TOWN OF PALM BEACH

Office of the Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON WEDNESDAY, FEBRUARY 15, 2012

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council meeting was called to order on Wednesday, February 15, 2012 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

Town Clerk Owens gave the invocation. Council President Rosow led the Pledge of Allegiance.

III. SWEARING IN OF ELECTED OFFICIALS

The Honorable Judge Peter D. Blanc performed the swearing in of Richard M. Kleid, David A. Rosow, and Robert N. Wildrick.

(Mayor Coniglio became the Presiding Officer)

IV. ORGANIZATIONAL ITEMS

A. Election of the Town Council President
Pursuant to Section 3.01 of the Town Charter

Mayor Coniglio announced that David A. Rosow was re-elected as Town Council President.

(Town Council President Rosow became the Presiding Officer)

B. Election of the Town Council President Pro Tem
Pursuant to Section 3.01 of the Town Charter

Council President Rosow announced that Robert N. Wildrick was re-elected as Town Council President Pro Tem.

V. COMMENTS OF MAYOR GAIL L. CONIGLIO

Mayor Coniglio congratulated Council President Rosow, Council President Pro Tem Wildrick, and Council Member Kleid. She stated that their uncontested election as candidates for the Town Council shows an overwhelming support for their service, dedication, and hard work for the community.

VI. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Diamond requested that, rather than just increasing taxes to fund the Coastal Program, the Finance and Taxation Committee look into creative financing options, including whether or not to reallocate reserve funds to the Coastal Program.

Council Member Kleid thanked Mayor Coniglio for her hard work and stated that she is owed a debt of gratitude.

Responding to Council President Pro Tem Wildrick, Town Manager Elwell stated that an event to raise funds for the Coastal Program would be organized next winter, as it was too late in the year for this season.

VII. COMMUNICATIONS FROM CITIZENS - None

VIII. APPROVAL OF AGENDA

The following changes were made to the Agenda:

DEFERRED: Item X.C.1.a., Variance #3-2012.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve deferral of Variance #3-2012 to the March 14, 2012 Town Council meeting. On roll call, the motion carried unanimously.

DEFERRED: Item X.C.2.c., Variance #6-2012.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve deferral of Variance #6-2012 to the March 14, 2012 Town Council meeting. On roll call, the motion carried unanimously.

DEFERRED: Item X.C.2.d., Variance #7-2012

Motion was made by Council Member Diamond and seconded by Council Member Pucillo to approve deferral of Variance #7-2012 to the March 14, 2012 Town Council meeting. On roll call, the motion carried unanimously.

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

IX. ORDINANCES

A. Second Reading - None

B. First Reading

1. ORDINANCE NO. 29-2011 An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Text Of The Future Land Use Element Of The Town Of Palm Beach Comprehensive Plan As Last Amended On July 13, 2011, With The Adoption Of Ordinance Nos. 1-11 And 3-11, By Amending The Future Land Use Element And Amending Policy 2.3.3 To Provide For The Creation Of An Overlay Area Within The C-TS Zoning District Within The Area Bounded By The East Right Of Way Line Of Bradley Place To The West, The South Right Of Way Line Of Sunset Avenue To The North, The West Right Of Way Line Of North County Road To The East And The North Right Of Way Line Of Royal Poinciana Way To The South; Further Amending Policy 2.3.3 To Provide Increases In Height From Three (3) Stories To A Maximum Of Four (4) Stories, Change In Density From Six (6) Units Per Palm Beach Acre To A Maximum Of Twenty-Four (24) Units Per Palm Beach Acre And Change In Lot Coverage From Seventy-Five Percent (75%) To Eighty-Five Percent (85%) On The First Floor, Sixty-Five Percent (65%) On The Second Floor, Fifty Percent (50%) On The Third Floor And Forty Percent (40%) On The Fourth Floor Provided Certain Threshold Criteria Are Met, And Providing For Said Certain Threshold Criteria; Providing For Severability; Repealing All Ordinances Or Parts Of Ordinances In Conflict Hereof; Providing For Codification; And Providing For An Effective Date.
[John Page, Director of Planning, Zoning, and Building]
Deferred from the December 14, 2011, and January 11, 2012, Town Council Meetings.

Mayor Coniglio stated that, although Town Attorney Randolph and Attorney Anderson of the Florida Commission on Ethics have opined that she has the full ability to participate and vote on this item, she would be recusing herself from the dais based upon her prior recusals. She filed the state Conflict of Interest Form 8B with Town Clerk Owens to be incorporated into the minutes, and left the dais.

Tom Testa, Testa Family, LLC, 221 Royal Poinciana Way, provided an overview of his application for the proposed Royal Poinciana Village Overlay District.

Frank Lynch, of Breton, Lynch, Eubanks, & Surarez, 1209 N. Olive Avenue, West Palm Beach, representing Testa Family, LLC, provided additional information regarding the proposed project.

Shelley Eichner, Calvin, Giordano & Associates, 560 Village Boulevard, Suite 340, West Palm Beach, provided her review of the proposed project.

Alan Golboro, Planning and Zoning Commission Chair, spoke regarding the process for the Commission's approval of the proposed amendment.

Adele Kahn, 231-235 Peruvian Avenue, spoke in favor of the amendment.

John Mashek, 82 Middle Road, spoke in opposition of the amendment.

Susan Watts, 455 Worth Avenue, spoke in opposition of the amendment.

Ned Barnes, Palm Beach Civic Association, spoke in opposition of the amendment, but recommended that a modified version be considered.

Laurel Baker, on behalf of Paul Leone of the Breakers Hotel, spoke in favor of the amendment.

Laurel Baker, Palm Beach Chamber of Commerce President, spoke in favor of the amendment.

Jere Zenko, 232 Tangier Avenue, spoke in opposition of the amendment.

Anne Pepper, 333 Seaspray Avenue, spoke in opposition of the amendment.

Rachel Lorentzen, 216 Garden Road, spoke in opposition of the amendment.

Peter Geisler, 315 South Lake Drive, on behalf of Penelope Townsend, 310 Via Linda, read a letter into the record in opposition of the amendment.

Deborah Robinson, 217 Clarke Avenue, spoke in opposition of the amendment.

Allen Wyett, 1145 North Lake Way, spoke in opposition of the amendment.

Leslie Evans, 249-253 Royal Poinciana and 135 Seminole Avenue, spoke in favor of the amendment.

Madelyn Greenberg, 3360 S. Ocean Boulevard, on behalf of the Coalition to Save Our Shoreline, spoke in opposition of the amendment.

Jay Dinger, Manager of Leverett House Condominium, 120 Sunset

Avenue, and Park Regent Condominium, 184 Bradley Place, on behalf of the respective Board of Directors, spoke in opposition of the amendment.

William Cooley, 8 Windsor Court, spoke in opposition of the amendment.

Lori Volk, 206 Phipps Plaza, spoke in opposition of the amendment.

Stephanie Bojokles, owner of the Tropical Fruit Shop, on Royal Poinciana Way, spoke in favor of the amendment.

Tanner Rose, 315 S. Lake Drive, Planning and Zoning Commission Member, provided his reasons for voting in favor of the proposed amendment.

Susan Markin, 1450 N. Lake Way, spoke in opposition of the amendment.

Emmy Wolbach, 241 Plantation Road, spoke in opposition of the amendment.

Clerk's Note: The Town Council recessed for lunch at 1:10 p.m., and reconvened at 2:30 p.m.

Discussion ensued regarding concerns over density, height, mass, and parking requirements.

Motion was made by Council Member Diamond and seconded by Council President Pro Tem Wildrick to deny approval on first reading of Ordinance Nos. 29-2011 and 30-2011. Motion failed 2-3, with Council Members Kleid and Pucillo, and Council President Rosow dissenting.

Motion was made by Council Member Pucillo and seconded by Council President Pro Tem Wildrick to remand Ordinance Nos. 29-2011 and 30-2011 back to the Planning & Zoning Commission for them to submit an alternate proposal that addresses the Council's concerns regarding density, height, mass, and parking requirements. On roll call, the motion carried 4-1, with Council Member Diamond dissenting.

Clerk's Note: The above motion included Ordinance No. 30-2011, below.

2. ORDINANCE NO. 30-2011 An Ordinance Of The Town Council Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Amending The Town Code Of Ordinances At Chapter 134, Zoning, At Article VI, District Regulations, Division 8 By Creating Section 134-1121 Royal Poinciana Village Overlay Area ("RPVOA") Within A Portion Of The Commercial Town-Serving Zoning District Bounded By The East Right-Of-Way Line Of Bradley Place To The West, The South Right-Of-Way Line Of Sunset Avenue To The North, The West Right-Of-Way Line Of North County Road To The East And The North Right-Of-

Way Line Of Royal Poinciana Way To The South, Which Allows For The Use Of The Following Zoning Code Provisions If Eligibility And Threshold Criteria In The RPVOA, As Provided For In This Ordinance, Are Met: Provision Of A "Purpose" Section; Provision Of RPVOA Permitted Uses, Special Exception Uses, Prohibited Uses And Accessory Uses; Provision For Accessory Structures; Varied Lot, Yard And Bulk Requirements As Follows: Increased Minimum Lot Size From Four Thousand (4,000) Square Feet To Forty Thousand (40,000) Square Feet; Increased Minimum Lot Depth And Lot Width Based On The Through Lot Requirement For The RPVOA; Increased Residential Density From Six (6) Dwelling Units To A Maximum Of Twenty-Four (24) Dwelling Units Per Palm Beach Acre; A Residential Component Of Not Less Than Twenty-Five (25) Percent Of The Total Development; Increased Number Of Stories From A Maximum Of Two (2) Stories To A Maximum Of Four (4) Stories; Increased Lot Coverage From Seventy (70) Percent To Almost One-Hundred (100) Percent In The Sub-Basement, Eighty-Five (85) Percent On The First Floor, Sixty-Five (65) Percent On The Second Floor, Fifty (50) Percent On The Third Floor And Forty (40) Percent On The Fourth Floor; Increased Height From A Maximum Of Twenty-Five (25) Feet To Fifty (50) Feet By Special Exception; Increased Overall Height From Thirty-Five (35) Feet To Sixty (60) Feet; A Two (2) Foot Front Setback For A Sub-Basement And Differing Building Setback Requirements For Taller Buildings; Decreased Landscape Open Space From A Minimum Of Twenty-Five (25) Percent To Ten (10) Percent; Increased Building Length From A Maximum Of One Hundred Fifty (150) Feet To Three Hundred (300) Feet; Providing A Sunset Provision For The Overlay Regulations; Providing The Elimination Of The Maximum Floor Area Requirement; Providing A Sunset Provision For The Overlay Regulation; Providing A Site Plan Review Process; Creating New Definitions For The RPVOA; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing An Effective Date.

[John Page, Director of Planning, Zoning, and Building]

Deferred from the December 14, 2011, and January 11, 2012, Town Council Meetings.

Clerk's Note: Ordinance No. 30-2011 was heard and acted upon simultaneously with Ordinance No. 29-2011. See previous action.

X. DEVELOPMENT REVIEWS

A. Appeals – None

B. Time Extensions & Waivers None

C. Variances, Special Exceptions, and Site Plan Reviews

Town Clerk Owens administered the oath to all those who would be providing testimony.

1. Old Business

a. VARIANCE #3-2012 The application of Anand and Neeta Khubani; relative to property commonly known as **108 El Mirasol**; described as Lots 7 and 8, EL MIRASOL, according to the plat thereof, recorded in Plat Book 28, Page 60, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant proposes to build a 17,655 square foot, two story house on a 44,360 square foot lot and requests Variances to: allow a front yard setback for a one story portion of the proposed residence to be 26.6 feet in lieu of the 35 foot minimum required for an R-B lot in excess of 20,000 square feet and with a lot depth of 160 feet; to allow a front yard setback/building height plane setback for the proposed stair tower to be 38.75 feet in lieu of the 48.8 foot minimum required; to allow a front yard setback/building height plane setback for the front entry feature to be 39.1 feet in lieu of the 44 foot minimum required; and, to allow the minimum perimeter landscape area to be 7,256.35 square feet in lieu of the 9,981.1 square foot minimum required to meet the 50% of the 45% in the code for the perimeter of a lot in the R-B Zoning District.
[Attorney: Maura A. Ziska]
[ARCOM Recommendation: Implementation of the front yard setback/building height plane setback variances will cause negative impacts to the subject property. Implementation of the perimeter landscape open space variance will not cause negative impacts to the subject property. Both Carried 7-0.]
Deferred from the January 11, 2012, Town Council Meeting.
Request for Deferral to the March 14, 2012, Town Council Meeting Per Letter Dated January 25, 2012, from Maura A. Ziska. (Second Deferral, Special Circumstances) – *Deferred to the March 14, 2012 Town Council meeting.*

2. New Business

a. VARIANCE #4-2012 The application of Ronald J. Berk; relative to property commonly known as **273 Tangier Avenue**; described as Lot 6, Plat of TANGIER ESTATES, according to the plat thereof as recorded in Plat Book 12, Page 16 of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant requests a variance to demolish more than 50% of the existing one story house in order to add a one story addition and a second story addition which would require a variance to allow the existing west side yard setback to be 4.99 feet to 9.49 feet in lieu of the 12.5 foot minimum required under the current zoning code in the R-B Zoning District. [Attorney: Maura A. Ziska]

The following ex-parte communications were declared: Council President Rosow, Council President Pro Tem Wildrick, and Council Members Diamond, Kleid, and Pucillo spoke with Attorney Ziska, who advocated the position of her client.

Attorney Ziska, on behalf of Ronald Berk, provided an overview of the applicant's request.

Zoning Administrator Castro provided Staff's comments.

Motion was made by Council Member Diamond and seconded by Council Member Kleid that Variance #4-2012 be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 have been met. On roll call, the motion carried 4-1, with Council Member Pucillo dissenting.

b. VARIANCE #5-2012 The application of Brown Harris Stevens; relative to property commonly known as **351 Worth Avenue**; described as lengthy legal description on file; located in the C-WA Zoning District. The applicant requests a variance to permit an office use on the first floor in the C-WA Zoning District, which is not permitted. An existing real estate office on the first floor of 353 Worth Avenue (Brown Harris Stevens) requests to expand into adjacent space on the first floor of 351 Worth Avenue. The existing office is 876 square feet and the proposed expansion would add 1,999 square feet, for a total square footage of 2,875 square feet. [Attorney: Maura A. Ziska]

The following ex-parte communications were declared: Council President Rosow, Council President Pro Tem Wildrick, and Council Members Diamond, Kleid, and Pucillo spoke with Attorney Ziska, who advocated the position of her client. Council President Rosow, Council President Pro Tem Wildrick, and Council Member Diamond spoke with Scott Lesee, General Manager of the Everglades Club. Mayor Coniglio spoke with an employee of the Everglades Club.

Attorney Ziska, on behalf of the Everglades Club, provided an overview of the applicant's request.

Zoning Administrator Castro provided Staff's comments.

Allen Wyett, 1145 N. Lake Way, spoke in opposition of the variance.

Motion was made by Council Member Diamond and seconded by Council President Pro Tem Wildrick that Variance #5-2012 be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 have been met approved subject to the condition that no additional doors be along Worth Avenue. This approval is for the current tenant only, and it is non-assignable. This approval will allow for a maximum ten-year lease; at the expiration of the lease, the applicant will need to come back before the Council if they want to request an extension. On roll call, the motion carried 3-2, with Council Members Kleid and Pucillo dissenting.

c. VARIANCE #6-2012 The application of US Bank; relative to property commonly known as **324 Royal Palm Way**; described as Lots 44 and 45, Block D, Revised Map of 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 requests a variance to allow two business identification signs for "US Bank" on the rear of the building which is not permitted in the zoning code. Business identification signs are only allowed to front on streets. In addition, a variance is also being requested to allow a business logo on each of those business identification signs which exceeds the one allowed and front location allowed. Only one logo is allowed in this case. The applicant already has one logo in the front of the building. [Attorney: Maura A. Ziska]
Request for Deferral to the March 14, 2012, Town Council Meeting Per Letter Dated January 31, 2012, from Maura A. Ziska. - *Deferred to the March 14, 2012 Town Council meeting.*

d. VARIANCE #7-2012 The application of Gregory S. Kino, Esq.; relative to property commonly known as **2 Via Los Incas**; described as lengthy legal description on file; located in the R-B Zoning District. The applicant requests variances to allow a 26'7" front yard setback for a 644 square foot second story addition for a caretaker's bedroom in lieu of the 30 foot minimum required; a 26'1" front yard setback for an architectural parapet feature to match the second story addition in lieu of the 30 foot minimum required; a 10'1" side yard setback for the second story addition in lieu of the 15 foot minimum required; and a lot coverage of 35.8% (35.3% existing) in lieu of the 30% maximum allowed for the second story addition. [Attorney: Gregory S. Kino, Esq.]
Request for Deferral to the March 14, 2012, Town Council Meeting Per Letter Dated January 31, 2012, from Gregory S. Kino. - *Deferred to the March 14, 2012 Town Council meeting.*

e. VARIANCE #8-2012 The application of Francis X. J. Lynch, Esq.; relative to property commonly known as **1348 North Lake Way**; described as lengthy legal description on file; located in the R-B Zoning District. The applicant requests a variance to construct a new house with a perimeter landscape open space of 6,796 square feet in lieu of the 8,159 square foot minimum required.
[Attorney: Francis X. J. Lynch, Esq.]
[ARCOM Recommendation: Implementation of the perimeter landscape open space variance will not cause negative impacts to the subject property. Carried 7-0.]

The following ex-parte communications were declared: Mayor Coniglio spoke with Mr. Carney on several occasions in the past.

Attorney Lynch, on behalf of Mr. and Mrs. Carney, provided an overview of the applicant's request.

Zoning Administrator Castro provided Staff's comments.

Motion was made by Council Member Pucillo and seconded by Council Member Diamond that Variance #8-2012 be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 have been met. On roll call, the motion carried unanimously.

D. Other

1. Proposed Fourth Amendment to the Blossom Estates Subdivision Agreement, Lot 7, for 1255 South Ocean Boulevard Realty Trust.
[John Page, Director of Planning, Zoning, and Building]

The following ex-parte communications were declared: Council President Rosow, Council President Pro Tem Wildrick, and Council Members Diamond, Kleid, and Pucillo spoke with Attorney Ziska, who advocated the position of her client.

Zoning Administrator Castro provided Staff's comments.

Attorney Ziska, on behalf of Tom Peterffy, provided an overview of applicant's request.

Motion was made by Council Member Diamond and seconded by Council Member Pucillo to approve the proposed Fourth Amendment to the Blossom Estates Subdivision Agreement, Lot 7, for 1255 South Ocean Boulevard Realty Trust. On roll call, the motion carried unanimously.

XI. ANY OTHER MATTERS – None

XII. ADJOURNMENT

There being no further business, the February 15, 2012 Town Council meeting was adjourned at 4:30 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Susan A. Owens, MMC
Town Clerk