



TOWN OF PALM BEACH

Town Clerk's Office

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE MEETING HELD ON THURSDAY, MAY 20, 2021

I. CALL TO ORDER AND ROLL CALL

The Ordinances, Standards and Rules (ORS) Committee meeting was called to order on Thursday, May 20, 2021, at 9:30 a.m. via Zoom. On roll call all committee members were found to be present.

II. PLEDGE OF ALLEGIANCE

Chair Araskog led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

Ms. Araskog requested item no. V.B.3 Review of Truck Study Report be deferred to a future committee meeting to receive further direction from Council. Deputy Town Manager Jay Boodheshwar stated the reason behind sending this item to Council in June before ORS studies the issue is to have Town Council discuss and make recommendations on the different options available to regulate truck traffic in the Town, so ORS is not studying possible alternatives that the Council does not want to implement. The consultant and Public Works staff will provide a presentation and will be available for questions at the June Council meeting.

Ms. Araskog added Native Plantings ordinance under ANY OTHER MATTERS. She explained that this item was inadvertently removed from the ORS agenda. The Town Council had directed the Committee to study the native plantings ordinance, the definition of native, what manual or guide should be used as far as natives and study the requirements – 35% vs. 25%.

Motion was made by Member Cooney and seconded by Chair Araskog to approve the agenda as amended. On roll call, the Motion passed unanimously.

IV. COMMUNICATIONS FROM CITIZENS - None

V. REGULAR AGENDA

A. Old Business

1. An overview of the discussion of the Review of Chapter 42 of the Town Code, Relative to Construction Hours
Jay Boodheshwar, Deputy Town Manager

Mr. Boodheshwar provided an historical overview of the previous Committee discussions regarding construction hours. Year-round residents expressed a need for more consistency to provide enjoyment of their property throughout the summer months.

In 2018, modifications to the Town Code were made to provide more consistency on a year-round basis in terms of dealing with construction hours, days of the week and time of day due to the Town becoming a less seasonal community. Changes included an earlier end of the summer construction season (the Monday prior to Thanksgiving) and consistency in the hours permitted for construction and landscape work. The biggest change was prohibiting outdoor construction during the summer months and only allowing quiet interior work on Saturday to mirror in-season regulations. An additional hour was added to construction hours Monday through Friday to offset the change.

Chair Araskog discussed the issues of noise associated with indoor and quiet work such as slamming of doors, talking loudly outside, constant movement, parking, etc. that was taking away the quiet enjoyment of peoples' property and complaints she receives. Mr. Boodheshwar agreed with Ms. Araskog that interior quiet doesn't always mean quiet because people have to get to the job site, there is back and forth inside and outside of the property to get tools and what not, which adds to the outdoor noise. There was also discussion about violations on Saturdays involving noisy outside work, and it was agreed that the Town does not have the ability to police all sites at all times. It is too hard to make everyone comply on Saturdays.

The Committee and Staff discussed the amount of construction in Town and so many streets having multiple projects, which has been a major noise issue hurting our residents' quiet enjoyment of their property.

Mr. Boodheshwar discussed a few options pertaining to the idea of partitioning the Town geographically but expressed concern that any of these could be problematic in terms of enforcement and education. He began the discussion of different suggestions in relation to having rules for different areas of Town i.e. North of Worth Avenue and South of Worth Avenue or alternate rules on alternate weekends. He stated that this would be very difficult to implement and communicate to everyone.

During the meeting, reminded the committee that this is meant to be a session to talk about many ideas. He recommended uniformity because it is easier to communicate and enforce.

Option 1: Different rules for bigger lots for RA and RAA lots, because the homes were farther apart than in RB and would diminish noise. The Committee did not recommend this option because Ms. Araskog thought lots in those areas can be close together and Mr. Cooney thought this could be problematic for both code enforcement and builders to understand. He stated consistency is key.

