



TOWN OF PALM BEACH

Town Clerk's Office

MINUTES OF THE TOWN COUNCIL MEETING HELD ON TUESDAY, OCTOBER 13, 2020

Clerk's Note: There was a 5-minute break every 55 minutes during the meeting for system reboot.

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting of Tuesday, October 13, 2020 was called to order at 9:31 a.m. On roll call, all Council Members were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Queenester Nieves gave the Invocation and Council President Margaret A. Zeidman led the Pledge of Allegiance.

III. MODIFICATIONS TO THE AGENDA

Town Clerk Nieves announced the following modifications:

Item No. X.B.1.d. has been removed

Item No. IX.B.7. has been removed from the Consent Agenda and placed under New Business as item no. X.C.3.

IV. APPROVAL OF AGENDA

Council Member Julie Araskog requested that the following item be added under ANY OTHER MATTERS:

NOTIFICATION REGARDING 800 S. COUNTY ROAD

Motion was made by Council Member Crampton and seconded by Council Member Araskog to approve the Agenda, as amended. On roll call, the motion passed unanimously.

V. BOARDS AND COMMISSIONS APPOINTMENTS

A. Appointments to the Planning and Zoning Commission *Queenester Nieves, CMC, Town Clerk*

Town Clerk Nieves announced that Marilyn Beutenmuller, Rick Pollock and Jorge Sanchez have been appointed as Regular Members of the Planning and Zoning Commission. William J. Gilbane, III has been appointed as an Alternate Member of the Planning and Zoning Commission.

Motion was made by Council Member Moore and seconded by Council President Pro Tem Lindsay to appoint Marilyn Beutenmuller, Rick Pollock and Jorge Sanchez as Regular Members and William J. Gilbane, III as an Alternate Member of the Planning and Zoning Commission.

VI. COMMENTS OF MAYOR GAIL L. CONIGLIO

Mayor Coniglio announced the retirements of Tony Higgins (PW) after 29 years, Mario Rivero (FR) after 26 years and Mark Neilsen (PD) after 14 years of service to the Town. She also mentioned the recent passing of Bill Crouse, the Town's first Director of Human Resources. She then gave congratulations and accolades to the dedicated and valued staff as follows:

The Purchasing Dept., under Dean Mealy's leadership, was selected as one of the 69 cities in the United States and Canada to receive the Achievement in Excellence Award in Procurement; demonstrating the highest level of commitment to procurement processes.

The Finance Department, under the guidance of Jane LeClainche, has AGAIN received the GFOA distinguished budget award, a superior rating and recognition in governmental budgeting.

The PZ&B Director, Wayne Bergman, along with his staff, participated in the National Flood Insurance Community Rating System. An extensive audit of Town operations was required by local, state and federal mandates for flood prevention, new construction and community flood related matters. This effort resulted in an elevation to a Class 6 program which qualifies property owners for a 20% discount on flood insurance.

These achievements are a testament to the staff's commitment to excellence; exceeding expectations all day, every day.

VII. COMMENTS OF TOWN COUNCIL MEMBERS

Council President Zeidman expressed her appreciation for the work staff had done to make the council chambers safe.

Council President Pro Tem Lindsay also expressed appreciation, commenting the social distancing was fantastic and there was Plexiglas between all the Council

members and in front of them. For the general public, because of social distancing only a few people could be accommodated, but the six-foot distancing was marked, giving a good sense of safety and it was comfortable. She thanked staff for doing all the work.

Council Member Moore echoed Council President Pro Tem Lindsay's comments, and expressed thankfulness the Council was all back together.

Council Member Crampton commented he was so glad to be in the Council Chambers, and this was the first time he had worn a tie since March. He gave kudos to Council President Zeidman for running six or seven very complex meetings and felt it would be a lot easier in the Council chambers. He expressed kudos to Rob Weber for securing \$1M for the marina project.

Council Member Araskog commented she wished she could be in the room with everyone else but although she tested negative for COVID, she was running a fever, so was attending remotely. She reported receiving an alert the previous evening for coyotes, and urged everyone to keep their animals safe and not to let dogs or cats loose in yards by themselves because coyotes could jump high fences. There were also bufo toads. She cautioned everyone to remember CDC guidelines to wear a mask and for people over 65 stay home and not attend gatherings in large crowds. She expressed hope the public would be able to continue to attend these meetings by Zoom for a while. She thanked staff for their work to make the Council chambers safe and said she hoped to attend the next meeting.

VIII. COMMUNICATIONS FROM CITIZENS-3 MINUTE LIMIT PLEASE

Laurel Baker, Palm Beach Chamber of Commerce, expressed thanks for the quick turnaround for the restaurants to have outdoor seating and suggested if some parking could be given up that could make room for more outdoor seating. She asked to get rid of the Town's serving reports and asked when the code was being looked at again to address that. She commented removing the police cars from the bridges made a big difference.

Jeff Rappaport, 790 S. County Road, submitted letters on behalf of himself and six other neighbors, a letter from their Attorney Harvey Oyer, a letter from a structural engineer, and other letters to be part of the record. He stated he was here because of a zoning issue, and was a long-time resident. New neighbors were undergoing renovations near his property line, but he and six other neighbors had received no notice. Several changes would affect his property, including elevation of the neighbor's boathouse to the height of a three-story structure. The residents were asking that this project be re-noticed properly, since their rights to notice had been denied.

