TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MONDAY, JULY 10, 2006, AT 3:00 P.M.

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting of July 10, 2006, was called to order at 3:00 p.m., in the Town Council Chambers. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President Denis P. Coleman
President Pro Tem Richard M. Kleid
Council Member William J. Brooks
Council Member Susan Markin
Council Member Allen S. Wyett

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
Jay Boodheshwar - Recreation Director
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Veronica Close - Director Planning, Zoning & Building
Charles Langley - Public Works Assistant Director
Edward J. Moran - Fire Rescue Chief
Michael Reiter - Police Chief
Rob Walton - Chief Code Compliance Officer
Susan Eichhorn - Town Clerk

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II. PLEDGE OF ALLEGIANCE

President Coleman led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

Town Manager Elwell addressed and read into the record a letter provided by Town Attorney John Randolph requesting advice from the Town Council regarding pending litigation. He advised that staff was complying with the requirements of the State Statutes as to how this item should be placed properly on the Agenda and then acted upon to meet all requirements for calling this meeting. The intent would be that under discussion of this item, the Council would call a Closed Door Attorney/Client Session for 6:00 p.m. this evening.

As the first item of business, **ADD** to Agenda for consideration the scheduling of an Attorney-Client Closed Door Session re: Town of Palm Beach vs. Barry Small, Case No. 50 2006 CA 3502 XXX MB AH, Fifteenth Judicial Circuit Court, Palm Beach County, Florida to discuss this matter immediately following the Special Meeting of the Town Council scheduled for 3:00 p.m., Monday, July 10, 2006, in the Town Council Chambers, 360 South County Road, Palm Beach, Florida. The Attorney-Client Closed Door Session attendees would be Mayor Jack McDonald, Town Council President Denis P. Coleman, Town Council President Pro Tem Richard M. Kleid, Town Council Member William J. Brooks, Town Council Member, Susan Markin, Town Council Member Allen S. Wyett, Town Manager Peter Elwell, Town Attorney John C. Randolph, and Court Reporter from Ley and Marsaa, Court Reporters.

Motion made by Council Member Wyett to add to the Agenda, as the first item of business, consideration of Scheduling an Attorney-Client Closed Door Session regarding Town of Palm Beach vs. Barry Small, Case No. 50 2006 CA 3502 XXX MB AH, Fifteenth Judicial Circuit Court, Palm Beach County, Florida, to discuss this matter immediately following the Special Town Council Meeting scheduled for 3:00 p.m., Monday, July 10, 2006.

In response to Mayor McDonald, Town Manager Elwell advised that the Agenda for today's meeting could be amended to include the Mayor's comments and communication from citizens.

Mayor McDonald explained that there were people that wanted to speak to particular issues that could not remain for the entire meeting and that was the reason for communications from citizens.

President Coleman advised that the floor would be open for public comment at the beginning of this meeting.

Town Attorney Randolph stated, for the record, that he needed the Town Council's advice in regard to the case of the Town of Palm Beach vs. Barry Small, Case No. 50 2006 CA 3502 XXX MB AH, Fifteenth Judicial Circuit Court, Palm Beach County, Florida.

The motion was seconded by President Pro Tem Kleid. On roll call, the motion carried unanimously.

Mr. Elwell suggested that before proceeding with the other items of business, including discussion of the closed door session, that the Town Council hear comments from the Mayor, Town Council and the public.

There were no comments from Mayor McDonald, the Town Council Members or the public.

Motion was made by President Pro Tem Kleid, seconded by Council Member Markin, to approve a Closed Door Attorney/Client Session for 6:00 p.m. or thereabout regarding Town of Palm Beach vs. Barry Small, Case No. 50 2006 CA 3502 XXX MB AH, Fifteenth Judicial Circuit Court, Palm Beach County, Florida. On roll call, the motion carried unanimously.

Mr. Elwell announced that further consideration of the feral cat issue would be scheduled for a time certain of 11:00 a.m. tomorrow at the Regular Town Council Meeting.

IV. PRESENTATIONS BY BOARD/COMMISSION APPLICANTS

A. Building Board of Adjustments and Appeals

Town Manager Elwell advised the Council that at tomorrow's Regular Town Council Meeting, two members would be appointed to the Building Board of Adjustments and Appeals. He stated that regular members, Ames Bennett and John Nora were applying for reappointment.

President Coleman advised that the presentation process by Board/Commission applicants was a developing process and was not a formal interview. He explained that it was an opportunity for those citizens interested in serving on a Board/Commission to come before the Council to ask questions, to obtain input, and for the Council to get to know them.

The following applicants addressed the Town Council, requesting an opportunity to serve on the Building Board of Adjustments and Appeals:

- Ames Bennett, Architect
- John Nora, Jr., General Contractor
- Kathryn Grace Jordan, Businessperson
    - Withdrew her request to serve on the Building Board of Adjustment and Appeals, but asked to be considered to serve on the Planning and Zoning Commission in addition to the Code Enforcement Board.
- Clare O'Keeffe, Real Estate Broker

B. Code Enforcement Board

The following applicants addressed the Town Council, requesting an opportunity to serve on the Code Enforcement Board:

- Harris S. Fried, Attorney
- Madelyn Greenberg
- Kathryn Grace Jordan, Businessperson
- Clare O'Keeffe, Real Estate Broker
- Cynthia Van Buren, Attorney
- Floyd Wideman, Jr., Retired/Businessperson

President Coleman thanked the candidates and stated that the Town was very fortunate to have these people volunteer for service. He advised that at tomorrow's Regular Town Council Meeting, the Council would vote to determine which of these applicants would be appointed to the Code Compliance Board and to the Building Board of Adjustments and Appeals.

