

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON APRIL 10, 2006

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting of April 10, 2006, was called to order in the Town Council Chambers at 2:00 p.m., by Town Council President Denis P. Coleman. On roll call, the following elected officials were found to be present:

Mayor Jack McDonald
President Denis P. Coleman
President Pro Tem Richard M. Kleid
Council Member William J. Brooks
Council Member Susan Markin
Council Member Allen S. Wyett

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

Town Manager Peter B. Elwell
Deputy Town Manager Thomas G. Bradford
Assistant Town Manager Sarah E. Hannah
Town Attorney John C. Randolph
James Bowser - Town Engineer
Paul Brazil - Public Works Director
Eric Brown - Public Works Assistant Director
Veronica Close - Director Planning, Zoning & Building
Tim M. Frank - Planning Administrator
Jane Day - Historical Preservation Consultant
Charles Langley - Public Works Assistant Director
Jane Struder - Finance Director
Susan Eichhorn - Town Clerk

04-10-06 STC

II. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by President Coleman.

III. APPROVAL OF AGENDA

The Agenda was approved with the following change:

Added Update of the Dune Restoration Project.

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

IV. DUNE RESTORATION PROJECT UPDATE

Town Manager Elwell provided a brief summary of the update of the Dune project. He presented the following three alternatives, prepared by Attorney Reggie Bouthillier of Greenberg Taurig, P.A., to the Council:

1. Commence construction of the Dune Project, except for the area not covered by the biological opinion between R-132 to R-134, coordinate with the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service to modify the Services' biological opinion to cover this area and extend the time-frame until May 15, 2006, for the Town to complete construction of the entire Dune Project;
2. Write a letter to the Corps and the Service notifying them that you are proceeding to immediately construct under the terms of the Corps Permit, which includes the segment between R-132 to R-134, and was authorized under the Corps Permit and consistent with all relevant federal laws; and
3. Proceed and construct the Dune Project as permitted by the Corps, assuming the risks.

Mr. Elwell recommended the second alternative because the Corp ensured that the permit was valid, and that south of R-132 there were no nests yet this season. Construction could be done quickly in that area before any turtles nested; and if nests were found, work would cease in that area and construction would move to the north.

Responding to President Coleman, Public Works Director Paul Brazil indicated that it would take two weeks to complete the construction south of R-132.

Responding to President Pro Tem Kleid, Mr. Elwell indicated that the earliest that letters could be sent instructing Public Works to begin work south of R-132 and notifying U.S. Fish and Wildlife Service would be the following morning, preceding any of the three alternatives. Mr. Elwell explained that the request for an extension was still pending, and that approval was not due to be addressed until the end of the month, which would necessitate the Town to move forward with one of the alternatives.

Director of Public Works Brazil responded to President Pro Tem Kleid's concern that the project on the north end of the south side of Town would not be jeopardized by working on the south side of Town because Public Works would continue working where they were and bring in additional equipment in a second effort to do the southern section of the beach.

Motion made by Council Member Brooks, seconded by Council Member Wyett to select the second alternative to renourish the dune sections between R-132 and R-134, and that Town Manager Elwell or the Town Attorneys would submit a letter to the U.S. Fish and Wildlife Service.

Council Member Wyett suggested that if the U.S. Fish and Wildlife Service objected while the work was being done on the beach south of R-132, that the Council should be prepared to handle the issue.

Upon roll call, the motion carried unanimously.

Council Member Wyett motioned to authorize Town Manager Elwell to act appropriately, should U.S. Fish and Wildlife Service raise a question between the start and finish date of area R-132 and R-134.

Mr. Elwell explained that the Town would complete the work as quickly as possible, and in the interim, if the Town received a letter of objection, the Council would meet in order to decide what action to take on the matter.

Public Comment:

Responding to Mr. Waxman, 3360 S. Ocean Boulevard, Mr. Elwell indicated that his building was included in the program.

V. CONSIDERATION OF PENDING LANDMARKS PRESERVATION MATTERS, INCLUDING THE RECOMMENDATIONS OF THE LANDMARKS PRESERVATION COMMISSION

Planning, Zoning, and Building Director Close provided a history of the Four Winds project and an update of what had transpired over the past year that led up to this meeting. She noted that the following discussions would be about the Preservation Foundation's report on the value of historic properties, and the Landmarks Preservation Commission's recommendations.

Planning Administrator Tim Frank reviewed several of the following Administrative Issues included in the memorandum, which were currently operational:

- All Certificates of Appropriateness would be signed by Staff, as a result of conjectures as to who should sign;
- The Landmark Preservation Commission would continue to hear informal items on the agenda, in order to advise applicants, but the items would not be voted on;
- Staff would develop and require a "Materials Removal Plan" prepared by the architect, to clarify the nature and extent of the work to be undertaken on any Landmark structure; in order to alleviate confusion as to what was approved, a drawing would be added that specified only what was to be altered or removed in the process;
- In case of a dispute, applicants must pay for unbiased professional studies if the proposed work on a Landmark property could impact the structural integrity of the building; if an applicant said the building was structurally deteriorated, and must be removed because of its condition, the Town required that an independent structural engineer be hired at the applicant's expense to deliver a report to the Landmark Preservation Commission validating the claim.
- Staff would continue to provide educational opportunities for Landmark Preservation Commissioners regarding Historic Preservation issues; staff had received an increase in budget that allowed training seminars and workshops available to the Landmark Preservation Commissioners; and
- Staff would continue to encourage the development of Landmark Building Standards as part of the Florida Building Code to ensure safe structures, hurricane impact windows, and structures brought up to code, which could alter the outside appearance.

