



TOWN OF PALM BEACH

Town Clerk's Office

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE MEETING HELD ON THURSDAY, JULY 1, 2021

I. CALL TO ORDER AND ROLL CALL

The Ordinances, Rules and Standards (ORS) Committee meeting was called to order on Thursday, July 1, 2021 at 9:30 a.m. in the Town Council Chambers. 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

Chair Araskog announced that due to Wayne Bergman, Director of Planning, Zoning and Building having to leave to attend an urgent meeting at 10:30 a.m., she would be switching the agenda around to begin with item no. V.A.2. Review Draft Language to Regulate the Use of Synthetic Turf and that item no. V.B.2. Discuss Possible Modifications to the Native Landscape Section in Chapter 66 of the Town Code would be heard next. She then suggested that item no. V.A.1. Review of Chapter 42 of the Town Code, Relative to Construction Hours would probably be heard at about 10:30 a.m.

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

Brad Gary, 229 Onondaga Road, spoke regarding construction projects blocking driveway access and debris littering the streets and suggested creation of a construction code for new construction projects. **(Please see a more detailed account at the end of the report.)**

V. REGULAR AGENDA

A. Old Business

1. Review of Chapter 42 of the Town Code, Relative to Construction Hours

Jay Boodheshwar, Deputy Town Manager

Chair Araskog stated many residents who would like to see their weekends and weekdays returned to the former quiet enjoyment of their property. She also received an onslaught of phone calls asking for a complete moratorium on building.

She discussed many of the issues, including some residents who are selling or sold their homes because of all the construction noise. She discussed phone calls from residents pleading with her to make 8-9 AM on weekdays off season quiet work to make it the same as in season. Residents are tired of being awakened early and spending their days hearing loud construction and at times their rooms are shaking.

She expressed her appreciation for the construction industry representatives attending the meeting and understands that many are upset by the suggestion of cutting back on hours or eliminating Saturday hours, but stated that the overwhelming amount of construction is causing Town residents stress and discomfort. She relayed it is difficult to receive so many phone calls. She believes this Committee needs to think of the residents, their reasons for moving here and the money spent on their homes. She hoped a solution could be found to protect residents and hopefully not cause a tremendous impact on construction projects.

She discussed the Town's 68.7 age mean with a majority of retired residents who want to enjoy their homes, their yards and quiet enjoyment of their property. She explained later that because we are a retirement community unlike other places people do not get up at 7 a.m. to run to work, but are home, and she wished the Town had larger lots. She later explained this is not about construction workers or contractors doing anything wrong but is about the fact that people buy their homes to enjoy them. Current residents expressed to her that they do not think it is fair for people who are building homes in our Town to arrive after their homes are built having the benefit of escaping all the noise that they cause for residents who currently reside in their homes and often have for 10, 20, or 30 years.

Ms. Araskog stated that she was told that before the rules were changed by Peter Elwell, that only 13 applications were allowed to be presented to ARCOM, and that just last month there were 58 applications on the agenda. She does not believe a 12-mile Island can handle this pressure and that something must be done.

Jay Boodheshwar, Deputy Town Manager, clarified that the discussion is centered on Saturday construction hours. He reminded everyone that the ordinance was changed two years ago with the intent to have a more consistent schedule in terms of construction work year-round, specifically on Saturdays to be limited to as what we define as "quiet hours."

Mr. Boodheshwar discussed several options to limit Saturday construction hours. ****[For these options it is important to note that **Off Season** is currently May 1 to the Saturday before Thanksgiving; are 8 am to 6 pm Monday through Friday; and "quiet work" interior and exterior on Saturdays from 9 a.m. to 5 p.m.. There are*

*exceptions if a waiver is granted by the building department for Saturdays. **In Season hours are the Monday before Thanksgiving thru April 30; “quiet work” from 8 a.m. to 9 a.m. on weekdays; “quiet work” interior only on Saturdays from 9 a.m. to 5 p.m.; Worth Avenue Hours: May 1 through October 31: 8 a.m. to 8 p.m. Monday through Saturday. Work is not prohibited throughout the Town on legal holidays and Sundays.]***

Additionally, Mr. Boodheshwar discussed Mr. Bergman’s suggestion that if hours on Saturdays were not permitted for the Season and/or Off-Season Construction Hours that an extension could be granted for construction permits to allow additional time for completion of projects to offset the hours of construction work lost. This would mean a longer construction project, but would provide for contractors and homeowners to get their projects completed. He discussed an additional suggestion to offset lost construction hours which was to add an "hour of interior quiet work" Monday through Friday Year- Round or just In Season.

- B. Mr. Boodheshwar Discussed the Following Options for Limiting Saturday Work:
Option 1: Year-Round: Eliminate all Saturday construction and add an additional hour of interior “quiet work” to the end of the day Monday through Friday for the entire year and add 20.5 days (one month) for the completion of construction for each project. This means that during the Off- Season Monday through Friday 8-9 a.m. and 6-7 p.m. is “quiet work” only inside and from 9 a.m. – 6 p.m. all construction is permitted; and In Season 8-9 a.m. and 5-6 p.m. “quiet hours” indoors only and 9a.m. -5 p.m. all construction work is allowed .

Option 2: In Season: add an additional hour of interior “quiet work” at the end of the construction hours only Monday through Friday and add 9 days (two weeks) for the completion of construction for each project. In Season would have “quiet work” inside only from 8 a.m. - 9 a.m. and 5 p.m. - 6 p.m. and all other construction would be permitted from 9 a.m. to 5 p.m. Off Season construction hours remains the same on Saturday with only inside and outside “quiet work” permitted. All construction Monday through Friday is permitted from 8 a.m. to 5 p.m.

