TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON WEDNESDAY, MARCH 9, 2011

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Wednesday, March 9, 2011, at 9:30 a.m., in the Town Council Chambers. On roll call, all of the elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Administrative Assistant Anne Boyles gave the invocation. President Rosow led the Pledge of Allegiance.

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

There were none.

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Rosow commented that he wanted to correct the record, from his statement yesterday, regarding the applications for Shore Protection Board that no one from the north end applied. He said that there were four people from the north end that applied and two of them were selected for the Board. The last time a position was open for re-appointment, no one from the north end applied for the position.

Council Member Diamond commented regarding the issue of a newly formed coalition named Save Our Shores (SOS) from yesterday's meeting requesting enlargement of the Shore Protection Board.

Mayor Coniglio commented that the other suggestion, yesterday, was to disband the Shore Protection Board. She noted that Town Manager Peter Elwell would present a staff financial Plan B recommendation at the April 4, 2011, Shore Protection Board meeting, and suggested placing the issue on hold until after that meeting.

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Council Member Kleid expressed concern regarding the request that two people be appointed from that very specific SOS group. He noted that the Town Council had not done that in the past, as the Town Council appointed people as individuals and not as members of a specific group.

President Pro Tem Wildrick commented that the Town Council should consider placing discussion regarding the SOS Coalition on the agenda for the 13th, since a number of citizens requested it and would be a worthy discussion.

President Rosow suggested deferring the discussion until receipt of Town Manager Elwell's report relative to the Shore Protection Board's next meeting in early April.

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

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

Leslie Evans, 135 Seminole Avenue, commented that he noticed the rubber strips for a traffic study, which was a prerequisite to obtain approval from the Federal Department of Transportation (FDOT) for closure of the median cut-through on Royal Poinciana Way.

President Rosow confirmed that Town Council authorized staff to work with FDOT.

Town Manager Elwell responded that the report of the traffic study will be on the April 12, 2011, Agenda.

Joyce McCleary, co-owner of Joy of Palm Beach, 233 Royal Poinciana Way, and vice-chairman of the new Royal Poinciana Way Association, indicated that the Association has been approved by the Centennial Commission and the Town Manager's Office for the event "Centennial on Poinciana", the original main street of Palm Beach, Fl. The event is scheduled for Saturday, April 16, 2011; she requested Town Council approval for a time capsule and described what it would entail.

Council Member Diamond suggested consideration of the median for the location of the time capsule.

President Rosow asked Ms. McCleary to work with staff regarding the time capsule.

VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

ADDITION: Item VI.A., Waiver of Certain Sections of the Town Code to Facilitate Preparation for and Execution of the Centennial Finale Event on April 17, 2011. [Peter B. Elwell, Town Manager]

ADDITION: Item VI.B., Designation of Jones Foster Johnston & Stubbs (Rather Than an Insurance Carrier's Panel Attorney) to Represent the Town and Town Manager in the following Litigation: William Amador vs. Town of Palm Beach and Peter B. Elwell, Case no. 50-2011-CA-003092-XXXXMB AB Fifteenth Judicial Circuit, Palm Beach County, Florida. [Peter B. Elwell, Town Manager]

ADDITION: Report from Planning, Zoning and Building Department regarding the Testa application.

WITHDRAWN: Item VIII.C.1.b., Special Exception #6-2011 with Variances.

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

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A. Item VI.A., Waiver of Certain Sections of the Town Code to Facilitate Preparation for and Execution of the Centennial Finale Event on April 17, 2011. [Peter B. Elwell, Town Manager]

Responding to Town Manager Elwell, President Rosow indicated that the Town Council was in agreement to the Centennial Commission's handling of the time capsule Centennial event.

Mr. Elwell requested that the Town Council waive certain sections of the Town Code, as there were some aspects that would normally exceed Town Code, such as:

- Parking certain vehicles along Whitehall Way in order to move equipment into appropriate locations to prepare the museum grounds for the April 17, 2011 event;

- The testing of the lighting for that event, which would be confined to the property, but would be done during evening hours not normally done in Town, as it was set forth in the letter to the Town Council.