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Mr. Frank noted that the Landmark Preservation Commission believed that Chapter 54 of the Code of Ordinances of the Town of Palm Beach (Historic Preservation Ordinance) had served the Landmark program well since 1979 and should not be altered.

Historical Preservation Consultant Jane Day reviewed the Policy Issues of the memorandum and noted the following four recommendations:

1. The Landmarks Preservation Commission encouraged the Town Council to approve Landmark Designations despite owner objection if the recommendation was accompanied with a solid Designation Report based on the Criteria. Owner consent was not required in the Ordinance.

President Coleman noted that the Landmarks Preservation Commission had to be sympathetic while working with the homeowners, in order to develop a comfort in the community.

Ms. Day indicated that the Landmarks Preservation Commission was requesting that the Town Council have the option of voting to overturn a decision regarding the policy, whereby currently, staff was required to obtain a letter of consent before each designation if a building met all four criteria in the Ordinance. She noted that there were several Florida municipalities that did not obtain owner consent before landmarking a property.

Mayor McDonald commented that the Town should designate a property to be considered as landmarked, because the property could be demolished by waiting for the owner's approval. The owner could refute as to the reason the property should not be considered for a landmark designation. It should not be a requirement that the Town Council obtain owner approval in advance of designating a property to be landmarked.

Responding to President Pro Tem Kleid, Mayor McDonald advised that it was an unwritten policy of obtaining owner's consent to designate a property for landmarking, and that it and the 50-year rule were not in the Ordinance.

President Pro Tem Kleid commented that he was in favor of obtaining owner's consent, which was only one factor to be considered before making a determination.

Town Manager Elwell noted that the policy had been a formal, clearly stated policy of prior Town Councils' for several years, which was being reconsidered in today's meeting.

Council Member Wyett suggested that the outstanding properties be designated over the mediocre properties, and should be placed on a list, to be considered as a landmark designation in the future, preventing it from being demolished, until the petition of the designation had been made. He said that the owner would not have it landmarked, could not demolish the property, but it would be recorded. The next owner may want to have it landmarked in order to receive tax credits.

Ms. Day responded that she would have to defer it to Town Attorney Randolph, as it would require legislation.

Council Member Brooks stated that property owners that had objected to their property being landmarked, had lost their cases in court.

Mayor McDonald requested that the Town Council, as a minimum, rescind the "owner consent policy in advance" permission, and authorize Landmarks Preservation Commission to compile a current list of buildings that should be considered for landmark status, because there were at least one or two in danger of being demolished before the designation.

Motion made by Council Member Wyett to approve rescinding the "owner consent policy in advance" and authorizing the Landmarks Preservation Commission to compile a current list of buildings for consideration as landmarked designation status.

Landmarks Preservation Commission Chairman Gene Pandula discussed several of the issues regarding the designation of landmarked properties. Mr. Pandula stated that because of the rapidly changing society, it was important to keep the dialogue open among the Landmarks Preservation Commission, Town Council, Preservation Foundation, and other interested parties in the Town to monitor and make appropriate adjustments in the designation of properties.

Responding to President Coleman's concern about the entire Town being landmarked, Mr. Pandula explained that the current style of today did not come close to being landmarked, now or in the future.

Council Member Markin commented that premier towns maintained their historic character and that the Town of Palm Beach was at a greater risk than most towns because of the property values. She said that the Town should aggressively preserve buildings, foster trust and willingness on the part of the owner, and should have a strong criteria with a balanced approach.

Landmarks Preservation Commission Chairman Gene Pandula addressed renovation and reconstruction techniques, the Florida Building Codes, and non-discretionary requirements on buildings, over which the Landmarks Preservation Commission and the Building Department had no control. He discussed several of the following issues:

- Renovations or restorations required adherence to the current Florida Building Code;
- Many of the hollow clay tile buildings required massive, structural upgrades, in order to comply with Code;
- Difficulty in bringing buildings to Code, without destroying its architectural fabric, in that it was no longer considered a landmark; and
- A dialogue was necessary as to what was legitimate restoration, in order to achieve a standard of expectation.

President Pro Tem Kleid seconded the motion to approve rescinding the “owner consent policy in advance” and authorizing the Landmarks Preservation Commission to compile a current list of buildings for consideration as landmarked designation status. On roll call, the motion carried unanimously.

Ms. Day continued with the second of the four policy issue recommendations:

2. The Landmarks Preservation Commission encouraged the Town Council to consider properties that were less than 50 years old for Landmarking if they were exceptional examples of an architectural style and met the Criteria in the Ordinance. The Ordinance did not require a property to be 50 years old to be a landmark.

