PLANNING & ZONING COMMISSION
2007-2008 ZONING HEARINGS
RECORD AND REPORT
TUESDAY, DECEMBER 4, 2007 9:30 a.m.

I. CALL TO ORDER AND ROLL CALL: Chairman Guttman called the meeting to order at 9:30 a.m.

PRESENT: William M. Guttman, Chairman
Alan S. Golboro, Secretary
Lowry M. Bell, Jr., Member
Elizabeth S. Murphy, Member (arrived 9:38 a.m.)
John H. Schuler, Member
Leslie A. Shaw, Member
Walter Anthony Dowell, Alternate Member
Eugene Lawrence, Alternate Member
Floyd Wideman, Jr., Alternate member
John S. Page, Director of Planning, Zoning & Building
Veronica B. Close, Assistant Director of Planning, Zoning & Building
Paul W. Castro, Zoning Administrator
Timothy Frank, Planning Administrator
John C. Randolph, Town Attorney

ABSENT: None

RECORDING SECRETARY: Deborah A. Morakis

Chairman Guttman introduced John Page, "J.P.," the new Director of the Planning & Zoning Commission and welcomed him.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Ms. Morakis gave the invocation and led the Commission in the Pledge of Allegiance.

III. PROOF OF PUBLICATION: Mr. Castro verified that proof of publication had been accomplished with regard to this hearing.

IV. COMMENTS FROM THE PUBLIC:

Mr. David Barton of Jamaica Lane commented that "this was the best qualified membership of the Planning & Zoning Commission that I've has seen in the last fifteen years and I have high hopes for them." Mr. Barton agreed with Mr. Shaw on what the role of the Planning Commission should be and stated that he felt it should be an entity unto itself. He felt the Planning Commission should set its own agenda and be a physical planning commission in every sense of the word. Mr. Barton suggested that sometime in the next year a completed Strategic Plan should be readdressed, and added that a land use plan for the island has never been done. Mr. Barton also suggested the Commission adhere to the limits of growth, provide input for a capital budget, and raise the permit fees. Mr. Barton said, "These permit fees are to be spent for the operating expenses of the Planning & Zoning Department. It is against the law to turn these fees over to the Council or to staff for any expense they choose. One way it could be done is to transfer the capital program back here, where it belongs and money could be spent in that fashion. Here is a great chance for a newly constituted group. Thank you."

V. REGULAR AGENDA

A. 2007-2008 Zoning Season Staff Report, Phase II

Study Item 8 Complete the next phase of the intersection vision study which includes modifying the existing proposal and determining when the intersection vision requirement should be met

Mr. Castro presented an overview of Study Item 8 and introduced Brian Mirson and Gareth Klotz from American Consulting Engineers (ACE). Mr. Castro stated there were actually two items in front of the Planning & Zoning Commission. One item was the actual proposed change in the regulation and the other was the implementation if the proposal, if it was adopted, or if not adopted what the intersection vision requirements might be.

Mr. Castro presented some history and stated that back in 2004, the Planning & Zoning Commission heard a proposal from American Consulting Engineers, as it relates to clearing the intersections on our residential streets to create site visibility triangles. The Planning & Zoning Commission did not feel, based on the crash data that was presented at the time, and the regulation provided, that implementation should occur for this new intersection vision. The Planning & Zoning Commission felt that the new proposal would take more property and was not really necessary based on the accidents that had occurred historically over the five years prior to bringing the proposal forward. Staff brought the recommendation to the Town Council and the Town Council deferred consideration and asked staff to go back and look further at the regulation itself as well as the implementation strategy to come up with some other proposal. Because of priorities that were set by the Town Council, this item is now back before the Planning & Zoning Commission.

Brian Mirson with American Consulting Engineers summarized the process and explained, “In 2004/2005, after taking into consideration the recommendation to Town Council, by a three to two-vote, Town Council decided to go ahead, in concept, and move forward with the implementation of a revised site triangle. Town Council also directed staff to use, in concept, the revised triangles. Discussion has always centered around “Is it necessary? Do we have an unsafe condition we need to fix? If we do not, why do anything at all?” Mr. Mirson stated, “Our position from the beginning is that there is a balancing act on the roadway network, specifically related to your community. Each community has standards that relate to how you operate as a community in terms of the drivers, the site or setting that you are in. We have set a site triangle requirement or proposed triangle that we believe is prudent for you to implement over time. The existing triangle that was in place, 15 feet by 30 feet, no matter where it was, wasn’t an appropriate way to provide solutions to the roadway network. The real challenge was to define what the minimum requirement was to implement, based on a 25 mph speed limit for those streets that are 35 mph. This is what the Code Enforcement Department has been using now. As development or redevelopment occurs, there is a balance between creating appropriate landscaping as traffic calming. People slow down as things are closer together. The real challenge is since we don’t have a history of significant accidents, we implement this over time as improvements are being made.”