V. CONSENT AGENDA FOR MONTHLY BUSINESS OF JULY 2006

A. MINUTES: JUNE 8, 2006
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING REGARDING FLORIDA POWER AND LIGHT (FPL) TRANSFORMER SITE VISITS.

B. MINUTES: JUNE 8, 2006
APPROVAL OF SPECIAL TOWN COUNCIL MEETING MINUTES FOR THE SPECIAL TOWN COUNCIL MEETING CLOSED-DOOR SESSION REGARDING TOWN OF PALM BEACH VS BARRY SMALL.

C. MINUTES: JUNE 12, 2006
APPROVAL OF THE MINUTES OF THE SPECIAL TOWN COUNCIL MEETING REGARDING TOWN DEPARTMENT PRESENTATIONS.

D. MINUTES: JUNE 13, 2006
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING.

E. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON JUNE 28, 2006.

F. RESOLUTIONS

1. RESOLUTION NO. 35-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of a Locally Funded Agreement Between the Florida Department of Transportation and the Town of Palm Beach for Construction and Maintenance of Decorative Improvements Along South County Road. [H. Paul Brazil, Director of Public Works]
Deferred from the June 13, 2006, Town Council Meeting.

2. RESOLUTION NO. 36-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Maintenance of Decorative Improvements along South County Road as Constructed by the Florida Department of Transportation. [H. Paul Brazil, Director of Public Works]
Deferred from the June 13, 2006, Town Council Meeting.

3. RESOLUTION NO. 38-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Contract to Best Lighting Supply, Inc. to Provide 82 Decorative Street Light Poles to Be Installed along SR A1A by Others from Southern Boulevard to Hammon Avenue.
[H. Paul Brazil, Director of Public Works]

4. RESOLUTION NO. 47-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of a Quit Claim Deed in the Manner and Form Attached Hereto from the Town of Palm Beach to the State of Florida Department of Transportation.
[John C. Randolph, Town Attorney]

G. OTHER

1. Florida League of Cities Conference - Designation of Town's Official Voting Delegate.
[Peter B. Elwell, Town Manager]

2. Approval of Hourly Rate Increase for Town Attorney.
[John C. Randolph, Town Attorney]

3. Authorization for Emergency Replacement of Air-Conditioning Systems at Seaview Park Recreation Center.
[H. Paul Brazil, Director of Public Works]

4. Informational Item Regarding Proposed Code Enforcement Fines.
[John C. Randolph, Town Attorney]

5. Authorization to Intervene in Bruce Rosenzweig, et al, vs. Florida Department of Transportation; A1A Bicycle Lanes.
[Thomas G. Bradford, Deputy Town Manager]

6. Authorization of Study Regarding the Feasibility of Sending all South End Sewage Flows Through the City of West Palm Beach. [H. Paul Brazil, Director of Public Works]

Motion made by Council Member Brooks, seconded by President Pro Tem Kleid, to approve the Consent Agenda. On roll call, the motion carried unanimously.

VI. BOARD/COMMISSION ANNUAL REPORT

A. Recreation Advisory Commission
[Michael Spaziani, Chair, and Jay Boodheshwar, Director of Recreation]

Director of Recreation Jay Boodheshwar referred to his detailed memorandum to the Mayor and Town Council, dated June 26, 2006, and included in the backup material, to provide a summary on the progress of the Recreation Department. He noted that with him today was the Chairman of the Recreation Advisory Commission Michael Spaziani.

Mr. Boodheshwar stated that the recreational needs of the Town of Palm Beach were always evolving, and to effectively react to community needs, Recreation Department staff participated in the completion of an internal self-assessment this past spring. The assessment involved the evaluation of six major areas:

- Administration
- Programs/Services
- Facilities
- Finance
- Communication
- Personnel

Mr. Boodheshwar advised that there were many additional topics and areas of operations that were reviewed. The results of the exercise proved to be very worthwhile, as several new initiatives had been identified for implementation and completion, including, but not limited to, the following:

- Departmental reorganization and redistribution of responsibilities;
- Preparation for the proposed integration of the Town Marina;
- Completion of a Town-wide citizen's interest survey;
- Implementation of an annual Action Planning Program;
- Review and revision of KRM's and departmental work load indicators;
- Attainment of national accreditation from the Commission for Accreditation of Parks and Recreation Agencies.

The following five program areas would comprise the proposed new Recreation Enterprise Fund (REF), and would highlight specific items of additional programs, which would have an impact or be a priority in Fiscal Year 2007.

- Fund Program: Administration & General Maintenance
- Fund Program: Marina
- Fund Program: Golf Course
- Fund Program: Tennis Facilities/Programs
- Fund Program: Recreation Programs/Events

Mr. Boodheshwar noted that with the initiatives described, and in conjunction with the implementation of other systems and policies, greater consistency and efficiency with day to day operations, as well as being better prepared for future challenges, would be provided.

Chairman of the Recreation Advisory Commission Michael Spaziani congratulated Town Manager Elwell on his choice for Recreation Director, Jay Boodheshwar. He noted that within six months of his hire, Mr. Boodheshwar had reorganized the entire Recreation Department using past experiences to guide his way to a leaner, more diversified staff.

