TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE TOWN COUNCILMEETING
HELD ON WEDNESDAY, JANUARY 13, 2010

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Wednesday, January 13, 2010, at 9:30 a.m., in the Emergency Operations Center, 355 South County Road, Palm Beach. On roll call, all of the elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. COMMENTS OF MAYOR JACK McDONALD

There were none.

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Council Member Wildrick commented that Island Cats, Inc. were doing a great job and providing a service to the town. He requested that the Town have a discussion to consider giving a donation of $25,000.

President Rosow responded that it would be placed on the Agenda under Any Other Matters.

President Pro Tem Coniglio commented that Island Cats would not have the opportunity to speak and suggested that the discussion be placed on the Agenda for next month.

V. COMMUNICATIONS FROM CITIZENS- 3 MINUTE LIMIT PLEASE

Tommy Bosniak, Association President at 3200 S. Ocean Blvd., commented regarding the William Donner project, which was a multi-family dwelling. She indicated that the Association was protesting the project.

President Rosow noted that at the appropriate time, the project would be on the Agenda, and would require a series of hearings, including a quasi-judicial public hearing.

Council Member Kleid added that the Council was very supportive of the Association's position, although today they could not formally show support.

VI. APPROVAL OF AGENDA

President Rosow handed the gavel to President Pro Tem Coniglio, as he recused himself, at the advice of Town Attorney Randolph and provided Form 8b to Town Clerk Cunningham, since an item to be deferred was next door to his home.

DEFERRED Item IX.C.3.a., Variance #30-2009, to the February 10, 2010, Town Council Meeting.

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve the Agenda as Amended. On roll call, the motion carried 4-0, with President Rosow recused.

VII. **PUBLIC HEARINGS**

A. RESOLUTION NO. 1-10 A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Ratifying and Confirming the Determination of the Landmarks Preservation Commission that the Property Known as 271 El Vedado Road Meets the Criteria Set Forth in Ordinance No. 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach; and Designating Said Property as a Town of Palm Beach Landmark Pursuant to Ordinance 2-84, Also Known as Chapter 54, Article IV of the Code of Ordinances of the Town of Palm Beach. [John S. Page, Director of Planning, Zoning, and Building]

Responding to President Rosow, Historical Consultant Jane Day noted that proof of publication had been received.

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

Historical Consultant Day provided a designation report of the property.

Motion made by President Pro Tem Coniglio, seconded by Council Member Kleid, to accept the Designation Report of the property known as 271 El Vedado Road. On roll call, the motion carried unanimously.

Motion made by President Pro Tem Coniglio to approve Resolution No. 1-10 designating the property at 271 El Vedado Road, as a landmark of the Town of Palm Beach on the basis that it meets criteria 1, 3, and 4 of section 54-161 of the Town of Palm Beach Code and the Landmarks Preservation Ordinance No. 2-84, seconded by Council Member Diamond.

Town Attorney Randolph read Resolution No. 1-10 by title, as printed above.

Upon roll call, the motion carried unanimously.

Ms. Day submitted the new Landmarks Preservation Manual that was updated with the help of the Palm Beach Preservation Foundation. She thanked the interns from the Anthony K. Baker internship program of the Preservation Foundation, and the Landmarks Preservation Commission members.

President Rosow commented that the Manual was outstanding and all of the Council Members agreed.

John Mashek, president of the Board of Directors of the Preservation Foundation said they were very proud as this was the first year of using interns from the University of Miami.

Responding to President Pro Tem Coniglio, Mr. Mashek indicated that the Board of Realtors could be provided copies of the Manual and that it was also available on the Town website.

VIII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 17-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending the Town Code of Ordinances at Chapter 22, Businesses, Division 2, Window Treatment, Providing for Definitions; Providing Specifications for Window Treatments and Screening of Store Fronts in Commercial Zoning Districts; Providing Exceptions; Providing a Penalty; Providing for Severability; Repealing All Ordinances or Parts of Ordinances in Conflict Hereof; Providing for Codification; Providing an Effective Date. [John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 17-09 by title, as printed above.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to adopt Ordinance No. 17-09.

