

**VILLAGE OF PALM SPRINGS
VILLAGE COUNCIL MINUTES
REGULAR MEETING, COMMUNITY ROOM, JANUARY 22, 2009**

CALL TO ORDER, ROLL CALL, INVOCATION, AND PLEDGE OF ALLEGIANCE

Mayor John M. "Mike" Davis called the regular meeting of the Village Council to order at 7:30 p.m.

Present: Mayor John M. Davis, Vice Mayor Joni Brinkman, Mayor Pro Tem Patti Waller, Council Member Chet Osborne, Council Member Bev Smith, Village Manager Karl E. Umberger, Village Attorney Glen J. Torcivia, and Village Clerk Virginia M. Walton.

Staff present were Public Safety Director Jay C. Pickens, as Sergeant at Arms, Land Development Director Bette J. Lowe, Finance Director Rebecca L. Morse, Public Service Director Bill Davis and Leisure Services Director Bill Golson.

Invocation was given by Village Manager Karl E. Umberger, followed by the Pledge of Allegiance led by Vice Mayor Joni Brinkman.

ADDITIONS, DELETIONS OR MODIFICATIONS, AND APPROVAL OF AGENDA

Village Manager: Items #6, #7, #8 and #12 will be continued to Feb. 12th agenda
Correction: Item #2 on the consent agenda had the wrong heading for the resolution.
The correct heading was in the council book backup.

A motion to accept the agenda as revised was made by Council Member Smith and seconded by Mayor Pro Tem Waller. Motion carried 5 – 0.

CONSENT AGENDA

1. **Minutes of Regular Council Meeting on January 8, 2008**
2. **RESOLUTION NO. 2009-07**

~~A RESOLUTION OF THE VILLAGE OF PALM SPRINGS, FLORIDA, AWARDED A PIGGYBACK CONTRACT TO MUSCO SPORTS LIGHTING, IN THE AMOUNT OF \$102,004, FOR THE PURCHASE AND INSTALLATION OF SPORTSCLUSTER GREEN® LIGHT FIXTURES AND CONTROL BOX ON THE VILLAGE'S BALLFIELD COMPLEX; AND PROVIDING AN EFFECTIVE DATE.~~

Correct Heading:

A RESOLUTION OF THE VILLAGE OF PALM SPRINGS, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT BETWEEN PALM BEACH COUNTY AND THE VILLAGE OF PALM SPRINGS FOR FUNDING OF THE VILLAGE COMPLEX BALLFIELD RE-LIGHTING PROJECT; AND PROVIDING AN EFFECTIVE DATE. Staff: Bill Golson, Leisure Services Director

3. **RESOLUTION NO. 2009-08**

A RESOLUTION OF THE VILLAGE OF PALM SPRINGS, FLORIDA, AWARDED A PIGGYBACK CONTRACT TO MUSCO SPORTS LIGHTING, IN THE AMOUNT OF

\$102,004, FOR THE PURCHASE AND INSTALLATION OF SPORTSCLUSTER GREEN® LIGHT FIXTURES AND CONTROL BOX ON THE VILLAGE'S BALLFIELD COMPLEX; AND PROVIDING AN EFFECTIVE DATE. Staff: Bill Golson, Leisure Services Director

4. RESOLUTION NO. 2009-09

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA, AUTHORIZING THE MAYOR AND VILLAGE CLERK TO EXECUTE AN AGREEMENT WITH MACHA PROPERTIES II LLC; OWNERS OF A 0.4523 ACRE PARCEL OF LAND LOCATED AT 3800 SOUTH CONGRESS AVENUE, FOR VOLUNTARY ANNEXION INTO THE VILLAGE; AND PROVIDING FOR AN EFFECTIVE DATE. Staff: Bette Lowe, Land Development Director

5. RESOLUTION NO. 2009-12

A RESOLUTION OF THE VILLAGE OF PALM SPRINGS, FLORIDA, REQUESTING COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR THE LAKEWOOD AREA SANITARY SEWER PROJECT WITHIN THE VILLAGE, FOR A MAXIMUM AMOUNT OF \$300,000; AND PROVIDING AN EFFECTIVE DATE.