Michael Scharf, 225 Dunbar Road, reported observing that 5 people were killed who were riding electric scooters and electric bikes on the beaches in Israel when he was there last summer, and he felt these were dangerous and should be banned from the lake trail. He expressed concern that placing parking meters on North County from Sunrise Avenue to Wells Road would make his property a parking lot and suggested

making parking for residents only on the middle part of Dunbar Road. He was referred to Town Manager Blouin for information on the resident only parking program. Mr. Scharf was informed motorized vehicles were already prohibited by ordinance.

Linette Miller, 210 Via Dunbar, spoke regarding 800 S. County Road notification issues and asked to receive notification so she could respond.

Sean Herring, 770 S. County Road, stated he received no notice of the project at 800 South County Road and would like to second Mr. Rappaport's comments.

IX. APPROVAL OF CONSENT AGENDA

Item No. IX.B.9 RESOLUTION NO. 106-2020 was pulled and heard as Item No. X.A.1.

Motion was made by Council Member Crampton and seconded by Council Member Araskog to approve the Consent Agenda, as amended. On roll call, the motion passed 3-2 with Council Members Lindsay and Moore dissenting.

After intervention by the Town Attorney, John C. Randolph, the vote was re-taken.

Motion was made by Council Member Crampton and seconded by Council Member Araskog to approve the Consent Agenda, as amended. On roll call, the motion passed unanimously.

A. MINUTES

1. Town Council Meeting Minutes
Queenester Nieves, CMC, Town Clerk
 - a. September 9, 2020, Development Review Town Council Meeting Minutes
 - b. September 10, 2020, Town Council Meeting Minutes
 - c. September 10, 2020, Special Town Council Meeting Minutes
 - d. September 16, 2020, Special Town Council Meeting Minutes
2. Approval of Major Matters Considered by the Architectural Review Commission at its Meeting of September 23, 2020.
Wayne Bergman, Director of Planning, Zoning and Building

B. RESOLUTIONS

1. RESOLUTION NO. 98-2020 A Resolution of The Town Council of The Town Of Palm Beach, Palm Beach County, Florida, Approving a Single Source Identification for Kemira Water Solutions, Inc. for a period not to exceed five years.
Dean Mealy, Purchasing Manager
2. RESOLUTION NO. 99-2020 A Resolution of the Town Council

of the Town of Palm Beach, Palm Beach County, Florida, Approving a Purchase Order for a single source contract with Kemira Water Solutions, Inc. in the annual amount of \$187,200 and a five year contract contingent upon satisfactory performance and budget authorization in the amount of \$936,000.

Dean Mealy, Purchasing Manager

3. RESOLUTION NO. 100-2020 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Purchase Orders to Florida Superior Sand, Inc. to Furnish and Deliver Sand to PAR 3 in the Amount of \$12,000 for FY21 and \$12,000 for water crushed shell for FY21.

Dean Mealy, Purchasing Manager

4. RESOLUTION NO. 101-2020 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Purchase Order for Fountain Maintenance Service to Mako Pools, Inc. in the Amount of \$25,100 for FY21 and \$25,100 for FY22 based on Satisfactory Vendor Performance and Budget Approval and an overall Project Budget of \$115,907 for total contract period of FY17 to FY22.

Dean Mealy, Purchasing Manager

5. RESOLUTION NO. 102-2020 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Purchase Orders to Oracle Elevator Company for Elevator Maintenance and Inspection Services in the amount of \$7,080 for Public Works and \$2,499 for Recreation PAR 3 in the total amount of \$9,579 for FY21 and a new contract value of \$67,997.

Dean Mealy, Purchasing Manager

6. RESOLUTION NO. 103-2020 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Purchase Order to Property Works for Vegetation and Litter Removal-Cleaning in the amount of \$42,758 for FY21 and \$42,758 for FY22 based on satisfactory performance and budget authorization for a total contract value of \$172,000.

Dean Mealy, Purchasing Manager

7. RESOLUTION NO. 104-2020 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Award ITB No. 2021-01, Bradley Park Tidal Garden in an Amount Not-to-Exceed \$150,000.

Dean Mealy, Purchasing Manager – Pulled and Heard as Item No. X.C.3.

8. RESOLUTION NO. 105-2020 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida,

Approving Change Order in the Amount of \$4,853 to Central Square (Superion) and Establishing a New Contract Value of \$119,352 for Needed Services.

Dean Mealy, Purchasing Manager

9. RESOLUTION NO. 106-2020 A Resolution Of The Town Council of The Town Of Palm Beach, Palm Beach County, Florida, Approving The Award Of ITB No. 2020-23, Phipps Ocean Park Nourishment To Weeks Marine Inc. In The Amount Of \$8,755,000.
Dean Mealy, Purchasing Manager – Pulled and Heard as Item No. X.A.1.

10. RESOLUTION NO. 107-2020 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Adopting Amendments to the Statement of Investment Policy for the OPEB Trust Board of Trustees of the Town of Palm Beach Pursuant to Section 82-153 of the Code of Ordinances of the Town of Palm Beach; Providing an Effective Date.

Jane Le Clainche, Director of Finance

11. RESOLUTION NO. 112-2020 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving Award of Extension of Interlocal Agreement with Palm Beach County for Vehicle Maintenance for Fire Rescue in the amount of \$126,000 for FY21.

