

TOWN COUNCIL MINUTES OF SPECIAL MEETING HELD ON FEBRUARY 6, 1995, AT 5:01 P.M.

I. CALL TO ORDER AND ROLL CALL: The meeting was called to order by President Pro Tem Smith at 5:03 p.m. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul R. Ilyinsky, President Pro Tem Lesly S. Smith, Councilwoman Michele Clarke Royal, Councilmen Leslie A. Shaw and C. Gerald Goldsmith. Also attending were Town Manager Robert J. Doney, Town Attorney John C. Randolph, Assistant Town Manager Peter B. Elwell, Assistant to the Town Manager David F. Jakubiak, Director of Planning, Zoning and Building Robert L. Moore, Planner/Projects Coordinator Timothy M. Frank, Town Clerk Grace T. Peters, Deputy Town Clerk Mary A. Pollitt, and William F. Brisson, Consultant from Adley, Brisson, Engman, Inc.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: The invocation was given by Mrs. Peters. The Pledge of Allegiance was led by President Pro Tem Smith.

III. APPROVAL OF AGENDA: Mr. Doney requested that two items be added to the agenda under "Any Other Matters". Mrs. Peters would like to address an item for the Salvation Army regarding a charitable solicitation permit. The second item concerned a request from the City of West Palm Beach on the PBIA proposed I-95 interconnect matter.

Motion made by Mr. Goldsmith to approve the agenda with the addition of the two items under "Any Other Matters". The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

IV. PROOF OF PUBLICATION: Mr. Moore reported the proof of publication was received on February 2, 1995.

Mrs. Smith requested public comments before the second reading of Ordinance Number 1-95, as modified.

Richard Weinstein, 150 Bradley Place, President of the Biltmore Condominium Association, addressed the Town Council. Mr. Weinstein said the Association remains quite concerned about some of the issues related to shared parking in the revised 1-95 Ordinance. Mr. Weinstein stated they are particularly concerned about the 110 parking spaces directly across from the Biltmore at Publix. He continued that the proposed changes limit the residents who will be affected by the area in which the shared parking is being considered to 200 feet. Mr. Weinstein said 200 feet is totally inadequate, and the ordinance as it is presently drawn does not indicate how the measurement will be made--will it be property line to property line or building to building? He continued every time an application is submitted, the affected residents will have great concern. Mr. Weinstein said a second concern is, with the advent of allowed shared parking, that a new use could be established which may be a late night use.

Mr. Weinstein stated adopting this ordinance would intensify the concerns and have an impact on the living style of the many older residents of the Biltmore. He requested the issue of shared parking be returned to the Zoning Commission for study to give the concerned residents an opportunity to express their opinions. Mr. Weinstein suggested the 200 feet be increased to 500 feet and the term "affected owner" be defined. He added anyone affected by shared parking should be considered if an application comes before the Council.

Mr. Michael Tammaro, Attorney representing Royal Poinciana Apartments and Robert Pergament, addressed the Town Council and stated his clients oppose legitimizing in any fashion the use of the Publix parking lot under the existing circumstances as parking for E. R. Bradley's. He said the language changes that have been made to the ordinance since last meeting may work; however, the 200 foot requirement is not large enough and should probably be 500 feet.

Mr. Brooks Ricca, Attorney, 267 Dunbar Road, commented that he had concerns that were expressed in a letter to Mr. Randolph as follows:

"The proposal relating to Section 6.21 provides that the Town Council shall be included as a party to the Shared Parking Lease, prior to the lease approval. It further provides that shared parking...may be allowed...subject to the sole discretion of the Council. That is being done, in part to give consideration to nearby residents who may be affected by the agreement. Deference to residents' concerns is a legitimate consideration. However, the Amendments in question are legally deficient because they do not provide any guidelines whatsoever for the Council to follow in making its determination. At present, the Amendment gives the Town Council unfettered authority to act in a capricious and arbitrary manner..."

Mr. Ricca summarized that the long-standing general accepted rule in Florida is to the effect that, an Ordinance which vests in municipal authorities arbitrary discretion to grant or revoke a license to carry on an ordinary lawful business, without prescribing definite rules and conditions for the guidance of the authorities in the execution of the discretionary power, is invalid.

Mr. Ricca referred to Section 2, (a) (I) SHARED PARKING IN COMMERCIAL ZONING DISTRICTS, line 5, "...Council must and shall consider the effect...", and said that was a legal standard that would be very difficult to adhere to because the words "must" and "shall" are mandatory language. He suggested using the words "should" and "may", and then the Council has discretion to do what they want.

