

MINUTES
LANDMARKS PRESERVATION COMMISSION
WEDNESDAY, JUNE 18, 2008 AT 9:00 A.M.
AT THE TOWN COUNCIL CHAMBERS, 360 SOUTH COUNTY ROAD, PALM BEACH

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 Cindy Delp, Secretary to the Landmarks Preservation Commission at (561) 227-6408. As a point of reference, you will find the recording times listed on these

I **CALL TO ORDER:** Chairman Pandula called the meeting to order at 9:01 a.m.

II **ROLL CALL:**

PRESENT: Eugene Pandula, Chairman
William Lee Hanley, Vice Chairman
Patrick Segraves, Secretary
Robert Eigelberger, Member
Eileen Bresnan, Member
Hazel Rubin, Member
Charles S. Roberts, Member
D. Imogene Willis, Alternate Member
Dudley L. Moore, Jr., Alternate Member
Wallace Rogers, Alternate Member
John C. Randolph, Town Attorney
John S. Page, Director of Planning Zoning & Building
Timothy M. Frank, Planning Administrator
Jane S. Day, Staff Preservation Consultant
Cynthia M. Delp, Recording Secretary

ABSENT: None

III **APPROVAL OF THE MINUTES OF THE MAY 21, 2008 MEETING: (0:01:29.0)**
MOTION BY MR. HANLEY FOR APPROVAL OF THE MINUTES.
MOTION SECONDED BY MRS. BRESNAN.
MOTION CARRIED UNANIMOUSLY.

IV **ADMINISTRATION OF THE OATH TO PERSONS WHO WISH TO TESTIFY:**
By Mrs. Delp

V **APPROVAL OF THE AGENDA: (0:01:56.2)**
MOTION BY MRS. BRESNAN FOR APPROVAL OF THE AGENDA.
MOTION SECONDED BY MR. SEGRAVES.
MOTION CARRIED UNANIMOUSLY.

VI **COMMENTS FROM THE PUBLIC: None (0:02:08.5)**

VII **OTHER BUSINESS: (0:02:24.0)**

A. **Informal Review: 350 Worth Avenue, The Everglades Club (deferred from April & May)**
(In conjunction with Special Exception #6-2008 with Site Plan Review and Variance)

In four phases, from May 1 to Nov. 1 of calendar years 2009 to 2012, demolish existing one-story 14,072 sq. ft. kitchen additions. Construct corresponding portions of proposed 30,496 sq. ft. two-story kitchen addition. Phase I to house new vertical circulation, exterior access, Dish Room, Electrical/Mechanical Rooms, Bathrooms. Phase II to house Main Kitchen facilities, Elevator, Bake Shop, removal and reconstruction of existing unreinforced masonry Bell Tower. Phase III to house Main Kitchen facilities, Bathrooms, Loading Dock slips, Freight Elevator, exterior access, Issue Office, Mechanical Room. Phase IV to house vertical circulation, exterior access, Elevators, Bathrooms, Wine Cellar, Flower Shop, Trash, Electrical/Mechanical Rooms, Employee Dining, Pedestrian Arcade, Future Offices, Future Laundry. Massing, ornamentation, and materials palette to be drawn from the original elements of the existing building. Existing kitchen additions extend into Worth Avenue right-of-way, offer no sidewalk along Worth Avenue, and are architecturally inconsistent with the style and massing of the original building that is to remain. Right-of-way encroachments to be eliminated, sidewalk and landscaping along Worth Avenue to be added to complement new construction. Multiple existing rooftop a/c systems to be replaced with freestanding enclosed cooling tower adjacent to existing generator enclosure.

Please note that at the April meeting there was a motion to defer this informal review project to the May meeting for re-study to make the bell tower more visible, and to re-visit the second floor office space; and that the architect shall bring back the model for use during the presentation. At the May meeting, the applicant's representative requested deferral to the June meeting. Since that time, a letter dated May 22, 2008 was received from Maura Ziska, on behalf of the Everglades Club, requesting that the project be withdrawn.

MOTION BY MR. EIGELBERGER TO WITHDRAW THIS INFORMAL REVIEW.
MOTION SECONDED BY MR. SEGRAVES.
MOTION CARRIED UNANIMOUSLY.

