PLANNING AND ZONING COMMISSION
2008-2009 ZONING HEARING
RECORD AND REPORT
TUESDAY, DECEMBER 2, 2008, 9:30 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: (0:02:04) Chairman Guttman called the meeting to order at 9:34 a.m.

PRESENT: William M. Guttman, Chairman
Alan S. Golboro, Secretary
John H. Schuler, Member
Leslie A. Shaw, Member
Walter Anthony Dowell, Member
Eugene Lawrence, Member
Floyd Wideman, Jr., Member
E. James Ryan, Alternate Member
C. Tanner Rose, Jr., Alternate Member
John S. Page, Director of Planning, Zoning & Building Department
Paul Castro, Zoning Administrator
John C. Randolph, Town Attorney

ABSENT: Martin I. Klein, Alternate Member

RECORDING SECRETARY: Deborah A. Morakis

II. INVOCATION AND PLEDGE OF ALLEGIANCE: (0:02:35)
Ms. Morakis gave the invocation and led the Commission in the Pledge of Allegiance.

III. PROOF OF PUBLICATION (0:03:28)

Mr. Castro stated that he had proof of publication.

IV. COMMENTS FROM THE PUBLIC: (0:03:40)

Chairman Guttman expressed his irritation after receiving a six-page letter at 5:00 p.m. on Monday, December 1, 2008, from counsel for the Palm Beach Towers as well as an email earlier today that no one has had an opportunity to read. Chairman Guttman called Counsel for Palm Beach Towers to the podium.

John Eubanks from the Law Offices of Moyle, Flanigan, Katz, Breton, White & Krasker, P.A., identified himself for the record.

Chairman Guttman stated that it was unprofessional of him not to have copied counsel for the applicant with his letter and put Mr. Eubanks on notice that the Commission would not accept such late filings. There were statements made about spot zoning and other issues raised that would not pass legal muster. Staff was asked to republish Study Item 15 in two parts. Part 1 as related to the application by Sydney Spiegel, and, Part 2 as related to the general study of off-street parking in any commercial district. Mr. Eubanks was asked to provide the Director of Planning, Zoning & Building Department, Town Attorney and Ms. Ziska with a memorandum of law. Chairman Guttman advised Ms. Ziska that he expected her to answer this memorandum of law with her own memorandum of law and suggested that it be served on all parties mentioned within three to six days.

Maura Ziska, Attorney for the Royal Poinciana Plaza, requested a deferral until the January 6, 2009 Planning & Zoning Commission Meeting. Ms. Ziska stated that she did receive a copy of the letter from Moyle, Flanigan, et al late last evening and had not had an opportunity to review or rebut it and felt it was a disservice to hear this matter with opposition pending.

Mr. Shaw asked if it would be possible to defer Study Item 15 until the February Planning & Zoning Commission meeting.
Ms. Ziska stated that would hold up tenant issues.

MOTION BY MR. SHAW TO DEFER STUDY ITEM #15 UNTIL THE JANUARY 6, 2008, PLANNING & ZONING COMMISSION MEETING.
MOTION SECONDED BY MR. DOWELL.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

V. REGULAR AGENDA

A. Approval of November 4, 2008, Planning and Zoning Commission Record & Report. **(0:10:10)**

MOTION BY MR. SCHULER TO APPROVE THE NOVEMBER 4, 2008, RECORD AND REPORT.
MOTION SECONDED BY MR. LAWRENCE.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

B. 2008-2009 Study Items, Phase II

1. Study Item 6. Intersection Vision Study. **(0:11:05)**
[American Consulting Engineers]

Chairman Guttman provided a lengthy background on Study Item 6, pointing out deficiencies he believed was in the language and made suggestions for correction.

