested that it be added to the Town web page, if possible, so that everyone could see how the regulators treat the Town.

Council Member Markin commented that it was crystal clear that beach renourishment was not needed as much as government refurbishment. The problem was at the Federal and State level. She urged Dr. Dean to encourage them to put the requirements together and give them to the local communities to allow the projects to be completed.

d. Competitive Consultants Negotiation Act (CCNA) Recommendation Regarding Selection and Retention of Coastal Consultant(s).
[H. Paul Brazil, Director of Public Works]

Public Works Director Brazil reported that the CCNA process had been completed; the Selection Committee was composed of President Pro Tem Coniglio, Deputy Town Manager Thomas Bradford, Town Engineer Jim Bowser, and Public Works Director Brazil. Submittals had been received from ten different firms, with seven being interviewed; five had been selected for Town Council consideration. He requested that the Town Council ratify the Selection Committee rankings, and authorize the Town Manager to enter into continuing service agreements with the five selected firms. Mr. Brazil noted that the submittals for the top five firms had been forwarded to the Town Council. Representatives from those firms were present today to respond to any questions or comments.

In response to President Pro Tem Coniglio, Mr. Brazil advised that there were a wide range of challenges ahead; the firms interviewed all had unique qualifications. Originally, staff had been directed to find a very experienced Coastal Coordinator, and that simply had not been possible. Therefore, more resources would be needed, and each of the five firms would offer resources as each had unique capabilities and unique contacts. Mr. Brazil advised that Coastal Systems International had been the choice for their federal lobbying/permitting experience.

Penny Cutt, Regional Manager of Coastal Systems International, addressed the Town Council, advising that she had been a former employee of the U.S. Army Corps of Engineers. She noted that when dealing with the U.S. Army Corps of Engineers, it must be realized that there were two different groups – the civil group and the regulatory group. She stated that, officially, a lawsuit, as long as it was not directly related to the permit being sought, should have no bearing on efforts to move Town projects forward. Once a lawsuit was initiated, however, USACE office of counsel would want to review any correspondence, federal decisions, etc., to determine that there were no perceived conflicts. The office of counsel review would slow things down, and there would be little priority on expediting that office of counsel review. When dealing with the regulatory group, when there was an ongoing lawsuit, there were really no implications. The slow down would be with the office of counsel review of every little action that would go along with the federal process.

President Pro Tem Coniglio moved approval of authorizing the Town Manager to enter into a Continuing Services Contract for Coastal Strategic Planning, Engineering and Permitting Consultants (CSPE & PC). The motion was seconded by Council Member Rosow. On roll call, the motion carried unanimously.

2. Independent Sampling and Testing of Potable Water.
[H. Paul Brazil, Director of Public Works]

Tom Emenhiser, HSA Engineers and Scientists, noted that Michael Fisher of HSA was present as well. He presented a report on the Drinking Water Monitoring Program Development for the Town of Palm Beach, which was included in the backup material, and responded to questions and concerns of the members of the Town Council.

After discussion, **Council Member Rosow made a motion, seconded by Council Member Markin, to approve an expenditure of up to $5,000 for a one time sample to be compared with the City of West Palm Beach tests.**

In response to Council Member Coleman, Mr. Emenhiser commented as follows:

- HSA had requested the latest results from the City of West Palm Beach to prepare this report, but it had not been received.
- The City of West Palm Beach had published some historical information on their website.
- The first step was to summarize the latest information supplied by the City of West Palm Beach, take all tests, summarize them, compare to acceptable limits for everyday drinking, and then collect an additional set of samples and compare those results.
- The laboratory work had a two-week testing turn around time after collection takes place.

In response to President Pro Tem Coniglio, Mr. Brazil commented as follows:

- How the City of West Palm Beach currently collected their information.
- The Town's concern when information from the City was not received.
- HSA had been retained because they could read the data.

Council Member Markin suggested obtaining information and water reports from Palm Beach County as part of the analysis. She noted that the Town had two options for obtaining water: the City of West Palm Beach and Palm Beach County, and the Town opted years ago to get it from the City. She advised that she had not heard as many complaints from County customers as from City customers. She believed that it would be important for the Town Council to see a report of the City of West Palm Beach test, and the Town of Palm Beach Test compared to the Palm Beach County test.

Mr. Emenhiser responded that HSA would obtain same.