Option 3: Year- round: Prohibit all Saturday work hours for the entire year but add an hour of interior “quiet work” only in Season Monday through Friday and add 38 days (7 weeks three days) for the completion for each project. (same hours as option (b) for Season and off-Season hours.)

Option 4 :Year- Round: Eliminate all Saturday “quiet work” (no change to the current weekday permitted hours) and add 52 days (10 weeks and 2 days) for the completion of construction for each project.

Public Comments

Desmond Keough, 241 El Dorado Lane, Owner and President, Haifa Limestone,

spoke regarding Saturday work. He lives in the North end and appreciates having peace and quiet on that seldom day he has off and gets it, but the implication of removing Saturdays is pretty big. His concern is that if Saturdays are eliminated, he will be unable to get his flooring work done and it would take longer to complete a project. He discussed his need for time without other trades present, so he can do flooring, finishings, grinding, sealing and polishing. He mentioned certain actions that can be taken by workers to reduce noise, traffic, crews sprawled on lawns and in driveways having lunch and making noise, radios on sites, etc. He believes an element of education is needed and stated that he liked the idea of the "Gold Star" club that was mentioned by Brad Gary.

George Ford, 14792 Palmwood Road, Palm Beach Gardens, Partner, Seabreeze Building and Owner, Leeds Custom Design, listed some projects they just completed, including 149 East Inlet, which he built in 18 months, 456 South Ocean Blvd (the Charlie's Crab site), and Duck's nest. He said he did not have a problem on any of those jobs despite being under a microscope and thinks that is the case with most builders on this Island. He advocated for continuing Saturday work. He stated that changing Saturday hours because of cheaters is not the way to go because we have a great town staff who will come out if a complaint is made. He suggested the Town should start with the cheaters and run with the current rules. He agrees with Brad Gary and Desmond. He thinks the overwhelming construction will pass.

Ms. Araskog explained the issue is not about cheaters or workers doing anything wrong, but as Mr. Boodheshwar discussed at the last meeting, there is noise that comes with non-noisy construction such as cars pulling in, doors closing, people coming and going or on their cell phones, and general noise that comes with an active site, which disrupts the neighbors. Ms. Araskog discussed seeing twenty cars on a site on a Saturday, which brings noise, and the issues that come with many small streets having two or more active construction sites on them.

Lynn George, Mockingbird Trail, spoke regarding two houses that are being torn down within 100 feet of her home. She has had many aggravations as they have had a lot of new construction and renovations on her street. She ran several people off who parked before they were allowed to and complained that trucks and workers constantly park within five feet of the stop sign, which creates a safety issue. The police tell people on North Lake Way to park on Mockingbird trail. She has had times when she could not even enter or exit her driveway due to the trucks. She expressed her frustration that people were parking on her street for North Lake Way projects and stated the police told them to park there. She added that with two people building on her street simultaneously she knows she will be calling a lot.

Benjamin Alma, Support Services Manager, Benjamin Alma, Support Services Manager, to answer Ms. George's questions stated that residents should call 561-838-5454 at any time to report any code/parking issues and that construction parking locations for permits are assigned by the Building Department and it depends on the stage of the construction as to the number of trucks/cars permitted.

Public Comments (continued)

Susan Gary, 229 Onondaga Avenue, thanked the Committee for discussing Saturday construction work. She said residents are generally fed up with the massive amount of construction in the Town. Between the Undergrounding tearing up the streets with several years to go and all of this private construction- 500 building permits last year- the amount of construction is phenomenal, and the residents and she have had it. She is begging the elected representatives to start getting stricter on construction and to forthwith stop all Saturday construction to give residents some peace and quiet for two days per week. She explained she spent 25 years in the design and construction business for a major company in the United States and understands construction and is not unfamiliar with it or unsympathetic; but residents need some peace and quiet. All they are asking for: no Saturday hours.

She stated she was very pleased to speak with two representatives from construction companies today and welcomes the fact that they are willing to work with the Town and residents to make the construction better for everyone. She discussed her former small community in Rumson, New Jersey, where they started a voluntary program like the one her husband described earlier and hopes the industry and residents can work together to work things out. She stated she is very familiar with the industry, one she has high regard for, and volunteered to work with contractors, business owners and owners to help resolve some of the problems. She hoped maybe The Civic Association could step in or some other organization as well.

John Cassidy, 19000 Loxahatchee River Road, Jupiter, stated he moved out of Palm Beach three years ago after growing up on Seabreeze. His parents lived here for over 50 years. He completed several remodeling projects on the island. He said the Town makes these rules for people who break the rules and that's the problem. The people doing the right thing get penalized for the people that are doing the wrong thing. And this construction is going to pass, he stated and that property in Palm Beach is limited, and the building permits will decline. He advocated for not just making a blanket statement because of the few who don't follow the rules. He stated he has been in business for sixty years and does what is right. He makes sure his guys are quiet on Saturdays and believes the Town needs to think about it as a whole and not make a blanket statement or rule because of rule breakers.

