



To: Mayor and Village Council
From: Eve A. Boutsis, Village Attorney

Date: May 29, 2012
Re: Moratorium- First Reading

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, PURSUANT TO THE ENACTED ZONING IN PROGRESS RESOLUTION; CREATING A MORATORIUM ON THE ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF USE WITHIN THE RESIDENTIAL ZONING DISTRICTS FOR PROPERTIES OVER AN ACRE IN SIZE FOR THE LESSER OF A FOUR (4) MONTH PERIOD OR UNTIL SUCH TIME THAT AN ORDINANCE IS ADOPTED APPROVING NEW REGULATIONS THERETO; SUCH TEMPORARY MORATORIUM TO APPLY TO ALL PROPERTIES WITHIN THE RESIDENTIAL ZONING DISTRICTS THAT ARE OVER AN ACRE IN SIZE; EXEMPTING HEALTH, SAFETY WELFARE OR MAINTENANCE TYPE PERMITS; PROVIDING WAIVER PROVISION THROUGH HEARING BEFORE THE VILLAGE COUNCIL; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Council Person Joan Lindsay].

BACKGROUND:

On April 16, 2012, at a Committee of the Whole (COW) meeting, Council Person Joan Lindsay requested the imposition of a "Zoning in Progress" (ZIP) procedure to implement revisions to the zoning code as it relates to neighborhood protection. Council Person Lindsay advised that she desired to provide guidelines for nonresidential uses allowed within residential districts so as to preserve the overall residential quality of Village neighborhoods and to provide a fair and equitable process and guidelines for issuing development orders. Council Person Lindsay intends for the proposed neighborhood protection regulations to simplify the current process of imposing conditions on developments, and provide a fair and equitable system for all by defining specific criteria for: setbacks, buffers, construction staging, athletic fields and amenities, landscaping, traffic, parking related conditions, lighting, noise, operations, historic/archaeological, unity of title, enforcement, and structures, amongst other issues.

Pursuant to Section 30-30.10(a) of the Code of Ordinances, "[t]he Village Council may consider a 'Zoning in Progress Resolution' on its own initiative." In this particular case, the Mayor and Village Council chose to pursue a ZIP upon their own initiative. On May 21, 2012, following public hearing, the Mayor and Village Council adopted the zoning in progress resolution for all residentially zoned properties larger than one (1) acre, including the Live Work subdistrict within the FT&I District. As a result of approving the ZIP, the Village Council has now directed staff to prepare a

moratorium ordinance that is to expire the earlier of adoption of the neighborhood protection regulations or November 9, 2012.

PROCEDURES (ZONING IN PROGRESS/MORATORIUM)

Ordinance 30-30.10 provides the process by which a ZIP and Moratorium are to be adopted, as each mechanism provides for a different effect with regard to permits, certificates of use, and development orders issued by the Village (collectively hereinafter referred to as 'PERMITS'). Generally, a ZIP does not preclude the issuance of PERMITS, rather it simply requires that any permit that is issued not violate either existing or proposed regulations. Thus, a standard ZIP must be accompanied by specific regulations that would apply in lieu of those that already exist. When the scope of the proposed change is broader, less clearly defined, and requires a fuller consideration of current regulations, a moratorium becomes the appropriate tool. By approving Resolution No. 2012-45, on May 21, 2012, the Mayor and Village Council elected to pursue the moratorium option. To date, no legislation relating to "neighborhood protection" has been drafted.

Pursuit of the moratorium option required the passage of a ZIP resolution, which defines the scope of the proposed moratorium and directs staff to proceed with its study and preparation of the moratorium legislation. Pursuant to Section 30-30.10(b)(2), in approving a ZIP resolution, "[t]he Village Council shall make preliminary findings" which identify the need to pursue such action. Resolution No. 2012-45 accomplishes this task. Given the ZIP Resolution was initiated by Village Council, pursuant to Section 30-30.10(a), consideration and analysis of the proposed Moratorium Ordinance by staff shall rely upon the May 21, 2012, findings issued by the Mayor and Village Council and as further detailed below under the "Analysis" section.