William Diamond, 220 Wells Road, commented on a recent survey conducted by Citizens for a Better Palm Beach relative to the resident's concerns over water quality. The responses reflected the concerns of the Town Council regarding the quality and quantity of the water and how much was being paid for what the Town was getting. He noted that he appreciated everything that was being done today by the Town Council, as he felt it was very important that there was an independent analysis of what the City of West Palm Beach was doing with regard to the safety of the water supply. He thanked the Town Council, once again, for the concern regarding this important topic.

The motion made by Council Member Rosow to approve an expenditure of up to $5,000 for a one time sample to be compared with the City of West Palm Beach tests was seconded by Council Member Markin. On roll call, the motion carried unanimously.

3. Request for Funding for RNI Fuel Management System.
[Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Hannah referred to her memorandum to the Mayor and Town Council dated October 3, 2008, and included in the backup material, to provide additional information regarding the request for funding for RNI Fuel Management System. She responded to the questions and concerns of Council Member Rosow.

Motion was made by Council Member Rosow, seconded by President Pro Tem Coniglio, to approve funding for RNI Fuel Management System from the General Fund Contingency not to exceed $80,000 with the condition that staff provide a report as to how the 360 hours of staff time per year was saved by switching to an RNI system. On roll call, the motion carried unanimously.

01/29/2010

4. Fee Increase Recommendations.
[Jane Struder, Director of Finance]

a. RESOLUTION NO. 85-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the per Hour Fee for Special Assignment Overtime Deployments for the Police Department and the Fire-Rescue Department.

Town Attorney Randolph read Resolution No. 85-08 by title, as printed above.

Chief Reiter explained that, at the direction of the Town Council, he informally surveyed Town of Palm Beach police officers regarding pension costs associated with special assignment overtime income. He discussed the results and responded to questions and concerns of the Mayor and Town Council.

After extensive discussion, **Council Member Rosow made a motion to keep the special assignment overtime fee at $60 per hour, not to accrue into the police officers' pension funds. Direct payment through the Town would be made to the police officers. The motion died for lack of a second.**

Discussion ensued and Town Manager Elwell suggested that this item be deferred to the November Town Council meeting, and staff would provide a report, at that time, containing information needed to make a decision. He advised that the Town Council could not, by motion, make this change today, because it would require amending the retirement ordinance, which would need a first reading in November and a second reading in December.

Council Member Rosow amended his motion to defer Resolution No. 85-08 and to request that staff provide a report regarding amending special assignment fees. The motion was seconded by Council Member Coleman.

After further discussion, **on roll call, the motion carried 3/2:**

Council Member Rosow:	**Yes**
Council Member Coleman:	**Yes**
Council Member Markin:	**No**
President Pro Tem Coniglio:	**No**
President Kleid:	**Yes**

Town Manager Elwell clarified that the consensus of the Town Council was for staff to provide a report to include the following:

- Address how the system would work;
- Address the questions discussed today regarding a system that would charge $60 per hour paid directly to the officers (not included in the pension) versus the potential of moving forward with a charge of $90 per hour under the current system.
- Information related to Fair Labor Laws and whether any laws would be violated.
- Examine special overtime duty equally across the board for police and fire.
- Include information related to surrounding municipalities in the County that might accumulate special assignment overtime in their pensions.

At the October 14, 2008, Town Council meeting, President Kleid announced that with the consent of the Town Council Resolution No. 85-08 would be reconsidered.

Motion made by President Pro Tem Coniglio, seconded by Council Member Rosow, to reconsider Resolution No. 85-08. On roll call, the motion carried unanimously.

Motion made by President Pro Tem Coniglio to adopt Resolution No. 85-08, setting a $90 per hour fee for Special Assignment Overtime Deployments for the Police Department and the Fire-Rescue Department. The motion was seconded by Council Member Rosow. On roll call, the motion carried unanimously.

b. RESOLUTION NO. 86-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Fees for Photo Identification Cards and Fingerprint Cards.

Finance Director Jane Struder referred to her memorandum to the Mayor and Town Council dated October 3, 2008, and included in the backup material, to review Resolution No. 86-08.

Town Attorney Randolph read Resolution No. 86-08 by title, as printed above.

Motion made by Council Member Coleman, seconded by Council Member Markin, to adopt Resolution No. 86-08. On roll call, the motion carried unanimously.

c. RESOLUTION NO. 91-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Planning, Zoning, and Building Department Fees.

