TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON WEDNESDAY, NOVEMBER 9, 2011

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council meeting was called to order on Wednesday, November 9, 2011 at 9:30 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

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

III. COMMENTS OF MAYOR GAIL L. CONIGLIO – None

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

Town Manager Elwell announced that the informational meeting regarding the whitefly emergency ordinance will be held in the Town Council Chambers on Monday, November 14, 2011, at 3:00 p.m.

V. COMMUNICATIONS FROM CITIZENS – None

VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

ADDED: Item VII.1., Review of Breakers Waiver, was added to the Agenda. Item was deferred to this meeting from the November 8, 2011 Council meeting.

ADDED: Item VII.2., Review of Construction Activity at 332 South County Road, was added to the agenda per Town Council's request at the November 8, 2011 Council meeting.

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480
Telephone (561) 838-5416 • Facsimile (561) 838-5417
E-mail: townclerk@townofpalmbeach.com • Website: www.townofpalmbeach.com

ADDED: Item VII.D.1., Discussion of Intent of Post Office's New Owner, was added to the Agenda.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve the Agenda, as amended. On roll call, the motion carried unanimously.

VII. DEVELOPMENT REVIEWS

1. Additional Review of Request for Waiver of Town Code of Ordinances Section 42-198 and 42-199 for a Shore Protection Project at the Breakers. [H. Paul Brazil, Director of Public Works] – ***Item was added to the Agenda. It was deferred from the November 8, 2011, Town Council Meeting.***

Director of Public Works Brazil provided Staff's comments.

Paul Leone, President of the Breakers, provided an overview of the applicant's request and committed to work with the neighbors to address any concerns they may have, and to restore the road if needed.

Discussion ensued among the Council regarding how many trucks would be going back and forth across the island, the relocation of the groins, and notification to the neighbors.

Henry McIntosh, 124 Via Bethesda, expressed his concern that the vibration of the heavy trucks could cause damage to his house, and said that he had not received notice of the project.

Peter Broberg, Chancellor of Bethesda-by-the-Sea Church, expressed his concerns about losing parking spaces on Via Bethesda and access to the Church, and also stated that the Church did not receive notification of the project until last Friday afternoon.

Further discussion ensued among the Council regarding possible stress cracks to the homes on Via Bethesda as a result of the heavy truck traffic, using trucks versus barges, and the consideration of using alternate routes.

Motion was made by Council Member Diamond to approve the waiver contingent upon a photographic survey of Mr. McIntosh's home so that any damage could be remedied by the Breakers. Motion died for lack of a second.

Motion was made by Council Member Pucillo and seconded by Council Member Kleid to approve the request for Waiver of Town Code of Ordinances Section 42-198 and 42-199 for a Shore Protection Project at the Breakers, subject to compliance with the submitted traffic routing plan, and the condition that all staging of vehicles be done in West Palm Beach. It was added to the motion, for the record, that the Barton Avenue route is not being approved by the Council. On roll call, the motion carried unanimously.

The Council further requested that the parties continue to work together, and try to work out alternative plans.

2. Review of Construction Activities at 332 South County Road. [John Page, Director of Planning, Zoning, and Building] – ***Item was added to Agenda per Town Council's request at the November 8, 2011, Town Council meeting.***

Director of Planning, Zoning, and Building Page provided an overview of the construction and permitting history of this property. He commented that he had spoken with the owner over the phone about eight to twelve months ago and told him that any repairs he makes that support multi-family usage are not allowed; and, that if he went that route, he would do so at his own risk.

Parking/Code Enforcement Manager Houston provided an overview of the code enforcement activities relative to the property.

Council consensus was to affirm the position that any repairs the owner makes will be done at his own risk, and that he cannot come before Council for relief.

Council President Rosow requested that this issue and its history should be referred to the Ordinances, Rules, and Standards Committee to determine what, if any, changes to permitting procedures and prolonged improvements would be advisable. Council consented.

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

A. Appeals – None

B. Time Extensions & Waivers

1. Request for Waiver of Section 42-199, Hours of Construction Work, at 150 Worth Avenue, Suites 231-235, Per Letter Dated October 18, 2011, from James R. Brindell.

The following ex-parte communications were declared: Council Members Diamond and Kleid, Council President Rosow, Council President Pro Tem Wildrick, and Mayor Coniglio spoke with Attorney Brindell, who advocated the position of his client.

Director of Planning, Zoning, and Building Page provided Staff's comments.

Attorney Brian Seymour, Gunster Law Firm, provided an overview of the applicant's request.

Motion was made by Council Member Diamond and seconded by Council Member Kleid to approve the Request for Waiver of Section 42-199, Hours of Construction Work, at 150 Worth Avenue, Suites 231-235, subject to the conditions within the staff report. On roll call, the motion carried unanimously.

2. Extension of Agreed Maximum Time Schedule for Completion of Work Per Town Code 18-242.105.4.1.6, at 409 Antigua Lane, Per Letter Dated October 6, 2011, from Jeffrey W. Sullivan.

