

**VILLAGE OF PALM SPRINGS  
VILLAGE COUNCIL MINUTES  
REGULAR MEETING, COMMUNITY ROOM, JANUARY 28, 2010**

**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 Patti Waller, Council Member Joni Brinkman, Council Member Doug Gunther, Village Manager Karl E. Umberger, Village Attorney Glen J. Torcivia, and Village Clerk Virginia M. Walton. Mayor Pro Tem Bev Smith was absent.

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

Invocation was given by Village Manager Karl E. Umberger, followed by the Pledge of Allegiance led by Council Member Doug Gunther.

**ADDITIONS, DELETIONS OR MODIFICATIONS, AND APPROVAL OF AGENDA**

Village Manager: Add: Item #6 Resolution No. 2010-09 (Site Plan)

Council Member Brinkman: Add Item #7 Discussion on Pain Management Clinics

A motion to accept the agenda as revised was made by Council Member Gunther and seconded by Council Member Brinkman. Motion carried 4 – 0.

**CONSENT AGENDA**

1. Minutes of Regular Council Meeting on January 14, 2010
2. Approval of Addendum No. 22 to Task Order No. 1, Renewal of Annual Agreement for Professional Services with Eckler Engineering, Inc.  
Staff: Bill Davis, Public Service Director

A motion to approve the consent agenda as revised was made by Vice Mayor Waller and seconded by Council Member Gunther. Motion carried 4 – 0.

**PUBLIC COMMENT**

Gary Ready, 3118 Meadow Road, wanted to know who the editor of the Village newsletter was and was there a website or mailing address people could send articles to be included. Manager Umberger responded that there was no editor. The Leisure Services Department compiled the information sent by all departments and the newsletter was normally just for Village news and events and had never accepted outside articles before. The newsletter was available for viewing on the Village website and the address would be Village Hall address.

Elizabeth Shields, 2111 Prairie Road, wanted to thank Chief Pickens for his assistance. Traffic had become like a race track on her road and she had requested some officer traffic enforcement, which had started immediately. She had witnessed one officer making at least 12 stops in a very short period of time.

William Brockway, 3388 Rostan Lane, stated he has lived in this area for almost 30 years. He purchased on Rostan Lane to have a safe street for his four children. Mr. Brockway did not want the traffic that a 23 hour business would produce. He did not purchase in a commercial neighborhood and there were already four day care facilities nearby.

### **PUBLIC HEARINGS**

3. ORDINANCE NO. 2010-01 (SECOND READING)

AN ORDINANCE OF THE VILLAGE OF PALM SPRINGS, FLORIDA, AMENDING CHAPTER 34, LAND DEVELOPMENT, ARTICLE II, LAND USE, DIVISION 7, SUPPLEMENTAL DISTRICT REGULATIONS; SECTION 1022 "DEVELOPMENT STANDARDS", AND REPEALING SECTION 34-1024 "ADDITIONAL REQUIREMENTS"; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR 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 14, 2010. 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 from the public. Council Member Brinkman commented that she had spoken to Director Lowe and understood that there might be some additional changes to this section of the Code when the full update on the Code came forward. Hearing no further comments, a motion to adopt on second reading was made by Vice Mayor Waller and seconded by Council Member Brinkman. A roll call vote was in favor of adoption 4 – 0, with Mayor Pro Tem Smith absent.

4. RESOLUTION NO. 2010-06 (SITE PLAN)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA, APPROVING WITH CONDITIONS THE SITE PLAN (SPR10-01) SUBMITTED BY THE SPEAR GROUP, FOR CONSTRUCTION OF THE CLUSTER DEVELOPMENT ZERO-LOT-LINE PROJECT, CONSISTING OF A TOTAL OF 40 UNITS ON 3.2 ACRES LOCATED NORTH OF 2<sup>ND</sup> AVENUE NORTH AND EAST OF MILLER ROAD; AND ESTABLISHING AN EFFECTIVE DATE. Staff: Bette Lowe, Land Development Director

There were no ex parte communications disclosed. Anthony Palumbo was sworn in to give testimony. Manager Umberger advised the Council the site plan for 40 townhomes was originally approved in August 2005. Due to economic reasons, on the first building of 8 units was completed and the site plan expired in 2007. The owner is under contract to sell the property and the purchaser wishes to complete the project. There are no changes to the original site plan. The Land Development Board recommended approval, subject to conditions, at their meeting on January 12, 2010. Director Lowe stated the traffic concurrency report and revised conditions had been placed on the Dias tonight for review by Council.