Finance Director Jane Struder referred to her memorandum to the Mayor and Town Council dated October 3, 2008, and included in the backup material, to review Resolution No. 91-08.

Town Attorney Randolph read Resolution No.91-08 by title, as printed above.

Motion made by Council Member Rosow, seconded by President Pro Tem Coniglio, to adopt Resolution No. 91-08. On roll call, the motion carried unanimously.

B. New Business

1. Florida Historic Marker Application for Little Red School House at Phipps Ocean Park.
[John S. Page, Director of Planning, Zoning, and Building]

Director of Planning, Zoning, and Building Page referred to his memorandum to the Mayor and Town Council dated September 19, 2008, and included in the backup material, to discuss the Florida Historic Marker application for the Little Red School House at Phipps Ocean Park.

Motion made by President Pro Tem Coniglio, seconded by Council Member Coleman, to approve and authorize the Florida Historical Marker application prepared by the Preservation Foundation of Palm Beach, requiring that the sign was situated at the site as directed by the Planning, Zoning, and Building Department, in the right-of-way in front of the building. On roll call, the motion carried unanimously.

2. South County Road Beautification.
[H. Paul Brazil, Director of Public Works]

Director of Public Works Brazil referred to his memorandum to the Mayor and Town Council dated September 29, 2008, and included in the backup material, to discuss the proposed South County Road Beautification Project.

Patricia L. Sans, President of the South County Road Association, commented on the proposed South County Road Beautification Project, requesting the support of the Town Council with the $12,000 venture.

Ms. Sans and Mr. Brazil responded to questions and concerns of the members of the Town Council.

Motion made by Council Member Rosow, seconded by Council Member Markin, to approve the planter beautification plan and a Town financial contribution up to a maximum of $6,000. On roll call, the motion carried unanimously.

President Kleid commented that he had voted yes, but believed that the Town was setting a precedent and similar requests would be made, in the future, from other associations.

Motion made by President Pro Tem Coniglio, seconded by Council Member Rosow, to approve the placement of red bows on the Royal Palms in the median of Royal Palm Way during the holiday months. On roll call, the motion carried unanimously.

Ms. Sans discussed empty store fronts in regard to beautification efforts on South County Road.

At the suggestion of Council Member Rosow, staff was directed to place the empty store front issue on the agenda of the October 27, 2008, Ordinance, Rules, and Standards meeting.

Ms. Sans commented in regard to the beautification efforts of the South County Road Association as it related to unsightly sidewalks. She requested the following:

- The Town provide funding in next year's budget to start a project that would enhance some of the sidewalks that were in dire need of repair.
- Discussion by the Town Council relative to the pressure cleaning of the sidewalks between now and the start of season.

Mr. Brazil along with members of the Town Council responded to the requests made by Ms. Sans.

3. Status Report on Underground Utilities.
   [Thomas G. Bradford, Deputy Town Manager]

Deputy Town Manager Bradford referred to his memorandum to the Mayor and Town Council dated October 3, 2008, and included in the backup material, to provide a status report on underground utilities. He responded to the questions and concerns of the members of the Town Council.

Discussion ensued and Council Member Coleman requested that a straw poll amongst the Town Council be taken to determine if consideration would be given to imposing special taxing districts.

The consensus of the Town Council was that requests for Special Taxing Districts and/or Underground Assessment Areas would be appropriate for consideration.

4. Airport Expansion. [Jack McDonald, Mayor]

Mayor McDonald addressed the issue of airport expansion commenting on the following:

- Airport expansion had fallen under the radar and had as many environmental implications and expansion issues as the Port expansion issue.

- Issuance of the Environmental Impact Study (EIS).

- Citizens Committee on Airport Noise (CCAN)

Council Member Coleman, as the Town's representative during the past three years, provided a history of the Citizens Committee on Airport Noise (CCAN), noting that the Committee had no authority and no standing.

Mayor McDonald explained that there were two important developments that occurred since the Town Council had discussed this issue:

1. The Environmental Impact Study (EIS).
2. The formation of a consortium of two groups who united to fight the expansion.

Mayor McDonald responded to questions and concerns of the members of the Town Council and requested that they read the EIS and pursue whether there was a consortium, if it was active, and if the Town should become involved with it.