Dean Mealy, Purchasing Manager

C. OTHER

1. Request to Consider Ordinance No. 11-2020 Prior to 5:00 p.m. at a Public Hearing on October 14, 2020.

Wayne Bergman, Director of Planning, Zoning and Building

2. Status Report of Delinquent Accounts and Request for Authorization to Write-off Uncollectible Accounts.

Jane Le Clainche, Director of Finance

X. REGULAR AGENDA

A. Matters Pulled From Consent Agenda: If needed

1. RESOLUTION NO. 106-2020 A Resolution Of The Town Council of The Town Of Palm Beach, Palm Beach County, Florida, Approving The Award Of ITB No. 2020-23, Phipps Ocean Park Nourishment To Weeks Marine Inc. In The Amount of \$8,755,000.
Dean Mealy, Purchasing Manager

Zoning Manager Paul Castro explained FEMA would pay 75% of losses from two storms. He commented the dredging business had slowed down so that the Town was able to get a much more favorable price on sand for this replacement project.

Motion was made by Council Member Moore and seconded by Council President Pro Tem Lindsay to approve Resolution No. 106-2020. On roll call, the motion passed unanimously.

B. Old Business

1. COVID-19 Update
Kirk W. Blouin, Town Manager
TIME CERTAIN: 11:00 AM

This item began at 11:12 a.m.

a. Report on COVID-19 Infections and Hospitalizations

Division Chief Sean Baker reported the positivity rate below 5% continued in Palm Beach County, which meant the level of coronavirus transmission was low relative to the amount of testing. The peak had been 14% on July 10. WHO recommended the percentage of positivity remain below 5% for 2 weeks before government considered re-opening. In Palm Beach County it had remained below 5% since August 21. This had been accomplished through social distancing and wearing masks and it was essential to continue these policies. The Town of Palm Beach had an average of 1 to 1.4 new cases since June, but now that had dropped to .28 new cases per day. Eight deaths had been reported in the Town. The Town's best option to maintain their low percentage of positivity and low cases per day was through education.

b. Report on Compliance and Enforcement, Relative to State and County Orders (*verbal report*)

Police Chief Nicholas Caristo reported that since the last Town Council meeting restrictions had been lifted; however, restaurant checks were continuing at night. There had been no capacity violations and only six mask complaints which were resolved by medical education. Restaurants were opting for outdoor seating and staying at 50% capacity indoors, therefore social distancing was not an enforcement problem.

c. Input from Business Community

There was no input via Zoom from the business community.

Deputy Town Manager Boodheshwar reported temporary approval had been given to 13 restaurants for almost 400 outdoor seats, and most were utilizing private property and public sidewalks to expand their outdoor seating. Restaurants were not allowed to exceed their approved capacity by going to 100% indoors and also using outdoor seating.

d. Expanded Use of Tents – ***Removed from Agenda***

e. Discussion Regarding Future Public Meetings

It was expected that under the Governor's orders, governing bodies would be required to meet in person beginning in November, but that advisory boards might be able to continue electronic zoom meetings. Town Attorney Randolph expressed concern the boards' actions could be challenged and therefore recommended the advisory boards also meet in person. Council President Zeidman reported the State Attorney General had clarified "governing bodies" to mean "government bodies"; therefore all boards would meet face to face. Discussion ensued.

The Town Manager's position was that effective November 1 the Town Council and its advisory boards would meet in Council Chambers and all other boards would meet remotely through the end of the year.

The Town Council discussed whether all boards should meet in person, that volunteers on boards might want to serve the Town in other ways if they were uncomfortable meeting in person, that Council President Zeidman and the staff who were meeting with her on COVID should make the decision and this matter should be discussed every month.

Council President Zeidman explained she and staff met every two weeks on Zoom regarding COVID-19, and no other Town had been on top of this like Palm Beach. That could continue, however they also had to follow the law. She noted many residents were staying in the northeast instead of returning in October this year. The Governor had given an order that as of November 1, everybody was back to meeting in person.

Council President Zeidman announced effective November 1 all boards and committees would meet in person but Town Council would review this every month. Town Attorney Randolph stated this was a Council decision and in November they could talk about December.

2. Palm Beach Marina Update

H. Paul Brazil, P.E., Director of Public Works

TIME CERTAIN: 11:30 AM

a. Proposed Improvements to Town Marina Upland Amenities, Lake Drive Park and South Lake Drive - Review of Cost Estimates of Recommended Improvements

Director of Public Works H. Paul Brazil advised today's presentation was almost the same as presented last month, and today the goal was to get consensus for what Council would like so he could put together a draft of a Landmarks Preservation Commission (LPC) package and bring it back to Council with the costs.

Consensus was received for the Traffic Calming items presented, with the roundabout separated out under separate items, which would need a traffic study. Town Manager Blouin explained some of the items might not be required in order to operate, such as the roundabout, but were included based on previous conversations

that these were desired. Mr. Brazil indicated he would provide the cost for the roundabout.

Discussion began on walkways and access paths. Mr. Brazil asked for consensus on three paths. Council Member Crampton asked for a sign restricting golf carts. Other members of the Council wanted the sidewalk width smaller before it went to LPC. Discussion ensued. It was pointed out that Council had come prepared to discuss each item today before it went to LPC. Mr. Brazil indicated that today he needed large functional items approved and any upgrades that might be wanted. He was taking notes in order to provide relative costs along the way, and planned to come back before going to LPC unless very clear decisions were made. Council discussion covered maintenance of the different surfaces and the differences in costs as well as liability, safety issues, and residents' requests for gray tabby. Mr. Brazil explained why the costs differed so widely for the same surface in different areas.

