

VILLAGE OF PALMETTO BAY, FLORIDA
MINUTES OF THE MONDAY, SEPTEMBER 16, 2013
MEETING OF THE VILLAGE COUNCIL – ZONING HEARING
Village Hall Chambers
9705 E. Hibiscus Street, Palmetto Bay, FL

1. **CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE:** Mayor Stanczyk called the meeting to order at 7:05 p.m. The following members of the Village Council were present:

Mayor Shelley Stanczyk
Vice Mayor John DuBois
Councilman Patrick Fiore
Councilman Tim Schaffer
Councilwoman Joan Lindsay

The following staff members were present:
Village Manager Ron E. Williams
Village Attorney Eve Boutsis
Village Clerk Meighan Alexander
Director of Planning and Zoning Darby Delsalle
Planning Analyst Morelia Rodriguez

Mayor Stanczyk led the pledge of allegiance.

2. **Approval of Minutes: Zoning Hearing of May 20, 2013**
Vice Mayor DuBois moved to approve. Seconded by Councilman Fiore. All voted in favor. The Minutes were approved unanimously (5-0.)
3. **Reading of decorum statement/Swearing in of witnesses:**

Clerk Alexander read the decorum statement: “Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Village of Palmetto Bay Council shall be barred from further audience before the Village of Palmetto Bay Council by the presiding officer, unless permission to continue or again address the council be granted by the majority vote of the council members present.”

Attorney Boutsis provided an explanation of the quasi-judicial process and swore in all individuals who wished to speak.

The following item is being considered pursuant to Sections 30-30 of the Village’s Land Development Code:

- a. Applicant: **SOUTH MOTORS COMPANY OF DADE CO.**
Locations: 16215 S. Dixie Highway and 9271 SW 164 Street
Requests:

- i. AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO AMENDING THE FUTURE LAND USE MAP CONSISTENT WITH 163.3161, 163.3184 AND 163.3187, FLORIDA STATUTES; CHANGING 1.9344 ACRES (+/-) OF THE TOTAL 9.4678 ACREAGE FROM LOW DENSITY RESIDENTIAL TO BUSINESS OFFICE FOR A PORTION OF THE PROPERTY LOCATED AT 9271 SW 164 STREET BEARING FOLIO 33-5028-002-0070 AND A PORTION OF THE ADJACENT PROPERTY BEARING FOLIO 33-5028-002-0080, PALMETTO BAY, FLORIDA; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. (First public hearing)

Vice Mayor DuBois moved this item forward. Seconded by Councilman Fiore.

Attorney Boutsis explained the procedures and noted that this ordinance concerns the Future Land Use Map and the Village is only required to have a public hearing on the second reading of this matter, should it pass on first reading; however, the advertisement allows for public hearing. She asked the Council to provide their disclosures.

Mayor Stanczyk that her disclosure includes those emails included in the disclosure packet: emails from Terry Horner, Sandy Gallaher and Joseph Gallaher. She stated that she has not been contacted since the application was filed in December of 2012 and will be impartial.

Attorney Boutsis provided the emails to applicant's attorney, Simon Ferro.

Vice Mayor DuBois advised that he had received the same emails and forwarded them to Director Delsalle. He stated that he did not drive by the property and will be impartial.

Councilman Fiore stated that he had no further disclosures, other than the emails received. He will remain impartial.

Councilman Schaffer stated that he had received the same emails as the other Council members. He disclosed that he is a

board member of the UM Sports Hall of Fame that held a fishing tournament. He stated that while he was finding corporate sponsors for the event, he reached out to South Motors and had lunch with Mr. Lujan of South Motors. He explained that South Motors did become a sponsor for the celebrity fishing tournament and Councilman Schaffer saw Mr. Lujan at an event concerning the Sports Hall of Fame. He noted that he will remain impartial.

Attorney Boutsis advised that she had spoken with the Commission on Ethics, who had advised that there was no conflict; however, she asked Councilman Schaffer to disclose the matter in an abundance of caution.