Staff: Bette Lowe, Land Development Director

A motion to approve the consent agenda as revised was made by Council Member Osborne and seconded by Vice Mayor Brinkman. Motion carried 5 – 0.

ANNOUNCEMENTS AND PROCLAMATIONS - None

PUBLIC COMMENT

Liz Shields, 2111 Prairie Road, presented and read a formal complaint about the noise coming from Club Ibiza, which was 4/10 mile from her home, usually from about midnight to around 2am. Ms. Shields stated that she had spoken to Land Development Director Lowe and also had called the police out several times. Officer Diaz had spoken to the owner once and had been able to reduce the noise, but it was back again the next night. Last week the noise equipment had registered 57dba from her property line. Ms. Shields stated this problem was mostly on Thursday, Friday and Saturday. Ms. Shields stated that although she had gotten prompt response and concern from her calls to the police, the problem never seemed to get resolved and she requested the Council possibly review the noise ordinance to see if further restrictions could be enforced. In response to comments from the Council, Chief Pickens stated that he had spoken to Ms. Shields and Capt. Hall was going to her home this evening to further investigate the problem.

Gary Ready, 3118 Meadow Road, asked if the Village could do an ordinance similar to the red light traffic enforcement ordinance to address people talking on cell phones or texting while they are driving. Signs could be posted letting drivers know they would be monitored. Manager Umberger responded that it would be difficult for a local ordinance to be enforced for this type of issue; however the National Safety Council had put a mechanism in motion to address this problem on a state level. Fifteen states have already passed legislation and it would probably spread to the rest of the states in the near future.

Mr. Ready also asked what the Village's policy was on take home vehicles for Village employees, and the cost of this use to the Village. Manager Umberger stated that certain Supervisors for the Water/Sewer Utilities Department were on call 24/7 and did take their vehicles home. Police Officers who lived inside the boundaries of the Village took their vehicles home as both a visibility for crime deterrent and they could respond immediately to an emergency. However, all employees were charged a daily rate for personal use of the vehicle.

PUBLIC HEARINGS

This item was continued to the February 12, 2009 agenda

6. RESOLUTION NO. 2008-80 (SITE PLAN – TONSET/CONGRESS & LARK RD)

This item was continued to the February 12, 2009 agenda

7. RESOLUTION NO. 2008-87 (OXYGEN SITE PLAN)

This item was continued to the February 12, 2009 agenda

8. RESOLUTION NO. 2008-93 (7TH DAY ADVENTIST CHURCH)

9. RESOLUTION NO. 2009-01 (SITE PLAN TIME EXTENSION)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA, APPROVING AN AMENDMENT TO CONDITION NO. ONE FOR SITE PLAN (SPR 08-02) SUBMITTED BY 3400 CONGRESS LLC FOR AN EXTENSION OF THE PERMIT DATE TO FEBRUARY 28, 2011 AND EXTENSION OF THE BUILD OUT DATE TO FEBRUARY 28, 2012, FOR CONSTRUCTION OF A 21,000 SQUARE FOOT ONE-STORE RETAIL BUILDING, ON 2.2 ACRES LOCATED AT 3400 SOUTH CONGRESS AVENUE; AND ESTABLISHING AN EFFECTIVE DATE.

Staff: Bette Lowe, Land Development Director

Village Clerk Walton advised the Council that notice of public hearing was placed in the Lake Worth Herald on December 25, 2008. There were no ex parte communications disclosed. Ed Oliver was sworn in to give testimony. Mr. Oliver testified that approval had previously been given for this site plan; however, the Applicant was requesting that this extension be granted in the hope that the market would improve prior to the start of the project. There were no changes to the approved site plan and all conditions would remain in effect. Mr. Oliver added that he had been presented with a photo of the existing sign on the property; had spoken with Mr. Marty Chinitz, agent for the owners, and it was agreed that the sign needed to be painted and made presentable. Manager Umberger confirmed that the Council had approved the original site plan by adopting Resolution No. 2008-20 on March 27, 2008. A condition of that site plan was that building permits be obtained prior to February 28, 2009. In response to a question from Council, Director Lowe reiterated that this request was the same as several others brought before the Council due to economic times.