VIII **PUBLIC HEARINGS: (0:03:04.0)**

- A. **Application for Certificate of Appropriateness #6-2008, (deferred from May)**
Reconstruction, addition, demolition, landscape/hardscape
Owner/Applicant: Everglades Club, Inc.
Address: 356 Worth Avenue
Project Description: In four phases, from May 1 to Nov. 1 of calendar years 2009 to 2012, demolish existing one-story 14,072 sq. ft. kitchen additions. Construct corresponding portions of proposed 30,496 sq. ft. two-story kitchen addition. Phase I to house new vertical circulation, exterior access, Dish Room, Electrical/Mechanical Rooms, Bathrooms. Phase II to house Main Kitchen facilities, Elevator, Bake Shop, removal and

reconstruction of existing unreinforced masonry Bell Tower. **Phase III** to house Main Kitchen facilities, Bathrooms, Loading Dock slips, Freight Elevator, exterior access, Issue Office, Mechanical Room. **Phase IV** to house vertical circulation, exterior access, Elevators, Bathrooms, Wine Cellar, Flower Shop, Trash, Electrical/Mechanical Rooms, Employee Dining, Pedestrian Arcade, Future Offices, Future Laundry. Massing, ornamentation, and materials palette to be drawn from the original elements of the existing building. Existing kitchen additions extend into Worth Avenue right-of-way, offer no sidewalk along Worth Avenue, and are architecturally inconsistent with the style and massing of the original building that is to remain. Right-of-way encroachments to be eliminated, sidewalk and landscaping along Worth Avenue to be added to complement new construction. Multiple existing rooftop a/c systems to be replaced with freestanding enclosed cooling tower adjacent to existing generator enclosure.

Please note that this formal review of this item will have to be deferred. The Town Council is awaiting the result of the LPC's informal review of the matter. At the May meeting, the applicant's representative requested deferral to the June meeting. Since that time, a letter dated May 22, 2008 was received from Maura Ziska, on behalf of the Everglades Club, requesting that the project be withdrawn.

MOTION BY MR. EIGELBERGER TO WITHDRAW THE PROJECT FROM THE AGENDA.

MOTION SECONDED BY MR. HANLEY.

MOTION CARRIED UNANIMOUSLY.

(0:03:45.0)

B. Application for Certificate of Appropriateness #7-2008, (deferred from May) Details

Owner/Applicant: Mitchell & Hilarie Morgan

Address: 343 El Bravo Way

Architect: Mario Nievera Design Inc.

Project Description: Request approval of the following:

1. Proposed wing wall(s) details
2. Driveway gates details
3. East wall fountain details
4. Other associated changes as presented

CALL FOR DISCLOSURE OF EX PARTE COMMUNICATION.

Please note that this matter was approved at the May meeting, but the applicant was to return with the ornamental tile for the fountain, a lighting plan, and the modification of the driveway apron.

Mr. Keith Williams of Mario Nievera Design Inc. stated that they have been unable to prepare a presentation as the client has been out of town until now. He was confident they would be ready for a July presentation.

MOTION BY MR. EIGELBERGER FOR DEFERRAL TO THE JULY MEETING.

MOTION SECONDED BY MR. SEGRAVES.

MOTION CARRIED UNANIMOUSLY.

- C. Application for Certificate of Appropriateness #9-2008, (deferred from May)
Addition to historic structure (0:04:49.0)
Owner/Applicant: The Breakers Palm Beach Inc.
Address: 1 South County Road
Engineer: Mactec Engineering
Project Description: Request approval of addition to historic structure which is further described as: T-Mobile proposes to install a wireless support facility at the Breakers Hotel that will consist of antennas to be installed by concealing them behind concealment panels similar in appearance to panels that are part of the existing architecture/design of the hotel. The associated electronic equipment for the installation is to be placed in a leased 207 sq ft area in the equipment room specifically designed for such installations, and located on the attic floor level of the hotel. Other associated changes as presented.

CALL FOR DISCLOSURE OF EX PARTE COMMUNICATION.

Please note that this matter was deferred from the May meeting to the June meeting for lack of approval from the State Historic Preservation Office.

Ms. Amy O'Rourke was present to request a deferral to the July meeting. It was her understanding that the State Historic Preservation Office was proceeding with their review of this application.

MOTION BY MR. EIGELBERGER TO DEFER THE PROJECT TO THE JULY MEETING.

MOTION SECONDED BY MR. SEGRAVES.

