



TOWN OF PALM BEACH

Town Manager's Office

TENTATIVE –
SUBJECT TO
REVISION

TOWN COUNCIL MEETING

TOWN HALL
COUNCIL CHAMBERS-SECOND FLOOR
360 SOUTH COUNTY ROAD

AGENDA

WEDNESDAY, SEPTEMBER 15, 2010

9:30 AM

For information regarding procedures for public participation at Town Council Meetings, please refer to the end of this agenda.

The progress of this meeting may be monitored by visiting the Town's website (www.townofpalmbeach.com) and selecting "Your Government" and then selecting "Live Meeting Audio." If you have questions regarding that feature, please contact the Office of Information Systems (561) 227-6315. The audio recording of the meeting will appear within 24 hours after the conclusion of the meeting under "Agendas, Minutes, and Audio."

No written materials received after 5:00 p.m. on the Thursday immediately prior to a monthly Town Council meeting will be included in the back-up binders distributed to the Mayor and Town Council in preparation for that meeting. Written materials received after 5:00 p.m. on Thursday will be separately distributed to the Mayor and Town Council; however, depending upon the length of the materials, the time of submittal, and other circumstances, the Mayor and Town Council may not be able to read and consider such late submittals prior to acting upon the policy matter(s) which they address.

- I. CALL TO ORDER AND ROLL CALL
- II. INVOCATION AND PLEDGE OF ALLEGIANCE
- III. COMMENTS OF MAYOR JACK McDONALD
- IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

V. COMMUNICATIONS FROM CITIZENS – 3 MINUTE LIMIT PLEASE
(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

VI. APPROVAL OF AGENDA

VII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 23-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, at Section 134-1 to Change the Use of the Term Building Official to Planning, Zoning and Building Director and to Add a Provision Which Allows the Town Council to Waive Certain Zoning Provisions Regulating the Use of Public Rights-of-way to Allow Town Sponsored Events Provided Certain Conditions Are Met; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.
[John S. Page, Director of Planning, Zoning and Building]

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B. First Reading

None

VIII. DEVELOPMENT REVIEWS

A. Appeals

None

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours of Construction Work, at 265, 255, 235 and 231 Sunset Avenue and 240 Sunrise Avenue (Publix Supermarket) (Per Letter Dated August 28, 2010, From Maura Ziska).
(See VIII.D.1.b.)

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business – Less than 15 Minutes

None

2. New Business – Less than 15 Minutes

a. SITE PLAN REVIEW #5-2010 WITH SPECIAL EXCEPTION AND VARIANCE The application of HOJO Partners, LLC; relative to property commonly known as **2880 South Ocean Blvd.**; described as 23/24-44-43, SLY 150 Ft of ELY 256.9 Ft of filled land Lyg W of SR A1A & N of Lake Ave being Pt of Gov Lot 1 SEC, of the Public Records of Palm Beach County, Florida; located in the C-TS Zoning District. The applicant is requesting a Site Plan Review for Phase I of a two phase project. Phase I consists of the demolition of an existing 3,833 square foot restaurant building and the construction of a new 4,000 square foot office building. The request includes providing the required parking spaces, and trash receptacle area and associated sidewalks. The exact nature and details of Phase II of the project will be determined at a future date. The applicant requests Special Exception approval to allow a business to occupy 4,000 sq. ft. which is more than the 2,000 sq. ft allowed by the Town Code and a Variance is required to allow for an office use on the ground floor in the C-TS Zoning District. [Attorney: Robert Deziel]

b. SITE PLAN REVIEW #6-2010 WITH VARIANCES The application of Rita Schneider; relative to property commonly known as **130 Sunrise Avenue, PH 9**; described as Sun & Surf One Hundred Thirty Condominium Unit PH-9, according to the Declaration as recorded in Official Records Book 2818, Page 1 of the Public Records of Palm Beach County, Florida; located in the R-C Zoning District. The applicant is requesting a Site Plan modification with variances to allow one (1) retractable awning totaling 142.38 square feet over the terrace on the seventh floor of a seven story condominium building. Variances are requested to allow the awning at a height of 61.5 feet in lieu of the 23.5 feet maximum height allowed; to allow the awning on the existing seventh floor penthouse of a seven story building in lieu of the two story building maximum allowed; to allow the awning with a rear yard setback of 38.58 feet in lieu of the 123 feet minimum required for multi-family use. [Attorney: Maura A. Ziska]
[ARCOM Recommendation: Approval of the variances will not cause negative impacts. Carried 7-0.]

c. SITE PLAN REVIEW #8-2010 WITH VARIANCES The application of Jeraldine Meltzer; relative to property commonly known as **130 Sunrise Avenue, PH3**; described as Sun & Surf One Hundred Thirty Condominium Unit PH-3, according to the Declaration as recorded in Official Records Book 2818, Page 1 of the Public Records of Palm Beach County, Florida; located in the

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R-C Zoning District. The applicant is requesting Site Plan Modification with Variances to allow one (1) permanent awning totaling 460 square feet over the terrace on the seventh floor of a seven story condominium building. Variances are requested to allow the awning at a height of 61.5 feet in lieu of the 23.5 feet maximum height allowed; to allow the awning on the existing seventh floor penthouse of a seven story building in lieu of the two story building maximum allowed; to allow the awning with a front yard setback of 71.25 feet in lieu of the 123 feet minimum required for multi-family use; to allow the awning with a side yard setback of 49.5 feet in lieu of the 61.5 feet minimum required for multi-family use in the R-C Zoning District. [Attorney: Maura A. Ziska] [ARCOM Recommendation: Approval of the variance will not cause negative architectural impacts. Carried 7-0.]

- d. VARIANCE #16-2010 The application of Cathleen McFarlane Estate; relative to property commonly known as **456 Worth Avenue**; described as lengthy legal description on file; located in the R-B Zoning District. The applicant is requesting a variance to allow the redesign of the existing entrance with a new forty two square foot second story addition. The overall cubic content ratio will remain the same at 4.11 in lieu of the 3.91 maximum allowed. A variance is also being requested for a side yard setback of 12.7 feet in lieu of the 15 foot minimum required. [Attorney: L. Frank Chopin] [Landmarks Preservation Commission Recommendation: The implementation of the variances will not cause a negative architectural impact on the subject property. Carried 7-0.]

- e. VARIANCE #17-2010 The application of Richard C. Bauer, DMD; relative to property commonly known as **241 Bradley Place**; described as Lots 5, 6 and 7 of ORANGE GROVE PARK, an addition to the Town of Palm Beach, Florida, according to the Plat thereof, recorded in Plat Book 5, Page 97, Public Records of Palm Beach County, Florida, LESS that part of Lot 5 condemned for public street purposes; located in the C-TS Zoning District. The applicant is requesting a variance to allow an office use on the first floor which does not meet all of the conditions of subsection (18). The variance is to allow a first floor office use which does not meet the requirement that more than 50% of the existing first floor tenant spaces within 300 feet in the same zoning district are required to be office uses, although it does meet the requirement that at least 50% of the existing uses on all floors of the same building are offices. [Attorney: Maura A. Ziska] ***Request for Withdrawal Per Letter Dated September 8, 2010, from Maura A. Ziska.***

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3. Old Business – More than 15 Minutes

a. MODIFIED SITE PLAN REVIEW #4-2010 WITH SPECIAL EXCEPTION AND VARIANCE (See VIII.D.1.a.)

