

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON WEDNESDAY, NOVEMBER 10, 2010

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Wednesday, November 10, 2010, at 9:35 a.m., in the Town Council Chambers. On roll call, all of the elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Administrative Assistant Anne Boyles 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

There were none.

V. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

(Another opportunity for communications from citizens will be offered immediately after the lunch break.)

Laurel Baker, Chamber of Commerce, commented regarding: the Economic Councils Regulatory Climate Task Force; the Brisson Report; first floor offices; and on behalf of Bill Bone, she requested the attendance of the Town Council members at the private reception at the Colony Hotel for the Centennial on November 23, 2010.

VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

1 **WITHDRAWN:** Item VIII.B.2.d., Variance 21-2010.

2
3 **Motion made by Council Member Diamond, seconded by Council Member Kleid, to**
4 **approve the Agenda as amended. On roll call, the motion carried unanimously.**

5
6 Administrative Assistant Boyles administered the oath to all those who would be providing
7 testimony.

8
9 **VII. ORDINANCES**

10 **A. Second Reading**

11 None

12 **B. First Reading**

1. ORDINANCE NO. 26-10 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, at Section 134-2 to Add Clarifying Language Relative to the Rules of Construction of the Zoning Ordinance; Sections 134-36, 134-145, 134-171, 134-327, 134-330, 134-561, 134-1576 and 134-1577 to Change the Reference from Building Official to Director of the Planning, Zoning and Building Department; Section 134-7 to Include Site Plan Review in Penalties for Violation; Sec. 134-235 to Not Allow Dimensional Waiver Approval If There Is Neighbor Objection; Section 134-326 to Provide Additional Requirements for Administrative Site Plan Review; Sections 134-416, 134-417, 134-418 and 134-419 to Provide Language That Allows Expansion of Nonconforming Multi-family and Commercial Buildings or Structures Provided it Does Not Make the Buildings or Structures More Nonconforming; Sections 134-446 by Modifying the Section Title and Clarifying That Residential Development and Redevelopment Is Required to Meet Density Requirements in the Town's Comprehensive Plan in Certain Situations; Section 134-888 by Expanding Accessory Commercial Uses Allowed for the Town Golf Course and Tennis Court Facilities; Sections 134-942, 134-997 and 134-1052 to Replace the Word "May" with "Shall" in Order to Require Site Plan Review in R-C, R-D(1) and R-D(2) Zoning Districts and Correct a Cross Reference; Sections 134-949, 134-1005, and 134-1061 to Eliminate the Reference to Cubic Content in the R-C, R-D(1) and R-D(2) Zoning Districts as That Term Does Not Apply in Those Zoning Districts; Section 134-1732 to Provide a Cross Reference to the Fee for a Temporary Storage Unit, Increase The Maximum Length of Time for Said Unit, Limit the Number of Times Allowed per Calendar Year and a Suspension Provision from this Regulation During a State of Emergency; Sections 134-2172, 134-2179 and 134-2237 to Change the Required Parking Stall Dimension And/or Drive Aisle Width to Be Consistent with Other Sections of the Code; Sections 134-2296 and 134-2329 by Eliminating the Specific Costs for Parking Permits and Providing a Reference to the Fee Schedule; Section 134-2409 to Correct Typographical Errors in the Residential Political Sign Section of the Code; Section 134-2446 to Create a Section to Include a Political Sign Provisions in the Commercial Zoning Districts; Section 134-1107 and 134-1109 to Permit Office Uses on the

First Floor in the Two Hundred Block of Peruvian Avenue and Bradley Place in the C-TS Zoning District; Section 134-797, 134-847, 134-898, 134-953, 134-1009 and 134-1065 to Increase the Maximum Height of the Finished Floor from Grade and Require Building Permits to Fill and Raise the Grade of Property in the R-AA, R-A, R-B, R-C, R-D(1) and R-D(2) Residential Zoning District; Section 134-1733 by Creating Said Section for Regulations for the Screening of Existing and Future Dumpsters; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John Page, Director of Planning, Zoning, and Building]

1
2 Town Attorney Randolph read Ordinance No. 26-10 by title, as printed above.

