TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING
HELD ON TUESDAY, JUNE 22, 2010

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Tuesday, June 22, 2010, at 9:30 a.m., in the Town Council Chambers. On roll call, all of the elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Town Hall Renovation Project and Expression of Appreciation to Hedrick Brothers Construction, Mark Marsh, The Preservation Foundation of Palm Beach, and Town Staff.

Mayor McDonald welcomed everyone into the newly renovated Town Hall. He noted it is a Landmarked building that was restored on time and under budget. He recognized architect Mark Marsh, Contractor Dale Hedrick, Gene Parker, Robin Lunsford, Bob Dimmers, Chris Mattingly, and Sandy Scanlon.

He also recognized John Mashek from the Preservation Foundation. This was the second restoration of Town Hall that the Preservation Foundation had done.

Next, Mayor McDonald recognized Town Staff that worked on the project: Eric Brown, Assistant Public Works Director, and Mike Roach.

B. Palm Beach Country Club Scholarship Presentations.

Mayor McDonald presented scholarships to the following recipients:

- Joseph Arroyo, Florida Atlantic University
- Michael Dickson, Art Institute of Ft. Lauderdale
- Tashea Gordon, Florida State University
- Richard Connor Howe, Florida State University

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- Ashlee Justice, Liberty University
- Connor Madison, Palm Beach Atlantic
- Matthew McElhinney, Florida Atlantic University
- Blake Morris, Jacksonville State
- Alyssa Paige Palmer, Palm Beach Community College
- Lindsay Rodriguez, Florida Gulf Coast University
- Chelsea Anne Shoff, Palm Beach Atlantic
- Marissa Duquette, Florida State University (not in attendance)
- Alexandra Ingle, Florida State University (not in attendance)

C. Legislative Update Provided by Representative Mary Brandenburg.

Representative Brandenburg provided the Town Council with an overview of this year's legislative session.

Mayor McDonald thanked her for her leadership and mentioned that Representative Brandenburg's husband was running for her seat, since she was term limited.

IV. COMMENTS OF MAYOR JACK McDONALD

Mayor McDonald commented on the proposed sales tax that had been delayed. He stated that Palm Beach County had considered in November putting on the ballot a referendum dealing with increasing the sales tax one percent to pay for fire-rescue services. He acknowledged that the Civic Association appeared at the County Commission Meeting and spoke against it. The County Commission had passed to place the item on a referendum by a 4-3 vote. But, the next day the staff realized there were a lot of problems with it and they have delayed it until 2012. That was a momentary victory.

V. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council President Pro Tem Coniglio commented on the many meetings that they come to where they are heated and contentious. It's a warm and fuzzy feeling to start the meeting off as well as they had this morning. She thanked the Palm Beach Country Club for their generosity to the community and offered congratulations to the success of the students that were present.

While it had been a long and bumpy road, the renovation of Town Hall was nearly complete. The building had been fortified, beautified and made operationally functional for another fifty years. There have been a few glitches, but she hoped that everyone understands as they open a new house or a new store, there may be some problems, but she trusts Town staff to pull that together and it was great to be home.

Council President Pro Tem Coniglio continued that following several conversations that she has had with the Palm Beach County Commissioners, she was pleased to announce that they have offered a joint workshop. This would be an opportunity for both the Town of Palm Beach and

Palm Beach County Commissioners to collaborate on coastal management. Hopefully that would include funding at some point which she felt the County owes to the Town of Palm Beach. Lastly, in relation to the oil spill, everyone has become increasingly aware that our beaches will be affected. The impact will be a long haul and volunteers will be needed. At this point, if anyone were to find a tar ball, while you would think it was not rocket science, they are hazardous. Disposal of them requires additional measures. Report them to the police department or the Coast Guard because they can be fingerprinted to identify if, in fact, they are coming from the deepwater horizon spill, so that additional county measures can be taken. Very often, the Town had thrown stones across the water, but Palm Beach County has been extremely proactive and worked very hard to control our own destiny on this cleanup. The County is not going to leave it up to BP and their representatives.

Council Member Diamond stated that the Town Council had begun consideration of the 2011 budget, he wanted residents to know that he had mailed out at his own cost and expense to more than 2600 residents, a questionnaire asking them for their opinions on budgetary matters. He thanked the community for providing their opinions on Town Taxes, levels of services, and construction initiatives. He asked that they fill it out and return it and thanked them for taking part in the budgetary process. As soon as he had the results, he would make them public.

Council President Rosow announced that the next public hearing on Publix would be in July before ARCOM. ARCOM's role is to ensure the architecture lives up to the standards of Palm Beach. A lot of questions had been asked about parking and how parking would be dealt with at the ARCOM meetings. He stated that issue would come before the Town Council when the Publix application comes in. He asked the public not to spend a lot of time at the ARCOM meeting discussing parking. Council President Rosow also echoed the compliments about Town Hall. It had been a long and arduous process, but it was very nicely done and it was wonderful to see a project done under budget and on time.

Council Member Kleid hitchhiked on Council President Rosow's comments. He stated that he had attended all of the ARCOM meetings, as other Town Council members also have. Publix has had at least three meetings with the public and progress was being made. Publix seemed receptive to a lot of the comments that were made by ARCOM. This was an excellent example of the process. The process was to move things along to allow the advisory committees to negotiate, in a sense, what was going to happen. At the end, he was hopeful that they will present a plan to the Town Council that would be acceptable to the community at large. He had spoken a lot about process and was happy to report that he felt the process was working with ARCOM *vis a vis* Publix.

VI. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

a. (Another opportunity for communications from citizens will be offered immediately after the lunch break.)

Alexander Ives, Preservation Foundation, spoke about presentations and computerized plans that are placed on the Town website for viewing. Mr. Ives voiced his opposition to this citing a privacy issue for homeowners.

Mrs. McNamara, 422 N. Lakeside Drive, Lake Worth, spoke about public safety, the enforcement of the 1979 Agreement, and the Spiegel organization. Town Manager Elwell responded that there have been inspections of the playhouse and the violations that the Spiegel Organization had been cited for, had been corrected. He also informed her that a vacant building has different code requirements than if it were occupied.

Council Member Kleid stated that people were free to express their opinion, but he took umbrage at the use of word "conspired" by Mrs. McNamara. He had not, and would not conspire, and had no business relationship with Mr. Spiegel or Mr. Kosoy. He counseled people who speak and make gratuitous comments to know the facts and not use language that was inappropriate and not in keeping with the civility of the Town.

Eric Gilbertson, 151 Chilean Ave. congratulated the "iron" Mayor for refusing to give up. He also spoke about taxes and salaries. He noted that the newly renovated Town Hall was breath-taking and magnificent. He also honored veterans.

Leslie Evans, 214 Brazilian Ave., also commented on Mrs. McNamara's statements. He wanted to bring attention to the fact, from depositions he had with her, that she was not a registered voter or a U.S. Citizen. The comments that were brought up are by those who are not Town residents such as Patrick Flynn, and the McNamara's. They were the ones pushing certain amendments, are not residents, and have brought incivility to the Town Meetings. He has seen what goes on in Lake Worth and he certainly did not want to be like Lake Worth. He wondered how other cities would feel if they were to have their charter amended and have involvement in their politics by Palm Beach residents. It concerned him and he felt that the people of Palm Beach should make their own decisions.

Laurence McNamara, 422 N. Lakeside Drive, clarified for the record that his wife was a registered voter and a U.S. Citizen.

Council President Pro Tem Coniglio commented on Mr. Ives' comments. She had spoken to architects and planners who shared his same concern regarding the safety and privacy. The Town will find a policy between public notification and privacy of the residents. The Planning staff was already looking into a way to accommodate both.

VII. APPROVAL OF AGENDA

MOVED: Item VII. E.5 Adoption of Revised Policy Regarding Vacant Storefronts.[John S. Page, Director of Planning, Zoning, and Building] to X.B.8.

DEFERRED: Item XII.B.1., Request for Waiver of Section 42-199, Hours For Construction, at 214 Worth Avenue (Cartier) (Per Letter Dated June 3, 2010, From R & R Professional Services, Inc.)., to the July 14, 2010 Town Council Meeting.

DEFERRED: Item XII.C.1.b., Variance #4-2010, to the July 14, 2010 Town Council Meeting.

WITHDRAWN: Special Exception #11-2010

WITHDRAWN: Special Exception #3-2010 with Site Plan Review and Variance

DEFERRED: Site Plan Review #4-2010 with Special Exception and Variances to the July 14, 2010 Town Council Meeting.