4. New Business – More than 15 Minutes

None

D. Other

1. Publix Matters:
TIME CERTAIN: 10:00 AM

a. MODIFIED SITE PLAN REVIEW #4-2010 WITH SPECIAL EXCEPTION AND VARIANCE The application of Publix Super Markets, Inc. and Sunset Avenue Corp.; relative to property commonly known as **265, 255, 235, 231 Sunset Avenue and 240 Sunrise Avenue**; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting Site Plan Review and Special Exception to construct a 53,272 (44,018 gross leasable) square foot one story grocery store on 4.36 acres. The new store will provide 219 off-street parking spaces that will be at 90 degrees. There is proposed to be an outdoor ATM and the grocery cart storage will be within the building. All of the proposed mechanical equipment will be contained within portions of the building and will not be seen as equipment on the roof. Part of the proposed design is to have two generators located on the southeast corner of the proposed store that will contain a 100 KW standby generator and a 500 KW main generator. There is proposed to be two loading areas within the loading dock on the east side of the building that will be screened. The proposed store will have a pharmacy, deli, bakery and a larger selection of food items and other products. A variance is being requested to allow the individual ingress and egress drives on the south side of the property extending across the public sidewalks and curbs and connecting to the off-street parking spaces to the public street areas to be 43'7" and 51'3" in lieu of the 30 foot maximum allowed. [Attorney: Maura A. Ziska]

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b. Request for Waiver of Section 42-199, Hours of Construction Work, at 265, 255, 235 and 231 Sunset Avenue and 240 Sunrise Avenue (Publix Supermarket) (Per Letter Dated August 28, 2010, From Maura Ziska).

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- c. Consideration of Proposed Declaration of Use Agreement for Publix Supermarket; 265, 255, 235 and 231 Sunset Avenue and 240 Sunrise Avenue.

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

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- d. Consideration of Construction Management Agreement for Publix Supermarket; 265, 255, 235 and 231 Sunset Avenue and 240 Sunrise Avenue.

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

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IX. ANY OTHER MATTERS

X. ADJOURNMENT

PLEASE TAKE NOTE:

- Note 1:** If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings. For such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
- Note 2:** Disabled persons who need an accommodation in order to participate in the Town Council Meeting are requested to contact the Town Manager's Office at 838-5410 or through the Florida Relay Service by dialing 1-800-955-8770 for voice callers or 1-800-955-8771 for TDD callers, at least two (2) working days before this meeting.
- Note 3:** Items listed on the Consent Agenda will be approved by one motion of the Town Council, unless the Mayor or an individual Council Member requests that any item(s) be moved to the Regular Agenda and individually considered.
- Note 4:** A summary of the actions taken at Town Council meetings can be viewed on the Town's website after 5 p.m. on the Friday following the Town Council meeting.

PROCEDURES FOR PUBLIC PARTICIPATION

Citizens desiring to address the Town Council should proceed toward the public microphones when the applicable agenda item is being considered to enable the Town Council President to acknowledge you.

PUBLIC HEARINGS: Any citizen is entitled to be heard on an official agenda item under the section entitled "Public Hearings," subject to the three minute limitation.

COMMUNICATIONS FROM CITIZENS: Any citizen is entitled to be heard concerning any matter under the section entitled "Communications from Citizens," subject to the three minute limitation.

OTHER AGENDA ITEMS: Any citizen is entitled to be heard on any official agenda item when the Town Council calls for public comments, subject to the three minute limitation.

Town Council Meetings are public business meetings and, as such, the Town Council retains the right to limit discussion on any issue.

TOWN OF PALM BEACH

Town Council Meeting on: September 15, 2010

Section of Agenda

Ordinances - Second Reading

Agenda Title

ORDINANCE NO. 23-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, at Section 134-1 to Change the Use of the Term Building Official to Planning, Zoning and Building Director and to Add a Provision Which Allows the Town Council to Waive Certain Zoning Provisions Regulating the Use of Public Rights-of-way to Allow Town Sponsored Events Provided Certain Conditions Are Met; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum from John Page dated September 1, 2010
- Ordinance No. 23-10

TOWN OF PALM BEACH

Information for Town Council Meetings on: September 15, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John S. Page, Director, Planning, Zoning & Building Department

Re: Proposed Modifications and Changes to Chapter 134, Zoning
Ordinance No. 23-10

Date: September 1, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council approve Ordinance No. 23-10, as modified, on second reading of the Ordinance.

PLANNING AND ZONING COMMISSION/LOCAL PLANNING AGENCY RECOMMENDATION

The Planning and Zoning Commission/Local Planning Agency, at its meeting of July 20, 2010, recommended by a 7-0 vote, approval of Ordinance No. 23-10 which would have given the Town Council the power to waive any zoning provision in Chapter 134 for a town building, town structure, or use of town property or public rights-of-way for specified events.

GENERAL INFORMATION

The Town Council, at its August 11, 2010, meeting, amended and simplified the proposed Ordinance on first reading. The Council felt that the proposed Ordinance was too broad and granted too much discretion for the Town Council to waive zoning provisions. With assistance from the Town Attorney, the Council revised the language to narrow the scope of waivers the Council could approve. The modified language eliminates the Council's ability to grant zoning waivers from the lot, yard and bulk regulations for Town building and structures. As drafted, the revised Ordinance provides that the Town Council can only grant waivers for Town sponsored events on public rights-of-way provided there is super majority approval (4/5 vote) at a regularly scheduled Council meeting. The proposal also continues to require that any waiver be consistent with the comprehensive plan.

If you have any questions or comments about the ordinance please contact Paul Castro at 227-6406.

Second Reading by the Town Council of Ordinance No. 23-10, Proposed Modifications and Changes to Chapter 134, Zoning.
September 1, 2010
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TOWN ATTORNEY REVIEW

Modified Ordinance No. 23-10 was approved by Town Attorney Randolph for legal form and sufficiency.

Attachment

PBE:jsp:pc

cc: Planning and Zoning Commission
Thomas G. Bradford, Assistant Town Manager
John C. Randolph, Town Attorney
Joanna Cunningham, Town Clerk
Veronica B. Close, AICP, Asst. Director, Planning, Zoning and Building Department
Paul W. Castro, AICP, Zoning Administrator
John Lingdren, AICP, Planning Administrator
pf

ORDINANCE NO. 23-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 134, ZONING, AT SECTION 134-36 TO CHANGE THE USE OF THE TERM BUILDING OFFICIAL TO DIRECTOR OF PLANNING, ZONING AND BUILDING AND TO ADD A PROVISION WHICH ALLOWS THE TOWN COUNCIL TO WAIVE CERTAIN ZONING PROVISIONS IN CHAPTER 134 REGULATING THE USE OF PUBLIC RIGHTS-OF-WAY TO ALLOW TOWN SPONSORED EVENTS PROVIDED CERTAIN CONDITIONS ARE MET; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

WHEREAS, after public hearing pursuant to notice as required by law, the Town Council does hereby find, determine, and declare that the public health, safety, morals and general welfare of the citizens of the Town of Palm Beach require that the aforesaid Chapter 134, Zoning, of the Code of Ordinances, be amended as hereinafter set forth.

Section 1. Amend ARTICLE II, ADMINISTRATION, Section 134-36, Powers of building official; council order for issuance of building permits for variances and special exceptions, to read as follows:

Section 134-36, Powers of ~~building official~~; planning zoning and building director and town council and town council order for issuance of building permits for variances and special exceptions.

(a) The ~~building official~~ director of planning, zoning and building is given the duty, power and authorization to enforce this chapter. He or she shall oversee the ~~examine~~ examination of all applications for permits, and the ~~issue~~ issuance of permits for the construction, alteration, enlargement and occupancy of all uses which are in accordance with requirements of this chapter. The building official shall record and file all applications for permits with accompanying plans and documents and shall make such reports to the planning and zoning commission and/or town council on permits as may be required.

(b) The town council shall have the power to waive zoning provisions in Chapter 134 regulating the use of public rights-of-way to allow town sponsored events provided that the waiver is consistent with the town's comprehensive plan, and further, that there is a favorable vote to grant the waiver by four members of the town council at a regularly scheduled town council meeting.

(c) Building permits for a variance from the requirements of this chapter and for such

special exception uses as may be enumerated in this chapter shall be issued only upon written order of the town council.

Section 2. Severability.

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this Ordinance are hereby declared severable.

Section 3. Repeal of Ordinances in Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 4. Codification.

This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Palm Beach.

Section 5. Effective Date.

This Ordinance shall take effect 31 days subsequent to its passage on second and final reading.