Chair Araskog read a letter **Susan Watts** of 44 Cocoanut Row asked be read into the record advocating for an elimination of Saturday construction hours citing the "needs of residents to have two days a week when the noise, traffic, disruptions and confusion of endless construction projects do not impact the serenity of residents' lives in Palm Beach" and included the following from the Town's comprehensive plan: *'The Town of Palm Beach is essentially "built-out." This unique island community has grown and developed into a premier residential community of exceptional beauty. As a result, the future of the island will be focused on preserving and protecting this residential island community while maintaining the culture, serenity, and the unique character of the Town. '*

(Executive Summary 1-3). She “ask(s) the Town Council to remember that ‘the future of the island will be focused on preserving and protecting this residential island community.’ Palm Beach is a very special place. Your residents, taxpayers and voters are speaking loud and clear. ‘

John David Corey, 426 Australian Avenue, referred to his letter to the Editor (Shiny Sheet) regarding Saturday construction hours where he referenced his hometown of Boston where there is no Saturday construction work allowed. He stated he believes most condos on the Island do not allow Saturday hours because the residents do not want to be disturbed. He believes people moving to Palm Beach would be surprised, as he was, that you could build on a Saturday. It is his opinion that for a long time the lobbyists and the construction business have advocated for and successfully won construction on Saturdays, but he thinks the residents are clawing it back. He hopes we can gain Saturday back and if there is a compromise to have more time in the day maybe an earlier start time then so be it. Or else, like death and taxes, construction in Palm Beach never ends, You sell a house and right away they start doing kitchen and bathrooms, so I don’t think the idea of having construction projects finish sooner is any kind of incentive for Saturday work hours.

End of Public Comments

Responding to public comment, Ms. Araskog stated that she mentioned a moratorium to express resident frustration, but this was not being discussed today and that workers who have been breaking the rules and doing outside work on Saturdays is a Code Enforcement issue and not the reason for today’s discussion.

In response to a comment that this construction will pass, **she stated it is not going to pass for a long time because we just had 58 applications at ARCOM.** This is a point where until things change, we need to make some kind of effort for our residents to have their weekends off by not allowing Saturday work during the season and adding one hour of quiet work to the end of the day, which will add only 9 days. She would rather stop all Saturday work hours, but the problem is projects would be prolonged by 52 days- an added two and a half months.

She expressed her opinion that some effort needs to be made so the residents have the weekends free of construction not allowing Saturday work during the season, which adds 9 days to the out of season work, and adding one hour of quiet work at the end of the day for construction. She stated she would rather stop all Saturday work hours, but the project completion time would be prolonged for too long.

Mr. Boodheshwar responded to Member Cooney by presenting a historical review regarding construction hours and how we got to where we are currently. He referred to a spreadsheet showing the current construction hours for peak and summer seasons.

Mr. Cooney stated this is a complicated issue trying to balance the needs of

residents and their right to quiet enjoyment of their property with construction which is loud and disruptive and noisy and dirty. It feels like a constant cycle. He really feels for the residents who as soon as a job wraps up behind them, a job next to them starts going. Sometimes they are dealing with noise for an excess of five years, he said, so striking that balance when we have new residents and properties turning over and work that needs to get done and residents undertaking the work who understandably want it to be done efficiently. He does not know the right balance to strike here.

He appreciates that we are inching toward recognizing the community as becoming more of a year-round community and applauds the previous effort to switch Saturdays to quiet work in the summer, because there are many residents like him who are year-round. Sometimes it felt like year-round residents had to deal with the heavy load disruption and it did not always seem fair as the community has evolved with an increasing number of year-round residents. He is concerned that eliminating Saturdays year-round would be incredibly detrimental as far as moving projects along. He stated that quiet work is interior work, so if there is a rainy day, having Saturday hours does keep projects moving along as they deal with the disruptions of a storm coming or rain. It could prevent certain jobs from getting done.

Discussion ensued regarding eliminating Saturday work in season, adding one hour of quiet work during the Winter season and adding an additional 9 days (two weeks) to the project permit. Additionally, a discussion ensued on having quiet work only from 8-9 a.m. during the Summer Season.

The Committee agreed that this is one of the most intense times of construction. Ms. Araskog quoted Paul Brazil stating that construction is just booming in a way it has never boomed before and that when driving around Town she sees 2-3 construction sites on an overwhelming number of streets in Town. Mr. Cooney stated Sundays were his favorite day in Town because it is quieter and much safer to bike, walk, and run errands without trucks buzzing around and that on Sunday the Town feels like a different and much more livable place.

Some of the points made in regard to eliminating only in Season Saturday hours and adding an hour of quiet work during the day were that at least the residents would have 6 months of quiet weekends and that traffic and burdens on the residents is much worse in the Winter months. Mr. Cooney was concerned that while in concept the addition of an hour of quiet work at the end of the day was good, he is not a contractor and does not know if it would be useable time to advance a project. He was not certain that workers would stay until 6 p.m., which could create lingering, longer projects.

Mr. Boodheshwar pointed out certain pros and cons to the various decisions regarding the construction work-day.

Ms. Araskog suggested elimination of Saturday work during the peak season, an

additional hour to the weekdays in Season and conversion of 8-9 a.m. during the summer to interior quiet work only.

Mr. Cooney stated there is no easy solution. This has been disruptive to our residents' quality of life for quite a while. He wants to look out for the peace and quiet enjoyment, which can be tough to find when there is a lot going on around you, but he struggles because there are a lot of residents doing work on their own homes who want to get them done. Their representatives and contractors want to create the most efficient end to get residents into their home by season and all of those standard deadlines we know about in the community. He just does not know how to work with both.

Ms. Araskog discussed the residents who are complaining saying well of course they want to get into their homes quickly, because most are not in their house having to listen to and living through all the construction noise. Ms. Araskog is wondering if this extra hour would give contractors the time that they need or maybe they will become more efficient with their time.

Clarifying our Ordinance as to what an 8 a.m. start time should mean.