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

VIII. CONSENT AGENDA

1

A. MINUTES: MAY 11, 2010
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

2

B. MINUTES: MAY 12, 2010
APPROVAL OF THE MINUTES OF THE TOWN COUNCIL MEETING

3

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON MAY 26, 2010.

4

D. RESOLUTIONS

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1. RESOLUTION NO. 60-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Expenditure of $47,250 for the Purchase of One (1) 125-KW Baldor Standby Generator from Standby Systems, Inc., of Melbourne, Florida for the D-16 Pump Station via the Florida Sheriffs Association Contract No. 09-17-0908. [Jay Boodheshwar, Acting Director of Public Works]

6

2. RESOLUTION NO. 63-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a City/County Right-of-Way Agreement for Underground Conversions (WR# 3749484) with FPL in Conjunction with the Worth Avenue Improvement Project and Authorizing the Town Manager to Execute the Same on Behalf of the Town.[Thomas G. Bradford, Deputy Town Manager]

7

3. RESOLUTION NO. 64-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Creation of an Additional 5 Foot Public Utility Easement Adjacent to the Existing 2.5 Foot Public Utility Easement in Peruvian Avenue

Park in Conjunction with the Worth Avenue Improvement Project and Authorizing the Town Manager to Undertake All Lawful Actions Necessary to Effectuate the Same on Behalf of the Town.[Thomas G. Bradford, Deputy Town Manager]

1

4. RESOLUTION NO. 65-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Purchase Order to Kimley-Horn and Associates, Inc., for the A-7 Pump Station Improvements and In-line Booster Station, Establishing a Design Phase Budget of $140,000 (from the Bond Proceeds Construction Fund) for Said Improvements, and Authorizing the Town Manager to Take Actions Necessary to Complete Said Improvements.[Jay Boodheshwar, Acting Director of Public Works]

2

5. RESOLUTION NO. 67-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing Expenditure of up to $370,000 from the Bond Proceeds Construction Fund for the Purchase of Traffic Control and Video Detection Equipment from TPFL, Inc., and for the Installation of That Equipment.[Jay Boodheshwar, Acting Director of Public Works]

3

6. RESOLUTION NO. 68-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Awarding a Not-to-Exceed $158,000 Contract to Applied Technology & Management, Inc., for the Annual 2010 Town-Wide Physical Monitoring Services. [Peter B. Elwell, Town Manager]

4

E. OTHER

5

1. Florida League of Cities 84th Annual Conference-Authorization of Mayor and Town Council Attendance and Designation of Mayor Jack McDonald as the Town's Official Voting Delegate.[Peter B. Elwell, Town Manager]

6

2. Consent for Distribution of Funding Through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program for FY 2011. [Kirk W. Blouin, Police Chief]

7

3. Approval to Accept a Grant of up to $60,000 from Palm Beach County for Communications Software that Improves the Efficiency of the Dispatch Process.[William Amador, Fire-Rescue Chief]

8

4. Authorization to Approve Two Change Orders for the Replacement of Windows at the North Fire-Rescue Station, Increasing the Total Project Cost from $202,625 to $232,660.[Jay Boodheshwar, Acting Director of Public Works]

9

5. Adoption of Revised Policy Regarding Vacant Storefronts.[John S. Page, Director of Planning, Zoning, and Building]

10

Item VIII.E.5., was pulled from the Consent Agenda and moved to the Regular Agenda, item X.B.8.

Motion to approve the Consent Agenda as Amended made by Council Member Diamond, seconded by Council Member Kleid. On roll call, the motion carried unanimously.

IX. COMMITTEE REPORTS

A. Administrative and Personnel Committee Meeting of June 2, 2010. [Richard M. Kleid, Town Council Member]

Council Member Kleid presented the Administration and Personnel Committee Report. He announced that the Committee met, heard the appeal of Assistant Dock Master John Fallon, who was terminated, and noted that the joint recommendation was not to reinstate him to his position, but allow Mr. Fallon to receive a pension, even though he was not vested.

Council President Rosow commented that he agreed with the recommendation at the time of the hearing, but after reading Town Manager Elwell's memo objecting to the recommendation, he now agreed with termination but did not feel he should receive the pension.

Council Member Diamond was opposed to giving a pension to someone that was not vested and did not want to set a precedent. Everyone should abide by the same rules. The Town has enough problems funding pensions and was in deep financial trouble. He stated that denying the pension was one step in the right direction.

Council Member Kleid stated that each case stands on individual merits and reminded the Town Council that Mr. Fallon had not done anything criminally wrong. What he did was overextend his relationships to dock captains and residents that used the docks. He was misguided and was counseled on several occasions. The Committee Members both felt that he should not return to duty because he would do it again. Council Member Kleid understood that it was an expensive proposition but quoted John Milton: Temper justice with mercy.

Council Member Wildrick felt that the propensity the Town Council had from time to time regarding giving funds to people who violate rules is not a good policy. He stated he was shocked that the initial recommendation was to award a pension when the rule says you must have ten years of service. Mr. Fallon would have to be on leave for one and a half years. This was not fair to the employees that have had no raises, and pay freezes and rewarding someone who had misbehaved. If granted, it was taking money out of the general fund and it would be $500,000 over the lifetime of that individual. He asked that in the future the Committee not bring forth irresponsible projected financial responsibility and it was embarrassing to spend taxpayer dollars that way.

Motion to accept the report of the Administrative and Personnel Committee was made by Council President Pro Tem Coniglio, seconded by Council Member Wildrick. On roll call, the motion carried unanimously.

Motion to accept the decision and recommendation of the Administrative and Personnel Committee to terminate Mr. Fallon and grant him a pension was made by Council Member Kleid. The motion died for lack of a second.

Motion to accept the termination of Mr. Fallon employment with non-vesting of the pension was made by Council Member Kleid and seconded by Council Member Diamond. On roll call, the motion carried unanimously.

X. <u>REGULAR AGENDA</u>

A. <u>Old Business</u>

1. <u>None</u>

B. <u>New Business</u>

1. <u>Proposed Charter Amendment Regarding Certain Landmark Properties. [John C. Randolph, Town Attorney]</u>

Town Attorney Randolph provided a summary of the options available to the Town Council. It was his opinion that this Charter Amendment was very similar to the previous amendment. The last amendment was found to be unconstitutional by a judge. Town Attorney Randolph expressed his concern that the current amendment suffered from the same deficiency and is contrary to a State Statute. The Town Council did not have the discretion to not place the amendment on the ballot when it had been certified to have the appropriate number of signatures by the Supervisor of Elections Office. The only entity that could determine its constitutionality was the court.

Mayor McDonald asked what the legal cost of the last declaratory judgment was and it was approximately $47,000.00.

The cost of placing the amendment on the November 2, 2010 ballot was $2400.00, according to Town Clerk Cunningham.

It was discussed that if they do not place it on the ballot, the Town could be sued. If they place it on the ballot and it passes, but then is found to be unconstitutional, there could also be litigation.

Comments from the public:

The following persons spoke in favor of the referendum:

- Mrs. McNamara, 422 Lakeside Drive, Lake Worth
- Patrick Flynn, Palm Beach Theater Guild, 2600 N. Flagler Drive, West Palm Beach
- Barbara Patrick, 235 Sunrise Ave., Palm Beach
- Don Huber, Boca Raton

- Paul Noble, 2175 Ibis Isle Road, Palm Beach
- Laurence McNamara, 422 N. Lakeside Drive., Lake Worth
- Barrie Ingham, actor, Ballenisles, 104 Isle Drive, Palm Beach Gardens

The following persons spoke in opposition to the referendum:

- Barry Hoyt, 133 Banyan Rd., and Trustee at Society of the Four Arts, Palm Beach
- Attorney James Brindell, speaking on behalf of the Breakers, Palm Beach
- Tanner Rose, 227 Australian Ave., Palm Beach
- Nancy Murray, 249 Monterey Rd., Palm Beach, President of Bath & Tennis Club
- Dan McDonnell, 2784 S. Ocean Blvd., Palm Beach
- Ned Barnes, Palm Beach Civic Association, Palm Beach
- Attorney John Little, 250 W Australian Ave.