Motion made by Council Member Kleid to accept the recommendations and make the necessary waivers to adhere to the request of the Centennial Commission, pursuant to the letter from Bill Bone. President Pro Tem Wildrick seconded the motion. On roll call, the motion carried unanimously.

Mr. Elwell wanted to ensure that the Town Council was aware that there would be some small scale vending that would occur such as food and Centennial items.

B. Item VI.B., Designation of Jones Foster Johnston & Stubbs (Rather Than an Insurance Carrier's Panel Attorney) to Represent the Town and Town Manager in the following Litigation: William Amador vs. Town of Palm Beach and Peter B. Elwell, Case no. 50-2011-CA-003092-XXXXMB AB Fifteenth Judicial Circuit, Palm Beach County, Florida. [Peter B. Elwell, Town Manager]

Mr. Elwell indicated that there would be an insignificant difference in the rates, as there were hourly rates paid to Jones Foster Johnston & Stubbs versus what would be paid to the panel attorneys. It could not be specifically defined and would not be very significant compared to the benefits of a strong protection in defense of the Town.

Motion made by Council Member Pucillo, seconded by Council Member Diamond, to approve representation by Jones Foster Johnston & Stubbs in Litigation of William Amador versus Town of Palm Beach and Peter B. Elwell. On roll call, the motion carried unanimously.

VII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 5-11 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County Florida, Amending Chapter 134, Zoning, At Sections 134-172 To Change The Commencement Of Special Exceptions And Variances From Architectural Commission Or Landmark Preservation Commission Submission To Approval; Section 134-330 To Change The Commencement Of Site Plan Review As Architectural Commission Or Landmark Preservation Commission Submission To Approval; Sections 134-1107 And 134-1109 To Permit Office Uses On The First Floor In The Two Hundred Block Of Peruvian Avenue And Bradley Place In The C-TS Zoning District; Section 134-2175 By Providing An Exemption For The Two Hundred Block of Peruvian Avenue And Bradley Place In The C-TS Zoning District from Principal Equivalency For Required Parking; Sections 134-2436 And 134-2437 To Provide A Provision To Allow Hanging Business Identification Signs In Commercial Zoning Districts; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing For An Effective Date. [John Page, Director of Planning, Zoning, and Building]

Council Member Diamond recused himself from voting on this Ordinance, as his wife owns property at 380 S. County Road. He provided Form 8b to the Clerk and left the dais.

Town Attorney Randolph read Ordinance No. 5-11 by title, as printed above.

Allen Wyatt, 1145 N. Lake Way, commented that the Ordinance was flawed and it should be studied more. He suggested that a summary be provided to the public, as the many referrals made it difficult for the public to understand.

Adele Kahn, 231 and 235 Peruvian Avenue, commented that she had enough parking for 16 cars on her property and that the Town should be more open.

Leslie Evans, 135 Seminole Avenue, commented in favor of adoption of the Ordinance.

Rachel Lorentzen, 216 Garden Road, commented regarding her opposition to the adoption of the Ordinance at this time.
Leta Foster, 64 Via Mizner, said that she agreed with Ms. Lorentzen, and that the Ordinance needed more study.

Earl Hollis, 145 Peruvian Avenue, with an office at 217 Peruvian Avenue, commented regarding the appearance of Peruvian Avenue and that he wanted the Town to remain as it is; he stated that he has had a first floor office on this street for about 50 years.

Anne Pepper, 333 Seaspray Avenue, commented in opposition to adoption of Ordinance 5-11.

Gay Cinque, 3 Golfview Road, commented regarding the several buildings she owned on Peruvian Avenue and asked that the north side of the 300 block be included in the change if it is approved.

Dr. Gregory Boyajian, 235 Peruvian Avenue, commented that he is in favor of retail space rather than office space, because it brings more people in. Although he questioned what would happen if retail space opened and no one walked in.