Responding to President Pro Tem Coniglio, Planning Administrator John Lindgren indicated that a press release would be put on the Town's website; would also be published in the *Shiny Sheet;* and staff would coordinate with the merchants groups.

President Rosow indicated that it would be more polite for staff to notify the merchants that were not in compliance, before Code Enforcement approached them.

Responding to Mayor McDonald, Rob Walton, Code Compliance, indicated that a warning letter is sent first, and then a ticket, or a request to attend the Code Enforcement Board Hearing.

President Rosow directed staff to notify the merchants that there had been a change in the Code, stating the new criteria, before any warning letters were issued.

Upon roll call, the motion carried unanimously.

B. First Reading

1. ORDINANCE NO. 4-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, at Sections 134-326 and 134-2182 to Change the Reference from Building Official to Director of the Planning, Zoning and Building Department, Section 134-893(a)(13) Relating to the Cubic Content Requirements for R-B Lots Which Are Not Adjacent to the Waters of Lake Worth in (a)(13); Sections 134-1472, 134-1473 and 134-1474 Relating to Allowing Public Structures and Buildings in the Beach Area Zoning District and Exempting Them from Setback, Size and Height Requirements; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.[John S. Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 4-10 by title, as printed above.

Motion made by President Pro Tem Coniglio, seconded by Council Member Diamond, to approve on first reading Ordinance No. 4-10. On roll call, the motion carried unanimously.

IX. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

a. SPECIAL EXCEPTION #1-2010 WITH VARIANCE The application of Alfred J. Malefatto, Esq., City National Bank of Florida; Trust # 2401-2301-00; relative to property commonly known as 2842 South Ocean Blvd.; described as lengthy legal description on file; located in the Beach Area Zoning District. Request for Special Exception to permit the Omphoy Hotel to add a beach house structure to accommodate a beach attendant in the Beach Area zoning district on a lot with a minimum 150 feet of lot frontage. Ten foot setbacks will be provided from all property lines and a unity of title provided. A variance is requested for said beach structure to be placed 52.23 feet from the Town Bulkhead line in lieu of the 150 feet required for properties southward of Southern Boulevard where no proper ocean bulkhead exists. [Attorney: Alfred J. Malefatto, Esq.]

Ex-parte communication was declared by:

- Council Member Diamond had a brief discussion with Attorney Alfred J. Malefatto at a Code Enforcement Board meeting, but not in any great detail.

Attorney Malefatto, Greenberg & Traurig, Inc., on behalf of the owners of Omphoy Hotel, provided an overview of the request. He presented photos of the cabana structure.

Responding to Council Member Diamond regarding the structure being built before a permit was approved; Attorney Malefatto noted that the owners did not know that one was needed.

Council Member Wildrick commented that he was not happy that the structure was built before approval for a permit was obtained. He indicated that ignorance of the law was no excuse, and on more than one occasion the owners requested a permit after the work was completed.

Council Member Kleid stated that the Omphoy Hotel was a terrific addition to the Town; he added that at the time of notification that a permit was required; the structure had not been removed in the interim period. He noted that the chaise lounges were placed without permission, which was a concern of the Council.

Attorney Malefatto indicated that he would let his clients know regarding the concerns of the Town.

Responding to Mayor McDonald, Attorney Malefatto noted that the structure was not anchored deeply, and could easily be removed in inclement weather.

Code Compliance Officer Rob Walton noted that the structure had been moved from the beach to the dune, and now was back on the beach.

Responding to President Pro Tem Coniglio regarding the ten foot setbacks Attorney Malefatto said that he was not aware if his clients had, spoken to the neighbors on the left and the right, but that the neighbors were notified by staff of the application. Secondly, he noted that the Florida Department of Environmental Protection had been notified and that he had been advised that during turtle season he needed prior authorization, although he was not subject to obtaining a permit. The structure was removed temporarily, during the turtle nesting season, and placed back on November 1st.