Town Council President Rosow announced that they were in Executive Session:

Council Member Wildrick stated that this was not a Bert Harris issue and not a theater matter. This issue had divided the town and he was very disappointed in both sides with their inability to resolve the situation. He felt it was the fiduciary responsibility of the Town to determine the legality of the Charter Amendment. He felt, at this time, the Town Council should not take any actions until they have a ruling from the court on its constitutionality.

Council Member Diamond felt it was more of a decision to be made based on public policy, rather than on law. The bottom line question was whose side was the Town really on. The residents have twice asked for this item to be on the ballot. The town appeared to be on the side of developers to tear down the theater and build condos on the waterfront. The Town should use the money and legal resources to defend the residents' interests that want the right to vote instead of assisting the developer. The developer should be the one to sue the Town if they feel the amendment is unconstitutional. He would make a motion at the appropriate time.

Council President Rosow stated that it had been suggested that the Town Council re-write the referendum language so that it was less onerous. He was opposed to that since it changes what was signed by the residents and would be inappropriate. He has never seen any legislation interpreted narrowly. This petition could be interpreted more broadly than one would expect.

Council President Rosow took great umbrage with Council Member Diamond's comment that the Town was on the side of the developer. That was incorrect. He was not financially invested with the developer. He only owns a home and does no business in Town. He believed it was the Town Council responsibility to make certain that what they do is legal and appropriate. He suggested putting the Ordinance on the agenda for first reading at the July meeting, subject to a court ruling.

Council Member Kleid was concerned with the language of the petition and stated it could lead to unintended consequences with the use of the word "demolition". He cited the Bath and Tennis Club and The Palm Way Building as possibly being accepted and the consequences of the Bert Harris Act. He was very big on process and feels the process was being bypassed. After all this,

his consideration was if there was a question of constitutionality, it was the Town Council's fiduciary responsibility to listen to the Town Attorney. Once and if it is declared constitutional, then place it on the ballot.

Council President Pro Tem Coniglio was a proponent of the landmarks mission. She has anxiety over losing the process. The landmarks policy has been in effect for over thirty years. She was concerned about legislating by referendum. She had spoken to all of the landmarked properties that would be affected. Most were opposed to the referendum. The question was the legality of the amendment. Would anyone personally participate in a transaction where legal questions were unanswered? She could not spend town funds without knowing the legality and was in agreement with Attorney Randolph's recommendation.

Motion made by Council Member Diamond to place on the ballot the Preserve Palm Beach's Political Action Committee petition for a Charter Amendment. Motion died for lack of a second.

Motion made by Council Member Kleid, seconded by Council Member Wildrick, to direct the Town Attorney to place the question of constitutionality of the Charter Amendment before the courts. On roll call, the motion passed, 4-1 with Council Member Diamond dissenting.

2. <u>RESOLUTION NO. 66-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Execute a Not-to-Exceed $205,000 Contract with Coastal Systems International, Inc., for Reach 8 Beach Restoration State and Federal Permitting.[Peter B. Elwell, Town Manager and Rob Weber, Coastal Coordinator]</u>

Town Manager Elwell read Resolution No. 66-10 by title, as printed above.

Madeline Greenberg, Co-Chair of the Citizens Association, read the following statement and submitted a copy into the record:

The Coastal Erosion Task Force for the Citizens' Association of Palm Beach which represents about 6,000 residents strongly endorses placing adequate amounts of sand on Reaches 7 & 8. We appreciate and endorse the town's efforts to get the "Critically Eroded Beach" designation for our southern most beaches.

The Task Force of the Citizens' Association believes it is essential that whatever final design our town gets permitted, we receive a well designed beach re-nourishment project that maximizes storm protection against at the very least, Category 2 hurricanes for the safety of our residents and the infrastructure on this barrier island. We believe that the town shares in this desired result.

We support proceeding with the permitting process, but The Task Force is greatly concerned with some aspects of the currently proposed plan.

It is of paramount importance to us that projects like the Reach 8 one are well designed from the standpoint of shore protection, which would include protection from hurricanes. For those of us living here in Palm Beach, it was not that long ago that Frances, Jeanne and Wilma tore through our town. It is the opinion of our Task Force that there needs to be a thorough review of alternatives considered for this project, especially looking at the ratio of cost to the amount of hurricane protection. It is very important that this be completely explored before going too far with this present plan.

The reduced volume of sand in this current Small Scale Reach 8 Truck/Haul Project provides a corresponding reduction in storm protection and causes a shorter re-nourishment interval. It is the understanding of The Task Force of the Citizens' Association of Palm Beach that the volume of sand being proposed will likely protect against a tropical storm, but will not afford protection against a Category 2 hurricane as has been done for other town projects. That combined with the high cost for the truck hauled sand places the project presented at this time in the position that costs appear to exceed the benefits. We believe the town's design team must aggressively strive to improve the cost/benefit ratio of the Reach 8 project.

My speaking to you today is not only to express the concerns of the Task Force of the Citizens' Association relating to the proposed Reach 8 project but also is in response to the Town Council and Shore Board's request that the Citizens' Association do a thorough and detailed survey of the south end residents to determine if they support the currently proposed Small Scale Reach 8 Truck/Haul Project. If it is considered appropriate to undertake a survey of the residents, we believe this is a responsibility of the town. We are not in a position to conduct such a survey. Our decision in this regard doesn't, of course, preclude the Town from doing so, if it wishes.

There is one additional matter that the Task Force of The Citizens' Association believes must be addressed at this time. It has been noted at the Shore Board Meetings that the two south end bridges, the Lantana Bridge and the Lake Worth Bridge, will be used to transport 261 sand trucks a day during the implementation period of the Small Scale Reach 8 Truck/Haul Project. It is our understanding that the Lantana Bridge is scheduled to be closed for repairs during a period of approximately two years. For those who live on the south-end of the Town of Palm Beach and also in the Towns of South Palm Beach and Manalapan, the Lantana and Lake Worth Bridges are used for many of our daily excursions off the island. There is a real possibility of the two projects, the closing of the Lantana Bridge and the Reach 8 Project, occurring simultaneously and creating serious safety issues for the residents. For example, the increased truck traffic and bridge closing would negatively impact emergency vehicles trying to get to condominiums and off the island when the Lake Worth Bridge becomes the main on and off route. This issue needs to be considered carefully in planning the Reach 8 project if South Ocean Blvd. is used to transport the sand by truck as is now being proposed. We are bringing this matter to your attention because we know that the safety of residents is a priority in our fine town. We believe there are a number of technical issues concerning sources of sand, delivery methods, amount of sand and cost/benefit ratios that presently are under review by the Town's staff. With your approval, the task force would like to have Dave Decker, our technical advisor comment on these issues at this time.

Dave Decker, from the East Bay Group, Inc. spoke on behalf of the Citizens Association as a consultant, regarding the Reach 8 Project. He agreed with the Town's approach for permit application and stated it was a work in progress. He also thanked Coastal Coordinator Rob

Weber for providing them helpful information. He submitted his memo into the record. He stated that the ultimate goal was shore protection.

Mr. Decker requested the Town expand the scope of the permit to be more aggressive in requesting improvements form the State. It was difficult to negotiate for more in the process than less.

Town Manager Elwell noted that staff and the Shore Protection Board had concerns with the comments and the project has been in consideration for about a year now. The one item that Mr. Decker presented was to not constrict them by Judge Meale's order. Town Manager Elwell noted that it was DEP Secretary Mike Sole's decision also. The Town needs to be mindful of the orders that have been imposed upon the Town by the recommended orders. Secondly there is a group of people, that have great influence, and they are the environmental groups. The project as it was designed could be modified slightly after being submitted, but the only significant issue that was still pending was the trucking issue. If there was a better method to bring the sand to the site, that would be and is being looked at.

Council President Rosow said that the Town Manager's point was to defer the recommendation until next month so that the concerns could be worked out between the Shore Board, the Citizen's Association, and Town staff.

Council Member Diamond stated that they should go ahead and approve the Resolution, and get the ball rolling.

Mr. Decker stated that they did not want to delay moving forward since permit processing can take eighteen months.

Council Member Kleid stated that he was confused by Mr. Decker's presentation, as he seemed to contradict himself, but to meet the schedule by 2011, they need to get the process moving. Mr. Decker spoke about alternatives but gave no specifics. Council Member Kleid stressed the importance of having the acceptance of the environmental groups.

Town Manager Elwell noted that Coastal Coordinator Weber was to meet with DEP on June 30th and could discuss today's Town Council's decision. A delay today would not affect the project in the long run.