Option 2: Allow a specific amount of interior work hours on Saturdays according to the area, maybe north of a certain street and then afternoon hours south of another street or alternating weekends in different areas. This was not recommended by staff. The Committee agreed and did not recommend this option as it would be confusing and hard to enforce.

Option Three: A complete ban on Saturdays and starting daily construction hours one hour earlier to offset the time lost as recommended by John David Corey. The Committee liked this option but did not recommend adding an hour in the morning due to the issues Wayne Bergman discussed. (Please refer to the subsection Morning Issues discussed after this section.)

Discussion ensued about adding an hour of quiet work to the end of current weekday construction hours. There was concern with ending at 7 p.m. out of season, but agreement that 6 pm in season might be a good trade-off to eliminate Saturday work hours.

Ms. Araskog suggested the Committee recommend to Council that all Saturday work hours be eliminated and that an additional hour be given in-season for quiet work only at the end of the workday Monday through Friday. Mr. Cooney agreed with the suggestion despite the fact that we are adding an hour to in-season, which seemed counter-intuitive.

Option 4: No work on Saturdays to occur in the high season- January through March- when the Town is at peak population and bustling and add back the hours during the work week outside of those three months.

Ms. Araskog stated that while the builders do not want to take more time to finish their projects, most residents prefer Saturdays off, even if it means additional time for the construction period. The Committee discussed presenting to Council no Saturdays either in season or out of season. Ms. Araskog and Mr. Cooney agreed that the residents must come first.

Mr. Boodheshwar felt he had enough direction. Ms. Araskog stated that the residents might go for the addition of one hour for quiet work from 6- 7 PM in the Summer to gain their quiet Saturdays, so at least we should use it as a discussion point but stated her preference is what the Committee originally proposed.

Option 5: Planning, Zoning and Building Director Wayne Bergman discussed the option of mitigating the loss of 3 hours of Saturday Construction throughout the

course of the year by adding them to the duration of the building permit. Mr. Boodheshwar calculated a loss of 156 hours [or 19.5 days], if an additional hour was added Monday through Friday in and out of season. Director Bergman recommended to modify the permit duration period to add the 156 hours back into the permit time.

Ms. Araskog and Mr. Cooney agreed this was a very good option. [This will go back to ORS for further study.]

PUBLIC COMMENT

John David Corey, 426 Australian Avenue, recommended no Saturday work in Town and suggested an additional hour for work during the week. He believes within reason the Council must speak for the residents and that it should be consistent throughout the year. Residents he spoke with think Saturday work should be prohibited. He also discussed the issues people have calling code about a neighbor and how difficult that is for everyone. We do not want our residents to have to police the neighborhood. He discussed large amounts of traffic with trucks coming on the Island in the morning. He asked that we please err on the side of the quiet enjoyment of the residents. He discussed that even condos do not allow work on Saturdays.

Susan Gary, 229 Onondaga Avenue, agreed with Mr. Corey's suggestion regarding no Saturday construction work year-round for many of us who live here full time. She also agreed with everything being uniform and simple. She stated they currently have 6 construction sites within Onondaga, Laurie Lane, North Lake Way and Debra Lane. John Corey's idea to give an extended hour is good, she said, but there is a lot of noise. I would like to see less construction.

Mrs. Gary also inquired if anonymous reporting can be set up for Code Enforcement. Ben Alma reported that the State of Florida recently passed a law that no code enforcement unit in the State of Florida may accept anonymous complaints except ones that were deemed life threatening. Whoever calls will be in the record as the complainant, but one can call for someone else.

MODIFYING THE CODE TO PREVENT MORNING NOISE

A separate issue arose during these conversations. Mr. Bergman stated that during the weekdays he noticed workers arriving at 7 a.m. and construction activity beginning at 7:30. He reiterated that the code is written to allow setup time between 8:00 and 9:00 a.m., which is quiet work only such as getting materials, tools and crew together and getting organized. In reality, he said the majority of the sites are very active before 8:00 a.m.