Paul Castro, Zoning Administrator, stated that Staff initiated this zoning proposal because the existing code provision was unrealistic and did not work. Mr. Castro stated that this item was brought to the Town Council and Planning & Zoning Commission with proposed changes and Staff has been trying for the past four years to implement these site triangles. Mr. Castro stated that the Town has had Zoning in Progress for the past four years. During that four years, property owners who have had major renovations or new construction have been required to meet the site triangle requirements. Mr. Castro stated that Staff believes that the triangles being reviewed by the Commission today work and added that the implementation strategy and the codification of that strategy would come back to the Planning & Zoning Commission in January.

Brian Merson of American Consulting Engineers gave a brief presentation summarizing the work done on Study Item 6 and requested that the Commission approve the revised triangles with whatever refinements are necessary when detailed language is brought forward at a later date. Mr. Merson stated that there is the potential for a public safety issue.

Comments were heard by the Planning & Zoning Commissioners and Garreth Klotz of American Consulting Engineers answered questions.

Mr. William Feldkamp, a Town resident and member of the Architectural Review Commission addressed the Commission and stated that ARCOM had been given a presentation at their November 21, 2008 meeting. Mr. Feldkamp advised the Commission that it was the consensus of the Architectural Commission that by allowing the removal of piers, walls or interesting landscape, it would not be aesthetically pleasing. ARCOM felt that by setting a reasonable standard, there could be a balance between the safety issues and the aesthetic issues. Mr. Feldkamp added that the Architectural Commission summed up their discussion by agreeing that the current 15'x30' triangles were not working and should be thrown out, and, that the study, as presented to ARCOM, should be implemented and codified. However, when the rule affects large landscaping and architectural features, the issue should come before the Architectural Commission or the Landmarks Commission for review.

After further discussion, Chairman Guttman stated that the ARCOM suggestion for a waiver process made some sense and continued to formulate the following suggestion for a motion: **TO ACKNOWLEDGE THAT THE EXISTING REGULATION OF TRAFFIC AT INTERSECTIONS IS SUBSTANDARD, THAT THE COMMISSION PROCEED TO ASK STAFF TO DRAFT ORDINANCE LANGUAGE THAT WOULD ADOPT FIGURES 1 THRU 3 AND INCLUDE DEFINITIONS OF TRAVEL LANES, ETC., AND INCLUDE A WAIVER PROCESS.**

MOTION BY MR. SHAW, AS STATED BY MR. GUTTMAN.
Mr. Wideman asked if all that had to be included in the motion and Mr. Shaw suggested a simpler motion:

MOTION MODIFIED BY MR. SHAW THAT THE PLANNING & ZONING COMMISSION RECOMMEND TO STAFF THAT THE PROPOSALS AS GIVEN TODAY BE ADOPTED INTO ORDINANCE FORM AND THAT THERE BE A CONSIDERATION FOR A WAIVER OPTION BY EITHER THE ARCOM OR LANDMARKS COMMISSION WHEN THERE IS A STRUCTURE, HEDGE OR LANDSCAPING OF SIGNIFICANT VALUE AND IMPORTANCE TO THE PROPERTY.
MOTION SECONDED BY MR. WIDEMAN.

Mr. Merson stated that he was not asking the Commission to adopt the national standard for site triangles. National criterion was used to develop prudent site triangles that are sensitive to the community. He did not believe the national standard for clear street zones was appropriate, nor would he recommend it.

Mr. Lawrence asked that street signs, poles etc. be taken into consideration when this is codified. Mr. Lawrence also suggested that he would not object to a tree being located within a site triangle as it would not block a car and could make a difference in the way the corner looks.

MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE WITH MR. GOLBORO COMMENTING THAT HE WOULD ALSO LIKE TO SEE A SCHEDULE OF IMPLEMENTATION INCLUDED.
Mr. Merson agreed.

2. Study Item 8. Study of Flags and Flag Poles **(0:53:58)**
[John C. Randolph, Attorney]

Town Attorney Randolph provided an overview of Study Item 8 and read a proposed definition of a flag. Mr. Randolph stated that the language included is what was proposed to Town Council, and includes the size of flags that would be attached to particular size poles. Mr. Randolph stated that grand-fathering does not usually apply to portable structures and does not normally apply to temporary structures. By including specific language in the ordinance, it could be made to apply to temporary things. Mr. Randolph recommended that Staff do a "windshield survey" of the flags now in existence in Town to keep on file to help identify any existing flags.

Comments were heard from the Planning & Zoning Commission and Mr. Randolph stated that he would look at some of the inconsistencies in the sizes and heights.

Mr. Schuler stated that he felt this issue should not be over complicated and asked about Clubs and their ability to fly their flags and Mr. Randolph stated that this ordinance would apply only to commercial messages. Mr. Randolph stated that adopting this ordinance would grant an opportunity for someone to apply for a special exception.

Chairman Guttman noted that this ordinance was previously approved and the only change being implemented is the grand-fathering of flags and Attorney Randolph stated that if a flag was up for more than three years, it would be considered grand-fathered.

Robert Moore, former Director of Planning, Zoning & Building Department, addressed the Commission and stated that he was pleased to see the language added to deal with the grand-fathered flags, especially for the clubs. Mr. Moore pointed out that the language is the same except for the exclusionary grand-fathered language and asked if the flags with a club signature on them would be considered as a commercial message.

Mr. Randolph stated that the flags that were up would be considered grand-fathered in and it was the consensus of the Commission to include a sentence in the language to not include clubs.

After additional discussion, the following motion was made:

MOTION BY MR. SHAW TO APPROVE THE ORDINANCE AS WRITTEN, WITH THE ADDITION OF THE CLUB LOGO INCLUSION, AND, FOR STAFF TO TAKE A LOOK AT THE SQUARE FOOTAGE OF THE 25 TO 30 FOOT POLES.
MOTION SECONDED BY MR. WIDEMAN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

3. Study Item 9. Investigate the Elimination of Zoning Season. [Town Planning Staff] **(1:09:45)**

Chairman Guttman read a portion of the report that he presented to the Town Council on November 13, 2008.

John Page, Director of Planning, Zoning & Building Department addressed Study Item 9 and gave a brief history of the zoning season, which now runs from October through May, during which any rezoning request or text amendment is processed. As directed by the Town Council last summer or fall, this is to be one of the zoning season study items looked at this year for possible change. If changed, we would eliminate the season altogether. Meaning, any rezoning request and any text change request could come before the Town twelve months out of the year. Staff has considered whether this would place undue strain on our resources and has come to the conclusion that it would not. Staff is not inviting more applications to be submitted to the Town, simply eliminating the eight-month window in which they could be considered. That means the Commission would be subject to meeting year round if needed. Staff has proposed that the zoning season be eliminated and that new language be included in the Ordinance indicating that once an application is complete it would be heard by this Commission within sixty days, and then go to the next regularly scheduled Town Council meeting.

Mr. Shaw suggested that language be included to allow for a minimum time line in which an application could be processed.

Mr. Castro stated that when Staff reviewed the language in the Code, Staff wanted to be sure to allow property owners and applicants an opportunity to have due process in a timely manner. Once an application is deemed complete and is heard by the Planning & Zoning Commission, the Planning & Zoning Commission could defer the application if it is a sensitive issue that needs further consideration.

Mr. Golboro and Mr. Wideman both expressed the opinion that the zoning season should be eliminated since the Planning & Zoning Commission has been mandated to meet twelve times per year.

Attorney Randolph asked if a balance should be struck between the issue of resident-initiated applications versus town-initiated applications and stated that 90 percent of the zoning considerations that come before the Planning & Zoning Commission are town-initiated. Mr. Randolph added that would give lots to do during the summer and require applicant-initiated applications to continue during the season. If the Town Council is looking to change a zoning district or create a new zoning district, those things would remain during the season.

Discussion continued and comments were heard from Mr. Bill Diamond of 220 Wells Road, who stated that with the advent of technology, meetings can now be broadcast worldwide and communication is much less of a problem.

Mr. Page stated that Staff would be comfortable with the idea of separating town-initiated applications from applicant-initiated applications and suggested to allow town-driven applications to be heard year round, but, remain seasonal with regard to applicant-driven applications.

Comments were heard from Town Councilwoman Susan Markin, who agreed with Mr. Golboro's comments and stated, "This is a year-round town. Every Commission in this Town needs to meet twelve months per year."

Discussion continued regarding notification requirements and how a determination would be made of what type of applications could be deferred.

Town Council President Dick Kleid agreed with Mrs. Markin and stated that every other Commission meets twelve months per year and believed that there is a prerogative that certain matters should not be done in the summertime. Mr. Kleid sited as an example the Landmarking of the Royal Poinciana Plaza, which came up in the off-season. Town Council deferred this item to November so that more residents could be here. Mr. Kleid added that the Commission needs to trust the Town Council and pressure from the community as to what matters need to be treated in full season.

Mr. Shaw suggested that strenuous advertising of each application take place.
Town Councilwoman Gail Coniglio stated that she would like the Planning & Zoning Commission to meet year round.

Mr. Castro pointed out that just because the Commission can meet year round, it does not mean that the Commission has to meet year-round if there is no business. Most Planning & Zoning Commissions meet year round only if there is work to be done. The intent was to provide the opportunity for the Commission to meet to do Town business and take care of issues and to process other applications year-round.

Chairman Guttman suggested three possible motions:

- meet year round and deal with zoning issues and adopt the Staff's proposal;
- meet year round on zoning issues of there are zoning issues but to not permit applicant-driven applications for re-zoning off season which would permit us to deal with Town Council or Staff initiated;
- reject idea of changing zoning season from what it is now to a year round zoning season unless we poll the residents in some fashion and that is what they want us to do.

Mr. Wideman commented that this is also the Planning Commission and Mr. Randolph stated that the reason that planning has not been a focus is that the Commission is not precluded from meeting year round in regards to planning issues and Mr. Schuler added that the Commission has agreed to do just that.

MOTION BY MR. GOLBORO TO RECOMMEND THE ELIMINATION OF THE ZONING SEASON.
MOTION SECONDED BY MR. SHAW.
MOTION CARRIED 4 TO 3 AFTER A ROLL CALL VOTE, WITH MESSRS. SCHULER, LAWRENCE AND GUTTMAN OPPOSED.

4. Study Item 11. Re-Evaluate the Proposed Zoning Provisions Related to Requiring Easements for Underground Utilities. **(2:01:42)** [Tom Bradford, Deputy Town Manager]

Deputy Town Manager Tom Bradford advised the Commission that Study Item 11 was carried forward from last year. Mr. Bradford stated that approximately 10% of properties in the Town would not be able to accommodate underground utilities without the Town first receiving a new easement from those property owners. Because of the amount of time involved to plan and construct a project of this magnitude, and since new construction and major renovations are ongoing at all times, the thought was to require that major redevelopments accommodate underground utilities or that providing for underground utilities be a condition of their project approvals.

Mr. Lawrence commented that this was a very complicated issue and stated that the rear yard easements include gas, water, sewer, electric, etc. and asked for a Staff recommendation.

Mr. Bradford stated that Staff recommended that there be no further action on Study Item 11.

MOTION BY MR. LAWRENCE TO NOT CONSIDER FURTHER ACTION ON STUDY ITEM 11.
MOTION SECONDED BY MR. SCHULER.
MOTION CARRIED 6 TO 1 AFTER ROLL CALL VOTE WITH MR. SHAW OPPOSED.

5. Study Item 14. Zoning Amendment Application to Modify the Front and Rear setbacks for Larger Lots in the R-B Zoning District. **(2:22:43)** [CG&A]

Steven Belden, Sr. Planner with Calvin, Giordano & Associates presented a report to the Planning & Zoning Commission and explained Zoning Amendment application.

Mr. Lawrence declared ex-parte and stated that he discussed this matter with Mr. Ciomek and Mr. Seagraves.

Robert Moore presented background information and stated that this section was being added into the ordinance to deal with a problem that the Architectural Commission was having with the fact that mass was too great on the larger lots as compared to adjacent, smaller lots in the same neighborhood. To deal with the issue of mass, it was considered that lots of 20,000 sq. ft. or more be granted the R-A or R-AA zoning district for their lot yard and bulk regulations.

Paul Castro pointed out that when this regulation was adopted by the Town Council, the concern at the time was with the larger lots. An overlay was created in the R-B Zoning District so that if the lot was over 20,000 square foot, most of the R-A requirements within that zoning district had to be met. Mr. Castro added that after that was adopted, another provision was placed in the code so that no matter how big the lot was, as long as it was 150 feet or more deep, you had to meet the more stringent setback, but you got none of the advantages of the R-A. Staff is recommending that if there is a change that it not occur on the larger lots, but, it does merit some consideration for the smaller lots under 20,000 sq ft.

Discussion continued and Mr. Robert Harvey, resident of 160 Dunbar Road, addressed the Commission and stated that he recently came across this code when he went to see his architect about possibly bulldozing his house and building a new house. Mr. Harvey said that his lot is 100 x 160 and as a result, he is caught up in the 35 foot setback requirement dilemma. Mr. Harvey stated that he supports this amendment.

Architect Pat Seagraves, here on behalf of Mr. Harvey, stated that he thinks that lots over 20,000 square feet should be treated as R-A lots, but that lots of under 20,000 square feet should be treated as R-B lots.

Mr. Ryan asked how many lots in the Town are affected by this and how many variances have been involved.

Mr. Castro stated that approximately 15 homes in the past year have had to be redesigned due to this requirement.

After further discussion, the following motion was made:

MOTION BY MR. WIDEMAN TO APPROVE STUDY ITEM #14.
MOTION SECONDED BY MR. SHAW.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

6. Study Item 15. Zoning Amendment Application to Modify the Off-Street Parking Requirement for Retail Uses in the C-PC Zoning District. **(0:03:40)** [CG&A]

The Planning & Zoning Commission heard a request for a deferral at the beginning of this meeting and a motion was made and approved to defer Study Item 15 until the January 6, 2009 Planning & Zoning Commission meeting.

VI. COMMENTS OF THE PLANNING AND ZONING COMMISSION AND PLANNING, ZONING AND BUILDING DIRECTOR. **(2:40:47)**

Mr. Golboro stated that on February 4, 2008, Mr. Timothy Frank reported on the 307 Capital Improvement program. Mr. Golboro asked if there was an update on this program and wondered if a report had been given to the Town Council.

Mr. Page advised the Commission that he would look into this matter. Mr. Page reminded the Commission that as well as Phase III Zoning Season Study Items being considered in the month of January, 2009 and Staff will present a summary of actions that will clearly spell out the recommendations and actions taken before being presented to the Town Council. Mr. Page announced that a new Town Planner has been hired to replace Mr. Frank who resigned at the end of September. John Lindgren was introduced to the Commission. Mr. Page added that one of the first items Mr. Lindgren will be focusing on will be the Comprehensive Plan. Mr. Page stated that the initial ORC report has been received from the State of Florida and noted that a number of comments from the State must be analyzed, items will be amended and changes will be made to what was submitted to the State. Mr. Page stated that the Town has four months in which to analyze those comments and respond to them. Additional information will be provided to the Planning & Zoning Commission in the near future.

VII. ADJOURNMENT **(2:45:38)**

MOTION BY MR. SCHULER TO ADJOURN AT 12:17 P.M.
MOTION SECONDED BY ALL.
MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

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

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