Councilwoman Lindsay advised that she had received the three emails previously referenced. She noted that she is familiar with the property and did not discuss this matter once the application was filed. She stated that she will be impartial.

Director Delsalle stated that when the second Ordinance is considered, he will ask Council to incorporate this report into the record. He introduced Alex David of Bell David Planning Group, in partnership with the Corradino Group.

Director Delsalle provided staff report. He advised that the Future Land Use Map (FLUM) must be amended prior to this matter being considered for rezoning. He advised that the 1980-82 development order had restricted covenants; and, in order to move forward, the covenant must be released. He noted that park property is essential to this project, as it will be the principal buffer to protect the neighborhood.

Vice Mayor DuBois asked the intent of the three acres for park usage; would it be for the Village to operate a park or will it remain a natural area.

Director Delsalle advised the matter is part of an ongoing discussion.

Vice Mayor DuBois asked if the neighbors had been consulted.

Attorney Boutsis advised that consideration of the release of the covenant would occur at second reading.

Vice Mayor DuBois asked if the area is considered part of the DRTF (Downtown Redevelopment Task Force) area.

Director Delsalle advised that it is not part of FT&I zoning area; however, it is a significant commercial piece. Manager Williams added that the company had participated in the early DRTF meetings.

Attorney Simon Ferro, Two S. Biscayne Boulevard, together with Attorney Tucker Gibbs introduced themselves, representing South Motors. Attorney Ferro introduced Henry Iler (Iler Planning), Bruce Arthur and Bruce Ford (project architects), Bud Martin (Landscape architects), Richard Garcia (traffic consultant), and Timothy Hyman (community outreach consultant). He provided a brief history of the project. He noted that the north portion of the parcel is BO, with a zoning designation of R-1 as the underlying zoning. He stated that 4.9 acres is low density residential and R-1 on the south side of parcel. He explained that South Motors proposes to offer a park parcel on the south three acres of the property with a request to: 1. Amend the FLUM from LDR to BO; and 2. Rezone from R1 to B2. He advised that the applicant has a site plan in place; however, it is not up for consideration this evening.

Mr. Ricardo Lujan, Vice President of South Motors, noted that he had worked on the original charette and also with the DRTF. He provided a brief history of their company. He stated that the have received over 500 signatures of support.

Attorney Tucker Gibbs added that South Motors' community outreach has been extensive. He explained that the company is interested in listening to the neighbors' concerns. For example, he advised that Mr. Lujan responded to the complaints about test driving by now allowing sales personnel to drive through the residential neighborhood. He stated that unloading of vehicles will now take place inside the property and employees are forbidden to park within the neighborhood. Attorney Gibbs further noted that South Motors had agreed to add additional street trees to provide a solid buffer of vegetation.

Attorney Ferro stated that South Motors is willing to offer a condition to prohibit test drives through the neighborhood.

Mr. Henry Iler, Planner, 50 East Ocean Blvd, Stuart, FL, provided his report concerning the compatibility of the zoning amendment, should the Council grant same.

Attorney Ferro added that there is consistent zoning with the neighboring parcels, with the Brandsmart being zoned BO, as is the parcels located to the west. He advised that South Motors envisioned the park parcel to satisfy the neighbors; however, there will be a perpetual easement agreement with the Village. He stated that South Motors' preference would be to give the park to the village, but it is needed in order to comply with open space requirements. He explained that the applicant had met with the president of the condominium association of Banyan Townhomes and also spoke with Mr. Gallaher. He reserved time for rebuttal.

Mayor Stanczyk stated that while she appreciates the effort by South Motors, only part of the affected area is covered by the covenant. She stated that she wants to insure the surrounding neighbors will not be negatively impacted.

Attorney Boutsis noted that neither the site plan nor the covenant were scheduled for tonight's discussion and that those issues will be addressed at the second hearing.

Mayor Stanczyk stated that she remain concerned with the issues of stacking and loading/unloading of vehicles.

Attorney Ferro stated that in order to satisfy her concerns, he would have to begin a discussion concerning the interior of the parcel, the site plan. He asserted that they received 100% approval from the five homes that abut the property and met many of the neighbors one-on-one. He explained that the plan would also incorporate a "truly neighborhood" park, as there would be no parking and guests to the park would have to walk to visit it.

Vice Mayor DuBois noted that Mr. Ferro had mentioned that this application has been six years in the making. He asked how many condominium board meetings had been attended by South Motors in the last six years.

Attorney Ferro advised that South Motors held three zoning workshops in the last six years; one at Ludovici Park, and others in public forums.

Vice Mayor DuBois asked how many workshops were held at South Motors. Attorney Ferro stated that none had been held at the dealership.

Councilwoman Lindsay thanked the applicant for working with the community. She expressed her concern with the noise issue mentioned in Mr. Gallaher's email. She expressed that the loud music must cease in order to allow the residents to enjoy their homes. She stated that there were also some concerns regarding the wall that separates the South Motors property from the Banyan residents.

Attorney Ferro stated that he was not aware of an issue concerning the wall. He asked the architect to come forward.

Mr. Bruce Arthur, architect, stated that the plan is to tear down the existing wall and install new CBS block wall that will allow for a significantly larger buffer.

Councilwoman Lindsay asked if the buffer will accommodate the second story of the homes.

Mr. Arthur stated that the applicant will be installing trees that will be vertical, hedge-like trees.

Councilwoman Lindsay asked why 37 people did not sign the petitions.

Attorney Ferro suggested that some people will not sign a petition in spite of any accommodations offered. He stated that they received 75% approval and had to focus on receiving 100% of the adjacent neighbors.

Councilwoman Lindsay asked the applicant to meet again with the neighbors who did not sign and asked them to meet with the six homes that were not included in the discussions.

Mr. Tim Hyman, community outreach consultant, advised that he had spoken personally to the majority of the homeowners: some said they wanted to think about it; some discussed the

condition to include a passive park; and, others did not answer the door.

Councilwoman Lindsay asked him to give the homeowners another opportunity to meet. She suggested that the Gallaher's should invite South Motors to their next hoa meeting.

Mayor Stanczyk opened the public hearing.

Attorney Boutsis stated that the site plan discussion will be held at a future hearing; therefore, she cautioned the public speakers to not address the site plan. Manager Williams concurred that it is important to focus on the procedure.

The following individuals addressed the Council: Eric Tullberg, 7884 SW 179 Terrace; Joe Gallaher, 16232 SW 92 Avenue; Andrea Spivak, 16238 SW 92 Avenue, HOA board member; Phil Ulmand, 16371 SW 90 Court; Carlos Menendez, 16400 SW 92 Court; Ray Canali, 8006 SW 173 Terrace; Sandra Burkowski, 9260 SW 165 Street; Karen Muney, 16625 SW 83 Court; Elizabeth Goyta, 8800 SW 183 Terrace; Pam Lawson, 9301 SW 166 Street; and, Sandy Gallaher, 16232 SW 92 Avenue.

Mayor Stanczyk asked when the next hearing will be held.

Attorney Boutsis advised that it would be a minimum of 45 days. Director Delsalle concurred.

Attorney Ferro stated that the applicant is committed to continue to reach out to the neighbors.

Councilman Fiore asked if this matter were deferred, would it have to be re-advertised. Attorney Boutsis advised that it would delay the process, but if it were deferred to date certain, there would be no additional cost.

Attorney Ferro stated that the applicant does not need a deferral; the applicant is under a deadline to complete the project. He asserted that the applicant will meet with the residents should this matter pass on first reading.

Mayor Stanczyk stated that she understands that Attorney Ferro is committing that his client will incorporate the concerns of the neighbors in conditions to the plan.

Councilman Fiore thanked Attorney Ferro for his diligence. He asked if conditions could be placed at this time.

Attorney Boutsis advised that site plan review will be coming in the future.

Mayor Stanczyk stated that the Council will be able to insure that the conditions are placed, if the applicant does not provide the assurances on their own.

Attorney Boutsis asked Attorney Ferro to state that he will return with a proposed covenant to address all community concerns.

Attorney Ferro stated that he would return with appropriate conditions and restrictions to protect the neighborhood.