Zoning Administrator Castro provided an explanation of what had occurred and said that no structures were allowed within 150 feet of the bulkhead line, which the structure was clearly within 150 feet. The other four structures were placed after staff's meeting with the owners, without consultation from the Town. If the structure was approved, food or drinks should not be allowed to be sold out of the structure. It would meet code as it related to being one beach cabana structure on the beach area zoning district, but the other four structures were not permitted and were a Code Enforcement action at this point.

Town Clerk Cunningham administered the oath to Sue Keller, who would be providing testimony.

Sue Keller, 2850 S. Ocean Blvd., a resident of Palm Worth, said that she was located directly south of the Omphoy Hotel. She distributed photos of the structures, which were located on the southern part of the Hotel property, and obstructed her view of the continuity of the beach. She noted that she would like the structures removed, or if approved that the structures be placed on the north side of the Hotel's property.

Town Clerk Cunningham administered the oath to Donald Kranenberg, who would be providing testimony.

Don Kranenberg, 2850 S. Ocean Blvd., a resident of Palm Worth, said that he was opposed to the cabana structures, as it was not reflective of the Town of Palm Beach, because of a cluttered appearance.

Sue Keller provided a letter of opposition that the Palm Worth residents had written.

President Rosow suggested that the application be denied and the structures removed; the applicant should return with an application that described their vision of the beach, which would be reviewed in its entirety, rather than the piecemeal approvals. The placement of the structures was a flagrant violation of the Code.

Motion made by Council Member Wildrick that Special Exception #1-2010 with Variance shall be denied for the reason that the granting of the special exception would adversely affect the public interest and that the specific requirements set forth in Section 134-229 of the Town Code had not been met.

Council Member Kleid commented that he agreed with Mr. Kranenberg, that it would be like Atlantic City and agreed to the denial.

Council Member Diamond seconded the motion.

Planning, Zoning and Building Director Page noted that when a variance was denied by the Council, a one year prohibition existed from reapplying for that same variance.

Attorney Malefatto requested a waiver of the one year prohibition in order that the applicant could reapply.

Council Member Wildrick was willing to withdraw the motion, but the applicant would be unable to return for 60 days, in which the applicant would need to be compliant as judged by Code Enforcement Officer Rob Walton.

Mayor McDonald noted that the motion of denial would need to include a condition that the one year would be waived in lieu of 60 days for resubmittal of the variance request.

Amended motion made by Council Member Wildrick that Special Exception #1-2010 with Variance shall be denied for the reason that the granting of the special exception would adversely affect the public interest and that the specific requirements set forth in Section 134-229 of the Town Code had not been met. The one year waiting period would be waived in lieu of 60 days for resubmittal of the variance request, with a principal, and the consultation of the neighbors and that Code Enforcement Officer Rob Walton attest that the applicant was not in violation of the code.

President Rosow commented that the applicant return with a renewed application, and that the residents adjacent to the property would have an opportunity to provide input.

Responding to Mayor McDonald, Mr. Castro indicated that the earliest the applicant could return in order to meet all of the requirements would be March or April.

Town Attorney Randolph clarified that the Omphoy Hotel would need to remove the cabana structures immediately. If the Council denied the application today, it would immediately go to Code Enforcement, and would be subject to fines, if not removed.

President Rosow added that the cabana beds were also included in the removal.

President Pro Tem Coniglio expressed concern for the residents regarding when the item would be on the Agenda, in order for them to be present.

President Rosow noted that the applicant would have to have an agreement with their neighbors and that the applicant could not come back in July when the neighbors were not around, and that it was part of the record.

