TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD ON WEDNESDAY, MAY 11, 2011

I. CALL TO ORDER AND ROLL CALL

The Regular Town Council meeting was called to order on Wednesday, May 11, 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. President Rosow led the Pledge of Allegiance.

III. COMMENTS OF MAYOR GAIL L. CONIGLIO

None

IV. COMMENTS OF TOWN COUNCIL MEMBERS AND TOWN MANAGER

President Rosow apologized for not taking a break at yesterday's Council meeting and requested that if anyone thinks we need a break, just let him know.

V. COMMUNICATIONS FROM CITIZENS

None

VI. APPROVAL OF AGENDA

The following changes were made to the agenda:

ADDITION: Item IX.B.2, Request for Waiver of Section 42-199, Hours of Construction Work, at 223 Sunset Avenue (Publix Supermarket) Per Letter Dated May 10, 2011 from Martin C. Gierlach, was added.

ADDITION: Item X.A., Sunsetting the Hybrid Committee for the Worth Avenue Improvement Project, was added.

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

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RESOLUTIONS

A. RESOLUTION NO. 31-11 A Resolution Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida, Establishing An Abandoned Real Property Registration Fee; Providing An Effective Date.
[John Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Resolution No. 31-11 by title, as printed above.

Planning, Zoning, and Building Director Page provided an overview of the item.

Motion made by Council Member Diamond, seconded by Council Member Pucillo, to approve Resolution No. 31-11. On roll call, the motion carried unanimously.

VII. ORDINANCES

A. Second Reading

None

B. First Reading

1. ORDINANCE NO. 14-11 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 Create Definitions Of Business Directory Sign and Menu Sign; At Section 134-2435 By Creating A Provision To Permit Business Directory Signs At The Entrances To A Via; Section 134-2446 By Creating Said Section To Provide A Provision To Allow A Menu Sign At The Entrance Of A Restaurant Or Merchant Retail Take-Out Food Establishment; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing For An Effective Date.
[John Page, Director of Planning, Zoning, and Building]

Town Attorney Randolph read Ordinance No. 14-11 by title, as printed above.

Motion was made by Council Member Diamond, seconded by Council Member Kleid, to approve Ordinance No. 14-11. On roll call, the motion carried unanimously.

Zoning Administrator Castro noted that the language, "Or Esplanade", was advertised, but was pulled from the Ordinance because the Esplanade is not regulated for signs. The corrected language was what Town Attorney Randolph read into the record.

VIII. DEVELOPMENT REVIEWS

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 1170 South Ocean Boulevard (Bath and Tennis Club) Per Letter Dated April 21, 2011, from Nicolas Gomez.

Ex-parte communication was not declared by any members of the Town Council. President Rosow disclosed that he is a member of the Bath and Tennis Club, but that he had no financial interest in the outcome of the request.

Nicolas Gomez, Kast Construction Company, requested that the hours of work be extended from 8:00 a.m., to 9:00 p.m., to complete interior work at the Bath and Tennis Club.

Responding to President Rosow, Planning, Zoning, and Building Director Page indicated that there has not been any objection from neighbors regarding this project in the past. This extension is being specifically requested to run from June 1, 2011 to October 31, 2011. This item was approved last year, and it worked without any objections. Director Page noted that one of the conditions being recommended by staff is that all of the work being done during the extra evening hours be contained to the interior of the building.

Motion made by Council Member Diamond, seconded by President Pro Tem Wildrick, to approve the Request for Waiver of Section 42-199, Hours of Construction Work, at 1170 South Ocean Boulevard (Bath and Tennis Club), subject to all conditions recommended by staff. On roll call, the motion carried unanimously.

2. Request for Waiver of Section 42-199, Hours of Construction Work, at 223 Sunset Avenue (Publix Supermarket) Per Letter Dated May 10, 2011 from Martin C. Gierlach.

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

Marty Gierlach, Moss & Associates, provided an overview of the extension request. He stated that the request for waiver of the hours is for public utilities work associated with the relocation of the utility corridor for the new Publix Supermarket. This work will involve service interruptions; and, the applicant would like to schedule the work at night to minimize the impact on the residents and business nearby.

Council Member Diamond asked about the provision of notice to the public. Aaron Neely, Construction Coordinator for Comcast, stated that he would try to get the notice televised. President Pro Tem Wildrick suggested the applicant publish the notice in the newspaper.

As part of the final motion, the Town Council directed staff to provide public notice regarding the service interruptions to the Town's e-mail list.

