TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON WEDNESDAY, AUGUST 12, 2009

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council Meeting was called to order on Wednesday, August 12, 2009, at 9:30 a.m., at 355 S. County Road, Palm Beach, Florida 33480, in the Central Fire Station, in the Emergency Operations Center (EOC). On roll call, all elected officials were found to be present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Cunningham gave the invocation and 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.)

Donna Marks, owner of Sprinkles Ice Cream, commented that, as a result of their recent fire, a child who was a recipient of The Make A Wish Foundation, would have been unable to have her party. She commended the Town of Palm Beach Fire-Rescue Department for obtaining approval to bring the ice cream and host the party at the Fire Department. Ms. Marks said that the Town's and the Fire-Rescue Department's support were awesome.

Motion made by Council Member Diamond, seconded by Council Member Kleid to commend and recognize the tremendous work done by the Fire-Rescue Department regarding the Sprinkles Ice Cream fire. On roll call, the motion carried unanimously.

VI. APPROVAL OF AGENDA

The following changes were made to the Agenda:

DEFERRED: Item VIII.C.4.a. Special Exception #8-2009 with Variances to the September 10, 2009, Town Council Meeting.

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

VII. ORDINANCES

A. Second Reading

1. ORDINANCE NO. 8-09 An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Amending Chapter 134, Zoning, Article VI, District Regulations, Division 15, Beach Areas, at Sections 134-1472 and 134-1473 so as to Provide for Height, Width and Length Limits for Structures, Walls, Fences and Hedges in the Beach Area, for Properties Adjacent to Properties in the R-B District and Districts Other than R-B; Providing for Requirements; Providing for Severability; Providing for Repeal of Ordinances in Conflict; Providing for Codification; Providing an Effective Date. [John C. Randolph, Town Attorney]

Town Attorney Randolph read Ordinance 8-09, by title, as printed above.

Council Member Kleid pointed out that the Ordinance did not include the amendment change voted on at the last meeting from "1472(c) **and** 1473(c)" to "1472(c) **or** 1473(c)".

Town Attorney Randolph noted that the change referred to by Council Member Kleid would be made. Town Clerk Cunningham acknowledged that she had the corrected version prepared for the Town Council members' signatures.

Planning, Zoning and Building Director John Page provided a brief history regarding the Ocean Vista ordinance. He noted that, primarily, the Ordinance would not prohibit greenery in its entirety along the coast line, but would preserve some portion of properties east of Ocean Boulevard so that people who were riding, driving, or walking by would see glimpses of the ocean.

Discussion occurred among the Council Members and Town Attorney Randolph regarding the height of the hedges along the coast line and the State versus the Town's guidelines.

Motion made by Council Member Kleid, seconded by Council Member Wildrick to adopt Ordinance #8-09.

Attorney Peter Broberg, 220 Monterey Rd., inquired regarding whether or not the State would require removal of the pine hedges on his road and Colonial Road, which would be considered invasive, along public ways.

Town Attorney Randolph replied that the Town would not require the removal of the hedges, but it may be required by the State if a permit was needed.

Jack Maxey, 244 Nightingale Trail, expressed concern regarding the Ordinance relative to the beach replenishment approach to the coast line. He asked if there had been input from the Town's consultant at D.B. Ecological Services, U.S. Fish and Wildlife Services, and the public.

Council Member Wildrick replied that the Ordinance would prohibit any major changes going forward; certain areas would not have to obtain a State permit that trumped the local ordinance. He noted that this was the best possible solution considering all of the circumstances.

Council Member Diamond stated that he would vote no and that the Ordinance was unnecessary.

Upon roll call, the motion carried 4-1, with Council Member Diamond dissenting.

B. First Reading

There was none.

VIII. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of ARCOM Decision #B48-09, Architectural Modification at 170 Barton Avenue. [John S. Page, Director of Planning, Zoning, and Building]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Hanlon.
- President Rosow spoke with Attorney Hanlon and the Town staff.
- President Pro Tem Coniglio spoke with Attorney Hanlon, the Town staff, and Jeffrey Smith from the Architectural Commission (ARCOM).
- Council Member Wildrick spoke with Attorney Hanlon and the Town staff.