Council President Pro Tem Coniglio asked if the Town would lose its cost sharing with the State if it were deferred one more month, and Town Manager Elwell responded that they would not.

After more discussion, the item was deferred until the July 13, 2010 Town Council meeting.

3. Residents' Proposal to Rename the Par 3 Golf Course in Honor of Raymond Floyd. [Jay Boodheshwar, Director of Recreation]

Jay Boodheshwar, Acting Director of Public Works, presented the item requesting the Town Council considering naming the Par 3 to the Raymond Floyd Town of Palm Beach Par 3.

Mayor McDonald was concerned about setting a precedent. He suggested that if the Town Council were to re-name the golf course that they set up guidelines for future requests.

Council Member Wildrick was concerned because he did not want to set a precedent in the long run. He noted that the efforts of Mr. Floyd were fantastic. The sacrifice was great and the results were exemplary and may inhibit other groups wanting to do something only with their name attached to it. He offered as an alternative to have the name of the designer and call it the "Palm Beach Par 3, designed by Raymond Floyd".

Council Member Kleid agreed with Council Member Wildrick. He was not as concerned about setting a precedent since there already was Phipps Park, and Bradley Park. He also agreed with Mayor McDonald in setting up guidelines to distinguish this naming so it does not happen every time.

Council Member Diamond had no objection to re-naming the golf course after Floyd. He gave the example from personal experience at Columbia Law School where the library was named after his uncle, but then someone else came along, gave even more money, and wanted naming rights.

Council Member Kleid stated that having Floyd's name on the Town website and stating that the Par 3 is a Raymond Floyd designed Course would also give proper credit and attract business.

Attorney Peter Broberg, 220 Monterey Road, commented that he had played the course and Raymond Floyd did a great job. He reminded the Town Council not to lose sight that Dick Wilson originally designed the course. The town has had a tradition of not naming facilities, but suggested a plaque in the new clubhouse with the names from the inception of the Golf course who were instrumental in its success. He would help provide information to the Town on the original donors and persons involved.

Council President Pro Tem Coniglio stated that this request was brought forth by the donors and the Recreation Advisory Board.

Steve Hall, 230 El Dorado Lane, said there was a strong reason to recognize Mr. Floyd he also but was wary of precedent. They did realize that originally it was a Dick Wilson course.

Council President Rosow said he wanted to make an impressive point: if it had not been for Raymond and Maria Floyd, the entire project would not have happened. Not only did he donate his design services, he raised almost all of the funds himself. There are many good citizens of the Town that are very charitable. As a compromise, he proposed naming the course the "The Town of Palm Beach Par 3 Golf Course, redesigned by Raymond Floyd, Town Resident." Council President Rosow added that there should also a plaque inside the clubhouse to recognize the people who helped make the course possible.

Motion made by Council Member Wildrick, seconded by Council Member Kleid, to name the Town golf course "The Town of Palm Beach Par 3 re-designed by Raymond Floyd, Town Resident 2010". On roll call, the motion carried unanimously.

Motion made by Council President Pro Tem Coniglio, seconded by Council Member Kleid, to provide for a permanent plaque in the new clubhouse which identified the persons responsible for the creation of the original Par 3 golf course. On roll call, the motion carried unanimously.

4. County Budget Task Force Request for Town Council to Designate the Task Force's Mission as Fact Finding Only.[John C. Randolph, Town Attorney]

Town Attorney Randolph provided a memo to the Town Council indicating that the Task Force should operate under the Sunshine Law.

Bruce McAllister, 224 Bahama Lane, stated that the Town should not force interested residents to jump through hoops to provide service. The private tax group has accomplished more in a month than the task force operating under Sunshine could possibly accomplish. Mr. McAllister noted that Task force and tax group member Jere Zenko had been in dialogue with the County and State. He proposed that the Task force be changed to a fact finding group.

Council Member Wildrick said there was precedent in the Town when they worked together on the budget. That task force met in Sunshine and he had assigned tasks to members, and then reported back their findings at a public meeting. Then the Town Council made a decision. There was no reason to not do it the same way again this time.

Mr. McCallister was opposed to the Town Attorney's comments since they were advised to not discuss the meeting contents since other members are in the other group.

Council Member Diamond believed that the Town Council appointed the seven members to see what information they could obtain from the County.

Jere Zenko, 232 Tangier Avenue, Budget Task Force Member, stated that the reason the budget task force was successful was because her job was task specific. She has discovered other areas in her research which could also be helpful to the town, in the areas of pension reform. She said there should be defined tasks.

Council Member Kleid stated that when the committee was created, it was an advisory committee to sift through information and hear recommendations. He encouraged the Task Force to be careful where there are ethics problems, and not have a lack of transparency. He said to follow procedure and meet in the Sunshine.

Mayor McDonald said he felt consensus that it remain under Sunshine but he respected Mr. McAllister's position. He decided to chair the committee because it was operating under the

Sunshine Law. The three people that are part of the PAC caused him discomfort, and those people need to pick which group they want to belong to.

Town Attorney Randolph stated that some of the issues that were being discussed by the PAC were also being discussed by the Task Force, and could be on the Task Force.

Mr. McAllister noted that he would resign from the PAC group.

The consensus of the Town Council was to keep the Task Force as an advisory group and operate under the Sunshine Law.

5. Street Signage and Pole Standards for Worth Avenue Project. [Thomas G. Bradford, Deputy Town Manager]

*******The Town Council Reconvened at 2:00pm after a lunch recess.*******

Motion to accept the Street Signage and Pole Standards for the Worth Avenue Project as recommended by ARCOM was made by Council Member Kleid and seconded by Council Member Wildrick. On roll call the motion carried unanimously.

6. Consideration of Property Available for Purchase.

a. 159 Australian Avenue.[E. Anthony Hollis, Hollis Realty Group, Inc.]

Town Manager Elwell announced that two individuals had written to the Town offering adjacent properties for sale for Town consideration.

Earl Hollis 145 Peruvian Ave., and Anthony Hollis, Hollis Realty Group, Inc., Palm Beach Gardens, presented photographs and a description of the property behind the Police Department at 159 Australian Ave. The asking price was $1.990 million. After discussing the options and potential use of the land, the Town Council took no action.

b. 150 Australian Avenue.[Sharon S. Kahle, Realtor/Associate, Jeffrey A. Cloninger and Associates, Inc.]

Sharon Kahle, Realtor, presented the property at 150 Australian Ave. She stated that the asking price was $3.99 million, but was negotiable.

After discussing the options and potential use of the land, the Town Council took no action.

7. Matters Related to the Completion of the Town Hall Renovation. [Peter B. Elwell, Town Manager]

a. Opportunity to Convert the Area Between Town Hall and Memorial Fountain Park to Greenspace.

Town Manager Elwell indicated that the Florida Department of Transportation (FDOT) was willing to sell the property between Town Hall and Memorial Fountain Park to the Town as long as it was used for one of three uses. Mr. Elwell proposed using it as green space. There were no resident complaints regarding the closure of the road.

Council President Pro Tem Coniglio stated that she had spoken to the Garden Club, they were ecstatic and were willing to beautify and improve the area. She was in favor of this.

Council Member Diamond asked if you would be able to walk through the green space. Town Manager Elwell stated that the area would be initially curbed and grassed by Hedrick Bros. They would need to go to Landmarks with the design and after it was approved there, would come back to the Town Council for final approval.

Motion to convert the area between Town Hall and Memorial Fountain Park to greenspace was made by Council President Pro Tem Coniglio, and seconded by Council Member Diamond. On roll call, the motion carried unanimously.

b. RESOLUTION NO. 61-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Request the Florida Department of Transportation ("FDOT") to Convey Surplus Property to the Town of Palm Beach ("Town") to be Utilized for the Public Purpose of Providing Park Facilities, Transportation Facilities, or Parking Facilities, Such Property Being Identified in the Legal Description and Sketch Attached to this Resolution Labeled Exhibit "A"; Providing An Effective Date; And For Other Purposes.

Town Manager Elwell read Resolution No. 61-10, by title, as printed above. For the record, Town Manager Elwell noted that even though the Town would be using the area as greenspace, all three permitted uses were in the Resolution for future flexibility.

Motion to adopt Resolution No. 61-10 was made by Council Member Diamond, seconded by Council President Pro Tem Coniglio. On roll call, the motion carried unanimously.

c. Review of Town Council Policy Prohibiting Board/Commission Member Participation in Town Meetings by Phone.