PASSED AND ADOPTED in regular, adjourned session assembled on first reading August, 11th 2010, and second reading on this 15th day of September, 2010

Jack McDonald, Mayor

David A. Rosow, Town Council President

Gail Coniglio, Town Council President Pro Tem

William J. Diamond, Town Council Member

ATTEST:

Richard M. Kleid, Town Council Member

Joanna Cunningham, Town Clerk

Robert N. Wildrick, Town Council Member

TOWN OF PALM BEACH

Town Council Meeting on: September 15, 2010

Section of Agenda

New Business - < 15 Minutes

Agenda Title

SITE PLAN REVIEW #8-2010 WITH VARIANCES The application of Jeraldine Meltzer; relative to property commonly known as 130 Sunrise Avenue, PH3; described as Sun & Surf One Hundred Thirty Condominium Unit PH-3, according to the Declaration as recorded in Official Records Book 2818, Page 1 of the Public Records of Palm Beach County, Florida; located in the R-C Zoning District. The applicant is requesting Site Plan Modification with Variances to allow one (1) permanent awning totaling 460 square feet over the terrace on the seventh floor of a seven story condominium building. Variances are requested to allow the awning at a height of 61.5 feet in lieu of the 23.5 feet maximum height allowed; to allow the awning on the existing seventh floor penthouse of a seven story building in lieu of the two story building maximum allowed; to allow the awning with a front yard setback of 71.25 feet in lieu of the 123 feet minimum required for multi-family use; to allow the awning with a side yard setback of 49.5 feet in lieu if the 61.5 feet minimum required for multi-family use in the R-C Zoning District. [Attorney: Maura A. Ziska] [ARCOM Recommendation: Approval of the variance will not cause negative architectural impacts. Carried 7-0.]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated August 16, 2010 from Wiliam I. Roth, M.D., P.A.

William I Roth, M.D., P.A.

Dermatology and Dermatologic Surgery

Boynton Medical Arts Center

10075 Jog Road, Suite 206

Boynton Beach, Florida 33437

Tel (561) 731-4900

FAX (561) 731-4419

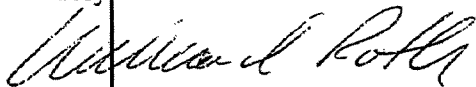
August 11, 2010

RE: Jeraldine I. Meltzer
300 East 74th Street
New York, NY 10021

Letter of Medical Necessity:

Due to a serious problems with skin cancer and sun damage, it will necessary to have a shade over her patio.

Sincerely



William I. Roth, M.D.

TOWN OF PALM BEACH

Town Council Meeting on: September 15, 2010

Section of Agenda

New Business - < 15 Minutes

Agenda Title

VARIANCE #17-2010 The application of Richard C. Bauer, DMD; relative to property commonly known as 241 Bradley Place; described as Lots 5, 6 and 7 of ORANGE GROVE PARK, an addition to the Town of Palm Beach, Florida, according to the Plat thereof, recorded in Plat Book 5, Page 97, Public Records of Palm Beach County, Florida, LESS that part of Lot 5 condemned for public street purposes; located in the C-TS Zoning District. The applicant is requesting a variance to allow an office use on the first floor which does not meet all of the conditions of subsection (18). The variance is to allow a first floor office use which does not meet the requirement that more than 50% of the existing first floor tenant spaces within 300 feet in the same zoning district are required to be office uses, although it does meet the requirement that at least 50% of the existing uses on all floors of the same building are offices. [Attorney: Maura A. Ziska] ***Request for Withdrawal Per Letter Dated September 8, 2010, from Maura A. Ziska.***

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Letter dated September 8, 2010, from Maura A. Ziska

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

*Also admitted in New York

Esperanté

222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA FACSIMILE: 561-835-4621

September 8, 2010

Mayor and Town Council
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

RE: Variance #17-2010/241 Bradley Place, Palm Beach

Dear Mayor and Town Council:

Please **withdraw** the above referenced matter from the September 15, 2010 Town Council agenda. Please call me if you have any questions or comments with the foregoing. Thank you.

Sincerely yours,



Maura A. Ziska

MAZ/mr

cc: Paul Castro

Richard Bauer

00007840

TOWN OF PALM BEACH

Town Council Meeting on: September 15, 2010

Section of Agenda

Development Review - Other

Agenda Title

MODIFIED SITE PLAN REVIEW #4-2010 WITH SPECIAL EXCEPTION AND VARIANCES The application of Publix Super Markets, Inc. and Sunset Avenue Corp.; relative to property commonly known as 265, 255, 235, 231 Sunset Avenue and 240 Sunrise Avenue; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting Site Plan Review and Special Exception to construct a 53,272 (44,018 gross leasable) square foot one story grocery store on 4.36 acres. The new store will provide 219 off-street parking spaces that will be at 90 degrees. There is proposed to be an outdoor ATM and the grocery cart storage will be within the building. All of the proposed mechanical equipment will be contained within portions of the building and will not be seen as equipment on the roof. Part of the proposed design is to have two generators located on the southeast corner of the proposed store that will contain a 100 KW standby generator and a 500 KW main generator. There is proposed to be two loading areas within the loading dock on the east side of the building that will be screened. The proposed store will have a pharmacy, deli, bakery and a larger selection of food items and other products.

A variance is being requested to allow the individual ingress and egress drives on the south side of the property extending across the public sidewalks and curbs and connecting to the off-street parking spaces to the public street areas to be 43'7" and 51'3" in lieu of the 30 foot maximum allowed. [Attorney: Maura A. Ziska]

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Fax dated September 2, 2010, from Janice Thorstad

TOWN OF PALM BEACH

SEP 02 2010

Town Manager's Office

9.2.10

To Mayor
Town Council (fax 838-5411)
Attorney

I spoke to a representative in the Building and Zoning Department yesterday afternoon. I was informed that approval had been given to demolish the existing Publix building and that it would be at least 8 months for a new Publix building to be built. He said that there had not been voiced opposition on this permit. (I had prior called the town manager's office and she said that letters had been written by residents on this topic.) I can't imagine not having access to a grocery store for such a long time. Palm Beach has many elderly residents and this will present a major problem for them. The Code Department said it was suggested for Publix to provide some sort of smaller store (while the present one is torn down). It seems as if this should be a town requirement.
or instead to have

the existing building. What happens if the new building isn't built within the time frame of eight months? I built my pub. home in 1981. The contractor told me it would take six months to build the house. Actually, it was approximately nine months. Even with a clause that he would be penalized for extension of time, the contractor was not motivated to complete the home in six months.

Another issue is the collection of traffic and the harm that will be done to the businesses operating in the North end corridor. Are they going to close and/or they willing to not have as much income in this economic climate? What a mess with Publix closing and the North bridge project due to start soon and ^{the 2 projects} possibly overlapping each other. As a resident, I can not say I am happy with our sleepy town being turned into a long time disturbance on a daily basis.

Jamie
Thurston

TOWN OF PALM BEACH

Town Council Meeting on: September 15, 2010

Section of Agenda

Development Review - Other

Agenda Title

Request for Waiver of Section 42-199, Hours of Construction Work, at 265, 255, 235 and 231 Sunset Avenue and 240 Sunrise Avenue (Publix Supermarket) (Per Letter Dated August 28, 2010, From Maura Ziska).

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated August 31, 2010, from John Page
- Letter dated August 18, 2010, from Maura Ziska

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 15, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John Page, Director, Planning, Zoning & Building

Re: Extension of Work Hours, Publix Supermarket, 231, 235, 255 and 265 Sunset Avenue
and
240 Sunrise Avenue.

Date: August 31, 2010

STAFF RECOMMENDATION

Town Code: Section 42-199, "Hours for Construction Work"

*Work hours, May – November, 8:00 a.m. – 6:00 p.m.

*Work hours, December – April, 8:00 a.m. – 5:00p.m. (1st hr. quiet work only).

*Monday through Friday, excluding national holidays.

Publix Request:

*From April 25, 2011 until estimated project end on December 19, 2011, 5:00 a.m. – 9:00 p.m.