Attorney M. Timothy Hanlon, for the owner and applicant, at 170 Barton Avenue, provided an overview of the appeal.

Architect Mark Marsh, Bridges & Marsh Architects, provided a Power Point presentation.

Attorney Hanlon requested that the Town Council overturn ARCOM's decision regarding the two conditions of the flat tile roof and the stained glass window.

Mr. Page made several of the following comments:

- The property had not been landmarked.
- The home was constructed in 1931, by John Volk, and the original plans showed that the home had barrel tile.
- ARCOM voted unanimously for the barrel tile, it was the most appropriate roofing material for the structure.

Discussion occurred among the Town Council members, Architect Marsh, and staff regarding a policy endorsed by ARCOM, which stated that if barrel tile was previously existent, it should remain there.

Motion made by Council Member Diamond to grant the appeal. Council Member Wildrick seconded the motion. On roll call, the motion was denied 3-2.

President Rosow	**No**
President Pro Tem Coniglio	**No**
Council Member Diamond	**Yes**
Council Member Kleid	**No**
Council Member Wildrick	**Yes**

Motion made by Council Member Kleid, seconded by President Pro Tem Coniglio to deny the appeal, and uphold ARCOM's decision. On roll call, the motion carried 3-2.

President Rosow	**Yes**
President Pro Tem Coniglio	**Yes**
Council Member Diamond	**No**
Council Member Kleid	**Yes**
Council Member Wildrick	**No**

B. Time Extensions & Waivers

None

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business- Less Than 15 Minutes

None

2. New Business- Less Than 15 Minutes

a. VARIANCE #17-2009 The application of Wilbur L. Ross; relative to property commonly known as 328 El Vedado Road; described as lengthy legal description on file; located in the R-A Zoning District. A variance is being requested to allow a set a driveway gates with a ten (10) foot setback from the edge of pavement in lieu of the eighteen (18) foot minimum required. [Attorney: Maura A. Ziska]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Maura Ziska and she explained the problem.
- President Rosow spoke with Attorney Ziska about the property and the Town.
- President Pro Tem Coniglio spoke with Attorney Ziska, advocating the position of her client.
- Council Member Wildrick drove by the project.

Attorney Ziska, on behalf of Mr. and Mrs. Wilbur Ross, provided an overview of the variance request. The hardship was the change of the grade and the impossibility of having an 18 foot back gate with the slope of the driveway, as well as the consideration of it not being a burden on the neighborhood.

Staff Comments:

Planning, Zoning and Building Director Page made several of the following comments:

- There were no neighborhood objection letters.
- A precedent was established a year ago, when the Council approved a variance for gates at the principal structure, adjacent to this one.
- The gate situation appeared to be self-imposed.
- If approval was granted, the Fire-Rescue Department required that emergency access be provided by the owner/occupant by installing a knox box and/or an electronic knox box key.

Attorney Ziska responded to questions by the Town Council.

Motion made by Council Member Diamond that Variance No. 17-2009 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 condition that the emergency access be provided as set forth by staff. Council Member Wildrick seconded the motion.

John Mashek, 82 Middle Road, commented that consideration should be given to the Ross's for restoring a landmarked house and lowering the density; it enhanced the neighborhood.

Upon roll call, the motion carried unanimously.

b. VARIANCE #18-2009 The application of John and Cheryl Lucks; relative to property commonly known as 332 Seaspray Avenue; described as Lots 381 and 382, POINCIANA PARK SECOND ADDITION, 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 Book 6, Page 86; located in the R-B Zoning District. A variance is being requested to allow the construction of a 512 square foot one story addition for a guest bedroom and bathroom with a west side yard setback of 2.4 feet in lieu of the 12.5 foot minimum required in the R-B Zoning District. [Attorney: Maura A. Ziska]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Ziska.
- President Rosow spoke with Attorney Ziska and she advocated her client's position.
- President Pro Tem Coniglio spoke with Attorney Ziska, and she lobbied for her client.

Attorney Ziska, on behalf of Mr. and Mrs. Jack Lucks, provided an overview of the variance request. The hardship was a non-conforming setback.