Council President Pro Tem Coniglio supported the current policy which prohibits phone participation.

Mayor McDonald wished to discuss it further by stating that the newly formed Budget Task Force should be exempt, since it was a temporary board. All other boards and commissions, including the Town Council, would be prohibited from attending meetings by phone.

Council Member Kleid asked if the members were notified when they were appointed that attendance in person was required. Mayor McDonald was concerned about having quorums this summer. Council Member Kleid was hesitant to grant an exception.

Motion to leave the policy "as-is" was made by Council member Wildrick, seconded by Council President Pro Tem Coniglio. On roll call, the motion passed 4-1, with Council President Rosow dissenting.

Council President Rosow addressed Council Member Diamond's concern about absences from special meetings and referred that item to the ORS Committee.

8. Adoption of Revised Policy Regarding Vacant Storefronts.[John S. Page, Director of Planning, Zoning, and Building]

Item VIII.E.5., was pulled from the Consent Agenda.

Town Manager Elwell explained that when staff and he presented the "Talk of the Town" at the Business Associations last Friday, one of the questions was if the Town could add to the Ordinance a time limit to address what happens over time when the installation becomes stagnant.

He assured the group that he would bring it to the Town Council for consideration.

Council Member Wildrick indicated he wished to leave the policy as-is and not complicate the matter. If the policy does not work, it could be revised in the future, but he felt enough time had been spent on the issue already.

Town Manager Elwell said they would confer with the business associations in Town and would return back with what an appropriate time-frame would be.

Motion by Council President Pro Tem Coniglio, seconded by Council Member Diamond, to approve the revised guidelines for vacant storefronts. On roll call, the motion carried unanimously.

XI. ORDINANCES

A. Second Reading

1. None

B. First Reading

Council President Rosow commended the Ordinances, Rules and Standards Committee and Town Staff for their excellent work on going through each Chapter of the Codes for review.

1. ORDINANCE NO. 11-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 1 of the Town Code of Ordinances Relating to General Provisions at Section 1-14 Relating to General Penalties; Amending Chapter 2 Relating to Administration, at Article III, Officers and Employees, Section 2-271; Amending Article IV, Boards and Commissions, Sections 2-326 and 2-334; Amending Article VI, Finance, Sections 2-491, 2-517, 2-518, 2-541, 2-542, 2-566 and 2-567; Deleting Article VII Relating to Issuance of Subpoenas in its Entirety; Amending Article VIII, Investment Policy, Section 2-604; 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. 11-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve on first reading, Ordinance No. 11-10. On roll call, the motion carried unanimously.

2. ORDINANCE NO. 12-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 6 of the Town Code of Ordinances Relating to Alcoholic Beverages, at Article I, in General; Amending Section 6-3 Relating to Measurement of Distances; Amending Section 6-4 Relating to Distance Between Vendors at Subsection (e); Amending Section 6-8 Relating to Hours of Sale for Off Premises Consumption; Amending Article II, Adult Entertainment Code, Section 6-37 Relating to Application for License at Subsection (3); 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. 12-10 by title, as printed above.

Council President Pro Tem Coniglio informed the public and fellow Town Council members that this ordinance would allow the sale of alcohol on Sunday mornings at 7:00 a.m.

Motion made by Council Member Diamond, seconded by Council President Pro Tem Coniglio, to approve on first reading, Ordinance No. 12-10. On roll call, the motion carried unanimously.

3. ORDINANCE NO. 13-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 10 of the Town Code of Ordinances Relating to Animals, at Article I, in General, Section 10-10 Relating to Temporary Permits; Amending Article II, Dogs and Cats, Section 10-41 Relating to Registration; Inoculation; Amending Section 10-43 Relating to Running at Large Prohibited; 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. 13-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council President Pro Tem Coniglio, to approve on first reading, Ordinance No. 13-10. On roll call, the motion carried 4-0, with Council Member Wildrick absent.

4. ORDINANCE NO. 14-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 22, Businesses, Article III, Pugilistic Exhibits, at Section 22-94 Relating to Benefit Fights; 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. 14-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve on first reading, Ordinance No. 14-10. On roll call, the motion carried 4-0, with Council Member Wildrick absent.

5. ORDINANCE NO. 15-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach by Rescinding Chapter 26, Cable Communications, in its Entirety; 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. 15-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve on first reading, Ordinance No. 15-10. On roll call, the motion carried 4-0, with Council Member Wildrick absent.

6. ORDINANCE NO. 16-10 An Ordinance of the Town Council of the Town Of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 30, Consistency and Concurrency Management System, at Section 30-36 Relating To Determination of Consistency; Section 30-73 Relating to Concurrency Determinations and The Development Approval Process; Section 30-76 Relating to Limitations and Expiration of Concurrency Determinations; Section 30-111 Relating to Transportation System; Section 30-112 Relating to Sanitary Sewer; Section 30-113 Relating to Solid Waste; Section 30-114 Relating to Drainage; Section 30-115, Relating To Potable Water; and Section 30-116 Relating To Recreation Open Space; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.[Thomas G. Bradford, Deputy Town Manager]

Town Manager Elwell read Ordinance No. 16-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council President Pro Tem Coniglio, to approve on first reading, Ordinance No. 16-10. On roll call, the motion carried 4-0, with Council Member Wildrick absent.

7. ORDINANCE NO. 18-10 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 42-199, Hours for Construction Work, So as to Modify the Definition of Construction Work by Deleting the Word "Major" and the Reference to the $10,000 Permit Valuation; Amending Section 42-230, Lawn Maintenance Equipment Noise, by Deleting the Reference to "Major" Construction; and Further Amending Chapter 42 to Include a New Article VIII Relating to Abandoned Real Property; Providing for Purpose and Intent; Providing for Definitions; Providing for Applicability; Providing for Registration of Abandoned Real Property; Providing for Maintenance Requirements; Providing for Security Requirements; Providing for Immunity of Enforcement Officer; Providing Additional Authority; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.[Thomas G. Bradford, Deputy Town Manager]

Town Manager Elwell read Ordinance No. 18-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve on first reading, Ordinance No. 18-10. On roll call, the motion carried unanimously.

8. ORDINANCE NO. 19-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 50, Floods; Article II, Flood Damage Prevention; at Section 50-34, Objectives; at Section 50-35, Definitions; at Section 50-66, Designation of Building Official; at Section 50-67, Duties and Responsibilities of the Floodplain Administrator; at Section 50-68, Establishment of Development Permit; at Section 50-69, Variance Procedures; at Section 50-91, General Standards; and at Section 50-93, Standards for Subdivision Proposals; 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. 19-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve on first reading, Ordinance No. 19-10. On roll call, the motion carried unanimously.

9. ORDINANCE NO. 20-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm

Beach at Chapter 62, Marine Structures; Article III, Bulkheads and Pierheads on Lake Worth; at Section 62-77 to Require Maintenance and Certification of All Bulkheads and Seawalls; 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. 20-10 by title, as printed above.

Council President Pro Tem Coniglio felt the concept was good, but she asked Council President Rosow, as a lake front owner, if he felt it was onerous and he did not.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve on first reading, Ordinance No. 20-10. On roll call, the motion carried unanimously.

10. ORDINANCE NO. 21-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 74, Parks and Recreation; Article II, Beaches and Aquatic Activities; Section 74-162, Regulation of Fishing; and Amending Article III, Boats and Boating, by Deleting Sections 74-263 and 74-267 in Their Entirety; 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. 21-10 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council President Pro Tem Coniglio, to approve on first reading, Ordinance No. 21-10. On roll call, the motion carried unanimously.

11. ORDINANCE NO. 22-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Code of Ordinances of the Town of Palm Beach at Chapter 66 Natural Resource Protection; Article IV Vegetation; Division 4 Design Requirements; Section 66-286 Water Conserving Landscape Design; at Subsection (d) Irrigation Sectors, To Include A New Subsection (3) Providing For Regulations Regarding "Smart Irrigation Systems"; Providing a New Subsection 4 Relating To Applicability; Providing a New Subsection 5 Relating to Violations and Penalties; 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. 22-10 by title, as printed above.

Former Mayor Deede Marix, 1570 N. Ocean Blvd., was opposed to the Ordinance and also asked that the Town Council provide a summary for each Ordinance. She was informed that this ordinance was already on the books, except for the new State requirement of smart water systems and that pertained only to new construction, or a major renovation.

