

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD SEPTEMBER 1, 1994

Roll Call

I. CALL TO ORDER AND ROLL CALL. President Wiener called the Special Town Council Meeting to order at 9:30 a.m. on September 1, 1994 in the Town Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Ilyinsky, President Wiener, Councilwoman Royal, Councilwoman Smith and Councilman Shaw. Also attending were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Deputy Town Clerk Pollitt, Chief Terlizzese, Chief Elmore, Mr. Moore, and Mr. Jakubiak.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Mrs. Peters. The Pledge of Allegiance was led by Councilwoman Smith.

Approval of Agenda

III. APPROVAL OF AGENDA: Mrs. Wiener requested an item relating to an article in the 9/1 issue of the Shiny Sheet stating that two houses of worship would like to use the Colony Hotel and the Palm Beach Hotel for services for the Jewish High Holy Days that may require special exceptions should be added to the agenda under V. ANY OTHER MATTERS. Motion made by Mrs. Smith to approve the agenda as amended. Motion seconded by Mrs. Royal. On roll call, the motion carried unanimously.

Appt. to Town Council

IV. CONSIDERATION OF APPOINTMENT TO THE TOWN COUNCIL SEAT PREVIOUSLY HELD BY TOWN COUNCIL PRESIDENT PRO-TEM M. WILLIAM WEINBERG (APPOINTED INDIVIDUAL TO SERVE UNTIL TOWN ELECTION ON FEBRUARY 7, 1995).

Mrs. Wiener stated that the person who will fill the unexpired term would have to be a nonpolitical person who would not run for election and use the position to enhance that end. She added the Council has always considered this a major matter and thought the Council would agree with her position. She asked Mr. Randolph to read the provision in the Town Charter relating to filling vacancies.

Mr. Randolph stated that the controlling provision of the Town Charter relating to filling vacancies is 3.06, and that section provides a vacancy in the office for a Town Council member shall be filled by a majority vote of all of the remaining members of the Town Council. He continued the charter said, in case of a tie vote to fill a Town Council vacancy, the Mayor shall have the right to vote and break the tie. He said a council member so chosen shall serve only until the next regular Town election, February 7, 1995, at which time the unexpired term of the Town Council member whose vacancy was filled shall be submitted to the electorate for the election of a successor to fill out the remaining term. He added the decision for this meeting is for the Council to decide if someone should be appointed to fill the remaining term and nominations should be taken if the Council so chooses.

Mr. Wiener asked for the pros and cons from the Council members concerning the consideration of an appointment to fill the seat.

Mrs. Smith requested either Mr. Doney or Mr. Randolph give a background view of what has transpired on previous occasions when an opening has resulted on the Council? Mr. Randolph replied Alan Cummings died in office, in April, and George Mathews, a former councilman, was appointed to fill the vacancy.

Mrs. Wiener pointed out that the vacancy that occurred when Peter Widener resigned was not filled, and that resignation was in September. Mrs. Wiener stated she thinks the seat should be filled for the following reasons: September starts a busier season for the Council; several people have volunteered to fill the seat and the body is missing a member and the seat could be filled to complete the body; the Council as a deliberative group needs to be kept in top strength at all times barring any unforeseen events such as illness, death or travel and having just three Council members may present problems; several nonpolitical Town residents have volunteered who have the Town's interests at heart and have good backgrounds.

Mr. Shaw reported he had attended the Florida League of Cities meeting the previous week in Orlando and he stated he learned that no two cities or towns have the same construction or make-up of their governments, each of the charters is different and the Town of Palm Beach is very fortunate to have six elected officials, and although the shift from where the tie breaking vote has moved from the presidency of the Council to the Mayor of the Town, the Town is still being governed by five elected members. Mr. Shaw stated that the Council is able to fill the obligation to the electorate and when necessary the Mayor will be able to assist the Council, and he would like to wait until the February election to fill the vacancy. He added another issue at hand is the irrevocable resignation of Mrs. Wiener effective December 31, 1994, which would leave the January meeting with only three Council members during the zoning period and the charter requires that zoning issues be approved or denied by a vote of three to something. Mr. Shaw asked Mrs. Wiener to consider, in the case of an unsuccessful congressional campaign, an appointment to the unexpired term of Mr. Weinberg effective in January.

