TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MONDAY, MAY 11, 2009

I. CALL TO ORDER AND ROLL CALL

The Special Town Council meeting was held on Monday, May 11, 2009, at 3:30 p.m., in the Flagler Gallery, at 401 Clematis Street, West Palm Beach City Center. On roll call, all elected officials were present.

II. PLEDGE OF ALLEGIANCE

President Rosow led the Pledge of Allegiance.

III.. APPROVAL OF AGENDA

Motion made by Council Member Kleid to approve the agenda.

Council Member Diamond requested that the agenda be modified to add Council Member Comments.

Amended motion to approve the agenda as amended. Council Member Wildrick seconded the motion. On roll call, the motion carried unanimously.

IV. CONTINUATION OF CONSIDERATION OF THE FUTURE OF THE ROYAL POINCIANA PLAZA

Motion made by Council Member Diamond that as a point of order, in the form as a matter of law, that the Town Council suspend forthwith any action whatsoever to cancel, modify, or suspend any portion of the 1979 deed covenant between the Town of Palm Beach and the predecessor of Poinciana Properties concerning the property known as the Royal Poinciana Plaza, since any such proposed action by the Town Council had been vitiated and made moot, as a matter of law, by the proposed charter change referendum on this subject and he also moved that the vote of the charter change referendum take place in

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February 2010, at the same time and places as the Town voted for its municipal officers, on February 2, 2010. Council Member Wildrick seconded the motion for discussion.

Discussion occurred among the Town Council Members and Town Attorney Randolph. Town Attorney Randolph noted that that the matter of the referendum regarding the 1979 Agreement was being researched and a report would be provided, with recommendations on how to proceed.

Also discussed was the language in the motion, "as a matter of law", and Town Attorney Randolph indicated that it was not a matter of law, but rather a policy decision.

Upon roll call, the motion was denied 4-1:

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

President Pro Tem Coniglio noted that she would like to eliminate any misinformation or concerns about her voting today. Last July, in a teleconference with Town Attorney Randolph, and Attorney Chris Anderson, for the State Ethics Commission in Tallahassee, she had a lengthy discussion with respect to any conflict, and her participation in the voting process on Royal Poinciana Plaza. It was Attorney Anderson's opinion, at that time, reaffirmed by a conversation with him again this morning, that the Royal Poinciana Plaza was a 12 acre site, governed under its own CPC Zoning Code, that the gain or loss effect, for a neighboring property, was remote and speculative. As an elected official, she would exercise her civic responsibility today and vote on the future of the Royal Poinciana Plaza, carefully considering the facts.

After a brief discussion, the Town Council agreed that comments from the public would be permitted, beginning with the Sterling Group and Palm Beach Towers.

Lee Munder, of the Sterling Group, commented that progress had been made, in the private discussions between the Sterling Group and Palm Beach Towers, but that a definitive agreement had not been reached. He indicated that input from Landmarks Preservation Commission, Planning and Zoning Commission, the Town Council, and the citizens was needed in order to proceed.

John Grosskopf, general manager of the Palm Beach Towers, provided an overview of their favorable meetings with the Sterling Group.

The following additional members of the public, listed in the order of which they spoke, provided comment:

Peter Rock, Palm Beach Towers
Pat Flynn, Palm Beach Theater Guild
Dee McNamara, Lake Worth

Bill Metzger, Palm Beach (Citizen's Task Force)
Vickie Hlamos, (Citizen's Task Force)
Lawrence McNamara, Lake Worth
Barbara Patrick, Palm Beach
Laurel Baker, Palm Beach Chamber of Commerce
Joan Ellis, Lake Worth
Jere Zenko, Palm Beach
Lory Volk, John L. Volk Foundation

President Rosow called for executive session.

President Pro Tem Coniglio explained the Landmarks Preservation Commission requested direction, prior to moving forward, and indicated that the Sterling Group would provide a full submittal in accordance with their standards, and a request for a certificate of appropriateness. The Sterling Group review would be a full presentation with architectural elements, elevations and all mandatory requirements. Any details or modifications to the 1979 Agreement remained under the purview of the Town Council, which could be amended or modified; any land use, density, code changes, and parking variances would fall under the purview of the Planning and Zoning Commission.

Council Member Kleid noted that in earlier meetings, which were also public meetings, the Town Council suggested that the consideration of the Plaza be placed in the purview of Landmarks Preservation Commission.

Input from many groups was expected.

Council Member Diamond indicated that the Town Council was subject to all other requirements of the boards, commissions, and committees. He suggested that there not be any motions by the Council, and to allow the process to continue, as the referendum could be litigated.
Council Member Wildrick commented that he agreed that the project should go back to Landmarks. He disagreed with the process of the referendum, and that the Town Charter should not be fooled with, on a "business" matter, or a commercial issue, which would be inappropriate.

President Rosow commented that the 1979 Agreement had been amended before and could be amended again. The agreement was the result of the owner wanting to build two buildings on the lake, and then agreed not to build the second one, when he was given permission to expand the Slat House. The issue was the theater, and whether the Town Council would approve a plan, from Landmarks, that did not include presentation of the existing theater.