Council Member Wildrick inquired about the use of a smart system when the power goes out, and would need to be reset. Many residents are not here in the summer months. Many of the systems do have a battery back-up.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve on first reading, Ordinance No. 22-10. On roll call, the motion carried 4-1, with Council Member Wildrick dissenting.

XII. DEVELOPMENT REVIEWS

A. Appeals

1. None

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours For Construction, at 214 Worth Avenue (Cartier) (Per Letter Dated June 3, 2010, From R & R Professional Services, Inc.).

This item was DEFERRED to the July 14, 2010 Town Council Meeting.

2. Request for Waiver of Section 42-199, Hours For Construction, at 760 N. Ocean Blvd. (Palm Beach Country Club) (Per Letter Dated June 2, 2010, From Steven L. Bielsky).

Ex-parte communication was declared by:

- Council Member Diamond spoke with Gerry Goldsmith.
- President Rosow spoke with Mr. Goldsmith.
- Council Member Wildrick spoke with Mr. Goldsmith.

Gerry Goldsmith, 285 Colonial Lane, appearing for the Palm Beach Country Club, requested an extension of the hours for construction in order to begin work on the Country Club's golf course at 7:00 a.m. He said that he did not think it would disturb any of the neighbors and that the extensive work was expected to be completed before the fall season, and before Thanksgiving.

Assistant Planning, Zoning and Building Director Veronica Close noted that no feedback from the neighbors had been received; the application requested the extension of hours from 7:00 a.m. to 6:00 p.m. and indicated that no work would be done within 300 feet of the neighbors from 7:00 a.m. to 8:00 a.m.

Motion made by President Pro Tem Coniglio, seconded by Council Member Kleid, to approve the Request for Waiver of Section 42-199, Hours for Construction, at 760 N. Ocean Blvd., Palm Beach Country Club from 7:00 a.m. to 6:00 p.m., with the conditions placed on the project by staff that no work would be done within 300 feet of the neighbors from 7:00 a.m. to 8:00 a.m. On roll call, the motion carried unanimously.

3. Request for Waiver of Section 42-199, Hours For Construction, at 313 Royal Poinciana Way (TooJays) (Per E-Mail dated June 3, 2010, From Bonnie Kohulka).

Ex-parte communication was not declared by any members of the Town Council.

President Rosow indicated that Town Council only received an email from TooJays and asked staff for comments.

Assistant Planning, Zoning and Building Director Close indicated that TooJays asked for permission to work three nights during the week in order to replace a grease trap and to work from 8:00 p.m. to 6:00 a.m., inside. She added that there were no residential units within 200 feet.

President Pro Tem Coniglio commented that she was in agreement with the request, but that she believed someone should have attended the meeting in order to present it.

Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond, to approve the Request for Waiver of Section 42-199, Hours For Construction, at 313 Royal Poinciana Way (TooJays) with the conditions enumerated by staff that the work would be done from 8:00 p.m. to 6:00 a.m., three days during the week. On roll call, the motion carried unanimously.

Responding to President Rosow, Ms. Close indicated that she was not certain that there were any requirements that the applicant be present for items that come before the Town Council.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

a. SPECIAL EXCEPTION #6-2010 The application of Diane Wren, relative to property commonly known as 3000 S. Ocean Blvd., Unit PH6; described as Bellaria Condominium Unit PH6, Phase South; located in the R-D(2) Zoning District. Request for Special Exception to add a 532 square foot roofed portion on the existing 5th floor patio. The height exception is required above three stories. [Attorney: James R. Brindell, Esq.][ARCOM Recommendation: Approval of the Application Will Not Cause Negative Architectural Impacts Based on Option 1.]

Deferred from the May 12, 2010, Town Council Meeting (Special Circumstances).

Ex-parte communication was not declared by any members of the Town Council.

Attorney James Brindell provided an overview of the request.

Staff Comments:

Zoning Administrator Paul Castro made several of the following comments:

- The Architectural Commission (ARCOM) unanimously recommended approval of Option # 1, which provided for different fascia or facade, of the covering being proposed on the penthouse unit.

Architect Eugene Lawrence presented photos and elevations of the Bellaria building, indicating the location where the shelter would be placed.

Motion made by Council Member Diamond that Special Exception #6-2010 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

b. VARIANCE #4-2010 The application of Robert T. Tomsich, relative to property commonly known as 151 Via Bellaria; described as lengthy legal description on file; located in the R-A Zoning District. Request a variance to permit the construction of a new larger two-story open loggia to replace the existing two-story loggia, which will result in a lot coverage of 25.8% in lieu of the 24.9% existing and 25% maximum allowed. [Attorney: M. Timothy Hanlon][ARCOM Recommendation: Defer to the June 23, 2010, ARCOM Meeting.] Deferred from the May 12, 2010, Town Council Meeting (Special Circumstances). Request for Deferral to the July 14, 2010, Town Council Meeting Per Letter Dated June 9, 2010, from M. Timothy Hanlon.

This item has been deferred to the July 14, 2010 Town Council meeting.

c. MODIFIED SITE PLAN REVIEW #3-2010 WITH VARIANCE The application of Mr. & Mrs. Adler, relative to property commonly known as 7 Sloan's Curve Drive; described as lengthy legal description on file; located in the PUD-B Zoning District. Request for Site Plan Review to construct a 135 square foot infill addition on the front entry of an existing townhouse and a 49 square foot infill addition to the breakfast atrium and a 49 square foot infill addition to an upstairs bedroom. A Variance is requested to allow two small additions that will enclose the entry feature and an interior atrium thereby increasing the lot coverage to 42.1% in lieu of the 39.5% existing and the 35% maximum allowed in the PUD-B district. The proposed additions will modify a previously approved site plan in a PUD complying with Section 134-688 (b) of the Town's Zoning Code. [Attorney: Maura A. Ziska, Esq.][ARCOM Recommendation: Approval of the Variance Will Not Cause Negative Architectural Impacts. Carried 7-0.]Deferred from the May 12, 2010, Town Council Meeting (Special Circumstances).

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Maura Ziska.

- President Pro Tem Coniglio had a telephone conversation with Attorney Ziska.

- Council Member Wildrick had a conversation with Attorney Ziska.

Zoning Administrator Castro conveyed that there was an advertisement problem with the notification. He said that the applicant would like to proceed forward in order to obtain direction from the Town Council in processing the building permit. He continued that ultimately this case would have to be deferred to the July Town Council meeting; ARCOM heard the case.

Attorney Ziska, on behalf of Mr. & Mrs. Adler, of 7 Sloan's Curve Drive, provided an overview of the request. The building did not conform to today's lot coverage which was 35%, as it was built in the 70's. There were letters from neighbors on each side supportive of the project. She added that ARCOM approved the request 7-0.

Staff Comments:

Zoning Administrator Castro made several of the following comments:

- The applicant would need to provide the Town Council with adequate demonstration that the criteria had been met for the variance.

- The Fire Marshal's comment was that, if applicable, the units would be provided with fire sprinklers in the as-builts for the additions.

Discussion occurred among the Town Council Members, Attorney Ziska and Mr. Castro regarding the previous approvals of enclosing the atriums in the buildings, and the increase in the lot coverage.

Responding to President Rosow, there were no Town Council Members that had any objection to the proposed change. He informed Ms. Ziska that the applicant would have to re-notify and return to the next meeting.

Motion made by Council Member Kleid to defer Modified Site Plan Review #3-2010 with Variance to the July 13, 2010 Town Council Meeting. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

Zoning Administrator Castro called attention to the applicant's need to understand that moving forward with the building permit application was at their own risk, in terms of returning to the Town Council.

Attorney Ziska indicated that the applicant would apply for and obtain the permit at their own risk, hoping that in July it would just be a technicality.

2. New Business- Less Than 15 Minutes

a. SPECIAL EXCEPTION #8-2010 The application of BB&T, relative to property commonly known as 125 Worth Avenue; described as Lots 38 through 48, inclusive, Block 16, REVISED MAP OF ROYAL PARK ADDITION, according to the Plat thereof, recorded in Plat Book 4, Page 1, of the Public Records of Palm Beach County, Florida; located in the C-WA Zoning District. Request for Special Exception to allow a new Town-serving tenant bank (BB&T) to occupy the same 12,396 square feet that the current, Town-serving tenant bank (Colonial Bank) occupies. [Attorney: John C. Dotterrer, Esq.]

