

**VILLAGE OF PALMETTO BAY**  
**Minutes of the Regular Council Meeting of December 9, 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  
Interim Village Attorney John R. Herin  
Village Clerk Meighan J. Alexander

Mayor Stanczyk called the meeting to order at 8:10 p.m.

**2. APPROVAL OF MINUTES**

- A. Minutes of the Local Planning Agency Meeting of November 4, 2013
- B. Minutes of the Regular Council Meeting of November 4, 2013

Vice Mayor DuBois moved to approve the Minutes, as submitted. Seconded by Councilman Fiore. All voted in favor. The Minutes were approved unanimously (5-0.)

- 3. REQUESTS, PETITIONS AND PUBLIC COMMENTS:** The following individuals addressed the Council: Don Noe, 6844 SW 145 Terrace; James Woodard, 17001 SW 90 Avenue; David Singer, 8360 SW 154 Terrace; and, Henry Clifford, 8875 SW 171 Street.

**4. CONSENT AGENDA**

- A. A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ATTORNEYS' FEES; APPROVING ATTORNEYS' FEES AND COSTS FOR FIGUEREDO & BOUTSIS, P.A. IN THE AMOUNT OF \$17,754.15; PROVIDING AN EFFECTIVE DATE.
- B. A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO COUNCIL MEETING PROCEDURES; ANNOUNCING THE REGULAR COUNCIL MEETING SCHEDULE; THE LAND DEVELOPMENT PERMIT

HEARINGS; AND, THE BUDGET WORKSHOP FOR THE YEAR 2014; PROVIDING AN EFFECTIVE DATE.

- C. A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO DRAIN CLEANING; AUTHORIZING ENVIROWASTE SERVICES GROUP, INC. TO CONTINUE PROVIDING STORM DRAIN CLEANING SERVICES WITHIN THE VILLAGE OF PALMETTO BAY; AUTHORIZING THE VILLAGE MANAGER TO ISSUE A PURCHASE ORDER IN AN AMOUNT NOT TO EXCEED \$25,000.00; AND PROVIDING FOR AN EFFECTIVE DATE.

Clerk Alexander reported that no one had timely pulled any item from the Consent Agenda.

Vice Mayor DuBois moved to approve the Consent Agenda items. Seconded by Councilwoman Lindsay. All voted in favor. The Resolutions passed unanimously (5-0.)

**7. VILLAGE MANAGER'S REPORT**

Manager Williams provided a report. He advised the Council that staff is continuing discussions with Miami Science Museum and he would expect to offer a presentation in the future. He asked Commander Truitt to come forward.

- A. Village Police Commander Report: Commander Truitt provided a staff report, with crime updates. He invited Council to attend the radKids graduation scheduled for this Friday.

Vice Mayor DuBois asked for the statistics concerning homicides. Commander Truitt advised that unfortunately there were two this year, to date.

Clerk Alexander provided an update concerning the calendar and recent events in Palmetto Bay.

**8. VILLAGE ATTORNEY'S REPORT**

- A. December, 2013 Final Report – Attorney Eve Boutsis: Attorney Herin advised that the former Village Attorney's last report concerning pending items had been provided to the Council. He reported that he had been meeting with staff, working on various ordinances, and also has been working with staff in preparation for the zoning hearing on the 16<sup>th</sup>.

**9. BOARD AND COMMITTEE REPORTS: None at this time.**

**10. RESOLUTIONS**

- A. A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO AD HOC ADVISORY BOARDS; APPOINTING MEMBERS TO THE EDUCATION ADVISORY BOARD; PROVIDING AN EFFECTIVE DATE.

Councilwoman Lindsay moved this item forward. Seconded by Councilman Fiore.

Mayor Stanczyk noted that Ms. Clifford's application had been placed on the dais. Clerk Alexander advised that the application had been received this afternoon and Councilwoman Lindsay desires to nominate this individual who meets the qualifications.

Councilwoman Lindsay moved to revise the Resolution to include Ms. Clifford, in addition to Ms. Cunningham and Ms. Tabor. Seconded by Councilman Fiore. All voted in favor.

Mayor Stanczyk called the question on the motion to approve the three individuals. All voted in favor. The Resolution was adopted (5-0.)

**11. RESOLUTIONS REQUIRING PUBLIC HEARING: None at this time.**

**12. ORDINANCES FOR FIRST READING**

- A. AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY; AMENDING SECTION 30-60.29 OF THE CODE OF ORDINANCES OF THE VILLAGE OF PALMETTO BAY ENTITLED "NOISES" TO PROHIBIT THE NOISE GENERATED BY BACKUP ALARMS ON COMMERCIAL VEHICLES IN THE VILLAGE OF PALMETTO BAY BETWEEN THE HOURS OF 9 PM AND 7 AM ON COMMERCIAL PROPERTIES WITHIN 100 FEET OF A RESIDENTIAL AREA UNLESS A SPECIAL EVENTS PERMIT HAS BEEN ISSUED BY THE VILLAGE; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE. [Sponsored by Vice Mayor John DuBois.]

The Ordinance was withdrawn by Vice Mayor DuBois.

- B. AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, MODIFYING SECTION 30-30.3, "ADMINISTRATIVE (DE MINIMUS) VARIANCES", TO MODIFY THE ADMINISTRATIVE VARIANCE REVIEW CRITERIA AND

PROCEDURES TO BE REFLECTIVE OF PREVAILING COMMUNITY DEVELOPMENT PATTERNS; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Sponsored by Council Person Patrick Fiore].

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

Director of Planning & Zoning Darby Delsalle stated that this matter was initiated by the Council on June 3, 2013 and staff was directed to conduct a study to examine the variance processes. He stated that Councilman Fiore directed a specific review of the administrative variance process. He advised that this ordinance expands the eligibility to apply to multi-family, residential, and commercial uses. Director Delsalle noted that, currently, the process only applies to a single duplex or a single home. He stated that the ordinance currently includes a minimum request parameter of 5% and the proposed modification allows for a minimum request of up to 12 inches, but not to exceed 2 feet or 10% of the requirement. He explained that the current standard requires an applicant to seek a variance for a very small number of inches. He further concluded that a percentage rule is appropriate due to the varying sizes of properties within the Village and that the 10% maximum is sufficient to allow for a proper level of staff discretion. Director Delsalle added that staff revised some of the criteria to include measurable, less subjective, language. He also noted that the notification procedure was expanded to include mailing notification to the surrounding neighbors and allowed a 30-day window to object.

Councilwoman Lindsay noted that the administrative process, if approved, would now include "lot dimension". She asked for clarification of this term.

Director Delsalle explained that the Village has minimum widths, depths and square footage; however, there are some properties un-platted or have a zoning category that was classified under the County Code. He stated that when an applicant comes in to develop a property, they may find that they require plat approval and an adjustment in order to resolve an undersized lot issue.

Councilwoman Lindsay asked for clarification of the language on Page 2, subsection 2: "An administrative variance granted under this section shall be permitted up to minimum of twelve inches".

Director Delsalle advised that a minimum request could be twelve inches. He explained that if you apply the 10% rule on a setback and it is 7 ½ inches, staff will offer at least 12 inches in order to meet a threshold.

Councilwoman Lindsay stated that the sentence continues with language that requires clarification, "An administrative variance granted under this section shall be permitted up to minimum of twelve inches, however shall not exceed ten

percent or two feet into any setback...” She asked if this meant that staff would be measuring by a 10% percent standard, or two feet, or the lesser of.

Director Delsalle replied it would be the lesser of. Councilwoman Lindsay stated that “the lesser of” needs to be stated.

Councilman Schaffer stated that he is supportive of allowing further discretion by staff.

Mayor Stanczyk stated that when the Council sits at the zoning board, they are performing their responsibility as elected officials. She noted that increasing the discretion of staff removes public input and increases the authority of staff. She remarked that the Council will no longer be aware of a variance request. She stated that if someone does not receive a variance from the Council, then they may not have deserved a variance. Mayor Stanczyk concluded that while the hardship variance is a difficult standard, removing the authority of the Council and giving more authority to staff is a serious consideration.

Vice Mayor DuBois stated that he has faith and confidence in staff and the Planning and Zoning Director and believes staff will be familiar with the pulse of the neighborhood. He opined that few variances are requested and is supportive of modifying the Ordinance.

Councilman Fiore thanked Manager Williams, former-Attorney Eve Boutsis, Interim Attorney Herin, and Director Delsalle for their assistance. He stated that this legislation is a measured response and it protects the quality of life in the Village. He opined that when residents come to the Village, they should be able to resolve a simple variance of a few inches. He asked for support.

Councilwoman Lindsay stated that the reason for stability in our neighborhoods is the strong zoning code. She asked Director Delsalle how many administrative variances have been requested recently. Director Delsalle stated that there were several for the shed amnesty; none in 2012; and one in 2013.

Councilwoman Lindsay asked how many were denied. Director Delsalle stated that all were approved. He explained that variance requests to the Council are expensive and, in his opinion, a threshold of 5% is overly restrictive.

Attorney Herin suggested modifying the language, deleting, “shall be permitted to a minimum of twelve inches; however” and insert, “an administrative variance granted under this section shall not exceed ten percent or two feet into any setback”. He stated that paragraph four remains: the requirement that the adjacent property owners give consent. He explained that staff included language for a 30-day time period that will allow an adjacent property owner time to object; and if an objection is received, the administrative variance will be denied.

Councilwoman Lindsay moved to include posting on the property, as well as posting on the website.

Discussion ensued regarding the posting requirement. Attorney Herin clarified that the Council would like to require the property that is seeking the variance to be posting; and, staff will post a notice on the website.

Vice Mayor DuBois moved to clarify the language, as stated by Attorney Herin, and include language in the Ordinance to post the property and provide notice on the website, noting that objections would be received from those within the radius stated by the Code. Councilwoman Lindsay seconded. All voted in favor.

Mayor Stanczyk called the question to approve the Ordinance with modifications. All voted in favor, following roll call vote (5-0.)

- C. AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, MODIFYING SECTION 30-30.6, "VARIANCES", TO PROVIDE FOR VARIANCE REVIEW CRITERIA AND PROCEDURES REFLECTIVE OF PREVAILING COMMUNITY DEVELOPMENT PATTERNS; PROVIDING ALTERNATIVE REVIEW STANDARDS FOR STRICT HARDSHIP AND GENERAL COMPATIBILITY; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE. [Sponsored by Council Person Patrick Fiore].

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

Director Delsalle provided staff report. He explained the criteria, noting that a simple majority vote would be required. He stated that review is based upon the community and the consistency and compatibility with the community.

Vice Mayor DuBois asked for clarification of the meaning of "compatibility of the standards."

Director Delsalle reviewed the eight criteria for compatibility standards.

Vice Mayor DuBois asked if there were the ability for Council to approve based upon some criteria and not others. Director Delsalle replied affirmatively.

Councilman Fiore stated that his intent is for the Council to be able to approve an application if the neighbors agree and it fits into the general character of the neighborhood.

Councilwoman Lindsay expressed her concerns regarding the general compatibility standard. She stated that the criteria must be objective; otherwise,

the Village may find itself in the similar circumstance as Miami-Dade County did in the Omnipoint case of 2002. She expressed support for a super majority vote, if this legislation is approved. She concluded that the subjective nature of the criteria may lead to litigation.

Councilman Schaffer stated that he would prefer the law to be more stringent upon the Council. He also expressed support for a 4/5 vote.

Vice Mayor DuBois asked for Attorney Herin's opinion concerning the suggestion that the modification to the Ordinance would be too subjective.

Attorney Herin stated that anyone may file a lawsuit; however, concerning the Omnipoint case, the primary factor that the Court found objectionable, was that the County was hearing use variances, rather than zoning variances. He opined that with regard to the issue of arbitrary and capricious, when you look at criteria for hardship and compatibility variances, there is an inherent amount of subjectivity. He advised that the Village can craft a compatibility standard to withstand judicial scrutiny. He stated that narrowing the specificity of the hardship compatibility so that it is not too broad would accomplish this.

Councilwoman Lindsay remarked that the current ordinance we have defining a hardship variance is very objective; however, the revised language is not objective.

Following brief comments, Vice Mayor DuBois suggested Attorney Herin and Director Delsalle meet and review the matter, investigating the specificity and objectivity in order to remove subjectivity. He moved to return the matter for first reading for the next Council Meeting, deferring the matter to January 6, 2014. Seconded by Councilman Schaffer. All voted in favor (5-0.)

### **13. ORDINANCES FOR SECOND READING AND PUBLIC HEARING**

- A. AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AMENDING SECTION 30-50.16(B)(44) OF THE CODE OF ORDINANCES RELATING TO PET STORE USE WITHIN THE B-1 ZONING DISTRICT TO SPECIFICALLY REFERENCE THE PROVISIONS OF 30-60.31; AND CREATING SECTION 30-60.31, ENTITLED "RETAIL SALE OF DOGS AND CATS;" TO PROVIDE CONDITIONS RELATING TO THE SALE OF DOGS AND CATS; PROVIDING FOR VIOLATIONS AND A \$250.00 FINE; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE. [Sponsored by Vice Mayor John DuBois.]

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

Councilman Schaffer moved to modify the effective date. Seconded by Councilman Fiore. All voted in favor.

Councilman Schaffer moved to incorporate the staff report, and all comments made at the Local Planning Agency Meeting of December 9, 2013 into this proceeding. Seconded by Vice Mayor DuBois. All voted in favor.

Mayor Stanczyk opened the public hearing. Mr. Eric Tullberg, 7884 SW 179 Terrace, addressed the Council.

Mayor Stanczyk remarked that while she has always rescued her pets, people should be permitted to purchase a pure bred dog if they wish.

Vice Mayor DuBois concurred, adding that the legislation solely regulates retail pet stores.

Mayor Stanczyk called the question. The Ordinance was adopted (4-1), as follows: Mayor Stanczyk: yes; Vice Mayor DuBois: Yes; Councilman Fiore: Yes; Councilman Schaffer: Yes; and Councilwoman Lindsay: No.

#### **14. OTHER BUSINESS**

- A. Request to hear co-designation of SW 144 Terrace between SW 68 Court and SW 68 Avenue as “George Johnson Way” – Councilman Patrick Fiore

Councilman Fiore reminded the Council that resident Don Noe spoke in favor of this co-designation. He stated that while he was not fortunate enough to meet George Johnson, he has heard from others that he was a very conscientious, hard-working man who went beyond his needs to work on improving drainage for his neighborhood. He advised that 13 neighbors signed the petition provided to Council.

Mayor Stanczyk expressed her support. She noted that she understands that residents want to commemorate others, but had hoped they would wait until April when the Ordinances allows for these public hearings.

Councilman Fiore moved to hear the co-designation of SW 144 Terrace between SW 68 Court and SW 68 Avenue in honor of George Johnson in January.

Councilman Schaffer asked what the Village will do to research and verify the information provided. Mayor Stanczyk noted that the Village Clerk can assist Councilman Fiore to research this matter, as the Clerk has assisted in the past.

Clerk Alexander stated that she personally knew Mr. Johnson, but will work with Councilman Fiore to insure the accuracy of the information.

Councilman Schaffer seconded the previous motion. All voted in favor. The motion carried (5-0.)

B. Discussion concerning Michael Muni's website [www.miamidadelostpets.com](http://www.miamidadelostpets.com) – Councilman Patrick Fiore

Councilman Fiore thanked Vice Mayor DuBois and Councilman Schaffer for their efforts in this matter. He also thanked Mr. David Singer for offering a \$500 donation during public comments. He stated that he would like the Council to consider helping this individual with the expenses related to this website and the community-wide effort to assist with lost and found pets.

Mayor Stanczyk mentioned that she had raised the issue many years ago to provide \$500 for the creation of a website by a resident. Manager Williams concurred.

Councilman Schaffer stated that Council needs to be given the correct information in order to insure that the Council is able to provide the funds.

Ms. Carol Muni, 16625 SW 93 Court, addressed the Council. She stated that her son had estimated \$800 for the site.

Mayor Stanczyk remarked that there was \$500 designated in the past. Manager Williams stated that administration is interested in supporting this effort. He remarked that he would work with Mr. Muni to insure the proper paperwork is provided prior to the Village issuing funds.

Vice Mayor DuBois stated that he is supportive of providing the funds appropriately; however, he would like staff to investigate the matter to determine whether it is preferable to have Mr. Muni continue or whether the Village should work with the County or other agencies for this type of website.

Mayor Stanczyk remarked that "Other Business" items are problematic. She stated that while she is supportive of Mr. Muni's "good deed", now the Village is putting this into a different category: a paid job. She noted that Mr. Muni offered to do this and wants to be reimbursed for his expenses. She remarked that compensating Mr. Muni puts this issue into a different category.

Councilman Schaffer stated that we should support this effort, particularly due to the fact that the Village had funds allocated for this in the past.

Vice Mayor DuBois stated that the issue is not only regarding the good deed, it is also the matter that the website is affiliated with the Village. He remarked that Mr. Muni provided a website to the Village, and there is supervision that may be required by the Village in the future.

Manager Williams stated that he was under the impression that this website was clearly not just for the Village, but for the whole County. He remarked that he felt it was simply a contributing donation, like the Village has provided to other entities.

Attorney Herin remarked that the discussion has gone from the idea of providing the equivalent of a grant to help defray the cost, to whether the Village enters into an agreement with this individual in the future. He suggested that if the intent is to provide financial assistance, a Council member can make a motion that this person is providing a public service that is not available otherwise. He stated that the Council gives the Manager the discretion to determine the amount provided. Attorney Herin opined that the Village could revisit the issue in the future.

Following brief comment, Councilman Fiore moved to authorize the Manager to provide \$500 to Mr. Michael Muni as a grant for the public service provided. Councilman Schaffer seconded. All voted in favor. The motion carried unanimously (5-0.)

## **15. COUNCIL COMMENTS**

Vice Mayor DuBois expressed his concerns regarding the length of the workshop and the details provided for the Downtown Redevelopment Task Force project. He asserted that there was a detailed presentation, but insufficient time for dialogue and he believes more opportunity should be given in order to communicate the need to invest. He suggested that the Village consider hiring a professional planning firm to do the documentation and memorialize what has been discussed.

Councilman Fiore stated that there is a Committee of the Whole meeting on January 18<sup>th</sup> and Council could use that opportunity to discuss the matter further.

Manager Williams stated that he will be bringing a report concerning the Museum of Science item to that meeting; however, he will discuss the matter with Mr. Silva and members of the DRTF regarding the status.

Mayor Stanczyk wished all a happy holiday. She encouraged all to attend the town hall meeting concerning the Fire Station and to give generously to the food drive.

**16. NEXT MEETING AND ADJOURNMENT**

The Meeting adjourned at 10:25 p.m.

*Prepared and submitted by:*



*Meighan J. Alexander, CMC  
Village Clerk*

*Adopted by the Village Council on this 6<sup>th</sup> day of January, 2014.*

  
*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.