MOTION CARRIED UNANIMOUSLY.

- D. Application for Certificate of Appropriateness #10-2008, (0:05:34.0)
Driveway changes
Applicant: Mr. and Mrs. David H. Koch
Owner: David H. Koch, Trustee of the David H. Koch 2003 Trust
u/a/d 1/24/03
Address: 150 South Ocean Boulevard a/k/a 140 South Ocean Blvd. and/or
150/158 South Ocean Boulevard
Architect: Thomas M. Kirchhoff, AIA, P.A.
Project Description: Request approval of exterior demolition and other which is further described as: Driveway relocation: Abandon one curb cut on Clarke Avenue, and relocate other curb cut and driveway on Clarke Avenue westward, per one of the four options below, in descending order of preference. Relocated driveway will simplify access to the required garage storage for two vehicles which is located on west side of subject property. Option A involves demolition of both accessory structures (pavilions) but locating an orchid house behind the gate; Option B involves demolition of the northern accessory structure (pavilion) but locating an orchid house behind the gate; Option C involves relocation of both accessory structures (pavilions) to frame the driveway and locating orchid house behind the gate (Town staff notes that Option C requires a variance and cannot be considered under this Certificate of Appropriateness application.) ; or Option D involves keeping both of the accessory structures (pavilions) in their existing locations, but locating an orchid house behind the gate. Other associated changes as presented.

CALL FOR DISCLOSURE OF EX PARTE COMMUNICATION:

Mr. Roberts stated that he spoke with Mr. Koch and Mr. Ross, both architects, and has visited the property. Mrs. Bresnan spoke with Mr. Koch by phone, Mr. Ross in person, and both architects. Mr. Segraves met with Mr. Ross and his architect, spoke to Mr. Kirchhoff by phone, and has reviewed the e-mails from Mrs. Delp relative to correspondence received. Mr. Pandula met with Mr. Ross, Mr. Kirchhoff and Mr. Brower. Mr. Hanley spoke with both owners at various times, both architects, landscape architects, and a private investigator. Mr. Eigelberger spoke with Mr. Ross, Mr. Kirchhoff, Mr. Saladrigas, Mr. Koch, and has reviewed various letters. Mrs. Rubin spoke with everyone who has already been mentioned; she visited the site; has spoken with Mr. Kirchhoff by phone; has spoken with Mr. Koch by phone; and has met with Mr. and Mrs. Ross and their architect at the site. Mrs. Willis spoke with Mr. Kirchhoff by phone. Mr. Moore spoke with Mr. Kirchhoff by phone, with Mr. Saladrigas by phone, has visited the site; and has reviewed all of the correspondence. Mr. Rogers met with Mr. Kirchhoff on site. Mr. Randolph noted, for the record, that if anyone present has questions regarding the content of the any of the aforementioned conversations with LPC members, they may feel free to address any questions in that regard.

Mr. Frank stated that several pieces of correspondence were received relative to this application. Rather than have Mr. Frank read the correspondence into the record at this time, Mr. Pandula elected to have Mr. Kirchhoff commence with the presentation.

Mr. Tom Kirchhoff, Architect for the Kochs, presented this request and was accompanied by Jerry Wentzel, Traffic Engineer with DKS Associates, Jorge Sanchez, Landscape Architect, Robert Moore, former Director of Planning Zoning & Building, and the clients, David and Julia Koch. He submitted a notebook of documents and exhibits into the record. At the outset of the presentation, he indicated that the Kochs have a preference for Option B, as listed above. Mr. Kirchhoff reviewed the history of presentations regarding this property since 2005. In the course of review of various applications for Certificate of Appropriateness, the LPC agreed to the owner's request to abandon the circular driveway on Clarke Avenue. Mr. Kirchhoff stated that neither Mr. Koch, nor any of his representatives, ever stated that no other driveway off Clarke Avenue would ever be presented in the future, however. Ultimately, the two properties, 150 and 158 South Ocean Boulevard were tied together by unity of title; the 158 South Ocean Boulevard structure was moved approximately 15 ft. to the west; and, several variances were obtained for completion of the project. After further review of the project, the design team determined that maintaining access to the west motorcourt via the alley (12 ft. wide, two lane alley) was dangerous and did not provide a proper turning radius for vehicles, particularly emergency vehicles. Mr. Kirchhoff stated that a driveway off Clarke Avenue would "ameliorate the perception of a compound," would reflect the residential character of the street with a walkway to the front door and a driveway to the family's garages; meets the technical requirements of the Public Works Department; and, provides convenient and safe access and egress for the family, and safety for pedestrians and cars on Clarke Avenue."

