

VILLAGE OF PALMETTO BAY
MINUTES OF THE ZONING HEARING OF MONDAY, MAY 16, 2016
9705 E. HIBISCUS STREET, PALMETTO BAY, FLORIDA

- 1. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE:** Mayor Flinn called the meeting to order at 7:25 pm. He led the pledge of allegiance. The following members of the Village Council were present:

Mayor Eugene Flinn
Vice Mayor John DuBois
Councilwoman Karyn Cunningham
Councilwoman Larissa Siegel Lara

The following staff members were present:
Village Manager Edward Silva
Village Attorney Dexter Lehtinen
Village Clerk Meighan Alexander
Director of Planning & Zoning Darby Delsalle
Zoning Administrator Travis Kendall

Mayor Flinn led the Council in a moment of silence for Lieutenant George Interian's family, whose wife passed away following a bicycle/motor vehicle fatality.

- 2. Village Attorney Report – Circuit Court ruling in favor of Alexander Montessori School, declaring 75% signature prerequisite for access to zoning hearing unconstitutional**

Village Manager Ed Silva stated that as the Council had indicated that it did not wish to hold "Shade" meetings, he and the Village Attorney had decided to discuss this matter publicly.

Village Attorney Dexter Lehtinen advised that Judge Thomas presided over two hearings and ruled that the 75% rule in the Village's Charter is unconstitutional. He stated that matter was argued on a purely legal issue; no factual arguments were presented. He stated that the Court found that to allow a small portion of the constituents (75% of residents within 2,000 feet of a school) to control a legislative decision is an unconstitutional delegation of authority. He further noted that single parcel zoning matters are quasi-judicial; therefore, the first judicial determination is the Village Council, with appeal being made to the Miami-Dade County Circuit Court, appellate division. Attorney Lehtinen noted that the Court also ruled that the Village's Charter provision prohibits the private school's constitutional right of access to court, meaning that as the 75% rule says the applicant cannot appear before the Council without receiving 75% of the vote within 2000 feet. He stated that the Court's ruling is only final 30 days following signature, if not appealed.

Mayor Flinn asked that as the Council is charged with defending the charter, what is the Village's obligation.

Vice Mayor DuBois asked if the unconstitutional ruling would apply if a lower threshold were in place.

Attorney Lehtinen stated that the unconstitutional ruling would apply if a lower threshold were in place. He opined that with respect to defense of the charter, there are attorney generals and some others in government who will not defend a legislative act, if the governing body believes it is inappropriate. He stated that absent a blatantly wrongful acts, such as a law in the State of Virginia that said blacks and whites couldn't marry, this Charter provision does not rise to the level that the Village should not defend it. Attorney Lehtinen noted that the Council had previously decided that the Village should defend the matter and in Court, and his office did. He stated that if the Council feels it should appeal the matter, that would be sensible; however, as it was defended once, the Council could also reasonably decide not to appeal. He stated that he believes the matter can be defended in good faith; however, the Attorney General's opinion concerning the constitutional right to court was shared by the Judge, which means that it is less likely the Village will win, but they may.

Councilwoman Cunningham asked if Attorney Lehtinen had a recommendation. Attorney Lehtinen replied that the appeal will not be expensive, as the matter is a pure matter of law; there will not be a need to schedule depositions. He stated that as a professor of constitutional law, he would probably not seek appeal; however, he also would not recommend against appeal, as the appellate court could rule in favor.

Mayor Flinn stated that this provision was a citizen's initiative, with a large number of signatures received on the initial petition. He noted that a good campaign to reduce the threshold number was held and it was defeated, even though narrowly.

Attorney Lehtinen stated that the appeal period is 30 days from last Monday.

Vice Mayor DuBois moved to appeal the matter. Second by Mayor Flinn.

Vice Mayor DuBois asked for an estimated cost. Attorney Lehtinen advised that the matter would cost approximately \$20,000.

Attorney Jerry Proctor, on behalf of the Alexander Montessori School, asked to address the Council.

Following brief remarks, Attorney Lehtinen stated that there would not be any issue with Attorney Proctor addressing the Council.

Attorney Proctor opined that this matter concerns a class of property owners is being denied this same opportunity to appear before the judicial body that every other property owner has. He concluded that the matter is about fairness, as a private school is unable to ask for one additional student before the Council.

Mayor Flinn called the question to approve. The matter passed (3 to 1, Councilwoman Siegel Lara opposed.)

Attorney Lehtinen stated that he would begin the process and welcomes any amicus briefs that may be submitted by any supporters.

Councilwoman Cunningham asked if the provision would be removed from the Charter, if the appeal is not successful for the Village. Attorney Lehtinen stated that the language would remain; however, it would not be enforceable.

Vice Mayor DuBois noted that the Village electorate may be able to remove it from the Charter, if the question is placed on the ballot for removal and the vote is positive to remove it.