Mr. Jesse Newman addressed the Council and stated he was concerned about the accessory use of commercial uses in a hotel and the use of the temporary sign in commercial districts. He continued that the Chesterfield Hotel had violated the ordinance this past weekend by showing/selling designer apparel.

Mr. Brisson said he had prepared alternative language if the Council wished to change Section 2.

Mr. Randolph said the amended language proposed for the Town Council's consideration between the first and second reading of the ordinance was an attempt to accommodate the concerns of all parties. He continued that in drafting the language, copies were provided to staff and affected property owners. Mr. Randolph stated the original draft called for a distance of 500 feet from the site, but this was changed after consultation with staff because 200 feet was used for special

exceptions. He added that Mr. Brisson attempted to draft language which would address the concerns stated by Mr. Ricca and others. Mr. Randolph said he thought the Council had enough concerns about this ordinance, and that it might be beneficial for staff to have an opportunity to review this. He said if Council wants this item to go through this year, it can be done perhaps by striking some of the language from the ordinance and modifying additional language. Mr. Randolph stated there is a risk when language is modified between first and second readings, and these modifications have not been advertised. Mr. Randolph recommended the shared parking issue be examined closely, and it should not be included in this year's zoning approval.

Mrs. Smith said she had a problem with this at the January 23, 1995, meeting with this issue, and it is not proper without advertising and studying the wording to make changes to the zoning. She recommended the shared parking issue be returned to the Zoning Commission for study next season.

Mayor Ilyinsky agreed with Mrs. Smith. He said he initially thought this could be resolved during this zoning season; however, he has talked to many residents recently and agrees the issue should be restudied.

Mrs. Royal and Mr. Goldsmith agreed with Mrs. Smith. Mr. Goldsmith added he hoped a future Council would realize the Town has a specific problem and a solution should be found for it.

Mr. Robert Wood, Zoning Commission member, addressed the Council. Mr. Wood stated when the ordinance was first presented to the Zoning Commission, it was not restricted to commercial uses--it was wide open. Mr. Wood said he was very concerned about the encroachment of commercial parking in residential areas; however, the Zoning Commission may have overlooked some important considerations and additional input from the public may be needed. Mr. Wood suggested solving the problem of shared parking by re-drafting the ordinance so that the shared parking becomes a special exception in every case. He continued once it is handled as a special exception in every case, then the standards Mr. Ricca said were missing could be applied. Mr. Wood said the ordinance as written and amended would create too much confusion and should not be changed again at this point in time. Mr. Wood agreed the Zoning Commission should start over next year to see that the ordinance is properly drafted and integrated into a new ordinance as a special exception.

Mr. Shaw said the initial concept of shared parking was originally intended to be an on-site issue rather than an off-site issue, and was geared for those properties that had parking on site that was used during the daytime and because of the seating requirements of restaurants, these restaurants could use the same daytime parking spaces in a commercial building for the evening. He continued that unfortunately this original concept was lost during the ensuing process, and that should be kept in mind. He stated the theory was that a commercial building that did not have sufficient parking for a commercial restaurant could share that same parking rather than going off site and that could be included in the ordinance.

Motion made by Mrs. Royal to delete the issue of shared parking from the 1-95 ordinance; to return the issue to the Zoning Commission for study during the next zoning season and to eliminate the issue from consideration during the 1994-95 zoning season. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

V. SECOND READING OF ZONING ORDINANCE NO. 1-95 AS MODIFIED

Mr. Randolph read the ordinance as follows:

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; PROVIDING AMENDMENTS TO ARTICLE 5, ENTITLED, "SUPPLEMENTARY LOT REGULATIONS" BY AMENDING SECTION 5.15, "LOT AREA", PROVIDING FOR GREATER BUILDING SETBACKS ON LOTS OF 60,000 SQUARE FEET OR GREATER IN R-A AND R-B DISTRICTS; BY AMENDING SECTION 5.51, "MINIMUM YARD, LOT AND BULK REGULATIONS" BY REDUCING ALLOWABLE DISH ANTENNA SIZE IN THE R-AA DISTRICT AND BY ALLOWING CERTAIN SIZE DISH ANTENNAS MOUNTED ON BUILDING ROOF; TO PROVIDE AMENDMENTS TO ARTICLE 6 ENTITLED, "SUPPLEMENTARY USE REGULATIONS", BY AMENDING SECTION 6.21, "OFF-STREET PARKING" TO INCLUDE A NEW PARKING REQUIREMENT FOR GROUP HOMES AND FOSTER CARE FACILITIES; BY AMENDING SECTION 6.33, "SIGNS IN COMMERCIAL DISTRICTS" BY ELIMINATING DISPLAY TIME FOR TEMPORARY SIGNS ADVERTISING SPECIAL EVENTS; TO AMEND SECTION 6.54, "ACCESSORY COMMERCIAL USES IN A HOTEL", PROVIDING REGULATION ON TEMPORARY DISPLAY AND SALE OF MERCHANDISE; TO PROVIDE AMENDMENTS TO ARTICLE 8 ENTITLED, "NONCONFORMITIES" BY AMENDING SECTION 8.15, "TERMINATION OF NONCONFORMING USES", ALLOWING NONCONFORMING USES WITHIN TOWN DESIGNATED LANDMARK STRUCTURES BE CONTINUED IN THE EVENT A DESTROYED LANDMARK STRUCTURE IS RECONSTRUCTED; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY FOR A VIOLATION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph noted the section related to shared parking in commercial zoning districts would be eliminated from the body of the ordinance, pages 2, 3 and 4.