Discussion ensued and **Council Member Rosow made a motion that there was a sense of the Town Council to oppose the expansion of the airport, but a budget should be brought before the Town Council to determine what the costs of such a program would be.**

The motion was seconded by President Pro Tem Coniglio, who suggested that this item be deferred to the November 12, 2008, Town Council meeting, in order to discuss what would be necessary to stop the expansion of the airport, and to determine the funding necessary.

After further discussion, **Council Member Rosow amended his motion to defer this item to the November 12, 2008, Town Council meeting, in order to have a program brought before them to discuss what would be necessary to stop the expansion of the airport, and to determine the funding necessary. The motion was seconded by President Pro Tem Coniglio. On roll call, the motion carried unanimously.**

5. Medical Insurance Premiums for 2009.
[William C. Crouse, Director of Human Resources]

Town Manager Elwell referred to the memorandum provided by Director of Human Resources Crouse to the Mayor and Town Council dated October 6, 2008, and included in the backup material, to review the medical insurance premiums for calendar year 2009. He noted that staff recommended approval of the medical insurance premiums as presented, based on the actuarial report. He responded to the questions and concerns of the members of the Town Council.

Council Member Coleman requested staff prepare options in next year's budget to provide some consideration for the compensation received by the employee in relation to the amount paid by the employee for insurance (a "sliding scale").

Motion made by Council Member Coleman, seconded by President Pro Tem Coniglio, to approve medical insurance premium rates for calendar year 2009. On roll call, the motion carried unanimously.

6. Town Employee Compensation Values/Increases from Year to Year.
[Susan Markin, Town Council Member]

Council Member Markin requested that staff prepare a report showing the total compensation to Town employees by department, including benefits information, to reflect total compensation paid.

Town Manager Elwell clarified the manner in which the information requested would be reported.

It was the consensus of the Town Council to direct staff to prepare a report, for last year and this year, to calculate the relative value of salaries, by quartile, for each of the different categories of employees, including benefits information, to reflect the total compensation paid.

In response to Council Member Markin, Town Manager Elwell reviewed the double digit increases, as quoted in the newspaper relative to salary increases.

Town Manager Elwell advised that the report requested by Council Member Markin would be provided within the next month.

Council Member Markin commented that, based on the explanation provided by Town Manager Elwell regarding double digit increases, the Town did have a policy, which has been adhered to by the Town Council, especially when they looked at pay increases, noting that they wanted all employees to be in the upper 25% percentile.

Tim Moran, 257 Dunbar Road, Town of Palm Beach volunteer, addressed recruitment in the Police Department and applauded the Town Council in their actions and policy.

7. Proposed Retirement Health Savings Plan.
[Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his memorandum to the Mayor and Town Council dated October 9, 2008, and included in the backup material, to discuss development by staff of a Retirement Health Savings Program for consideration at a future Town Council meeting. He responded to the questions and concerns of the members of the Town Council.

Motion made by President Pro Tem Coniglio, seconded by Council Member Coleman, authorizing staff to develop a Retirement Health Savings Plan. On roll call, the motion carried unanimously.

8. Proposed Settlement of Litigation: Worth Avenue Associates, Ltd. vs Town of Palm Beach.
[John C. Randolph, Town Attorney]

Town Attorney Randolph discussed the settlement agreement proposed by Worth Avenue Associates, Ltd., in regard to the pending lawsuit, noting that he and Zoning Administrator Castro had reviewed some modified wording, which they believed improved upon the present agreement. He noted that the Town Council had been provided with a copy of the settlement agreement for their consideration.

Motion made by Council Member Rosow, seconded by Council Member Coleman, to approve the settlement Agreement, specifying the number of seats (183) that could be granted without a variance, however, the seats would not be used to expand any existing restaurant uses in the Esplanade. On roll call, the motion, carried unanimously.

9. Appointments to the Firefighter Retirement System Board of Trustees.
[William Hanes, Pension Administrator]

President Kleid announced that, after casting ballots, the Town Council had appointed the following to the Firefighter Retirement System Board of Trustees:

Regular Members: Sergio I. De Araujo
Willbur L. Ross, Jr.

