

Monday, January 10, 2022
7:00 pm



Town Hall Commission Chambers
247 Edwards Lane
Palm Beach Shores, FL 33404

**TOWN COMMISSION
WORKSHOP AGENDA**

Mayor Alan Fiers
Vice Mayor Scott McCranels

Commissioner Tracy Larcher
Commissioner Janet Kortenhuis
Commissioner Brian Tyler

Keith Davis, Town Attorney
Town Administrator Wendy Wells
Town Clerk Evyonne Browning

PLEASE NOTE:

**THIS MEETING MAY BE CONDUCTED USING
COMMUNICATION MEDIA TECHNOLOGY**

Meeting link:

<https://townofpalmbeachshores.my.webex.com/townofpalmbeachshores.my/j.php?MTID=m8d38e0c2ab4c8492918ca05a16761fdc>

Meeting number: 2633 065 3509

Password: 0110

Join by phone: +1-408-418-9388 United States Toll **Access code:** 2633 065 3509

1. **CALL TO ORDER**

- a. Pledge of Allegiance
- b. Roll Call

2. **PRESENTATIONS AND/OR DISCUSSIONS:**

- a. District B – Town’s plan to stimulate redevelopment
- b. Inlet Park property encroachments
- c. Purchasing guidelines
- d. Capitalization threshold
- e. Peanut Island MOU

3. **PUBLIC COMMENTS**

4. **ADJOURNMENT**

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision made by the Town Commission with respect to any matter considered at this meeting or hearing, such interested person will need a record of the proceedings, and for such purpose may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based. The meeting/hearing will be continued from day to day, time to time, place to place, as may be found necessary during the aforesaid meeting.

IN ACCORDANCE WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (ADA), THIS DOCUMENT CAN BE MADE AVAILABLE IN AN ALTERNATE FORMAT (LARGE PRINT) UPON REQUEST AND SPECIAL ACCOMODATIONS CAN BE PROVIDED UPON REQUEST WITH THREE (3) DAYS ADVANCE NOTICE. FOR HEARING ASSISTANCE: If any person wishes to use a hearing device, please contact the Town Clerk.



Item 2.b.

Keith W. Davis, Esq.

*Florida Bar Board Certified Attorney in
City, County and Local Government Law*
Email: keith@davislawteam.com

MEMORANDUM

TO: Mayor Fiers, Vice Mayor McCranels, Commissioners Kortenhaus, Larcher, & Tyler
CC: Administrator Wells
FROM: Keith W. Davis, Esq.
DATE: November 18, 2021
RE: Inlet Park Property Encroachments

Please find attached my 2010 Memorandum on the above referenced topic. It is my understanding that there have been no significant changes to the conditions described therein; likewise, the state of the law remains as described therein.

Corbett and White, P.A.

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TRELA J. WHITE
BRADLEY W. BIGGS[^]
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R. MAX LOHMAN
ABIGAIL FORRESTER JORANDBY

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* Board Certified in City, County and Local Government Law
^ State Certified County and Circuit Court Mediator

MEMORANDUM

TO: Mayor John M. Workman,
Vice Mayor Alan D. Fiers,
Commissioners Dereuil, McCranels and Tropepe

CC: Town Manager Cindy Lindskoog

FROM: Keith W. Davis, Esq.

DATE: May 3, 2010

RE: Inlet Park Property Encroachments

As directed by the Town Commission at its April 19, 2010 meeting, I have prepared the following information regarding the existing Inlet Park property encroachments, and the legal issues that surround them.

1. It appears (based on a 2005 survey of the Inlet Park property and current GIS mapping photographs taken from the Palm Beach County Property Appraiser's website), that there are four minor sidewalk encroachments that connect private property sidewalks to the Inlet Park sidewalk on the easterly portion of the Inlet Park property (LOTS 590, 588, 585 and 582). West of the Town Parkway, there appears to be one additional sidewalk connection from private property to the Inlet Park sidewalk (LOT 575), and then several more significant encroachments; specifically, hedge material, several walkway/patio areas and most notably, a series of retaining walls, a swimming pool and pool house, parking lot areas which also include one small building, and a shuffleboard court at the western end of the Inlet Park property (LOTS 567 through 572).

