TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON WEDNESDAY, OCTOBER 13, 2010

I. CALL TO ORDER AND ROLL CALL

The regular Town Council meeting was called to order on Wednesday, October 13, 2010, 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 Cunningham gave the invocation. President Rosow led the Pledge of Allegiance.

III. COMMENTS OF MAYOR JACK McDONALD

There were none.

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

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.)

Adele Kahn, 235 and 232 Peruvian Avenue, requested that an exception be made to allow her to lease her space that was previously approved for use as office space.

Town Council, Mayor McDonald, Town Attorney Randolph, and staff discussed the procedures, the adherence to the law, and the setting of a precedent. Mr. Castro indicated that Ms. Kahn's two options were to file for the special exception for December or wait for adoption of an ordinance that staff is proposing to the Town Council for allowing office use on Peruvian Avenue.

President Rosow suggested that Ms. Kahn file an application immediately, as the Town Council could not override the Ordinance.

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President Rosow directed staff to review the procedures of expediting the processing of applications and that the Ordinances, Rules and Standards Committee would also review the procedures.

VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

ADDED: Item VIII.A., Resolution 118-10, regarding the Proposed County Charter Amendment.

ADDED: Item VII.C.3.a., Town of Palm Beach vs. James M. Brandon-Code Enforcement Lien Foreclosure-112 Caribbean Avenue. [John C. Randolph, Town Attorney]

Motion made by Council Member Diamond, seconded by President Pro Tem Coniglio, to approve the Agenda as amended. On roll call, the motion carried unanimously.

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Clerk's Note: Discussion regarding Resolution No. 118-10 was addressed at this time. Please see Any Other Matters, Item VIII.A., for further discussion.

VII. DEVELOPMENT REVIEWS

Town Clerk Cunningham 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 255 Worth Avenue (Vineyard Vines) (Per Letter Dated September 24, 2010, From Maura A. Ziska).

Ex-parte communication was declared by:

Council Members Diamond, Kleid, Wildrick, President Pro Tem Coniglio, and President Rosow, spoke with Attorney Maura Ziska, who advocated for the position of her client.

Attorney Ziska, representing the owners of Vineyard Vines, provided an overview of her client's request for an extension of construction work through December 15, 2010.

Planning, Zoning and Building Director Page noted that staff was comfortable with the request and recommended a series of restrictions; Attorney Ziska agreed to the terms.

Motion made by President Pro Tem Coniglio that the request for Waiver of Section 42-199, Hours of Construction Work, at 255 Worth Avenue (Vineyard Vines) for an extension of work construction to December 15, 2010, be approved, subject to conditions set forth by staff. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

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 #9-2010 WITH SPECIAL EXCEPTION AND VARIANCE The application of RP/RS Royal Palm Way, LLC; relative to property commonly known as 324 Royal Palm Way; described as Lots 44 and 45, Block D, Revised Map of ROYAL PARK ADDITION to the Town of Palm Beach, Florida, according to the plat thereof as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida; located in the C-OPI Zoning District. The applicant is requesting a Site Plan Review to: (i) construct 1,411 square foot roof terrace on the third floor of the existing building; and (ii) construct twenty (20) carport parking space awnings to provide covered parking on the south side of the existing parking lot. Special Exception request is to allow a roof terrace which would create a third story addition onto an existing partial three story commercial building in the C-OPI Zoning District; a Variance is being requested to allow lot coverage for the carport/awnings to be 39% in lieu of the 29% existing and the 25% maximum allowed in the C-OPI Zoning District. [Attorney: Maura A. Ziska] [ARCOM Recommendation: Approval of the variances will not cause negative impacts. Carried 7-0.]

Ex-parte communication was declared by:

Council Members Diamond, Kleid, Wildrick, President Pro Tem Coniglio, and President Rosow, spoke with Attorney Maura Ziska, who advocated for the position of her client.

Attorney Ziska presented her client's request. She noted that their lot coverage request had been increased.

Motion made by Council Member Diamond that the Site Plan Review of Site Plan Review #9-2010 with Special Exception and Variance be approved based upon the finding that the approval of the site plan would not adversely affect the public interest and that the Council certifies that the specific zoning requirements governing the individual use had been met and that satisfactory provision and arrangement had been made concerning Section 134-329, items 1 through 11, with conditions set forth by staff. Council Member Wildrick seconded the motion.

Motion made by Council Member Diamond that the Variance of Site Plan Review #9-2010 with Special Exception and Variance be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met, with conditions set forth by staff. Council Member Wildrick seconded the motion.

Motion made by Council Member Diamond that the Special Exception of Site Plan Review #9-2010 with Special Exception and Variance, shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met, with conditions set forth by staff. Council Member Wildrick seconded the motion.

Zoning Administrator Castro provided staff comments, which were accepted by the applicant.

Attorney Ziska noted that the hardship was that the lot coverage was nonconforming on the property; the code had been changed since the building was built.

