

VILLAGE OF PALMETTO BAY
Minutes of the Special Council Meeting
Items deferred to date certain of September 17, 2013
Village Hall Chambers
9705 East Hibiscus Street

1. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE

Mayor Shelley Stanczyk
Vice Mayor John DuBois
Council Member Patrick Fiore
Council Member Tim Schaffer
Council Member Joan Lindsay

Staff present:
Village Manager Ron E. Williams
Village Attorney Eve A. Boutsis
Village Clerk Meighan J. Alexander

Mayor Stanczyk called the meeting to order at 7:05 p.m. She led the pledge of allegiance.

- 2. DECORUM STATEMENT:** Clerk Alexander read the following 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 at this meeting 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.

3. RESOLUTIONS REQUIRING PUBLIC HEARING

- A. A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO AMENDING SUB-SECTION 5.1(C) AND (H) OF THE VILLAGE CHARTER; TO MODIFY THE ELECTION DATES TO HOLD ELECTIONS ON THE SAME DAY AS THE STATE PRIMARY ELECTIONS, AND RUN-OFF ELECTIONS ON THE FIRST TUESDAY OF NOVEMBER, WITH SWEARING IN ON THE FIRST MONDAY OF DECEMBER; AND REMOVING THE PROHIBITION ON HOLDING MEETINGS BETWEEN ELECTION AND SWEARING IN; PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION TO ELECTORS OF THE PROPOSED AMENDMENTS TO THE VILLAGE CHARTER; PROVIDING FOR A SPECIAL MAIL-BALLOT ELECTION TO BE CONDUCTED ON JANUARY 28, 2014; PROVIDING FOR COPIES OF THE CHARTER AMENDMENTS BE AVAILABLE FOR PUBLIC INSPECTION; PROVIDING FOR THE VILLAGE CLERK TO UTILIZE THE SERVICES OF MIAMI-DADE COUNTY SUPERVISOR OF

ELECTIONS TO PLACE THE CHARTER AMENDMENTS ON THE BALLOT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE. [Sponsored by Council Person Patrick Fiore].

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

Attorney Boutsis provided staff report.

Councilman Fiore stated that the most recent run-off election had difficulties due to the holiday that caused delay in forwarding absentee ballots. He opined that the cost of the run-off elections is also excessive at approximately \$60,000. He noted that the Village used to conduct its election cycle in the same manner he is suggesting: general election at the State primary, run-off election, if needed, at the State general election. Councilman Fiore noted that in the past two election cycles, voter participation in the run-off was less than the general election: at approximately 25% for run-off. He reported that his proposal would not change the term of the Council, as the swearing in would remain the same date. He opined that having the proposed cycle would coincide with the County, increase voter participation, and insure that the Absentee Ballots are timely received by voters.

Mayor Stanczyk opened the public hearing. The following individuals addressed the Council: Susan Ludovici, 7790 SW 176 Street; Eric Tullberg, 7884 SW 179 Terrace; Bev Gerald, 14271 SW 74 Court; Warren Lovely, 15323 SW 74 Place; Rex Lehman, 17300 SW 87 Court; Steve Kreisher, 18201 SW 98 Avenue; Peter England, 7620 SW 171 Street; Richard Blake, 16041 SW 80 Avenue; Chet England, 15300 SW 80 Avenue; Diane Garginin, 17120 SW 78 Avenue; Chuck Latshaw, 8825 SW 154 Terrace; Gary Pastorella, 6940 SW 142 Terrace; Richard Duncan, 8700 SW 149 Terrace; Stanley Kowlessar, 8360 SW 148 Drive; Jerry Templer, 8120 SW 182 Street; and Jacqueline Caproon, 8285 SW 164 terrace.

Councilman Schaffer asked the Clerk to provide information concerning voter turn-out in the last election.

Clerk Alexander replied that the turn-out was approximately 62% in the general election; 25% in the run off.

Vice Mayor DuBois remarked that voter apathy is a problem; however, Palmetto Bay has a higher voter turnout than most cities. He asserted that in terms of maximizing voter participation, the general election is best; second best is the primary; and third is run-off election. He noted that there are different philosophies as to what is the best strategy for encouraging voter participation. He opined that he previously made the recommendation that plurality voting with a minimum percentage threshold would be optimal; however, in lieu of that, a single date with plurality voting is acceptable. He stated that he is not opposed to asking voters what they would like to do; however, he believed the Council

resolved the run-off difficulties by mandating a three week period between general and run-off.

Councilwoman Lindsay remarked that she understands the concerns that some expressed regarding delay in receiving a ballot; however, the Council extended the time frame to address those issues.

Mayor Stanczyk provided research concerning voter turn-out and stated that if this matter were to be presented to the voters, it should be raised at the next election, as many individuals may ignore their mail and voter turn-out on mail ballot elections is limited.

Mayor Stanczyk called the question. The motion failed (3 to 2, Mayor Stanczyk, Vice Mayor DuBois, and Councilwoman Lindsay opposed.)

4. ORDINANCES FOR FIRST READING

- A. AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING DIVISION 30-160, "ART IN PUBLIC PLACES"; MODIFYING SECTION 30-160.7, TO EXEMPT ~~SINGLE FAMILY HOME~~ RESIDENTIAL REPAIRS AND OR CONSTRUCTION FROM THE PROGRAM; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Sponsored by Council Person Patrick Fiore].

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

Councilman Fiore stated that he is only seeking fairness on this matter.

Attorney Boutsis advised that this matter had to return for a second-first reading due to substantial changes.

Mayor Stanczyk expressed her support for the program, adding that art installed as a result of the program benefits the Village and a very small amount of funds is collected from developers.

Director of Planning & Zoning Darby Delsalle provided staff report, advising that the residential component would be exempt, if this item passes.

Councilwoman Lindsay stated that she was in agreement initially; however, she was supportive of exempting only single family homes, not all residential units.

Vice Mayor DuBois stated that he was the one who initially specifically added non-single family homes to the exemption. He stated that the residential component exemption is appropriate as even though a builder may put

condominiums in a building, the condominiums cost are far less than purchasing a single family home. He opined that the purchaser of the condominium is less likely to be able to afford the fee that will be passed to them by the contractor.

Councilwoman Lindsay moved to modify the ordinance to return the language: "To exempt single family home repairs or construction from the program". Councilman Fiore second.

Mayor Stanczyk asked if the fee is charged for individual units of a development. Attorney Boutsis replied that the fee was part of the cost of a development, not individual units.

Following brief discussion, Mayor Stanczyk called the question on the amendment. All voted in favor.

Mayor Stanczyk called the question on the Ordinance, as amended. All voted in favor, as follows, following roll call vote: Councilman Schaffer: Yes; Councilwoman Lindsay: Yes; Vice Mayor DuBois: Yes; Mayor Stanczyk: Yes; and, Councilman Fiore: Yes.

5. ORDINANCES FOR SECOND READING AND PUBLIC HEARING

- A. AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PUBLIC COMMENTS DURING MEETINGS OF THE VILLAGE COUNCIL; REVISING SECTION 2.47 ENTITLED "ORDER OF BUSINESS" AND SECTION 2.50 ENTITLED "COUNCIL MEETING AGENDA ITEMS" TO ENSURE COMPLIANCE WITH SECTION 286.0114, FLORIDA STATUTES, WHICH PROVISION BECOMES EFFECTIVE ON OCTOBER 1, 2013; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

Vice Mayor DuBois moved this item forward. Seconded by Councilwoman Lindsay.

Mayor Stanczyk remarked that this would result in the Village being in compliance with the change in the Florida Statute.

Attorney Boutsis concurred, adding that this matter is a companion item to the item below.

Mayor Stanczyk opened the public hearing. No one wished to speak. The public hearing was closed.

The Ordinance was adopted (5-0), following roll call vote: Councilwoman Lindsay: Yes; Mayor Stanczyk: Yes; Vice Mayor DuBois: Yes; Councilman Fiore: Yes; and Councilman Schaffer: Yes.

- B. AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO PUBLIC COMMENTS; AMENDING ARTICLE VIII OF CHAPTER 2, ENTITLED "BOARDS AND COMMITTEES, GENERALLY"; REQUIRING ALL SCHEDULED BOARD AND COMMITTEE MEETING TO PROVIDE FOR PUBLIC COMMENT PERIOD AT THE BEGINNING OF EVERY MEETING CONSISTENT WITH SECTION 286.0114, FLORIDA STATUTES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

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

Mayor Stanczyk remarked that this noted – second reading on similar ordinance, mandated by state statute.

Mayor Stanczyk opened the public hearing. Stanley Kowlessar, 8360 SW 148 Drive, addressed the Council.

The Ordinance was adopted (5-0), following roll call vote: Mayor Stanczyk: Yes; Vice Mayor DuBois: Yes; Councilman Fiore: Yes; and Councilman Schaffer: Yes; and Councilwoman Lindsay: Yes.

- C. AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO REPEAL THE LANGUAGE OF SECTION 27-89 OF THE VILLAGE'S CODE ENTITLED "PEDDLING PROHIBITED"; AND REPLACING IT WITH "NOTICE ON PREMISES THAT UNINVITED VENDORS, SOLICITORS, PEDDLERS, ETC. ARE NOT WANTED; AND PROVIDING PENALTIES; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

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

Attorney Boutsis advised that the Miami-Dade County Code was updated and door-to-door solicitation may not be banned outright by municipalities. She noted; however, that a homeowner may place a no-solicitation sign on their property.

Mayor Stanczyk opened the public hearing. No one wished to be heard. The hearing was closed.

The Ordinance was adopted (5-0), following roll call vote: Vice Mayor DuBois: Yes; Councilman Fiore: Yes; and Councilman Schaffer: Yes; Councilwoman Lindsay: Yes; and, Mayor Stanczyk: Yes;

6. OTHER BUSINESS

- A. Discussion concerning annual evaluations of Charter Officers – Vice Mayor John DuBois: Vice Mayor DuBois deferred this matter.
- B. Conditions for release of shade session transcripts – Councilman Patrick Fiore stated that as settlement has been reached with Palmer, and a quasi-judicial hearing will be scheduled, the Village's role is concluded. He asked the Village Attorney to read the Attorney General's opinion. Attorney Boutsis did.

Mayor Stanczyk stated that the opinion concerns that no charge could be brought against those who would vote to release, rather than an opinion as to whether the shade session transcripts should be released.

Attorney Boutsis advised that the Attorney General opinion was sought in response to members of the Council being concerned about violating the Statutes. She noted that the transcripts are not confidential, rather they are exempt from disclosure; and, if the Council votes to release the exemption, the Council is able to do so without violating the law.

Mayor Stanczyk remarked that releasing the transcripts early does not benefit the residents. She expressed that the transcripts should be released when the litigation is over.

Councilman Schaffer asked if the shade session transcripts would be released immediately, if Councilman Fiore's desired action is approved. Attorney Boutsis replied that the transcripts would be released after the quasi-judicial hearing.

Councilman Fiore stated the two conditions: once the settlement is reached; and, upon approval of the hearing concerning site plan modifications.

Councilman Fiore moved to approve his directed action. Seconded by Vice Mayor DuBois.

Vice Mayor DuBois remarked that the statutes provide an exception to the rule of transparency when litigation is ongoing. He stated that the Village has the right to stop the non-transparency and release the exemption, even if it exposes this prior to settlement. He noted that in this case, the Village has given its settlement offer and the need to protect the strategy of litigation is not an issue. He concurred with Councilman Fiore's directed action.

Attorney Boutsis cautioned that if the hearing concerning the site plan modification should go awry, the litigation will continue. Vice Mayor DuBois stated that the directed action confirms that release of the exemption would not occur until following approval of the site plan modification.

Mayor Stanczyk stated that there could be a problem with third party intervention. Attorney Boutsis advised that the language concerning third party intervention was removed from the settlement agreement.

Councilwoman Lindsay stated that the Village has been in litigation for many years and there should be no need to release the exemption until the appeal period has concluded following the quasi-judicial hearing. She noted that she had received emails opposing the release of the shade session transcripts early. She asked Mr. Michael Baiamonte (present in the audience, Chairman of the Board of Trustee for Palmer Trinity School) whether he would release his confidential attorney client notes, if Palmetto Bay releases its notes. (Mr. Baiamonte did not respond.)

Mayor Stanczyk expressed her disapproval with members of the audience being disrespectful. She stated that the litigation is concluded when the judge dismisses the case.

Vice Mayor DuBois and Councilman Schaffer expressed their disappointment at members of the Council directing comments to or questioning members of the public in the audience.

Councilman Schaffer moved to include the release shade sessions of the Shores Litigation. Councilman Fiore second. Clerk Alexander asked the Councilmen to clarify that their motion included the release under the same two conditions. The Councilmen concurred.

Attorney Boutsis provided clarification, noting that Shores would also be returning for a quasi-judicial hearing on a site plan modification.

The motion passed (3-2), following roll call vote: Councilwoman Lindsay: No; Vice Mayor DuBois: Yes; Mayor Stanczyk: No; Councilman Fiore: Yes; and Councilman Schaffer: Yes.

Vice Mayor DuBois moved to include that the sessions would not be released until after an additional 30 days following approval at the site plan modification hearing, when the matter would no longer be eligible for appeal. Seconded by Councilwoman Lindsay. The motion passed (4-1), following roll call vote: Vice Mayor DuBois: Yes; Mayor Stanczyk: No; Councilman Fiore: Yes; Councilman Schaffer: Yes; and Councilwoman Lindsay: Yes.

Councilman Schaffer moved to release the Shores and Palmer Trinity shade session transcripts immediately. Seconded by Vice Mayor DuBois.

Attorney Boutsis stated that the motion would have to be to include striking the original motion and striking the amendment (30 day waiting period.) Councilman Schaffer so moved. Seconded by Vice Mayor DuBois.

Councilman Fiore stated that while he understands Councilman Schaffer's frustration, the Council needs to move forward.

Vice Mayor DuBois asked Councilman Schaffer to clarify the reasons behind this motion.

Councilman Schaffer stated that he believes residents should know why the Council is voting the way they are voting. He opined that all should be able to talk about the matters. Attorney Boutsis cautioned the Council that they should not be communicating with anyone concerning the site plan, as it will be the subject of a future quasi-judicial hearing.

Vice Mayor DuBois stated that the Village should not take this risk, as the Shores Development may take years to re-submit its site plan.

Vice Mayor DuBois called the question. The motion passed (4-1), following roll call vote: Vice Mayor DuBois: Yes; Mayor Stanczyk: Yes; Councilman Fiore: Yes; Councilman Schaffer: No; and Councilwoman Lindsay: Yes.

Mayor Stanczyk suggested opening the matter to public comment. Vice Mayor DuBois objected and moved to not permit public comment. Seconded by Councilman Fiore. The motion passed (3-2, Mayor Stanczyk and Councilwoman Lindsay opposed.)

Mayor Stanczyk called the question on the previous motion. The motion passed (4-1), following roll call vote: Vice Mayor DuBois: Yes; Councilman Fiore: Yes; Councilman Schaffer: Yes; Councilwoman Lindsay: Yes; and Mayor Stanczyk: No.

7. COUNCIL COMMENTS

Vice Mayor DuBois raised the matter concerning voting dates. He stated that, inadvertently, some incorrect information regarding the number of voters that frequented the general versus the run-off was provided.

Councilwoman Lindsay stated that it is difficult to do an analysis to determine which date is better for voters. She concluded that the goal is to have the maximum number of residents participate.

Mayor Stanczyk stated that the August primary is not the largest turnout.

Vice Mayor DuBois stated that it makes intuitive sense to believe the August turnout would be second best, ahead of the Regular Palmetto Bay election in November.

8. **NEXT MEETING AND ADJOURNMENT:** The Meeting adjourned at 9:30 p.m.

Prepared and submitted by:


Meighan J. Alexander, CMC
Village Clerk

Adopted by the Village Council on this ^{27th} day of October, 2013.


Shelley Stanczyk, Mayor

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.