PLANNING AND ZONING COMMISSION AND LOCAL PLANNING AGENCY
RECORD AND REPORT
TOWN HALL – COUNCIL CHAMBERS – SECOND FLOOR
360 S COUNTY ROAD, PALM BEACH
TUESDAY, APRIL 16, 2013, 9:00 a.m.

Please be advised that in keeping with a recent directive from the Town Council, the minutes of all Town Boards and Commissions will be "abbreviated" in style. Persons interested in listening to the meeting, after the fact, may access the audio of that item via the Town's website at www.townofpalmbeach.com or may obtain an audio recording (tape or CD) of the meeting by contacting Debby Morakis, Secretary to the Planning & Zoning Commission at (561) 227-6411. As a point of reference, you will find the recording times listed on these minutes at the beginning of each item.

I. CALL TO ORDER AND ROLL CALL (9:30:08 a.m.)

Chair Rose called the meeting to order at 9:30 a.m. On roll call, Commission Members present were:

C. Tanner Rose, Chair
Leslie Shaw, Vice Chair
Floyd Wideman, Member
Martin Klein, Member
Lewis Crampton, Member
Bobbie Lindsay Buck, Member
Jeffrey Cloninger, Alternate Member
Bruce Langmaid, Alternate Member
Thomas Greenbaum, Alternate Member

Commission Members absent were:
Angela D. Usher, Palm Beach County School Board, Member

Staff Members present were:
John Page, Director of Planning, Zoning, Building
Paul Castro, Zoning Administrator
Debby Morakis, Secretary to the Planning & Zoning Commission

For the record, Alternate Member Cloninger voted due to the vacancy caused by the resignation of Mr. Lawrence.

II. INVOCATION AND PLEDGE OF ALLEGIANCE (9:30:15 a.m.)

Ms. Morakis led the Commission with the invocation and Pledge of Allegiance.

III. APPROVAL OF THE AGENDA (9:32:17 a.m.)

MOTION BY MR. KLEIN FOR APPROVAL OF THE AGENDA.
THE MOTION WAS SECONDED BY MR. CRAMPTON.
MOTION CARRIED UNANIMOUSLY WITHOUT BENEFIT OF A ROLL CALL.

IV. COMMENTS FROM THE PUBLIC ON ANY ITEM NOT ON THE AGENDA (9:32:34 a.m.)

Comments were heard from Mr. Cooley of 8 Windsor Court. Mr. Cooley stated that he felt that Mr. Pucillo's presentation and lobbying of this Commission was improper and asked that each Commission member be sworn in and that Mr. Rose and Mrs. Buck recuse themselves as they had already made up their minds when the item was before the Royal Poinciana Way Committee. Mr. Cooley added that he felt the legal notice was faulty since it did not mention that it was for the Testa family.

Chair Rose noted that he, as Chair of the Planning and Zoning Commission and Local Planning Agency, asked Mr. Pucillo, as the Chair of the Royal Poinciana Way Committee, to address the Commission for informational purposes. Chair Rose stated that this was not a judicial hearing and it was not necessary for anyone to be sworn in, adding that since there was a court reporter present, a challenge could be filed regarding the notice of hearing dispute.

Mr. Castro noted that the Palm Beach County School Board Member of the LPA had been invited to and provided backup for the meeting but responded that they would be unable to attend. Mr. Castro stated that the Testa application was separate from what was in front of the Commission today and explained that this Commission had made a recommendation to Council regarding the Testa application, Council did not like the application from the Testa family, deferred that application, and, appointed an ad-hoc Committee to review proposed changes to the same area that were different from the Testa application.

Mr. Page noted for the record that a similar question regarding exparte announcements had been posed to Council the previous week and Attorney Randolph had indicated that the actions of the Planning and Zoning Commission were legislative and not quasi-judicial and therefore exparte would not be required.

V. APPROVAL OF MARCH 19, 2013 PLANNING AND ZONING COMMISSION/LOCAL PLANNING AGENCY MINUTES (9:38:47 a.m.)

MOTION BY MR. KLEIN FOR APPROVAL OF THE MINUTES.
MOTION SECONDED BY MR. SHAW.
MOTION CARRIED UNANIMOUSLY WITHOUT BENEFIT OF A ROLL CALL.

Chair Rose noted that further discussion of the list of potential future study items was tabled until after the May meeting.

VI. CONSIDERATION OF PROPOSED PUD-5 ZONING TEXT AMENDMENTS AND COMPREHENSIVE PLAN AMENDMENTS (9:38:59 a.m.)

a. Presentation from Michael Pucillo, Town Council and Chairman of the Royal Poinciana Way Committee. (Dr. Jane Day, consultant, will also be available to respond to questions).