Mrs. Wiener replied she did not wish to have a political race conversation during the Council meeting, and State law requires an irrevocable resignation. Mrs. Wiener stated, based on her understanding of the State's requirement, she would not accept an appointment. She reiterated the resignation is irrevocable for the month of January regardless of what the situation may be. Mrs. Wiener stated she signed that resignation and gave her word and could not accept that kind of appointment.

Mayor Ilyinsky stated the best people in Town step forward and offer their services not only to fill Town Council vacancies but also to fill the various commission seats, and he has had 17 telephone calls from qualified people willing to fill this vacancy. He stated all the calls have been from people he considers good friends and for that reason he would like to see the seat remain open and put the issue to the voters in February. He added he has full faith in the three Council members who will be hearing the zoning issues in January, and they will handle the matters smoothly, efficiently and effectively. He continued the zoning season is very important to the Town and his past experiences would allow him to be a tie breaker if necessary. The Mayor stated this is another reason he would like to see the vacancy left open until the February election.

Appointment to
Town Council

Mrs. Wiener replied there would be no need for a tie-breaker in January since there will be three Council members voting, and, in fairness to applicants and issues, an unanimous vote would be required to approve or disapprove. She added a three member Council makes it difficult to conduct business and practically stops business during the month of January, and if anyone is sick or absent, a problem is created.

Mayor Ilyinsky asked Mr. Randolph how many votes a zoning issue requires?

Mr. Randolph replied zoning matters that relate to either the amendments to the zoning ordinance or for the approval of variances and special exceptions, a 3/5 vote is needed which means that in the event an applicant appears before Town Council on a zoning matter and only three Council members were present, a 2-1 vote would not carry the day for that issue. He continued, as Mrs. Wiener previously stated, the applicants are informed that if they do not want to be held to the standard of a unanimous vote, then they may return to a subsequent meeting where additional Council members may be present. He continued the Mayor can only break a tie and cannot cast a vote to make a 3/5 vote requirement.

Mrs. Smith asked Mr. Randolph to verify the case where the recommendations of the Zoning Commission are brought to the Council, the acceptance of those recommendations would have to be unanimous and the Zoning Commission report cannot be turned over until the next month such as the scheduled January, 1995 Zoning hearings.

Mr. Randolph replied the zoning amendments do not have to be completed until April, and the scheduled January zoning meetings as listed on the calendar have been established, but there is nothing in the Code that requires completion by January. He added as long as the advertising and the public hearings are completed prior to the time the Council wished to adopt them, the meetings could be scheduled at other times. Mr. Randolph said he did not know if the Zoning Commission had sufficient time to complete the advertising to change the dates, but he stated he thought they would on an accelerated schedule.

Mrs. Wiener stated there are reasons for these dates and one of these reasons is to provide the opportunity for the seasoned members of the Council to complete the zoning work before the February elections when new members may be elected and are not as familiar with the zoning work.

Mr. Moore stated the advertising schedule that is currently in effect provides for the November Zoning Commission meeting(s), the Council receiving and reviewing the report the first week in January and the scheduling of the two 5:01 p.m. public meetings prior to the new Town Council being seated at the February Town Council meeting. He continued the current calendar must be maintained to allow the current Council members to consider the zoning amendments and not have new members voting on matters not deliberated by them prior to their election to the Council. He added it would be difficult to change the zoning hearings other than postponing the meetings until after a new Town Council had been seated.

Mr. Doney added another consideration in keeping the current schedule was to be able to schedule adequate time to fully advertise and convene whatever Town Council meetings were necessary to have a complete second set of hearings in the event something was identified during the first set of hearings that Council felt needed to be addressed before the subsequent year's hearings, and it has happened in the past.