3. **Reading of decorum statement/Swearing in of witnesses:** The Clerk read the decorum statement. Attorney Lehtinen swore in those individuals who wished to speak.
4. **Approval of Minutes:**
 - a. April 18, 2016 Zoning Hearing: Councilwoman Cunningham moved to approve the Minutes. Seconded by Vice Mayor DuBois. All voted in favor. The Minutes passed unanimously (4-0.)
5. **Public Hearing Item:**

ITEM 1: The following item is being considered pursuant to Division 30-110 of the Village's Land Development Code:

Applicant: Grace Pentecostal Church of Miami, Inc.
Folio: 33-5032-004-2720
File #: VPB-14-002
Location: 17510 South Dixie Highway
Zoned: Downtown Urban Village
Request: Approval of a site plan establishing a place of worship to include variances reducing the required south side setback from 50 feet to .5 feet and reducing the required west side setback from 50 feet to 42 feet.

Vice Mayor DuBois moved this matter forward. Seconded by Councilwoman Cunningham.

Councilwoman Siegel Lara asked if the DUV designation considers places of assembly.

Planning & Zoning Director Darby Delsalle noted that within the DUV code, many of the uses are prescribed specifically; however, there is a section that noted whenever there are uses that are not prohibited, a public hearing is required to established that usage. Attorney Lehtinen stated that the DUV code language replaced everything specific to the downtown zoning district; however there are village-wide codes that govern places of public assembly.

Councilwoman Siegel Lara asked if the DUV code requires a 50' setback. Attorney Lehtinen stated that the Village-wide code requires that setback.

Following brief comment, Councilwoman Siegel Lara moved to deter this hearing until such time as the Village has had the opportunity to revise the code, as the general regulation does not appear valid in this area.

Mayor Flinn asked if a variance might be requested in this area again due to this non-specificity in the DUV area. Director Delsalle replied that it might occur. Mayor Flinn suggested that the Village consider reviewing the matter, adding that he is supportive of Councilwoman Siegel Lara's motion.

Vice Mayor DuBois asked if the Village were to proceed with the variance and the Council granted the variance, would this be setting a precedent. Attorney Lehtinen stated that the standard for variance is hardship. He added that it is true that due the peculiarity of the public assembly code, the Council would have to find a hardship for this church and that would become a precedent that would define what the Council may consider hardship in the future. He concluded that if the Council considers correcting the law, the Church would not be applying for a deviation from the law, they would apply for consistency with the law.

Following brief comment, Councilwoman Cunningham asked if the Council can add to the deferral that the Church may be permitted to continue to operate until the matter is decided. Mayor Flinn concurred. She asked when the matter came to staff. Director Delsalle explained that the matter came forward in 2014.

Councilwoman Cunningham stated that during staff's review, when it was apparent that a legislative change might have been necessary, the correction in the Code should have been brought to the Council.

Councilwoman Siegel Lara moved to defer the matter to September 26th and allow the Church to operate while the deferral is ongoing. Councilwoman Cunningham seconded the motion.

Attorney Lehtinen stated that the motion is legally sufficient.

All voted in favor of the motion (4-0.)

The Church's pastor came forward and it was explained that the matter would be addressed legislatively. Mayor Flinn asked him to meet with the Village's Planning and Zoning Director.

ITEM 2: The following item is being considered pursuant to Division 30-80 of the Village's Land Development Code:

Applicant: Maku Home Developers Inc.
Folio: 33-5027-000-0771
File #: VPB-16-002
Location: 7980 SW 160th Street
Zoned: E-M
Request: A request to plat the East 152 feet of the North 160 feet of the west 304 feet of the NW ¼ of the NE ¼ of the NW ¼ of the SE ¼ of section 27 township 55 South, Range 40 East lying and being in Miami-Dade, Florida.

Councilwoman Siegel Lara moved this item forward. Seconded by Councilwoman Cunningham.

Mayor Flinn asked if this matter was ministerial or quasi-judicial. Attorney Lehtinen stated that it would be ministerial; however, it is appropriate to provide disclosures.

Vice Mayor DuBois stated he had not been contacted. Mayor Flinn noted that he would remain fair and impartial and did not have any disclosures. Councilwoman Cunningham stated that she, too, would be fair and impartial and did not communicate with anyone regarding this matter. Councilwoman Siegel Lara noted that she would be fair and impartial and did not have any disclosures.

Zoning Administrator Travis Kendall provided staff report, stating that this is a single family lot zoned EM, which is seeking to dedicate the street right of way to Village. He stated that this is the only remaining parcel not platted in the neighborhood and is consistent with other parcels. He stated that staff recommends approval.

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

Mayor Flinn asked if platting this parcel would resolve any issues with regard to sidewalks, utilities and easements. Mr. Kendall stated that it would. Attorney Lehtinen and Manager Silva concurred.

Mayor Flinn called the question to approve the matter. Following roll call vote, the matter passed unanimously (4-0.)

The meeting adjourned at 8:15 pm.

Prepared and submitted by:

Meighan J. Alexander, CMC
Village Clerk

Approved by the Village Council on this ____ day of June, 2016.

Mayor Eugene Flinn

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.