Motion made by Mr. Goldsmith to adopt Ordinance 1-95 as presented by Mr. Randolph. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

VI. ANY OTHER MATTERS

1. Mrs. Peters addressed the issue of the request by the Salvation Army to hold a third event at Mar-a-Lago. She said the Salvation Army, under charitable solicitation permit number 197-95, had already scheduled two events for the year, and this event was a "thank-you" dinner; however, they wanted to be in a position to accept donations for their capital campaign.

Mr. Keith Waters, Director for the Salvation Army for the Capital Campaign, addressed the Council and stated this was the first capital campaign the Salvation Army had conducted in 72 years.

Mr. Randolph, responding to questions from Mrs. Smith, said the Salvation Army was attempting to rectify the situation, if this were a fund raising event, by requesting a third event be permitted under the current permit. He continued that, if this were not a fund raising event, then this would be a party, and a permit would not be required.

Motion made by Mr. Shaw to approve the third event under Charitable Solicitation Permit 197-95 to be held at Mar-a-Lago. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

2. Mrs. Smith said the proposed I-95 PBIA direct connect item on the agenda is in direct response to a letter received from Mayor Nancy Graham, City of West Palm Beach. She continued that Mayor Graham requested the Town of Palm Beach join the City of West Palm Beach to authorize funding, on behalf of the Town, for \$12,500 for professional fees plus disbursements through 1995, to work with a partner of Sullivan & Cromwell to pursue the elimination of the proposed PBIA I-95 Interconnect and the proposed east/west runway. Mrs. Smith stated she supported the idea and asked to hear from other Council members.

Mr. Goldsmith asked to hear a breakdown of the proposed costs.

Mrs. Smith responded Mr. Jeffrey Jacobs' fee is projected at \$25,000, and Mayor Graham requested the cost be split 50/50 with the Town.

Mrs. Royal asked if additional costs would be accrued, and would there be upward exposure?

Mrs. Smith responded additional costs may occur; however, the Council is only considering the \$12,500 request.

Mr. Shaw asked if other municipalities could be involved in this issue?

Mrs. Smith replied the project was between the City of West Palm Beach and Palm Beach.

Mayor Ilyinsky said this issue was important, and this approach was the best way to go. He continued Mayor Graham stated in her letter that apparently no assistance will be available from the Federal Highway Administration in Atlanta, and she does not think they will be successful in stopping the project in Tallahassee. Mayor Ilyinsky added the \$12,500 would be very well spent in this case.

Mrs. Smith asked if any member of the public had comments. There were none.

Mr. Doney said Mr. Jacobs' letter to Anne Maass stated no guarantee of success or a precise estimate of how much effort will be required to stop this project; but nonetheless, it is likely that professional fees of not more than \$25,000 plus disbursements would be sufficient to pursue this matter through 1995. Mr. Doney continued that Mr. Jacobs' letter outlined the projects which were identified as including a proposed runway extension and construction of an airport interchange from I-95.

Mrs. Smith recommended a motion stipulate the \$12,500 would be for professional fees, and the funding would be appropriated from the Town's FY95 undesignated general fund balance.

Mrs. Smith passed the gavel to Mr. Shaw to make the following motion:

Motion made by Mrs. Smith to approve the amount of \$12,500 for professional fees, as part of the \$25,000 shared expense with the City of West Palm Beach to address the issue of the proposed extension of the PBIA runway and the interconnect from the airport to I-95, and the funds are to be appropriated from the FY95 undesignated general fund balance. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

Mr. Doney mentioned a letter from Mayor Ilyinsky will be faxed to Mayor Graham notifying her of the Council's action.

VII. ADJOURNMENT: There was no further business, and the meeting was adjourned at 5:40 p.m.

Mary A. Pollitt
Deputy Town Clerk