Staff Comments:

Planning, Zoning and Building Director Page made several of the following comments:

- The home sits on a very tight lot, 50 feet in width.
- There were no neighborhood objection letters.
- The property was heavily screened and not very visible.
- The existing home was situated at 2.4 feet from the side lot line, so the building addition represented a straight extension of the existing building line.
- Public Works Department required drainage calculation, with roof drains and gutters.

Responding to President Pro Tem Coniglio, Architect Michael Perry indicated that Mr. Lucks spoke to both neighbors, prior to the submittal of the application, and there was no issue.

Motion made by President Pro Tem Coniglio that Variance No. 18-2009 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 condition that there was drainage with roof drains and gutters provided as set forth by staff. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

c. SPECIAL EXCEPTION #7-2009 The application of John H. Surovek; relative to property commonly known as 7 Via Parigi; described as ROYAL PARK ADD LTS 51 TO 56 INC /LESS TR IN DB792 P345 & DB934 P422/BLK 14; located in the C-WA Zoning District. A special exception is requested to expand an existing art gallery from 1,637 square feet to 2,509 square feet which requires special exception approval for exceeding 2,000 square feet. [Attorney: Peter S. Broberg, Esq.]

Ex-parte communication was declared by:

- Council Member Diamond spoke with Attorney Peter Broberg.
- President Rosow spoke with Attorney Broberg and he advocated his client's position.

Council Member Wildrick noted that he was a member of the Everglades Club, Inc., owner of the property in this application, and recused himself. He completed Form 8B, Voting Conflict Form, and provided it to Town Clerk Cunningham.

Attorney Broberg, for the applicant, Surovek Galleries, provided an overview of the request.

Staff Comments:

Planning, Zoning and Building Director Page made several of the following comments:

- A special exception was necessary because two store fronts would exceed 2,000 square feet in size.
- One letter of support from Mrs. Russell Duncan, indicated it was a prestigious gallery and that they had been good neighbors.

Responding to Council Member Kleid, Mr. Page noted that the applicant would comply with Code Enforcement, if approval for the Special Exception was obtained.

Motion made by Council Member Diamond that Special Exception No. 7-2009 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 condition of compliance with Code Enforcement. Council Member

Kleid seconded the motion. On roll call, the motion carried 4-0, as Council Member Wildrick recused himself.

President Pro Tem Coniglio indicated that, for the record that her husband was a partner with Mr. Surovek, in a building that had nothing to do with the Special Exception. She had a conversation with Town Attorney Randolph and the Attorney for the State Ethics Commission, who had indicated that she could vote in this matter.

d. SPECIAL EXCEPTION #9-2009 The application of Albert Levy, Owner, A. B. Levy Palm Beach and Spencer Antiques Gallery; relative to property commonly known as 205 Worth Avenue; described as ROYAL PARK ADD LTS 28 TO 33 INC BLK 15; located in the C-WA Zoning District. A special exception is requested to combine two tenant spaces (209B & 211 Worth Avenue), which combined would be over 5,927 square feet. The request requires special exception approval to exceed 2,000 square feet. [Attorney: James R. Brindell, Esq.] TIME CERTAIN: 10:00 A.M.

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

Ex-parte communication was declared by:

- Council Member Diamond spoke to Attorney James Brindell.
- President Pro Tem Coniglio received a voice mail from Attorney Brindell.
- Council Member Wildrick received a voice mail from Attorney Brindell.

Attorney Brindell, on behalf of A. B. Levy Palm Beach and Spencer Antiques Gallery, provided an overview of the request.

Planning, Zoning and Building Director Page concurred with Attorney Brindell.

Responding to President Pro Tem Coniglio, Mr. Page noted that a new business would have to come back for a Special Exception, if it was 2,000 square feet.

Motion made by Council Member Diamond that Special Exception No. 9-2009 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. President Pro Tem Coniglio seconded the motion. On roll call, the motion carried unanimously.