The approved ZIP resolution may last no longer than 90 days, operates in a manner similar to a moratorium, and is dissolved once the proposed moratorium is enacted, the 90 days pass, or the Council repeals the ZIP resolution, whichever happens first. A Moratorium seeks to fully preserve the *status quo* of the affected area until such time pending legislation is implemented as set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2nd DCA 1980). A moratorium must be enacted under the same procedures which govern zoning and rezoning, as a moratorium temporarily prohibits a person from building upon his/her property, and is considered a substantial restriction upon land use. *City of Sanibel v. Buntrock*, 409 So.2d 1073, 1075 (Fla. 2d DCA 1981). If enacted, pursuant to case law and the Burt J. Harris Act, a Moratorium Ordinance may remain in effect for a period not to exceed twelve (12) months or else the action may be considered a violation of the Act. The proposed moratorium is intended to last up to four months, or until the adoption of any new neighborhood protection regulations to the Land Development Code, whichever event occurs first. To reiterate, the zoning moratorium would not apply to residential properties one acre or smaller or to the commercial or mixed use districts (except for Live Work - Residential sub-district within the FT&I District).

ANALYSIS

The Comprehensive Plan is the base line regulatory document governing all land developmental activities within the Village of Palmetto Bay. The Land Use Element of the Comprehensive Plan provides specific goals which are supplemented further explained through the Village's delineated objectives and policies. The Village adopted its Comprehensive Plan in 2005 citing its first goal as:

Goal 1: To guide the Village of Palmetto Bay from birth to early maturity as an outstanding and truly livable community in Southeast Florida by building on, and improving, the existing land use blueprint through visionary planning and place-making, cost efficient provision of high quality facilities and services, *quality neighborhood protection*, and enhancement of its unique and beautiful coastal environmental resources. [*Emphasis added*].

The development standards prescribed within the Village's Land Development Code (hereinafter referred to as the "LDC"), otherwise known as the Village's zoning code, takes its purpose and direction from and must be consistent with the goals, objectives, and policies adopted in the Comprehensive Plan.

The LDC provides consolidated zoning development standards for both commercial establishments within the Village's business districts and for residential developments in residential districts. The LDC, however, does not provide the same kind of development standards for all non-residential uses that are permitted within residential districts. Though most of the non-residential uses permitted within residential districts are subject to public hearing, the development criteria vary from use to use, are spread throughout different portions of the LDC, or, in some cases, are silent in addressing the full impact of such developments on the residential neighborhood. The result is an approval process that may be subject to non-standardized development conditions imposed during the hearing/review process.

The proposed moratorium would provide the time needed for the Council and staff to prepare development standards for non-residential developments in residentially zoned districts. These developments would still be subject to the public hearing process and, potentially, conditions of development where appropriate. However, the proposed neighborhood protection regulations are being designed to provide a consistent and predictable framework aimed at protecting residential neighborhoods from disruptive intrusion by uses that may otherwise disrupt or degrade the health, safety, tranquility, character, and overall welfare of the neighborhood. The regulations are intended to minimize the impacts to the neighborhood from excessive density, noise, light, glare, odor, vibration, dust or traffic. As such, the proposed regulations are intended to refine or better define the regulations relating to criteria for setbacks, buffers, construction staging, athletic fields and amenities, landscaping, traffic, parking related conditions, lighting, noise, operations, historic/archaeological, unity of title, enforcement, and structures, amongst other issues. In adopting such regulations, the Village intends to provide a stream lined check-list of criteria, applicable to all such zoning requests, which would assist the applicant and residents in obtaining a fair and equitable development order. Adoption of the proposed standards will assist the Village in

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minimizing the imposition of different conditions on different properties while still providing for unique site specific requirements that may be applied during the public hearing process.

FISCAL/BUDGETARY IMPACT:

The fiscal/budgetary impact is undetermined.

RECOMMENDATION:

Decision for the Mayor and Village Council.