Mrs. Smith stated she did not think it was advisable or responsible for the sitting Council to pass this over to a later time. She continued the present Council is aware of the zoning issues, and several of the candidates who have written letters expressing interest in filling the vacant seat are members of the Zoning Commission. Mrs. Smith asked for clarification for the procedure in filling the vacancy.

Mrs. Wiener said people in the Town are aware of the procedure, and that is why they have come forward to volunteer to fill the vacancy. She added she believed the Town should have a full Council if it is possible to have people who are able and can serve. Mrs. Wiener stated the crux of the problem is that the Mayor is not in a position to vote with three sitting members, and the variances and special exceptions would require a unanimous vote which is not always forthcoming. She added the variances and special exceptions could create a back log and a long meeting.

Mrs. Royal said that January is the crucial meeting month, and the Council has enough members until that time.

Mrs. Wiener replied if someone is willing to start serving now, the person would be able to fill in for any other member not able to attend any of the intervening meetings.

Mrs. Smith asked Mr. Randolph why the interested parties who would like to serve on the Council wrote letters to the Council? Mr. Randolph replied he did not know the answer to that question.

Mrs. Wiener replied she had received a few calls, and she had explained it had always been the policy of the Council not to give anyone a leg up politically.

Mrs. Smith stated there would be no question if anyone were appointed by the Council, they would have to stipulate publicly they would not run for any seat on the Town Council; otherwise the Council is giving a political edge to someone and that cannot be done by the Council. Mrs. Smith clarified she was talking about the appointee running in the February election and not future elections.

Mr. Randolph stated that stipulation can be made by the Council and is a stipulation that the Council can demand be made publicly, but there is no matter of law that precludes that person if he or she decides to change his or her mind.

Mrs. Smith declared she could not imagine anyone in the Town going back on his or her word, and if they did, it would be unacceptable.

Mrs. Wiener added the public would not accept anyone changing his or her mind.

Mrs. Wiener asked for comments from the audience.

Comments from
the public
re: Town Council
appointment

Adrian Winterfield stated the Charter said the Council shall fill the vacancy not whether or not it is convenient. He added there are five meetings between now and election day, and that is a long time to deprive the Town of a fifth council person. He pointed out there is an additional danger during the month of January, if one member should be ill, there would not be a quorum to conduct a meeting.

Mr. Randolph replied the charter provision indicates the Council shall fill the seat by a majority vote, and he does not interpret the provision in the same way that Mr. Winterfield stated as incumbent upon the Council to fill the vacancy. Mr. Randolph stated when or if the Council fills the vacancy, it shall be by majority vote.

Motion made by Mr. Shaw to consider the filling of the vacancy as an agenda item for the September 13 meeting.

Mrs. Wiener stated the people who have expressed interest in being appointed to fill the vacancy are aware of the issues and the positions, and this is the time to make a decision. She added if the decision is "no" then let it be so, and if the decision is "yes" then let the Council move forward.

Motion seconded by Mrs. Smith. Mrs. Smith requested the motion be amended to have the item put on the beginning of the September agenda to allow a possible appointment be made early in the meeting.

Mrs. Royal asked if the motion presumed the Council would make an appointment at the September meeting? Mr. Randolph replied the motion does not presume that, and it will be a matter for discussion at the September meeting.

Mrs. Wiener stated the reason for choosing this special council meeting was to have a specially prepared person for that September meeting. She added no one would be able to fulfill his or her obligations with the amount of material to cover before the meeting, since each member is required to vote on every item with or without the necessary background information on each item. Mrs. Wiener stated the only time a council person may be excused from voting on an issue is due to a conflict of interest. She added if the vacancy had been filled at this meeting, a person could bone up on the necessary issues that they are not familiar with and also meet with the Building Department concerning the variances and special exceptions.

Mrs. Smith replied she thought it was important that this special meeting was called so the members could discuss the various questions that have been brought up at this meeting concerning whether or not the seat should be filled or not filled. She said this meeting was important as she was not aware of the legal background as provided by Mr. Randolph at this meeting. Mrs. Smith added if these questions had not been discussed at this meeting, the question could have put off until the October meeting.