Michael J. Pucillo, 224 Dunbar Road, Chair of the Royal Poinciana Way Committee and Council Member presented the Commission with an explanation of the Royal Poinciana Way Committee's recommendations and provided a synopsis of the resulting PUD-5 Zoning Text Amendments and Comprehensive Plan Amendments being proposed. Mr. Pucillo explained how the Committee decided to focus on a PUD concept for the area, and, with the assistance of Dr. Jane Day, who provided extensive research to create the Contributing Building Report which would become part of the PUD-5 code provisions. With assistance from design expert Steven Mouzon, four categories were created: Historically and Architecturally Contributing, Architecturally Contributing, Urbanistically Contributing, and, Non-Contributing.

Zoning Administrator, Paul Castro, assisted Mr. Pucillo with a power point presentation that included photographs of each property in the district and further explained and demonstrated examples of each category, describing what development might take place using the PUD-5 plan. Mr. Pucillo explained that PUD-5 development applications would be reviewed by the Planning and Zoning Commission and the Landmarks Commission for recommendation for approval by Council.

Chair Rose thanked Mr. Pucillo for his presentation and asked that he and Dr. Day stay to answer any questions from the Commission.

b. Comments and/or questions from the Commission.

Mr. Cloninger asked several questions including whether a performance bond would be required for any development using the PUD-5; how many total new condominium units could be expected including any grandfathered existing units; would access onto Royal Poinciana Way be allowed for the Breakers PUD; and, if a parking and traffic study was done to consider what would happen with the Breakers PUD being approved. Comments were heard from Messrs. Pucillo and Page, who explained how the current code had been amended in 2009 requiring a demolition bond. Mr. Pucillo explained a chart in the backup material that compared existing C-TS density limitations with the PUD-5 limitations. Mr. Castro noted that the Breakers PUD would have only limited access onto Royal Poinciana Way.

Comments were heard from Mr. Crampton regarding the contributing building report and he asked whether a decision regarding an application could survive a challenge. Mr. Pucillo answered that he felt the proposed language had more teeth than the existing Landmarks Ordinance. Mr. Page noted that once an application was submitted it would be reviewed by the Planning and Zoning Commission, the Landmarks Commission and finally approved by Council.

Mr. Klein thanked Mr. Pucillo and the Royal Poinciana Way Committee for doing a wonderful job and stated that he liked the concept and was intrigued by the idea that density might be reduced. Mr. Klein stated that he felt the PUD-5 regulations were better in concept than existing zoning in place today.

Mr. Castro used a power point map that demonstrated existing and proposed densities and access points for the Breakers PUD.

Comments were heard from Mr. Shaw who stated that he wondered what the Commission's role would be since the Planning and Zoning Commission could not make anything more than recommendations to Council. Mr. Shaw asked whether a building could be demolished and development under the PUD-5 could be applied for on vacant land. Mr. Pucillo explained that provisions were included in the PUD-5 language that would prohibit redevelopment using the PUD-5 regulations after demolition for a period of five years. Additional comments were heard from Mr. Shaw and Mr. Pucillo regarding the flexibility in the Landmark code that dealt with disintegrating properties. Discussion continued regarding completion bonds and demolition bonds. Mr. Castro explained that Council looked at the actual implications of a completion bond in 2007 and at that time decided that the Town did not want to get into the business of finishing projects, nor did the Town have the legal authority to trespass in order to complete a project. The Town decided that if a project was not done, then demolition bond funds would be available to demolish and sod a property. Mr. Shaw then asked specifically what the Planning and Zoning Commission would do relative to PUD-5 applications. Mr. Pucillo stated that he felt the Planning and Zoning Commission would make sure everything was in conformity with the zoning code and PUD-5 requirements, noting that the process for PUD approval was being revised for all PUD's.

Comments were heard from Mr. Greenbaum who complimented Mr. Pucillo on his presentation adding that he felt the work of the Royal Poinciana Way Committee set a precedent and should be how the Town handled big issues in the future.

Mr. Wideman also thanked Mr. Pucillo for his presentation and noted that it did a lot to assuage 99% of his concerns about what he felt was wrong with the proposal. A discussion ensued regarding the decision to use the Landmarks Commission rather than the Architectural Review Commission to review PUD applications. Mr. Wideman asked what this PUD-5 did for other citizens of the Town. Comments were heard from Mr. Pucillo who explained improvements he felt might be added to the area including the elimination of an unsightly parking lot, the creation of a more walkable and pedestrian-friendly street with the elimination of curb cuts to name a few.