Traffic Engineer, Jerry Wentzel, of DKS Associates, offered his testimony in support of the Clarke Avenue driveway. It was his opinion that the Clarke Avenue driveway was far superior for the property owner, for pedestrians, for normal vehicles, and for emergency vehicles; is not unlike the Clarke Avenue accesses afforded to other neighbors' properties; and, meets all of the Town's standards.

Jorge Sanchez testified identifying changes since the last meeting relative to landscape/hardscape. He began with the Clarke Avenue driveway together with associated landscaping and driveway gates (only open for ingress and egress), a proposed orchid house on axis with the driveway, and showed colored renderings of the site plan and elevations.

Robert Moore, former Director of Planning, Zoning & Building, testified that he reviewed the application and the records of prior meetings relative to this property. He questioned why it would now be objectionable to move one of the curb cuts, which once existed on Clarke Avenue when the circular driveway was still there, to the west for the family's use to access the family's motorcourt. As far as he could determine, the only problem with the driveway is the neighbor's objection. He made the point that in all of the years that he served as a staff liaison for the LPC to the Town Council, the LPC's charge was to work with the landmark property owner who has the responsibility of owning a landmark property. A landmark property comes with certain requirements for maintenance, and the LPC has always worked with property owners to make landmark buildings habitable for modern living. "As far as your charge, as far as I understand, it is to listen to a property owner, look at their request fairly, certainly take neighbors' concerns into consideration, but the person paying the freight is the property owner that is here today before you to ask you for not one, not two...excuse me, not three, not two, but one driveway cut on Clarke Avenue." He noted that there are 29 other driveway cuts on Clarke Avenue. He did not believe that the Koch's request was unreasonable for their single family dwelling.

Julia Koch, property owner, stated that she was here today with her husband and children. She discussed how the 158 South Ocean Boulevard house will be used as a playroom, a place for her children and their friends to meet and play, and a place for parents to meet and talk while their children play. She stated that the Clarke Avenue driveway is desirable because of its great site lines to move in and out of the property, and because it provides greater safety for all persons on Clarke Avenue, many of whom are families, as they walk to and from the beach.

Mr. Randolph stated that the notebook exhibits submitted by Mr. Kirchhoff will be part of the record. A copy of the notebook exhibits had been provided to the neighbor, Mr. Ross.

Attorney Ray Royce was present on behalf of the Koch's neighbor, Burke Ross. He described this matter as a very important issue to Mr. Ross at 172 South Ocean Boulevard, and to other Clarke Avenue residents, all of whom, he remarked, would be adversely affected by the Koch driveway.

He maintained that the Koch service driveway, from the service parking lot, should enter onto the service alley. Since reference had been made to the Ross driveway on Clarke Avenue, Mr. Royce made the point that the Ross house, also landmarked, is a much smaller home, and will not generate the amount of traffic that the Koch house will generate. In fact, the LPC's November 2005 approval showed the Koch's garage and service driveway off the service alley, not on Clarke Avenue, since the removal of the circular driveway was approved. Mr. Royce stated there is no good reason to change the 2005 LPC approval at this time, as all of the issues being raised by the Kochs now could have been raised in 2005. Mr. Royce remarked that the Kochs have created their own problem by moving the house (158) back to the west by 15 feet, thus reducing the size of the parking area. The proposed addition of the orchid house further impacts the available parking area. Mr. Royce offered several options for solutions which could be done by the Kochs without impacting Clarke Avenue, i.e., moving or removing the pavilions, moving the driveway north of the north pavilion, and widening the service alley. Mr. Royce showed the 1917 plot plan of Primavera Estates which shows that along Clarke Avenue, all property owners access their garages via the east/west service alley running behind the properties. This clearly was the historic intent for the development of this area. He showed the approved floor plan from 2005 indicating that the 158 building is definitely the service end of the house. The 2005 plans also show a parking area much larger than that which is now being proposed. Mr. Royce felt the 2005 approved plans were good and workable plans. He maintained that the Koch's plan makes Clarke Avenue the service alley for the Koch property, rather than the existing north/south service alley running behind the property. Mr. Royce referenced Chapter 54 -1 of the Town Code of Ordinances regarding the purpose of historic preservation, and read this section into the

record. He urged the LPC to protect and enhance this area of town, the Primavera Estates, which he referred to as an historic district, by respecting the development wishes for the subdivision as referenced by the plat.