Mr. Castro stated staff laid out three of several possible scenarios to demonstrate how this would be implemented. Staff felt that lowering the threshold and clearing the intersection vision areas would create safer site visibility areas throughout the residential districts of the Town. This would require quite a bit of education to residents who live on corner lots, and in time, may create more of an administrative procedure relating to phasing in intersection vegetation, as well as structures.

Mr. Shaw commented that he was surprised that a list of streets impacted by this was not included and wondered how many residents were affected. He said, “If what we are dealing with is the modification to a regulation that will affect 25 homeowners, and it is to the benefit of all of the residents of the Town, that is a reasonable approach to be taking. We should not be looking at things from the standpoint that no one has yet been injured. We need to be more proactive in our thinking.”

Mr. Castro explained that we are in zoning in progress. The previous provision that was presented by ACE would be applied or the 15 feet x 30 feet would be applied. Both have been applied concurrently and what staff would require, for the construction of a new home or laying out of a safe site visibility triangle when re landscaping or putting in a new wall, would be to meet one of those two standards, whichever is most conservative.

Mr. Castro stated that the 15 feet x 30 feet triangle would be measured from the property line and not from the pavement. The new proposal would be less than 15 feet and would begin from the actual street pavement and not the property line.
Mr. Mirson explained that 15 feet x 30 feet was an easy measurement to use, but that it

had no relationship to the vehicles, where they are traveling within the right-of-way, how many lanes are involved, or speed. ACE has laid out a triangle indicating what the appropriate distance is. Although it is less than 15 feet, the difference is how far down the street it goes.

After much discussion, the following motion was made:

MOTION TO APPROVE BY MR. BELL.
MOTION SECONDED BY MR. SHAW WITH THE FOLLOWING MODIFICATIONS; BASED ON THE RECOMMENDATIONS (EXCEPT ITEM 1) INCLUDING ALL NEW CONSTRUCTION AND RE LANDSCAPING THAT INVOLVES THE SETBACK AREA, ALL VEGETATION IN THE RIGHT-OF-WAY MUST COMPLY WITHIN EIGHTEEN MONTHS AND VEGETATION WITHIN THE VISION TRIANGLES MUST COMPLY AND BE MAINTAINED WITHIN THIRTY MONTHS.
After further discussion,
MOTION DIED.

Discussion continued and a substitute motion was made:

MOTION BY MS. MURPHY THAT THIS ITEM BE ADDRESSED IN TWO MOTIONS, GRANTING SIX (6) MONTHS FOR LANDSCAPE REDUCTION IN HEIGHT AND ADDING A PROVISION TO COME TO COUNCIL FOR A WAIVER.

Chairman Guttman stated that he would like to bifurcate the motions and called for a second on the first part of the motion, relating to landscaping and not structures.

MOTION SECONDED BY MR. GOLBORO.

Mr. Mirson suggested that this is not about the 30 inches in height but that landscaping should be modified to comply with site distance requirements, as outlined in the report. Discussion continued.

MOTION CARRIED 5 TO 2 AFTER A ROLL CALL VOTE, WITH MR. BELL AND MR. SHAW OPPOSED.

Additional discussion took place regarding structures in the site vision triangles. Mr. Randolph commented that if the Commission was to adopt the 25% or 50% rule, it would not be necessary to have an amortization schedule.

Ms. Murphy stated, “The safety bug doesn’t care whether it is an old structure or a new structure. We should aim to obtain safety across the board, and should therefore take into account an amortization period for grand-fathered structures.”

Mr. Shaw stated that walls within the right-of-way should be handled with an amortization period, and walls within the vision triangle should be handled differently.

Mr. Randolph stated that something that is in the right-of-way could be dealt with by Code Enforcement. A determination as to the appropriate length of time to deal with other issues needs to be made.

Mr. Castro concurred with Mr. Randolph and asked for a recommendation from the Commission for adoption of this provision.