Mr. Spaziani explained that the main directive, as the Chairman of the Recreational Advisory Commission, was to open communication between the Commission and the Town Council. The three most important issues that the Commission was concerned with were as follows:

- Departmental reorganization and redistribution of responsibilities;
- The integration of the Town marina;
- Attainment of national accreditation of individual employees to insure that the Town had qualified and educated staff.

Mayor McDonald discussed a tennis court that had been defectively built at Phipps Park, which needed to be repaired before all activities were moved there from the Seaview Recreation Center. He noted that this matter had previously been before the Town Council, and there had not been any improvement.

Mr. Boodheshwar commented that staff was very disappointed with that court; Public Works Director Paul Brazil was actively involved with the contractor that had constructed that court; staff hoped to receive some proposals very soon to remedy this situation. He agreed that it was very important that this court was repaired before Seaview was torn up.

In response to Mayor McDonald, Director of Public Works Paul Brazil stated that the contractor had extended the warranty, and had tried various types of maintenance programs, doing everything short of ripping the court down to the base, which was probably the next step. The contractor, admirably, held himself responsible, and was willing to take that next step. He advised that the contractor had asked the Town to try the interim solutions, none of which had worked.

Council Member Wyett discussed past fundraising efforts at the Par 3 Golf Course and asked why public fundraising no longer occurred there.

Mr. Spaziana advised that the following reasons made it very difficult for it to be a worthwhile event.

- There were problems in obtaining major sponsors to support these events.
- There were problems in getting golf pros to perform at these tournaments.
- Staff put in an overwhelming amount of hours for an event of this type.
- The amount of work involved did not make the numbers work
- The Town no longer had this one person who dedicated hours campaigning for people to donate money.
- It was not economically feasible.

Discussion ensued regarding fundraising events at the Par 3 Golf Course. Mr. Spaziani reiterated that there was just too much involved for it to be worthwhile.

In response to Council Member Markin, Mr. Spaziani advised that the Commission had previously discussed the option of renting out the Par 3 Golf Course to organizations wanting to hold fundraising tournaments, but concerns were raised regarding staff involvement and the number of hours that would be required.

Council Member Markin explained that staff's involvement would, basically, be to make sure that the golf course was in good playing condition. She noted that everything else could be taken care of by the organization holding the fundraising tournament. She stated there would be a minimal drain on the staff in that situation.

In response to President Coleman, Mr. Spaziani responded that there were no plans in place to allow reserving court time and tee time on line. He stated that service was being studied relative to the golf course. The technology was evolving, and they were going to try to take advantage of as much of it as possible.

President Coleman stated that an automated system could be set up to save staff time. It could include notifying persons on a waiting list when cancellations were received.

Mr. Spaziani, in closing, commented on the following:

- The Town Council had selected well-educated, interested, and well-qualified individuals to serve on the Recreation Advisory Commission.
- The Recreation Advisory Commission Members were all grateful to be able to serve the community.
- The communication between the Town Council and the Recreation Advisory Commission should be opened up further.
- Thanked the Town Council, on behalf of the children from the St. Ann's School, for allowing them to use the vacant parcel of land in West Palm Beach for recreational purposes.

VII. REGULAR AGENDA

A. Old Business

1. Further Consideration of Governmental Impact Review Panel Report and Recommendations.
[Sarah E. Hannah, Assistant Town Manager]

Assistant Town Manager Sarah Hannah referred to her detailed memorandum to the Mayor and Town Council, dated June 30, 2006, and included in the backup material, to summarize the staff report on the recommendations of the Governmental Impact Review Panel (GIRP). The recommendations related to the development of an "outreach program" with the following five governmental entities, which the Panel believed the Town should have better relationships with.

- The City of West Palm Beach as it particularly related to downtown development.
- The Metropolitan Planning Organization (MPO)
- The Florida Department of Transportation (FDOT)
- The Aviation and Airports Advisory Board (AAAB)
- The City of Lake Worth

Councilman Brooks recommended that the Town Council accept the Governmental Impact Review Report as provided. He advised that if Mayor McDonald wanted to assign a Council Member to be a liaison, he would be happy to do so.

Mr. William Diamond, Chairman of the Governmental Impact Review Panel, on behalf of the Panel, advised that the Panel had made four suggestions as to how to implement the recommendations made by GIRP.

- Create a full time staff position, similar to what was done for beach renourishment;
- Hire a contract employee without benefits, similar to the hiring of Mike Galvin, Emergency Operations Coordinator;
- Appoint an individual citizen or citizens' group to officially represent the Town at meetings of "very high and high impact" governmental agencies, as identified in the GIRP Report;
- Assign, on a rotating basis, Town Council Members to attend these "very high and high impact" meetings of governmental agencies.

Chairman Diamond stated that the bottom line was that some staff resources would be needed to successfully implement the GIRP recommendations regardless of what methods were decided upon by the Council.

Mr. McLendon, Panel Member of the Governmental Impact Review Panel, made the following comments:

- He was surprised that the Panel received positive responses from a number of agencies they contacted, which he appreciated.
- The main problem the Town would be facing, in the future, was the traffic generated by the large amount of development occurring in West Palm Beach.

Council Member Markin requested that Chairman Diamond expand on GIRP's recommendation for the Town to hire a contract employee. She asked if the recommendation was to hire a lobbyist type of person who would act as a representative of the Town?

Chairman Diamond explained that a person could be hired without benefits who would represent the Town and recommend back to the Council what dangers the Town faced, and what measures could be implemented, on the Town's behalf. He noted that there were various methods to accomplish this, but that was for the Council's consideration.