2. On September 21, 1964, the Town entered into a Lease Agreement with Romaine, Inc., to allow Romaine, Inc. (LOTS 570 and 571) to use certain land in the Town's Inlet Park (approximately 103 feet deep adjacent to Lots 570 and 571) for a parking area, garden, and site for a swimming pool. This Lease Agreement runs through January 15, 2057. The only consideration mentioned in the Lease Agreement is the sum of \$10.00; however, copies of correspondence dating back to 1964 indicate that the lease was given to the Town and approved by the Town Commission in exchange for a quit claim deed to certain jetty property from C. Robert Burns o/b/o the Edwards Estate. Although the Lease Agreement does not mention any provision for the construction of a pool house building, I note that the pool house is wholly contained within the leased area and

is adjacent to the actual swimming pool. I also note that over the years, the Town has approved and issued multiple building permits to allow work in and about the pool and the pool house. I do not have information on the actual construction of any of the improvements located within the leased area. The Lease Agreement itself acknowledges that the leased area "is presently the subject of various nonconforming uses" and that it is entered into subject to Section 8 of Ordinance 64. Ordinance 64 was an early Town zoning code. Section 8 provided for the continuation of non-conforming buildings and land uses, which would lead one to believe that the swimming pool, the pool house, or both, were in existence prior to the execution of the Lease Agreement.

3. There is no other legal documentation that addresses or authorizes any other Inlet Park property encroachments. The largest non-documented encroachments appear to exist adjacent to LOTS 567 through 569, at the most western end of the Inlet Park property. These encroachments include a retaining wall, a shuffleboard court, a parking area (which connects to the permitted parking area used by Romaine, Inc.), and a small CBS building.

4. On private property, encroachments such as those in question here can obtain prescriptive rights to remain. Prescriptive rights can come into existence when all of the following conditions occur: a continuous and uninterrupted use (encroachment) for a minimum of 20 years, during which time, said use was with the knowledge of the property owner, or was so open and notorious that knowledge can be imputed to the property owner, the nature of the use (encroachment) is that of a limited, defined area, and the use was without the permission of the property owner. Although the non-documented encroachments (those other than the encroachments of Romaine, Inc.) in question here cannot technically acquire "prescriptive rights" since the law generally prohibits such against property owned by the government, it is possible that general principles of equity and fair play could mitigate in favor of their being allowed to remain in their current form, were the Town to try to force their removal after so many years. It is my opinion, however, that any desired re-development of such encroachments could be denied by the Town.

5. Going forward, it is recommended that the Town seek to formally document these encroachments by way of written easements, leases or memorandums of understanding. Such documentation should include insurance and indemnification requirements.

6. In the event that the Town desires to explore the directed removal of any of the non-documented encroachments, several legal issues must be addressed. The Town should verify what, if any, permits have ever been issued relative to these encroachments. The Town should also be comfortable that it can overcome equitable defenses of estoppel and laches. Both of these defenses are, fundamentally, defenses that look at the fairness of requiring removal of the encroachments at this time.

7. There are three elements necessary to establish equitable estoppel: (1) a property owner's good faith reliance, (2) upon some act or omission of the Town, (3) resulting in a substantial change in position or the incurrence of such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right the property owner acquired. The doctrine of equitable estoppel may be applied against a governmental entity only under exceptional circumstances; that is, a property owner is not entitled to rely on the Town's failure to enforce its regulations absent a successful showing that the above elements have been met.

8. To establish the affirmative defense of laches, the property owner seeking to maintain the encroachment must prove: (1) conduct on their part giving rise to the situation; (2) failure of the Town, having knowledge or notice of such conduct, to assert its rights by suit; (3) a lack of knowledge on the part of the encroaching property owner that the Town will now assert its rights; and (4) injury or prejudice to the encroaching property owner in the event relief is accorded to the Town.

9. Whether it is advisable, desirable, or legally defensible to require the directed removal of any of the non-documented Inlet Park property encroachments at this point in time will be dependent on additional facts, which as noted herein, will require further research into Town records. However, I am happy to discuss this matter with you further, at your convenience.



Town purchasing guidelines are set in the Town Code. Changes to those policies must be made by ordinance. Below the current levels are compared to proposed changes.

Current purchasing approval levels:

1. Up to \$499.99 – department head
2. \$500.00 up to \$4,999.99 – department head with Manager or Mayor
3. \$5,000.00 up to \$24,999.99 – Mayor or designee
4. \$25,000.0 and up – Town Commission

Proposed revised approval levels:

1. Up to \$999.99 – department head
2. \$1,000.00 up to \$9,999.99 – department head with Manager or Mayor
3. \$10,000.00 up to \$49,999.99 – Mayor or designee
4. \$50,000.00 and up – Town Commission

Current procedure levels:

1. Up to \$499.99 – no specified procedures
2. \$500.00 up to \$4,999.99 – two verbal quotes
3. \$5,000.00 up to \$24,999.99 – three written quotes
4. \$25,000.00 and up – formal competitive procurement

Proposed revised procedure levels:

1. Up to \$499.99 – no specified procedures
2. \$500.00 up to \$24,999.99 – two verbal quotes
3. \$25,000.00 up to \$99,999.99 – three written quotes
4. \$100,000.00 up to \$199,999.99 – informal competitive procurement
5. \$200,000.00 and up – formal competitive procurement

Informal competitive procurement contemplates the Town advertising for proposals and also proactively seeking known vendors who might be interested in submitting a proposal. Proposals in this range of procurement are not sealed and are not protected by public records exemptions that apply to competitive procurement. Selection of vendor is in the best interest of the Town.