Ms. Buck commented that she felt being on the Committee was all about "what's in this for the Town." Ms. Buck added that she felt personally felt it was all about restoration and preservation of our "main street".

c. Comments and/or question from the Public.

Chair Rose noted for the record that he wished to waive the three minute rule for citizen comments, within reason.

William Cooley, 8 Windsor Court, asked how a developer could cut a building in two and develop the back. Mr. Rose explained that only certain buildings could be developed that way and that would have to be approved by Planning and Zoning Commission, Landmarks Commission and Council. Mr. Cooley then distributed material to the Commission which included a copy of a memo to Michael Pucillo from Attorney Randolph dated October 11, 2012, his response memo dated October 14, 2012, a copy of FS 163.3161, FS 133.3194, and, a series of pages from the Palm Beach Comprehensive Plan with his comments on each page as to the reason why all these changes in the Plan are necessary if the Commission recommends adoption of the PUD-5. Mr. Cooley then read a prepared statement into the record.

Alexander Ives, 237 Jamaica Lane, Executive Director of the Preservation Foundation and Member of the Royal Poinciana Way Committee, stated that he has always been a part of and lived in this community. Mr. Ives stated that both he and the Foundation take this very seriously and felt it was very clear that this proposal would result in a net decrease in density. Mr. Ives added that he felt this was a wonderful proposal and hoped it moved forward.

Audrey Bender, 330 South Ocean Blvd., stated that she felt a historic, functioning, successful street was being torn up. Ms. Bender described her move to Palm Beach from Naples and her unpleasant experience with the development there. Ms. Bender provided pictures to the Commission of development in Naples and asked the Commission to not approve the plan adding, "Please, don't Naple-ize Palm Beach."

Jay Denger, Manager of the Leveret House Condominium at 120 Sunset Avenue, and, the Parc Regent Condominium at 184 Bradley Place. Mr. Denger stated that he and members of his Association have followed the planning for the area for many years and have always recognized that something needed to be done there. Mr. Denger added that he believed what was being presented was a good plan and added that they had concerns of a canyon effect that might occur on Sunset Avenue from a zero setback up three stories and wondered if there would be a process that could minimize that affect.

Raychel Lorenzen, 216 Garden Road, on behalf of the Neighborhood Alliance of Palm Beach, explained that NAPB had hired land-use zoning lawyer Nancy Stroud to review the proposed PUD-5 and give her opinion. Ms. Stroud was not in favor of the proposed regulations and recommended instead the creation of a subset in the C-TS Zoning District. A copy of Ms. Stroud's opinion, a draft of what the proposed zoning would look like, and, a chart to compare the PUD-5 and the zoning sub-set were distributed to the Commission. Ms. Lorenzen noted that NAPB also hired Architect Anna Galvert to present graphically the existing massing of buildings on Royal Poinciana Way compared to what is being proposed in the PUD-5 and what is proposed in the zoning sub-set. Copies were distributed to the Commission and Ms. Lorenzen urged the Commission to reject the PUD-5 proposal.

Susan Watts, 455 Worth Avenue, spoke in opposition of the PUD-5 proposal and urged the Commission to not endorse it.

Bob Moore, Consultant for the Civic Association, stated that his previous history with the Town went back to 1981 and that he had experience with working with the various PUDS' in the Town. Mr. Moore spoke about the Breaker's PUD which would be coming back to the Planning and Zoning Commission in 2025. Mr. Moore noted that this Commission would get the first shot at the negotiation process on any application submitted. Mr. Moore stated that the sub-set proposed would be nothing more than an overlay and further explained why the Landmarks Commission would be the appropriate body to review applications. Mr. Moore agreed with Mr. Klein that was a tremendous job done by the Royal Poinciana Way Committee and staff over almost a year. Mr. Moore added that he felt the Committee brought what he and the Civic Association consider to be a "plus" to the Council. "There are holes in every project and concept. The question is can you find more right with it or more wrong with it and I believe you will find more right with it with this PUD-5 concept than you will find wrong."

Anita Seltzer, Cocoanut Row, addressed a procedural question asking when and how the Planning and Zoning Commission functions as the Local Planning Agency and asked what the probable time table for progression of this PUD was.

Chair Rose stated that he anticipated the Commission would be able to move forward today and vote on an ordinance possibly in May.

Mr. Castro explained that the Commission was appointed by the Town Council as the Local Planning Agency to consider any legislative proposals related to the Comprehensive Plan and zoning text changes. As part of that and as advertised, the Planning and Zoning Commission, as the LPA today, with an invitation to the Palm Beach School District as required, as a result of the proposal having an increased density. Today, or at a subsequent meeting, the Commission would direct staff to draft an ordinance based upon whatever action taken, and, by statute notice the meeting as the LPA to consider any ordinance so that you could make a recommendation on those proposals as brought to you in ordinance form.