Mayor Davis stated this was a public hearing and asked for questions or comments from the public. Reverend Yon stated she lived on Rostan Lane and wanted to know how the traffic would be impacted when construction commenced. Director Lowe stated there would be some additional traffic since this was now a vacant parcel; however, there was approved traffic concurrency from the County and the impact at the intersection of 2<sup>nd</sup> Avenue and Congress Avenue would not be above the approved levels. Council Member Brinkman asked for clarification on what conditions had been revised. Director Lowe responded that the items that certain items were now to be completed prior to the issuance of the first certificate of occupancy, such as the tot lot and perimeter landscaping, and the build out date had been revised. Hearing no further comments, Village Attorney Torvicia read the resolution by title. A motion to adopt was made by Council Member Brinkman and seconded by Council Member Gunther. Motion carried 4 – 0.

#### 5. RESOLUTION NO. 2010-08 (SITE PLAN)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA, APPROVING WITH CONDITIONS THE SITE PLAN (SPR10-02) SUBMITTED BY KIDDIE HAVEN PRESCHOOL INC., FOR CONSTRUCTION OF AN ADDITIONAL 2454 SQUARE FOOT CLASSROOM BUILDING AND A 561 SQUARE FOOT ADMINISTRATION BUILDING, FOR THE .99 ACRE PROPERTY LOCATED AT 2783 GULFSTREAM ROAD; AND ESTABLISHING AN EFFECTIVE DATE. Staff: Bette Lowe, Land Development Director

There were no ex parte communications disclosed. Pedro Tirado was sworn in to give testimony. Manager Umberger advised the Council that the Applicant currently had a 3,583 square foot preschool in operation and wanted to expand in order to add a new 2,454 square foot classroom building and a 561 square foot administration building. This would increase the school capacity to 113 children, from the current 69 children. The Land Development Board had recommended approval, subject to conditions, at their meeting on January 12, 2010.

Mayor Davis stated this was a public hearing and asked for questions or comments from the Council and from the public. Council Member Brinkman asked about the operating

hours for this daycare. Director Lowe stated they would be closing at 6 pm. Hearing no further comments, Village Attorney Torcivia read the resolution by title. A motion to adopt was made by Council Member Gunther and seconded by Vice Mayor Waller. Motion carried 4 – 0.

ADD:

6. RESOLUTION NO. 2010-09 (SITE PLAN)

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA, (APPROVING/~~DENYING~~), WITH CONDITIONS, THE SITE PLAN (SPR10-03) AND SPECIAL EXCEPTION USE (PSSE10-01) SUBMITTED BY CARLOS GONZALEZ, FOR CONSTRUCTION OF A 10,534 SQUARE FOOT DAYCARE FACILITY ON THE 1.35 ACRE PROPERTY LOCATED AT 3644 10<sup>TH</sup> AVENUE NORTH ; AND ESTABLISHING AN EFFECTIVE DATE.

Staff: Bette Lowe, Land Development Director

There were no ex parte communications disclosed. Carlos Gonzalez was sworn in to give testimony. Manager Umberger advised the Council that this site plan and special exception was for a proposed 200 student daycare facility on 1.35 acres. The property was zoned residential multi-family and currently had a single family home on it, which would be demolished. The Land Development Board had recommended denial at their meeting on January 12, 2010. Since that meeting, the Applicant and Village Staff had worked together to revise the plan to correct the significant issues of concern to the Board. Mr. Gonzalez stated that the site plan had been amended and now the 23-hour operation would only be open until midnight. This would be for daycare during the day and also night care for those professions who worked nighttime shifts. The medical office space had been substantially reduced and would only operate for physicals and immunizations for the students of the facility with a doctor or nurse for staffing. The traffic now fully complies with Palm Beach County traffic concurrency, and additionally large buffers were added on the east and the south. Traffic for discharge and pick up would be flowed to 10<sup>th</sup> Avenue rather than the County recommendation of using Rostan Lane. This facility would also add twenty-two job opportunities for this area. Director Lowe stated that the revised site plan and revisions to the conditions were placed on the Dias tonight. Mayor Davis stated this was a public hearing and asked for questions and comments from the public.

Charles Tharpe, 3363 Rostan Lane, stated his concern was about traffic. The facility was slated for 200 children, which means 200 cars dropping off in the morning and picking up at night. Rostan Lane was a dead end street and this will create congestion on the street.