Motion made by Council Member Kleid that the Town Council, the Landmarks Preservation Commission, and the Planning and Zoning Commission continue to explore with the owners and lessees of the Royal Poinciana Plaza, proposals for the improvements of the Plaza, including but not limited to amendments to the 1979 Agreement, rezoning comprehensive plan amendments, and a Certificate of Appropriateness from the Landmarks Preservation Commission to include among other things, a possible demolition of the existing theater building, but retaining the eastern façade; all subject to terms and

conditions ultimately acceptable to the Town Council. Furthermore, he moved that the Landmarks Preservation Commission, the Planning and Zoning Commission be encouraged to work with the owners and lessees to effectuate a mutually acceptable redevelopment plan. In exploring these proposals, the Council should express at the onset, its concern regarding the density, height and mass of the residential units, the number of seats within the proposed theater building, and the need for the financial guarantees acceptable to the Town, to be put in place before any demolition or construction is permitted on the property. President Pro Tem Coniglio seconded the motion.

Council Member Diamond commented that he opposed the motion, as the Landmarks Preservation Commission was appointed to be the experts, and should not depend upon the Town Council for direction to do their job. He added that he would never vote for any motion that foresees the possible demolition of the theater.

Council Member Wildrick commented that he did not understand why a motion was needed, as the process would move forward, until it came before the Town Council at the appropriate time.

Gene Pandula, chairman of the Landmarks Preservation Commission, provided several of the following comments:

- The reason the Commission requested guidance was that an application was provided to them for review that had procedural discrepancies, in which the Commission had not previously encountered.

- The applicant's presentation was incomplete and the project was not allowed by the current zoning code.

- The signal needed from the Council was their awareness of the anomalies, in order that the burden did not become his decision to circumvent the code.

- Did the Council want Landmarks to consider this application, due to the unusual and complex circumstances, even though it did not meet the technical requirements?

Council Member Kleid withdrew his motion.

Motion made by President Pro Tem Coniglio that the Sterling Group provide a full submittal in accordance with Landmarks Preservation Commission's standards for a request for a Certificate of Appropriateness. Landmarks Preservation Commission's review would be a full presentation with architectural elements, elevations, and all mandatory requirements that existed currently in the code; not to be included in their deliberation, any details or modifications to the 1979 Agreement, any land use, density, code changes, and variances, which fall under the purview of the Planning and Zoning Commission. Council Member Diamond seconded the motion.

Discussion occurred on the following topics:

- The 1979 Agreement in the motion;

- Whether or not the demolition of the theater should be included in the motion;

- Everything should be on the table, and if the Commission wanted the building demolished, it could then be said; the Council would not say "under no circumstances can you demolish a particular building";

- If the density issue was not addressed, a plan could come to the Town Council with too many units;

- Would the Council allow the applicant to make a presentation before Landmarks Preservation Commission prior to the amendment of the Zoning and Comprehensive Plan?

- If anything was passed at Landmarks, it would be conditional on the Zoning and Comprehensive Plan being amended, etc.;

- The 1979 Agreement should be eliminated, as it restricted the use of the property. By eliminating restrictions from the Comprehensive Plan the restrictions from the 1979 Agreement should be eliminated; and

- A number of "horses" would have to be "ridden" and the question was which horse to ride first;

Town Manager Elwell suggested that if the majority of the Council members believed that the Landmarks Preservation Commission should be the first horse and did not want to restrain Landmarks from considering the fullness of what might be done on that property, in the context of historic preservation, and everything that was good for the community, then the motion should be that the Landmarks Preservation Commission would go first and consider the application without being bound by any of the other factors that were within jurisdiction of other parties.

Motion made by President Pro Tem Coniglio that the Landmarks Preservation Commission be the first Town body to consider, in its fullness, the application of the Sterling Group and that Landmarks Preservation Commission consider that application without regard to potential future changes to the 1979 Agreement, the Comprehensive Plan, or the Zoning Ordinance of the Town, but rather focus on the architectural and historic preservation consideration that was within their jurisdiction. Council Member Kleid seconded the motion. On roll call, the motion carried unanimously.

V. <u>ANY OTHER MATTERS</u>

President Rosow indicated that he had met with the Sterling organization several times and asked to see their agreement with Mr. Spiegel. The Sterling Group had received permission from all parties except for Mr. Spiegel to allow the Town Council to see the agreement. He noted that he wanted to use the Subpoena Powers of the Council, to subpoena the agreement between the Sterling organization et al, and Mr. Spiegel.

Town Attorney Randolph indicated that in the Town's code, the Town Council had the power to subpoena information which was deemed essential to a particular topic being discussed. If the Sterling Group did not comply, there could be a court proceeding, wherein the court would determine if the subpoena was appropriate.

Discussion occurred regarding the subpoena power of the Council, and that it was important that all the information regarding the Royal Poinciana Plaza become available. The residents had the right to understand what was in the future for the property.

President Rosow passed the gavel to President Pro Tem Coniglio.

Motion made by President Rosow to subpoena the agreement between the Sterling organization, et al, and Sidney Spiegel, et al. Council Member Wildrick seconded the motion.

Responding to President Pro Tem Coniglio, President Rosow indicated that he was not concerned with the financial numbers and those could be redacted from the agreement. He wanted to understand how the chain of events worked for protection of the residents.

Upon roll call, the motion carried unanimously.

VI. ADJOURNMENT

There being no further business, the Special Town Council Meeting of May 11, 2009, was adjourned at 5:33 p.m.

APPROVED:

David A. Rosow
Town Council President

ATTEST:

Joanna Cunningham
Town Clerk