Formal competitive procurement contemplates the Town advertising for sealed bids, proposals or qualifications, that submittals are publicly opened but are also exempt from public records disclosure until the Town makes an award (or 30 days passes from the receipt deadline).

Other statutory requirements for certain procurement will continue to apply, e.g. CCNA process for architects, landscape architects, engineers, and surveyors; Formal bidding for certain public construction projects.

Likewise, statutory exemptions for certain procurement will continue to apply, e.g. sole source procurement, “piggybacking” off another current government contract which contains line items for goods and services being purchased, emergency measures, certain professional and artistic services, etc.



The Town’s current capitalization threshold is \$750. This means any asset purchased with a cost or value of \$750 and useful life of 3 years or more is capitalized. When capitalized, assets are inventoried annually and depreciated for the government-wide financial statements. The Town Commission sets the capitalization threshold. It has not been changed recently.

There is some industry guidance on capitalization thresholds. The Florida Administrative Code Rule 69I-73 requires local governments to record all property with a value or cost of \$5,000 or more and a projected useful life of 1 year or more as capital for inventory purposes. The Government Finance Officers Association (GFOA) in its best practices of capital assets for state and local governments recommends a \$5,000 minimum capitalization threshold for any individual item.

Below is a chart showing what other local municipalities are doing:

Comparison of Captialization Thresholds						
	Juno	Gulf Stream	North Palm	Manalapan	Tequesta	Palm Beach
Infrastructure	5,000	10,000	250,000	150,000	25,000	50,000
Buildings & improvements	5,000	5,000	50,000	75,000	5,000	50,000
Equipment	5,000	5,000	5,000	15,000	5,000	5,000
Intangible assets	5,000	5,000			25,000	
Computer equipment	5,000					3,000

Staff recommends increasing the capitalization threshold to \$5,000.

**Memorandum of Understanding (MOU)
Between Palm Beach County, the City of Riviera Beach,
The Town of Palm Beach and the Town of Palm Beach Shores for
The Recreational and Educational Use of the leased area of Peanut Island**

WHEREAS, the Port is the owner in fee simple of approximately 42 acres of land located on Peanut Island, 6500 Peanut Island Road, Riviera Beach, Florida, 33404-6900; and

WHEREAS, the Port of Palm Beach (Port) and Palm Beach County (County) have agreed to a long-term lease agreement for the renovation, operation and management of the Historic Facilities on Peanut Island by the Parks and Recreation Department (include the Resolution number of the lease agreement here); and

WHEREAS, the County desires to renovate, manage and operate the Historic Facilities on Peanut Island exclusively for public park, historic and educational purposes; and

WHEREAS, the County desires to enter into this MOU with the Town of Palm Beach (Town of PB), the Town of Palm Beach Shores (Town of PBS) and the City of Riviera Beach (City) regarding programmatic, educational and ecotourism opportunities that reflect the diversity of the communities; and

NOW THEREFORE, in consideration of the benefits to the public, and the covenants of the Parties set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Parties to this MOU hereto agrees as follows:

The County intends to renovate, manage and operate the approximate 6.4 acres of historic facilities on Peanut Island in addition to the existing 22 acres leased from the Port as a County park open to the general public for recreational, historical and educational purposes. The County agrees not to change the current land use and zoning on Peanut Island that would permit commercial activities, notwithstanding those retail services commonly associated with a museum or educational facility will be permitted.

The County envisions operating the historic structures as a low impact historical museum serving the general public, students, tourists and others a minimum of four days per week to include a Saturday and/or Sunday.

The County will:

(a) Manage, maintain, and operate the historic facilities on Peanut Island in the same manner as the rest of Peanut Island without impairing or restricting maritime uses by the Port.

(b) Provide the Port with an Operational Management Plan (OMP) which will include general and specific goals, management and operation of the site and projected improvements to the historic facilities. The OMP will include strategies designed to effectuate activities that will create an educational, recreational and entertaining environment that equitably supports inclusion and diversity.

(c) Continue partnerships with municipal Parks and Recreation Departments and non-profit organizations that attract and encourage youth, students, seniors and other groups to visit

Peanut Island for picnicking, environmental exploration, snorkeling, history/education/environmental tours and special functions.