In response to Mr. McLendon, Town Engineer Jim Bowser advised that he had sat on the Technical Advisory Committee.

Mayor McDonald made the following comments:

- West Palm Beach was the largest city in Palm Beach County in terms of population, with Boca Raton being second.
- The Town of Palm Beach contributed more real estate taxes to Palm Beach County than West Palm Beach did.
- The Town of Palm Beach was the second largest provider of real estate tax money to the County in Palm Beach County, only behind Boca Raton.
- GIRP recommended that there were at least three organizations that the Town should be involved with.
    - Metropolitan Planning Organization (MPO)
    - Aviation and Airports Advisory Board (AAAB)
    - City of West Palm Beach as it pertained to Downtown Development
- The Town of Palm Beach did not have representation in any of these organizations.
- The Town was not getting anything in return for their tax dollars.
- The Town needed to become more intensely involved than in the past.

President Pro Tem Kleid commented as follows:

- Agreed with the recommendations made by GIRP.
- Suggested that Mayor McDonald appoint citizen representatives to the various organizations with authority from the Town Council to effectively represent the Town, and to report back to staff and the Town Council for direction. He suggested appointing citizen representatives was the way to proceed before hiring outside people or an extra staff person.

President Pro Tem Kleid also commented on the recommendations regarding communication between the Town and the City of Lake Worth, which he believed was the fifth GIRP suggestion. He agreed that the Town should attempt to have contact with the staff of the City of Lake Worth, Mayor with Mayor; and if possible, even hold a joint meeting between the two Councils.

President Coleman commented on the following:

- Did not favor increasing the Town's staffing levels, and supported the Town's position not to do so this year.
- The various organizations would not respond to staff in the same way they would to citizen representatives.

In response to President Coleman, Mayor McDonald stated that it might work if there was a pool of citizens to act in this capacity, who would be committed to serving twelve months a year. He explained that several people would be needed because one person could not do it.

President Pro Tem Kleid stated that he was impressed with the caliber of people that addressed the Council today, and noted that out of this large pool of people, the Town should be able to find interested individuals who were willing to serve twelve months a year.

Mayor McDonald made the following comments:

- Membership on the MPO was based on population.
- The MPO would have to change their requirements to include the Town.
- Advised that he would write to Commissioner Marcus and Commissioner Greene asking if they would consider appointing him to the AAAB.

In response to President Coleman, Mayor McDonald advised that the Town could not get membership on the MPO, but would have to be involved.

Mr. Elwell made the following comments relative to the appointment of citizen representatives:

- The Town could support the appointment of citizens to monitor, at least, the MPO, and perhaps, other organizations.
- The Town could provide staff support to help citizen representatives.
- Appointment of citizen representatives was an approach for the Town to stay better informed on issues without the Town making the types of investments involved with contract employees or an additional staff person.
- It was important to determine the ability of a citizen representative to speak on behalf of the Town.

Chairman Diamond commented on representatives:

- Noted that it was clear that the representative had to represent the Town Council.
- An individual could not make any decisions without the approval of the Town Council.
- The Town Council, when a particular agenda item came up and wanted to address it, could authorize that particular representative to do so.
- A formal letter from the Mayor and Town Council to each of these entities advising them who the representatives were, that attend on behalf and make recommendations

back to the Town Council would kick start this whole procedure.

Council Member Markin commented that she did not accept that the Town of Palm Beach could not get representation on the MPO; the MPO was the one organization that controlled a broad spectrum of issues in the County that effect the Town of Palm Beach. She suggested that the Town should make a concentrated effort to figure out what the Town could and was willing to do to obtain representation on the MPO.

Chairman Diamond noted that Council Member Markin provided three good ways in which to start the process to become an MPO member. He stated there were several approaches that the Town could simultaneously take:

- Attend meetings in an official capacity.
- Political process through State Senators to whom the residents have been very generous. Consequently, the representatives should do something for the residents.
- The possibility of bonding together.

Mayor McDonald stated that he was not aware of any municipalities that had bonded to obtain membership on the MPO. He explained that the MPO's governing documents stated membership could also be based on geography and noted that it was mandated that there be two representatives from the largest cities.

Council Member Markin advised that at a GIRP meeting, Commissioner Koons noted there were three communities that did not meet the population requirements necessary to have a seat, but those communities were grouped together to give them representation.

Assistant Town Manager Sarah Hannah advised that membership was based on both geography and population. Although population requirements the MPO had defined for the Palm Beach County MPO were not in the State Statute, the MPO decided to include them on their own. She noted that any change in membership requirements on the Palm Beach County MPO would need to be determined by a vote of that MPO.

Council Member Wyett commented as follows:

- Requested the Council ask the Mayor to initiate a meeting between the Town, South Palm Beach, Manalapan, and Gulf Stream to discuss the possibility of joining together to gain representation on the MPO as well as various other organizations.
- Suggested encouraging Mayor McDonald, Mayors of the small surrounding communities and West Palm Beach to meet more often.

- Supported the idea of the Mayor appointing a representative to attend meetings and report back to the Council thereby enabling the Town to be informed.
- Suggested that the Town monitor West Palm Beach's agenda since it would be very difficult to attend their weekly meetings.

Chairman Diamond stated that if the MPO allowed geographical representation for the western area of Palm Beach County, which had a sparse population, but was geographically distinct, the barrier island communities could form a geographical alliance. The Town might then have some natural allies.