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2
3 **ORDINANCE NO. 2012- _____**
4

5 **AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE**
6 **VILLAGE OF PALMETTO BAY, FLORIDA, PURSUANT TO THE**
7 **ENACTED ZONING IN PROGRESS RESOLUTION; CREATING A**
8 **MORATORIUM ON THE ISSUANCE OF BUILDING PERMITS AND**
9 **CERTIFICATES OF USE WITHIN THE RESIDENTIAL ZONING**
10 **DISTRICTS FOR PROPERTIES OVER AN ACRE IN SIZE FOR THE**
11 **LESSER OF A FOUR (4) MONTH PERIOD OR UNTIL SUCH TIME**
12 **THAT AN ORDINANCE IS ADOPTED APPROVING NEW**
13 **REGULATIONS THERETO; SUCH TEMPORARY MORATORIUM TO**
14 **APPLY TO ALL PROPERTIES WITHIN THE RESIDENTIAL ZONING**
15 **DISTRICTS THAT ARE OVER AN ACRE IN SIZE; EXEMPTING**
16 **HEALTH, SAFETY WELFARE OR MAINTENANCE TYPE PERMITS;**
17 **PROVIDING WAIVER PROVISION THROUGH HEARING BEFORE**
18 **THE VILLAGE COUNCIL; PROVIDING FOR ORDINANCES IN**
19 **CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE**
20 **DATE.**

21 **WHEREAS**, the Mayor and Village Council are designated the local planning agency; have
22 previously undertaken the necessary studies; and adopted a Comprehensive Plan to guide and
23 control growth and development in the Village; and,
24

25 **WHEREAS**, in 2009, the Village Council adopted its own land development regulations for
26 the various zoning districts contemplated in the Village's Comprehensive Plan; and,
27

28 **WHEREAS**, a majority of the Village Council, on its own initiative during a Committee of
29 the Whole meeting held on April 16, 2012, indicated a desire to review the Land Development Code
30 to ensure that the guidelines provide development standards for nonresidential development in
31 residential zoning areas to ensure neighborhood protection; and,
32

33 **WHEREAS**, the Mayor and Village Council enacted a zoning in progress resolution and
34 complied with the requirements of 30-30.10, relating thereto; and,
35

36 **WHEREAS**, a neighborhood protection ordinance may be needed to preserve the
37 residential character and quality of life that Village residents expect; and,
38

39 **WHEREAS**, the primary intent of such an ordinance is to provide design guidelines for
40 non-residential development in residential zoning areas in the Village of Palmetto Bay; and,
41

42 **WHEREAS**, the commercial districts, and the mixed-use districts (except for the Live Work
43 sub-district within the FT&I mixed use district), shall be exempt from this moratorium ordinance;
44 and,
45

1
2 **WHEREAS**, the neighborhood protection regulations should simplify the current process
3 of imposing conditions on these developments, and provide a fair and equitable system for all by
4 defining specific criteria for: setbacks, buffers, construction staging, athletic fields and amenities,
5 landscaping, traffic, parking related conditions, lighting, noise, operations, historic/archaeological,
6 unity of title, enforcement, and structures, amongst other issues; and,
7

8 **WHEREAS**, the Mayor and Village Council desire to preserve the *status quo*, except as
9 provided below, regarding existing zoning designations of property in the Village during a
10 moratorium to impose the neighborhood protection regulations; and,
11

12 **WHEREAS**, when an ordinance may affect land use, it must be enacted under the same
13 procedures which govern zoning and rezoning, as a moratorium temporarily prohibits a person from
14 building upon his/her property, and is considered a substantial restriction upon land use; *City of*
15 *Sanibel v. Bunrock*, 409 So.2d 1073, 1075 (Fla. 2d DCA 1981); and,
16

17 **WHEREAS**, the Village Council seeks to implement this ordinance, creating a four (4)
18 month moratorium within the residential zoning districts and the Live Work subdistrict within the
19 FT&I mixed use district for properties over one acre in size, in order to study and complete the
20 proposed revisions to the code and address the issues identified herein; and,
21

22 **WHEREAS**, as the next step in the process, the Village Council will initiate drafting its
23 neighborhood compatibility and preservation ordinance for the various residential zoning districts;
24 and,
25

26 **WHEREAS**, to preserve the *status quo*, it is necessary to establish a moratorium on the
27 issuance of building permits for developments that are within the Village, such temporary
28 moratorium to apply to all residentially zoned properties over an acre in size within the Village for
29 four months to complete the study and adoption of the neighborhood protection ordinance,
30 whichever comes first; and,
31

32 **WHEREAS**, to fully preserve the *status quo* it is necessary to implement the pending
33 legislation doctrine set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2nd DCA 1980).
34

35 **BE IT ENACTED BY THE MAYOR AND VILLAGE COUNCIL OF THE**
36 **VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**
37