(d) Partner with donors and explore grant opportunities to renovate and restore historical facilities and to conduct activities and functions.

(e) Encourage private local residents to visit and participate in Peanut Island activities and services by creating fair opportunities that may include:

- (1) free and reduced admission fees for daily activities and special events being held on Peanut Island through creative partnerships to offset the direct operational cost whenever feasible.
- (2) free and reduced transportation fees to attain physical access to the Island through creative partnerships to offset the private transportation cost whenever feasible.

(f) Work closely with all Parties to this MOU to seek input on program offerings, and will install an information kiosk displaying the logos of the Town of PB, the Town of PBS and the City.

(g) Work collaboratively with the municipalities for cross-promotion of facilities as both a local resource for quality of life and a tourism destination for economic vitality.

(h) Conduct outreach and endeavor, as regulations permit, to recruit employees and volunteers from the surrounding community, particularly for youth education programs where teen and young adults would gain work experience and achieve community service volunteer hours.

(i) Ensure that all signage, and marketing collateral reflects the partner municipalities in the agencies that are contiguous to Peanut Island.

(j) Provide for opportunities for partnering agencies such as the local municipalities and the Port to utilize the site for bona fide municipal purposes i.e. Staff outings, training, recreational activities etc.

(k) Provide annual updates on the (OMP) upon request.

(l) Create programs that promote inclusivity and allows for underserved and underrepresented communities to gain access to the amenities and services provided on the island.

The Town of PB, the Town of PBS and the City will coordinate with the County if they wish to sponsor a group for a guided tour or to include the historic facilities as part of a community-wide celebration, program, or hosted conference activity. The County will work cooperatively with each Party in this effort.

The County retains the option to operate the museum facilities directly or contractually with revenue generated through tour admission fees, program registration, museum store, food/beverage sales and donations.

Both the County and the Town of PB, the Town of PBS and the City agree to contribute to and /or work collaboratively to pursue grant funding and other fund raising opportunities for the restoration and operation of the historic facilities.

Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the parties agree that no person shall, on the grounds of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of or be subjected to any form of discrimination under any activity conducted pursuant to this MOU.

If any term or provision of this MOU, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this MOU, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this MOU shall be deemed valid and enforceable to the extent permitted by law.

This MOU shall be effective once executed by all Parties to this MOU and shall remain in effect until the Lease between the County and the Port terminates. This MOU shall automatically terminate as of the effective termination date of the Lease and may also terminate if there is a change or modification to the Lease Agreement which would change or modify the terms of this MOU or if there is a change or modification to the Historic Facilities at Peanut Island that would contradict the intent of this MOU.

Execution of this Memorandum of Understanding signifies your understanding and concurrence with same.

IN WITNESS WHEREOF, County, Town of PB, Town of PBS and the City have executed this MOU, or have caused the same to be executed as of the day and year first above written.

Attest:

Joseph Abruzzo, Clerk of the Circuit Court
and Comptroller Palm Beach County

Palm Beach County, Florida, By
Its Board of County Commissioners

By: _____

Deputy Clerk

By: _____

Commissioner Robert S, Weinroth, Mayor

Approved as to Form and Legal Sufficiency

Approved as to Terms & Conditions

By: _____

Anne Helfant, Assistant County Attorney

By: _____

Eric Call, Director
Parks & Recreation Department

CITY

**CITY OF RIVIERA BEACH, a political
subdivision of the State of Florida**

By: _____

Clerk

By: _____

Ronnie L. Felder, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____

TOWN

**TOWN OF PALM BEACH, a political
subdivision of the State of Florida**

By: _____

Clerk

By: _____

Danielle H. Moore, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: _____

TOWN

**TOWN OF PALM BEACH SHORES, a political
subdivision of the State of Florida**

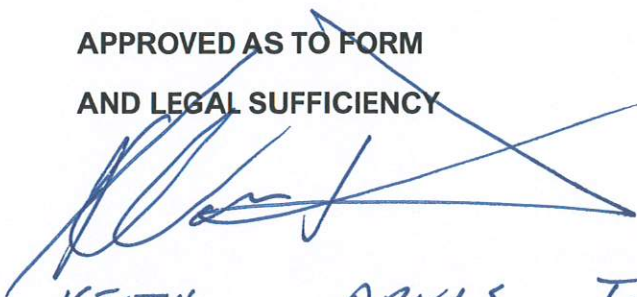
By: _____

Clerk

By: _____

Alan D. Fiers, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**



Handwritten signature in blue ink, appearing to read "Keith W. Davis".

KEITH W. DAVIS - Town Attorney

By: _____

Handwritten text, possibly a signature or date, located at the bottom right of the page.