Michael Spaziani, 323 Seaspray Avenue, asked for an explanation of Bradley Place as stated in the Ordinance.

Zoning Administrator Castro responded that it included all that fronts onto Bradley Place; if a business did not front onto Bradley Place, such as Spa Cara and the building facing Royal Poinciana Way, toward the southwest, it would not be included in the area.

Responding to Mr. Spaziani, President Rosow provided clarification regarding Council Member Diamond's recusing of himself regarding the Ordinance.

Mayor Coniglio presented facts to Mr. Spaziani regarding Bradley Place.

Discussion ensued among Mr. Spaziani, Town Council, and Town Attorney Randolph, regarding litigation and spot zoning. President Pro Tem Wildrick noted that if anyone thought the Town Council was acting nefariously, they should make a public complaint.

Allen Goldboro, Planning and Zoning Commission Chairman, 2500 S. Ocean Blvd., commented regarding the Planning and Zoning Commission's opposition to the three sections in the Ordinance and urged that the Town Council send it back to the Commission for review of the parking in general.

Anita Seltzer, 44 Cocoanut Row, commented regarding her opposition to the adoption of Ordinance 5-11.

Executive Session:

Responding to Council Member Pucillo, Mr. Castro indicated that the east side is the zoning district of Bradley Place.

Town Attorney Randolph provided an explanation of spot zoning, and how it is different than limited or partial zoning, as stated in Ordinance No. 5-11.

Discussion occurred among the Town Council, Town Attorney Randolph, and staff regarding the reasoning behind the Ordinance. Council Member Pucillo noted that the 200 block of Peruvian Avenue has had offices for as long as he could remember. Staff related that, as offices had been in place on that street prior to 1985, when variances for office space were not required, it was not feasible to require a variance for office space now, because of the existing office spaces. He said it was not spot zoning, as nothing was changing on Peruvian Avenue; he noted that Bradley Place always had offices on the first floor also. These areas were unique to first floor office use. He said that the Ordinance is reflecting the reality of the existing situation.

Zoning Administrator Castro indicated that the two aerial maps that were originally part of Ordinance 26-10, which was justification for Ordinance 5-11 and backup information that was prepared by staff, would be made part of the record.

President Rosow emphasized that the subject was studied by the Planning and Zoning Commission, and was rejected.

Motion made by Council Member Pucillo, seconded by Council Member Kleid, to adopt Ordinance 5-11. On roll call, the motion carried 4-0, with Council Member Diamond recused.

B. First Reading

None

VIII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

Administrative Assistant Boyles administered the oath to all those who would be providing testimony.

a. SITE PLAN REVIEW #4-2011 The application of 210 Emerald Lane, LLC.; relative to property commonly known as 210 Emerald Lane; described as Lot 34 of REVISED PLAT OF STOTESBURY PARK, according to the Plat thereof as recorded in Plat Book 20, Page 42, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a Site Plan Review to permit construction of a 3,197 square foot two-story single family residence on a platted lot with a width of 90 feet in lieu of the minimum 100 foot lot width required within the R-B District. [Attorney: M. Timothy Hanlon]Deferred from the February 16, 2011, Town Council meeting.

Ex-parte communication was declared by: Council Member Kleid with Attorney Timothy Hanlon, the neighbor to the east, and all advocated for their client's or their personal position; President Rosow with Attorney Hanlon who advocated for his client; Council Member Diamond talked to the neighbor and some of the lawyers, as the Site Plan Review is only two blocks from his home.

Attorney Hanlon, representing 210 Emerald Lane, LLC, provided an overview of the request. He noted that this was presented and deferred last month. For the record, he provided how the application of the proposed home met all required site plan criteria. He indicated that he met with the two objecting neighbors and he provided the agreement, which would be submitted as conditions, if the Town Council was willing to approve the application. At the request of President Rosow, Attorney Hanlon listed the seven conditions of the neighbors' agreement.

Zoning Administrator Castro provided staff's comments. He noted that if the project is approved, the letter of agreement from Attorney Hanlon would be attached to the development order, which would reference the conditions in the letter of agreement.

Motion made by Council Member Diamond that Site Plan Review #4-2011 be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement has been made concerning Section 134-329, items 1-11.

Council Member Kleid seconded the motion and noted that the list of conditions should be added to the motion.

The maker agreed.

Amended motion made by Council Member Diamond that Site Plan Review #4-2011 be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement has been made concerning Section 134-329, items 1-11, subject to the list of conditions in the neighbor's letter of agreement. Council Member Kleid seconded the motion.

Zoning Administrator Castro clarified that all of the lot yard and bulk regulations except the lot width is part of that site plan approval.

Attorney Hanlon noted, for the record, that the total square footage was 5,400, as the plans only included the first floor area square footage

President Rosow stated that all of the above would be part of the motion.

The maker and seconder agreed.

Amended motion made by Council Member Diamond that Site Plan Review #4-2011 be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement has been made concerning Section 134-329, items 1-11, subject to the list of conditions in the neighbor's letter of agreement; including all of the lot yard and bulk regulations except the lot width; the total square footage is 5,400. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

b. <u>SPECIAL EXCEPTION #6-2011 WITH VARIANCES The application of Terry R. Taylor; relative to property commonly known as 780 South Ocean Blvd.; described as lengthy legal description on file; located in the R-A Zoning District. Variances are requested to install a tennis court with a rear yard setback of 10 feet in lieu of the 35 foot minimum required; to allow an associated 10 foot high fence with a side yard setback of 15 feet in lieu of the 30 foot minimum required and to install light poles at a height of 23 feet in lieu of the 15 foot maximum required. A Special Exception is requested to install night lighting which will meet all requirements in the Code, including a light timer switch to ensure the lights will operated only from 9:00 a.m. to 9:00 p.m. [Attorney: Peter S. Broberg] Deferred from the February 16, 2011, Town Council meeting.</u>

Item VIII.C.1.b., has been withdrawn.

2. New Business

a. SITE PLAN REVIEW #5-2011 WITH VARIANCE The application of Garrison Lickle, President, Chilton Trust Management; relative to property commonly known as 396 Royal Palm Way; described as Lots 48, Block D, ROYAL PARK ADDITION to the Town of Palm Beach, Florida, according to the plat thereof as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida; located in the C-OPI Zoning District. The applicant is requesting a Site Plan Review to construct a carport/awning to provide covered parking for seven (7) existing parking spaces on the south side of the existing trust company's parking lot. The Applicant is also redesigning the south entry façade which will reduce the square footage of the covered entry by 458 square feet and the North entry by changing the existing step design and planter area. The parking lot is also being modified to restripe and add one more parking space and enclose the recycle/trash bin area. The handicap ramp is being relocated into two ramps for access to the building. There will also be landscape modifications to the existing planting areas on the north, west and south sides of the site. A variance is requested to allow a carport/awning to have a seven (7) foot rear yard setback in lieu of the 10 foot minimum required in the C-OPI Zoning District. [Attorney: Maura A. Ziska] [ARCOM Recommendation: Implementation of the proposed variance will not cause negative architectural impacts to the subject property and that landscaping be added in the area of the covered parking. Carried 6-1.]

Ex-parte communication was declared by Council Member Diamond that he had seen the proposals and spoke with Attorney Maura Ziska.

Attorney Ziska, on behalf of Chilton Trust Management, provided an overview of the request.

Zoning Administrator Castro provided staff's comments. He noted that Attorney Ziska needed to speak to the hardship relative to the Variance.

Attorney Ziska provided that the hardship was that the existing parking space encroached into the setback, and that a covered awning slightly encroached covering the parking spaces that currently exist.

Motion made by Council Member Diamond that Site Plan Review #5-2011 with Variance be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning Section 134-329, items 1 through 11; and the Variance be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. President Pro Tem Wildrick seconded the motion. On roll call, the motion carried unanimously.

b. VARIANCE #6-2011 The application of Philip Strathy; relative to property commonly known as 276 Jamaica Lane; described as Lot 23, of JAMAICA LANE, according to the Plat thereof, as recorded in Plat Book 18 at Page 93, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a Variance to allow a one-car canvas carport to be replaced with an enclosed garage which will encroach within the side yard setback. The west side yard setback is being proposed at 5.1 feet in lieu of the 12.5 feet minimum setback required. [Attorney: James C. Paine, Jr., Esq.]

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

Attorney James C. Paine, Jr., on behalf of Philip Strathy, provided an overview of the request.

Zoning Administrator Castro provided staff's comments and noted that Attorney Paine needed to speak to the hardship.

Attorney Paine indicated that the hardship was that it related to the position of the parking space, which had been there since before the current setback rules were in place and that it was in the best location in terms of circulation of the driveway.

Responding to President Rosow, Attorney Paine stated that there was a letter of support from the neighbor to the west.

Motion made by Council Member Diamond that Variance #6-2011, be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met. President Pro Tem Wildrick seconded the motion. On roll call, the motion carried unanimously.

D. Other

1. Further Consideration of Revised Plans at 1100 North Ocean Boulevard (Karp/Castle). [Mayor Gail L. Coniglio]

Attorney James Brindell provided a summary of the Karp's revised plans of the proposed addition.

Attorney Paul Rampell, on behalf of the Castle's, indicated that after receipt of the draft that Attorney Brindell and he worked out, Mr. and Mrs. Castle will sign the agreement.

Attorney Brindell asked that Town Council approve the plans as revised, subject to condition of approval of the agreement.

Town Attorney Randolph indicated that the project was in an appellate stage, from ARCOM, as an appeal, and it did not have to go back to ARCOM for approval.

Mayor Coniglio gave her report regarding the proposed addition. She noted that at last month's meeting, it was the consensus of the Town Council that ARCOM would need to approve the compromise. Mr. and Mrs. Karp are concerned that ARCOM approval could delay the project further. The Karp's have signed the agreement and Attorney Rampell has indicated that the Castle's will sign it and that all are concurring with the agreement.

President Pro Tem Wildrick noted that because of the long term mission for agreement, the architecture of the addition was not the best for the Town.

Architect Eugene Lawrence stated that there was never one solution to a problem. He noted that the flat roof was not a major compromise and that the building was screened behind a 30 foot edge anyway.

Responding to President Rosow, Attorney Brindell noted that the area would be screened and would be consistent with the hedge that runs all the way to the north.

President Rosow requested that two more sconces be added to either side of the windows, for balance.

Council Member Diamond suggested that the mediation report be accepted and expressed his great appreciation to the Mayor for making it possible.

Motion made by Council Member Diamond to approve the plans as submitted subject to all of the conditions set forth in the agreement between the parties. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

President Rosow said to make certain that the plans are signed by the appropriate parties and that the Town would retain one set of the plans and that another set is to be signed and kept in perpetuity, with notification to the Town as to where that set is held.

IX. ANY OTHER MATTERS

Planning, Zoning and Building Director Page provided an overview regarding the Testa application. He noted that Tom Testa and Attorney Frank Lynch discussed their future plans with him and Zoning Administrator Castro. Mr. Testa is contemplating an update to his zoning application, which has been pending with Planning and Zoning Commission.

Responding to Council Member Diamond, the application is pending before the Planning & Zoning Commission and would remain there until it was recommended up or down and delivered to the Town Council.

X. ADJOURNMENT

There being no further business, the March 9, 2011, Town Council Meeting was adjourned at 11:30 a.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Susan Owens
Town Clerk

March 9, 2011 Town Council Meeting Agenda Back-up (Development Review)
March 9, 2011, Town Council Meeting Backup Centennial Commission
March 9, 2011, Town Council Meeting Backup Choice of Counsel