10. Appointments to the General Employee Retirement System Board of Trustees. [William C. Crouse, Director of Human Resources]

President Kleid announced that, after casting ballots, the Town Council had appointed Alvin Parven to the General Employee Retirement System Board of Trustees:

11. David Rosow's Seven Suggested Budget Related Actions.

Council Member Rosow advised that he had submitted, for Town Council discussion, a document containing seven recommendations regarding the budget.

After discussion, the following actions were taken on each of those items:

1. Institute Hiring Freeze Immediately

It was the consensus of the Town Council to remain with the current policy, leaving the discretion to the Town Manager.

2. Review All Capital Expenditures

It was the consensus of the Town Council to continue with the paving on North Lake Way and the bike path. Staff was directed to provide a review of this year's capital improvement program when reviewing the long term (20 year) capital improvement program at the Finance & Taxation Committee meeting scheduled for October 31, 2008.

3. Delay Legal Action Against Army Corps of Engineers

A motion had been made earlier in the agenda to proceed with legal action with an initial allocation not to exceed $100,000 for preparation and filing of a lawsuit.

4. Confidential Suggestion Box for Employees

It was the consensus of the Town Council to leave it to the discretion of management.

5. Find Additional Savings Through Re-examination of CRTO and Budget

It was the consensus of the Town Council not to re-examine the CRTO at this time.

6. December Meeting of Finance and Taxation Committee to Evaluate Five Topics:

1. Future Funding Town's Pension Plans
2. Review of Reserve Accounts
3. Defined Benefit vs Defined Contribution Plans
4. Evaluation of Stop Loss Levels in Town's Health Insurance Programs
5. Review of Health Savings Plan

It was the consensus of the Town Council to direct the Finance and Taxation Committee to review all of the five topics at an upcoming meeting to be scheduled.

7. Notice to New Hires Relative to Possible Pension Policy Changes.

It was the consensus of the Town Council not to provide notice to new hires relative to possible pension policy changes.

Council Member Markin thanked and commended Council Member Rosow for taking the initiative in presenting these seven recommendations. She noted that she believed as a Town Council, they needed to support each other when one of them took the initiative in presenting ideas, trying to work together, as opposed to being defensive.

12. RESOLUTION NO. 82-08 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Ranger Construction Industries, Inc. and North Florida Emulsions, Inc. for the Annual Roadway Paving and Resurfacing. [H. Paul Brazil, Director of Public Works]
(Removed from Consent Agenda)

Motion made by Council Member Rosow, seconded by Council Member Coleman, to adopt Resolution No. 82-08. On roll call, the motion carried unanimously.

13. RESOLUTION NO. 83-08 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 Microsoft, Sungard HTE, Cartegraph, Coleman Technologies and Tyler Technologies and Authorizing the Town Manager to Execute the Purchases on Behalf of the Town.
[Thomas G. Bradford, Deputy Town Manager]
(Removed from Consent Agenda)

Council Member Markin advised that she had Resolution No. 83-08 pulled from the Consent Agenda due to some questions she had relating to the maintenance contracts.

Information Systems Manager Spencer Wilson responded to the questions and concerns of members of the Town Council.

Motion made by Council Member Markin, seconded by Council Member Coleman, to adopt Resolution No. 83-08. On roll call, the motion carried unanimously.

XIII. ANY OTHER MATTERS

President Pro Tem Coniglio questioned whether any of the members of the Town Council would be inclined to hold an Attorney/Client meeting with Attorney Bouthillier in order to discuss litigation strategy and the fees related to the litigation regarding Surfrider et al.

Town Manager Elwell explained that the Town had received, minutes ago, privileged communication from Attorney Bouthillier, related to litigation strategy, including a full update of the administrative hearing. He suggested that the Town Council review that information this evening, in order to make a determination of whether to announce an Attorney/Client closed door session immediately following the Town Council meeting continued on October 14, 2008.

It was the consensus of the Town Council to schedule an Attorney/Client closed door session to discuss Reach 8 litigation, Surfrider et al v The Town of Palm Beach, immediately following the Town Council meeting.

XIV. ADJOURNMENT

There being no further discussion, the October 13, 2008, Town Council meeting, beginning at 9:30 a.m., was adjourned at 5:15 p.m. and the October 14, 2008, Town Council meeting, beginning at 9:30 a.m., was adjourned at 3:50 p.m.

APPROVED:

Richard M. Kleid
Town Council President

ATTEST:

Susan A. Eichhorn
Town Clerk

01/29/2010