Lead Code Enforcement Officer Walton requested that the Council include, as a condition of approval, that a Moss & Associates representative remain onsite at all times during the work in case of any problems.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to approve the Request for Waiver of Section 42-199, Hours of Construction Work, at Publix Supermarket, subject to all conditions recommended by staff and the condition that a Moss & Associates representative remain onsite at all times during the work. On roll call, the motion carried unanimously.

The Town Council directed staff to provide public notice regarding the service interruptions to the Town's e-mail list.

Clerk's Note: This item was added to the agenda.

C. Variances, Special Exceptions, and Site Plan Reviews

1. Old Business

a. <u>SITE PLAN REVIEW #6-2011 WITH SPECIAL EXCEPTION AND VARIANCES The application of Little Broad Beach Partners; relative to property commonly known as 95 North County Road; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting a modification to the Site Plan and two Special Exception approval requests to convert the existing post office building located at 95 North County Road into an office building which will result in a second floor interior addition and will expand the current gross square footage from 10,656 square feet (5,651 gross leasable square feet) to 14,495 gross square footage (11,255 gross leasable square feet). The Special Exception requests are to expand the second floor area and to have an office which exceeds 2,000 square feet. Since the proposed office is in excess of 2,000 square feet, the applicant is required to obtain Town Council approval of a special exception and a finding that the proposed use is town serving. The site plan will be modified by eliminating the access driveway on the east side of the property and relocating it to the south side of the property and will also change the parking configuration. A Variance is requested to allow an office use on the first floor in the C-TS Zoning District which does not meet all of the conditions of subsection (18). The variance is to allow a first floor office use which does not meet the requirement that more than 50% of the existing first floor tenant spaces within 300</u>

feet in the same zoning distract are required to be office uses. Variances are also requested from the requirement to provide seventeen (17) additional off-street parking spaces above the amount calculated by the principal of equivalency zoning requirement to convert a 5,651 square foot post office to a 11,255 square foot office building in the C-TS Zoning District and to not provide a loading berth as required in Section 134-2211 of the Zoning Code. [Attorney: Maura A. Ziska]
Deferred from the April 13, 2011, Town Council Meeting (Special Circumstances).

Ex-parte communications: Council Member Pucillo spoke with Architect Mark Marsh regarding the extent of this application; Council Members Kleid and Diamond, and President Rosow spoke last month with Attorney Maura Ziska, who advocated the position of her client.

Attorney Ziska, on behalf of Little Broad Beach Partners, provided an overview of her client's request and stated that she and Zoning Administrator Castro had worked out the language of the Declaration of Use Agreement requested by the Council.

Zoning Administrator Castro stated that there was one condition added to the Declaration of Use Agreement subsequent to sending it to the Council. The condition was that the applicant will be required to provide the Town with a Certificate of Compliance every year, upon renewal of its business tax receipt, showing that they are complying with the agreement.

Motion made by Council Member Diamond, seconded by Council Member Pucillo, that Site Plan Review #6-2011 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 have been met and that satisfactory provision and arrangement had been made concerning Section 134-329, items 1 through 11, and further subject to all conditions recommended by staff, including compliance with the associated Declaration of Use Agreement.

Discussion ensued regarding the U.S. Post Office sign remaining on the building. Mr. Castro stated that the sign was protected by the Landmarks Preservation Commission. President Rosow suggested that it be made a condition of approval.

Council Member Diamond made a new motion, which was seconded by Council Member Pucillo, that Site Plan Review #6-2011 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 have been met and that satisfactory provision and arrangement had been made concerning Section 134-329, items 1 through 11, and further subject to all conditions recommended by staff, including compliance with the associated Declaration of Use Agreement, and leaving the old U.S. Post Office sign on the building consistent with approval of the Landmarks

Preservation Commission and all specific requirements Landmarks has imposed on it. On roll call, the motion carried unanimously.

Motion made by Council Member Diamond, seconded by Council Member Pucillo, that Special Exception #6-2011 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 had been met, and further subject to all conditions recommended by staff. On roll call, the motion carried unanimously.

Motion made by Council Member Diamond, seconded by Council Member Pucillo, that Variance #6-2011 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, and further subject to all conditions recommended by staff. On roll call, the motion carried unanimously.

2. New Business

a. SPECIAL EXCEPTION #11-2011 The application of Noreen S. Dreyer, Esq.; relative to property commonly known as 285 Sunrise Avenue; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting Special Exceptions for a bank and drive-in service facility with greater than 2,000 square feet of gross leasable area. The bank is replacing Wachovia Bank at that location.
[Attorney: Noreen S. Dreyer, representing JP Morgan Chase]

Ex-parte communications: Council Member Diamond spoke with the property owner, who advocated his position.