The last point of discussion was about clarifying in the ordinance as to what a start time of 8 a.m. means, because so many sites have been active at 7 am or 7:30 setting up, drinking coffee, and disturbing the neighbors. Ms. Araskog would like to look at implementing a three-strike rule for those who are starting earlier than 8 AM. Wayne Bergman stated we need enforcement. Mr. Alma agreed that they could check the sites in the morning and enforce it. He said they would do two weeks of warnings and then start citing them. It was stated that we do not currently state when contractors and subs can arrive or when they can start working.

Mr. Alma stated that a lot of the complaints were about construction workers arriving early and in 2020, it is because the workers are there having their morning coffee and making noise. It can be contractors with designers or owners or workers talking. Director Alma asked Skip if people had a constitutional right to be on the street or on the site having coffee or conversations. Skip stated that they do not as they are there for a business purpose. Skip advised that no construction workers can congregate at the site as they are gathering in anticipation of beginning work.

Ms. Araskog stated the intent was to stop all early activity until 8 a.m. We said people were tired of morning noise and there should be no noise until 8 a.m. She would like no cars before 7:30 and no activity on the site or on the street until 8 a.m.

Committee recommendations for Town Council Discussion:

- 1) Ms. Araskog preferred to eliminate Saturday hours In Season, add 9 days to the permit period and add an extra hour of indoor "quiet

work” Monday through Friday. Mr. Cooney would like it to remain as it is but expects a robust discussion.

- 2) Consensus of the Committee for off Season, 8-9 a.m. indoor quiet work only with the possibility of the addition of one hour of quiet work at the end of the day, from 6-7 PM, if necessary.
- 3) Consensus to look at the Landscape Ordinance to mirror the quiet hours during the week and on Saturdays.
- 4) Prohibit arrival to the construction site before 7:30 a.m. and no activity or being present on the site other than in their automobile before 8 a.m.

1. Review Draft Language to Regulate the Use of Synthetic Turf

Wayne Bergman, Director of Planning, Zoning and Building

Chair Araskog spoke regarding two applications that were presented at ARCOM’s last meeting. She mentioned no commissioner was in favor of synthetic turf due to aesthetics and environmental issues. She stated she agreed with the ARCOM Commissioners and believes a Variance should be required for its use. She feared if the proposed Ordinance is passed, it could be an impetus for people to install artificial turf as landscapers are already recommending residents cover large areas with artificial turf on a regular basis and fail to understand or know they must appear before the ARCOM or LPC to get a permit before installation. After mentioning issues regarding an onslaught of artificial turf in the neighborhood and the Town desiring to become green and environmentally friendly, she stated she was not in favor of allowing any artificial turf without a Variance.

Wayne Bergman, Director of Planning, Zoning and Building, stated that artificial turf is not directly regulated by the Town Zoning Code at this time, except that all site and landscaping plans must be approved by either ARCOM or LPC. After the last meeting, a review began of some Ordinances and Codes that regulate artificial turf by staff. Ms. Araskog requested that Mr. Bergman correct a mistake made in the paper and asked him to clarify what a resident must do if they would like to install artificial turf.

Mr. Bergman stated that if a resident wanted to install artificial turf, they would have to receive approval from either ARCOM approval as a minor project or LPC approval as a COA. Mr. Bergman confirmed it would be approved, deferred, or denied and the owner would need a permit as per an approval from ARCOM nor LPC to install the artificial turf.

Mr. Bergman stated that at the last committee meeting, staff was directed to draft an Ordinance, therefore they looked primarily at the Town of Ocean Ridge, the Village of Key Biscayne and the Town of Jupiter Inlet Colony. These municipalities have regulations for artificial turf. The draft Ordinance includes a definition for artificial turf; the approval process; locations in a yard where it could be considered;

standards for the material and manufacturing of artificial turf; installation, maintenance and repair of artificial turf and what to do with existing artificial turf that has already been installed.

Public Comments

Susan Lerner, Director of Horticulture, Preservation Foundation of Palm Beach, applauded the Chair's position on artificial turf. She stated that accepting the installation of synthetic turf is adding to the problem of extreme and irreparable damage to the planet. She spoke about issues regarding recycling the artificial turf after it has passed its useful life, drainage, destruction of the soil and the food web by the trapped heat of the blanket of plastic and the use of pervious vs. impervious materials. She stated that while trying to solve a small problem like grass will not grow under a shade tree that it creates a larger problem later and mentioned that there are ground covers that will happily grow under the shade trees and she could show them [to residents] in Pan's Garden.

Jorge Sanchez, 239 Southland Road, President, SMI Landscape Architecture, expressed his agreement with Chair Araskog that the issue should remain as it is on the books, as hardscape. He stated he did not see anything wrong with it in certain areas such as dog runs and does not support banning it completely but including it as part of the hardscape calculations. He stated he would not like to see it proliferated throughout the gardens. He expressed his agreement with Susan [Lerner] that there are a million types of groundcovers that can be used in shady areas, so it should be no excuse to use it and anyway that is sort of my feeling.

John David Corey, 426 Australian Avenue, thanked the Committee for hearing this item. He stated that one of his responsibilities when he got on ARCOM was to attend the University of Florida Master Gardener program. During that program they discussed artificial turf quite a bit. The consensus they were taught is like Mrs. Lerner was mentioning about the disposal problems, about the heat island problems, things of that sort. He understands Mr. Sanchez's comments about maybe using it in impervious areas, but he thinks that a lot of times with the sun baking it and the off gassing they used to talk about that he honestly just doesn't think there is any place in Palm Beach for it. He stated that our ARCOM ordinance is pretty clear on quality materials going into the landscapes and also the architecture and the built environment. He does not think we would advocate for PBC plastic trim or should be advocating for or endorsing plastic plants. It is his opinion that even without an ordinance, ARCOM can prohibit its use because it is not an actual material and is not fitting for the environment here. He said having it as a big NO would be helpful and just sort of closes the chapter on this item. He advocated for prohibiting it.

End of Public Comments

Chair Araskog stated at one time used artificial turf. She stated the turf got very hot, was too hot for her dogs or her to walk on and smelled like chemicals even though she used one that was pervious to let water through. She did not realize its

potential for holding onto bacteria or that it was killing everything underneath. She changed to grass and now has butterflies, frogs and birds. She stated this meeting also is to educate the public as some people did not seem to understand that you must apply to ARCOM or the LPC and receive a permit before installation. Regarding Mr. Sanchez's comments, she stated she would never use the artificial turf as a dog run after her experience with it.

Mr. Cooney stated that he was struggling with the concept because he had never cared for synthetic grass, but surprisingly had a lot of outreach from community members who like it and do not want it prohibited. He mentioned that he didn't know what the solution should be, but it is clear to him that there is a certain sector of the community who really likes the turf and does not want it to be prohibited. He is against it being visible from the right of way. He also stated he understood the environmental perspective. He believes people installed it not knowing they were breaking our code. He stated he would totally support the concept of codifying standards regarding the use of artificial turf.

Ms. Araskog stated that many of those residents probably do not know the questions or information in articles she has seen in regard to damage it may cause to their children or backyards. She mentioned the ordinances of Key Biscayne, which required a list of native plantings, and Ocean Ridge which set out the calculations for the percentage of the area to be covered. Ms. Araskog gave staff and Member Cooney a list of suggestions regarding this item to be added to the backup for the next committee meeting.

Ms. Araskog also asked Staff if a letter could be sent to all landscapers and residents alerting them to the code and the process and the rules for the installation of artificial turf to eliminate any confusion.

Mr. Cooney supports codifying minimum standards is very important for material quality and maintenance if this should go forward.

Public Comments

Steve West, Landscape Architect, Parker Unity Design Group, does a lot of work in Town. He stated that he has a few but not many residents requesting artificial turf, but primarily along driveway edges that have intricate paving patterns. Most times this is done to avoid constant maintenance for regular grass. He mentioned that he agrees with Mr. Sanchez that sometimes there are individual situations, like dog runs, for use of the artificial turf and those should be reviewed by ARCOM on a case-by-case basis. He stated that he is speaking on behalf of his clients.

Ms. Araskog agreed there may be times when between pavers could be acceptable and she believes Susan Lerner agrees. She discussed width regulations for between pavers that she found included in other ordinances. Mr. West thought that was a good idea, to add maximum widths, and that we study maximum square footage for

checkerboard patterns. He added that people suggested he use artificial turf in his backyard due to the low maintenance, but he did not want it in his entire backyard, so he went with a natural grass. He said he has a very sunny backyard, and that heat is an issue in big masses of artificial turf, but he does think there are small instances where it is appropriate and does not want a full ban.

Jorge Sanchez, SMI Landscape Architecture, commented on the layout of regular grass in driveways. He stated that many younger individuals can really tell when artificial turf is used and believes our current code is nearly perfect. He considers using it in driveways as part of the hardscape calculations and said some people have exceeded the percentages and installed it illegally, but that is a code issue.

Raymond Jungles, discussed artificial turf. He stated he is not a fan and does not like it visually, because it smothers the earth. He does not think it gives anything back to the environment or creates diversity. He thinks it get super hot in the sun, and super dirty, and does not renew itself. He stated that he understands the other Landscape architects concerns and when their clients want it. He stated the use of artificial turf should be reviewed on a case-by-case basis. As far as its use in a shady area where lawn will not grow, he believes it should be restricted and not pervasive.

End of Public Comments

Discussion ensued regarding requiring a variance for artificial turf; limiting it to certain spaces as ARCOM deems necessary on a case-by-case basis; restrictions of width for pavers; not having it count toward green space; prohibition for the front yard, corner lots, ocean front property and areas visible to the public; creating a policy or incorporating details in the ordinances such as height, color, materials, being lead-free, etc.; and how to proceed with people who illegally installed it, especially if they do not meet the 45% landscape requirement; and other specifics. The Committee will discuss specifics at the next ORS meeting.

The Committee recommended that artificial turf should be prohibited unless approved by ARCOM, LPC or staff, in limited circumstances, and must obtain a permit. It will not count towards landscape open space or hardscape.

Mr. Boodheshwar mentioned to the Committee that they should also take into account that synthetic T strips are used at the golf courses and some playgrounds have a synthetic turf surface.

B New Business

1. Review of Truck Study Report
Paul Brazil, Director of Public Works
This item was deferred to the next meeting to be held on August 9, 2021.
2. Discuss Possible Modifications to the Native Landscape Section in

Chapter 66 of the Town Code

Wayne Bergman, Director of Planning, Zoning and Building

Chair Araskog commented that she hoped the landscape architects listening today would present applications with a focus on native landscape trees, shrubs, ground cover and hedges until a comprehensive native ordinance is passed. She mentioned that she had seen certain landscape plans presented at ARCOM that were between 60% and 90% native. She hoped they will be an example for others.

Mr. Bergman stated that the Town Council had adopted Ordinance 21-2018 in early 2019 relating to vegetation changes to Chapter 66 Natural Resource Protection. This ordinance added, for the first time, a minimum requirement of 25% native plants for new landscape projects. He stated that native plants are defined as plants that naturally occur in this part of Florida, do not require direct human interaction to grow, are generally resistant to pests and require minimum irrigation to survive. They are good choices to minimize water usage and to avoid the use of chemicals. After adoption of the Ordinance, landscape designers provided the Town with landscape plans showing that they met or exceeded the 25% native requirement. It soon became clear that more work was required on the Code to provide the details of native landscape calculations and the type of plant material to be included. The new requirement began to raise questions, so this matter was brought to the Town Council who referred it to the ORS committee.