Mayor Davis stated this was a public hearing and asked for questions or comments from the public. Hearing none, Mayor Davis asked for comments from Council. Vice Mayor Brinkman stated she knew everyone was aware of the state of the economy and she had no problem with the extension request; however she questioned whether the sign had even been approved on the original site plan, or whether it had to be demolished prior to starting

construction. Direct Lowe replied that she would have to go back and review the original site plan because she

remembered there was much discussion about signage and she thought there may have been given some consideration for the sign.

Mr. Oliver added that originally they had requested three street side signs, but had reduced the signage to two signs; however they had wanted to maintain the existing sign. There had been lengthy dialog in which they explained the need of the sign for the success of their tenants, and he was pretty confident that it had been approved. Vice Mayor Brinkman commented that she had not been in favor of the sign, so maybe she had not recalled the decision correctly; however, she wanted a condition of the extension added that the sign would be resurfaced, painted and would not have any advertising since it was a vacant lot. Mr. Oliver stated the Applicant would be in agreement on that additional condition. Mayor Pro Tem Waller added that she remembered the discussion on two signs rather than three, and she agreed that the sign must be repaired as well as repainted. Council Member Osborne commented that he had no problem with the extension and he agreed that the sign must be fixed. Council Member Smith stated she would like to see the sign taken down, but she agreed it needed to be fixed. Mayor Davis stated the Village wanted to work with their business owners, but the sign needed to be fixed. If it was fixed and looked good, the Council would be happy; however, if it still looked bad, the Applicant would be before the Council again.

Hearing no further comments, Village Attorney Torcivia read the resolution with the added condition of repair to the existing sign. A motion to adopt the resolution was made by Mayor Pro Tem Waller and seconded by Council Member Smith. Vice Mayor Brinkman requested that a time certain date be included in the condition for the repairs to the sign and suggested 90 days. Mayor Davis thought 60 days was sufficient since the sign had been there a long time. The 60 day time certain for repairs was added to the resolution condition. Motion carried 5 – 0.

10. RESOLUTION NO. 2009-03 (MURAL PERMIT-QJ)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA, (APPROVING – APPROVING WITH CONDITIONS – DENYING) THE APPLICATION OF C&D PRODUCE FOR A PERMIT FOR INSTALLATION OF MURALS ON THE PERIMETER WALLS ON THE BUILDING LOCATED AT 3133 LAKE WORTH ROAD, PURSUANT TO SECTION 34-295 VILLAGE CODE OF ORDINANCES; AND ESTABLISHING AN EFFECTIVE DATE.

Staff: Bette Lowe, Land Development Director

Village Clerk Walton advised the Council that notice of public hearing was placed in the Lake Worth Herald on January 8, 2009. There were no ex parte communications disclosed. Carlos Gonzalez was sworn in to give testimony. Manager Umberger advised the Council that Ordinance No. 2008-10 was adopted on August 28, 2008, which provided for murals within the Village. The ordinance specifies the criteria by which the Council can judge the appropriateness of the mural. The criteria, along with staff's analysis, were provided to the Council as Exhibit "A". The Applicant had submitted four paintings. Three of the paintings already exist, each on a different face of the building. The Applicant was proposing that the three existing paintings be considered as one mural since they have the same theme; and the

fourth meat market painting had not yet been created.

Mr. Gonzalez testified that the Applicant felt they were in compliance with the code as written and their interpretation of the code was that the proposed meat mural was one mural and the existing fruit murals on three faces of the building should be considered one mural since they are all the same, even though staff had interpreted the code differently. Mr. Gonzalez stated he had read the ordinance thoroughly and felt there was nothing in the ordinance which prohibited one mural from being shown on three faces of the building, even if that was not the intent of the Council. However, the Applicant had agreed to remove the C&D Produce sign above the mural, which was not allowed in the ordinance.