Council Member Brooks made the following comments:

- The Town should start with sending at least one person to these meetings.
- It was unlikely that a County Commissioner would be elected from Palm Beach, because the district had been gerrymandered to provide a minority position.
- The Town should be aware that there was the perception that Palm Beach did it differently, and there has been a negative reaction to that designation.
- The Town cannot let this fall between the cracks: start with a delegate and see what develops.

President Coleman suggested that this item be placed on next month's Regular Town Council Meeting agenda.

Discussion ensued regarding the designation of representatives to the various organizations. Mr. Elwell stated that it was important for continuity and recognition to have designated individuals for each entity. He stated that individuals needed official credentials in order to represent the Town, even if they were not empowered to speak or discuss the Town's position on different issues. He noted that if different representatives were sent, at different times, they would not have any impact or be effective. He advised that there could be more than one designated individual in order to provide coverage for vacations, etc.

Mr. Elwell clarified that the Town did currently track the agenda's of the different organizations, but the Town only reacted when an issue of significant importance to the Town was to be discussed.

Council Member Markin suggested a twofold approach:

- Suggested Mr. Diamond be considered as the Town's MPO representative and attend meetings.

    - The Town would become informed as to what was occurring at MPO meetings.
- Would like staff to provide more information as to which coastal communities did not currently belong to MPO.
    - The Council should request that Mayor McDonald contact the Mayors of those coastal communities, to find out if they did or did not want to participate.

Mr. Elwell made the following comments:

- The Mayor was empowered by the Charter to take the lead on intergovernmental issues.
- The Town Council needed information in order to make some additional decisions about what might be the best approach.
- Staff should confer with the Mayor regarding today's meeting to provide the Council several options for action.

It was the consensus of the Town Council that staff provide an additional report at the August 8, 2006, Regular Town Council Meeting.

2. Reconsideration of Foreclosure Authorization Regarding Code Enforcement Lien at 1191 North Ocean Way.
[Veronica B. Close, Director of Planning, Zoning, and Building] *Deferred from the June 13, 2006, Town Council Meeting.*

Director of Planning, Zoning and Building Veronica Close referred to her detailed memorandum to the Mayor and Town Council, dated June 30, 2006, and included in the backup material, to review the report regarding the Code Enforcement Board's Authorization for Foreclosure Action for 1191 North Ocean Way, owned by Mockingbird Trust.

Attorney Michael Tannenbaum advised that he was the attorney and co-personal representative for the Estate of Anne McBride. He explained that Mockingbird Trust was established in 1991, and that there was a deed from Ms. McBride to Mockingbird Trust in that year. The equitable title holder was Ann McBride until the time of her death in 2005.

Attorney Tannenbaum along with Mr. Wolfe Von Faulkenberg, the surviving spouse and also a co-personal representative, addressed the Town Council regarding the mitigating circumstances behind this particular case in an effort to preclude the foreclosure action and to resolve this matter fairly for both the property owner and the Town.

Mr. Von Faulkenberg made the following comments in response to the Town Council Members:

- There were never phones at that property.
- Certified letters were signed for by employees of the UPS office.
- The mail was opened by Ms. McBride, and he never saw the certified mail or he would have made immediate contact.

In response to the Council, Chief Code Compliance Officer Rob Walton made the following comments:

- The first contact he made with Mr. Von Faulkenberg was in 2004. He knocked on the door of the house Mr. Von Faulkenberg lived in on Merrain Road to make face to face contact when he could not make telephone contact.
- Contacted Attorney Tannenbaum via the telephone during this process.

In response to Mayor McDonald, Attorney Tannenbaum stated that depending on the legal existence of the Mockingbird Trust entity, he probably did have as much responsibility for the property as Mr. Von Faulkenberg as of June 1, 2005. He explained that he did not have a copy of the document and was operating under the assumption that it may not have been a valid conveyance; and therefore, the property, from a legal point of view, may be part of the estate. He stated that he just paid the taxes, not the utilities.

In response to Mayor McDonald, Mr. Von Faulkenberg advised that the Code Enforcement Board fine was about $80,000. He clarified that he and his wife did not live in that building and never had.

In response to Council Member Wyett, Mr. Von Faulkenberg stated that he did have a proposal.

Attorney Tannenbaum explained that they had attempted to resolve this matter earlier today with Chief Code Compliance Officer Walton. He stated that since the property was now in compliance, and because of the nature of the violations, and there had been no prior violations on another piece of property owned by Mr. Von Faulkenberg, some type of compromise relative to the amount of the fine was appropriate. He noted that it was his understanding that the fine was assessed at the rate of $200 per day and that one basis for resolving it would be to alter the amount of the per diem charge due to the mitigating circumstances described. Alternatively, a fixed amount could be agreed upon under either basis. He advised that they were determined to prevent the foreclosure from going forward to the extent that if the Council wished to entertain a settlement offer, they would be happy to make one.

In response to Council Member Brooks, Attorney Tannenbaum advised that Mockingbird Trust was just for this one piece of property, 1191 North Ocean Way, and did not encompass three separate residential properties.

Mr. Von Faulkenberg advised that the property on North Ocean Boulevard was in a different trust. He stated that none of the properties were up for sale and the mortgages and all other expenses were paid on those properties.

Council Member Brooks suggested that they obtain a home equity loan and pay the total amount of money due the Town. The Town would then consider dropping the foreclosure action. He advised that he would not negotiate a compromise.