Public Comment

John David Corey, 426 Australian Avenue, spoke via Zoom. He noted he had spoken to a group of residents and suggested 5-foot wide asphalt or concrete for the pathways, which would be good for wheelchairs, and pointed out some areas could be wider where there would be more traffic, or narrower where it would be only pedestrians. He suggested a few islands for the green space near the parking, and expressed support for staff.

Rene Silvin, 422 Australian Avenue, agreed with maintaining the three crosswalks, observed usage was heaviest on Brazilian and next heaviest on Australian. He asked for specifics on items in the presentation for approval by the Landmarks Preservation Commission.

Council discussion continued.

Motion was made by Council Member Crampton and seconded by Council Member Moore to approve the decision to use asphalt for the three park pathways. On roll call, the motion passed 3-2 with Council President Pro Tem Lindsay and Council President Zeidman dissenting.

Motion was made by Council Member Crampton and seconded by Council Member Moore to approve the decision to use asphalt for the Lake Trail. On roll call, the motion passed 4-1 with Council President Pro Tem Lindsay dissenting.

Motion was made by Council Member Araskog and seconded by Council Member Moore to delete the proposed seawall cap and coating on retaining walls that would be visible from the parking lot as shown on the Fairfax and Sammons renderings, since the Lake Trail would stay in its current location. On roll call, the motion passed unanimously.

A rendering was presented for an aesthetic of circular seating, flagpole with

American flag, and inlaid compass design in the road for which the cost was \$354,000. Comments from Council included a request for lighting on trees, and a large amount of landscaping. There was discussion on accepting private donations, but being careful about naming items since this park should be unconditionally the Palm Beach brand. Staff agreed to plantings between two retaining walls and a planter in the parking lot unless parking was affected, and to using colored concrete for planters to match the building. Staff indicated only a very minimal amount of green space would be lost with these aesthetics.

Motion was made by Council Member Crampton and seconded by Council President Zeidman to approve \$354,000 for circular seating, flagpole, and inlaid compass rose and to accept public contributions subject to Town Council approval. During discussion of the motion consensus was to deal with the matter of public contributions later. **Motion was revised by Council Member Crampton and seconded by Council President Zeidman to approve \$354,000 for circular seating, flagpole, the retaining wall and inlaid compass rose. On roll call, the motion passed unanimously.**

Clerk's note: Council President Zeidman announced a lunch break at this point in the meeting at 2 p.m. The meeting reconvened at 2:15 p.m.

Motion was made by Council Member Araskog and seconded by Council Member Moore to approve traffic calming but to wait for a recommendation for the future. On roll call, the motion passed unanimously.

Staff explained there was an opportunity for a flat seating area on the north side of the Brazilian dock. Council discussion ensued which favored deciding this issue at a later time, after staff had provided a rendering. A resident had asked for the flagpole to be lighted at night, for which there was enthusiasm. Council Member Araskog asked if the pathways could be moved closer to allow more contiguous green space, to which staff agreed. Staff indicated they would come back before Council before making the presentation to Landmarks Preservation Commission.

Landscaping was discussed, adding much more throughout the park than proposed, with native plants desirable, putting it out for bid or having a design competition, possibly among landscape architects, without an amount so that the designs would not be restricted because of cost.

Motion was made by Council Member Araskog and seconded by Council President Pro Tem Lindsay to go forward with a contest for landscaping. On roll call the motion passed unanimously.

Director Brazil requested addition of security gates at the entrance to the parking lot, with their appearance to be determined later. He explained if the current configuration of the parking lot was left as is, there would be more parking than if changes were made because then it would be required to conform to the more restrictive current code.

Motion was made by Council Member Crampton and seconded by Council

Member Moore to leave configuration of all the parking lots as they currently exist, and to approve security gates for the parking lot entrance, with their appearance to be determined later. On roll call, the motion passed unanimously.

Director Brazil recommended the cast stone benches, drinking fountains, and landscape lighting go into the landscape plans, with the numbers of benches and drinking fountains to be determined by the architects as the plans develop. He asked that all four bike racks be installed now near the entrance of all four docks as part of this project

Motion was made by Council Member Crampton and seconded by Council Member Araskog to move bike racks forward to comport with staff's plan to build around the entrances, and everything else to go into the landscape plans, including drinking fountains and benches. On roll call, the motion passed unanimously.

Staff agreed to come back to Council before going before the Landmarks Preservation Commission and to provide Council with a list of items the Council still needed to vote on.

Council Member Lindsay advocated for the water main replacement for Lake Park Drive to be done as soon as possible, possibly as soon as Passover and Easter were over, and asked how Council could expedite that so as not to interfere with the Marina opening. Staff indicated they needed a really good contractor and authorization to be flexible on work days and work hours. This would be discussed at a Public Works meeting. Consensus was to provide all support possible.

b. RESOLUTION NO. 109-2020 A Resolution of The Town Council of The Town of Palm Beach, Palm Beach County, Florida, Approving The Selection Committee Recommendation Of RFP No. 2020-21, Marina Marketing Services To Jacober Creative In An Amount Of \$181,500 For FY21 And \$138,000 For FY22 Contingent Upon Satisfactory Vendor Performance And Budget Authorization, And Authorize Three, One Year Extensions With Jacober Creative.

Director of Business Development and Operations Carolyn Stone presented the resolution.

Council Member Crampton agreed a first class marketing program was needed. Mayor Coniglio agreed, and read aloud tasks with associated fees. Town Manager Blouin commented someone familiar with target marketing was needed. Council President Pro Tem Lindsay agreed this was needed and would be a great partnership.