Mayor Davis asked for comments from Land Development Director Lowe. Director Lowe responded that even with her most liberal interpretation of the code, she could not consider the three existing murals as one. Mayor Davis stated this was a public hearing and asked for questions or comments from the public. Liz Shields, 2111 Prairie Road, stated just looking at the building with all the murals brings to mind some unfavorable areas in Miami. Too many murals were just not nice. Gary Ready, 3118 Meadow Road, asked what our ordinances definition of a mural was, since his interpretation was one mural for one wall. His parents had lived in Lake Placid, Florida, and that town had numerous murals. Director Lowe then read the definition of a mural from the ordinance into the record. Mayor Davis asked for comments from the Council.

Council Member Smith stated that when she voted to adopt the mural ordinance, it was her interpretation that one picture would be one mural. Just because someone painted seven apples, that didn't mean it was one picture because it was the same apple. Council Member Smith stated she wanted to see two murals, not four.

Mayor Pro Tem Waller commented that from the photos it was evident that there would be landscaping problems when the trees grew and the murals would not even be visible. Mayor Pro Tem Waller agreed that there were three walls and three pictures and that was three murals, and the Applicant now wanted to put up four. This was overkill. Mayor Pro Tem Waller stated she was in favor of the murals, but there were too many of them.

Council Member Osborne commented that this was definitely an interpretation problem. He agreed there were too many murals and he would agree to only two murals; whatever two the Applicant chose.

Vice Mayor Brinkman stated that even though she did not vote in favor of the ordinance, she was in favor of staff recommendations because she was pretty sure of the intent of the ordinance to make each artwork a separate mural. Vice Mayor Brinkman asked for clarification on Exhibit "D" which appeared to be a wall sign, not a mural. Director Lowe stated that was not part of the mural request. Mr. Gonzalez stated that since the mural request was coming before the Council the wall sign approval was also included so the Applicant would not have to come back again. Mayor Davis asked Director Lowe if the intent of the ordinance was not taken into consideration and an interpretation was made of what the ordinance actually said, would the Applicant comply with the ordinance. Director Lowe responded that the Applicant met the definition, but not the code. Mayor Davis asked the Village Attorney the same question. Village Attorney Torcivia replied that the Council had the right to interpret the code, and what he had heard tonight from Council Members was a reasonable interpretation.

Mayor Davis commented that he personally had no problem with the murals as they were, as long as the lettering was removed. Mayor Davis stated one of the reasons the Village had done so well with annexations was that the Village had been willing to work with business owners. In response to comments from the past about setting precedence, Mayor Davis stated he took each applicant's request individually and ruled, within reason, on that individual; which in his opinion was not setting precedence one way or the other.

Mayor Pro Tem Waller stated she believed this was really a form of advertising and she asked Mr. Gonzalez if she was correct that the Applicant wanted to use the murals as a form of advertising for people in the community who would see the pictures coming from all roads and directions. Mr. Gonzalez stated there were actually two reasons for the murals. One was, of course, to have the murals depict what was actually sold at the site; but also to esthetically enhance the façade of a building with just four blank white walls.

Council Member Osborne stated that he was going to go back to the word intent. He felt that the way the ordinance was written was for the intent to be that one specific mural for each wall of a building. The way he saw it, the Applicant could choose one meat and one fruit mural, or two fruit murals, but that was all.

Mayor Davis then asked the Village Attorney to read the resolution. Village Attorney Torcivia stated the heading had a choice of approving or denying and he would need to know what way the resolution would be read. Mayor Davis asked the Council for a consensus who agreed or disagreed with the Applicant's request as presented. Vice Mayor Brinkman stated she would make a motion to adopt the resolution with the staff conditions as presented, which would remove one of the three murals and no further murals. After much discussion, it was the consensus of Council that only two murals on only two walls, and suggested the Village Attorney could word the resolution accordingly. Village Attorney Torcivia read the resolution with the addition of language stating "only two faces of the building will have a mural". A motion to adopt was made by Vice Mayor Brinkman and seconded by Council Member Osborne. Mayor Davis voiced adamant disapproval of how the rest of the Council was voting. Mayor Davis further commented that he felt the Council was trying to tell a business owner how to run his business and what was being presented in a commercial zoning area wasn't bad looking. By making this decision the Council was doing a disservice to the owner. Motion carried 4 – 1, with Mayor Davis dissenting.