The following ex-parte communications were declared: Council President Pro Tem Wildrick and Council President Rosow spoke with the neighbor, who expressed his opposition to the request. Council Member Diamond spoke with the neighbor, Attorney Ziska, and the contractor, who each expressed their positions. Mayor Coniglio and Council Members Kleid and Pucillo spoke with and received correspondence from the neighbor, who expressed his opposition to the request.

Attorney Ziska, on behalf of the owners, provided an overview of the applicant's request. Jeffrey W. Sullivan, Project Contractor, provided the status and completion schedule of the project.

Director of Planning, Zoning, and Building Page provided Staff's comments.

Tom Pournaras, owner, stated the reasons why it has taken so long to complete the work.

Motion was made by Council Member Diamond and seconded by Council President Pro Tem Wildrick to approve the Extension of Agreed Maximum Time Schedule for Completion of Work per Town Code 18-242.105.4.1.6, at 409 Antigua Lane, subject to the general conditions for waivers, and the following:

- **Exterior work can be performed until December 1, 2011-if performing stucco work, the owner shall start with the front of the house;**
- **All exterior work can be resumed May 1, 2012;**
- **All work must be completed by August 1, 2012;**
- **Quiet work may be performed during season;**
- **All garbage removal and bringing in of equipment must be done in the rear alley;**
- **If there are any code violations, then the job will be shut down; and**
- **There will be a daily fine of $1,000 per day for each day construction is performed after August 1, 2012.**

On roll call, the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

   a. SPECIAL EXCEPTION #25-2011 Declaration of Use Agreement for FEDCO Pharmacy, **2875 South Ocean Boulevard.** [Representative: Johnny Meier]
   Deferred from the October 12, 2011, Town Council Meeting.

   The following ex-parte communications were declared: Council Member Kleid spoke with a member of the Palm Beach Citizen's Association.

   Zoning Administrator Castro provided Staff's comments.

   Mike Patel, managing member of FEDCO Pharmacy, provided an overview of the applicant's request. He stated that what distinguished "high-end" chocolates and suntan lotions were their price and sales consistent with other high-end retailers.

Motion was made by Council Member Kleid and seconded by Council Member Diamond that Special Exception #25-2011 shall be granted based upon the finding that such grant will not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code have been met, subject to the amended Declaration of Use Agreement allowing the sale of high-end suntan lotions and chocolates. On roll call, the motion carried unanimously.

2. New Business

   a. SPECIAL EXCEPTION #31-2011 The application of Sabadell United Bank, NA; relative to property commonly known as **180 Royal Palm Way**; described as ROYAL PARK ADD LT 34 BLK F; located in the C-TS Zoning District. The applicant requests a Special Exception to use the first and third floors of the subject building totaling 12,940 square foot as a bank (Sabadell United Bank, NA). The subject tenant space was most recently used as a Lydian Bank branch office with its customers and clients being more than 50% town-persons in satisfaction of the requirements of Section 134-299(12).
   [Attorney: Peter S. Broberg]

   There was no ex-parte communication declared by the Town Council.

   Town Staff had no comments.

Motion was made by Council Member Diamond and seconded by Council President Pro Tem Wildrick that Special Exception #31-2011 shall be granted based upon the finding that

such grant will not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code have been met. On roll call, the motion carried unanimously.

b. <u>SPECIAL EXCEPTION #32-2011 WITH SITE PLAN REVIEW AND VARIANCE</u> The application of Everglades Club, Inc.; relative to property commonly known as **350 Worth Avenue**; described as lengthy legal description on file; located in the C-WA Zoning District. The applicant requests a Special Exception with Site Plan Modification to renovate the existing kitchen at the Everglades Club and change the front façade along Worth Avenue. The plan includes raising the parapet and eliminating mechanical equipment on the roof. A portion of the building will be demolished and setback further from the street to provide more room for loading and unloading. No additional square footage is proposed. A variance is requested to allow renovation of the existing kitchen to be phased over four years in lieu of the two year maximum completion time required. [Attorney: Maura A. Ziska]

There was no ex-parte communication declared by the Town Council.

Attorney Ziska, on behalf of The Everglades Club, Inc., provided an overview of the applicant's request.

Town Staff had no comments.

Motion was made by Council Member Diamond and seconded by Council Member Kleid that Special Exception #32-2011 shall be granted based upon the finding that such grant will not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code have been met, that the site plan review related to Special Exception #32-2011 be approved based upon the finding that the approval of the site plan will not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use have been met and that satisfactory provision and arrangement has been made concerning Section 134-329, items 1 through 11, and that the variances related to Special Exception #32-2011 be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 have been met. On roll call, the motion carried unanimously.

c. <u>SPECIAL EXCEPTION #33-2011</u> The application of The Breakers Palm Beach, Inc.; relative to property commonly known as **230 Sunrise Avenue, Suite A, Echo Restaurant**; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant requests a Special Exception to remove the previous condition of approval which requires an annual Town-serving statement. [Attorney: James R. Brindell]

The following ex-parte communications were declared: Council Members Diamond, Kleid, and Pucillo, Council President Pro Tem Wildrick, Council President Rosow, and Mayor Coniglio spoke with Attorney Brindell, who advocated the position of his client.