*After building shell is complete, 24 hrs. a day on the interior.

*Proposal is for work Monday through Saturday, excluding Sundays and national holidays.

Staff is supportive of completing this important construction project as quickly as reasonably possible. As noted above, Town Code restricts construction activity to specified hours. This is done to minimize disturbances to the public. In this instance, the community at large has expressed an interest in seeing that the store is completed with relative speed. Striking a balance is necessary to see that Publix is completed in accelerated fashion, that the temporary lack of a full-service grocery store is kept to short duration, and that potential neighborhood disturbances are kept to a minimum. Given these factors, staff recommends that a more appropriate working time may be between 7:00 a.m. and 8:00 p.m., with approval for interior work 24 hours a day once the entire exterior shell is complete.

GENERAL INFORMATION

Staff received a letter from Maura Ziska with Kochman & Ziska, PLC., on August 18, 2010 requesting an extension of hours to allow work from 5:00 a.m. to 9:00 p.m., excluding Sundays and town holidays and to allow construction work 24 hours a day on the interior of the building (once the shell is completed), Monday through Saturday, excluding town holidays (copy

attached).

Staff feels the request to work from 5:00 a.m. until 9:00 p.m. from April 25, 2011 to December 19, 2011, excluding Sundays and Town holidays, is inappropriate at the project site given the close proximity of residential properties. It is expected that heavy equipment will be used and flood lighting may be necessary to work during such early morning and late evening hours. The request does not specify the type of tools and equipment to be used during the extended hours (questions to this effect have not yet been answered). "Quiet work" at the site will not be practical until the exterior shell and site work has been completed, but can be allowed once that threshold is achieved. The extended work hours as recommended by Staff (7:00 a.m. to 8:00 p.m.) will allow Publix to begin work one hour earlier than normally allowed throughout the year, and extends their evening work by several hours throughout the duration of the project.

The construction schedule for this project has been greatly accelerated and staff concurs that extended work hours will prove necessary to complete the project as proposed (late April to December). This challenging timeframe is made even more so during the seasonal time of heavy rainfall and the hurricane season. The Building Official believes the aggressive timeframe will require the Publix team to be extremely organized, and will be a challenge even with extended work hours. All parties should understand the complexities of staging and completing a structure of this size in less than eight months before the Construction Management Agreement identifying permissible work hours is finalized. The bottom line is that staff agrees some relief from usual hours of work restrictions is necessary and appropriate in this case, but we believe 5:00 a.m. is too early to start and 9:00 p.m. may be too late to end, given the proximity of this project to certain residential properties.

It should be noted that anticipated construction of the Flagler Memorial Bridge (at close proximity to Publix) may also necessitate extended work hours. Various utility and sewer subaqueous crossings may require continuous, 24 hour construction windows, to which the Council has conceptually agreed. Both projects are of vital importance to the Town; the off-season nature of these projects helps to mitigate inconvenience to others.

Attachments

JP/jlt

cc: Jeff Taylor, Building Official
Paul W. Castro, Zoning Administrator
H. Paul Brazil, Public Works Director
Robert Walton, Lead Code Enforcement
Maura Ziska, Kochman & Ziska

KOCHMAN & ZISKA PLC

Ronald S. Kochman*

Maura A. Ziska

*Also admitted in New York

Esperanté

222 Lakeview Avenue, Suite 1500
West Palm Beach, Florida 33401

Telephone: (561) 802-8960

Facsimile: (561) 802-8995

VIA EMAIL AND HAND-DELIVERY

August 18, 2010

John Page, Director
Planning Zoning & Building
360 South County Road
Palm Beach, FL 33480

RECEIVED

AUG 18 2010

TOWN OF PALM BEACH
PZB DEPT

RE: Publix Property, 265 Sunset Avenue, Palm Beach, FL

Dear Mr. Page:

In reference to the above construction project, I would like to request that the contractor be allowed to work extended construction hours beginning April 25, 2011 until the end of the project, estimated to be December 19, 2011. The contractor would like to start work at 5:00 a.m. and work until 9:00 p.m. After the building (shell) is complete, the contractor would like to have the ability to work 24 hours a day on the interior. The proposed schedule is for work Monday through Saturday, excluding Sundays and national holidays.

It is Publix's intention to move this project as quickly and diligently as possible and the extended construction hours are essential for a completion date by the middle of December, 2011. Since there will be no grocery store in Palm Beach until the new store is finished, it is in the best interest of the Town to allow extended hours. Further, the property is in a commercial district, so there should be minimal impact on the residents.

Please place this matter on the agenda to be heard at the September 15, 2010 Town Council Meeting. Please call me if you have any questions with the foregoing or require any additional information.

Sincerely yours,



Maura A. Ziska

/maz

cc: Woody Rayburn
Hank Porcher

TOWN OF PALM BEACH

Town Council Meeting on: September 15, 2010

Section of Agenda

Development Review - Other

Agenda Title

Consideration of Proposed Declaration of Use Agreement and Construction Management Agreement for Publix Supermarket-Site Plan Review #4-2010 with Special Exception and Variances; 265, 255, 235 and 231 Sunset Avenue and 240 Sunrise Avenue.

Presenter

John Page, Director of Planning, Zoning, and Building

Supporting Documents

- Memorandum dated September 2, 2010, from John Page
- Proposed Publix Declaration of Use Agreement
- Proposed Publix Construction Management Agreement
- Exhibit B Construction Schedule, Proposed Publix Construction Management Agreement

TOWN OF PALM BEACH

Information for Town Council Meeting on: September 15, 2010

To: Mayor and Town Council

Via: Peter B. Elwell, Town Manager

From: John S. Page, Director, Planning, Zoning & Building

Re: Proposed Declaration of Use Agreement and Construction Agreement for the Publix Supermarket-Site Plan Review #4-2010 with Special Exception and Variances- 231, 235, 255 and 265 Sunset Avenue and 240 Sunrise Avenue

Date: September 2, 2010

STAFF RECOMMENDATION

Staff recommends that the Town Council approve the Declaration of Use and Construction Agreements, as modified by staff.

GENERAL INFORMATION

The Town Council, at its August 11, 2010, meeting, approved the Special Exception and Variance portion of the Publix zoning application. The Site Plan Review portion was deferred in order to redesign the parking and traffic circulation, and also to provide the applicant time to work with staff on the Declaration of Use and Construction Management Agreements (proposed Agreements attached). Staff and the applicant have been working on the Agreements and have attempted to resolve any differences in the proposed documents. The proposed modifications to the Agreements recommended by staff are identified in bold, add/delete format. Staff recommends these changes be required in order to ensure that the Publix Supermarket has minimum impact to neighboring property owners and the Town during the construction and operation of the store.

Declaration of Use Agreement

The applicant is proposing to modify one of the conditions of approval of the Special Exception and Variances portion of the application granted by the Council on August 11th. The issue is the hours for large truck and semi-truck deliveries once the Store is operational. The Council limited those delivery hours daily from 6:00 a.m. to 9:00 a.m. Publix prefers keeping their current delivery schedule, or at a minimum, daily from 4:00 a.m. to 6:00 p.m. Staff is unclear why the applicant needs such a wide time frame to accept large truck and semi-truck deliveries. It was our understanding that Publix could control the large trucks but needed longer hours for smaller truck deliveries. Staff recommends that the Council possibly expand the hours, but not to the point that the applicant is requesting. In addition, staff is recommending five additional conditions of approval be added to the proposed Declaration of Use Agreement which will minimize disturbance to others and ensure monitoring of the conditions in the Agreement.

Proposed Declaration of Use Agreement and Construction Agreement for the Publix Supermarket-Site Plan Review #4-2010 with Special Exception and Variances- 231, 235, 255 and 265 Sunset Avenue and 240 Sunrise Avenue

September 2, 2010

Page 2

The conditions are as follows:

1. That the applicant be required to keep the screen doors to the loading area closed before and after deliveries, and when feasible, during the unloading of deliveries.
2. That the applicant's deliveries be restricted to the southeast side of the store in the delivery dock area.
3. That the applicant be allowed to exercise the generators at a certain time and on a certain day as determined by the Town Council.
4. That the applicant be required to operate the trash compacter during certain times as determined by the Town Council.
5. That the applicant shall provide a certificate of compliance every year at the time of renewal of the Store's business tax receipts.

Construction Management Agreement

The applicant is proposing an aggressive construction time line (See Construction Management Agreement, Exhibit B). The applicant proposes to complete this building in less than seven months during hurricane season. Publix has submitted a request for extended work hours (5:00 a.m.-9:00 p.m.). Although staff understands the need to stretch permissible work hours, the suggested start time (5:00 a.m.) and end time (9:00 p.m.) are extreme. Such hours would undoubtedly cause disturbance to nearby residents, and are unprecedented in Town for a private project. Assuming that most would prefer to see the project completed as soon as possible, it is important that we establish work hours that are reasonable for all parties. Staff suggests that the Council consider limiting the hours from 7:00 a.m. to 8:00 p.m. Publix also proposes that it be allowed to work 24 hours a day within the building once the exterior shell is complete. The Town Council must also decide if that request is reasonable in this instance and/or what conditions should apply. The Building Official believes the aggressive Publix time frame will prove challenging. All parties should understand the complexities of staging and completing a 53,000 plus square foot structure before this document is finalized.

Staff is recommending several changes in the "Conditions" section of the Agreement (see underlined text). Changes clarify requirements for demolition, concrete pours, the use of heavy equipment and remedies for violations to the Agreement. Staff emphasizes that concrete pours and the use of heavy equipment should only be allowed during the permitted hours of construction in the Code of Ordinances. In addition, staff is also recommending that construction workers be bused to the property until the building shell is completed and the parking lot paved. This will help alleviate some of the traffic, noise and dust due to the heavy construction activity anticipated with this project.

Proposed Declaration of Use Agreement and Construction Agreement for the Publix Supermarket-Site Plan Review #4-2010 with Special Exception and Variances- 231, 235, 255 and 265 Sunset Avenue and 240 Sunrise Avenue
September 2, 2010
Page 3

The applicant is requesting removal of a paragraph in the standard Construction Management Agreement providing that violations of any of the conditions in the Agreement require the applicant to pay the Town a liquidated amount of \$2,000.00 for each day that any of the conditions of the Agreement are not met. That liquidated amount increases to \$5,000.00 per day after the fifth (5th) day of such violation. Staff does not recommend that this standard language be eliminated from the Agreement. The purpose of the Violations portion of the Agreement is to ensure that there are binding repercussions if the applicant does not meet conditions intended to mitigate the negative impacts this large construction project might have on neighboring property owners.

If you have any questions about the proposed Agreements please contact me at your convenience.

TOWN ATTORNEY REVIEW

The proposed Declaration of Use Agreement and Construction Management Agreements were approved by Town Attorney Randolph for legal form and sufficiency.

Attachments

PBE/JP/pc

cc: Thomas G. Bradford, Deputy Town Manager
John C. Randolph, Town Attorney
Kirk Blouin, Chief of Police
Bill Amador, Fire-Rescue Chief
Joanna Cunningham, Town Clerk
Paul W. Castro, AICP, Zoning Administrator
Jeff Taylor, Building Official
pf
zf

DECLARATION OF USE AGREEMENT

by

THE TOWN OF PALM BEACH

and

PUBLIX SUPER MARKETS, INC.

September, 2010

**Prepared by and return to:
Maura A. Ziska, Esquire
Kochman & Ziska PLC
222 Lakeview Avenue, Suite 1500
West Palm Beach, FL 33401
(561) 802-8960**

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DECLARATION OF USE AGREEMENT

THIS DECLARATION OF USE AGREEMENT is made and entered into this ____ day of _____, 2010 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter called the "Town"); and Publix Super Markets, Inc., 135 Bradley Place (previously known as 231, 235, 255 and 265 Sunset Avenue and 240 Sunrise Avenue), Palm Beach, Florida 33480 (hereinafter called "Owner"), which terms "Town" and "Owner" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

WITNESSETH :

WHEREAS, the land described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Land") is located within the municipal limits of the Town;

WHEREAS, title to all of the Land is held by Owner;

WHEREAS, Publix Super Markets (hereafter referred to as the "Grocery Store") is located and operated on the Land;

WHEREAS, the Grocery Store is a conforming use in the C-TS Zoning District;

WHEREAS, Town Council approved Site Plan Review #4-2010 with Special Exception and Variances on September 15, 2010 which approved the development of a new grocery store subject to the conditions set forth herein and the approval of this Agreement, and on the basis of the Owner's application, the testimony on behalf of the Owner, and the specific finding of the Town Council that the approval of the Site Plan is in compliance with said conditions, will not be adverse to the public interest and upon a finding of the Town Council that the applicable provisions of the Town Code governing the use of the Land and the site plan criteria have been met;

WHEREAS, the Town Council approved on August 11, 2010, the Special Exception request, subject to the conditions set forth herein and the approval of this Agreement on the basis of the Owner's application, the testimony on behalf of the Owner, and the specific finding of the Town Council that the proposed Grocery Store is town-serving and will be beneficial and compatible with the neighborhood, and upon a finding by the Town Council that the applicable provisions of the Town Code governing the use of the Land and special exception criteria have been met;

WHEREAS, the Town Council approved on August 11, 2010, those certain Variances, subject to the conditions set forth herein and the approval of this Agreement, and on the basis of the Owner's application, the testimony on behalf of the Owner, and the specific finding of the Town Council that the necessary hardships exist, and that the approval of the Variances, in compliance with said conditions, will not be adverse to the public interest, and upon a finding by the Town Council that the applicable provisions of the Town Code governing the use of the Land and criteria for granting the variances have been met;

WHEREAS, in approving Site Plan Review #4-2010 with Special Exception and Variances, the conditions of approval reflected herein are imposed in order to regulate the use,

mitigate any adverse impacts of the use, as well as to insure that said use shall not be adverse to the public interest; and

WHEREAS, all of the representations made herein are true and accurate and the approval of the Site Plan with Special Exception and Variances are conditioned upon the representations made herein and all of the conditions herein imposed.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed as follows:

ARTICLE I

RECITALS

The recitals set forth above are true and correct and are incorporated herein and made a part hereof.

ARTICLE II

REPRESENTATION OF OWNERSHIP

Owner has full right to enter into this Agreement and to bind the Land and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Land in accordance with the terms and conditions of this Agreement. No consent to execution, delivery and performance hereunder is required from any person, partner, limited partner, creditor, investor, judicial or administrative body, governmental authority or other party other than any such consent which already has been unconditionally given or referenced herein. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will violate any restriction, court order or agreement to which Owner or the Land are subject.

ARTICLE III

GROCERY STORE

The use of the Land shall be for the operation of a supermarket/grocery store in compliance with all of the information and exhibits, not inconsistent with the terms and conditions set forth herein, as set forth in the application submitted to the Town for Site Plan Review #4-2010 with Special Exception and Variances, as modified and approved by Town Council on August 11, 2010 and September 15, 2010 (hereinafter referred to as the "Approval"). The Approval is subject to that provision of the Town Code which provides that no subsequent deviation may be made from the application as approved by the Town Council except upon an application to and approval by the Town Council. Any additional uses of the Land shall be subject to approval by the applicable governmental authority including, but not limited to, the Town Council of the Town, the Architectural Review Commission of the Town., ~~Palm Beach County, the State of Florida, the United States Government, and/or any agencies under any of the foregoing governmental authorities.~~

ARTICLE IV

CONDITIONS

1. Deliveries shall only be from 6:00 a.m. to 9:00 a.m. (Publix is requesting this condition be removed and that the Store be allowed to keep its current delivery schedule or at a minimum to allow deliveries between 4:00 a.m. and 6:00 p.m.)
2. The store hours shall be 6:30 a.m. to 10:30 p.m.
3. Owner shall provide valet parking for as long as the store exists; however, if there proves to be no need for valet parking, the Owner has the right to return to the Town Council to remove this condition and discontinue valet parking.
4. Owner will use best efforts to open a temporary store for convenience items during the time period of the construction of the new grocery store.
5. The proposed business identification sign shall not be illuminated and will be the only sign on the building and at the property.
6. Refuse pick up shall only be via Sunset Avenue.
7. The loading dock screening doors shall be closed before and after deliveries, and when feasible, will remain closed when trucks are unloading.
8. The applicant shall restrict deliveries to the southeast side of the Store in the delivery dock area.
9. The applicant shall be allowed to exercise the generators at a specific time and on a specific day as determined by the Town Council.
10. The applicant shall be required to operate the trash compacter during a specific time period as determined by the Town Council
11. The applicant shall provide a certificate of compliance every year at the time of renewal of the Store's business tax receipts.

ARTICLE V

VOLUNTARY AGREEMENT

Owner agrees to be bound by the terms and conditions in this Agreement, and Owner waives any legal objection it might otherwise have to said terms and conditions or parts thereof.

ARTICLE VI

REMEDIES FOR VIOLATION

1. Upon determination by the Director of Planning, Zoning and Building Department of a violation of any of the terms or conditions of this agreement *or* any other provision in the Town Code of Ordinances, and upon notice in writing from the TOWN to OWNER or OWNER's representative of said violation(s) and the date upon which said violations(s) shall be corrected, owner or owner's successor or assigns shall pay to the TOWN a liquidated amount of \$2,000 per violation. Said liquidated amount shall accrue on a per day basis for each day a violation of this agreement exists. In addition, in the event a violation remains uncorrected beyond the date noticed for correction by the Director of the Planning, Zoning and Building Department, this Agreement may be reconsidered by the Town Council at a future meeting upon thirty days notification to the owner. The Town Council may, upon a finding of violation, alter this agreement or rescind the approval of the use.

In the event owner disputes the determination of the Director of Planning, Zoning and Building Department of the violation of the conditions of this agreement, or in the event the owner disputes any code violation, owner may appeal the determination of the Director of the Planning, Zoning and Building Department to the Town Council, said appeal to be filed no later than fifteen (15) days of the written notice of violation.

2. In addition to the above, the TOWN shall have all remedies available at law and equity in order to enforce the terms of this Agreement including but not limited to (a) the Town's code enforcement procedures; (b) all remedies otherwise offered in the Town's Code of Ordinances; and (c) injunction, specific performance, and any and all other equitable relief through the civil courts in and for Palm Beach County for the State of Florida. In the event the TOWN is required to seek injunctive relief, it shall not be required to post bond and it shall not be required to demonstrate irreparable harm or injury to secure an injunction to enforce the terms of this Agreement. Additionally, in the event of any breach, default or non performance of this Agreement, or any of its covenants, agreements, terms or conditions, the TOWN shall be entitled to recover its costs, expenses and reasonable attorney's fees insofar as the TOWN prevails, either before or as a result of litigation, including appeals.

ARTICLE VII

PROVISIONS TO RUN WITH LAND/RECORDING

This Agreement shall run with the Land and shall be binding upon the Owner and their respective heirs, legal representatives, successors and assigns. This Agreement shall be recorded by the Town in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto. This Agreement shall be superior to any mortgages on the Land and shall be recorded prior to the recording of any such mortgages.

ARTICLE VIII

ENTIRE AGREEMENT

This Agreement represents the entire agreement between the parties as to its subject matter and it may not be amended except by written agreement executed by both parties.

ARTICLE IX

EFFECTIVE DATE

The Effective Date of this Agreement shall be the day upon which this Agreement is executed by the last party to sign the Agreement.

ARTICLE X

MISCELLANEOUS

Wherever the word "laws" appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities.

This Agreement may not be amended except by written instrument signed by all parties hereto.

Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this Agreement and to exhibits attached hereto, which exhibits are by this reference made a part hereof.

In the event of the invalidity of any provision of this Agreement, same shall be deemed stricken herefrom and this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above.

Signed, sealed and delivered
In the presence of:

TOWN OF PALM BEACH

By: _____
Jack McDonald, Mayor

By: _____
David Rosow, President
Town Council

By: _____
Peter B. Elwell
Town Manager

Publix Super Markets, Inc.

By: _____
Its: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2010, by Jack McDonald, the Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2010, by David Rosow, the President of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2010, by Peter B. Elwell, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public
Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____ 2010, by _____, the _____, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public

Printed Name of Notary Public
Commission Expires: _____

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR THE TOWN OF
PALM BEACH

By: _____
John C. Randolph, Esquire

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 190 to 215, inclusive, FLORAL PARK, according to the Plat thereof, recorded in Plat Book 2, Page 6, of the Public Records of Palm Beach County, Florida AND The East 20 feet of Lot 70 and all of Lots 71, 72, 73 and 74 SUNRISE ADDITION NO. 2 TO PALM BEACH, according to the Plat thereof, recorded in Plat Book 8, page 69 of the Public Records of Palm Beach County, Florida.

Construction Management Agreement
Re: Publix Super Markets, Inc., 135 Bradley Place (previously known as
231, 235 255 and 265 Sunset Avenue and 240 Sunrise Avenue), Palm Beach,
Florida

Publix Super Markets, Inc. ("Owner") and the Town of Palm Beach, Florida ("Town") enter into the following Agreement on this ____ day of _____, 2010.

WHEREAS, Owner owns property located at 135 Bradley Place in the Town of Palm Beach ("Property") as identified in the legal description (Exhibit A attached); and

WHEREAS, Owner received conditional approval by the Town Council of Site Plan Review #4-2010 with Special Exception and Variances on August 11, 2010 and September 15, 2010 ("Approval") for the development of a new grocery store on the Property; and

WHEREAS, the Town has required as a condition of the approval that the Owner enter into this Construction Management Agreement ("Agreement") prior to issuing the building permit for the development of the property.

NOW THEREFORE, Owner and Town agree as follows:

RECITALS

1. The recitals set forth above are true and correct and are incorporated herein and made a part hereof.

CONDITIONS

2. The Owner shall follow the Schedule of Construction as set forth in Exhibit B ("Schedule") attached hereto, however, said Schedule may be modified with the consent of the Building Official provided that construction does not exceed the maximum number of days allowed by Code. The Town shall use its best efforts to expedite review and issuing of the building permit and/or any modifications to the building permit. Such modifications shall be monitored and approved by the Building Official. The Owner's construction personnel shall provide to the Town's Building Official a progress report on the Schedule on the 1st business day of each month starting May 1, 2011.

The construction is approved subject to the following conditions:

- A. **Dust Control and Demolition During Construction**
 - i. **Rodent extermination shall be completed prior to the start of demolition by a Florida licensed and bonded exterminator. A**

written report shall be provided on the extermination to the Town.

- ii. Removal of debris on an every other day basis shall be required of the contractor. Prior to the issuance of a demolition or construction permit the contractor shall provide the Town with an acceptable plan that identifies the staging area for debris accumulated on the site. Said plan shall provide detailed information on how the contractor will screen the debris staging area from the neighboring property owners and street.
- iii. Dust control shall be as prescribed by the Town Code of Ordinances as set forth in Section 42-164 . Water spray suppression shall be provided by the contractor, as deemed necessary by the Building Official .

B. Property Security. Any security lighting shall be shielded so that it shines downward and does not produce any light or glare which would adversely affect surrounding property owners. Such lighting shall be the minimum necessary to allow security surveillance of the property.

C. Worker Parking. Construction workers shall be required to be bused to the Property until the shell of the building is complete and the parking lot is paved, and project Construction management personnel shall park only within the boundaries of the Property. Construction workers may park on the Property when the building shell is complete and the parking lot paved. Parking by ~~said persons~~ all construction workers and management personnel in the public rights-of-way is prohibited. Failure of any worker or construction manager to comply with this condition shall be deemed a violation of this Agreement.

D. Site Storage Areas, Screening and Deliveries. Storage and delivery area plans shall be submitted and approved by the Town prior to the issuance of a building permit. ~~Those areas on t~~The Property shall be fenced and screened from view by a six foot high green mesh fence. All construction deliveries shall be conducted on site and not in the public rights-of-way, unless prior approval from the Town's Department of Public Works is obtained. In addition, prior approval shall also be required from the Town Police department to bring in large deliveries that may block the street or access into the site.

E. Concrete Pours. All concrete pours shall be limited to the allowed hours of construction as provided for in the Code of he Ordinances.

~~E.F.~~ Hours of Construction. The hours of construction beginning ~~April 25, 2011 at commencement~~ until the end of the project, estimated to be December 19, 2011 will be 5:00 a.m. until 9:00 p.m. No heavy equipment or deliveries

shall be operated or made outside the allowed hours of construction as defined in the Code of Ordinances. After the building (shell) is complete, the contractor will have the ability to work 24 hours a day on the interior. The schedule is for work Monday through Saturday, excluding Sundays and national holidays. **(Note: The proposed extended hours in this section are at the request of the applicant. Approved hours will be determined by the Town Council at the September 15, 2010 Town Council meeting.)**

F.G Complaints. If valid noise, odor, dust control or other valid complaints are reported to the Town, the Town may order a cessation or modification of construction activities on the Property (for that portion of the work only that caused the alleged noise, odor, dust control or valid complaints, allowing the rest of the work to continue), until such time as the Town is satisfied that such complaints have been resolved. Upon receipt of a complaint which the Director of Planning, Zoning, and Building believes may be valid **and prior to making a determination on the complaint,** the Director shall notify Owner's **project manager in writing** and **obtain Owner's shall provide a written response** to the complaint **within three days of the project managers receiving the Director's notification. prior to making a determination on the complaint. Such A final** determination shall be made within three (3) days of Owner's response to the Director. Owner shall have the right to appeal the Director's determination to the Town Council at the next scheduled Council meeting and that portion of the work subject to the complaint shall continue to be prohibited during the pendency of the appeal. If the appeal is granted in favor of the Owner, any time lost by not allowing construction during the appeal will be added to the end of the Schedule and will not be counted towards a violation of the time to complete the construction.

G.H. Project Management.

1. The owner's general contractor shall schedule and attend a pre-construction meeting with all of the subcontractors and Town Staff prior to the issuance of a building permit.
2. The owner's general contractor shall designate two project managers who can be contacted by the Town with respect to any issues involved with the construction. The name of those persons shall be provided in writing to the Town and shall be updated with the Building Official upon any change. At least one of those project managers shall be on the Property at all times when construction work is being done on the Property.
3. Owner shall be ~~allowed~~ **required** to hire a resident inspector approved by the Town **as per Section 109.3.7 of the Town Code of Ordinances.**

H.I. Construction Trailers. Construction trailers shall only be for the general contractor and subcontractors.

I.J. Violations

1. If the Owner fails to complete the construction in the maximum number of days **allowed by Code or** as agreed to by the Owner and the Town, the Owner shall pay to the Town a liquidated amount of \$2,000.00 per day for each calendar day past the maximum number of days allowed. An extension of the completion date shall be granted in the event of an “act of God” which would shut down the project for a period of time.
2. In addition to the above, for violations of any of the conditions of this Agreement, Owner shall pay the Town a liquidated amount of \$2,000.00 for each day that any of the conditions of this Agreement are violated and which shall increase to \$5,000.00 per day after the fifth (5th) day of such violation. **(Publix is requesting this paragraph be deleted)**
3. All outstanding amounts imposed under this provision shall be paid by the Owner prior to the issuance of a certificate of occupancy for any building or structure on the Property.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above. Signed, sealed and delivered in the presence of:

By: _____
Jack McDonald, Mayor

By: _____
David Rosow, President Town Council

By: _____
Peter B. Elwell, Town Manager

By: _____
Publix Super Markets, Inc.

Its: _____

STATE OF FLORIDA

Signature of Notary Public
Printed Name of Notary Public
Commission No: _____
Commission Expires: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by David Rosow, President of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public
Printed Name of Notary Public
Commission No: _____
Commission Expires: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Peter B. Elwell, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation. He is personally known to me and he did not take an oath.

Signature of Notary Public
Printed Name of Notary Public
Commission No: _____
Commission Expires: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by _____, its _____, a Florida corporation, on behalf of the corporation. He/she is personally known to me and did not take an oath.

Signature of Notary Public
Printed Name of Notary Public
Commission No: _____
Commission Expires: _____

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 190 to 215, inclusive, FLORAL PARK, according to the Plat thereof, recorded in Plat Book 2, Page 6, of the Public Records of Palm Beach County, Florida AND The East 20 feet of Lot 70 and all of Lots 71, 72, 73 and 74 SUNRISE ADDITION NO. 2 TO PALM BEACH, according to the Plat thereof, recorded in Plat Book 8, page 69 of the Public Records of Palm Beach County, Florida.

EXHIBIT "B"

161 construction schedule wout precon

ID	Task Name	Duration	Start	Finish	Predecessors
1	Project Development Timeline Miami Division Stores	1332 days?	Mon 4/28/08	Tue 12/20/11	
2	Site Approved	0 days	Mon 4/28/08	Mon 4/28/08	
3	Closing Notice	30 days	Thu 3/17/11	Fri 4/15/11	
4	Equipment Removal	7 days	Mon 4/25/11	Sun 5/1/11	3
5	Demolition, Abatement and Pad Preparation	30 days	Mon 5/2/11	Tue 5/31/11	4
6	Site Work/ (Site Specific if justified)	180 days	Tue 4/26/11	Sat 10/22/11	
7	Construction commencement date	0 days	Wed 6/1/11	Wed 6/1/11	8SS
8	Publix Construction (Prototype specific, From first footer pour to Substantial Completion, TCO)	165 days	Wed 6/1/11	Sat 11/12/11	5
9	Building Shell	28 days	Wed 6/1/11	Tue 6/28/11	
10	Stabilized Road for Crane Complete	0 days	Tue 6/28/11	Tue 6/28/11	9
11	Publix Interior finishes	109 days	Tue 6/28/11	Fri 10/14/11	9SS+27 days
12	Roof Top Equipment	1 day?	Sat 7/2/11	Sat 7/2/11	9SS+31 days
13	Loading Dock complete	1 day?	Thu 6/30/11	Thu 6/30/11	9SS+29 days
14	Walk in Coolers	0 days	Fri 7/8/11	Fri 7/8/11	9SS+38 days
15	Publix facade	109 days	Wed 6/1/11	Sat 9/17/11	7
16	Paving Base complete	1 day?	Sun 7/31/11	Sun 7/31/11	7FS+60 days
17	Refrigerated case delivery	1 day?	Mon 9/5/11	Mon 9/5/11	7FS+96 days
18	Permanent Power	1 day?	Wed 9/14/11	Wed 9/14/11	17SS+9 days
19	Fixturing	35 days	Thu 9/15/11	Wed 10/19/11	18
20	Natural Gas	1 day?	Thu 10/20/11	Thu 10/20/11	19
21	Punch List	14 days	Sun 6/1/08	Sat 6/14/08	
22	Paving and curbs complete	8 days	Sat 10/15/11	Sat 10/22/11	16FS+75 days
23	Lanscaping and irrigation complete	12 days	Tue 11/22/11	Sat 12/3/11	22FS+30 days
24	<New Task>	1 day?	Sun 6/1/08	Sun 6/1/08	
25	Water & Sewer turned on	1 day?	Tue 10/18/11	Tue 10/18/11	11FS+3 days
26	Construction completion date	1 day	Sun 12/11/11	Sun 12/11/11	
27	Publix Opening Process (Store)	30 days	Mon 11/14/11	Mon 12/19/11	
28	Open Store	1 day	Tue 12/20/11	Tue 12/20/11	27
29					
30					

FW: 0161: Delivery Times

Maura Ziska

to:

PCastro, JPage

09/13/2010 09:03 AM

Cc:

"Woody Rayburn", "Hank Porcher", peter

Show Details

Paul and JP: See below for the current delivery schedule. Please confirm that you and JP are ok if we keep this schedule when the new store opens with a caveat to come back to TC 6 months later to discuss any problems or issues and if there is a need to modify the schedule at that time. Tx Maura

Maura A. Ziska, Esq.