MOTION BY MR. BELL TO ADOPT THE RECOMMENDATION AS PRESENTED.
MOTION SECONDED BY MS. MURPHY.
MOTION FAILED 3 TO 4 WITH MR. SCHULER, MR. GOLBORO, MR. GUTTMAN AND MR. DOWELL OPPOSED.

MOTION BY MR. SHAW TO ADOPT THE RECOMMENDATION, AND THAT AN AMORTIZATION SCHEDULE BE ADDED THAT WOULD REQUIRE ANY EXISTING STRUCTURES HAVE A PERIOD OF UP TO FIVE YEARS TO COME INTO COMPLIANCE.
MOTION SECONDED BY MS. MURPHY.
MOTION FAILED 2 TO 5 AFTER ROLL CALL VOTE.

Discussion continued, and Mr. Golboro suggested that the twenty sites involved be looked at next month. Mr. Castro stated that could not be done by next month. After additional comments were made, the following motion was made: .

MOTION BY MR. GOLBORO TO RECOMMEND TO THE TOWN COUNCIL TO IMPLEMENT THE EXISTING RULES REGARDING NEW CONSTRUCTION AND RENOVATIONS (50% RULE).
MOTION SECONDED BY MR. BELL.
MOTION PASSED 6 TO 1 WITH MR. SCHULER OPPOSED.

Ms. Murphy asked, "Of the twenty structures involved, how many are within thirty inches and how many go to 42 inches?" Mr. Mirson stated that he would look at that.

Study Item 9 Study a provision to prohibit "formula" restaurants in commercial zoning districts

Henry Iler of Iler Planning Group presented Study Item 9 to the Commission and explained that a formula restaurant was one with standardized features, menus, architecture, etc. and stated that these are currently prohibited in the Town due to zoning in progress. The purpose of this provision was to set this prohibition in code so that these could be regulated. Mr. Iler stated that in the past it has been found that these are undesirable forms of commercial uses in the Town, and that in the Comprehensive Plan, the definition of Town Serving uses stresses maintaining the character of the Town as a predominant residential community having only the type and amount of businesses and other support services necessary to meet the needs of residents. A formula restaurant is defined as one that has 14 or more businesses worldwide. The recommendation is that a formula restaurant is an establishment in a chain of three or more establishments in the nation and which satisfies at least two of the following three descriptions:

1. It has the same or similar trade-name as others in the group;
2. It has a standardized and limited menu, ingredients, food and beverage preparation;
3. It offers either of the following characteristics in a style that is distinctive to, and is standardized among the chain or group;
    a. Exterior design or architecture is similar or standardized
    b. Uniforms are worn by personnel.

Mr. Bell asked what would be the provision if a restaurant wanted to come into town and change its name. Mr. Castro answered that would be permitted, but the restaurant would also have to change how it operated, change the menu format, etc.

Mr. Shaw suggested that the interior decor be added to the criteria and Mr. Iler and Mr. Castro both thought that was a good suggestion.

Mr. Bell asked why staff was trying to keep these restaurants out and Mr. Randolph stated that staff is trying to figure out a way to carry out that policy decision. Mr. Randolph added that the town-serving aspect came about to promote and maintain the "mom and pop" businesses in the Town, keeping businesses that draw traffic from the region from coming to the Town.

Ms. Murphy added that this condition keeps the Town special. Mr. Shaw added, "If the issue is to keep out "take-out," that is a different issue. Are we helping the residents or hindering them?"

Mr. Golboro complimented staff on the recommendation and asked staff, "What happens to Bice's or Charlie's Crab when they come in for renewal? They do not meet the conditions." Mr. Castro answered that these restaurants are grand-fathered.

Chairman Guttman stated that he would rather see the word restaurant as opposed to the word establishment since the definition for restaurant currently exists. Mr. Guttman then asked, "Do we want to prohibit drive-in outlets? Those having a drive-up window?"

Mr. Castro stated that there is a provision in the code that allows drive-in facilities by special exception use only.

Mr. Guttman asked, "Why would you permit some drive-in outlets as a matter of special exception but totally block formula restaurants? Why not make them a special exception?"

Mr. Castro answered that the code was looking more at banks and financial institutions for the drive-in cuing and not restaurants.

Mr. Randolph stated that this regulation is aimed at dealing with town-serving establishments and added that it may be that a town-serving establishment could have a drive-in window. Some restaurants permit patrons to go back to the kitchen and pick up food. Mr. Randolph stated this is a policy decision and asked what staff is looking to regulate. "Are you trying to attract town-serving businesses or are you trying to prohibit businesses that will create traffic congestion and not be the quality restaurant you are envisioning?"