President Rosow noted that staff's recommendations were included in the approval.

Upon roll call, the motions for Site Plan Review #9-2010 with Special Exception and Variance carried unanimously.

b. <u>SPECIAL EXCEPTION #16-2010 The application of 375 South County Road LLC, dba Café Milano; relative to property commonly known as 375 South County Road; described as ROYAL PARK ADD LT 1 (LESS TRGLR PAR S COUNTY RD R/W), LTS 2 THRY 4, LT 66 (LESS PERUVIAN COURT COND) & LTS 67 THRU 69 BLOCK 9; located in the C-TS Zoning District. The applicant is requesting a Special Exception to allow a new restaurant to open in the 5,458 square foot space formerly occupied by Amici's Restaurant. The applicant proposes to meet all previous conditions of approval. [Attorney: Peter S. Broberg]</u>

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

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

Planning, Zoning and Building Director Page noted that staff had no objections to the request.

Zoning Administrator Castro noted that the applicant agreed to meet all previous conditions of approval. However, staff recommended that one of those requirements be that they not demonstrate town-serving each year.

Motion made by President Pro Tem Coniglio that Special Exception No. 16-2010 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had

been met, with the conditions set forth by staff. Council Member Wildrick seconded the motion. On roll call, the motion carried unanimously.

c. SPECIAL EXCEPTION #17-2010 The application of Ember Group LLC.; relative to property commonly known as 350 South County Road; described as Lots 11 through 17, Block 7, of REVISED MAP OF ROYAL PARK ADDITION TO PALM BEACH, FLORIDA according to the Plat thereof recorded in Plat Book 4, Page 1, of the Public Records of Palm Beach County, Florida; located in the C-TS Zoning District. The applicant is requesting a Special Exception to allow a restaurant with a floor area of 4,980 square feet. The restaurant is being proposed in the former space of the "Beach House Bistro", "Island Palm" and "Galaxy Grill" restaurants. Town Council approval and a finding that the proposed use is town-serving is required. The applicant is proposing to operate a restaurant "Ember Group LLC" which will serve world cuisine in a casually sophisticated setting. The restaurant will follow the applicable conditions of the prior restaurants' approvals and the request is to operate under the previous approvals for seating, with a total of 154 seats proposed. [Attorney: Maura A. Ziska]

Ex-parte communication was declared by:

Council Members Diamond, Kleid, Wildrick, President Pro Tem Coniglio, and President Rosow, spoke with Attorney Maura Ziska, who advocated for the position of her client.

Zoning Administrator Castro provided staff's comments and recommendations; he added that staff did not recommend the town-serving documentation requirement.

Motion made by President Pro Tem Coniglio, that Special Exception No. 17-2010 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met, with conditions set forth by staff. Council Member Wildrick seconded the motion. On roll call, the motion carried unanimously.

d. SPECIAL EXCEPTION #18-2010 The application of Amici Market, LLC; relative to property commonly known as 155 North County Road; described as THE NORTH 70.5 FEET OF LOT 13, SUNRISE AVENUE ADDITION TO PALM BEACH LESS THE WEST 10 FEET THEREOF, ACCORDING TO THE PLAT ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA AND RECORDED IN PLAT BOOK 7, PAGE 62; TOGETHER WITH AN EASEMENT OVER THE EAST 15 FEET OF THE SOUTH 95.98 FEET OF SAID LOT 13; located in the C-TS Zoning District. The applicant is requesting Special Exception approval to operate a Town-serving specialty food market with limited accessory seating (6 seats) in a 5,980 square foot building, exceeding the 2,000 square foot limitation, which is proposing to be Town-serving. [Attorney: James R. Brindell]

Ex-parte communication was declared by:

Council Members Diamond, Kleid, President Pro Tem Coniglio, and President Rosow, spoke with Attorney James Brindell, who advocated for the position of his client. Council Member Wildrick said that Attorney Brindell called him, but they did not talk.

Zoning Administrator Castro noted that this property was approved twice as a market, and the applicant was proposing to open up an upscale market at the same location. He recommended that the applicant tell how it proposes to continue to be town-serving as an upscale market, and that the town-serving requirement not be provided in this case.

The Town Council provided comments regarding the project.

Motion made by Council Member Diamond that Special Exception No. 18-2010 shall be granted based upon the finding that such grant would not adversely affect the public interest and that the applicable criteria set forth in Section 134-229 of the Town Code had been met, with the conditions set forth by staff. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

e. <u>VARIANCE #18-2010 The application of Kevin and Francesca McGann; relative to property commonly known as 180 E. Inlet Drive; described as Lot 21 of SEA ISLE ESTATES, according to the Plat thereof on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Bok 25, Page 89; located in the R-B Zoning District. The applicant is requesting a variance to allow construction of a 550 square foot second story addition for a bedroom and bathroom with an east side yard setback of 11.31 feet in lieu of the 15 foot minimum required in the R-B Zoning District. [Attorney: Maura A. Ziska]</u>

Ex-parte communication was declared by:

Council Members Diamond, Kleid, Wildrick, President Pro Tem Coniglio, and President Rosow, spoke with Attorney Maura Ziska, who advocated for the position of her client. President Pro Tem Coniglio, and President Rosow, and Council Member Wildrick also spoke with a neighbor.