Mr. Castro restated the following, which would be included in the motion:

- All of the structures would be required to be removed from the beach immediately;
- A new application would be required to be filed, which included noticing the neighbors;
- The neighbors could come to the meeting to have an opportunity to speak;
- An application, which would be heard after the May meeting, could not be filed;
- The principal had to be at the meeting if they wanted to be heard.
- All manmade structures on the beach would be required to be removed, except for the beach chairs;

Responding to Mayor McDonald, President Rosow defined what was meant by "agreement with the neighbors", as the neighbors and staff could object to whatever the applicant brings back.

Responding to Mr. Castro, President Rosow said that in the Development Order, staff should require that in the denial letter, the applicant meet with the neighbors prior to coming back to the Council.

Amended motion made by Council Member Wildrick that Special Exception #1-2010 with Variance shall be denied for the reason that the granting of the special exception would adversely affect the public interest and that the specific requirements set forth in Section 134-229 of the Town Code had not been met. The one year waiting period would be waived in lieu of 60 days for resubmittal of the variance request, with a principal, and the consultation of the neighbors and that Code Enforcement Officer Rob Walton attest that

the applicant was not in violation of the code. The following conditions were added to the motion:

- **All of the structures would be required to be removed from the beach immediately, except for the beach chairs;**
- **A new application would be required to be filed, which included noticing the neighbors;**
- **The neighbors could come to the meeting to have an opportunity to speak;**
- **An application, which would be heard after the May meeting, could not be filed;**
- **The principal had to be at the meeting if they wanted to be heard.**
- **All manmade structures on the beach to be removed,**

Responding to Mayor McDonald, President Rosow defined what was meant by "agreement with the neighbors" as the neighbors and staff could object to whatever the applicant brings back.

The maker and seconder agreed with the conditions stated above.

On roll call, the motion carried unanimously.

Council Member Diamond moved that Variance No. 1-2010 be denied for the reason that the application did not meet the criteria set forth in Section 134-201(a), items 1 through 7, under the same conditions as Special Exception No. 1-2010. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

a. VARIANCE #30-2009 The application of Maura A. Ziska, Attorney for St. George Investments, LLC (Wayne Ducote); relative to property commonly known as 1470 North Lake Way; described as lengthy legal description on file; located in the R-A Zoning District. Request approval of variances to (1) construct a dock and associated appurtenances a maximum of 244 feet west of land in lieu of the 150 foot maximum allowed; (2) for a side yard setback for triple dolphin piles to be 15 feet from the south property line and 15 feet from the north property line in lieu of the 25 foot minimum required; (3) to allow an accessory structure (dock) to be built on a parcel of land that has no principal structure. [Maura A. Ziska, Esq.] Deferred from the December 16, 2009, Town Council Meeting.

This item, IX.3.C.a., Variance #30-2009 was deferred to the February 10, 2010, Town Council Meeting.

4. New Business- More Than 15 Minutes

None

D. Other

1. Discussion of Town of Palm Beach 10-Year Water Supply Facility Work Plan.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to accept the Town of Palm Beach 10-Year Water Supply Facility Work Plan. On roll call, the motion carried unanimously.

2. Request to Consider Zoning Ordinances Nos. 2-10 and 4-10 Prior to 5:00 p.m. at the February 10, 2010, and March 10, 2010, Town Council Meetings.

Planning, Zoning and Building Director Page asked that the 5:01 p.m. requirement for Ordinance No. 4-10 be waived. He also indicated that Ordinance No. 2-10 should be removed from the Agenda, as it was uncertain as to when it would return to the Council because it had to do with the overlay and the Royal Poinciana area.

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to adopt Ordinance No. 4-10. On roll call, the motion carried unanimously.

3. Lunch Time Operation of Coco's Restaurant, Special Exception #3-2009, 290 Sunset Avenue.

Zoning Administrator Castro noted that the Police Department had been contacted regarding the status of the condition that *lunch operation would be allowed if valet parking was eliminated.* The Police Department indicated that no problems or issues occurred, and staff recommended that lunch time operation be continued with the existing condition.