3
4 Council Member Diamond recused himself as his wife owns property at 380 South County Road,
5 which fronts on Peruvian Avenue; he left the dais, and provided form 8b to the Town Clerk.

6
7 Zoning Administrator Castro provided a brief explanation of the Ordinance as to the Local
8 Planning Agency's recommendation regarding first floor office uses. Mr. Castro responded to
9 questions and comments by the Town Council.

10
11 Alan Goldboro, Planning and Zoning Commission Chairman, commented that their concern was
12 for the entire CTS zone, in which the limited change occurred, and that it was their
13 recommendation for approval of all of the changes.

14
15 Mike Spaziani, 322 Seaspray Avenue, member of the Planning and Zoning Commission,
16 clarified that their concern was for just the two areas of the Town, Bradley Place and Peruvian
17 Avenue, which was being brought before the Council.

18
19 Alexander Ives, co-director of the Preservation Foundation, commented that the concern was
20 brought on by the economy, which could trend the other way down the road. He asked to keep in
21 mind that office space on the first floor did not bring other people, but just the one service.

22
23 Anita Seltzer, 44 Cocoanut Row, said allowing office use of the first floor, as a matter of right, is
24 a short term solution, but would not enhance the town-serving districts. She indicated that if this
25 change is approved, a lethal ingredient would be introduced that could negatively impact other
26 retail owners.

27
28 Leslie Evans, 214 Brazilian Avenue, commented that he could not lease retail space. He noted
29 that it cost \$1800 for a permit to change from retail to office space, and that it was important that
30 the streets be available to be used as offices.

31
32 Discussion occurred among the Town Council, Town Attorney Randolph, and staff relative to
33 alternating uses, the Burt Harris Act, and the concept of parking equivalency.

34
35 Bob Moore, director of the South County Road Association, suggested that by grandfathering the
36 right of having the retail parking in place at the passage of this Ordinance, and stating that it
37 could alternate from retail to office use space, without the need of a variance, would eliminate
38 the problem. He added that the landlords would go back to retail use if given the opportunity.

1
2 President Rosow clarified that if you were a retail property at the passage of this Ordinance, you
3 would be grandfathered for retail parking equivalency if you chose to go from office to retail use,
4 specific to the 200 block of Peruvian Avenue and Bradley Place.

5
6 Town Attorney Randolph indicated that a portion of the whole zoning district is being isolated
7 and treated differently, although the provision could be added.

8
9 Discussion occurred between President Pro Tem Coniglio and Zoning Administrator Castro
10 regarding the Ordinance's provisions of uses for the Tennis and Golf Course.

11
12 **Motion made by Council Member Kleid to approve Ordinance No. 26-10 on first reading.**
13 **Council Member Wildrick seconded the motion.**

14
15 President Pro Tem Coniglio asked that a caveat be placed in the motion, rather than have a
16 secondary motion.

17
18 **The maker and seconder agreed.**

19
20 **Amended motion made by Council Member Kleid, seconded by Council Member Wildrick,**
21 **to approve Ordinance 26-10 on first reading, with the caveat that staff be directed to bring**
22 **forth a proposal to allow a reverting to retail use in those areas of Bradley Place and the**
23 **200 block of Peruvian Avenue. On roll call, the motion carried 4-0, with Council Member**
24 **Diamond recused.**

25
26 VIII. DEVELOPMENT REVIEWS

27 A. Appeals

- 28
29 1. Time Extensions & Waivers Request for Waiver of Section 42-199, Hours of Construction
30 Work, at 351/347 Worth Avenue (Everglades Club) (Per Letter Dated October 21, 2010,
31 From Maura A. Ziska).

32 Ex-parte communication was declared by:

- 33
34 • Council Member Diamond spoke with Attorney Maura Ziska who advocated the position
35 of her client.
36
37 • President Rosow did not read an email that was sent to him by Attorney Ziska. He said he
38 is a member of the Everglades Club, but is not affected financially by this request.
39
• Council Member Wildrick received and read an email from Attorney Ziska, and he did
not respond to it. He said he is a member of the Everglades Club.