Mr. Von Faulkenberg stated that he believed the Council would understand his situation.

Attorney Tannenbaum stated that it had been explained to them that, in the past, the Board had resolved these cases on a fifty percent basis. He explained that it was unfortunate, his involvement in this matter came too late to have this issue entertained by the Code Enforcement Board and was forced to appear before the Town Council in an attempt to solve it in a similar fashion. He stated that he believed they presented certain mitigating circumstances, particularly given the fact that the property was now in compliance, and that it would warrant some good faith consideration by the Town Council.

President Coleman stated that if the property was not in compliance, the Town would have already foreclosed.

In response to Mayor McDonald, Attorney Tannenbaum stated that he did not know what the size of the estate was, and asked if that was pertinent because the property was in Mockingbird Trust, which had a separate legal existence. He noted that he did not believe there were any other assets owned by the Mockingbird Trust. The value of the Trust was the value of the property and he advised that Mr. Spaziani had done the appraisal.

In response to Council Member Markin, Mr. Walton stated that there had never been any written responses explaining the extenuating circumstances.

President Pro Tem Kleid advised that the Town Council had made Code Enforcement one of their priority goals. He explained that, in addition to that, the Council advised the Code Enforcement Board that they wanted them to be tough on code enforcement. He noted that the Council had to be careful when they voted on this as to the type of message they would be sending.

President Pro Tem Kleid made a motion to continue with the foreclosure procedure unless the fine had been paid in full within thirty (30) days. The motion was seconded by Council Member Markin. On roll call the motion carried unanimously.

3. Proposed Use of Town Right-of-Way for Beautification Project on North Ocean Boulevard Between Everglade Avenue and Dunbar Road. [H. Paul Brazil, Director of Public Works]
Deferred from the June 13, 2006, Town Council Meeting.

a. RESOLUTION NO. 41-06 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of Encroachment Agreements Between the Town of Palm Beach and Mr. George A. Cloutier and Mr. Harvey Kinzelberg for Construction and Maintenance of Decorative Improvements along North Ocean Boulevard.

Director of Public Works Paul Brazil referred to his detailed memorandum to the Mayor and Town Council, dated June 30, 2006, and included in the backup material, regarding Resolution No. 41-06 authorizing the Mayor to execute encroachment agreements for 240 and 260 North Ocean Boulevard, subject to Town Attorney concurrence. The owners, Mr. George Cloutier, 240 North Ocean Boulevard, and Mr. Harvey Kinzelberg, 260 North Ocean Boulevard, requested installation of the following:

- 30-inch high breakaway wall;
- Installation of minor hard scape consisting of 2x2 paver bricks;
- Improved landscaping plan, if it could be permitted by the Department of Environmental Protection (DEP) and the Town.

Mr. Brazil advised that Mr. Cloutier and Mr. Kinzelberg would pay for and maintain the decorative improvements along North Ocean Boulevard, and they would hold the Town harmless by way of a $5 million liability policy naming the Town of Palm Beach as an additional insured.

Mr. Brazil stated that Town staff recommended adoption of Resolution No. 41-06 authorizing the Mayor to execute the encroachment agreements, subject to the Town Attorney's concurrence. The encroachment agreements would not be executed until the Town Attorney advised that the appropriate insurance documents for both properties had been reviewed and approved.

In response to President Pro Tem Kleid, Mr. Brazil advised that the encroachment agreement would be recorded against the land. He said that it would be binding upon all successors and interest who purchase this property. He explained that the insurance policy had to remain in effect, as well.

Motion was made by Council Member Wyett, seconded by Council Member Brooks, to authorize the execution of Encroachment Agreements between the Town of Palm Beach and Mr. George A. Cloutier and Mr. Harvey Kinzelberg. On roll call, the motion carried unanimously.

Town Attorney John Randolph read Resolution No. 41-06, as printed above. Attorney Randolph advised that approval would be subject to the condition of obtaining the hold harmless insurance.

Motion was made by Council Member Wyett, seconded by Council Member Brooks, to approve Resolution No. 41-06 authorizing the execution of Encroachment Agreements between the Town of Palm Beach and Mr. George A. Cloutier and Mr. Harvey Kinzelberg, with the condition that hold harmless insurance was obtained naming the Town as an additional insured. On roll call, the motion carried unanimously.

4. Charter Review Proposed by Mayor McDonald.
[Peter B. Elwell, Town Manager]
Deferred from the June 13, 2006, Town Council Meeting.

Mayor McDonald referred to Town Manager Elwell's detailed memorandum to the Mayor and Town Council, dated June 30, 2006, and included in the backup material, to seek direction from the Council on the question of whether or not to undertake a formal review of the Town Charter.

Motion made by Council Member Brooks to place this item for review on the agenda for the August 8, 2006, Regular Town Council Meeting.

Council Member Brooks made the following comments regarding the proposed Charter Review:

- The Town Council should handle the issue of a Charter Review;

- A full blown Charter Review Committee was not needed;
- The next Charter Review was due in 2010, and it did not have to happen at that time;
- The Town Council should handle the Mayor's request as it pertained to governance matters only;
- If this motion was approved, the Town Council should look at:
  - Candidates for the Town Council running at large
  - Position of the President of the Town Council on a rotating basis;
  - Term limits.

President Coleman made the following comments:

- Mayor should be a full participating voting member;
- No term limits;
- Candidates should run at large;
- No to a full Charter Review.