Mrs. Royal requested a clarification of the motion. Mrs. Peters read the motion to add an agenda item at the beginning of the September 13 meeting to consider an appointment to fill the vacant seat of the late M. William Weinberg. On roll call, the motion carried 3-1 with Mrs. Wiener casting a negative vote.

Mr. Doney asked if a judge should be present at the September 13 meeting to swear in an individual should the Council elect to appoint a replacement and should the person sit on the Council that day, if appointed? He stated this is an issue that would have to be planned for in advance.

Mr. Randolph added the Code requires a judicial officer do the swearing in, and the Council will not know until September 13 if those services are required.

Mr. Shaw suggested the materials be made available to any of the people who are being seriously considered before the September meeting so they would be knowledgeable.

Mrs. Wiener added, if the appointment were made in September, the person could be seated at the October meeting. She suggested deciding at this meeting if the appointee would be seated in September or October.

Mrs. Smith stated she thought the person, if appointed, should be seated in September. Motion made by Mrs. Smith to seat the person, if appointed in September, at the September meeting. Motion seconded by Mr. Shaw. On roll call, the motion carried unanimously.

V. ANY OTHER MATTERS - HOUSES OF WORSHIP, PALM BEACH HOTEL AND COLONY HOTEL

Mr. Moore stated the Sunday Shiny Sheet had an article reporting the Synagogue was going to hold temporary services for Rosh Hashanah at the Colony Hotel. Mr. Moore said no special exception was applied for or received by the Temple to hold services. He added he talked to Mr. Randolph and the Colony Hotel, and a letter will be sent to the Rabbi today advising him that a special exception would have to be granted to have a house of worship at the Colony Hotel. He stated a house of worship is a permitted special exception use, and the other church referred to in the same newspaper article had received a special exception for conducting services in the Paramount Theater. Mr. Moore added the 9/1/94 issue of the Shiny Sheet also said Rosh Hashanah services would be conducted at the Palm Beach Hotel.

Mrs. Wiener asked Mr. Randolph if a temporary special exception could be issued for the services due to the timing of the holy days and have the applicants appear at a Council meeting?

Mr. Randolph replied a temporary special exception does not exist as the ordinance requires notification of property owners. He added the ordinance contemplates the establishment of a use and these uses are listed as special exceptions under particular zoning categories. Mr. Randolph stated if a use is established at this area, a special exception would be required, and he understood Staff had made the decision not to curtail anyone from worshiping during the High Holy Days for this temporary period. He said the long term use may be to establish a use at these locations but the short term purpose is to hold a worship service.

Mrs. Wiener stated her concern was in the area of freedom of assembly and religion.

Houses of
Worship, Palm
Beach Hotel and
Colony Hotel

Mr. Randolph replied he shared the same concerns and for that reason the notice to the Rabbi would be related to the establishment of the permanent use at the location. He added people do worship in hotel ballrooms and assemble in hotels for various purposes.

Mrs. Wiener said services had been conducted at the Poinciana Theater, but these services are temporary situations and not established houses of worship at this time. Mrs. Wiener asked if anyone had any problems with this approach and stated the issue needed to be discussed by the Council.

Mr. Moore stated he would advise the principals involved with the services scheduled at the Palm Beach Hotel and see if they decide to establish a permanent house of worship.

Mrs. Smith stated the hotels were not aware special exceptions were necessary when, in effect, they are renting the space to someone for purposes of assembling.

Mr. Randolph responded he and the Staff did not know the intention of the hotels involved but viewed this arrangement as temporary although the newspaper article indicated services may be held on a longer term basis, and that is the reason the letter was drafted.

Mrs. Wiener asked for any other matters to brought up.

Mrs. Royal said she and Mr. Shaw would like to schedule an ORS Committee meeting to discuss Charitable Solicitation Permits.

Char.Sol.
Permits

Mrs. Wiener replied the meeting could be held at any time Mrs. Royal and Mr. Shaw wish.

VI. ADJOURNMENT - The meeting was adjourned at 10:30 a.m.

Adjournment

Mary A. Pollitt
Deputy Town Clerk