Ms. Araskog stated that it is very disturbing if workers are arriving before 8:00 a.m. as that one of the complaints from residents is the slamming of doors and other

noise early in the morning. She thought the hours [ordinance] could be changed, so workers cannot not arrive before 7:45 a.m.

Ms. Araskog inquired as to the type of code enforcement available at that hour and stated that we need to find a way to stop this activity before 8 am. She stated that residents are construction weary and the Town is under siege. She recommended the Council find a way to regulate these activities so residents can have quiet enjoyment of their property.

Mr. Boodheshwar responded that if violations are occurring and code enforcement is notified of these violations, proactive or reactive enforcement can be carried out by the code enforcement officers.

Ben Alma, Code Enforcement Manager, responded to Mr. Boodheshwar's query regarding the hours for the code enforcement officers, he explained during turtle season the first code enforcement officer starts at 6:00 a.m. (6:30 a.m. during the off season) and his primary duty is turtle violations; the second officer starts at 7:00 a.m. One officer works from Monday to Friday and the other from Tuesday through Saturday.

Discussion ensued regarding the allowable hours for arriving on site for quiet work. Mr. Boodheshwar stated that the Code does not legislate when workers arrive at the site. He stated that the requirement is no work can begin before 8:00 a.m. and from 8-9:00 a.m. it is quiet work (no heavy equipment or construction related noises).

Ms. Araskog suggested that we have a time of arrival for sites, be it 8 am or 7:45 a.m. and more strongly define what quiet work means. No moving around the site, getting out of the cars, loud music, cell phones- that they must stay quiet in the cars. Mr. Cooney agreed. He does not want builders to have to ask for time extensions, but the concern of residents has got to come first.

Mr. Cooney stated that while it is uncomfortable calling code on neighbors, sometimes it had to be done. He asked for the appropriate number to call. The response: Code violations can be reported by calling the Police Department at 561-838-5454.

Ms. Araskog stated that more people call her to call code, because they do not want to call themselves. They do not want their names involved or to hurt their relationship with their neighbor.

Mr. Boodheshwar recommended no workman on site prior to 7:30, but suggested we converse with the trades on this suggestion. There could be language added to the code that before 8am no work shall begin for any set up or work, not be on the cells outside and no slamming of doors. Jay said he would play with some language for the Committee.

UPDATE ON NEW SATURDAY SITE MONITORS

In addition to Construction Hours, an update was given by Mr. Boodheshwar in regard to enforcement on Saturdays. Contract Site Monitors are now monitoring sites on Saturday, which was a direct response to the discussion last month regarding complaints of violations on the weekend and the lack of Town staff available to ensure workers on the sites are in compliance with the quiet work. He reported that there were no violations, but there were concerns mostly related to cleaning up and the screening of the sites that the monitor was able to clear up. He said that having a site monitor on Saturdays has been productive and effective and will be continued. The site monitor will also report any code violations to Code Enforcement.

Mr. Bergman also pointed out that having the site monitor on Saturdays was an excellent suggestion and with periodic reports, staff will be able to find out what kind of violations are taking place on Saturdays.

There was a consensus to move the monitor from Saturday to weekday evenings if Saturdays were eliminated. Mr. Alma stated the code officers go home at 3:00 or 3:30. and that the bulk of Code issues are in the morning and early afternoon. Discussion ensued about using the Site Monitor for afternoons and evening.

B. New Business

1. Discussion Regarding Regulations Pertaining to the use of Synthetic Turf *Wayne Bergman, Director of Planning, Zoning and Building*

Ms. Araskog stated more and more residents are using synthetic turf. It appears many are adding it without getting permits and are in violation of the Town's landscape requirements. She believes many new and current residents do not understand the laws, so part of today's meeting will be educating the public and discussing if the Town needs a specific synthetic turf ordinance. She supports an ordinance incorporating the specifications and limitations of many other municipalities that have synthetic turf regulations, including permit and maintenance requirements, color, percentage of water permeability, height specifications, certain backing, and that they be lead free.

She explained that some people believe synthetic turf is better for the environment because it does not have to be watered, require noisy lawnmowers, or the use of pesticides. She quoted an article from the Coastal Star, citing an Ocean Ridge Commissioner's comments. He stated that experts reported UF does not consider it to be Florida Friendly or environmentally acceptable, and that, "Experts said it holds in heat and raises the temperature of neighborhoods, it allows microscopic petroleum pollutants to seep into the soil and water tables, it kills the beneficial bacteria and micro-organisms underneath, it collects animal feces..."

Mr. Boodheshwar reported that Mr. Bergman and he have been in contact with an Ocean Ridge Commissioner who contacted them over a year ago about an ordinance regarding synthetic turf. He explained that Palm Beach does not directly regulate the use of synthetic turf and thought we should use the Ocean Ridge Ordinance as a reference. Mr. Boodheshwar stated the Town requires a permit for its installation and it is not counted toward our landscape requirements. He also referenced information in the ARCOM designation manual.

Ms. Araskog stated that she found and studied about ten (10) municipalities (including Miami, Coral Gables, Ocean Ridge and Surfside) that had specific Ordinances relating to synthetic turf.

Mr. Bergman added that this subject appears only in the ARCOM Project Designation manual. Staff receives quite a few requests for artificial turf. Staff sends them to ARCOM, whose commissioners always struggle with these requests. He agreed with Chair Araskog's comments in that synthetic turf has a lot of problems.

Mr. Bergman discussed the Ocean Ridge Ordinance. He considers it to be a very good and thorough ordinance that lays out all of the parameters. He stated that from a zoning standpoint, the biggest challenges for ARCOM are the locations where the artificial turf could be used and whether this type of material should be treated as a pervious or impervious surface. Ocean Ridge treats it as 100% pervious, but he thinks we have a different expectation in our Town. He agreed there should be some regulation in place and that if this is something that can be seen from the street, the front or the public right of way, it should be heavily regulated.

Ms. Araskog spoke regarding the environmental concerns of synthetic vs. real turf. She spoke about her personal experience with synthetic turf. She would not recommend it, because it began to smell like plastic, heated up to an unbearable temperature, must be hosed off constantly and did not attract the birds, frogs and butterflies that she now sees on the grass since she replaced her synthetic turf. She has lived the difference. She agrees with other municipalities that do not include it in their landscape requirements. We are a very green town, she said, and it is not landscaping if it is synthetic. She said half of our beauty comes from our landscaping and our nature; therefore she is against synthetic turf for our Town.

Mr. Cooney stated he had never been keen on synthetic turf and the green space requirements are important to the harmony of our Community. He sees it in Town whether it is supposed to be there or not and has noticed its popularity. He stated there were people who liked it because it looks good in shady places. He does not know the balance that is needed. He said that although it was a plastic and petroleum product, folks are leery of children and chemicals.

Ms. Araskog discussed the native options for shady areas, organic treatment for landscape and grass, and the need for educating the public on the different options

to replace and issues with synthetic turf. If parents are worried about chemicals, she would not want children playing on this. Looking at this as a whole, Ms. Araskog recommended that landscapers, contractors and the companies that are common synthetic turf installers be notified by the Town as to our requirements.

Mr. Cooney recommended the public be educated. Mr. Cooney stated that people are paving their yards in the eyes of the zoning code.

Ms. Araskog and Mr. Cooney agreed the public needs to understand that they need a permit to install it and it does not count towards our landscape requirements. Member Cooney hoped the Garden Club might help with education.

Mr. Boodheshwar agreed it should not be counted as open landscape. He spoke regarding the different components: aesthetics, drainage (to not cause issues) and environmental piece (sustainability) to be addressed in the ordinance.