Ex-parte communication was declared by:

- President Pro Tem Coniglio had a conversation with Attorney John Dotterrer.

Attorney Dotterrer, on behalf of the applicant, BB&T, provided an overview of the request.

Staff Comments:

Zoning Administrator Castro made several of the following comments:

- The applicant provided the Town with a Town-serving document from an independent CPA, and staff reviewed the document, which appeared to be satisfactory.

- The reason for the Special Exception is that it is a change in banks and Colonial Bank was taken over by BB&T, through the federal government.

Motion made by President Pro Tem Coniglio that Special Exception #8-2010 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met. Council Member Wildrick seconded the motion. On roll call, the motion carried unanimously.

b. SPECIAL EXCEPTION #11-2010 The application of Mary Mahoney, Retail Store, relative to property commonly known as 350 Worth Avenue; described as lengthy legal description on file; located in the C-WA Zoning District. Request for Special Exception to relocate an existing retail store (Mary Mahoney) into a space with 3,909 square feet of gross leasable area. Since the proposed space is in excess of 2,000 sq. ft. of gross leasable area, the Applicant is required to obtain Town Council approval and a finding that the proposed use is town-serving. [Attorney: Maura A. Ziska, Esq.]Request for Withdrawal Per Letter Dated June 7, 2010, From Maura Ziska.

This item has been withdrawn.

3. Old Business- More Than 15 Minutes

a. SPECIAL EXCEPTION #3-2010 WITH SITE PLAN REVIEW AND VARIANCE The application of Roy Reeves, Restaurant Operator, relative to property commonly known as 219 Worth Avenue; described as Lots 20, 21, 34 and 35, ROYAL PARK ADDITION, according to the Plat thereof, on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida recorded in Plat Book, Page 1; located in the C-WA Zoning District. Request for Special Exception for a 4,075 square foot upscale American cuisine restaurant which includes site plan review to allow a new entry door and 36 outdoor seats on the proposed second floor patio within the proposed expansion area. The applicant is requesting umbrellas to cover the outdoor seating. The applicant also proposes to meet all conditions of approval which were granted to the previous restaurant applicant for this tenant space. The variance being requested is to eliminate the four additional off-street parking spaces required for the 74 proposed seats. [Attorney: Maura A. Ziska, Esq.]Deferred from the April 14, 2010, and May 12, 2010, Town Council Meetings.Request for Withdrawal Per Letter Dated June 14, 2010, From Maura A. Ziska.

This item has been withdrawn.

b. SITE PLAN REVIEW #4-2010 WITH SPECIAL EXCEPTION AND VARIANCES The application of Publix Super Markets, Inc., relative to property commonly known as 265, 255, 235, 231 Sunset Avenue and 240 Sunrise Avenue; described as lengthy legal description on file; located in the C-TS Zoning District. Request for a Site Plan Review and Special Exception to construct a 50,870 (43,360 gross leasable) square foot one story grocery store on 4.36 acres. The new store will provide 218 off street parking spaces. There is proposed to be an outdoor ATM and the grocery cart storage within the building. All of the proposed mechanical equipment will be contained within portions of the building and will not be seen on the roof. Part of the proposed design is to have two generators located within the southeast corner of the proposed store that will contain a 100 KW standby generator and a 500 KW main generator. There is proposed to be two loading areas within the loading dock on the east side of the building that will be screened. The proposed store will have a pharmacy, deli, bakery and a larger selection of food items and other products. Since the proposed grocery store is in excess of 2,000 square feet, the applicant is required to obtain Town Council approval of a special exception and a finding that the proposed use is Town serving. A Special Exception is being requested to have two illuminated monument signs at the northwest and southwest entrances to the west parking lot and one illuminated business identification sign on the west entrance of the building.

The following variances are being requested to construct the proposed one story grocery store: (a) to allow a building length of 245 feet in lieu of the 150-foot maximum allowed; (b) to allow a front yard setback at the northwest corner of the proposed building of 10 feet in lieu of the 14 foot minimum required based on building height; (c) to allow a side yard setback for the proposed towers to be 10 feet in lieu of the 19-foot minimum required; (d) to allow two loading spaces in lieu of the three spaces required by code; (e) to allow the proposed building to be a total square footage of 50,870 square feet in lieu of the 15,000 square foot maximum allowed; (f) to allow 8 towers in lieu of the two maximum allowed; (g) to allow the area of the 8 towers to be 12.2% of the gross floor area of the building in lieu of the 2% maximum allowed (h) to allow the parking lot light poles to be 23 feet in height in lieu of the 15-foot maximum allowed; (I) to allow the height of the proposed one story grocery store to be 22.66 feet in lieu of the 15-foot maximum allowed; (j) to allow the overall height of the proposed one story grocery store to be 37 feet in lieu of the 20-foot maximum allowed; (k) to allow a monument sign at the northwest entrance where no sign is allowed; (l) to allow a monument sign at the southwest entrance where no sign is allowed. [Attorney: Maura A. Ziska, Esq.][ARCOM Recommendation: Defer to the June 23, 2010, ARCOM Meeting.]Deferred from the May 12, 2010, Town Council Meeting (Special Circumstances).Request for Deferral to the July 14, 2010, Town Council Meeting Per Letter Dated May 28, 2010, From Maura A. Ziska.

This item has been deferred to the July 14, 2010 Town Council Meeting.

4. New Business- More Than 15 Minutes

a. SPECIAL EXCEPTION #9-2010 The application of Mizner Inc., relative to property commonly known as 87 Via Mizner; described as Unit Nos. C-106N, C-107N, C-108N, and C-111N in VIA MIZNER NORTH, A CONDOMINIUM according to the Declaration thereof recorded in Official Record Book 7069, Page 317, Public Records of Palm Beach County, Florida, together with the Patio area adjacent to and lying between said Units C-106N, C-107N and C-111N. (Additional Restaurant Space: Unit Nos. C-112N, C114N, and C-115N in VIA MIZNER NORTH, A CONDOMINIUM according to the Declaration thereof recorded in Official Record Book 7069, Page 317, Public Records of Palm Beach County, Florida; located in the C-TS Zoning District. Request for Special Exception to modify existing Special Exceptions (Nos. 5-89, 6-91 and 17-2005) to convert two retail stores containing a total of 1,265 square feet (previously Fiandaca and C. J. Laing and being Units C-112N, C-114N, and C-115N) to additional restaurant seating space with 18 additional seats. Applicant further requests authorization during periods of inclement weather to move 24 existing seats from the Via Mizner courtyard into the converted space during the daytime and 42 existing seats from the courtyard into the converted space in the evenings. No variances are required for off street parking. Applicant further requests that the Town accept the documentation previously submitted by the Applicant and that submitted herewith as a final determination of Renato's town-serving status.[Attorney: William W. Atterbury III, Esq.]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Tim Hanlon.

- President Rosow had a conversation with Attorney Hanlon, who advocated for his client.

- President Pro Tem Coniglio had a conversation with Attorney Bill Atterbury III regarding advocating for his client.

- Council Member Wildrick had a conversation with Attorney Hanlon.

Attorney Hanlon, on behalf of the applicant, Renato's Restaurant, provided an overview of the request.

Staff Comments:

Zoning Administrator Castro made several of the following comments:

- Based upon the plan submitted to the Town, there were two different seating plans. One for fair weather and one for bad weather. Staff did not object to the application. However, it would become a Code Enforcement issue in trying to determine the seating on any given night or day.

- Staff recommends that if approval is provided, of course the building code requirements would be met for separation and fire protection, as provided in staff comments, but also that the applicant enters into a Declaration of Use Agreement with the Town. The Agreement would specify the seating during either one of those times, in order that, at any point in time, there was a clear understanding with the Town, as well as the applicant, in what they have to meet as far as the conditions of approval.

- Staff recommended that the applicant memorialize their proposed seating plans in a Declaration of Use Agreement.

Attorney Hanlon indicated that he had no objections to staff's request.

Responding to President Pro Tem Coniglio, Mr. Castro noted that any subsequent owner would have to come back to the Town Council for re-approval.

Motion made by President Pro Tem Coniglio that Special Exception #9-2010 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met with conditions brought forth by staff, that the applicant enter into a Declaration of Use Agreement. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

b. <u>SPECIAL EXCEPTION #10-2010 The application of Terry R. Taylor, relative to property</u>

commonly known as 780 South Ocean Boulevard; described as lengthy legal description on file; located in the R-A Zoning District. Request for Special Exception to permit construction of a 114.2 foot tunnel for pedestrian access under South Ocean Boulevard to and from the beach parcel along the landmarked property. The applicant proposes to only close one lane of traffic at a time. [Attorney: Peter S. Broberg, Esq.]