Mr. Royce introduced Mr. Fred Schwartz, Traffic Engineer, of Kimley-Horn & Associates who offered his testimony regarding the proposal. He stated that he had visited the Clarke Avenue neighborhood at several different times of the day. He remarked that the number of driveways on Clarke Avenue indicate the traffic volume which already exists on Clarke Avenue. As such, adding yet another driveway will further aggravate activity and congestion on the street. He felt that the Clarke Avenue/South Ocean Boulevard corner is a very busy one already, so more volume should be discouraged. He agreed with Mr. Royce regarding adherence to the historic plat, and suggested that, perhaps, the driveway could be widened, or the garage could be oriented east/west for good access from the alley, and/or the alley wall could be lowered or pulled back.

Mr. Royce summarized asking the LPC to hold to the 2005 approval for good planning, safety and adherence to the historic plat, and to deny the current proposal.

Attorney Peter Broberg addressed the LPC on behalf of Jack Thomas, the neighbor to the west (on the other side of the wall and alley). Mr. Thomas was concerned about the alley wall and the pavilions, as the turning radius into the Koch property is too small. Mr. Broberg, on behalf of his client, recommended that one or both pavilions be removed to protect the integrity of the wall.

Mr. Frank gave staff comments that staff had recommended that the circular driveway be retained, however the removal of same was ultimately approved. He stated that today's proposal has no historical foundation.

Mr. Kirchhoff offered rebuttal to earlier testimony. He stated that while the approved floor plan had shown several staff bedrooms, since that time many of them have been turned into bedrooms for the children. He noted that even with the new driveway, the Koch's lawn service workers will still pull into the property off the service alley; pool service workers will park in the service alley; and, UPS typically parks in the alley. The house had been moved to the west to extend the east lawn. Since the 158 house was retained in its original size, and due to the move westward, some of the driveway area became unavailable. Moreover, the Clarke Avenue driveway provides more security for the family.

LPC Member Comments

Mr. Hanley suggested that perhaps the LPC might re-visit the original decision and let the Kochs have the circular driveway back again.

Mr. Segraves was concerned about gate and courtyard design, leaving the traffic issues to staff and Public Works. He also recommended that the Town might want to look at the parking in the 100 block of Clarke Avenue with respect to safety concerns. Mr. Kirchhoff responded that the gates will be 6 ft. tall sliding cypress gates, with 8 ft. tall gateposts. They will have a louvered design, will be painted white, and will be in the character with the Howard Major house. Mr. Sanchez responded that the driveway material will be simulated stone with grass, and a brick "rug" in the center, very similar to the Barton Avenue driveway. The Clarke Avenue gate will be closed at all times for security purposes.. The orchid house will provide a nice feature when the gates open, and setbacks prohibit many other locations. Mr. Sanchez noted that if the alley were to be used to access the property, Mr. Thomas would have to cut down his hedge

Mr. Pandula remarked that any of the four schemes would be acceptable to the LPC, but B was

his preference. He stated that aesthetics are secondary to traffic management in this issue. The goal is to encourage that the motorcourt is used and to get as much traffic off the street as possible.

Mr. Roberts agreed with Mr. Pandula. He noted that an owner is never prohibited from coming back to the LPC, subsequent of an approval, with a change to that approval. As a result, today the LPC merely has to deliberate a requested change. He felt that the house (158) should look and read like a house. He stated that it was unreasonable to comment about how many servants the Kochs have. The question is whether the change enhances the landmark.

MOTION BY MR. EIGELBERGER TO APPROVE DESIGN B FOR THE DRIVEWAY, WITH A SOLID GATE AND A GRASS COVERED DRIVEWAY AND TO CHANGE THE PROPOSED PALMS TO ONES MORE IN KEEPING WITH THE TIME PERIOD.

MOTION SECONDED BY MR. ROBERTS.

Mr. Randolph made reference to Section 54-122 and 54-123 regarding the LPC's criteria with regard to review of applications for Certificate of Appropriateness. He cautioned that if the matter goes to court, the court will make its determination based upon evidence and the Code's criteria.