Council Member Osborne made a suggestion that this code be looked at and adjusted as necessary to be more specific.

11. RESOLUTION NO. 2009-05 (SPECIAL EXCEPTION-QJ)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA, (APPROVING – APPROVING WITH CONDITIONS – DENYING) THE APPLICATION OF C&D PRODUCE MARKET FOR A SPECIAL EXCEPTION USE (PSSE 09-02) FOR THE TAKE-OUT SALE OF BEER AND WINE IN A COMMERCIAL ZONING DISTRICT, FOR THE BUSINESS LOCATED AT 3133 LAKE WORTH ROAD; AND ESTABLISHING AN EFFECTIVE DATE.

Staff: Bette Lowe, Land Development Director

Village Clerk Walton advised the Council that notice of public hearing was placed in the Lake Worth Herald on January 8, 2009. There were no ex parte communications disclosed.

Carlos Gonzalez was sworn in to give testimony. Manager Umberger advised the Council that the site plan had originally been approved on July 26, 2007. The construction was nearly complete and a temporary certificate of occupancy for the building had been issued. The Applicant was now requesting a special exception that would permit package alcohol sales as part of the retail business. The Land Development Board had recommended approval with the condition that the special exception would be immediately revoked if at anytime staff had evidence that alcohol consumption on the site was occurring. Mr. Gonzalez testified the original site plan approved this building as a produce market and grocery store, and sale of beer and wine was an accepted use for a grocery store, as an accessory use.

Mayor Davis stated this was a public hearing and asked for questions or comments from the public. Nancy Rowe, 161 Morgan's Way, stated that there already was plenty of places in Palm Springs where people could buy beer and wine; and every day she was picking up beer bottles from her yard where people were throwing them out of their cars. She was against this approval. Mayor Davis asked for comments from Council. Council Member Osborne and Mayor Pro Tem Waller stated they had no problem with the request. Council Member Smith stated there may be many places in Palm Springs to buy beer and wine, but this establishment was no different from any of the other grocery/convenience stores and was therefore entitled to the same approvals as the others. Council Member Smith did agree with Land Development Boards stipulation about drinking on the premises. Mr. Gonzalez stated that was an important point. There was an extent of how much the property owner's responsibility of the intent of controlling that act. The Applicant would do his best to control consumption on his premises. If there was an event, he had a responsibility to call the police, but he couldn't stop them himself. Mayor Davis responded that was a good point, but as long as the owner understands he has a responsibility to call public safety if he witnesses drinking on his premises, then the intent of the condition would be met.

Hearing no further comments, Village Attorney Torcivia read the resolution by title. A motion to adopt the resolution was made by Council Member Osborne and seconded by Mayor Pro Tem Waller. Vice Mayor Brinkman asked Chief Pickens if for some reason the owner does allow drinking and does not contact the police, are their legal repercussions. Village Attorney Torcivia responded that if the owner was allowing drinking and the police were called out or somehow became aware of the situation, it would be the same as with any other evidence. Public Safety would come before the Council and state on the following dates, evidence of drinking at the establishment was verified and the owner had not contacted them. The Council would then act as judge and jury to determine if their special exception would then be revoked. Council Member Osborne added that there was some trust that had to go along with this approval and the owner had stated he would contact the police. After no further comments, motion carried 5 – 0.

This item was continued to the February 12, 2009 agenda

- 12. RESOLUTION NO. 2009-10 (SITE PLAN/SPECIAL EXCEPTION – BURSICO/LAKE WORTH ROAD)**

- 13. ORDINANCE NO. 2009-01 (SECOND READING)**

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA, AMENDING CHAPTER 74 "TRAFFIC AND VEHICLES", BY RENUMBERING ARTICLE II "STOPPING, STANDING AND PARKING" TO ARTICLE

**III; BY CREATING A NEW ARTICLE II “RED LIGHT ENFORCEMENT PROGRAM”;
PROVIDING FOR RECORDED IMAGE MONITORING AND ENFORCEMENT OF RED
LIGHT INFRACTIONS, AND FOR RELATED PROCEDURES AND PROVISIONS;
PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY AND AN
EFFECTIVE DATE.** Staff: Jay Pickens, Public Safety Director

Village Clerk Walton advised the Council that notice of public hearing was placed in the Lake Worth Herald on January 1 and January 8, 2009. Village Attorney Torcivia read the ordinance by title. Mayor Davis stated this was a public hearing and asked for questions or comments from the Council and the public. Hearing none, a motion to adopt the ordinance on second reading was made by Council Member Smith and seconded by Mayor Pro Tem Waller. A roll call vote was in favor of adoption 5 – 0.