Zoning Administrator Castro provided Staff's comments.

Motion was made by Council Member Diamond and seconded by Council Member Kleid that Special Exception #33-2011 shall be granted based upon the finding that such grant will not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code have been met. On roll call, the motion carried unanimously.

Council President Rosow added the following item at this time:

Council President Rosow sought the opinion of the Council in regards to removing the annual submission requirement of town-serving documentation from four long-standing businesses within the Town: Testa's, the Church Mouse, Mildred Hoit, and C. Orrico.

Council consensus was that they would be favorably disposed to removing this requirement for the aforementioned businesses, should they apply. Attorney Randolph reminded Council that no final decisions should be made until the quasi-judicial process is completed.

d. SITE PLAN REVIEW #13-2011 WITH VARIANCES The application of Richard Hirsch; relative to property commonly known as **130 Sunrise Avenue, PH-1 West**; described as SUN & SURF ONE HUNDRED THIRTY COND UNIT PH 1W; located in the R-C Zoning District. The applicant requests Site Plan Review for a 203.4 square foot retractable awning. Variances are requested to install a 203.4 square foot retractable awning with a side yard setback of 19.37 feet in lieu of the 61.5 foot minimum required and to install a retractable awning on the 6th floor of a building in a district that allows 2-story buildings by right and a height of 61.5 feet in lieu of the 23.5 foot maximum required. [Attorney: Peter S. Broberg]
[ARCOM Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject property. Carried 7-0.]

There was no ex-parte communication declared by the Town Council.

Attorney Broberg provided an overview of the applicant's request.

Town Staff had no comments.

Motion was made by Council Member Diamond and seconded by Council Member Pucillo that Site Plan Review #13-2011 be approved based upon the finding that the approval of the site plan will not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use have been met and that satisfactory provision and arrangement has been made concerning Section 134-329, items 1 through 11, and that the variances related to Site Plan Review #13-2011 be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 have been met. On roll call, the motion carried unanimously.

e. SITE PLAN REVIEW #14-2011 WITH SPECIAL EXCEPTION AND VARIANCES The application of Marilyn and John Keane; relative to property commonly known as **425 Worth Avenue, PH-B**; described as lengthy legal description on file; located in the R-D(2) Zoning District. The applicant requests Site Plan Modification with variances to allow one (1) permanent awning totaling 840.5 square feet over the terrace on the seventh floor of a seven story building. Variances are requested to allow the awning at a height of 63.25 feet in lieu of the 60 foot maximum allowed; to allow the awning on the existing seventh floor penthouse of a seven story building in lieu of the five story building maximum allowed; and, to allow the awning with a street side yard setback of 21.7 feet in lieu of the 126 foot minimum required for multi-family use in the R-D(2) Zoning District. [Attorney: Maura A. Ziska] [ARCOM Recommendation: Implementation of the proposed variances will not cause negative architectural impacts to the subject property. Carried 7-0.]

There was no ex-parte communication declared by the Town Council.

Attorney Ziska, on behalf of Marilyn and John Keane, provided an overview of the applicant's request.

Zoning Administrator Castro provided Staff's comments.

Motion was made by Council Member Diamond and seconded by Council Member Pucillo that Site Plan Review #14-2011 be approved based upon the finding that the approval of the site plan will not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use have been met and that satisfactory provision and arrangement has been made concerning Section 134-329, items 1 through 11, that the special exception related to Site Plan Review #14-2011 shall be granted based upon the finding that such grant will not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code have been met, and

that the variances related to Site Plan Review #14-2011 be granted and find, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 have been met. On roll call, the motion carried unanimously.

D. Other

1. Discussion of the intentions of the owner of the Post Office. – ***Item was added to the Agenda***

Council President Rosow called attention to the Site Plan Review #6-2011 with Special Exception and Variances Hearings held in April and May 2011 regarding the old post office.

He expressed concern that there was a "for lease" sign on the building. Attorney Randolph confirmed that any lessees would need to come before Council for approval. The original approval was only for the property owner's business and charity uses.

Zoning Administrator Castro provided Staff's comments relative to the building permit.

Council President Rosow stated that the "for lease" sign may not be up to Code.

Council President Rosow asked Code Enforcement to see if the "for lease" sign on this property meets code.

VIII. <u>ANY OTHER MATTERS</u> – None

IX. <u>ADJOURNMENT</u>

There being no further business, the November 9, 2011, Town Council meeting was adjourned at 11:47 a.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Susan A. Owens, MMC
Town Clerk