Additional comments were heard and the suggestion was made to prohibit the use of paper products to serve patrons. After further discussion, the following motion was made:

MOTION BY MS. MURPHY TO ACCEPT THE PROPOSAL, DELETING THE WORD "ESTABLISHMENT", DELETING THE WORD "A" IN SUBSECTION 2, ADDING THE WORDS "AND INTERIOR" TO SUBSECTION 3.A. AND "PROHIBITING PAPER".

Comments were heard by Mr. Wideman and Chairman Guttman added that he felt adding the use of paper was a mistake. "Why not Styrofoam? Why not plastic?"

There was discussion about doggy-bags and take out products.

Ms. Murphy stated that her intent regarding paper was for the service to patrons not for take out. Mr. Shaw suggested that a limitation to the percentage of take-out as opposed to eat-in be included.

Mr. Bell asked what provision was in the code now to prohibit a formula restaurant.

Mr. Castro stated that if they occupy more than 2000 square feet, they would need a special exception, would have to demonstrate town-serving status, and would have to meet the criteria in the code to not be characterized as a formula restaurant.

MOTION SECONDED BY MR. GOLBORO.

MOTION AMENDED BY MS. MURPHY TO ACCEPT THE PROPOSAL, DELETING THE WORD "ESTABLISHMENT," DELETING THE WORD "A " IN SUBSECTION 2, ADDING THE WORDS "AND INTERIOR" TO SUBSECTION 3.A.

AMENDED MOTION ACCEPTED BY MR. GOLBORO.

Gail Coniglio of 1139 No. Ocean Blvd., commented, "there is a restaurant in Town that has been purchased by a formula entity and asked if we had control over that? Chuck and Harold's has been purchased by a corporate entity and they have taken that entity and turned it into a cookie cutter type of restaurant." Mrs. Coniglio stated that she was not complaining, but was simply offering food for thought and suggested that even a McDonald's could be town-serving.

Chairman Guttman stated, "We are trying to lock the barn door before any more horses get out."

MOTION PASSED 6 TO 1 AFTER A ROLL CALL VOTE WITH MR. BELL OPPOSED.

<u>Study Item 10</u> <u>Study the impact of Condo-Hotels and potential Zoning Regulations</u>

Henry Iler of Iler Planning Group presented Study Item 10 to the Commission, which was to study the impact of condo-hotels and potential zoning regulations. This is currently implemented as a zoning in progress to temporarily prohibit condo-hotel conversions. Several hotels in Town have converted to this form of ownership; Brazilian Court, Plaza Inn and Heart of Palm Beach are three. State statutes do not allow zoning regulations to regulate form of ownership, so we cannot prohibit condominiums. Many municipalities define condo-hotel use as a traditional hotel, whereby, the units are individually owned, and amenities are consistent with a hotel. Some of the impacts that happen when a hotel use is converted to a condominium are additional traffic considerations, and the need for more parking.

Mr. Iler added that after looking at regulations by other communities, some considerations would be the maximum length of stay per owner, signage as a hotel, a reservation system, etc. Some communities limit the length of stay by the owner to 60 or 90 days, or limit the number of stays within a twelve-month period. Mr. Iler added that hotel use is a special exception use in three zoning districts in the Town. A condo-hotel use is a hotel use and the only difference would be a change of ownership from a whole parcel and all the units to individually owned units. The condo-hotel is also operated as a commercial use and there needs to be a clear distinction between a hotel use and a residential use. To summarize the recommendation, Mr. Iler stated that within the residential use definition in the code, the word condo-hotel should be added as one of the uses. A condo-hotel is defined as a hotel operated under a condominium ownership in compliance with the zoning ordinance definition of a hotel.

Mr. Castro stated that the code currently allows twice the density for a hotel than it does for a residential unit. This density is twice what was ever contemplated in the zoning code and the comprehensive plan.

Mr. Iler explained the definition of a dwelling unit as defined in the code as having restrooms, minimum square footage, etc. Mr. Castro read the definitions of dwelling unit and a residential unit from the Code of Ordinances.

Mr. Lawrence stated there are a lot of people who want to live in hotels because of the services and amenities offered and added that the length of time an owner could be permitted to stay should be increased.

Mr. Golboro commented that he did not like this recommendation and felt that the owner must occupy the unit for four months or keep it vacant.

Mr. Shaw asked if there was a reason that co-ops were excluded.