President Pro Tem Kleid noted that he was in favor of many of the proposals that he believed would be advanced, but he was not quite sure that the elected officials, who were going to be the people that were really involved in this, should be the ones who actually debate this issue. He stated that it was important to have an outside objective group with input from the Town Council and Mayor, and recommended the appointment of a committee. He commented that if there was to be a Charter Review Commission, the number of subjects reviewed should be limited.

Council Member Wyett commented regarding a Charter Review as follows:

- Outside of the Mayor, he was the only other person on the Council who had listened to a Charter Review Commission before.
- At the last Charter Review, a lot of work was done to come up with the few changes that were made.
- The Council would have to be increased or decreased if the Mayor was given a vote, otherwise the Council set themselves up for a tie vote.
  - The question was were you going to reduce the Council to four members plus the Mayor or increase it to seven members, six Council members plus the Mayor.
- Review the possibility of eleven meetings per year so that the Council took their vacations at the same time.
- Supported a Charter Review Commission but it might be too soon since the last review, as they requested the next review be done in ten years, which did not mean it could not be done before that time.

Discussion ensued regarding ties votes and Town Attorney John Randolph explained that a motion would fail if there was a tie vote or if there was no majority vote.

Council Member Markin commented on the following:

- Against candidates running at large
  - It was less personal.
  - It would ensure that every Town Council Member would be obligated to run a campaign.
  - If it was the goal of the Council to have younger people on the Council, it would place a burden on them due to the cost factor of running a campaign.
  - Terms should be increased if running at large was decided upon.

President Coleman stated that he believed people were reluctant to participate in running competitively due to the smallness of the community. He questioned whether that discouraged good candidates from coming forward? He noted that Council Member Markin was right about the funding.

Yvelyne Marix, 1570 North Ocean Boulevard, commented as follows:

- She ran four times for Town Council and served eight years;
- She was Mayor for ten years and ran five times;
- She served on the Charter Review Commission.
- Suggested that before the Council made any decisions regarding a Charter Review Commission, they should read the full report of the previous Commission, as the information they would gain would be formidable.

Ms. Marix commented on the following issues that had been raised earlier.

- Noted that when she was Mayor, she had to split a vote several times as did Mayor Earl Smith.
- The present role of a Mayor allowed him to be what he should be: an ombudsman - the face of the public to the Town Council. It was a much different role than a Town Council Member played.
- Noted that she was against running at large. It was a very difficult in depth issue, which needed to be studied.

President Coleman stated that Ms. Marix's suggestion that the Town Council obtain the report of the last Charter Review Commission was excellent and requested Mr. Elwell provide same to members of the Town Council.

Ms. Marix suggested that in addition to the report, minutes should be obtained in order for the Town Council to review the changes recommended by the Charter Review Commission.

Discussion ensued regarding candidates running at large and the costs involved in a campaign. Ms. Marix suggested that a ceiling be placed on the cost of a campaign, which she believed would encourage people to run.

The Mayor and Town Council commented as follows:

- Competition was good for the well being of the Town, the common will, and the good of the Town's citizens.
- It was good idea for young people to join the Council.
  - The Council would have to change its method of operation in order to get young people to serve.
  - Young people held full time jobs and would not be able to give as much time as the present Council did.
  - Consideration would have to be given to holding evening meetings.

Mayor McDonald commented:

- Noted that he had two contested races in the last three years.
- Noted that he agreed that someone other than the Council considers Charter changes.
- Noted there was a wide difference of opinion amongst Council Members.
- Noted that he believed contested races were good.

Town Manager Elwell commented:

- The Council needed to make a decision as to whether they would like to appoint a Charter Review Commission or whether they wanted to undertake this themselves.
- The Council needed to consider whether they wanted a referendum placed on the ballot for next February's election. Noted that he believed it was unlikely a Charter Review Commission could accomplish their mission for the February election.

President Coleman requested staff provide the Council with a history of the last Charter Review Commission.

Council Member Wyett suggested that the only referendum on the ballot for the February election should be on underground wiring. He noted that a Charter Review was important but did not compare to the need of educating residents about the underground wiring costs and desirability.

Town Manager Elwell stated that staff would provide further information, including the last Charter Review Commission's report, to be reviewed at the August 8, 2006, Regular Town Council Meeting.

5. Proposed Addition of Three Town Holidays.
[Peter B. Elwell, Town Manager]
Deferred from the June 13, 2006, Town Council Meeting.

Town Manager Elwell referred to his detailed memorandum to the Mayor and Town Council, dated June 30, 2006, and included in the backup material, recommending that the Town Council approve three additional Town holidays: President's Day, Christmas Eve, and New Year's Eve. He stated that staff's recommendation was that there would actually be less impact upon the public if Town offices were closed completely for those three additional days a year rather than offering three additional vacation days for each employee to use as they pleased. He noted that the cost to the Town was the same, $150,000, regardless which of the two methods were implemented. He explained that there was an overtime cost either way, because of Police and Fire-Rescue services that were twenty-four hours a day. Staff recommendation was for the Council to authorize implementing the additional holidays this coming holiday season.

Council Member Wyett suggested deferring this item to the Special Town Council Meeting being held on Wednesday, July12, 2006 regarding the budget as it would impact the budget.

In response to Council Member Wyett, Mr. Elwell advised that the overtime funding could be absorbed within the proposed budget, and would not need to be added to the budget. The cost would be incurred, but he did not believe that the budget needed to be increased to absorb that cost.

Mr. Elwell suggested that this item could be deferred until tomorrow's meeting and staff would provide a clear answer at that time.