Zoning Administrator Castro provided staff's comments and recommendations.

Attorney Ziska noted that the hardship was that the property was nonconforming in width making the lot tight with the additions; the applicant was trying to use the first floor structural support in order to support the second proposed addition on the second floor; the neighbor on the opposite side supports the variance.

Motion made by President Pro Tem Coniglio that Variance #18-2010, be granted and found, in support thereof, that all of the criteria applicable to this application as set forth in Section 134-201(a), items 1 through 7 had been met, with the conditions set forth by staff. Council Member Wildrick seconded the motion. On roll call, the motion carried unanimously.

3. Old Business - More than 15 Minutes

a. Town of Palm Beach vs. James M. Brandon-Code Enforcement Lien Foreclosure-112 Caribbean Avenue. [John C. Randolph, Town Attorney]

Attorney Jonathan C. Chane indicated that his client, James M. Brandon, is offering $150,000, which is 80% of the total amount that would satisfy the lien on the property, the final judgment, and any other Code Enforcement issues.

Motion made by Council Member Wildrick, seconded by President Pro Tem Coniglio, to accept the offer of $150,000 for satisfaction of the Code Enforcement Lien-Foreclosure at 112 Caribbean Avenue. On roll call, the motion carried unanimously.

4. New Business - More than 15 Minutes

None

D. Other

1. Consideration of Utilizing Hold Harmless Agreements, Allowing For Interior Remodeling Projects to Proceed Forward at Owner's Risk, Prior to Certain Town Council Approvals.[John Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph referred to Planning, Zoning and Building Director Page's memorandum in the backup material recommending that individuals be accommodated to move forward with certain projects, at their own risk, prior to receiving a special exception or variance. The recommendation would not apply to exterior projects, only to interior projects that would not affect neighbors. A Hold Harmless Agreement would be a way to accommodate individuals without any risk to the Town.

Town Attorney Randolph noted he would like to have further opportunity to review Attorney Eubanks letter of objection properly. He indicated that there may be an amendment that could made in the code to allow Mr. Page's suggestion.

Bob Moore, 420 Santa Fe Rd. West Palm Beach, provided a Town history of hold harmless agreements that were in effect in his prior career with the Town.

The Town Council, staff, and Town Attorney Randolph discussed the issue further. Mr. Castro indicated that the hold harmless agreements were ceased after a small store, Giorgio, was allowed to obtain a permit for interior renovations before coming to the Town Council. The Town Council was dismayed that a permit was allowed without the required Town Council approval. Staff was directed to not issue any more hold harmless agreements that required Town Council approval. Town Attorney Randolph requested that this item be placed on hold until the legal status could be reviewed.

It was the consensus of the Town Council that Town Attorney Randolph would review the policy decision of the use of Hold Harmless Agreements, which would be discussed at a later date.

2. New Business - Less than 15 Minutes
   None

VIII. ANY OTHER MATTERS

A. Resolution No. 118-10, Proposed Palm Beach County Charter Amendment

The Town Council, Mayor McDonald and Town Attorney Randolph discussed the language of the Town's Resolution regarding the disadvantages of the proposed Palm Beach County Charter Amendment expanding the authority of the County's Ethics Commission and Inspector General. There were two drafts of the Resolution, with the Town Council agreeing to version B.

Motion made by Council Member Diamond, seconded by Council Member Wildrick to approve Resolution 118-10, version B, with revisions.

Council Member Wildrick indicated that the language in the Resolution should include the following:

- The lengthy discussion by the Town Council.
- Each individual was highly opposed to the amendment for all of the reasons in version A.
- It was decided that it was not appropriate for the Council, as a body, to put forth a recommendation.
- It would be opposed very strongly individually.

Town Manager Elwell would come back with revised language for the Resolution, relative to Council Member Wildrick's suggestion, which will be voted on later in the meeting.

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Town Manager Elwell returned with the following Resolution No. 118-10 that included the revised language:

RESOLUTION NO. 118-10 A Resolution of The Town Council of the Town of Palm Beach, Palm Beach County, Florida, Urging Voters to Carefully Consider the Disadvantages of the Proposed Palm Beach County Charter Amendment That Would Expand The Authority Of The County's Ethics Commission and the County's Inspector General.

Town Attorney Randolph read Resolution No. 118-10 by title, as printed above.

Motion made by Council Member Wildrick, seconded by President Pro Tem Coniglio, to approve Resolution No. 118-10. On roll call, the motion carried unanimously.

IX. ADJOURNMENT

There being no further business, the October 13, 2010, Town Council Meeting was adjourned at 11:00 a.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk

BackUp Documents 10-13-10