3. Old Business- More Than 15 Minutes

a. VARIANCE #13-2009 The application of Robert and Helen Ficalora; relative to property commonly known as 221 Ocean Terrace; described as Lot 12 and East 10 feet of Lot 13, OCEAN TERRACE, according to the Plat thereof, as recorded in Plat Book 20 at Page 640, of the Public Records of Palm Beach County, Florida; located in the R-B Zoning District. The applicant is requesting a variance to allow a point of measurement of 11.72 feet National Geodetical Vertical Datum mean seal level ("NGVD") for building height in lieu of the 8.63 feet NGVD maximum allowed to construct 2,365 square foot one and two story additions. [Attorney: Maura A. Ziska] [ARCOM Recommendation: Defer to the August 26, 2009, Architectural Commission Meeting.] Deferred from the June 10, 2009, and July 15, 2009, Town Council Meetings (Special Circumstances). Request for Deferral to the September 9, 2009, Town Council Meeting Per Letter Dated July 17, 2009, From Maura A. Ziska (Special Circumstances).

Motion made by Council Member Kleid to defer Variance #13-2009, to the September 9, 2009, Town Council Meeting. Council Member Diamond seconded the motion. On roll call, the motion carried unanimously.

4. New Business- More Than 15 Minutes

a. SPECIAL EXCEPTION #8-2009 WITH VARIANCES The application of Andreas Kotsifos, Ex. Chef, Palm Beach Steak House; relative to property commonly known as 191 Bradley Place; described as Lot 19, Block 4, Ocean Park H. W. Robbins Addition; located in the C-TS Zoning District. A special exception is requested to modify a previously grand-fathered special exception use (over 2,000 sq. ft. and night club use) to allow more inside seating by increasing from 125 seats to 150 seats. A variance is requested to eliminate eight additional required off-street parking spaces to expand the restaurant from 125 seats to 150 seats. [Attorney: Peter S. Broberg, Esq.]

Item VIII.C.4.a., Special Exception #8-2009 with Variances was deferred to the September 9, 2009, Town Council meeting.

D. Other

1. Public Discussion Relative to the Possibility of Amending the Zoning Ordinance and the Comprehensive Plan in the Greater Royal Poinciana Way Neighborhood. Time is to be Set Aside on the Afternoon of the November 12, 2009, Regular Town Council Meeting to Specifically Solicit and Welcome Comments from the Public. [David A. Rosow, Town Council President]

President Rosow commented that, as he had many communications from residents, the need to elicit more dialogue from the public was warranted regarding the Zoning Ordinance Amendment and Comprehensive Plan in the Greater Royal Poinciana Way Neighborhood. He noted that Planning and Zoning would obtain recommendations for the November meeting, and that in the

afternoon of that day, time would be set aside for public input; he requested concurrence from the Council.

Council Member Kleid noted that he was always in favor of communication. He thanked President Rosow for contacting all the residents previously, however it resulted in very little participation. He requested staff to communicate the expected accomplishments of the consultant by November.

Mr. Page conveyed that the Planning and Zoning Commission met earlier this month, Marcela Camblor was directed to proceed forward with preparing verbiage for proposed zoning ordinance changes, which would be ready for review in front of the Planning and Zoning Commission at their October meeting. The November meeting would have discussion regarding the changes.

Council Member Diamond was in favor of the meeting, although he noted that the month of December would be a better time for the public hearing, as more people would be in Town.

President Rosow indicated that they would keep November for the public hearing and would schedule additional meetings if needed.

IX. ANY OTHER MATTERS

There were none.

X. ADJOURNMENT

There being no further business, the August 12, 2009, Town Council Meeting was adjourned at 10:48 a.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
Robert Wildrick	Town Council
MAILING ADDRESS: 220 Nightingale Dr.	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY: Palm Beach COUNTY: Palm Beach	NAME OF POLITICAL SUBDIVISION: Town of Palm Beach
DATE ON WHICH VOTE OCCURRED: 8/12	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Robert Wildrick, hereby disclose that on August 12, 20 09:

(a) A measure came or will come before my agency which (check one)

___ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, _____;

___ inured to the special gain or loss of my relative, _____;

___ inured to the special gain or loss of _____, by whom I am retained; or

___ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Spec Exec. # 7-2009 - Member of Everglades Club

Aug 12, 09
Date Filed

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.