After further discussion, it was the consensus of the Town Council to defer this item to the Special Town Council Meeting of July 12, 2006 when the budget would be discussed.

Mr. Elwell advised that staff would amend the agenda for the Special Town Council Meeting of July 12, 2006 to include this item.

Council Member Markin asked if the three days being requested would add into the number of days that an employee could defer and then buy back when they retire and leave?

Mr. Elwell responded that they did not, but that they could if the consultant's recommendation for them to become additional vacation days was chosen. He explained that as awarded holidays with Town offices closed, and the employees were home, there would be no accrual of time.

In response to Council Member Wyett, Mr. Elwell advised that the overtime for Police and Fire-Rescue would impact the pension plan regardless of which method was chosen.

B. New Business

1. Staff Recommendation Regarding Boards and Commissions Procedures. [Peter B. Elwell, Town Manager]

Town Manager Elwell referred to his detailed memorandum to the Mayor and Town Council, dated July 3, 2006, and included in the backup material, to discuss staff recommendations regarding Board and Commission procedures. He reviewed the areas that would not be implemented unless the Town Council affirmatively indicated their approval for staff to proceed. He noted that either the process would begin in all other areas or would occur in the absence of the Council directing otherwise.

Discussion ensued regarding the two items requiring Town Council action:

1. Increased Recognition of Board Members and the Importance of Their Work
   - Initiate some form of formal volunteer appreciation event to recognize the community service provided by all board members. Funding would be involved requiring action by the Town Council.

Mr. Elwell advised that in the absence of the Council directing that staff act on this item, staff would not undertake it at this time, and the Council could give additional thought to this item.

2. Increase Town-sponsored Education and Training for Board Members
   - Staff endorsed the concept of providing ongoing formal training and educational opportunities to every board member.
   - Formal training and education were not, currently, possible with the funds that were budgeted.

- There was a limited amount of money budgeted within Planning, Zoning, and Building for training some of the board members but not for every board.
- There was nothing budgeted for members of boards/commissions by other departments outside of Planning, Zoning, and Building.

In response to President Coleman, Mr. Elwell advised that initially the commitment could be very small, which then could be built up over time to make sure that it was not beyond what was thought to be necessary. He noted that the following questions faced the Council:

- Whether the Council felt that formal training and education required a Town investment;
- Whether the orientation and other less formal training provided by the Town, would be sufficient.
- Whether the Council felt formal training and education for board members were needed.

In response to Council Member Wyett, Mr. Elwell advised that staff had added an area on the application to be filled out identifying how many meetings the applicant had attended of the particular board/commission they were applying to serve on. The Council could then use that information in making a determination on whom to elect. It would be at the Council's discretion to elect someone who had not been able to attend any meetings.

President Coleman requested that before staff formalizes the application, the Council would like to review and comment on it.

Mr. Elwell explained that staff would provide the Council, at the next Regular Town Council Meeting with a set of applications because each application was unique to a particular board.

Council Member Markin commented that she believed there should be a voluntary sign in sheet at Town Council Meetings.

- It let people know that the Council was interested in who attended meetings;
- It provided factual information as to whom physically attended and sat through meetings, etc.
- It did not require any extra work on the part of staff.

Ned Barnes, President of the Palm Beach Civic Association, thanked Mr. Elwell, Town staff, and everyone that took their Committee Report seriously. He noted that it was appreciated and was shown in the Town's report. He asked as a point of clarification, after having read the Town's report, what the rationale was for not stepping up and taking on interrelationships between board chairs and the Town Council in order for board chairs to become involved in the selection process.

In response to Mr. Barnes, Mr. Elwell responded that he believed the Town had stepped up, but the Town had a different perspective than what was recommended by the Palm Beach Civic Association's Committee.

Mr. Barnes advised that he was not challenging the Town's perspective on this issue, but he noted that his Committee had spent a lot of time discussing this. He explained that he wanted to know what the rational was when he went back to report to them.

Mr. Elwell discussed the following issues relevant to this item:

- Board chairs may have valuable opinions to offer during the appointment process, but it was a conscious recommendation that it would be better for the chairs to offer those opinions on their own initiative to the Council rather than create a formal role for the chairs in the screening process.
- Attendance of chairs at Town Council Meetings:
    - It was not necessary for chairs to attend every Council meeting. If there were no issues relevant to their roles to be discussed, they did not feel the need to be present;
    - There were occasions when they should be engaged more directly on issues that either have been dealt with or were in the area of responsibility of that board or commission and encouraged
- Assigning individual Town Council Members to attend board/commission meetings:
    - Staff suggested that there might be a danger in assigning Town Council Members the responsibility of becoming the liaison to any particular board/commission and formalizing that relationship.
    - The Council was cautioned not to become too deeply involved in the affairs of their advisory committees.

Discussion ensued regarding recognizing Mr. Bennett's and Mr. Nora's years of service to the Town. Mr. Elwell stated that the Council had an opportunity tomorrow to show their appreciation of their service by appointing them as members on the Board of Adjustments and Appeals, if the Council wanted them to continue serving. He advised that beyond that they could be invited back to receive a plaque sometime in the future.

VIII. ANY OTHER MATTERS

There were none.

IX. ADJOURNMENT

There being no further business to discuss, the July 10, 2006, Special Town Council meeting adjourned at 5:55 p.m.

APPROVED:

Denis P. Coleman
Town Council President

ATTESTED:

Susan A. Eichhorn
Town Clerk