After hearing further comments, Mr. Randolph stated that the Town is not trying to regulate ownership, only the use.

Chairman Guttman read from his notes and stated that density is not a problem. Traffic, parking and open space are not problems. Mr. Guttman added, "Condominiums are more desirable than trying to maintain highly transient hotels in the community."

Mr. Iler stated that hotel inventory in the Town would go down with the conversions to condominiums.

Mr. Castro added that staff had been asked to study this item and determined that a condo-hotel, with a more semipermanent tenant would require more parking and more demand for services such as maids and housekeepers, etc. Staff also saw the reduction in number of rooms, but also an increase in the amenities being supplied, i.e. more restaurants, more seats, larger function room, a larger spa, etc. The rooms could not support the functions that were provided for the convenience of the guests and they actually pulled more customers into the hotels that were not staying there. Staff expressed that concern to the consultants. Staff would like to proceed forward and continue to monitor this item in the future.

Chairman Guttman stated that he was in favor of monitoring this issue and not rushing to put in a complicated regulation.

Mr. Shaw stated that these conversions may be an asset and suggested staff look at the positive points of these conversions and suggested a three to one ratio for conversion, which may solve the density and parking problems.

Mr. Golboro stated, "We should be encouraging these conversions, because it helps with the maintenance of the rooms and public facilities. Stop studying it and accept what the developer wants to do. If there are new hotels, ask what the proposed financing is. This recommendation is a total waste of time."

Chairman Guttman stated that he was in favor of tabling this item and monitoring this issue, both here and across the country.

MOTION MY MS. MURPHY TO TERMINATE ZONING IN PROGRESS ON THE CONVERSION OF HOTELS TO CONDO-HOTELS AND MONITOR THIS SITUATION.
Chairman Guttman passed the gavel to Secretary Bell so that he could second the motion.
MOTION SECONDED BY MR. GUTTMAN.

A SUBSTITUTE MOTION WAS MADE BY MR SHAW TO RECOMMEND THIS PROPOSAL BE REVERSED SO THAT IT BECOMES A PERMITTED USE BASED UPON A REDUCTION IN DENSITY.
Motion died for lack of a second.
MOTION BY MS. MURPHY TO TERMINATE ZONING IN PROGRESS ON THE CONVERSION OF HOTELS TO CONDO-HOTELS AND MONITOR THIS SITUATION.
MOTION SECONDED BY MR. GUTTMAN.

Mr. Randolph explained that this motion meant that the Commission was simply recommending that zoning in progress be lifted so people can go forward with condo-hotel conversion, but that the situation continue to be monitored.

MOTION FAILED 3 TO 4 AFTER ROLL CALL VOTE.

Mr. Shaw restated his earlier motion. Mr. Golboro commented.
MOTION BY MR. SHAW TO RECOMMEND THE CONVERSION OF HOTELS TO CONDO, CO-OP STRUCTURES OR HOTELS WHERE THE DENSITY IS REDUCED AND THE MINIMUM RESIDENT STAY TIME IS ESTABLISHED.
MOTION DIED FOR LACK OF A SECOND.
Mr. Castro stated that if the Planning & Zoning Commission wished to defer and further study this issue, staff needed a recommendation to the Town Council, relative to the minimum/maximum stay of time and density and anything else staff would look at to promote the conversion.

MOTION BY MR. BELL TO RECOMMEND TO TOWN COUNCIL TO DEFER THIS ITEM FOR FURTHER STUDY AND RECOMMEND MAXIMUM SIZE OF ROOMS, CREATING MORE OF A RESIDENTIAL DENSITY AS OPPOSED TO HOTEL DENSITY.
MOTION SECONDED BY MR. SHAW.

Chairman Guttman stated that would require a lot of study and analysis.

Ms. Murphy asked, "Haven't we just determined that we like condo-hotel conversions and therefore, our reaction rather than lifting the moratorium is, 'make them wait'. If we are in agreement that we like the idea of bigger rooms and reduction in density, why don't we lift the stay and then ask the Town Council for other ways that we might want to encourage conversions. We should not be penalizing the property owners who are waiting in line to do this."
MR. BELL WITHDREW HIS EARLIER MOTION.

Mr. Randolph recommended that the Planning & Zoning Commission defer this item with comments and bring it back.

MOTION BY MR. SCHULER TO DEFER STUDY ITEM 10 AND RECOMMEND STAFF RESTUDY THE ITEM.
MOTION SECONDED BY MR. DOWELL.
MOTION PASSED 5 TO 2 AFTER A ROLL CALL VOTE WITH MR. GOLBORO AND MR. SHAW OPPOSED.