Director Bergman stated the four general areas for review as follows:

- 1) How to calculate the 25% requirement and what plant classes are to be included;**
- 2) Is the 25% requirement appropriate? ;**
- 3) The plant lists (five are mentioned in Chapter 66); and**
- 4) Review of Chapter 66 regarding native plantings, so it is consistent with other parts of the Code.**

He stated that staff examined native landscaping requirements from neighboring communities and several of the native plant lists from the Native Plant Landscape Ordinance Handbook produced by the Florida Native Plant Society. Local landscape professionals were consulted and provided their opinions on the questions above and ways to resolve conflicts with our regulations.

Regarding the first review area (1), how to calculate the 25% requirement, Mr. Bergman questioned whether it meant 25% of the landscaped area, number of plants and if it represents the coverage area, is it calculated at the time of the plant installation or at maturity? He stated that Susan Lerner of the Preservation Foundation of Palm Beach was very helpful in the preliminary stages of the process.

As to number (2), he stated that they reviewed 19 south and central Florida communities and their native landscape minimums. He reported that at 25% the

Town was the lowest of any community that was reviewed. He stated that some communities, such as Lee, Saint Lucie and Monroe Counties, set differing minimum requirements for different classes of plants. The Atlas of Florida Plants by the Institute for Systemic Botany was used as a reference to identify native plants by county in Florida. He mentioned there were just minor differences between the plant lists and. He mentioned various landscape architects who provided input in the discussions. He stated that Chapter 66 should be reviewed for compatibility

Third Review (3) is the lists. Mr. Bergman discussed our Town code and its reference of five different lists that are similar but do have minor differences. The first list is for Invasives that they call the pest plants. Then the code gets into other types of plants. The Atlas of Florida Plants by the Institute for Systemic Botany is used as a reference to identify native plants species by the County in Florida. Chapter 66 sec. 212 of the Town's code, Purpose and Intent, references the Florida Exotic Council's list of exotic species. Chapter 66, Section 285, mentions two other lists: the Xeriscape Guide by the South Florida Management District and an undefined County and Regional list. All lists were provided in the back-up. The lists have minor differences, but Mr. Bergman stated that it would be helpful if one list could be used by all designers and when the Town reviews plans. His opinion is that there is no wrong answer, but just what is best for Palm Beach.

Fourth Review (4) is of the native regulations throughout Chapter 66 for compatibility. Mr. Berman said that Susan Lerner helped Staff sort through these issues to find possible solutions and that Raymond and Amanda Jungles, Jorge Sanchez, Keith Williams, and Dustin Mizell gave input too.

Public Comments

Susan Lerner, Preservation Foundation of Palm Beach, applauded Mr. Bergman for his presentation. She spoke regarding the calculation of the percentage of native plants and referred to the Ordinance, especially in regard to the intent to encourage the presence of birds and wildlife. She explained that to accomplish this intent diversity of plant species is needed and is the key element. She prefers requirements in each category to accomplish diversity, in other words 25% for trees, 25% for shrubs, 25% of verbacious plants, etc. She stated that it is the diversity that meets the food needs for the young and adults, and shelter for nesting and from predators.

She stated that area coverage is problematic and gave the example that if you had a native Oak that had 6,000 square feet in coverage that no other natives would necessarily be required in that landscape. She discussed a similar issue of counting plants could be if one planted 100 Simpson Stoppers for a hedge, the requirement could be met with only one species, and you would lose food for butterflies and birds. She does not believe either example meets the intent of the ordinance. She made several points she hopes 25% could be seen as an opportunity and not a burden- an opportunity to learn about new plants, explore new ways to use natives

and to offer a high level of landscape stewardship. She stated that there are many handsome, elegant, and interesting plants in the palette for Palm Beach.

She detailed some of the issues she found when reviewing ARCOM applications with the native requirements. She said many were counting non-natives as natives- one example is many think oranges are native to Florida. There were also native plants that grow in the Panhandle specified on plans to be used in Palm Beach that are expensive but will not survive here. She stated that there were Category 2 invasive plants listed for use. It was clear the means for calculating the 25% needed to be resolved, and that accuracy checking is critical. Improperly specified native and invasives have probably already been planted on the Island.

What is the solution for this? Education is key. Education about natives and invasives. Requiring landscaping changes can be disruptive to a Landscape Architects' creative process, which is totally understandable as it is for any of us, she said, and therefore education is key. The Institute for Regional Conservation has a lot of information about habitat, growth patterns, soil preferences etc. Not all plants grow anywhere. She suggests that we include more than one resource while Landscape architects are getting used to natives and our requirements. She stated that when she is looking for native plants even she uses more than one resource. She looks at the IRC first but will look at the F&P website and at the Plant Atlas. She researches and sees where the samples were sourced- if she sees a plant was only sourced in dry areas, she will only put that plant in a dry area. She informed Mr. Bergman that the Model Landscape Brochure that he found is from 2007.

She encourages that we do not use the Water Wise document as a sole document as it is from 2003 and does not accurately list plants that are now considered invasive. For example, in 2003 there were 67 species of invasive plants listed and 59 species of category 2; in 2019 it jumped to 81 and 85, respectively. This kind of endeavor needs a living document. She stated that if the Town wants to put together a brochure or pamphlet for what are suitable natives that perhaps goes beyond what the Garden Club has done, they are more than willing to help. As the Landscape Architects start to use these tools, she said, they will become more comfortable.