Public Comment

Dana Politt stated he had provided the Town Clerk with comments yesterday. Council acknowledged they had received his comments. Mr. Politt indicated he was with Adept Marketing, the only firm bidding that

had marina marketing experience, but they had not been selected. He discussed their qualifications and asked to be considered.

Rene Silvin, 422 Australian Avenue, commented he was very encouraged with what the Town Council was doing, but expressed concern regarding the current and future management of the marina, which he felt needed to be updated. Ms. Stone responded staffing was going to be improved.

Council Member Araskog asked staff to explain why a firm was being considered that had no marina experience. Ms. Stone responded they had comparable experience and had the best creative asset ability. Town Manager Blouin added an additional marketing specialist from Sunfest had provided input as to the best qualified firm.

Motion was made by Council Member Crampton and seconded by Council President Pro Tem Lindsay to accept staff's recommendation in favor of Jacober Creative to manage the marketing for the marina, and to adopt Resolution No. 109-2020. On roll call, the motion passed unanimously.

3. Town-wide Undergrounding Project
Steve Stern, Project Manager

This item was heard before the 11 a.m. time certain COVID-19 update.

a. Review of Project and Dashboard, Summary of Project Status

Project Manager Stern reported a UTF meeting had been held on October 7 where discussion took place on the status of construction designs and the budget, as well as review of the plan. Community meetings were currently on hold. He provided a construction update on the Underground Utility Project for each phase and location. The financial summary included FEMA grant money under secondary review by FEMA and Florida Department of Emergency Management, and they had been asked for a contract extension for construction until May 2023. FEMA must approve the Town's ability to collect grant money. Mr. Stern reported the dashboard had been updated.

Council Member Crampton asked how the time extension would affect the marina construction project. Zoning Manager Castro explained it would not be a problem

Council President Pro Tem Lindsay expressed concern about the timing of a water main replacement before the soft opening of the marina and confirmed with staff that would be discussed later.

Mr. Stern confirmed for Mayor Coniglio the work sequence was following the original master plan timeline to minimize traffic disruptions, and there was no opportunity to save money by changing the sequence.

Mr. Stern addressed Council Member Araskog's concerns regarding placing

transformers in public utility easements, where sidewalks would be narrowed to accommodate the boxes, which would be landscaped to meet code. He explained the plan to create images to show these 20 to 50 locations and obtain consensus. The Town Manager stressed ongoing efforts to obtain easements from property owners and using the public utility easements as a last resort.

Council President Pro Tem Lindsay encouraged Mr. Stern to contact condominium association presidents regarding easement discussions with condominium residents.

b. RESOLUTION NO. 110-2020 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Design Services for Phase 7 and Phase 8 for Town-Wide Undergrounding to Kimley-Horn and Associates, Inc. in the Amount of \$2,387,791 with a Project Budget of \$2,587,791.
Patricia Strayer, P.E., Town Engineer

Town Engineer Patricia Strayer, P.E., presented the resolution.

Motion was made by Council Member Moore and seconded by Council Member Crampton to approve Resolution No. 110-2020. On roll call, the motion passed unanimously.

c. RESOLUTION NO. 111-2020 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving the Award of RFQ No. 2020-20, Pre-Construction Services for Phase 5, in the Amount of \$118,200, to Burkhardt Construction, Inc.
Patricia Strayer, P.E., Town Engineer

Town Engineer Patricia Strayer, P.E., presented the resolution.

Town Manager Blouin explained these services were necessary to comply with FEMA requirements.

Motion was made by Council Member Moore and seconded by Council Member Crampton to approve Resolution No. 111-2020. On roll call, the motion passed unanimously.

4. Report Regarding Public Access and the Enforcement of Regulations on the Beaches between Wells Road and Sunset Avenue.
Kirk W. Blouin, Town Manager

Deputy Town Manager Boodheshwar indicated reports had been provided to Council from the Police, Public Works, and Planning & Zoning Departments relative to actions they had taken to address concerns regarding beach access and enforcement of existing regulations in the area.

Also included were suggested actions for Council consideration.

Chief Caristo summarized the actions taken by Police along the beaches between Wells Road and Sunset Avenue. Council President Zeidman commended the Police for their enforcement efforts. She reported she went there often and almost always saw the police there. Council Member Araskog spoke about confusion among the residents who thought the sunrise to sunset hours had already been passed, but that would be effective after today's second reading of the ordinance.

Director of Public Works Paul Brazil explained that residents in the 100 block of Atlantic Avenue owned the beach access, and had locked it with a code which they had shared with residents of the 200 and 300 block. He explained the line between public and private beach had been cordoned off for beach renourishment at Wells Road and Dunbar, and at an area where dune vegetation would be replaced. A kiosk was to be opened the next day. The Mayor asked about hedge heights. Mr. Brazil answered questions about prior negotiations to make a section of the beach larger, which had been done on a small section but the weather was eroding it now and the weather would bring it back later. Council Member Araskog spoke about residents with beachfront property on the north end and near Midtown had allowed their vegetation to grow to a height where the view of the ocean was obstructed, and 4-foot gates would also obstruct the view.