Responding to President Pro Tem Coniglio, Mr. Castro said that Coco's Restaurant would still be required to provide parking in the lot, but they may lose that parking in the near future. Coco's Restaurant would need to come back to the Council and find a new location for their offsite supplemental parking.

Motion made by President Pro Tem Coniglio to approve Special Exception #3-2009 with maintaining the parking conditions that had not been a problem to the Town, the residents or the neighborhood. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

4. Condition of Approval for Palmway Restaurant Concerning Town-Serving Documentation, Special Exception No. 1-2009, 288/290 South County Road.

Zoning Administrator Castro noted that owner, Mr. Campaniello, of Palmway Restaurant provided Town-Serving documentation, which consisted of a thick stack of receipts with summary tables of each month. The summary tables revealed that 75% of the customers were Town residents. Mr. Castro said that he was not sure how it was determined whether a customer was a visitor or a Town resident, in reviewing the backup documents.

Responding to Council Member Wildrick, Mr. Castro explained that in the past, in the way the code was drafted, it was up to the applicant to acquire a methodology that would be acceptable to the Town Council.

Council Member Wildrick suggested that a standardized procedure for Town-Serving documentation should be created for all Town restaurants.

Discussion occurred among the Council Members, Town Attorney Randolph, and staff regarding the Town-Serving documentation process. Town Attorney Randolph advised that the purpose of today's application, the burden of proof was with the applicant and they could submit any kind of proof that would meet the Council's satisfaction.

President Rosow indicated that the Ordinance, Rules, and Standards Committee should address the Town-Serving documentation process after the Planning and Zoning Commission had reviewed it.

Mr. Castro said in the past, it was inconsistent as to who was required to provide Town-Serving documentation annually and who had not provided at all, once the Council determined that an establishment was Town-Serving.

Council Member Wildrick stated that whatever was done for one should be done for all, as the Town needed to be consistent to be fair in government.

Town Attorney Randolph provided a brief explanation as to the difference of establishments that were new and required Town-Serving documentation versus the ones that were established for a long period of time.

Council Member Wildrick noted that his personal opinion was that restaurants should be considered differently than other businesses, as it was very difficult for a restaurant to survive being totally Town-Serving.

Motion made by Council Member Diamond to extend the Special Exception #1-2009 until the time the Town Council had reformulated the standards.

Responding to Council Member Diamond, Mr. Castro indicated that by having the applicant wait until the standards were reformulated, the applicant would be burdened with more expense. He noted that the reason for a date or a time certain was so that the Town would not have to re-advertise or re-notice the Special Exception.

Council Member Diamond allowed Council Member Kleid to restate the motion, **Council Member Kleid moved to accept the Town-Serving documentation provided by the Palmway Restaurant, and that the documentation would be resubmitted next year in January 2011, in accordance with new rules at that time.**

Responding to Mayor McDonald, Mr. Castro clarified that the occupational licenses were normally submitted in September of every year, and the reason that the documentation should not coincide with the renewal of the occupational license was because it was not certain if staff would be finished by October of this year.

Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

X. ANY OTHER MATTERS

1. It was the consensus of the Town Council that discussion of donations for Island Cats, Inc., be placed on the February 10, 2010, Town Council Meeting Agenda.

2. President Pro Tem Coniglio acknowledged that the property at 215 Brazilian Avenue had a two-year extension, and indicated that she hoped that, prior that time frame, the Town could have an agreement that would comprise of aesthetic and parking changes. She stated that the property on Royal Palm Way had opted not to move forward. She added that it looked very lovely and hoped with a two-year time frame, the Council, Planning, Zoning and Building Director Page and Code Enforcement could meet with the owners and come to a harmonious agreement.

XI. ADJOURNMENT

There being no further business, the January 13, 2010, Town Council Meeting was adjourned at 10:34 a.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk