

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING 2004-2005 ZONING HEARING HELD ON APRIL 25, 2005

I. CALL TO ORDER

The Special Town Council meeting regarding 2004-2005 Zoning was called to order at 9:30 a.m. on Monday, April 25, 2005, in the Town Council Chambers. The following elected officials were found to be present:

Mayor Jack McDonald
President William J. Brooks
President Pro-Tem Norman P. Goldblum
Councilman Denis P. Coleman
Councilman Richard M. Kleid
Councilman Allen S. Wyett

Also present for all or a portion of the meeting were:

Town staff:

Town Attorney John Randolph
Town Manager Peter Elwell
Paul Castro - Zoning Administrator
Veronica Close - Assistant Director of Planning, Zoning & Building
Robert Moore - Director of Planning, Zoning & Building

Town Consultants:

William Brisson, Brisson Planning Solutions, Inc.
Gareth Klotz, American Consulting Engineers of Florida, LLC
Brian Mirson, P.E., American Consulting Engineers of Florida, LLC

STC - Zoning
4-25-05

Post Office Box 2029 • 360 South County Road • Palm Beach, Florida 33480
Telephone (561) 838-5416 • Facsimile (561) 838-5417
E-mail: townclerk@townofpalmbeach.com • Website: www.townofpalmbeach.com



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II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Eichhorn. The Pledge of Allegiance was led by President Brooks.

III. APPROVAL OF AGENDA

The Agenda was approved through motion of Councilman Kleid, seconded by President Pro-Tem Goldblum, carrying unanimously on roll call.

IV. PROOF OF PUBLICATION

Zoning Administrator Paul Castro verified that the Agenda had been posted as required.

V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC

President Brooks advised that the public was free to address any item, following the customary procedure of coming to the microphone, and providing name and address.

Dr. Sten Lilja, 1330 N. Ocean Blvd., commented that the initiative and intent of the Intersection Vision study was commendable, however, it addressed only the material part of the problem, based on the presumption that vehicles move at 30 MPH. As a resident on north Ocean Blvd., he assured that vehicle speeds commonly exceeded the posted 30 MPH limit, and often reached 50 MPH or more. He suggested that unless the speed component in the study's computation was realistic and enforced, the value of the study suffered.

Dr. Lilja suggested that the study could also look into the tendency of drivers to take short-cuts, by starting left turns too early and at excessive speed. He suggested that any new ordinance enacted ought to apply primarily to new construction, while allowing for sensible grandfathering. He urged that the ambiance of the old neighbors be maintained.

President Brooks thanked Dr. Lilja, noting that the Town Council was also aware of excessive speed by vehicles, as was the Police Department.

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VI. INTERSECTION VISION PRESENTATION BY AMERICAN CONSULTING ENGINEERS

Assistant Director of Planning, Zoning & Building Veronica Close reported that last year, in Phase I, American Consulting Engineers had conducted a study and presented a recommendation to the Planning & Zoning Commission, which that Commission, and subsequently the Town Council, had adopted, for a new provision for intersection vision, to replace the 15'/30' triangle that had been in the Code for many years. Staff and American Consulting were currently preparing an ordinance. Zoning-in-Progress was declared, which meant that all new construction had to meet that provision, or the existing provision, whichever was more restrictive. Phase II of the study was then authorized which looked at existing conditions at all of the Town intersections, and representatives from American Consulting Engineers, LLC were present today to present their findings, as well as to make their recommendations on how to address their findings. She noted that the Planning & Zoning Commission had adopted their recommendations, and after the presentation today, staff was prepared to give their own recommendations as to how to proceed.

President Brooks noted that Harrison Robertson, Chairman of the Planning & Zoning Commission was present today to provide any comments, if so desired.

Gareth Klotz, American Consulting Engineers of Florida, LLC, addressed the Town Council, and reviewed the Town-Wide Intersection Site Distance/Visibility Study. He introduced Brian Mirson, P.E., also of American Consulting Engineers of Florida, LLC, who addressed the details of the study. He explained that the information in the report was provided so that the Town Council could make policy decisions.

President Pro-Tem Goldblum expressed concern with enforcement of speed and parking regulations, especially during holiday periods.

Town Manager Elwell advised that the current code compliance staff was limited to two people, and a plan was being developed, as part of the budget process, for more comprehensive code compliance work, and associated staff requirements.

Discussion took place regarding specific intersections within the Town where visibility was extremely dangerous.