Zoning Manager Castro reported he had learned Root Trail Property LLC (consisting of 4 property owners) owned beach access at Root Trail, so the Town had an independent title search done which showed nothing between 1911 and 1991 except two quit claim deeds to the Town of Palm Beach. Town Attorney Randolph reported speaking with Mr. Coleman and his attorney regarding their request to gate the access. He also met with Mr. Guy Rabideau and Mark Dahlmeier and suggested Mr. Rabideau and Mr. Dahlmeier meet after this meeting to resolve the issue. If public, the Town could put up a sign. If private, the Town would allow owners to put up a sign and a gate conforming to code. Council Member Araskog agreed, and requested this be tabled until ownership was determined. Zoning Manager Castro advised the Town Council could put a governmental sign on private property. It was noted closing Root Trail access caused more people to use other access points.

Town Attorney Randolph recommended the parties meet to resolve the ownership issue.

Public Comments

Robert Meister, 101 Seminole Avenue, reported people had destroyed private property and at night there was drug use and drinking, and his family's lives had been threatened. He asked for police help at night.

Liz Moss, 302 Atlantic Avenue, was a long-time resident and in the past lived near Root Trail, which had been public access. She is an attorney representing her sister and her husband who own a seasonal home, Charlotte and Craig Peterson. She expressed agreement with Town Attorney Randolph, and requested to be a party to the discussion between

Attorney Randolph and Mr. Rabideau. Town Attorney Randolph stated he was happy to have Ms. Mosque involved in the discussions.

Guy Rabideau stated he represents Root Trail Partners LLC, owner of the north 10 feet of Root Trail access, with the south half owned by Ocean Towers and would be happy to discuss ownership with Attorney Randolph and Mark Dahlmeier. They had negotiated for many months and had come up with a more practical solution to gate the entrance, giving all owners on Root Trail access. The access ran with the properties so it would benefit future owners as well. By having this private instead of public, 80% of the problems would be solved, constant police presence would not be required, and the owners would take care of the problems. He commended the police for their work on this issue.

Town Manager Blouin agreed with Mr. Rabideau. Staff proposed a fence and gate up to 5'9" to prevent climbing over it.

Council discussion included that this was a growing concern and it must be determined who owned the access. Zoning Manager Castro clarified the Town was questioning only the 10-foot Root Trail piece. Mr. Rabideau explained there had been no discussion regarding inviting the neighbors to have access. Attorney Mosque commented the 1912 deed gave the Town ownership and discussion was to give an easement.

Discussion ensued regarding parking meters and hours.

Motion was made by Council Member Araskog and seconded by Council Member Moore to change the parking rates to \$5/hour with a two-hour maximum along N. County Road and the 100 block of Sunrise Avenue. On roll call, the motion passed unanimously.

Council Consensus was to hear ANY OTHER MATTERS - Notification Regarding 800 S. County Road at this time

Director of Planning Zoning and Building Wayne Bergman introduced this item, and provided an update. He had received a letter dated October 13 that morning from Harvey Oyer, who had personal contact with three of the neighbors all indicating there was not proper notice when this project went to Landmarks Preservation Commission and then to Town Council and was approved for 14 variances, which meant the landmark home could be raised to a level to comply with future FEMA regulations, could demolish portions of the home, and make additions to the home. Director Bergman reported Mr. Rappaport did not recognize the signature on his certified mail return receipt as his or any of his family, A notice sent via first class mail went to Canada and was not received. Mr. Idol, whose notice was addressed to New York, said he did not receive notice, and there was proof from Maura Ziska it was mailed but no receipt was received. Director Bergman reported research had determined notice was given properly, and at that time there were only 2 people who remained. Now there were seven. 4 were sent certified and the rest went by first class mail. Director Bergman stated the legal requirements of providing notice had been met.

Attorney Harvey Oyer, 525 Okeechobee Boulevard, displayed a property appraiser's

map with properties identified with red X's to show which ones received notice, and stated letters from each of the 7 who did not get the notices were attached. He stated it was the Town's obligation to provide proper notice.

Attorney Maura Ziska, 222 Lakeview Avenue, Suite 1500, West Palm Beach stated she had been researching this and described what happened in each case, described the mailing process she had followed, and disclosed she met with Mr. Rappaport and his mother on site, so they knew about it. She stated 80% of mailed notices had been received, which Council Member Araskog disputed.

Town Attorney Randolph commented staff had heard about two objections, then a third, and now there were seven. Staff's position was notice was properly given and they could not redirect this matter back for another hearing. Attorney Randolph advised this could be left as it stood or Town Council could direct it to be reheard, since Mr. Rappaport could not appeal within the 30-day limit because he did not know about it. Obligations of the Town were to give notice and also provide an opportunity to be heard. If they asked it to be reheard, consideration should be given to whether there had been equitable estoppel and whether the decision had been made based on criteria set forth in the code. He advised the whole thing should go back, not just part of it, and asked if notice was given for the Landmarks meeting and if any of that was certified.

Zoning Manager Castro advised both notice from the Town and Landmarks Preservation Commission had been mailed in the same envelope. Attorney Ziska explained the process required and she had followed it and delivered the notices to the mailbox, which was her obligation.

Attorney Randolph advised before the Town Council was whether they wished to rehear.

Mayor Coniglio commented the criteria identified by Attorney Randolph—noticing; variance criteria, and she recalled a hardship issue. She asked if the boathouse was the predominant issue if the two property owners could get together to come to a resolution without Town Council creating mandates.

Zoning Manager Castro reported all 4 certified return receipts were posted and stamped by the post office dated May 26, which showed they got to the post office and were mailed.

Council Member Crampton agreed with the Mayor, the process failed, and he would say send it back unless personal diplomacy could work.