Study Item 11 Study a provision to create zoning regulations to permit accessory entertainment uses in restaurants

Mr. Iler presented Study Item 11 to the Commission and stated that a special exception is required to allow entertainment within restaurants. Some of the uses for entertainment were comedy acts, music, television, etc. Mr. Iler stated that some of the recommendations in the report are to add the accessory entertainment uses as a permitted use within a restaurant. Mr. Iler went over some of the minimum standards for these proposed uses, including, but not limited to; hours of operation, noise standards, complaints, etc.

Ms. Murphy stated that she felt it excessive to restrict any use within 750 feet of a church or school, when those uses typically operate during daytime hours and entertainment would typically be during the evening hours. Ms. Murphy added that the maximum decibel standards should be measured from the point of the listener or complainant. Also, if there were two or more formal complaints, to require that a business close or discontinue until Town Council investigates those complaints could take more than a month and would be excessive.

Mr. Castro addressed those comments and stated that the provision for 750 feet came from the nuisance ordinance for alcoholic beverages. For noise complaints, staff measures from the property line. Mr. Castro stated that staff does see a concern with the language relative to that section of the proposal and recognized that staff should look at that issue again.

Ms. Murphy asked if this meant that there are no alcoholic beverages served closer than 750 feet from a church and Mr. Castro answered that there are some grand-fathered locations in the Town.

Mr. Shaw added that this should not apply to comedy acts or band performances and added that he had a problem with the use of patios and that seventy-five square feet was too small and was not realistic.

Mr. Castro stated that staff felt it appropriate to have separation between entertainment and churches or houses of worship.

Mr. Randolph commented that he shared concern with Item H and felt it allowed for abuse of power by residents that may have a grudge against a particular restaurant, and, at the very least, Item H needs to be clarified. The purpose of this was to liberalize the Town's code relating to allowing entertainment in restaurants. Mr. Randolph wondered if there was a concern that entertainment should be an accessory use to a restaurant and suggested that be added as a criteria.

Additional comments were made, and after discussion, the following motion was made:

MOTION BY MR. GOLBORO TO DEFER STUDY ITEM 11 AND REQUEST STAFF TO FURTHER STUDY THE ITEM.

Mauricio Ciminella of Amici's Bar and Ristorante addressed the Commission and stated that when a resident purchases a home downtown, they should expect the noises associated with downtown and businesses located there.

Franklin DeMarco, co-owner of the Taboo restaurant, addressed the Commission and stated that due to lack of interest this past summer, Taboo did not offer music or dancing. Mr. DeMarco added that the Town's codes were good, but enforcement was lacking.

Peter Broberg of Monterey Road stated that he was here to address the Commission as a resident and not as a spokesperson for any of the restaurants he represents as an attorney. Mr. Broberg felt the 75 square foot limitation was too small, having 750 feet between entertainment and a church or school was to restrictive and not fair, and the proposed start time for entertainment was too limiting. Mr. Broberg wondered where the decibel level would be measured.
Mr. Golboro restated his motion:
MOTION BY MR. GOLBORO TO SEND THIS ITEM BACK TO STAFF TO SIMPLIFY AND INCORPORATE THE COMMENTS MADE AT THIS MEETING.
MOTION SECONDED BY MR. BELL
MOTION CARRIED UNANIMOUSLY AFTER ROLL CALL VOTE.

<u>Study Item 12</u> <u>Study a modification to the zoning regulation to require easements and under ground placement of electric utility lines</u>

Mr. Bradford, Deputy Town Manager, presented Study Item 12 and addressed some of the concerns expressed by the Commission. Mr. Bradford stated that if easements are needed for underground utility service, FPL would want a 10 foot easement to abut the right-of-way. The Town would utilize the right-of-way when possible.

Mr. Randolph stated that his understanding was that as a condition of the issuance of a permit, variance or special exception, someone would have to grant an easement necessary to serve that property. Residents giving up their private property to achieve our ends would be "a taking", which would be compensable and should be negotiated.

Mr. Bradford stated that this was about the easements that run perpendicular to the road right-of-way and added that if the Town were to make a declaration that required all utilities be underground, a property owner who refused to allow an easement to the entry of his property would not be serviced by the utility.

Discussion continued and it was explained by Mr. Bradford that the ownership of the land would stay with the property owner, but the use of the land would be granted to the utility with an easement.