Chair Rose declared the Commission in executive session and called for comments from the Members.

Mr. Shaw stated that he felt the Commission was given a good and comprehensive plan. Mr. Shaw stated that he was not concerned with density or parking and liked the plan with the exception of building heights.

Mr. Wideman stated that he had now changed his mind based on Mr. Pucillo's presentation, adding that he felt the Commission should move forward and approve the proposal. Mr. Wideman added that he felt few land owners would take advantage of the proposal.

Mr. Klein concurred with Mr. Wideman adding that he felt this proposal would preserve the small town atmosphere and character and hoped the Commission would recommend approval today.

Mr. Crampton stated that he felt the proposed solution was "just right" adding that he felt the Commission ought to move forward and let Council decide.

Ms. Buck stated that the Committee had a lot of discussion regarding height and it was clear to her that more buildings, not less, were contributing to the characteristics on the street. Ms. Buck added that she felt the proposed language would give the Commissions the muscle needed and included strong language regarding mixed uses.

Mr. Cloninger stated that he was concerned about increased height and density and felt the proposal was the worst idea he would see in his lifetime and a mistake that he would not vote in favor of.

Mr. Langmaid stated that he had an open mind, felt Mr. Pucillo had done a fantastic job, and, this was a tough decision.

Mr. Greenbaum complimented the Committee on a job well done, adding that he did not agree with Mr. Cloninger and felt nothing would change dramatically. Mr. Greenbaum stated that he felt it was a great idea the Commission should vote on.

Chair Rose addressed Mr. Shaw's concern regarding bulk and a discussion ensued with comments heard from Messrs. Wideman and Shaw. Mr. Shaw suggested the agreement be bifurcated, removing Ch. 134-692. After further discussion, the following motion was made:
MOTION BY MR. SHAW THAT CH. 134-692 IS BIFURCATED. MOTION DIED FOR LACK OF A SECOND.

Discussion continued. Mr. Castro asked the Commission to provide direction regarding the mixed use development and requiring a residential component as part of the PUD-5. Mr. Castro explained there was nothing in the language requiring a residential component to qualify for the PUD-5. Ms. Buck stated that she did not want to require a residential component and stated that she recalled there being only a small accessory component being residential.

MOTION BY MR. KLEIN THAT THE PLANNING AND ZONING COMMISSION RECOMMEND THAT COUNCIL APPROVE THE PUD-5 CONCEPT (WITHOUT ADDING ANY RESIDENTIAL COMPONENT AS MENTIONED BY MS. BUCK), THE ZONING TEXT AND COMPREHENSIVE PLAN AMENDMENTS.

Chair Rose asked that the motion be amended to include a sunset provision of eight or nine years to allow for bridge construction. After discussion, Mr. Rose withdrew his requested amendment. Mr. Castro stated that the motion should be to direct staff to draft an ordinance to bring back to the Commission at their May 21meeting at 9:30 a.m. Mr. Castro noted that there would be two ordinances, one for the Comprehensive Plan Amendments, and another for the Zoning Text Amendments. Mr. Klein agreed.

MOTION SECONDED BY MR. CRAMPTON. MOTION CARRIED 4-3, WITH MESSRS. SHAW, WIDEMAN AND CLONINGER OPPOSED.

Mr. Castro noted that ordinances would be drafted and would come back to the Commission (as the LPA) on Tuesday, May 21, notices would be posted and advertised. Mr. Wideman stated that he was confused about what was just voted on and why another meeting would be required. Mr. Castro explained that statute required specific ordinances be considered by the Commission incorporating their recommendations. Mr. Wideman stated that he wished to change his vote to "yes" in favor of the motion.

MOTION CARRIED 5-2, WITH MESSRS. SHAW AND CLONINGER OPPOSED.

VII. COMMENTS OF THE PLANNING AND ZONING COMMISSION AND PLANNING, ZONING AND BUILDING DIRECTOR (12:48:36 a.m.)

For the record, Mr. Castro noted that a member of the School District would be invited to the May 21 meeting, as required by Statute.

VIII. ADJOURNMENT (12:48:53 a.m.)

MOTION TO ADJOURN BY MR. KLEIN AT 12:48 P.M.
MOTION SECONDED AND CARRIED.

Respectfully Submitted,

C. Tanner Rose

C. Tanner Rose, Chair
Town of Palm Beach
Planning & Zoning Commission

Leslie A. Shaw, Vice Chair
Town of Palm Beach
Planning & Zoning Commission