Mayor Davis stated that before the Council went on to the next item, he just wanted to apologize to the Council for his comments during the mural permit resolution. He disagreed with the Council’s decision, but he apologized for some of his remarks during that discussion. The Council accepted the Mayor’s apology.

14. ORDINANCE NO. 2009-02 (FIRST READING)

**AN ORDINANCE OF THE VILLAGE OF PALM SPRINGS, FLORIDA, ANNEXING A
PARCEL OF LAND CONSISTING OF 8.56 ACRES OWNED BY STUDENTS IN THE
ARTS TV/G-STAR TV, INC; LOCATED AT 2030 SOUTH CONGRESS AVENUE; AND
BEING MORE FULLY DESCRIBED IN EXHIBIT “A” ATTACHED HERETO; AND
CONCURRENTLY AMENDING THE COMPREHENSIVE LAND USE PLAN OF THE
VILLAGE TO COMMERCIAL, PURSUANT TO THE “SMALL SCALE”
COMPREHENSIVE LAND USE AMENDMENT LAWS OF THE STATE OF FLORIDA,
SAID LANDS TO BE CONCURRENTLY DESIGNATED WITHIN A LAND
DEVELOPMENT COMMERCIAL GENERAL ZONING DISTRICT, WITH A SPECIAL
EXCEPTION FOR A SCHOOL (CG/SE) ON THE VILLAGE OF PALM SPRINGS
OFFICIAL ZONING MAP; PROVIDING DIRECTIONS TO THE VILLAGE CLERK;
PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR
SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

Staff: Bette Lowe, Land Development Director

Manager Umberger advised the Council that property was compact and contiguous to the Village and was currently the site of a charter school. The Land Development Board had recommended approval of the request at their meeting on January 13, 2009. Mayor Davis stated this was a public hearing and asked for questions or comments from the Council and from the public. Hearing none, Village Attorney Torcivia read the ordinance by title. A motion to adopt the ordinance on first reading was made by Council Member Osborne and seconded by Council Member Smith. Motion carried 5 – 0.

15. ORDINANCE NO. 2009-03 (FIRST READING)

**AN ORDINANCE OF THE VILLAGE OF PALM SPRINGS, FLORIDA, ANNEXING A
PARCEL OF LAND CONSISTING OF 1.02 ACRES OWNED BY BURGER KING
CORPORATION, INC, LOCATED AT 3796 SOUTH CONGRESS AVENUE; AND
BEING MORE FULLY DESCRIBED IN EXHIBIT “A” ATTACHED HERETO; AND**

CONCURRENTLY AMENDING THE COMPREHENSIVE LAND USE PLAN OF THE VILLAGE TO COMMERCIAL, PURSUANT TO THE "SMALL SCALE" COMPREHEISVE LAND USE AMENDMENT LAWS OF THE STATE OF FLORIDA, SAID LANDS TO BE CONCURRENTLY DESIGNATED WITHIN A LAND DEVELOPMENT COMMERCIAL GENERAL (CG) ZONING DISTRICT ON THE VILLAGE OF PALM SPRINGS OFFICIAL ZONING MAP; PROVIDING DIRECTIONS TO THE VILLAGE CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Staff: Bette Lowe, Land Development Director

Manager Umberger advised the Council that this property was compact and contiguous to the Village and was currently the site of a fast food restaurant. The Land Development Board had recommended approval of the request at their meeting on January 13, 2009. Mayor Davis stated this was a public hearing and asked for questions or comments from the Council and from the public. Hearing none, Village Attorney Torcivia read the ordinance by title. A motion to adopt the ordinance on first reading was made by Council Member Smith and seconded by Mayor Pro Tem Waller. Motion carried 5 – 0.