Mr. Randolph stated that the Town is required to pay for construction easements, but this would go beyond that. This easement would be a permanent easement.

Mr. Bradford stated that he could not predict which properties would need to grant an easement. Mr. Bradford stated that he planned to go to every property owner, in advance of construction and final design, to look at each individual property and make sure we know what we are getting into regarding construction documents.

Chairman Guttman suggested that Mr. Randolph draft a proposed ordinance that takes into account the "taking" issues and inequities that could arise between those situations in which we could easily get the easement for nothing and those in which we could not. Mr. Guttman felt that, at that time, the Commission would be in a better position to evaluate the proposal.

Mr. Bradford stated that he and Mr. Randolph could do that and bring the matter back to the Commission in January or February.
Chairman Guttman passed the gavel to Secretary Golboro in order to make a motion.

MOTION BY CHAIRMAN GUTTMAN TO HAVE MR. BRADFORD AND MR. RANDOLPH WORK TOGETHER TO DRAFT ORDINANCE LANGUAGE THAT TAKES INTO CONSIDERATION CONSTITUTIONAL ISSUES OF FIFTH AMENDMENT TAKINGS AND, AT THE SAME TIME, PROVIDES THE COMMISSION WITH ENOUGH INFORMATION TO EVALUATE WHAT KIND OF INEQUITIES, IF ANY, WOULD OCCUR BY KEEPING IT CONSTITUTIONAL AND AVOIDING CONDEMNATION LAWS.
MOTION SECONDED BY MR. SCHULER.

MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL VOTE.

Study Item 13 Study the code as it relates to flags and flagpoles

Mr. Randolph explained why this issue was being addressed. Relating to the settlement in the Mar-a-Lago flag issue, the Town had agreed to do a study of Town Ordinances as they relate to the placement of flags and flagpoles. There were allegations made that there are situations that would warrant a flagpole taller than the forty feet that is now allowed by code, and that there are properties large enough to accommodate a flag larger than the 4 foot by 6 foot flag that is currently allowed by the Town. Staff has looked at this matter to see whether there are situations where it is appropriate to have a larger flag or flagpole, and looked at our ordinance in regard to whether or not it's constitutional to restrict one's freedom of expression by restricting the size of the flag they might fly. Mr. Randolph stated that he had looked at this issue, and with staff, looked at the size of the properties that could accommodate a larger flag.

Mr. Randolph distributed, to the Planning & Zoning Commission, a copy of the draft ordinance, with additional language added. Mr. Randolph explained that he added a sentence to the bottom paragraph that relates to height limitations which states, "flagpoles in excess of this height may be permitted by special exception on properties of greater than five acres, provided the flagpole is not in excess of 70 feet in height, and is set back at least 120 feet from any lot line". This was Mr. Randolph's first recommendation.

Mr. Randolph stated that his second recommendation related to the size of the flag. Mr. Randolph stated that he had no concern as to the restriction of displaying flags of governmental entities. Mr. Randolph was concerned that this might violate freedom of expression, to require that a flag be of a specific type, and proposed different language. Mr. Randolph suggested to include the definition of a flag, and that there be a limit of no more than three, 4 ½ feet x 6 feet flags. Mr. Randolph also suggested that instead of referring to a 15 x 25 foot flag, the code be modified to refer to a 12 feet x 18 feet flag, as a result of his finding a case which set forth flag protocol.

After a lengthy discussion by the Commission, it was determined that the Commission would like Mr. Randolph to further study this item and bring it back to the Commission. It was the consensus to make flags proportionate to the size of the property and to have the language continued which deals with flags that identify governmental entities.
MOTION BY MR. BELL TO DEFER STUDY ITEM 13.
MOTION SECONDED BY MR. GOLBORO.
MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL VOTE.

Study Item 14 Housekeeping item to change the construction time limits for renovation and reconstruction of non-conforming buildings or structures

Mr. Castro explained this item was to eliminate specific time frames for construction periods by simply referring to the building code portion of the code of ordinances relating to reconstruction, construction or renovation of non-conforming structures or buildings, eliminating the language and referencing the specific section of the code.

MOTION TO APPROVE BY MR. SHAW.
MOTION SECONDED BY MR. BELL.
MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL VOTE.