Discussion ensued among the Town Council regarding the “50-year rule”.

Responding to President Coleman, Ms. Day agreed that it was a reasonable approach to return in six months to address the “50-year rule” question.

President Pro Tem Kleid noted that the Ordinance had been amended over the years, and that the Council should rescind all previous policies, and work under the Ordinance. The Town Council should agree to look at the Ordinance per se without engrafting all the rules and regulations.

Council Member Wyett commented that there were many recent properties that would be landmarked in 50 years, but should not be landmarked at this point in time.

Mayor McDonald noted that it would be better to err on the side of preservation, which could be de-designated if it were an error.

Mr. Pandula indicated that landmarking proper buildings, could always be undone, but a lost property was lost forever.

Mr. William Guttman stated that landmarking a building that was not 50 years old would require meeting all four criteria, and suggested sending a message of the Town Council's expectations to the staff and the community.

Reginald Stambaugh, Executive Director, Preservation Foundation endorsed the staff's comments, and said that if a building was under 50 years old, and if it met the criteria, the Council should stay with the existing Ordinance.

President Coleman indicated that the Town Council would review several 50-year old properties provided by the Landmarks Preservation Commission, and then review the properties that were under 50 years old.

Mr. Elwell commented that no action was necessary by the Council, and that the 50-year rule could be revisited at another time.

Ms. Day continued with the third of the four policy issue recommendations:

3. The Landmarks Preservation Commission encouraged the Town Council to support the creation of Historic Districts in areas that meet the Criteria.

Ms. Day requested that the Town Council consider designating great historic districts that had contributing structures as a majority of the property. She noted that in the past, there was owner objection of belonging in a historic district, which was the Pendleton Avenue district, and as a result the district did not go forward, and the properties were designated individually.

Reginald Stambaugh, Executive Director, Preservation Foundation interjected that the landmarked properties retain their value, with record sales.

Ms. Day continued with the last of the policy issue recommendations:

4. The Landmarks Preservation Commission encouraged local non-profit organizations to establish revolving trust funds to be used for emergency situations in historic buildings.

Ms. Day noted that the Landmarks Preservation Commission was trying to partner with local non-profit organizations in a proactive way, in order to establish a trust fund for the Town to protect historic buildings in emergency situations.

Mr. Pat Flynn of the Palm Beach Theater Guild, called attention to Poinciana Plaza, as it related to a historic entity, in which President Coleman responded that it was a litigation issue and would be inappropriate for the Council to discuss.

Mr. Stambaugh indicated that the Preservation Foundation was in favor of the implementation of strong Code Enforcement fines.

President Coleman stated that the Town Council was open-minded to the Landmarks Preservation Commission's recommendations and would follow the existing statutes.

VI. PRESENTATIONS BY BOARD/COMMISSION APPLICANTS

President Coleman stated that the applicants were not being interviewed, but the presentations were intended to allow applicants to advocate for themselves.

Council Member Wyett advised the applicants that excessive absences were not acceptable, and that attendance was a requirement.

Town Manager Elwell reviewed the policy regarding excused absences on boards and commissions.

President Coleman commented that a member should step down if absences were excessive, allowing another individual to serve, and apply again when they were able to attend.

Council Member Brooks suggested that a meeting be scheduled with a Time Certain the day before the regularly scheduled Town Council meeting for the applicants to speak before the Council.

The following applicants spoke before the Town Council:

Code Enforcement Board:

Alfred J. Cinque
Catherine Duemler
Harris Fried

Recreation Advisory Commission:

Milissa Agnello
Dr. Harry Horwich
Kenneth Schechet

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It was the consensus of the Council that it was beneficial for the applicants to have an opportunity to speak before the Town Council.

President Coleman indicated that at the May 8, 2006, Town Council meeting, scheduling meetings for the applicants of the various boards and commissions would be discussed.

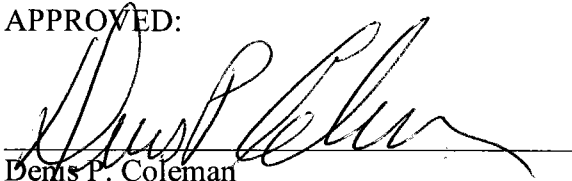
VII. ANY OTHER MATTERS

President Coleman responded to Mr. Elwell to add the item regarding the Condo Hotel Conversion Parking Study by DKS Associates as Required as a Condition of Approval for Site Plan Review #7-2005 with Variances, Plaza Inn Hotel, 215 Brazilian Avenue to the April 13, 2006, Special Town Council meeting agenda.

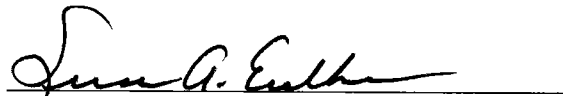
VIII. ADJOURNMENT

There being no further business, the meeting of Monday, April 10, 2006, was adjourned at 4:20 p.m.

APPROVED:


Denis F. Coleman
Town Council President

ATTESTED:


Susan A. Eichhorn
Town Clerk