Council President Pro Tem Lindsay agreed with the parties working together and commented there was another issue of fill in the Intracoastal waterway.

Council Member Moore's comment was we're stuck.

Council Member Araskog asked if only the boathouse could be sent back, and she was inclined to send it back since Mr. Rappaport had said he reached out to the applicant and got nowhere, She noted fill had never been discussed, and that would increase the size of the property.

Attorney Randolph stated if reheard, work must be stopped until that time or until the parties reached agreement.

Director Bergman reported he received a message from John Idol claiming they were building 9 feet from his property line, and the discussion should include all the neighbors impacted.

Attorney Oyer clarified there were 13 property owners, for 16 parcels of land, with 7 claiming they did not receive notice. This was over 50%, so the application was not eligible to be certified for a public hearing. This made the application incomplete with no receipt from Mr. Idol and possibly a fraudulent one for Mr. Rappaport. Also, he had been unable to find an owner consent form for Maura Ziska to act on behalf of the property owner, which under code Section 134-171 made the application void. He commented Mayor Coniglio had a good idea but that only applied to Mr. Rappaport and the applicant and not the other six property owners. He stated there were six variances on the property line between the applicant and Mr. Rappaport and he thought the only choice was to rehear. He did not think all the criteria for the variances were satisfied on July 15, and his client and possibly six others had been denied due process. He and his client were happy to meet with the applicant to solve their problems but could not solve the problems for the other six property owners.

Attorney Ziska displayed the certified mail tracking information from the USPS website for Mr. Idol and Mr. Rappaport. Council President Zeidman responded the issue was not the mailing process it was whether they received it. She commented when approving a variance or special exception, Council was always listening for what a neighbor had to say. Attorney Ziska commented she had fulfilled her legal obligation and now the Town Council was going to unravel her client's rights and they had already started work. She commented they were not doing the fill, and with Mr. Rappaport it was not about one foot, it was about the view. She felt it unfair to re-open the application.

Jeff Rappaport commented there were 14 addresses one of which was the owner, so 13 property owners and they had letters from 7, a majority. He advised that no homes on the Intracoastal received notice. Clearly, an agent got his card and signed it, but he had no agent and did not recognize the signature. He stated he did not give approval when he and his mother met with the applicant, and they did not know the boathouse would be 5 feet from their property and his seawall was intertwined with the boathouse foundation.

Council President Pro Tem Lindsay commented the people impacted the most did not receive notice, everyone admired the project, and this was tragic.

Council Member Crampton commented due process failed and if the parties could not work it out Council was leaning towards sending it back.

Town Attorney Randolph stated Council was stuck because whatever action they took would be attacked by the other side; however, if they voted to send it back that rescinded previous action and a stop work order would be needed until it came back before Council for further action.

Director Bergman indicated there were several more permits to be issued. Discussion ensued regarding how much time to allow for the applicant to work with the property owners. Attorney Randolph advised 7 property owners had objected, and only those 7 could be notified. It would be best to notify everyone again. In any motion make sure there is a date certain and during that time no further work can be done on the property.

Motion was made by Council Member Araskog and seconded by Mr. Crampton to rescind Variance 20-00261 for 800 South County Road unless or until the property owners give notice by a date certain of October 21, 2020 that they have worked out the situation and there is no further objection; and there is a stop work order until that time or until an agreement is reached between such parties; all fees are waived; the seven property owners are to be noticed by email to help with the expense; no permits are to be given during that time; and this shall come back to Town Council at the meeting on November 13, 2020.

During discussion of the motion the following comments were made:

Staff reported the Chair of Landmarks Preservation Commission wished them to convey he felt it should just go back to Town Council.

Applicant's Comments

Ann Desruisseaux, 800 South County Road, stated they were completely blindsided. They had tried to do everything to follow the process in sending the notices. She reported meeting Colby Rappaport and a friend who lives with her in front of Steve McDonald with SMC Contracting at her property and explaining the whole house would be raised. The house was sinking and water came in through some doors during last week's high tide. The term boathouse was used but it was really connected to the house by the arch bridge. A team of engineers was working on the project. They were at the point of raising the house and it would be open to the elements, with the original ceiling and trusses unable to be protected. She wanted everyone to be aware of the repercussions that would go against what she had been fighting to do which was to save this house. She and Jeff Rappaport were going to meet Friday but her son had an emergency appendectomy so she had not been able to attend. His concern was the view and he wanted her to move the house 10 feet. She described the house and said they could not make changes Mr. Rappaport asked for in a landmark house like making one instead of two stories and removing the arch bridge, which was the main feature of the house. She clarified there was a wall at the foundation separating the properties and his seawall would not be affected. She was happy to meet with neighbors. She objected to coming back for rehearing and asked if they could get affidavits from other homeowners that they had searched their records and confirmed they did not receive the notice. She did not know Mr. Rappaport was contacting all the neighbors. She commented Mr. Rappaport was concerned with the view with the boathouse raised, and his house was built after hers.

On roll call, the motion was approved 4-1 with Council Member Moore dissenting. Council Member Moore stated she believed this would set a precedent and because this landmark house might be lost. Council Member Araskog, Council President Pro Tem Lindsay, and Council President Zeidman each indicated they had voted yes because due process must be followed.

Council Member Moore brought up the question of due process, how the Town could protect itself in the future if the system was flawed, how to be fair to everyone, and suggested looking at addresses so they were not sent out of state when the person was here. Town Manager Blouin expressed his opinion regarding due process. It was agreed to place this on the next agenda for discussion.