16. ORDINANCE NO. 2009-04 (FIRST READING)

AN ORDINANCE OF THE VILLAGE OF PALM SPRINGS, FLORIDA, ANNEXING A PARCEL OF LAND CONSISTING OF 0.4523 ACRES OWNED BY MACHA PROPERTIES II LLC, LOCATED AT 3800 SOUTH CONGRESS AVENUE; AND BEING MORE FULL DESCRIBED IN EXHIBIT "A" ATTACHED HERETO; AND CONCURRENTLY AMENDING THE COMPREHENSIVE LAND USE PLAN OF THE VILLAGE TO COMMERCIAL, PURSUANT TO THE "SMALL SCALE" COMPREHENSIVE LAND USE AMENDMENT LAWS OF THE STATE OF FLORIDA, SAID LANDS TO BE CONCURRENTLY DESIGNATED WITHIN A LAND DEVELOPMENT COMMERCIAL GENERAL (CG) ZONING DISTRICT ON THE VILLAGE OF PALM SPRINGS OFFICIAL ZONING MAP; PROVIDING DIRECTIONS TO THE VILLAGE CLERK; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. Staff: Bette Lowe, Land Development Director

Manager Umberger advised the Council that this property was compact and contiguous to the Village and was currently the site of a strip retail center. The Land Development Board had recommended approval of the request at their meeting on January 13, 2009. Mayor Davis stated this was a public hearing and asked for questions or comments from the public. Hearing none, Village Attorney Torcivia read the ordinance by title. A motion to adopt the ordinance on first reading was made by Council Member Osborne and seconded by Vice Mayor Brinkman. Motion carried 5 – 0.

17. ORDINANCE NO. 2009-05 (ONE READING ADOPTION)

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA, AMENDING THE COMPREHENSIVE PLAN OF THE VILLAGE OF PALM SPRINGS, FLORIDA TO BE KNOWN AS A 2009 CYCLE II AMENDING; AND WHICH AMENDMENT IS MORE FULLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO, IN ACCORDANCE WITH THE LOCAL GOVERNMENT

COMPREHENSIVE PLANNING AND LAND DEVELOPMENT REGULATION ACT, AS AMENDED, BEING SECTIONS 163.3161, ET. SEQ, FLORIDA STATUTES; PROVIDING FOR THE AMENDMENT TO THE TEXT OF THE CAPITAL IMPROVEMENT ELEMENT OF THE COMPREHENSIVE PLAN TO UPDATE THE FIVE YEAR CAPITAL IMPROVEMENT PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR OTHER PURPOSES.

Staff: Bette Lowe, Land Development Director

Manager Umberger advised the Council this amendment revised the Capital Improvement Element as required by Chapter 163.3177 Florida Statutes, and would be adopted in accordance with Chapter 163.3184(7) FS. The Capital Improvement Element must be revised every calendar year and the adopted Element transmitted to Florida Department of Community Affairs. This Amendment would not count as one of the two permitted large scale yearly amendments; however, since this was actually a 2008 amendment, the 2009 yearly update would have to be included in the Cycle II Amendment later this year. The Land Development Board had recommended approval at their meeting on January 13, 2009. The complete Amendment had been provided in the Council Read File for review.

Mayor Davis stated this was a public hearing and asked for questions or comments from the Council or from the public. Hearing none, Village Attorney Torcivia read the ordinance by title. A motion to adopt the ordinance on one reading was made by Council Member Smith and seconded by Mayor Pro Tem Waller. Motion carried 5 – 0.