Brian Mirson, P.E., American Consulting Engineers of Florida, LLC, remarked that it would

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be a challenge to implement site visibility regulations, while retaining the ambiance of the community.

Zoning Administrator Paul Castro pointed out that staff had worked with American Consulting, the Police Department, the Fire-Rescue Department, and the Public Works Department in order to bring forward a reasonable implementation procedure for intersection vision.

President Brooks noted that the Planning & Zoning Commission had accepted the study, with a 4/3 vote, and invited Planning & Zoning Commission Chairman Harrison Robertson to address the issue.

Planning & Zoning Commission Chairman Harrison Robertson addressed the Town Council, stating that he had voted against the acceptance of the proposal; he was not convinced that it was the best way to proceed.

Assistant Director of Planning, Zoning & Building Veronica Close advised that staff recommended that the 21 intersections related to public right-of-way be addressed immediately, in whatever manner the Building Department and the Public Works Department determined. There were also approximately 284 intersections on private property. Staff was working with American Consulting currently to develop an ordinance that would formally put the new standards into place. Staff would be returning in late fall or the winter, during the next Zoning Season, with that draft ordinance. She suggested that staff be allowed to develop criteria for how to implement the standards on existing properties, with alternatives brought back with the draft ordinance.

In response to Councilman Kleid, Mr. Mirson explained that all Town intersections had been identified through aerial photography; those that had an impact had been identified, and an analysis would need to be done of each intersection to see what specifically should be done.

President Brooks clarified that staff would begin with the intersections that involved public right-of-way as soon as possible, and study the private property intersections in the fall.

Director of Planning, Zoning & Building Robert Moore commented that there would be different types of solutions for the 284 private property intersections identified. He suggested that each intersection would be looked at individually.

Town Manager Elwell commented that there was a related benefit to approaching the issue in the manner which staff had recommended. He considered that it would be helpful to allow residents to see the visible changes in the appearance of the intersections in Town that would be

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brought into compliance, as staff worked towards addressing those 21 intersections affecting the public right-of-way.

In response to Councilman Goldblum, Director of Planning, Building & Zoning Robert Moore advised that staff was looking for direction as to a threshold that would allow staff a method of addressing intersection visibility compliance through the issuance of a building permit. He noted that complete re-development, as well as over 50%, would trigger a correction immediately; staff had proposed a defensible amortization schedule for those that planned to do nothing to their property over the next 25 years.

Town Manager Elwell advised that the amortization schedule would speak very directly to the concern that had been expressed; there was already an ordinance that was in place that required this to occur with redevelopment. The only question today was whether the threshold should be anything less than the 50% rule, between now and the time some six or eight months from now.

Public comment was made by a candidate, who did not identify himself by name, in consideration for City Commission District I, noting that the majority of West Palm Beachers were against all of the new land development, especially the City of West Palm Beach employees, who will not be able to afford housing in the city.

Councilman Goldblum moved acceptance of the report on the Town-wide Intersection Site Distance/Visibility, and that the properties owned by the Town receive immediate attention, and that staff study how to go forward on a time frame with other properties. The motion was seconded by Councilman Kleid.

Town Manager Elwell clarified that staff understood the motion to mean that full compliance would be required whenever there was a renovation or redevelopment to 50% of the value or greater, and that was how staff would continue to enforce this between now and when staff comes back to the Town Council with a fuller set of recommendations.

On roll call the motion carried unanimously.

VII. 2004-2005 ZONING SEASON STAFF REPORT PHASE III AND THE TOWN PLANNING AND ZONING COMMISSION'S RECORD AND REPORT ON THE PHASE III STUDY ITEMS

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Zoning Administrator Paul Castro advised that the 2004-2005 Zoning Season Staff Report Phase III, dated March 14, 2005, had been provided to the Town Council, which outlined staff's report regarding alternatives to the Town variance and special exception requirements, as well as the other study item regarding alternatives for the review process for regulatory applications. William Brisson, Brisson Planning Solutions, Inc., was present to provide the presentation.

William Brisson, Brisson Planning Solutions, Inc., addressed the Town Council, stating that he would provide a summary on each of the major items and staff recommendations, and a summary of the Planning & Zoning Commission recommendations.

Mr. Brisson advised that there were approximately 90-100 development review items during the course of the year, and the Town Council had directed staff to review special exception criteria, and variances, to determine if there was a manner in which to reduce the workload. He explained that there was often frustration expressed in the area of hearing of variances; frequently this was because the Town Council had approved many variances over the years, which many people may feel did not meet the hardship criteria, however, they were frequently generated by the pattern of development. Many of the variances were approved because they were less onerous than to tear down and re-build, therefore there had been some variations from that which might be approved, if the Code was strictly enforced. Staff was reviewing the sub-division of the R-B Zoning District, which would eliminate some of the problems; staff was also working on the cubic content ratio – these would lessen the burden in some areas of variances.

Mr. Brisson noted that one of the important factors to consider was why there were so many variances. Approximately 90% of the properties in the Town were nonconforming; the R-B Zoning District was simply too large for one set of regulations. Until the CCR index was actually developed in greater detail, there was still the need to look at interim measures. One of the tools considered was changing the criteria in the variance from undue and unnecessary hardship to "practical difficulty." He stated that, in reality, many of the approvals of variances over the years had really been following the practical difficulty criteria as opposed to the undue hardship. Many communities used the practical difficulty technique, however, it was not without its own drawbacks. The practical difficulty was much more of a general, subjective standard, which had some legal weaknesses. It was also important to realize that if one were to use the practical difficulty, the purpose was not to reduce the number of variances. In reality, there would probably be an increase in the number of variances. The purpose of using such a tool would be primarily to legitimize the types of actions that had historically been taking place over the years.

Mr. Brisson suggested that the best way to address the variances was to know where they all

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came from. Most of the variances were in the R-B District; the greatest involvement in variances were setbacks; a fairly significant portion of the variances were actually fairly small - 15-20% of a variation from the current Code. Staff believed that one method that could be used was to allow staff to approve minor, harmless types of changes, which would relieve the Town Council of the consideration of minor variance requests. Another alternative development standard that could be used to reduce the workload on the Town Council was the use of a conditional dimensional variance.

Mr. Brisson advised that there were ways to develop alternative development standards, where the criteria would maintain neighborhood integrity, would not adversely affect neighboring properties, and could then be approved without necessarily having a hardship. The standards would probably be incorporated into the sub-districts later on.

Mr. Brisson noted that there were problems with any flexibility – the variances were harder to turn down; there was always the potential that when flexible standards were used, the neighbors would not always know what was going to go up next to them. In reality, the person who wanted to modify a structure also would not quite know what to expect, because the conditions would be somewhat flexible. With increased flexibility, the Codes tend to be less clear.

Mr. Brisson summarized the recommendations of staff:

- ▶ Subdividing the R-B District. Staff suggested that some of the practical difficulty standards be considered for certain variances, usually in development of single family homes, but not new homes.
- ▶ Allow alternative development standards for certain dimensional requirements.
- ▶ Certain types of uses could be applied through an administrative waiver, limited to some percentage variation from the current Code.
- ▶ Approve the point of measurement administratively, because it had typically been approved in every instance.

Mr. Brisson noted that the only significant difference in the Planning & Zoning Commission recommendation was that they did not support any use of the practical difficulty standard. They had suggested and recommended to the Town Council that the undue and unnecessary hardship criteria remain. After discussion, staff was in agreement with that, and agreed with the recommendations, as modified, by the Planning & Zoning Commission.

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Zoning Administrator Castro commented that staff had concurred with the Planning & Zoning Commission about the practical difficulty, and possibly eliminating that from the proposal because of the situations where there would be true variances. The Planning & Zoning Commission had expressed concern about eliminating very stringent criteria in the Code as it related to variances, and had recommended that, over a two-year period, staff continue to study separate zoning districts for R-B to closely align with the existing conditions in the neighborhoods; that staff develop alternative development standards in order to give staff flexibility to review Code provisions and come back with a recommendation. Some members of the Planning & Zoning Commission were concerned about developing conditional variances, or developing conditional dimensional waivers, but the thought was that they did want staff to review the provisions and come back with a recommendation that was in theory somewhat like those provisions.

Councilman Kleid commented that he was concerned regarding the burden on staff; the studies with respect to zoning were: to review the R-B Zoning District during the next season; to consider the realignment of those districts into more appropriate neighborhood districts or sub-districts; to develop special regulations and procedures in preparing for a declaration of a neighborhood index Zoning-in-Progress on November 8th; to work on conditional dimensional variances, which would not require proving a hardship, but which would require some criteria that would ensure compatibility with neighborhood properties; and to study the intersection vision.

Councilman Kleid suggested that there may be ways to speed up the process, and relieve staff of the burden in order to move forward.

Zoning Administrator Castro replied that staff was prepared to address all of the study items internally with the consultant.

President Brooks strongly encouraged the use of the services of Siemon & Larsen, while keeping in mind the innate right of property owners.

Councilman Goldblum commented that he would like to see the practical difficulty go into effect now, as most variances were for homeowners who wanted to do something with their own property. The variances granted would be legitimized by using the practical difficulty standard. He suggested that several test streets be developed for variances for new homes, so that it could be determined that the property rights of homeowners were not being violated, and so that the Town would retain its ambience.

Director of Planning, Zoning & Building Robert Moore responded that Ridgeview and Jamaica Lane had been used as test streets for the sizes of homes; the consultants, Urban Design

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Studios had provided that report. He requested clarification of the scope of work that Siemon & Larsen would do, and how the work already done would interface with that work.

Councilman Kleid suggested that the key to the whole problem was the subdivision of the R-B district; the priority should be that determination. In order to relieve staff, Siemon & Larsen could devote themselves into looking into the variances and special exceptions, and come back with their recommendations as to how the Code could be modified or amended. The total effort of staff right now should be directed toward the R-B district, hopefully with a recommendation to the Planning & Zoning Commission in the fall and to the Town Council in late fall or early winter.

Mr. Moore advised that staff would not recommend using the practical difficulty alternative initially, because it was part of both the Siemon & Larsen report, and staff report. He suggested that the Town Council continue to review variances during the summer season, and make a judgment as to whether or not there was a hardship, and then react accordingly.

Councilman Kleid responded that the thrust of his message was to allow Siemon & Larsen to do the work in the trenches.

Zoning Administrator Castro advised that it was not so much the scope of work, but it was also incumbent upon staff to get the residents involved, to have workshops, and to have the ability for the Town Council to hear the concerns of the residents, as staff works through the process. He noted that, in his opinion, it was still a two year process, since there were notice requirements, legal requirements, and staff and Town Council concern regarding getting the residents involved.

Ned Barnes, President/Chief Operating Officer, Palm Beach Civic Association, commented that Siemon & Larsen was a well qualified consultant, and had experience in doing these types of studies.

Town Manager Elwell suggested that consideration would need to be given to the amount of public dialogue that was planned; even if the report was ready in July or August, the Zoning Season would begin in the fall and it would be somewhat later until the Town was full of all of its residents again.

Councilman Kleid suggested that the summer months be used for the staff and outside consultant to do the work so that they could bring back a report in the fall; at that time there would be the time from the fall until the following April to have public dialogue.

Town Manager Elwell acknowledged that much work could be done in the off-season, however, since the real discussion could not commence until October or November, it would require

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some patience in moving forward. He clarified that he understood that the consensus of the Town Council was that staff would continue to focus, with some assistance from Mr. Brisson, on the division of the R-B District into smaller neighborhood districts, and that Siemon & Larsen would, to some extent yet to be defined, further develop the concept in the report that they prepared for the Civic Association regarding alternate development standards. There would need to be some communication between the staff and Siemon & Larsen to define what the scope of work would be; a proposal would be obtained from Siemon & Larsen as to costs and timetable, so that it can be brought to the Town Council for definitive action. The goal of the dialogue between staff and Siemon & Larsen was that Siemon & Larsen would do the work in the trenches, and continue dialogue with staff, so that a team report could be presented in the fall. He suggested that it would be ideal for the Town Council to be able to discuss the question of scope of work and proposal from Siemon & Larsen at the May 10, 2005, Town Council meeting, however, it may not occur until the June 14, 2005, Town Council Meeting.

President Brooks summarized that it was the consensus of the Town Council that discussion take place at the May 10, 2005, Town Council meeting, regarding a proposal for scope of work and proposal from Siemon & Larsen.

Councilman Kleid moved that Siemon & Larsen, P.A., be appointed as outside consultant to prepare, in conjunction with staff, a modification of the Zoning Code, with respect to variances and special exceptions, subject to an agreement between the Town and Siemon & Larsen, P.A., as to the cost of the project, and the cooperation between the parties. The motion was seconded by President Pro-Tem Goldblum. On roll call the motion carried unanimously.

Public comment was heard from resident Ralph Deldeo, 265 Fairview Road, addressed the Town Council, stating that he had no personal interest in knocking his house down, or building a larger house, or anything except living there in peace and quiet. He noted that he had written a letter stating his concerns, and had been assured today that all of his concerns would be addressed, and that the public would have the opportunity to comment.