Mary Cowern, 3370 Rostan Lane, stated she had grown up on Rostan Lane, moved away and then moved back. Since she walked her granddaughter to school in the morning, that was the only way she knew about this development from the sign on the site. Mayor Davis asked the Village Clerk if this was advertised. Village Clerk Walton replied that the site

plans were in the agenda posted on the website and development signs were posted on the property site, which was in compliance with Village Code and Florida Statutes. Ms. Cowern was concerned with traffic. Also, the congestion is already bad and being caused by parents parking on both sides of the street waiting for the elementary school kids, rather than using the pick-up lanes. Rostan Lane does not have sidewalks and this additional congestion will only make this situation worse.

Jule Rothmel, 3305 Rostan Lane, stated she had attended the Land Development Board Meeting and wanted some clarification on the resolution of the issues raised at that meeting. For the medical center issue, it was brought up that this property was not zoned commercial and would the doctors be seeing regular patients or just the registered children at the facility. Mrs. Rothmel stated she understood the need for growth, but wanted to know if the police and fire departments had also grown to accommodate this new facility. Also, traffic was a concern. Previously, there was a police officer, during the time the elementary school had drop offs and pick-ups, who was very efficient at monitoring cars for speeding thru the school zone; but the officer was no longer there. Mrs. Rothmel and her husband had come to view the plans prior to this meeting and would like to see a wall or six foot hedge between this facility and the residential homes instead of the four foot fence and two foot hedge noted on the plans. Also, does the additional dumpster on this site mean an additional garbage truck would be coming down their street? Director Lowe responded that the area of the infirmary has been reduced by half and there was no longer a sick and well waiting room. This would be strictly for the registered students and would only be open four days per week from 8 am to 5 pm. Also, the fence on the plan was five feet, not four.

Kathy Santoly, 3385 Rostan Lane, stated her main concern was for the twenty-three kids living on this street. Through the efforts of the homeowners, they had reduced speeding on their street and they were now afraid this extra traffic would bring the speeding back, thus endangering their children. Also, 200 children in this facility would bring a lot of noise to this very quiet street.

Candace Brockway, 3388 Rostan Lane, stated her main concern were for her children and the traffic hazards this would cause. Also, the noise from all these cars coming down the street late at night to pick up their children would be unacceptable. There were certain types of people, other than police and fire fighters, who would use these services and the residents don't want those people in their neighborhood. The building was a beautiful thing and the concept is a good one, but this building belongs somewhere else. There are enough daycares in the area now.

Elizabeth Shields, 2111 Prairie Road, stated she had attended and commented at the Land Development Board Meeting and she understood the comments of the residents regarding the noise. Also, if the facility was open until midnight and available for parents of night shift jobs, did that mean that there would be 200 children during the day and another 200 during the night? Although having a doctor onsite would be a nice convenience, this

was not necessary since the children can get their shots and exams other places. The traffic is definitely an issue that needs to be addressed.

Mr. Gonzalez stated the comments from the neighbors were well taken; however, Mr. Gonzalez felt that most of these concerns have been addressed with the changes to the plan since the Land Development Board Meeting. The infirmary size and hours have been reduced; the hours have been reduced from 23 hours to closing at midnight; the traffic will be routed onto 10<sup>th</sup> Avenue and not Rostan Lane; there have been extra buffers added to control noise for the residents and at the request of staff, the fence was changed to an aluminum railing type fence for better coverage. With regard to the day and evening number of children, they were expecting to have only 20-30% of the normal number of children for the second shift until midnight.

Council Member Brinkman asked about the mailing notice requirements. Director Lowe stated that it had been recently determined by the Village Attorney that this was not required in the Code or Statutes, and the Village had stopped this practice as a cost savings factor. Village Attorney Torcivia added that as the Village Clerk indicated in the records, proper notice had been provided; and as evidenced by tonight's attendance, the notice is effective. Council Member Brinkman stated she had a problem with this and the lack of mailing notice in the Code could be addressed. Council Member Brinkman requested that the Village Code be amended to state property owners within 300 feet of a proposed development should have notices mailed to their homes.