Attorney Noreen Dreyer, on behalf of JP Morgan Chase, provided an overview of her client's request and stated that they are confident that the Town-serving requirement will be met.

Zoning Administrator Castro provided staff's comments and noted that staff concurred with the applicant's attorney regarding satisfaction of the Town-serving requirement.

Motion made by Council Member Diamond, seconded by President Pro Tem Wildrick, that Special Exception #11-2011 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 had been met, and further subject to all conditions recommended by staff. On roll call, the motion carried unanimously.

b. SPECIAL EXCEPTION #12-2011 The application of Palm Beach Executive Center; relative to property commonly known as 2875 South Ocean Blvd.; described as lengthy legal description on file; located in the C-TS Zoning District. The applicant is requesting a Special Exception to lease 9,536 square feet in Suite 200, for executive office suites in C-TS zoning district. The space contains forty individual offices within the suite. [Attorney: Neil Schiller]

Ex-parte communications: Council Member Kleid and Mayor Coniglio spoke with Attorney Neil Schiller, who advocated the position of his client; Council Member Diamond spoke with the property owner, who advocated his position.

Attorney Schiller, on behalf of Palm Beach Executive Center, provided an overview of the applicant's request.

Zoning Administrator Castro provided staff's comments.

Motion made by Council Member Diamond, seconded by Council Member Kleid, that Special Exception #12-2011 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 had been met, and further subject to all conditions recommended by staff. On roll call, the motion carried unanimously.

D. Other

1. Consideration of Conditions of Approval for Café Milano, Special Exception #16-2010, 375 South County Road.
[John Page, Director of Planning, Zoning, and Building]

Zoning Administrator Castro provided an overview of the conditions of approval and their current status. He further stated that the Police Department and Code Enforcement have not had any issues relative to the business's operation.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to reaffirm the previous conditions of approval for Café Milano. On roll call, the motion carried unanimously.

2. Reconsideration of Supplemental Shared Off-Street Parking for Coco's Restaurant located at 290 Sunset Avenue and 139 North County Road, Special Exception # 4-2011.
[John Page, Director of Planning, Zoning, and Building]

Zoning Administrator Castro provided an overview of the conditions of approval and their current status. He further stated that they have not received any complaints relative to the business's operation; however, he was contacted by Code Enforcement, who notified him that they have been unable to reach the owner to obtain a copy of the restaurant's Certificate of Insurance. Parking/Code Enforcement Manager Houston stated that their Certificate of Insurance expired on May 1, 2011 and that she has left several messages with no return calls.

Attorney Maura Ziska, on behalf of Coco's Restaurant, stated that she was just informed of this yesterday, and that she will follow up with the owner.

Mr. Castro added that staff recommends the owner enter into a new agreement with the Town stating that, if the restaurant was to lose the parking, it would be required to notify the Town and find an alternate location for the required parking spaces within 500 feet of the restaurant. This is a standard agreement which would not need to come back before the Council.

Motion made by Council Member Diamond, seconded by Council Member Kleid, to accept the reconsideration contingent upon the Certificate of Insurance from Coco's Restaurant being provided, subject to all conditions recommended by staff. On roll call, the motion carried unanimously.

3. Request to Consider Zoning Ordinance No. 14-11 Prior to 5:00 p.m. at the June 15, 2011, Town Council Meeting.
[John Page, Director of Planning, Zoning, and Building]

Motion made by Council Member Kleid, seconded by Council Member Pucillo, approving the request to consider Zoning Ordinance No. 14-11 prior to 5:00 p.m. at the June 15, 2011 Town Council meeting. On roll call, the motion carried unanimously.

IX. ANY OTHER MATTERS

A. Sunsetting the Hybrid Committee for the Worth Avenue Improvement Project.

Motion made by Council Member Diamond, seconded by President Pro Tem Wildrick, to sunset the Hybrid Committee for the Worth Avenue Improvement Project. On roll call, the motion carried unanimously.

Clerk's Note: This item was added to the agenda.

X. ADJOURNMENT

There being no further business, the May 11, 2011 Regular Town Council meeting was adjourned at 10:27 a.m.

APPROVED:

~~David A. Rosow~~ Robert N. Wilbrick
Town Council President Pro Tem

ATTEST:

Susan A. Owens, MMC
Town Clerk