38 **Section 1.** Moratorium Imposed. Upon the date of enactment of this ordinance, no
39 Land Development Regulation proposals or amendments, development permits, including, but not
40 limited to, a re-zoning or change in zoning district boundaries, special exception, site plan approval,
41 building permit, certificate of use, Development of Regional Impact Application for Development
42 Approval, variance, plat or subdivision approval shall be processed or considered by the Village for
43 the residential zoning districts for properties over an acre during the time period that the
44 moratorium is in effect. This moratorium shall remain in effect for four (4) months through
45 November 9, 2012, or until such time as an ordinance establishing the new rules is adopted,

1 whichever comes first. This moratorium may be extended beyond the period contemplated in order
2 to complete the process of enacting the neighborhood protection ordinance. The moratorium shall
3 apply to all residentially zoned properties and all Live Work zoned properties exceeding an acre in
4 size.
5

6 **Section 2.** Exemptions. The following proposals to amend the Land Development
7 Regulations, development permits, and applications for development permits shall be exempted
8 from the provisions of this Ordinance:
9

- 10 (1) Development permits, such as site plan applications or building permit applications
11 for the purpose of repair, rehabilitation of an existing structure;
- 12 (2) Development order relating to concurrency;
- 13 (3) Vested rights special permit;
- 14 (4) Construction, repair, or rebuilding of structures in existence or with approved
15 construction permit obtained on or before date of enactment of this ordinance.
- 16 (5) Building permits or development orders for properties subject to the restrictions
17 herein may be issued for any and all projects, if the project does not increase the size or footprint of
18 the existing building or structure, a remodeling or renovation of an existing structure that does not
19 increase square footage, height or intensity of use; it being the intent of this Ordinance that building
20 permits for the repair or replacement of existing structures, or parts thereof, shall be allowed during
21 the moratorium.
- 22 (6) Emergency repairs, including life safety repairs, shall be entitled to proceed during
23 the moratorium.
- 24 (7) The commercial districts, and the mixed-use districts (except for the Live Work
25 subdistrict within the FT&I mixed use district - Live Work Neighborhood subdistrict.
- 26 (8) Residentially zoned properties of an acre or less.
27

28 **Section 3.** Waivers. The Village Council, after public hearing, may grant a waiver of the
29 moratorium where the applicant can show the following: That the proposed development complies
30 with the existing land development regulations; and that the proposed development satisfies the
31 objective of the Village Council in ordering a moratorium. For example, if the Village Council is
32 considering increasing the minimum setback in a residential zoning district by two (2) feet, and the
33 applicant demonstrates that it complies with the proposed modification of the setback, the Village
34 Council, after public hearing may grant a waiver of the moratorium. The waiver will not hinder the
35 intent of the Village Council in its proposed amendment to these regulations.
36

37 **Section 4.** This moratorium may be extended beyond the date of approval in order to
38 complete the neighborhood protection ordinance if the Village Council deems it necessary in order
39 to enact land development regulations to implement the plan.
40

41 **Section 5.** Nothing in this ordinance should be construed or applied to abrogate the
42 vested right of a property owner to develop or utilize his/her property in any other way

1 commensurate with zoning and other regulations, including any required renewal of permits for
2 existing legally erected premises.

3
4 **Section 6.** All ordinances or parts of ordinances in conflict with the provisions of this
5 ordinance are repealed.

6
7 **Section 7.** If any section, clause, sentence, or phrase of this ordinance is for any reason
8 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the
9 validity of the remaining portions of this ordinance.

10
11 **Section 8.** This ordinance shall take effect immediately upon enactment.

12
13 PASSED AND ENACTED this ____ day of _____, 2012.

14
15 First Reading: _____

16 Second Reading: _____

17
18
19 Attest: _____

20 Meighan Alexander
21 Village Clerk

Shelley Stanczyk
Mayor

22
23 APPROVED AS TO FORM:

24
25 _____

26 Eve A. Boutsis

27 Village Attorney

28
29 FINAL VOTE AT ADOPTION:

30 Council Member Patrick Fiore _____

31 Council Member Howard Tendrich _____

32 Council Member Joan Lindsay _____

33 Vice-Mayor Brian W. Pariser _____

34 Mayor Shelley Stanczyk _____