Council Member Brinkman also stated she noticed that a lot of the drop-off spaces were not adjacent to the building. Director Lowe responded that the Village Code required that the spaces be adjacent and this would need to be changed. Mr. Gonzalez stated this was switched because a requirement of Palm Beach County Traffic was that the departing vehicles had to be a certain distance from the adjacent residential driveway to the east. This could be changed to make the discharging to the south and still meet the requirements of the Code; but this was originally done to create a better buffer from peak hour traffic for the residents. This would require a waiver from the Council. Council Member Brinkman asked about Health Department review and Mr. Gonzalez responded that they had given their blessing to the project; however, they would require an "as-built" inspection after the completion of construction. Council Member Brinkman also asked about the hours of operation. Director Lowe responded that the Code allowed for the facility to be open until 11pm. Mr. Gonzalez stated he was requesting a waiver to remain open one more hour until midnight. Mr. Gonzalez confirmed there would be no wall signage. Also, a clarification of how the outdoor play area was calculated was explained and verified that the calculations met requirements of the Health Department. After discussion and clarification from Village Attorney Torcivia, the Council gave consensus for a waiver for the extra hour of operation; and it was determined the parking and discharge of vehicles would require an administrative waiver.

Council Member Brinkman commented to the audience that she understood the residents' concerns about traffic; however, this plan does meet all Palm Beach County standards and the Village had no choice but to abide by those standards. Also, daycare facilities are allowed in residential zoning districts in the Village Code and Mr. Gonzalez does not have to rezone to commercial. The Village Council's only authority was to make sure the plan is the best plan possible to make the least amount of impact on the residential neighbors. Vice Mayor Waller added that she wanted to empathize that the County had recommended that all traffic discharge onto Rostan Lane; however, Mr. Gonzalez had chosen to listen to the residents and discharge the traffic in and out of 10<sup>th</sup> Avenue instead.

Hearing no further comments, Village Attorney Torcivia read the resolution by title. A motion to adopt was made by Vice Mayor Waller and seconded by Council Member Brinkman. Motion carried 4 – 0.

## **REGULAR AGENDA**

### **ACTIONS AND REPORTS**

ADD: 7. Discussion on Pain Management Clinics

Council Member Brinkman commented that both Palm Beach County and the City of West Palm Beach had moved forward with moratoriums on Pain Management Clinics recently and several other cities have requested the ordinance language from the County. Council Member Brinkman stated she had just become aware that there were already two Pain Management Clinics in the Village. Council Member Brinkman asked that the Council support a move forward with a Moratorium and potentially a Zoning in Progress tonight, so that the Village is not forced to issue permits for this type of business. As the areas within the County where these businesses are allowed to open dwindle, they will gravitate towards those cities that do not have the restrictions. Also, the County had just received a definition of what a pain management clinic was and would now amend their code with a defined use of what they would not permit.

Mayor Davis asked for thoughts from the Council. Council Member Gunther stated this was very concerning to him and he agreed with Council Member Brinkman's request. Vice Mayor Waller stated she also agreed with the moratorium because she did not want Palm Springs to become the place where people went for drugs. Village Attorney Torcivia stated from a legal standpoint, this was a clear policy decision and was clearly a County-wide issue. Also, Council Member Brinkman had made a good point that while the other cities were discussing this, the Village should not be the only city not pursuing this issue. Mayor Davis asked for a legal clarification that the Village could declare a Zoning in Progress at tonight's meeting and Village Attorney Torcivia stated that was within the Council's authority.

Mayor Davis then asked for a motion to declare a Zoning in Progress for Pain Management Clinics. A motion was made by Council Member Brinkman and seconded by Vice Mayor Waller. Motion carried 4 – 0.

**VILLAGE COUNCIL COMMENTS**

Council Member Brinkman stated that she would be participating in the Komen Race for the Cure on Saturday and invited anyone interested to join her team. Council Member Brinkman also stated that she understood about not mailing to property owners within 300 feet if it was for something that was an approved use in the Village Code; however she strongly felt that special exceptions should have mailings. Since this was a cost factor, Council Member Brinkman suggested that the Applicant provide the notice, labels, envelopes and postage, just as was done by many other entities. Director Lowe stated that if they do for one item, then it should just be done for all, and a change in the code would need to be made for this.

Vice Mayor Waller thanked Chief Pickens for the nice job done on the Police Annual Report.

Mayor Davis stated that, if needed, the next Regular Council Meeting would be on February 11, 2010 at 7:30 PM in Council Chambers.

**ADJOURNMENT**

Hearing no further business, Mayor Davis adjourned the meeting at 8:38 p.m.

Respectfully submitted,

\_\_\_\_\_  
Village Clerk

Approved by Council \_\_\_\_\_

\_\_\_\_\_  
Mayor