Raymond Jungles, 3695 Stewart Avenue, Cocoanut Grove, thanked the Committee for reviewing this important matter. He stated that the reason he became a landscape architect was because he was always a student of nature. He stated that our planet is in serious problems and what we do locally can really help restore some of the local ecosystems and create habitat. In his opinion that is accomplished with diversity. He agrees with everything that Susan and Wayne said.

Mr. Jungles stated that the focus at the University of Florida was how to design with nature and how it makes things easier for all the reasons that were already mentioned: the climate, the water conditions, the soil. In the future they will probably regulate irrigation and use of water and you do not want to create a landscape that is on life support systems.

He shared photos of his studio and stated that for his home, studio and his clients he plants 80% natives. He does this because he loves landscapes that are full of life. Full of birds, full of squirrels, hummingbirds, butterflies, and it makes being in the garden and communing with nature so much more pleasant versus just looking at a bunch of plant combinations that is sterile, need fertilization, extra maintenance, pest control and all those sorts of things.

He believes the percentage should be high. He would like to see landscape architects do it voluntarily because it is the right thing and use the appropriate plants for the area. He explained that wetland plants like more moisture than sand hill plants, so that is very important to understand and education is vital.

He said The Native Plant Society is there; IRC is there. He stated he is more than happy to help whenever he can. He discussed the demonstration project at Phipps Ocean Park that he believes will be very helpful for the community, and said he appreciates the opportunity. He stated that we live in a great state and there are some amazing plants that are here and why we have to always use plants from some other region, some other part of the world makes no sense whatsoever. He stated that there has been an awful lot of destruction in the wake of human development and what was there was beautiful and it sustained quite easily- the native flora and fauna. He stated that we reduced tremendously the areas that can be landscaped, and suggests we bring back some of the plants that were there.

He thinks Monroe County's requirement to remove invasive species to get a building permit and its requirement that 100% of the required parking lot material must be native- that is the screening of the parking as well as the canopy trees- is fantastic. He would like to see the Town increase its required percentage of native plants and stated that 50% would be a good start. He stated that we have a great resource in Susan Lerner and the Preservation Foundation. He thinks the willingness to work in the community to make things better is going to be great and maybe we will see less trucks rolling around full of dangerous chemicals and there will be a lot of birds back where they used to be. And he cannot say enough about reading "Nature's Best Hope" by Douglass Tallamy because it clearly states what we need to do to help our communities to become better for our children and their children and the future. He thanked us very much for the opportunity to speak (He shared a presentation regarding climate, water conditions, and soil and showed the use of native plants on several projects.)

Jorge Sanchez, 239 Southland Road, President, SMI Landscape Architecture, spoke regarding use of native plants; cost of maintenance and the type of experts being consulted. He stated that one of the first things Mr. Bergman mentioned was the reduced cost of maintenance that natives have, and the tremendous amount of buzzwords used today. He said his firm designed Pan's Garden, which was very controversial at the time because no one understood natives. At that time, he said the buzz word was the low water type of plants, the xeriscape, and he convinced

the Board of the Preservation Foundation to make it into xeriscape to the maximum and use natives. He stated that he is very knowledgeable on natives. He suggests there are many misperceptions about natives with one being that natives never have to be sprayed or require any chemicals. He stated that is just not true. He discussed that when white fly first came to Miami it was pathetic to see huge areas where native plants were actually covered in white fly. The other is the cost of maintenance.

Mr. Sanchez stated he is on the verge of being shocked that we want to compare ourselves with other communities. He expressed his sadness that we are the example of gardens of the entire nation and people come to Palm Beach to see that diversity and the variety of our gardens, incredible spots, and we want to homogenize it to one type of garden. To him that is inconceivable- he has always held the view that it is so odd that people want to move to a community because they feel that it is so incredible and yet the first thing that they want to do is change it. We must look around us and be a little bit more admirable of what we have.

End of Public Comments

Chair Araskog provided a brief review of the earlier discussion.

Member Cooney thanked all the parties involved for their input. He mentioned sustainable gardening demonstrated by the Garden Club and other green initiatives.

The Committee discussed the different items Mr. Bergman brought forward.

Chair Araskog expressed her embarrassment at how low the Town's 25% requirement was in comparison to other municipalities and expressed a desire for it to be increased to 50%, which seems to be the norm. She also discussed the need to focus in on comments from Mr. West to find the appropriate calculation comparison. She likes breaking up percentages for shrubs, trees, and ground cover.

Member Cooney expressed his thanks to all those who participated and to recognize that while we may be low there are a lot of communities that have nothing on their books, we have been making positive inroads both at the Government level and not-for-profit at advancing more sustainable gardening to be more responsible stewards of our Town, the environment, the world that we live in and in recognizing we are part of a greater ecosystem beyond our community. He stated that we have done that with the recent green initiatives.

The Committee discussed the questions and options.

Mr. Cooney stated that he would like us to have diversity; he is comfortable with staying at the 25%; he is encouraged at all the residents now asking for natives; he has no recommendation on the lists due his lack of knowledge on this subject; he would like diversity; he was intrigued by the point system especially for small lots that will have a harder time; and if the goal is creating change and diversity, it

should carry more weight if someone chooses something special.

Ms. Araskog believes we could bump it up to 35% but would like to go to 50%, citing other communities like Manalapan at 50% and Sanibel at 75%. She would like to think we could be as green. She stated that she has been so impressed by landscape architects who are presenting plans at ARCOM with 60 to 70% natives and are making it very pretty. She does think someone must be looking at the plans to be certain they are not putting in Category 1 and 2 invasives.