Vice Mayor DuBois stated that the Village Council continues to hear issues wherein a non-residential neighbor does not listen to the concerns of the neighbors until a zoning matter is pending. He noted that; however, the Council must consider property rights under the law. He asked the applicant to redouble their efforts to work with the community to be a better neighbor to the residents.

Councilwoman Lindsay remarked that the neighbors need to be protected. She stated that the Village is proud of the businesses, as well. She reiterated Vice Mayor DuBois' comments to seek out the neighbors and address all concerns. She advised that there are noise/dust ordinances that will allow the neighbors to make certain that construction is not going to be problem for them.

Mayor Stanczyk thanked South Motors for their efforts. She stated that she is looking forward to receiving a resolution with conditions.

Mayor Stanczyk called the question. The matter passed via roll call vote (4 to 1, Councilman Patrick Fiore being the sole opposition.)

- ii. AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; AMENDING THE OFFICIAL ZONING MAP TO REFLECT A DISTRICT BOUNDARY ZONE; CHANGING 6.3705 (+/-) ACRES OF THE TOTAL 9.4678 ACREAGE, FROM R-1 SINGLE FAMILY DISTRICT TO B-2 BUSINESS DISTRICT; FOR THE PROPERTY LOCATED AT 9271 SW 164 STREET BEARING FOLIO 33-5028-002-0070 AND THE ADJACENT PROPERTY BEARING FOLIO 33-5028-002-0080, IN PALMETTO BAY, FLORIDA; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE. (First public hearing) [4/5 Vote].

Vice Mayor DuBois moved the item forward. Seconded by Councilman Fiore.

Attorney Boutsis asked the Council to consider incorporating staff report and all discussion, including public comments, applicant presentation and expert's discussion, into the record for consideration of this item. Vice Mayor DuBois so moved. Seconded by Councilman Schaffer.

Attorney Ferro stated that his report is complete. He asked the Council to support this matter and accept staff's recommendation.

Mayor Stanczyk opened the public hearing for any additional speakers. No one wished to speak. The public hearing was closed.

Mayor Stanczyk called the question. The matter passed via roll call vote (4 to 1, Councilman Patrick Fiore being the sole opposition.)

4. Adjourn: The meeting was adjourned at 9:25 p.m.

Prepared and submitted by:

Meighan J. Alexander, CMC
Village Clerk

Approved by the Village Council on
this ____ day of November, 2013.

Mayor Shelley Stanczyk

PURSUANT TO FLORIDA STATUTES 286.0105, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE VILLAGE FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW. WHILE THE FLORIDA STATUTES DO NOT REQUIRE TAPE RECORDINGS, TO THE EXTENT THAT TAPE RECORDINGS ARE MADE, THE TAPES MAY BE REQUESTED FROM THE VILLAGE CLERK FOR REVIEW AND/OR COPYING. THE VILLAGE OF PALMETTO BAY CAN NOT GUARANTEE QUALITY OF ANY RECORDING.

PLANS ARE ON FILE FOR THE ABOVE APPLICATIONS AND MAY BE EXAMINED IN THE DEPARTMENT OF PLANNING AND ZONING AT VILLAGE HALL. PLANS MAY BE MODIFIED AT THE PUBLIC HEARING.

T H E E N D
NOTICE OF APPEAL RIGHTS

Decisions of the Village of Palmetto Bay Council (VPB) are appealed to the Circuit Court. Appeals to Circuit Court must be filed within 30 days of the execution of the Village of Palmetto Bay resolution. Pursuant to Florida Statutes 286.0105, the Village hereby advises the public that if a person decides to appeal any decision made by this Council with respect to any matter considered at its meeting or hearing, he or she will need a record of the proceedings, and that for such purpose, the affected person may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the Village for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

Further information and assistance may be obtained by contacting the Legal Counsel's office for the Department of Planning & Zoning at (305) 235-9344, or the Village Clerk at (305) 259-1234. For filing or status of Appeals to Circuit Court, you may call the Clerk of the Circuit Court at (305) 375-5955.