1 Attorney Ziska, on behalf of the Everglades Club, provided an overview of the request for a
2 waiver of an extension of hours. She indicated that, after reading the staff's report, she is in
3 agreement with all of the conditions.

4
5 Planning, Zoning and Building Director Page noted that staff is in agreement with the proposal
6 subject to the conditions outlined. Staff did not agree with back to back seasonal work to
7 continue.

8
9 Attorney Ziska said that there would be no access on Worth Avenue, and that the work extension
10 would be for only one season.

11
12 **Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to**
13 **approve the Time Extensions & Waivers Request for Waiver of Section 42-199, Hours of**
14 **Construction Work, at 351/347 Worth Avenue (Everglades Club), with the conditions set**
15 **forth by staff and that it would be for only one season. On roll call, the motion carried**
16 **unanimously.**

17
18 B. Variances, Special Exceptions, and Site Plan Reviews

19
20 1. Old Business - Less than 15 Minutes

21
22 None

23
24 2. New Business - Less than 15 Minutes

- 25
26 a. SITE PLAN REVIEW #10-2010 WITH VARIANCES The application of the Town of
27 Palm Beach; relative to property commonly known as 1060 North Lake Way; described as
28 lengthy legal description on file; located in the R-B Zoning District. The applicant is
requesting a Site Plan Review to add an addition onto the D-10 Storm Water Pump Station
and replace a 500 kw generator with a 750 kw generator. The variances to raise the height
of a portion of the building and replace the generator are as follows: to allow a front yard
setback of 23.5 feet in lieu of the 25 foot minimum required; to allow a north and south side
yard setback of 11 feet (south and 8.1 feet (north) in lieu of the 12.5 feet minimum required;
to allow a building height of 20.5 feet in lieu of the 10.67 feet existing and the 14 foot
maximum allowed; to allow an overall building height of 21.5 feet in lieu of the 12.67 feet
existing and the 17 foot overall maximum building height allowed. [Attorney: John C.
Randolph][ARCOM Recommendation: Approval of the variances will not cause negative
architectural impacts. Carried 5-0.]

29
30 Ex-parte communication was declared by:

- 31
32 • Council Member Diamond that the item was discussed during the Agenda Review
33 meeting.
34
35 • Council Member Kleid received some communications.

- 1
- 2 • President Rosow received a briefing on it.
- 3
- 4 • President Pro Tem Coniglio read letters from Mr. Cole.
- 5
- 6 • Council Member Wildrick received staff briefing.
- 7

8 Responding to Council Member Diamond, Kevin Shannon, Kimley-Horn & Associates, Inc.,
9 noted that one letter of concern was received from the neighbor to the north of the property. He
10 stated that all of the neighbor's concerns were addressed and he sent a follow up letter of
11 agreement.

12

13 Zoning Administrator Castro provided staff's comments and requested that the hardship be
14 demonstrated.

15

16 **Motion made by President Pro Tem Coniglio that the Site Plan Review #10-2010 with**
17 **Variances be approved based upon the finding that the approval of the site plan would not**
18 **adversely affect the public interest and that the Council certifies that the specific zoning**
19 **requirements governing the individual use had been met and that satisfactory provision**
20 **and arrangement has been made concerning Section 134-329, items 1 through 11. Council**
21 **Member Kleid seconded the motion. On roll call, the motion carried unanimously.**

22

23 **Motion made by President Pro Tem Coniglio that the Variances of the Site Plan Review**
24 **#10-2010 with Variances be granted and found, in support thereof, that all of the criteria**
25 **applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been**
26 **met. Council Member Kleid seconded the motion. On roll call, the motion carried**
27 **unanimously.**

- 28
- 29
- 30 b. SPECIAL EXCEPTION #19-2010 The application of Bank United; relative to property
31 commonly known as 2875 South Ocean Blvd.; described as lengthy legal description on
32 file; located in the C-TS Zoning District. The applicant is requesting a Special Exception to
33 permit the operation of a 4,004 square foot full service bank in the C-TS zoning district and
34 to permit the operation of 3 existing drive-thru lanes in support of bank use. [Attorney:
35 Alfred J. Malefatto]

36 Ex-parte communication was declared by:

- 37
- 38 • Council Member Kleid and President Pro Tem Coniglio had a conversation with Mr.
- 39 Foreman and Ms. Coniglio had several telephone calls from residents in the south end
- 40 offering their support for the special exception.

