

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON 2/27/98

I. CALL TO ORDER AND ROLL CALL

Town Council President Lesly Smith called the Special Town Council meeting to order to consider the second reading of Ordinance No. 2-98 at 10:03 a.m. on Friday, February 27, 1998, in the Town Council Chambers. Town Clerk Pollitt called the roll and the following Elected Officials were found to be in attendance: President Lesly Smith, President Pro-Tem Sam McLendon, Councilmen Jack McDonald, Leslie Shaw, and Allen Wyett. Mayor Paul Ilyinsky was absent from the meeting. Also in attendance for all or part of the meeting were: Town Manager Robert Doney; Town Attorney John Randolph; Director of Planning, Zoning, and Building Robert Moore; Zoning Administrator Paul Castro; and Town Clerk Mary Pollitt. Zoning Consultant William Brisson from Adley, Brisson, Engman, Inc. was also present.

II INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Mrs. Pollitt, and the Pledge of Allegiance was led by President Lesly Smith.

II PROOF OF PUBLICATION

Mrs. Smith asked the Town Clerk if proof of publication had been received. Mrs. Pollitt replied that it had been received.

IV APPROVAL OF AGENDA

A motion was made by Mr. McLendon to approve the agenda and seconded by Mr. Shaw. On roll call, the motion was approved unanimously.

V. SECOND READING OF ORDINANCE NO. 2-98, ZONING AMENDMENTS, MODIFICATIONS AND ADDITIONS TO ORDINANCE 2-74, AS AMENDED AND THE WORTH AVENUE DESIGN GUIDELINES

Mrs. Smith asked Town Attorney Randolph to read Ordinance No. 2-98.

Mr. Randolph read Ordinance No. 2-98 by title.

ORDINANCE 2-98

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2-74, AS AMENDED, THE OFFICIAL ZONING ORDINANCE OF THE TOWN OF PALM BEACH; BY AMENDING SECTION 4.20, APPLICATION OF REGULATIONS, SCHEDULE A, SCHEDULE OF LOT, YARD AND BULK REGULATIONS BY CLARIFYING THE REAR SETBACK AND MODIFYING THE HEIGHT REQUIREMENTS IN THE C-WA DISTRICT FOR THREE STORY BUILDINGS, AND THE LOT COVERAGE REQUIREMENTS FOR ONE AND TWO STORY BUILDINGS, IN THE C-WA DISTRICT; BY AMENDING SECTION 4.20, APPLICATION OF REGULATIONS, BY ADDING A FOOTNOTE(29) THAT REFERS TO THE WORTH AVENUE DESIGN GUIDELINES FOR SPECIAL ALLOWANCES; BY AMENDING SCHEDULE B., SCHEDULE OF USE REGULATIONS BY DELETING THE CURRENT SUBSECTIONS L(1) AND L(2) AND REPLACING THAT WITH A NEW (L) SUBSECTION WHICH ADDRESSES RESIDENTIAL USES ON THE SECOND AND THIRD FLOORS; BY AMENDING 5.48, SPECIAL EXCEPTION TO HEIGHT REGULATIONS, SPECIAL EXCEPTION STRUCTURES, BY PROVIDING NEW TWO AND THREE STORY GUIDELINES IN CONFORMANCE WITH THE WORTH AVENUE DESIGN GUIDELINES, AS AMENDED; BY AMENDING AND MODIFYING THE WORTH AVENUE DESIGN GUIDELINES, ADOPTED BY REFERENCE IN THE ZONING ORDINANCE THROUGH ORDINANCE 1-91, BY CHANGING THE GUIDELINES RELATED TO THE EAST-END DEVELOPMENT AREA IN SECTION VII, RENAMING SECTION VIII, SPECIAL ALLOWANCES, TO SPECIAL ALLOWANCES FOR THE EAST-END DEVELOPMENT AREA, BY MODIFYING THE LANGUAGE IN SAID SECTION, BY RENAMING SECTION VIII TO SECTION IX, BY MODIFYING THE LANGUAGE FOR SPECIAL ALLOWANCES IN THE MID-AVENUE AND WEST-END DEVELOPMENT AREAS AS DEFINED IN THE GUIDELINES, AND BY CHANGING APPENDIX TO SECTION X, ALL OF WHICH IS

IDENTIFIED IN THE MODIFIED WORTH AVENUE DESIGN GUIDELINES, DATED FEBRUARY 1998, AND ATTACHED HERETO; PROVIDING FOR A PENALTY FOR A VIOLATION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREOF; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mrs. Smith asked for comments from the Council members. There were none.

Mrs. Smith asked for any public comment.

Mrs. Christine Franks, 148 Peruvian Avenue, Palm Beach, said she was speaking as a property owner in Palm Beach and a concerned citizen. She implored the Town Council to re-think their approval of the zoning change for the 100 block of Worth Avenue.

She said all of the residents were aware that the zoning change was specifically being approved for a proposed 57,000 square feet and over 50 feet in height Neiman Marcus store. Keeping in mind the Council's best interest to protect the residential property owners, how will the Council withstand the pressures that will be exerted for a special exception and variance that will be requested in the future if this zoning change is approved at this meeting?

Mrs. Franks said that plans have been drawn and various expert witnesses and legal representatives for the proposed Neiman Marcus store have bombarded the Town Council with their reasons and opinions why this zoning change is in the best interest for the Town of Palm Beach; however, no regard has been taken into account for the residential property owners as to the traffic problems and the 57,000 square foot mall-like structure, regardless of architectural designs attempting to disguise the fact.

This zoning change will certainly infringe on neighboring residents' right to peaceful enjoyment of their property in this town, which has always been known as one of the most wonderful *residential* communities in the world.

What happened to the Town's concern for TOWN SERVING commercial and retail establishments?

What will be the next step in this zoning change? Will the commercial developers come before the Town to request additional zoning or variance changes to allow further commercialization of residential property in order to complete this assault on the Town to achieve their ultimate development goals?

Let this honorable Town Council be aware that the probability of such requests is not a figment of imagination, but more likely a certainty.

Mrs. Franks thanked the Town Council for their attention.

Mr. Shaw said he did not think that what happens at this meeting will be the end of what happens on Worth Avenue. He said he had expressed his concerns in the past about the second and third story residential use of the building and also some setbacks. Mr. Shaw said some language was added which maximized the height of the building at 40 feet and a few other controlling issues. Many of these restrictions are all listed as maximums. He was confident that the different bodies that review the application—the Building Department, the Architectural Commission, Landmarks—are going to realize that these numbers are maximums and therefore not what the applicant will have approved but rather what they may apply for but not realistically expect to receive.

Mr. Shaw said his major concern with what is in the ordinance was that the third story residential use is not going to be permitted unless it is also on the second story, and he thought that was an error. He also thought that the setbacks are really on the minimum and not the maximum side and something should have been done. Mr. Shaw reflected that perhaps he should have voted "no" or tried to see that those changes have been made last time so they could have been incorporated at this particular point. He said he was sure that many of these issues would be addressed at the time a project is presented and also he thought the Zoning Commission will reconsider these issues during next zoning season.

Mr. Wyett said he wanted to reassure those neighbors who abut this project—the neighbors on Peruvian, the Winthrop House residents, and the condominium across the way—and asked that they please come to the meeting at which time the special exception is discussed. He said that meeting will really shape what is going to happen there, much more than the change in the zoning, since a store could have been built there under the old zoning although it would have been a more difficult procedure. Mr. Wyett said he thought this Council will be very cognizant of trying to make this building fit in and will be looking at how large and high the store will be. The residents' concerns will have a strong influence in the Council's thinking pattern.

Karen Roselli, Attorney with the law firm of Becker & Polikoff, represented the Winthrop House and the Kirkland House Condominium Associations. Ms. Roselli said the Town Council heard from many people hired by Neiman Marcus to say the amendments to the Worth Avenue Guidelines are not spot zoning, and that they are not unconstitutional. Ms. Roselli said people can be paid to say just about anything and that does not make it actually correct, and despite all of Neiman Marcus' efforts to justify these amendments from a legal and an architectural standpoint, the reality is that these amendments are spot zoning. She said that based upon all of the testimony given, it is apparent that Mr. Goodman and Neiman Marcus are the only ones who have a serious interest in the passage of these amendments. That is because the amendments do not confer a public benefit or serve a public purpose.

Ms. Roselli stated the Council did hear from the public in a series of public hearings on the amendments, and the public does not want these amendments passed or have the Town Council facilitate the construction of a massive, three story retail store on Worth Avenue. She said this is the Town Council's last chance to protect the public, the residents of this Town from the development in the 100 block of Worth Avenue which will be detrimental to this community.

Ms. Roselli said the Winthrop House and the Kirkland House condominiums urged the Town Council to take care of the people

of the Town rather than the interests of a developer and vote against Ordinance 2-98.

Mrs. Betty Bryant, 159 Australian Avenue, asked if there was any reason this issue could not be presented to all of the voters in Palm Beach to let them have a voice?

Mrs. Winifred Anthony Stearns, Hanover, New Hampshire, and a former resident of Palm Beach, said she cares a lot about the Town. She said she works in zoning in Hanover, a town that is constantly under pressure from commercial interests, and she always uses Palm Beach as an example of how to be tough and cites examples of the Limited who was not allowed expansion. Mrs. Stearns suggested that the Town Council should go back to bedrock on this one based on the fact this is a zoning issue, Neiman Marcus should not have anything to say about the amendments to the Guidelines. This is impact on land, not on use, and this should be considered for all times. Mrs. Stearns said that once zoning is given away, it can never be taken back, and zoning is the core for any well-being in a small town.

Town Clerk Pollitt said she had received a letter from former mayor, Yvelyne deMarcellus Marix, who had intended to be at this meeting who requested the letter be read to the Town Council at this meeting.

Mrs. Smith asked that the letter be read.

Mrs. Pollitt read the letter as follows:

TO: Mayor and Town Council

Due to unfortunate instances this morning, I am prevented from leaving the house but wanted to express my thoughts for your consideration. My feelings in this matter would be exactly the same if the proposed use of this property were going to be Harrods or Galleries Lafayette.

I feel it is exceedingly important prior to passing on this zoning, that a comprehensive and thorough impact study be made and a traffic pattern worked out. In view of this fact this will have to be done in due course. Doing it first should not affect the time frame in any serious manner. My other thought is with residential properties being at a complete premium in the Town, the possibility of truly elegant residential apartments upstairs would serve several purposes—protecting the residents or neighbors to the north, cutting down extensively on daytime traffic and yet allowing for retail business for which Worth Avenue is well known.

The Town would also benefit with the tax base of truly elegant living accommodations. I would therefore implore you to delay this ordinance change to next year's zoning season so these studies can be completed.

Respectfully yours,
Yvelyne deMarcellus Marix

Mrs. Smith asked for additional comments from members of the Town Council.

Mr. McLendon said he would like to reiterate what he said at the last meeting—that this was not approval of Neiman Marcus. They will have to go through many hoops before any such approval is obtained. He said it is somewhat a question of semantics—their desire to be on Worth Avenue is what prompted the proposed re-zoning.

Mr. McLendon said he felt a need to address the inference that this is spot zoning. He said he indicated previously that he has the distinct impression that what exists on Worth Avenue is the typical example of spot zoning. It is wide, diversified, tall, short, and he did not think that what is proposed is spot zoning. He understood that many of the buildings that are in the 200-300 block of Worth Avenue could not be built under the present zoning. He asked Mr. Moore if that were correct?

Mr. Moore replied that was correct.

Mr. McLendon said his main concern was traffic and that was something that will have to be severely addressed before any final plans for construction are issued. He was concerned about the size of the building, and the 57,000 square feet (building size) is larger than he expects the proposal to be. He said he believed the Town Council has made the right moves.

Mr. Wyett said he thought that Mr. Goodman in his efforts to create another fine building in Town has received the message to return to the Council with a proposal of less than 57,000 square feet and perhaps a two story building in deference to the neighbors and the quality of the street.

Mr. Wyett said he was not too concerned about parking since one of the forces of this project was a 200 car garage below the building, but he was concerned about the traffic which will need a study. This could be looked at many different ways with the same shopper going from Neiman Marcus to Saks therefore not creating too many more shoppers or traffic. Also, it could be said that the name, Neiman Marcus, will attract more shoppers from a wide area.

Mr. McDonald made a motion to move approval of Ordinance No. 2-98. The motion was seconded by Mr. Wyett.

Mrs. Smith called for further discussion. There was none.

On roll call, the motion carried 3-2 with negative votes being cast by Mr. Shaw and Mrs. Smith.

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VI. ANY OTHER ITEMS

There were none.

VII. ADJOURNMENT

The meeting was adjourned at 10:20 a.m.

Mary A. Pollitt, Town Clerk

Prepared by:

Mary A. Pollitt
Town Clerk