President Brooks thanked Mr. Deldeo for his most thoughtful letter.

Mr. Brisson stated that he believed that the motion made by Councilman Kleid incorporated the second portion of the first study item, which involved special exceptions, so he would not review that item.

Mr. Brisson reported that the second section of the staff report related to the actual processes

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for considering and approving site plans, special exceptions, and variances. The report addressed advantages and disadvantages of each, and staff recommended that site plans continue to be approved and reviewed by the Town Council, as they were currently, with the minor exception that there was one particular minor item – the one and two family platted nonconforming lots in residential districts, which could actually be approved administratively because all of the criteria were met. The Planning & Zoning Commission agreed with that recommendation.

Mr. Brisson reported that staff and the Planning & Zoning Commission had reviewed the advantages and disadvantages of who should be reviewing and approving special exceptions, and confirmed again that the most appropriate approach was to continue with the Town Council hearing and approving/disapproving special exceptions. There had been a few minor suggestions with special exceptions that had very specific criteria identified in the Code, which could be approved on the administrative level. The Planning & Zoning Commission agreed with staff recommendation.

Mr. Brisson reported that the staff report had cited different ways that variances could be addressed – an appointed board could review and recommend to the Town Council, or the Town Council could continue to review all variances, or a Board of Adjustment or Hearing Officer could make decisions regarding variances. After reviewing all of the pros and cons, the Planning & Zoning Commission recommended that the existing process be retained, whereby the Town Council reviews variances.

Mr. Brisson summarized that the Planning & Zoning Commission had recommended that the Town Council continue to hear variances, site plans, and special exceptions.

Councilman Kleid moved that the Town Council continue to hear variances and special exceptions for the interim period until the staff/consultant studies were completed. The motion was seconded by Councilman Coleman. On roll call the motion carried unanimously.

President Brooks commented that with the future audio/visual upgrades in the Town Council Chambers, the Town Council will have a more accurate picture of the plans presented for site plans, variances and special exceptions.

Councilman Kleid moved that the staff have, as a first priority, the study of sub-division of the R-B Zoning District, and that staff report back with recommendations this fall to the Planning & Zoning Commission.

In response to Councilman Goldblum, Mr. Castro clarified the entire scope of what would be done over the summer: the first priority was the R-B districting; as part of that, staff would review

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the CCR neighborhood index to bring to the Town Council to create Zoning-in-Progress while the districting work was being done. Also, staff, along with Siemon & Larsen would be working on the scope related to alternative design guidelines and requirements, which would take into account setbacks, and some of the conditions that would allow some alternative design guidelines. He explained that staff would be working over the summer on the street-by-street study, so that staff would be prepared to come back in the fall, not only for Zoning-in-Progress, but for implementation.

In response to Councilman Wyett, regarding clarification of the last motion made, Councilman Kleid repeated that the motion that he had made was to direct staff to have as its first priority, the study of the R-B neighborhood subdivision, and bring that back in the fall to the Planning & Zoning Commission.

Mr. Moore clarified that the priority of staff would be districting of the R-B Zoning District; along with that would be the street-by-street study. The priority would be the districting, and just below that would be the street-by-street study.

On roll call the motion carried unanimously.

VIII. OTHER ITEMS

Mayor McDonald informed the Town Council of the Government Impact Review Panel that he was appointing today. He explained that the Panel would identify, review, and make recommendations regarding the City of West Palm Beach, Palm Beach County, regional and state entities that would affect Palm Beach. The members were: William Diamond, Brian McIver, and Sam McLendon. The panel would be holding an organizational meeting on May 17, 2005, and commence their work in the fall. The input and support of the Town Council was extremely important, and he requested that the Town Council provide suggestions and recommendations at the first meeting of the Panel.

President Brooks publically congratulated Mayor McDonald for the concept of the Panel.

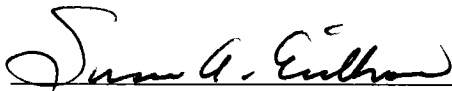
Mayor McDonald recognized William Diamond in the audience.

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IX. ADJOURNMENT

There being no further business, the Special Town Council Meeting 2004-2005 Zoning Hearing was adjourned at 11:30 a.m.

ATTEST:



Susan A. Eichhorn
Town Clerk



William J. Brooks
Town Council President