36 Zoning Administrator Castro provided staff's comments.

37

38 **Motion made by President Pro Tem Coniglio that Special Exception No. 19-2010 shall be**
39 **granted based upon the finding that such grant would not adversely affect the public**
40 **interest and that the applicable criteria set forth in Section 134-229 of the Town Code had**

1 **been met. Council Member Diamond seconded the motion. On roll call, the motion carried**
2 **unanimously.**
3
4

- 5
6
7
8
9
10 c. VARIANCE #19-2010 The application of Jason Evans; relative to property commonly
11 known as 208 Brazilian Avenue; described as Royal Park Addition, Lot 32, Block G;
12 located in the C-TS Zoning District. The applicant is requesting a variance to allow a real
13 estate brokerage office, consisting of approximately 490 square feet on the first floor which
14 is in contradiction to the Code which does not allow an office on the first floor. The space
15 is currently occupied by Casa Decora, LLC. [Attorney: Jason Evans]
16
17

18 Ex-parte communication was not declared by any members of the Town Council.

19 Zoning Administrator Castro provided staff's comments.

20 Attorney Jason Evans noted that the hardship was that the area was not conducive to strolling or
21 retail shopping.

22 **Motion made by Council Member Diamond that Variance #19-2010, be granted and found,**
23 **in support thereof, that all of the criteria applicable to this application as set forth in**
24 **Section 134-201(a), items 1 through 7 had been met, for this tenant only. President Pro Tem**
25 **Coniglio seconded the motion. On roll call, the motion carried unanimously.**
26

- 27 d. VARIANCE #21-2010 The application of Palm Beach Newspapers, Inc.; relative to
28 property commonly known as 249/251 Royal Palm Way; described as Lot 15, (less the
29 Northerly 65 ft of the Easterly 25 ft of said lot) and the South 135 ft of Lot 16, and Lot 58,
30 all of Block A, REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH,
31 FLORIDA, according to the Plat thereof on file in the Office of the Clerk of the Circuit
32 Court in and for Palm Beach County, Florida, recorded in Plat Book 4, Page 1; located in
33 the C-OPI Zoning District. The applicant is requesting a variance to allow a business
34 identification sign on the side of a building that does not front onto a street front or side
35 wall. [Attorney: Maura A. Ziska]
36

37 ***This item has been withdrawn.***

- 38 e. VARIANCE #22-2010 The application of Stephen F and Camilla T. Brauer; relative to
39 property commonly known as 131 Barton Avenue; described lengthy legal description on
40 file; located in the R-B Zoning District. The applicant is requesting a variance to allow
41 construction of a 2,926 square foot two story guest house/garage addition with a cubic
42 content ratio (CCR) of 4.84 in lieu of the 3.99 existing and 4.07 maximum allowed in the R-
43 B Zoning District. [Attorney: Maura A. Ziska] [ARCOM Recommendation: Approval of
44 the variance will not cause negative architectural impacts. Carried 4-1.]
45

46 Ex-parte communication was declared by:

- 1 • Council Member Diamond spoke to Attorney Ziska, who advocated the position of her
- 2 client.
- 3
- 4 • President Rosow received an email, which he did not read.
- 5
- 6 • Council Member Wildrick received and read an email.
- 7

8 Attorney Ziska indicated that there were no objections from neighboring properties, there was a
9 letter of support from a neighbor, it was passed by the Architectural Commission, and the
10 variances recommended.

11
12 Zoning Administrator Castro provided staff's comments.

13
14 Attorney Ziska noted that the hardship was that it was a one parcel property with a parcel that
15 goes down Flagler and up Via Bethesda, and at one time it was split into two parcels and this
16 house was the service common living area, not bedrooms. The other parcel was more of the
17 living space, a portion of the house was removed and this parcel was left with an odd
18 configuration and not livable space.

19
20 **Motion made by Council Member Diamond that Variance #22-2010, be granted and found,**
21 **in support thereof, that all of the criteria applicable to this application as set forth in**
22 **Section 134-201(a), items 1 through 7 had been met. Council Member Kleid seconded the**
23 **motion. On roll call, the motion carried unanimously.**
24

25
26 3. Old Business - More than 15 Minutes

27 None

28 4. New Business - More than 15 Minutes

29 None

30 C. Other

31 1. Consideration of Consultant's Town Serving Report and Planning and Zoning
32 Commission's Recommendations. [Bill Brisson of LaRue Planning & Management
33 Services]

34 The Town Council discussed each of the Planning and Zoning Commission's recommendations
35 of the Study of "Town-Serving" Provisions prepared by Bill Brisson of LaRue Planning &
36 Management Services. The Town Council made the following motions to the recommendations:

1. Retain the Town-serving provisions in the C-WA zoning district and increase the threshold
from 2,000 square feet to 3,000 square feet.

1
2 **Motion made by Council Member Kleid to approve an increase from 2,000 square feet to**
3 **4,000 square feet for the C-WA zoning district. Council Member Diamond seconded the**
4 **motion. On roll call, the motion carried unanimously.**
5

6 *It was the consensus of the Town Council to vote on the threshold amount separately from the*
7 *“Town-Serving” provisions.*
8

9 2. Retain the Town-serving provisions in the C-TS zoning district and increase the threshold
10 from 2,000 square feet to 3,000 square feet.
11

12 **Motion made by Council Member Diamond to approve an increase of the C-TS zoning**
13 **district from 2,000 to 3,000 square feet. Council Member Wildrick seconded the motion.**
14 **On roll call, the motion carried unanimously.**
15

16 3. Eliminate the Town-serving provisions in the C-OPI zoning district. Retain the Town-serving
17 provisions in the C-B zoning district and increase the threshold from 2,000 square feet to 3,000
18 square feet.
19

20 **Motion made by Council Member Diamond to approve elimination of the Town-serving**
21 **provisions in the C-OPI in the zoning district. President Pro Tem Coniglio seconded the**
22 **motion. On roll call, the motion carried unanimously.**
23

24 **Motion made by President Pro Tem Coniglio to approve an increase in the C-B zoning**
25 **district from 2,000 to 3,000 square feet. Council Member Diamond seconded the motion.**
26 **On roll call, the motion carried unanimously.**
27

28 4. Retain the existing Town-serving provisions in the C-PC zoning district.
29

30 5. Eliminate the Town-serving provisions for short-term occupancy uses such as hotels, motels
31 and timesharing in the multi-family residential zoning districts (PUD-A, R-C, R-D(1) and R-
32 D(2)).
33

34 **Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio to**
35 **approve the elimination of the Town-serving provisions for short-term occupancy uses**
36 **[PUD-A, R-C, R-D(1) and R-D(2)]. On roll call, the motion carried unanimously.**
37

38 6. Retain existing “Town-serving” special exception criteria for all special exception uses, not
39 just to commercial uses as is recommended in the Study.
40

41 Discussion occurred among the Town Council, Bill Brisson, Mr. Goldboro, Mr. Castro, and
42 Town Attorney Randolph relative to the uses of Town-serving special exception criteria.
43 President Rosow suggested making the criteria apply to the 3,000 and 4,000 square foot
44 thresholds already established, just on retail and office use. Mr. Castro noted that, as it became
45 complicated separating the criteria, it would be easier to leave it in the control of the Council.

1 President Rosow recommended the requirement of Town-serving after 4,000 square feet in the
2 C-WA zoning district.

3
4 **Motion made by Council Member Diamond to approve the elimination of the “Town-
5 serving” provision in the C-WA zoning district up to 4,000 square feet.**

6
7 Bill Brisson indicated that the 3,000 to 4,000 square feet is the Town-serving criteria, and if a
8 number is set, it is keeping the Town-serving criteria for everything above that number.

9
10 **Motion dies for lack of a second.**

11
12 Town Attorney Randolph stated that he was going by the Town staff’s list and that he thought
13 the Town Council voted to retain “Town-serving” and to increase it, and he indicated that it was
14 stated: Retain the Town-serving provisions in the C-WA zoning district and increase the
15 threshold from 2,000 square feet to 4,000 square feet, and that the Town Council voted to do
16 that.

17
18 **Motion made by Council Member Kleid to approve retaining the existing “Town-serving”
19 special exception criteria for all special exception uses, not just commercial uses as is
20 recommended in the Study. President Pro Tem Coniglio seconded the motion. On roll call,
21 the motion carried unanimously.**

22
23 7. Eliminate the necessity to certify each year that a business is “Town-serving”, but retain the
24 right to request substantiating documentation if the Town has reason to believe that the business
25 is not continuing to meet the “Town-serving” criteria.

26
27 *It was the consensus of the Town Council not to automatically require repeated annual
28 records. The initial reporting is to be left as is; more frequent reporting will be determined on
29 a case-by-case basis.*

30
31 8. Process the necessary comprehensive plan amendments required to complete the changes to
32 the land development regulations identified above.

33
34 **Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to
35 process the necessary comprehensive plan amendments as identified. On roll call, the
36 motion carried unanimously.**

37
38 Mr. Goldboro thanked everyone on behalf of the Planning and Zoning Commission, and he
39 expressed a special thanks to staff who supplied the information to Bill Brisson and to Tanner
40 Rose and Martin Klein for their work on the white papers at no expense to the Town.

2. Request to Consider Zoning Ordinance No. 26-10 Prior to 5:00 p.m. at Second Reading of Ordinance. [John Page, Director of Planning, Zoning, and Building]

Motion made by Council Member Kleid, seconded by Council Member Diamond, to approve consideration of Zoning Ordinance No. 26-10 prior to 5:00 p.m. at the Second Reading of the Ordinance. On roll call, the motion carried unanimously.

3. Further Consideration of Potential Use of Hold Harmless Agreements to Expedite Occupancy of Certain Commercial Properties. [John C. Randolph, Town Attorney]

Town Attorney Randolph provided an overview of further consideration of potential use of Hold Harmless Agreements to expedite occupancy of certain commercial properties.

Planning, Zoning and Building Director Page noted that Attorney John R. Eubanks, Jr., indicated that staff did not have the authority to allow interior demolition to occur before Town Council acted on a special exception unless the zoning ordinance was amended.

Motion made by Council Member Diamond to deny consideration of potential use of hold harmless agreements in order to expedite occupancy of certain commercial properties. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

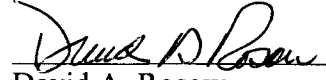
IX. ANY OTHER MATTERS

The Town Council wished Town Clerk Cunningham good luck in her new position in the City of West Palm Beach.

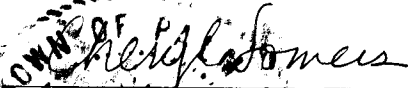
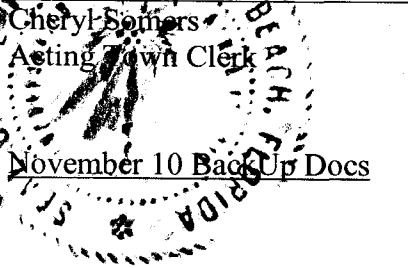
X. ADJOURNMENT

There being no further business, the November 10, 2010, Town Council Meeting was adjourned at 12:01 p.m.

APPROVED:


David A. Rosow
Town Council President

ATTEST:


Cheryl Somers
Acting Town Clerk

November 10 Back Up Docs