Town Attorney Randolph stated he did not opine on what should be done in the future, only on today's issue. He advised that the system was the same used by most

municipalities and it would be difficult for the Town to assure everyone got notice.

Council President Zeidman commented this Council only found out that morning there was more than one property owner involved, and with so many affected this had to be looked at and talked about how difficult this was.

C. New Business

1. **Consideration for ORS Study of Vegetation Height Limitations Adjacent to Existing Neighboring Structures and the Screening of Vacant Lots.**

Wayne Bergman, Director of Planning, Zoning and Building

Director of Planning, Zoning and Building Bergman explained review of 131 Seaview Avenue had brought this to attention, which was on the agenda for the October 14, 2020, Development Review meeting. Seventeen (17) residents requested this be moved forward for regulation.

Council Member Araskog commented about chain link fencing.

Mayor Coniglio asked if the Town was preparing for a potential legal challenge since there were already setbacks. Town Attorney Randolph responded side yard setbacks were designed to allow room for plantings, and if a 6-foot rule was passed someone could file a Burt Harris action for loss of reasonable investment expectation, but that should be discussed after it went to ORS.

Motion was made by Council President Lindsay and seconded by Council Member Araskog to send the ORS Study of Vegetation Height Limitations Adjacent to Existing Neighboring Structures and the Screening of Vacant Lots to ORS for further study, asking them to be very careful about vacant lots which already had rules and to know that issue came up in the Sea Streets. On roll call, the motion passed unanimously.

2. **Discussion Regarding Landmark Notification Procedures.**

Wayne Bergman, Director of Planning, Zoning and Building

Director of Planning, Zoning and Building Bergman explained this was about a courtesy notice mailed by staff under an administrative policy, whether or not it should be sent to those property owners that will be in an area placed under consideration for a new historic district.

Council Member Araskog recalled from previous discussion that notification was to be provided on multiple properties, and stated she was in favor of going forward with notification, but thought that situation would never happen again.

3. **RESOLUTION NO. 104-2020 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Town Manager to Award ITB No. 2021-01, Bradley Park Tidal Garden in an Amount Not-to-Exceed \$150,000.**

Dean Mealy, Purchasing Manager

Director of Public Works Paul Brazil requested this was for a wet and dry feature in Bradley Park, and asked Council to authorize the Town Manager to enter into a contract with the low bidder at a price not to exceed \$150,000, and to allow waivers to the code to allow for Saturday work past December 1 and also a waiver from the noise ordinance.

Motion was made by Council Member Crampton, seconded by Council Member Araskog to approve Resolution No. 104-2020. On roll call, the motion passed unanimously.

XI. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 13-2020 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Providing for an Amendment to the Town's Budgets Adopted for the Fiscal Year Commencing October 1, 2019, and Providing an Effective Date.

Jane Le Clainche, Director of Finance

Town Attorney Randolph read Ordinance No. 13-2020 on second reading by title only.

Motion was made by Council Member Crampton and was seconded by Council Member Moore to approve Ordinance No. 13-2020. On roll call, the motion passed unanimously.

2. ORDINANCE NO. 14-2020 An Ordinance of The Town Council of The Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 82 Of The Town Code Of Ordinances Relating To Personnel, At Article II, Employee Benefits, Division 2, Retirement System; Amending Subdivision III, Firefighters, By Amending Section 82-94, Retirement Age And Service Conditions For Firefighters; Amending Subdivision III, Firefighters, By Amending Section 82-98, Chapter 175 Share Accounts; Amending Subdivision III, Firefighters, By Amending Section 82-99, Deferred Retirement Option Program For Firefighters; Amending Subdivision IV, Police Officers, By Amending Section 82-114, Retirement Age And Service Conditions For Police Officers; Amending Subdivision IV, Police Officers, By Amending Section 82-119, Deferred Retirement Option Program For Police Officers; Amending Subdivision V, General Employees And Lifeguards, By Amending Section 82-135, Amount Of Pension For Benefit Group General And Benefit Group Lifeguard; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Danielle Olson, Director of Human Resources

Town Attorney Randolph read Ordinance No. 14-2020 on second reading by title only.

Motion was made by Council Member Crampton and was seconded by Council Member Moore to approve Ordinance No. 14-2020. On roll call, the motion passed unanimously.

3. ORDINANCE NO. 15-2020 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida Amending The Town Code Of Ordinances At Chapter 74, Parks and Recreation, at Division 3, Regulation of Use of Public Beaches, Section 74-196, Presence During Closed Hours; Hours Specified to Modify the name Lake Worth to Lake Worth Beach and to Add the Public Beach from Wells Road South to Sunset Avenue as an Additional Beach Declared to be Closed to the Public Each Day from Sunset to Sunrise; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

Nicholas Caristo, Chief of Police

Town Attorney Randolph read Ordinance No. 15-2020 on second reading by title only.

Motion was made by Council Member Crampton and was seconded by Council Member Araskog to approve Ordinance No. 15-2020. On roll call, the motion passed unanimously.

XII. ANY OTHER MATTERS

Notification Regarding 800 S. County Road

This item was heard at the end of Old Business.

XIII. ADJOURNMENT

There being no further business to discuss, the meeting was adjourned at 6:31 p.m. without benefit of a motion or vote.

APPROVED:

Margaret A. Zeidman, Town Council President

ATTEST:

Queenester Nieves, CMC, Town Clerk

Date