Mr. Roberts stated that this is a landmarked house which had a circular driveway. The house is meant to be a single family dwelling and is meant to be consistent with what was there since the 1920's. He noted that the south facade is most important. He liked the solid gates, and felt that the driveway enhances the landmark facade. "The driveway is consistent to read a house on Clarke, which is the way it was built and intended, and I think the drive enhances it, and continues to strengthen the facade, the landmarking, and what this house has always been, and without a drive, it doesn't feel like a single family house.. "It is consistent. The facade is excellent. You have saved it...that was the requirement under the Landmark decision two or three years ago, and the drive continues to strengthen that."

Jane Day, Historic Preservation Consultant, clarified that the south circular driveway was not original to the house. The original driveway was off South Ocean Boulevard, and those curb cuts are still there. She also stated that it was only the east arches of the house which were landmarked, and not the south facade. Mr. Eigelberger noted that many oceanfront properties have moved their driveways off South Ocean Boulevard because of increased traffic.

Mr. Roberts added to his earlier remarks stating that these four lots (150 & 158 South Ocean Boulevard) have experienced several modifications over the years. The driveway was moved from South Ocean Boulevard to Clarke Avenue, and became a circular driveway. The house has been modified. Mr. Roberts stated his preference for the south facade architecture with the single driveway aligned with the landmarked house across the street. "My decision is driven, not by traffic, and not by party vehicles, or servants, or the number of housekeepers, but solely by the south facade architecture as it relates to the Ross house, both fantastic facades, both...one facing north, one facing south...aligning those two driveways for safety, and also in keeping with the Clarke streetscape."

Mr. Frank clarified that the motion on the floor is for Plan B only.

MOTION CARRIED UNANIMOUSLY.

At this point, 10:55 a.m., there was a short recess.

VII **OTHER BUSINESS:** (Continued) (1:52:50.0)

- A. Informal Review: 150 Bradley Place
(In association with Site Plan Review #4-2008 with Variances)
Emergency power generator

Please be advised that the applicant has requested deferral of this matter to the August 20, 2008 meeting of the Landmarks Preservation Commission.

MOTION BY MR. EIGELBERGER FOR DEFERRAL TO THE AUGUST MEETING.

**MOTION SECONDED BY MR. SEGRAVES.
MOTION CARRIED UNANIMOUSLY.**

- B. Informal Review: 235 Phipps Plaza (1:53:18.5)
(In association with Variance #7-2008)
Addition of a 164 square foot bedroom on the second floor with a covered open loggia below. The addition will enclose the stairway that was remodeled in 1979 and will remove a window that was also added in 1979 that is out of context with the original house. The addition will be completed using the same materials and color scheme as the existing house and will be detailed in an architectural style that complements the original. This addition is in the rear of the house and will not be visible from the street.

CALL FOR DISCLOSURE OF EX PARTE COMMUNICATION: Mr. Pandula met with Mark Marsh on site to review the project..

Attorney Tim Hanlon addressed the LPC on behalf of the property owner, Mr. Harris, who is in need of additional space in his home due to recent additions to his family. The proposal is to add a second floor bedroom with an open loggia below. Two variances have been requested for rear setback and lot coverage. Mr. Hanlon testified that this is a very small lot with an unusual shape. The addition will not be visible from the street, and is consistent in architectural style, color and materials as the existing home. Architect Mark Marsh reviewed the plans, elevations, and a photo board. Various members of the commission took issue with the supports at the loggia. Mr. Marsh will revise the supports for the formal presentation next month.

MOTION BY MR. SEGRAVES TO RECOMMEND TO THE TOWN COUNCIL THAT THE LPC SUPPORTS THIS PROJECT, AND THE VARIANCE IS WARRANTED.

**MOTION SECONDED BY MR. EIGELBERGER.
MOTION CARRIED UNANIMOUSLY.**

IX **COMMENTS OF THE LANDMARKS PRESERVATION COMMISSION AND PLANNING ZONING AND BUILDING DEPARTMENT DIRECTOR:** (2:04:56.0)

Mr. Page announced that he hoped to see the LPC members at the joint meeting of the commissions to be held this afternoon at St. Edward's Church Social Hall.