Mr. Cooney stated that the most pressing issue is figuring out the method to calculate percentages, to define them, to select a list for natives and invasives, and what is needed for staff to check the ARCOM plans. Ms. Araskog and Mr. Boodheshwar expressed that they remembered it was originally passed as 25% of the 45% landscape requirement by coverage at installation not maturity and could use that for now until we have finished the ordinance. Chair Araskog agreed. Mr. Cooney recommended the same.

The Committee decided the calculation presently is 25% of the 45% required landscape.

Discussion of the best native plant sources (lists)

Susan Lerner prefers using a more flexible list and that is from the Institute for Regional Conservation (IRC) and Raymond Jungle prefers this list too. She also recommends the Native Plant List. **Mr. Bergman recommended getting a landscape architect to check that applications for ARCOM and LPC meet the native requirements.**

The Committee decided that we need more information to decide on a list and will address it at the next meeting.

Susan Lerner recommended using the FLEPPC List of Invasive Plants species to identify Invasive Category 1 and 2 plants. She said not to use the Water Wise as it is outdated. She prefers the Institute for Regional Conservation and others, and said The Model Ordinance recommends creating individual lists for each community.

Ms. Araskog recommended we look at whether the Town should allow Category 1 and 2 Invasive species and whether we should use xeriscape. She would like more specification at the next meeting. She recommended having charts of different communities and what list is used, how they define it and how they calculate the percentages, and to add the recommendations from the landscapers. She suggested maybe including the different groups that we went to the last time for their recommendations, which were the Garden Club, Preservation Foundation, The Civic Association Beautification Committee, and a group of landscape architects.

Mr. Boodheshwar suggested there was enough feedback now to answer the questions posed by the Committee, which will be handled at the next meeting, to begin answering the questions and to have recommendations with options. They will focus in on the three questions.

The committee recommended the following changes to the Ordinance to be brought forward as a draft ordinance at the next ORS meeting:

- 1) Use 25% of 45% required native space at installation not at maturity until we have completed the new ordinance;

Public Comment

Steve West, Landscape Architect, Parker Design Group, specified that Palm Beach County requires 60% native plants. He stated that the Town's 25% of the 45% of open space actually is greener than the County's 60% of required trees. He also said he agreed with Mr. Sanchez that natives do not mean less pesticide sprays and chemicals, and gave some examples. He said he would like to see the native requirement stay in the Town and suggested that the Town carefully look at what the percentages mean when comparing ours to other municipalities.

Chair Araskog recommended Mr. West and the other Landscape Architects listening send in their recommendations and thanked Mr. West for his participation.

Jorge Sanchez, President, SMI Landscape Architecture, requested that landscape architects be given a list of the suggested plants that are being proposed, what experts are advising the Town and which communities we are trying to emulate. Ms. Araskog thanked Mr. Sanchez for his participation today.

End of Public Comment

3. Discuss Potential Height Limitations of Vegetation Adjacent to Neighboring Structures
Wayne Bergman, Director of Planning, Zoning and Building

This item was deferred to the next meeting to be held on August 9, 2021.

VI. ANY OTHER MATTERS

*** Public Comment heard in the beginning of the meeting with a proposal Chair Araskog asked Mr. Gary to bring to Town Council.

Brad Gary, 229 Onondaga Road, presented the idea of developing a voluntary construction code for all new construction projects due the increaser in major new construction on our small Island. He discussed the difficulty of walking through our neighborhoods without incurring new construction blocking access to pedestrians, driveway access and debris littering the street. With hundreds of new

construction permits issued each year, he believes it is time to restore a semblance of civil order to the Town of Palm Beach in regard to new construction.

Absent a full construction moratorium, which some residents prefer, the establishment of a voluntary construction code for Town contractors may be a realistic alternative. First, contractors would be required to adhere to several general principles to be voluntarily certified as a "Palm Beach Good Neighbor Code Member." Requirements would be subject to negotiation between the Residents and the Contractor. If a contractor signed up, he would be deemed a "Palm Beach Good Neighbor Code Member" and would have actual signage at each of their properties bearing a gold star logo indicating code membership. Signage on the site would require a name and 24-hour telephone number for a responsible company executive. Examples of possible requirements could be no construction activity on the weekends, placement of portable toilets and one per job site, weekly clean out services required, dumpster requirements, noise limitations, trash receptacle requirements, rodent requirements, etc. We would like to see completion of construction activities within 18 months. Inside work completed within 2 years. Noise requirements at 50 decibels, especially when considering what North End residents are suffering from the construction.

This could be a citizen driven program to encourage our contractors to work closely with residents to improve the safety and appearance of our Town. He expects that most of the contractor community would join the program as responsible businesses to contribute to the health and welfare of Palm Beach. He asked that the Civic Association or the PB Chamber of Commerce be asked to staff the small administrative side of this to make presentations and most importantly to give awards to good contractors. He stated that The Palm Beach Voluntary Construction Code has great potential in addressing many of the critical construction building issues that now threaten to divide the Town and requested that we put a new system in place that advantages both residents and builders before the advocates of a zoning moratorium prevail in an election referendum.

Mr. Keogh agreed with Mr. Bradford Gary's idea and hoped to create the organization himself. Mr. Ford also agreed with Mr. Gary and Mr. Keogh.

The next meeting of the ORS Committee is scheduled to be held on Monday, August 9, 2021 at 9:30 a.m.

VII. ADJOURNMENT

The ORS Committee meeting of July 1, 2021 was adjourned at 1:30 p.m.

APPROVED:

Julie Araskog, Chair

ATTEST:

Queenester Nieves, CMC, Town Clerk

Date

DRAFT