REGULAR AGENDA

ACTIONS AND REPORTS

18. Appointment to the Land Development Board

Staff: Virginia Walton, Village Clerk

Mayor Davis stated the term of Jeff Elkins, who had been a member of the Board since 1998, expired on January 25, 2009; and he had indicated his willingness to continue to serve on the Board. Since there were no other nominations, a motion to appoint Jeff Elkins to the Land Development Board for a term to expire on January 25, 2012 was made by Council Member Smith and seconded by Vice Mayor Brinkman. Motion carried 5 – 0

19. Appointments to the Board of Adjustment

Staff: Virginia Walton, Village Clerk

Mayor Davis stated that the terms of Johnnie Tieche, Alice Lattimore and Art Wetherill were set to expire on February 10, 2009, and all three had indicated their willingness to continue to serve on the Board. Due to the resignation of Ed Burroughs, there was a regular member vacancy on the Board, which could be filled by Alternate Member Art Wetherill. Hearing no other nominations, a motion to appoint Johnnie Tieche, Alice Lattimore and Art Wetherill as regular members to the Board of Adjustment for terms that would expire on February 10, 2012 was made by Council Member Osborne and seconded by Mayor Pro Tem Waller. Motion carried 5 – 0.

RESOLUTIONS

20. RESOLUTION NO. 2009-11

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA, ESTABLISHING A LIEN AGAINST CERTAIN PARCELS OF LAND SERVICED BY THE VILLAGE OF PALM SPRINGS AS A RESULT OF VIOLATIONS OF THE PUBLIC NUISANCE ORDINANCE, FOR OUTSTANDING NUISANCE ABATEMENT SERVICE CHARGES; AUTHORIZING THE VILLAGE MANAGER OR DESIGNEE TO PERIODICALLY IDENTIFY OTHER PARCELS WITH OUTSTANDING NUISANCE ABATEMENT SERVICE CHARGES; DIRECTING THE VILLAGE CLERK TO RECORD SAID LIEN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL RESOLUTIONS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

Staff: Virginia Walton, Village Clerk

Manager Umberger advised the Council that Article VII, Section 2 of the Florida Constitution gave the Village Council the authority, pursuant to home rule and police powers, to determine and declare the existence of a public nuisance and to provide for the abatement of the nuisance, with the costs of such abatement being considered a municipal service which benefited that particular property and the Village could levy a special assessment lien to recover all costs incurred. Due to the increase in abandoned, neglected and foreclosed homes, the Village continues to expend increasing costs in manpower and equipment to address these problems and the neighborhood complaints arising about the properties. Mayor Davis asked for questions from the Council. Hearing none, Village Attorney Torcivia read the resolution by title. A motion to adopt the resolution was made by Council Member Osborne and seconded by Vice Mayor Brinkman. Motion carried 5 – 0.

VILLAGE COUNCIL COMMENTS

Council Member Smith commented on the noise problem brought up by Ms. Shields. She stated she didn't need to buy equipment to know the noise was too loud when she was woken up from the boom boxes going up and down Davis Road. It was becoming quite a problem and also wanted to know what could be done. Chief Pickens responded that the boom boxes would be a moving violation covered by State Statutes. Council Member Smith also commented that she was looking forward to the Travel Club trip to the Broward Theater to see Momma Mia.

Mayor Pro Tem Waller commented that she accepted Mayor Davis's apology. She thought that our noise ordinance had a time limit as far as turning down the noise. Manager Umberger responded that the noise decibels needed to be put in perspective. A golf swing has a noise level of 120 dba, which was more than the base thump mentioned in the complaint at 35 dba. Manager Umberger commented that Chief would have a bargaining chip because the club owners were willing to talk so the Village would not pass the County rules on noise.

Vice Mayor Brinkman stated in response to those comments made by Manager Umberger, she had a problem with using a decision the Council had not made yet as a bargaining chip with the nightclub owners. Manager Umberger replied that the statement was

misunderstood. The owners had come forward to work with the Village voluntarily, so that the need for tighter ordinances would not be necessary.

Mayor Davis stated he had arrived later than usual tonight because he had attended the viewing of the wife of one of his neighbors, Art Wetherill. Mr. Wetherill was also a long time member of Village Advisory Boards. Mayor Davis wanted everyone to know so that if anyone saw Mr. Wetherill around town they could extend their sympathies. Mayor Davis announced the next Local Planning Agency meeting would be on February 12, 2009 at 7:15 pm and the next Regular Council meeting would also be on February 12, 2009 at 7:30 pm in Council Chambers.

ADJOURNMENT

Hearing no further business, Mayor Davis adjourned the meeting at 8:49 p.m.

Respectfully submitted,

Village Clerk

Approved by Council _____

Mayor