Ex-parte communication was declared by:

- Council Member Diamond heard from Terry Taylor.

- Council Member Kleid had previous ex-parte conversations with Attorney Peter Broberg who advocated his client's position.

- President Rosow had the same ex-parte prior to the last meeting with Attorney Broberg, who advocated for his client.

President Rosow indicated that the issue for the nominees for the Budget Task Force would be discussed, under item XIII. Any Other Matters, for any members of the public that wanted to attend.

Attorney Broberg, representing Terry Taylor, 780 S. Ocean Blvd., provided an overview of the request. He noted the only solution was to close the road for a week.

Responding to President Rosow, Attorney Broberg indicated that the time frame for the closing would be known after obtaining permission from the Florida Department of Environmental Protection (FDEP), although they have preliminary approval.

Architect Jason Drobot explained the process of obtaining permits from FDEP and estimated that the time frame would be the end of September and beginning of October.

Staff comments:

Zoning Administrator Castro made several of the following comments:

- The applicant worked with all different departments to come up with solutions, but did not bring anything before the Development Review Committee. Mr. Castro said that he did not have the opportunity to speak to all of the representatives of the Police, Fire-Rescue, and Public Works Departments for their input, in order to obtain a consolidated and concise recommendation to the Town Council.

- The original application indicated that South Ocean Boulevard would be closed. However, staff does not recommend that the road be closed at any time.

- At last month's meeting the Town Council approved 710 S. Ocean Blvd., and asked that the applicant try to work with this applicant to do the project at the same time. It was not a requirement that it be done at the same time, but Council was hopeful that it could be done.

- Not knowing when 710 S. Ocean Boulevard was going under construction, staff would like to have the opportunity to review the plan with the Development Review Committee to see exactly what was being proposed.

- He had not seen any plans that show how the roads will be closed and the traffic detoured.

Architect Drobot provided an explanation of his actions relative to meeting with the different departmental representatives and that he emailed the results of the meetings to Mr. Castro.

Attorney Broberg noted that he spoke with Attorney Hanlon to coordinate the two projects. He said that if they were able to catch up time wise and the Town granted the closing of the road, they could do it at the same time and be done.

Discussion occurred among the Town Council Members, Architect Drobot, and Attorney Broberg regarding several of the following issues: lane closures versus road closing, which would be safer, faster, and less expensive; Attorney Hanlon's project, which was about a 45 day lag between the two projects; and that the residents were angry regarding closing the road.

Mr. Castro added comments from the Town Manager's Office regarding maintenance and rental fees for the right-of-way; the comments from the PZB Department were that if approved, all the conditions were required to be met as outlined in the letter received June 10, 2010; the Public Works Department noted that if the road was closed it would have to be before season.

Discussion continued among the Town Council Members and Mr. Castro regarding that a time limit or completion date would need to be set; that work would be done during the weekend in order to be completed in six days, closing the road for only a couple of days, all staff conditions would be applicable; a fee for the right-of-way was not consistent with the Patterson's project, as there was no fee charged in that instance. Seven days to complete the project was agreeable to the applicant. All approvals were expected by September 27, 2010, with a project completion date of October 15, 2010.

Town Clerk Cunningham administered the oath to a representative of Murphy Construction who would be providing testimony.

A representative of Murphy Construction Company provided an explanation of the difference of closing the road versus one lane of traffic.

Mr. Castro added other conditions of approval that were outlined in the letter provided by the Architect; staff recommended that the construction company incorporate placement of the message boards and flag people.

Motion made by President Pro Tem Coniglio that Special Exception #10-2010 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met. The following conditions of approval are: that completion be done in six days upon road closure; the project is to be completed by October 15, 2010 subject to Acts of God; additional staff conditions that had been described are included; the applicant has agreed that every day beyond six days there will be a $1,000 per day fine, subject to Acts of God; including conditions from the applicant. Council Member Wildrick seconded the motion. On roll call, the motion carried unanimously.

c. VARIANCE #6-2010 The application of Bucephalos, LLC, relative to property commonly known as 310 Eden Road; described as Lot 55 of EDEN PROPERTIES, an addition to the Town of Palm beach, Palm Beach County, Florida, according to the Plat thereof recorded in Plat Book 18, Page 49, of the Public Records of Palm beach County, Florida; located in the R-B Zoning District. Request for variance to allow the installation of a 4-foot high chain link fence which would be 8.66 feet in height (as measured from the neighbor's grade) in lieu of the 7 foot maximum allowed because of a significant change in the grade between the subject property and the neighbor to the east. [Attorney: Maura A. Ziska, Esq.]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Ziska and Mr. Worster regarding the application and details.

- President Pro Tem Coniglio spoke with Attorney Ziska regarding her lobbying for the position of her applicant; adjacent homeowner Mrs. Kaye spoke about her worries regarding the application as described.

- President Rosow received a call from Mr. Worster advocating the position of the occupant of 310 Eden Road.

Attorney Ziska, on behalf of the property owners, provided an overview of the application. She distributed the material for the landscaping as it had changed pursuant to the Kaye's request.

Zoning Administrator Castro noted that revised plans could not be submitted at this late date.

Attorney Ziska commented that she would verbally say that the landscape material would change pursuant to the neighbor's request and will submit a plan to Mr. Castro after the fact. She noted that the hardship was the change of grade between the two properties.

Architect Keith Williams presented the site plan. He noted that the neighbor had agreed to the fence with landscaping and was present.

Staff comments:

Zoning Administrator Castro made several of the following comments:

- The fence could meet code by moving the fence back 10 feet.

- The building permit was issued to the property owner for a four foot high fence but was not explained in the application that it was on a five foot high retaining wall.

- The applicant has applied for a variance to have the fence within 10 feet of the property line. The applicant was working with the neighbor in order to provide screening for the fence; he was not sure what the hardship was, but stated that the applicant is working with the neighbor,

- If it is to be approved, the agreement would need to be reviewed by staff and the Town Attorney with condition of approval.

Attorney Ziska stated that the hardship was the change of grades between the two properties; this would not be an issue if the two properties were flush with each other.

Lisa Kaye stated that they had reached a written agreement with her neighbors and if the variance is contingent upon that agreement, she is fine with the fence. ‘

Responding to Mr. Castro, Attorney Ziska mentioned that if the fence was ever removed, it would be terminated, or if the landscaping was not kept up, the Town could terminate it.

Mr. Castro requested that the agreement be reviewed by staff before it was executed.

Town Attorney Randolph advised that normally the agreement is related to screening issues which indicates that if they fail to maintain the screen for the property, the Town could put the screen in and lien the property.

Motion made by President Pro Tem Coniglio that Variance #6-2010 be 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, with the condition that the neighbor and the applicant had a Declaration of Deed Restriction on the landscape agreement that has been authorized by staff. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

D. Other

1. None

XIII. ANY OTHER MATTERS

Council President Rosow re-visited the Budget Task Force relative to attendance for those who were not here off season, and were not informed that they would have to fly back for meetings.

Council Member Diamond asked for an exception, as he had not informed his nominee that the attendance would be required in person over the summer. He proposed that for this year only, they have a different policy.

Council Member Kleid stated that there had to be a physical quorum present at each of the meetings.

Council President Rosow noted that the budget season is right now and now is when they need to meet.

Council Member Wildrick indicated that a letter be sent to all the members informing of the rules.

Council Member Diamond said that for this period and for the next group appointed to the task force, the members should be notified that commuting is a requirement for attendance at the meetings.

Mayor McDonald added that this was not a formal commission with set meeting times. The meeting changes with the availability every month of a meeting place.

Council Member Wildrick said to consider that the Mayor was the Chairman of the Task Force and could authorize a one-time exception during this year's county budget.

Motion to approve telephonic participation for the Budget Task Force up until November 2010 made by Council Member Diamond, seconded by Council Member Wildrick. On roll call, the motion carried unanimously.

There were also discussions about the resignations tomorrow, June 23, 2010, of at least one member. If that happened, the Town Council would revert back to one of the other two nominees for that particular member, to be appointed as a replacement.

XIV. ADJOURNMENT

There being no further business, the June 22, 2010, Town Council Meeting was adjourned at 4:10 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk