

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON FEBRUARY 13, 1998:
CONTINUATION OF FEBRUARY 9, 1998, MEETING—FIRST READING OF ZONING ORDINANCE NO. 2-98**

President Lesly Smith reconvened the Special Town Council meeting at 1:35 p.m. on the proposed zoning changes for the Worth Avenue Guidelines. The previous meeting was adjourned at 7:40 p.m. on Monday, February 9, 1998.

Mrs. Smith said she would like to clarify two points: The Town Council's decision at this meeting relates to modifying the zoning code in general for the purpose of any individual or any company who comes before the Council—not any one group or project.

Mrs. Smith said the sole purpose of considering any modification is to facilitate what the Council believes is in the best interest of the Town. The Council is considering the Zoning Commission's recommendations, and the Council represents the residents and the businesses. The Council has the responsibility to serve everyone in the Town. Mrs. Smith said, she personally, would not abdicate that responsibility.

Mrs. Smith asked if anyone in the audience would like to speak to the issue?

Mrs. Christine Franks, 148 Peruvian Avenue, read the following into the record:

Re: Rezoning of 100 Worth Avenue

The expert witnesses as presented by Mr. James Brindell, attorney for the Goodman/Neiman Marcus project, gave the following opinions:

- 1) Mr. Brindell presented a letter from an architect whom Mr. Brindell offered as an authority on this petition due to the fact that he was an architect on the Ellis Island project in New York.

Question: How does Ellis Island relate to the Town of Palm Beach and Worth Avenue?

- 2) Attorney Ron Kolins gave several reasons why, in his opinion, the action to revise the 100 Worth Avenue zoning was not spot zoning. It can also be assumed that opposing legal opinions can offer reasons why the zoning changes for the 100 block of Worth Avenue is spot zoning.

- 3) Urban architectural consultant Henry Skokowski injected his expert opinion with the message that all "malls need an anchor".

Questions: Is Worth Avenue a mall that needs an anchor? Is Worth Avenue/Palm Beach an urban development?

- 4) Anna Cottrell, a planning consultant, said she was from Clematis Street in West Palm Beach. I believe the Town Council should walk Clematis Street in its entirety and see how it has ben developed, mainly with bars and, as after thoughts, restaurants.

No one is opposed to a Neiman Marcus store if it is built within the existing zoning codes. To name a few merchants, Gucci, Cartier, Tiffany, Chanel, Ferragamo, and other famous international merchants, have all located on Worth Avenue without requesting major changes to the zoning and continue to prosper.

Changing the zoning on 100 Worth Avenue block will also allow the owners of the Esplanade to request the same height and floor space as the proposed Neiman Marcus store, which, by the way, the Town staff consistently reminds everyone that the zoning change is not for a Neiman Marcus store, but all the proponents for the zoning change Atty. Brindell and architect Eugene Lawrence represent Neiman Marcus.

The proposed zoning change will possibly create a canyon effect in the 100 block of Worth Avenue, with tall buildings on both the south and north sides of the street.

The Town Council's consideration for the residential property owners in Palm Beach and the keeping of Worth Avenue as a unique and world famous avenue should not be forgotten.

Palm Beach is a residential community first and foremost and the Town Council has the responsibility of insuring the symbiosis between the commercial community and the residential community so as not to create a similar situation as now exists between Park Avenue and Sunrise Avenue.

(That concluded Mrs. Franks' remarks.)

Gary Brandenburg, an attorney with the law firm of Carleton Fields, said he had practiced land use and zoning law for twenty years in the State of Florida. He was County Attorney for Palm Beach County, Indian River County, and has represented many municipalities and many petitioners while presenting petitions to various municipalities.

Mr. Brandenburg said it was his opinion that this was a clear example of spot zoning, and he thought that the history of how the matter was presented to the Town Council should indicate that the Town might be in jeopardy of this being considered spot zoning. If it were not considered spot zoning and the petitioner did not think there was a real issue concerning spot zoning, he would not have hired another law firm to have Mr. Kolins tell the Town Council all of the reasons why it was not spot zoning. Clearly, Mr. Brindell was worried that it is spot zoning. Mr. Brandenburg said if this is not spot zoning, and if it is truly just a modification to the Zoning Code of the Town of Palm Beach in general, then two and one-half hours of testimony would not have been presented, especially concerning the Neiman-Marcus project in particular. Mr. Brandenburg said that, clearly, this zoning code change is for one project and is thinly guised as not being spot zoning by tossing in a couple of little properties around it and having a big planning document to back it up. He said it will be considered spot zoning by a court of law when it is presented to them. Of course, a court is the only one that can really make a decision on that. He hoped that the Town Council would be very cautious about involving the Town in unnecessary litigation just to benefit one particular property owner.

Mr. Brandenburg said he brought two very important issues to the Town Council's attention on behalf of his client. Mr. Brandenburg explained that his client is a property owner on Peruvian, directly behind the site of the proposed Neiman-Marcus store. Those two issues have not been addressed by the petitioner in any of their presentations and has not been addressed by staff in any of the back up or any comments since, and they are still open issues. Those issues are: What has this ordinance done to make sure that the residents directly behind this facility will be taken care of when it comes to developers' height restrictions? The Town Council has been told that the view, as far as Worth Avenue is concerned, has been taken covered, and they have a tiered system so the building appears smaller as it goes up. Mr. Brandenburg said that in all likelihood it will be tiered and moved back from Worth Avenue. The back of the building will be straight up and down. Also on the back of the building will be these nice architectural features which the code will allow a variance from the height of 40% or a total of up to 56 feet. Mr. Brandenburg said the architectural features are another way of hiding the air conditioning system and the "nasty stuff" on top of the building. All of this will be exposed and hanging directly over his clients' property on Peruvian Avenue—a mere ten feet from their property line.

Mr. Brandenburg said the staff and the planners have done a good job saying how this is compatible with Worth Avenue, but what has not been addressed is that this is immediately in the middle of a residential area, will be backed up to a residential property, and there is nothing in any of the staff reports or anything in the presentations addressing the compatibility of this ordinance change with a residential property directly behind it. He said that was a glaring omission on the reports and the presentations made to date. He asked that the Town Council fill in the gaps before proceeding with the proposed changes.

Martin Klein, member of the Zoning Commission, said the debate has been interesting. He said he believed more strongly than ever that the Council should support its appointed Zoning Commission and approve the modifications to the Worth Avenue Guidelines.

Mr. Klein said he respected the views of Bob Grace and others, and he hoped they respected his right to disagree. Modifying the guidelines is not a condemnation of them or of his point of view but instead an appreciation of the fact that they exist as an evolving principle. Change is inevitable and can be embraced and make it work or it can be ignored with the consequences that flow from ignorance. He said the Zoning Commission chose to make change work for the Town's benefit, and the debate on Monday and at this meeting highlights the wisdom of the Zoning Commission's recommendation. He heard many residents voice concerns about the size of the proposed Neiman-Marcus store. All of the concerns raised at the meetings—whether they be size, parking, traffic, canyon effect, or buffers—were noise, and these are properly raised in the context of an application for a special exception. This meeting was to consider the modification of the Worth Avenue Guidelines, and it is still possible no change will occur even if the modification is approved. Mr. Klein said he could only predict that the Town Council will hear many more hours of presentation if and when an actual project is presented. Keeping the status quo is a distinct possibility; however, he thought the Town was better served by working with a well know, Town residing developer and architect who are both sensitive to the needs of the Town.

Mr. Klein stated the Zoning Commission carefully weighed all of these issues at public hearings and heard the recommendations of the Town's staff and consultants. After much thought and care, the Zoning Commission firmly concluded that the Town's heritage would be best preserved and its future enhanced for the residents' children and grandchildren by recommending modifications to these Guidelines. Mr. Klein urged the Town Council to support the Town's staff, consultants, and Zoning Commission.

Mrs. Smith asked if there were any other public comments?

There were none.

Mrs. Smith asked if Mr. Brindell had further comments?

He did not.

Mrs. Smith said the Town Council would go into Executive Session, and the public comment part of the agenda would be over.

Mr. McLendon summarized the issues as an attempt to encourage future good projects in the middle of the 100 block of Worth Avenue whether it is Neiman Marcus or anyone else. He said when riding down Worth Avenue, one sees what appears like a series of spot zoning impressions: the large residential apartment houses at the east end of Worth Avenue, the Esplanade next on the south going all the way to South County Road, the three story bank building on the north side, then a gap with "less than Worth Avenue style" buildings, and then returning to moderate facilities.

Mr. McLendon said he was very concerned about the potential future traffic problems on all of Worth Avenue with the exception of the 400 block. Whatever development that winds up being proposed must seriously address this issue as the Town Council most certainly will be looking at it quite carefully. He said no application has been received for a particular project, and the size of any proposed structure is yet to be determined. This is a change to the Guidelines only to permit an orderly and (he thought) improved development in the 100 block.

Mr. Shaw said he has tried to separate the passion of the application from the numeric values of the application, and tried to identify the specifics of what is being changed and how that change meets reality. He thought that within the summary that was provided to the Zoning Commission and to the Town Council, it appeared to him that what was being proposed in the change is to meet the standard that already exists. The fact that the zoning may not meet what is there, may not really be the issue—where buildings may be a few hundred feet in frontage, where zoning says a building that is only 150 feet may exist. He said that may prove that the 200-250 foot building is not creating an adverse issue or adverse affect on the Avenue, so why should that not be the standard for the entire Avenue?

Mr. Shaw said he heard the issues of spot zoning. He did not believe that it is spot zoning. Obviously the staff does not believe that it is spot zoning. He said he understood spot zoning was where it was being done specifically for one person where the use is very different from the other uses within that area. He realized this was a very broad summary of the concept.

Mr. Shaw used the analogy of constructing a Seven-Eleven store in the middle of the R-B zoning district that would be spot zoning. He said to have a slightly larger piece of property with entitlement to build a structure as large as other structures in the commercial district does not constitute a change. He said one change is the frontage of the building—changed from 150 feet to a larger frontage which is already on other parts of Worth Avenue. The size of the building would be above 15,000 square feet which is consistent with many of the other existing buildings on Worth Avenue. Most of the buildings in the 100-200 blocks of Worth Avenue exceed the guidelines of 50%. Almost all of the structures that have a second story exceed that guideline of 35%. Mr. Shaw noted that five, six, and some seven story buildings exist in the 300 block Mr. Shaw said he did not see that any of the proposals to the Guidelines would be adverse to what already exists in the Worth Avenue C-WA district.

Mr. Shaw asked how these proposals were different—in fact that it is going to make a change—to what is permitted on the 100-200 block and basically bring that character to the rest of the Avenue—to the rest of the 100 block. He said it was not just a change for the open lot and the two little houses, but it states there can be changes on the 100 block—it is not targeting one spot. He said if he missed something, he would like to have someone identify that and explain it to him.

Mrs. Smith asked Mr. Brisson to clarify for Mr. Shaw what could be built presently on the north side of Worth Avenue that is already zoned commercial?

Mr. Brisson responded that Mr. Shaw had explained it very clearly—the attempt was to encourage what already exists in specifically the 300 block. These regulations simply allow what already exists or something similar to it, and they were not proposing anything significantly different from already exists.

Mrs. Smith asked Mr. Brisson what size building could be built on the north side of the 100 block of Worth Avenue under the present guidelines, if they were not changed? Two story building?

Mr. Brisson replied that under the present guidelines, a two story building could be built under the special exception for Section 5.48; a three story building could be built with the second and third stories being residential under the Worth Avenue Guidelines and with the lower existing coverages that are currently allowed of 50% on the first floor, 35% on the second floor, and 25% on the third floor. The building length would be limited to only 150 feet and the gross floor area would be limited to 15,000 square feet. Under the proposals, the Town Council looks at these other areas of flexibility to determine if they are compatible with the surrounding properties and determine how much bigger would be allowed under the newer guidelines.

Mrs. Smith asked, under the present Guidelines, what the setbacks would be for a three story building?

Mr. Brisson responded the minimum required setback in the rear is still ten feet. That would not be changed. The Town Council could recommend greater setbacks now or under the proposed guidelines during hearings for a special exception.

Mrs. Smith said she thought it should be clarified what could be built today, under the present guidelines. The guidelines, with the changes in them, will not preclude a three story building.

Mr. Brisson said that was correct.

Mr. Wyett said all of the interested citizens who took the time to attend these meetings regarding this issue need to come back, because these proposed changes are just an enabling act. It changes the zoning somewhat. It means that the second and third floors, under one condition, do not have to be residential. He thought that no building on Worth Avenue today would really sell as residential on the second and third floors with no parking, swimming pools, grass area. Times have

changed since the zoning regulations were established.

Mr. Wyett said it was important that when and if one or more parties return to present a plan under the new zoning, that is when the interested parties will have the opportunity to say the building is too big, too small, too high, too low, or whatever anyone would want to say. That meeting will be important because the participants will help the Town Council shape what will be built there. There is a possibility the building will not be over two stories or the Town Council will say two stories is enough. The setbacks, rear lot lines, and other issues may be addressed. Mr. Wyett urged all interested parties to return if and when those meetings are scheduled to lend support to their positions.

Mr. McDonald said he had no comments.

Mayor Ilyinsky said he was sorry Mr. McDonald had no comments, because that was one of the reasons he was elected.

Mayor Ilyinsky asked how many people remembered the filling station on the corner of Worth Avenue and County Road? He recalled to the east of the gas station was a camera store, Raymond's, and a large commercial building on the corner with a public swimming pool in it. He said he arrived at a conclusion after talking to literally dozens of people about this issue and inevitably the consensus he heard was that the residents would not mind a new Neiman Marcus store, in fact, they would love to have one, but it must be a little smaller than what they think it is going to be.

Mayor Ilyinsky said he seldom agreed with Mr. Wyett 100% but he did agree with the remarks he just made. Mayor Ilyinsky said this is not the time to shoot this project down. The time to shoot this project down, as Mr. Wyett said, is later on when the applicant has the right to present a site plan review and their intentions to the Town Council.

Mayor Ilyinsky said, once again, the Town Council is on the wings of a dilemma in the Town. He said he knew all of the principals in this project for many years. He summarized that no one is opposed to a Neiman Marcus store if it is built within the existing zoning codes. To name a few merchants Gucci, Cartier, Tiffany, Chanel, Ferragamo, and other world famous merchants have located on Worth Avenue without requesting major changes to the zoning, and they continue to prosper. Mayor Ilyinsky said he borrowed that language from Mrs. Christine Franks who had spoken earlier. Mayor Ilyinsky said he thought the changing of guidelines should be permitted, temporarily. He said he will promise (the residents) that the building that they have heard of, 57,000 square feet, 3 ½ stories high, a great glob that will block the sunshine and air for everyone on the back street, will not be built as long as he is sitting as Mayor. The Mayor said what might be built is a lovely building that he hoped that Mr. Lawrence can design a building (*he knows he can*) that Murray Goodman will feel comfortable with as far as the future returns are concerned, and he hoped that Neiman Marcus will be happy too.

Mayor Ilyinsky said this is Palm Beach, and he agreed with the lady who said this is not a normal situation. This is a very unusual Town, and it still is. Every now and then everyone has to be reminded to dig his/her heels in, but at the same time, not be insulting or rude, but be cooperative, and this is one of those classic instances—the Town wants to get along with these people, the Town wants a Neiman Marcus store here, but the Town wants them to build it the way the Town wants it! The Mayor thanked everyone for being at the meeting and asked that everyone think this through by changing the guidelines, because it did not mean that Neiman Marcus can walk in and build anything they want to. He promised that.

Mr. Wyett made a motion to move the question on Ordinance 2-98—move approval. Mr. McDonald seconded the motion.

Mrs. Smith asked Mr. Randolph if he had any comments and to please read Ordinance 2-98 by title.

Mr. Randolph read Ordinance 2-98 by title.

ORDINANCE NO. 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,

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON 2/13/98

**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.**

Mr. Randolph clarified that the draft of the ordinance, dated 1/26/98, was the most recent draft of the ordinance. Mr. Castro confirmed that it was.

Mrs. Smith asked Mr. Randolph to respond to some of the questions she had before the question was called.

Mrs. Smith asked if the guidelines as just have been moved are voted upon and the two story building with a second story with a maximum coverage of 65%—will the Town Council or the Architectural Commission be in a position to reduce that second floor coverage to less than 65%?

Mr. Randolph replied that in considering the special exception, the Town Council will have the opportunity to place whatever reasonable conditions the Council deems are supported by the evidence on the application, but the Town Council has to do that, not based on the Council's whim or caprice, but on the basis of the evidence that comes before the Town Council at that particular time. Mr. Randolph said that, as opposed to this hearing which is a legislative hearing because it is a zoning change that affects a large portion of the Avenue, if the Town Council hears an application in the future that relates to a property on this block, the Town Council will hear it by way of special exception. At that time, that will be a quasi-judicial hearing and the Council's determination will have to be based upon the evidence as presented at that time. The validity of the determination will be based upon whether there is substantial, competent evidence before the Council to allow the Council to rule the way it does.

Mr. Randolph explained that the lot coverage requirement of 65% would give an applicant the right to build up to that amount, in the event they can prove by special exception that they are entitled to do that.

On roll call, the motion carried 4-1 with Mrs. Smith casting a negative vote.

Mrs. Smith explained that she thought the project was too big, and while she respected the opinions of the Mayor, she thought the 65% figure was possibly too large.

ANY OTHER MATTERS

Mr. Wyett said the Town Council will have another vote to take, and he did not want the people who were present at the meeting to think that the second floor at 65% was cast in stone. Competent, substantial evidence will have to be presented by the applicant, and the figure could be any sum under 65%.

Mr. Moore reminded everyone that the next meeting for the second reading of Ordinance 2-98 will be at 10:00 a.m. on February 27, 1998.

ADJOURNMENT

The meeting was adjourned at 2:10 p.m.

Mary A. Pollitt, Town Clerk

Prepared by:

Mary A. Pollitt
Town Clerk