Kochman & Ziska PLC

222 Lakeview Avenue, Suite 1500

West Palm Beach, FL 33401

561-802-8960 (telephone)

561-802-8995 (fax)

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From: Woody Rayburn [<mailto:Woody.Rayburn@publix.com>]

Sent: Thursday, August 26, 2010 5:14 PM

To: Maura Ziska; 'hank@tlpittman.com'

Subject: Re: 0161: Delivery Times

HV - High Velocity

LV - Low Velocity

Velocity refers to how fast product turns over in the stores.

William Rayburn

Director of Asset Management

Direct Dial (863) 616-5743

Main # (863) 688-7407 x52270

Fax (863) 616-5816

e-mail: woody.rayburn@publix.com

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From: Maura Ziska <MZiska@floridawills.com>

To: Woody Rayburn; hank@tlpittman.com <hank@tlpittman.com>

Sent: Thu Aug 26 17:06:55 2010

Subject: RE: 0161: Delivery Times

What does HV and LV mean?

Maura A. Ziska, Esq.
Kochman & Ziska PLC
222 Lakeview Avenue, Suite 1500
West Palm Beach, FL 33401
561-802-8960 (telephone)
561-802-8995 (fax)

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From: Woody Rayburn [<mailto:Woody.Rayburn@publix.com>]
Sent: Thursday, August 26, 2010 4:42 PM
To: Maura Ziska; hank@tlpittman.com
Subject: FW: 0161: Delivery Times

Here are the deliveries we get now.

William Rayburn
Director of Asset Management
Phone 863.688.7407 x52270
Direct Dial 863.616.5743
Fax 863.616.5816
e-mail woody.rayburn@publix.com

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From: Nick Abiusi
Sent: Thursday, August 26, 2010 4:38 PM
To: Woody Rayburn
Subject: 0161: Delivery Times

Woody,

I am going to break it down by day of the week. If you need it in different format, let me know. I am also going to give you the "in-season" schedule so that you are showing what we most need at the high point of business. We are concerned with trying to squeeze multiple trucks into the one loading area/backroom. For example Saturday-even with additional time past 9 am, we would have to move a truck to Sunday. We could assume that we move LV, this still leaves up to 53 pallets (15 Produce, 27 Hv groc., 3 Milk, 8 Frozen) that will need to be unloaded and staged between 4am and 9 am.

Sat. Produce-4am
 HV-Dry Grocery-6am
 LV-Drugs-Supplies-10am
 Milk-2pm
 Frozen Food-6pm
 Sunday Produce-4am
 Dairy-Box Beef-Deli-4pm
 Monday Produce-4am
 HV-Dry Grocery-6am
 Milk-2pm
 Frozen Food-6pm
 Tuesday Produce-4am
 LV-Drugs-Supplies-10am
 Dairy-Box Beef-Deli-4pm
 Wednesday Produce-4am
 HV-Dry Grocery-6am
 Dairy-Box Beef-Deli-4pm
 Frozen Food-6pm
 Thursday Produce-4am
 LV-Drugs-Supplies-10am
 Milk-2pm
 Friday Produce-4am
 HV-Dry Grocery-6am
 Dairy-Box Beef-Deli-4pm

From: Woody Rayburn
Sent: Thursday, August 26, 2010 3:33 PM
To: Nick Abiusi
Subject: Delivery Times

Nick – can you send me an e-mail that shows me what you have delivered and the time of the delivery on a weekly basis?
 We are trying to get as much flexibility as possible on the delivery times issue and I need to understand when you get deliveries and for what during a typical week.

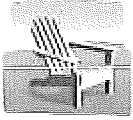
Thanks,

William Rayburn
 Director of Asset Management

Phone 863.688.7407 x52270
 Direct Dial 863.616.5743
 Fax 863.616.5816

e-mail woody.rayburn@publix.com

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Fw: Publix variances

Cheryl Kleen to: council
Cc: Peter B Elwell, John Page, Anne Boyles

09/14/2010 10:41 AM

----- Forwarded by Cheryl Kleen/PalmBeach on 09/14/2010 10:41 AM -----

From: scotch peloso <scotch.peloso@gmail.com>
To: council@townofpalmbeach.com
Date: 09/14/2010 10:34 AM
Subject: Publix variances

Town Council,

I have been cautiously optimistic about the proposed redevelopment of the Publix site. While Publix has been very accommodating to it's neighbors, one of the new variances requested may go a little too far. Granting permission to begin work at 5:00 AM would be unfortunate at best. My family and I came to the conclusion that 7:00 AM would be the earliest we could see being reasonable. We have no problem with the 9:00 PM end time or the 24-Hr inside work. We would also like to give our blessing to letting them get started earlier than the April start date. Surely a lot could be accomplished by prepping those empty parking lots on the east side.

Thanks for your consideration,
Scotch Peloso

TOWN OF PALM BEACH

SEP 13 2010

Town Manager's Office

Town Council
360 S. Country Road
Palm Beach, FL 33480

Re: Suna Surf 130 Condo Unit PH-3 - Landoline Meltzer,
Hearing The Lawrence Group

Gentlemen:

With reference to the above hearing on Sept 15, 2010,
we have no objection provided that the coving in
no way interferes with the sunshine on the terrace
of my apartment # 515 W.

Cordially

Bertum Klebanow
130 Sunrise Ave
Palm Beach, FL 33480
tel 917 420 0063

PalmLor, LLC
Dba – Marriott Fairfield Inn & Suites
2870 South Ocean Blvd.
Palm Beach, FL 33480

RECEIVED

SEP 10 2010

TOWN OF PALM BEACH
PZB DEPT

September 10, 2010

Paul Castro
Director of Planning and Zoning
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

VIA EMAIL [PCastro@TownofPalmBeach.com] & US Mail

Re: Site Plan Review Application 5-2010 / 2880 South Ocean Blvd

Dear Paul:

As you know, I am the sole Managing Member of PalmLor, LLC which owns the Marriott Fairfield Inn & Suites Hotel located at 2870 South Ocean Blvd. in Palm Beach, Florida. As you also know, our property is located immediately next door to the above-referenced property, and shares a recorded Access Easement with that property. That property is the subject of a Site Plan Review Application which is scheduled to be considered by the Palm Beach Town Council on September 15, 2010. I am writing this letter to show my support for Phase I of the proposed project, as depicted on the attached plan.

About a month ago, I met with the property owner to discuss the project. Also in attendance were his architect and lawyer. We met for nearly two hours and I felt that I had a thorough opportunity to understand the project as well as a very receptive audience that listened to and acted upon my suggestions. At the end of our meeting, the property owner agreed to follow up on all of my suggestions and make some modifications to the plan. Since our meeting, I have reviewed the revised plans for Phase I that have been submitted to the Town for review and approval. Those plans (copy attached) show a new office building located on the southeast corner of the site with a landscaped area on the northeast portion, labeled as "Future Phase Two". I am very satisfied with what has been proposed for Phase I and the Future Phase Two landscape plan.

This site has sat vacant for close to a decade, and the proposed Phase I redevelopment at this point would be a welcome improvement for the Town and the immediate area, I also believe the proposed Phase I plan will be a good and proper use for the neighborhood. It will fit in well.

As the owner of the only private property that touches the subject property, and the property that will be most affected by the new development, I encourage you to please approve the pending Application for Phase I of this project, at the earliest opportunity so that the redevelopment can commence as soon as possible.

My comments, if any, relating to the further development (Phase II) of that property will be submitted as those plans are made available to me by the property owner.

In the event you have any questions for me, I can be reached at 407-474-7799.

Very truly yours,

Al Baerenklau,
Managing Member. Palmlor LLC

1 encl. with mailed copy