Mr. Segraves brought up the subject of the Phipps Plaza trees which had been cut inappropriately. Mr. Frank stated that the cutting had been stopped in progress. Mr. Segraves asked about a policy or remedy for this type of activity in the future. Mr. Moore mentioned a tree on the property of the Royal Poinciana Chapel which is landmarked inquiring who handles the maintenance of the tree. Mr. Frank responded that historic specimen trees are not under the LPC's jurisdiction, but are regulated by the Public Works Department and the Town Council. Public Works takes care of scheduling the maintenance on historic specimen trees, and they are checked annually.

Because the Phipps Plaza trees are in an historic district, Mr. Randolph stated that Code Enforcement would become involved if the trees are disturbed or destroyed. In general, if unauthorized activity/changes occur to a landmark, the owner is cited and brought before the Code Enforcement Board and the LPC.

Town Councilman, David Rosow, of 1460 North Lake Way, added that all specimen trees are under the purview of the Public Works Department, regardless of whether they are on public or private property.

A. Discussion relative to hurricane shutters. (2:15:31.0)

This subject had come up at a previous meeting and it was questioned, at that time, whether there is a requirement that hurricane shutters be removed after a storm event. Jeffrey Taylor, Building Official, stated this subject deals with emergency escape and rescue access which is required in all sleeping areas on the first three floors of any residential building. The Building Code does not specifically address hurricane shutters, which are assumed to be placed in emergency situations and then immediately removed. Bars on windows, for example, are addressed in the Building Code, and such bars must be able to be released from the inside without keys or tools. Currently, there is no requirement in the Code to remove shutters after a storm, although it is certainly recommended if the building is occupied. Mr. Randolph stated that the Code could be changed at any time, if the Town Council wishes to consider this.

B. Informational update regarding 144 Wells Road (2:20:40.5)

Jane Day stated that this house was designed in 1960 by Alfred Browning Parker for the Manus family. In 1997, at the request of the Town Council, Mrs. Day prepared a list of five buildings, less than 50 years in age, that might warrant landmarking by the LPC. Mrs. Day asked the LPC at that time to choose the best example of the five to proceed forward with landmarking. La Ronda, 444 North Lake Way, was the commission's choice, a John Volk home, which has since been demolished. The LPC had voted unanimously to recommend for landmarking, but the Town Council did not ratify that decision. During the course of the La Ronda hearings, the Town Council directed staff not to move forward to landmark any of the remaining four structures on the list which were also less than 50 years old. 144 Wells Road was one of the four remaining structures.

At the ARCOM meeting in May, 2008, a request came before the commission for demolition of 144 Wells Road. Mrs. Day reviewed the minutes of that meeting, and noted that there was quite a lot of discussion about whether the house should be allowed to be demolished. 144 Wells Road is an important house in the Modernist style, and is the last

Alfred Browning Parker house left in the Town of Palm Beach. ARCOM ultimately referred the matter to the Town Council's meeting of June 9, 2008. At that meeting, Mrs. Day have a short presentation. The Dean of the University of Florida School of Architecture also testified, as well as other preservationists. Alfred Browning Parker is currently Professor emeritus at age 91, and still teaches at the University of Florida in Gainesville. The Town Council voted to defer the matter for 60 days, and directed staff to meet with the owner's legal counsel to reach a compromise which might save the structure. The house sits on a large lot with 274 feet of frontage and perhaps could be subdivided. Mr. Pandula, Mr. Frank, and Mrs. Day met at Attorney James Brindell's office, and had a conference call with the property owner. The owner stated that he was not interested in subdividing the property, even if incentives were offered. Since then, Alfred Browning Parker contacted Mrs. Day offering to collaborate on an addition to the original house, but the owner was likewise not interested in that option. It is the owner's preference to proceed with his original demolition request, and present plans for a new home. The property owner has agreed to allow staff to do full photo documentation of the Parker house.

It was Mrs. Day's understanding that the matter may actually be heard at the July Town Council meeting, rather than the August meeting.

Also at the June 9, 2008 Town Council meeting, the Mayor asked Mrs. Day about the status of the other homes which were on the 1997 list of five structures under 50 years of age. La Ronda and 756 North Lake Way have been demolished. 144 Wells Road is currently threatened. So upon the Mayor's advice, Mrs. Day distributed handouts to the LPC regarding the other two homes as he had suggested that they be studied and placed "under consideration" if the LPC still believes they are worthy of this status.