B. Discussion on Role of the Planning and Zoning Commission

Chairman Guttman reported the results of his presentation made on November 13, 2007 to the Town Council regarding the Commissions staggered term structure and the Commission's planning role. Mr. Guttman stated that he told the Town Council that at its regular Town Council meeting on January 8, 2008, "we would ask staff to submit to them a consolidated, prioritized list of planning issues that we would like to study during the summer. If the Council approves the list or a redacted version by their April meeting, we will avoid any boundary disputes between matters that the Council wants to consider and those that we want to study over the summer." Mr. Guttman added that he asked Ms. Close to collect a list from the Planning & Zoning Commission of the planning issues that the Commission would like to study over the summer. This synthesized list was distributed to the Commission. Chairman Guttman asked the Commission to look at the list and identify the five items, in no particular order of priority, which the Commission wished to study.

Ms. Close distributed the list to the Commission so that each Commissioner could check his or her choices. Mr. Randolph reminded each Commission Member to sign and date the form. Ms. Close then collected the lists and presented the results to the Commission. Ms. Close listed the seven highest rated items as follows:

1. Explore land-use and financial incentives to retain and promote town-serving retail businesses and that includes inventorying existing businesses and conducting market study of demand (received 7 votes)
2. Explore ways to maintain and reduce density (received 6 votes)
3. Identify and access town-serving businesses in the C-TS district (received 4 votes)
4. Follow DOT's plans on impact on traffic (with 4 votes)
5. Follow FPL hardening status and services to sub-stations serving the town (with 4 votes)
6. Long-range budgeting for beach re-nourishment and other capital items (with 3 votes)
7. Reduce dependancy on the outside (with 3 votes)

It was the consensus of the Commission to prioritize the list by the number of votes each item received.

Chairman Guttman also advised the Commission that at the November Town Council Meeting, he mentioned to the Town Council that the Commission wished the Town Council to amend its ordinances to approve appointments to the Planning & Zoning Commission in the month of October, rather than February, and to come up with some transition rules to cover incumbents. Mr. Guttman reported that Mr. Randolph has been asked to draft that Ordinance.

C. Royal Poinciana Area Planning Study Status Report (Verbal)

Tim Frank advised the Commission that the Town Council has chosen a steering committee and reported that staff has met with the consultants that will be doing the charrettes. There are a series of steering committee meetings that will commence on December 20, and continue weekly starting on January 9, and continuing through to February 13.

Mr. Frank stated that the steering committee is not the policy making committee, nor are they the cheerleaders. The role of the steering committee will be to assist the consultants and to make sure that all of the necessary participants are notified and invited to the charrette.

Mr. Shaw suggested the Poinciana Club be considered an appropriate location for the charrette.

Mr. Frank stated that suggestion had already been made, but was unsure of the availability of the facility. At Town Council's request, and as part of the agreement to extend the delay of the decision on the landmarking, an inspection of the facility was conducted. It is the opinion that the facility is in "pretty good shape."

Mr. Frank added that the consultants will put the commentary of the charrette together, and report that to the Planning & Zoning Commission.

D. Comprehensive Plan Evaluation and Appraisal Status Report (Verbal)

Mr. Frank stated that in the Evaluation and Appraisal Report, issues of: drainage, underground utilities, preservation of residential neighborhoods, shoreline protection and submerged lands, traffic and parking safety issues, disaster management and the Royal Poinciana Plaza have been addressed and this Commission and Town Council has passed and forwarded these to the state. Also approved were: special topics of a prehistoric inventory plan, town-wide beautification, implementation of concurrency management system, evaluation and success in coordination for school planning, evaluation of success in meeting water supply needs, evaluation of past density restrictions in the coastal high-hazard area, evaluation of progress in improving high levels of service and changes in designated urban in-fill and redevelopment areas. All of the above referenced items will become part of the capital improvement plan and will be approved by Town Council.

Mr. Bell commended Mr. Frank for his work on the Comprehensive Plan and Mr. Frank stated there is more work to be done on the report and it will be considered and approved by this Commission in the spring, and by the Town Council by November 2008.

VI. COMMENTS OF THE PLANNING AND ZONING COMMISSION AND PLANNING, ZONING AND BUILDING DIRECTOR

John Page, Director of Planning, Zoning & Building Department briefly addressed the Commission. Mr. Page said he looked forward to working with the Commission in the future and thanked them for making him feel welcome.

VII. ADJOURNMENT

It was the consensus of the commission to adjourn at 4:04 p.m.

Respectfully submitted,

William M. Guttman, Chairman Town of Palm Beach Planning and Zoning Commission	Alan S. Golboro, Secretary Town of Palm Beach Planning and Zoning Commission

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