Ms. Araskog read an article “*Environmental Impacts of Artificial versus Natural Turf Grass*” from The Sod University regarding chemicals, volatile organic compounds and suspected carcinogens which are associated with some health effects. It stated that choosing natural grass can help to reduce exposure to chemicals and potential health concerns and that environmental concerns associated with artificial turf include loss of wild habitat, contaminated runoff and migration of synthetic materials that are harmful to aquatic life. The article included a study that found an example of synthetic turf reaching 160 degrees.

Ms. Araskog spoke about the Ficus Benjamina movement after the education the Town and others did as recommended by Bobbie Lindsay and the Garden Club.

Mr. Bergman clarified that a resident must go to ARCOM, be approved and receive a permit to put synthetic turf in their yard. Anyone who has not received such approval or permit is in violation of the zoning code.

Committee members requested that staff return to the next meeting with draft language for the ordinance, include different ordinances from the various municipalities in the backup, and also invite members of the Garden Club and Susan (Lerner) from the Preservation Foundation to take part in the discussion. Ms. Araskog suggested maybe bringing someone from UF when this item goes to the Council. Ms. Araskog and Mr. Cooney agreed that this is not natural and should not count towards landscape requirements.

2. Discussion Regarding Landscape Buffers *Wayne Bergman, Director of Planning, Zoning and Building*

Mr. Bergman stated he had been working on this for the past two (2) years and gave the historical perspective of the issue. Language in the Town Code did not provide enough criteria for this to be turned over to Code Enforcement as a violation. This

issue was taken to Town Council in November 2019, and it was agreed to be forwarded to ORS for action. After a long discussion at the ORS meeting on January 9, 2020, staff was directed to propose changes to Chapter 66 section 236 and return to the Committee. Due to the pandemic, ORS did not meet.

He stated that Complaints from residents and neighbors show a disturbing trend that some property owner will receive approval from ARCOM or Landmarks to build their project, receive Certificate of Occupancy and shortly thereafter, remove large amounts of perimeter landscape buffering, sometimes replacing with something else or nothing at all.

ARCOM has been very concerned that approved landscape plans were later modified or changed without their involvement or knowledge. Our Town Attorney agrees that additional language is needed in the Code, so that such a violation can be enforced by Code Enforcement. Mr. Bergman stated the added changes would include language requiring approval from ARCOM or Landmarks to remove perimeter landscaping over a certain height or within certain linear feet of side or rear property lines.

Ms. Araskog recommended a few changes to the proposed ordinance. New language was proposed by staff and agreed upon by Staff and the Committee.

Mr. Cooney thought it important that staff can approve reasonable changes. If someone wanted to replace a buffer with something of similar height and thickness, they should not have to hire a landscaper to go to ARCOM. Wayne recommended the ARCOM designation manual be cited and confirmed there is a clause allowing staff to approve something similar or greater.

After further discussion and suggestions regarding changes to the language at Sec. 66-236, staff was directed to prepare an Ordinance for first reading at the June town council meeting.

Review of Truck Study Report
Paul Brazil, Director of Public Works

This item was deferred to the next Committee meeting.

VI. ANY OTHER MATTERS

1. Ordinance Relating to Native Plants

Ms. Araskog stated this item was inadvertently missed on last month's agenda and requested that staff add it to the next agenda. She mentioned several items to be discussed: increasing the native requirement from 25% to 35%; defining native species; and evaluating the best manual or guide to identify Florida natives. Mr. Boodheshwar confirmed this would be added. He stated the other pending items to

be studied are height limitations of vegetation adjacent to neighboring structures and noise allowances in residential areas.

It was agreed that the next meeting date will be Thursday, July 1, 2021 at 9:30 a.m.

VII. ADJOURNMENT

The ORS Committee meeting of May 20, 2021 adjourned at 11:30 a.m. with a Motion made by Member Cooney and seconded by Chair Araskog. On roll call, the Motion passed unanimously.

Julie Araskog, Chair

Queenester Nieves, CMC, Town Clerk

Date