Mrs. Day noted that although the 50 year age requirement is not included and was not included in the Landmarks ordinance, it was a policy that was followed for many years. Currently, the LPC is not prevented from moving forward to landmark properties under 50 years of age. As such, Mr. Eigelberger suggested that 144 Wells Road might be placed "under consideration" today. Mr. Randolph confirmed that the Landmarks ordinance does not require 50 years of age or owner support when considering landmarking a property.

Some previous Town Councils have not been in favor of involuntary landmarking, i.e., without owner support. Mrs. Day recalled that in 2006, in the midst of the Four Winds controversy, staff went back to the Town Council for review of LPC policies and procedures. That Town Council instructed staff to move forward with landmarking regardless of owner consent, with the proviso that staff has strong evidence to support the move to landmark. The Town Council had mixed opinions relative to the 50 year requirement. As a result, staff was instructed to landmark older buildings first, with the option to re-visit buildings less than 50 years of age.

Mr. Randolph stated that the owner of 144 Wells Road sought demolition approval from ARCOM because, at that time, the house was not under LPC jurisdiction. ARCOM has specific demolition criteria. Mr. Randolph discussed a 1987 case when Ira Harris had placed a deposit on a particular property which was not landmarked. He went to ARCOM with a demolition request, and ARCOM deferred the matter. At the following month, when it was scheduled to be heard by ARCOM, the Landmarks Preservation Commission placed the property "under consideration" for landmarking. ARCOM ultimately denied the demolition request. When it went to court, given the circumstances, the court decided that the Town could not deny the demolition application because the ARCOM demolition criteria had been satisfied, and because at the time Mr. Harris applied for demolition, the

property was not on a list of properties to be considered for landmarking, a list that was to be created and given to the Building Official. Mr. Randolph advised that each case stands on its own merits. It was suggested to Mr. Randolph that if the property, 144 Wells Road, is placed "under consideration" for landmarking, the Town would be sued. He advised the LPC, however, that such threats should not prevent them from moving forward if they feel they are protecting the public purpose in going forward.

Mr. Randolph indicated, in considering that old lawsuit, that the ARCOM application at that time was quite different than the one being used today which includes verbiage to inform applicants that attempts should be made to save homes whose original character remains intact. He discussed the legal concepts of vested property rights and equitable estoppel, and attempted to make the LPC aware of the possible challenge which may result from an action to place 144 Wells Road "under consideration" for landmarking. Of course, the LPC's decisions are appealable to the Town Council.

Bill Diamond, 220 Wells Road, testified as a member of the family who owned La Ronda, which has since been demolished. He urged the LPC to place 144 Wells Road "under consideration", to prevent another building like La Ronda from being lost.

Mr. Pandula recommended that the LPC "take the bull by the horns" and do the job of the Landmarks Preservation Commission to point out buildings which are worthy of landmark designation.

Mr. Moore questioned whether placing the property "under consideration" would be an unjust detriment to the property owner. Mr. Randolph responded that the property owner will likely present such a case. Mrs. Day noted that when the LPC ordinance was enacted in 1979, ten properties were proposed for designation, and of those ten, nine property owners objected to the landmarking and sued the Town. Ultimately, all ten properties were landmarked.

Attorney Michael Morel addressed the LPC regarding the Town's Landmark ordinance with respect to the 50 year requirement for buildings and several legal issues.

MOTION BY MR. SEGRAVES TO PLACE 144 WELLS ROAD, 958 NORTH LAKE WAY, AND 977 NORTH OCEAN BOULEVARD "UNDER CONSIDERATION" FOR LANDMARK DESIGNATION.

**MOTION SECONDED BY MR. EIGELBERGER.
MOTION CARRIED UNANIMOUSLY.**

Mrs. Day mentioned that the National Trust for Historic Preservation will hold its National Preservation Conference in Tulsa, Oklahoma on October 24th and 25th. Information regarding the conference is available through staff.

X **ADJOURNMENT:**

The meeting was adjourned at 12:10 p.m. without benefit of a motion.

The next meeting of the Landmarks Preservation Commission will be held on Wednesday, July 16, 2008 at 9:00 a.m. in the Town Council Chambers, 2nd floor, Town Hall, 360 South County Road, Palm Beach, Florida.

Respectfully submitted,

Patrick Segraves, Secretary
Landmarks Preservation Commission

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