

RECORD AND REPORT
PLANNING AND ZONING COMMISSION
2004-2005 ZONING HEARINGS
Wednesday, December 1, 2004 at 9:30 a.m.
Thursday, December 2, 2004 at 9:30 a.m.
360 South County Road, Palm Beach
Town Council Chambers

I Call to order and Roll Call:

Chairman Kleid called the meeting to order at 9:33 a.m.

PRESENT:

Richard Kleid - Chairman
Lowry Bell - Secretary
Peter Broberg - Member
Joanna Golino - Member
Nancy Murray - Member (arrived at 9:38 a.m.)
Harrison Robertson - Member
Jorge Sanchez - Member
Elizabeth Murphy - Alternate Member
Susan Markin - Alternate Member
John Schuler - Alternate Member

STAFF PRESENT:

Robert L. Moore, Director of Planning, Zoning & Building
John C. Randolph, Town Attorney
Veronica Close, Asst. Director of Planning, Zoning & Building
Paul W. Castro, Zoning Administrator
Timothy M. Frank, Planning Administrator
William F. Brisson, Zoning Consultant, Adley, Brisson, Engman
Cynthia M. Delp, Recording Secretary

II Invocation: By Mrs. Delp, Recording Secretary

III Pledge of Allegiance: All

IV Welcome to Service:

Councilman Samuel McLendon welcomed the Commission to service on behalf of the Town Council and its residents. He pledged the assistance of the Town Council to the Planning and Zoning Commission in their work this season.

V Approval of Minutes of November 4, 2004 Planning and Zoning Commission Meeting:

MOTION BY MR. ROBERTSON FOR APPROVAL OF THE MINUTES.
MOTION SECONDED BY MR. BELL.
MOTION CARRIED UNANIMOUSLY. (Ms. Murphy voting in Mrs. Murray's stead)

VI Election of Chairman and Secretary

Mr. Kleid called for nominations for Chairman.

MOTION BY MR. BELL NOMINATING MR. KLEID AS CHAIRMAN.
MOTION SECONDED BY MR. ROBERTSON.

There were no other nominations for Chairman.

UPON A ROLL CALL VOTE, MOTION CARRIED 7-0 (Ms. Murphy voting in Mrs. Murray's stead)

Mr. Kleid called for nominations for Secretary.

MR. KLEID PASSED THE GAVEL AND NOMINATED MR. BELL AS SECRETARY.
MR. ROBERTSON SECONDED THE NOMINATION.

Mr. Kleid asked if there were any other nominations for Secretary.

MS. MURPHY NOMINATED MRS. GOLINO AS SECRETARY.

Let the record show that Mrs. Murray arrived at this time, and did participate in the paper ballot to follow.

BY PAPER BALLOT, MRS. GOLINO WAS AFFIRMED AS SECRETARY BY A 4-3 VOTE.

VII PROOF OF PUBLICATION: Mr. Castro confirmed that there was proof of publication for these hearings.

VIII ROBERT'S RULES

Mr. Kleid announced that Robert's Rules would be used in governing these meetings.

IX PROCEDURES FOR INPUT BY THE GENERAL PUBLIC

Mr. Kleid stated that public input will be permitted after presentations by the applicant and/or the staff. Members of the public should state his/her name and address. Public comments should be limited to the specific agenda item under discussion, and should be kept to five minutes.

X 2004-2005 ZONING PROPOSAL STAFF REPORT (EXCLUDING THE PROPOSED POINCIANA PLAZA MIXED USE PLANNED UNIT DEVELOPMENT TO BE CONSIDERED ON DECEMBER 2, 2004)

For purposes of this Record and Report, there were no declarations of ex parte communication unless specifically stated under a given study item. At appropriate times during the meeting, Mrs. Delp administered the oath to those who intended to testify relative to quasi-judicial matters.

STUDY ITEM 4: PHASE II OF A MAXIMIZATION STUDY FOR RIDGEVIEW DRIVE AND JAMAICA LANE

Mr. Kleid explained that this study is a continuation of the 2003/2004 zoning season study performed by Urban Design Studio, and incorporates the minimum flood elevation and a cubic content ratio of 3.5 and 4.0. Prior to Urban Design Studio's presentation, Mr. Kleid asked Mr. Castro to provide a history of the types of studies which have been done already to attempt to regulate the size of homes. Mr. Castro distributed a one page report entitled "*Zoning*," and referred to and read from that report. The report is as follows:

Zoning

As early as 1990, the Town Council and the Zoning Commission have been evaluating those portions of the Town's Code of Ordinances which regulate the size of homes in the R-B zoning district. In the last three years the issue of "monster homes" or "mansionization" has become increasingly problematic not only in Palm Beach, but in other areas of the country.

The Town Council and Zoning Commission have considered and adopted a plethora of modifications over the last twelve years to attempt to address the size, mass and location of new homes in the area of Town where homes have been getting much larger than surrounding homes (in the north end R-B zoning district). Those adopted or proposed regulations were: 1) the building height plane (which was later eliminated), and angle of vision in 1990; 2) the floor area ratio (FAR) and the averaging of the front yards with neighboring properties in 1991 (both eliminated at later dates; 3) separate zoning districts within the R-B zoning districts in 1991-1992; and, 4) the cubic content ratio (CCR) which limits the size of homes in the R-B district in 1993.

In 1997, the CCR regulation was modified to lower the maximum size of homes based on a sliding scale.

Most recently, in December 1998, and January through July, 1999, the Town retained Ray Gindroz of Urban Design Studio to study a concept of architectural patterns and design guidelines for the R-B zoning district (north end). The concept dealt with indoor and outdoor living spaces and the spacial and architectural relationships of homes in different neighborhoods. After review of the concept, the Town pursued a somewhat different proposal that focused on creating zoning regulations that would not implement architectural guidelines, but would embrace zoning regulations which were consistent with the existing development patterns of a neighborhood.

In the fall of 1999, the Town retained Duncan & Associates and Urban Design Studio to develop a concept of prototype neighborhood zoning guidelines for four streets on the north end of Palm Beach. The proposed prototype concept for those streets, which included a proposal for design incentives to allow other zoning flexibility, was later eliminated from consideration. However, staff was asked to complete its own study incorporating many of the identifiable characteristics used by Duncan & Associates to create possible overlays or districts.

In 2001, Staff collected and analyzed lot, yard and area data on R-B lots in five distinctly different areas of the Town. Those areas were selected because of their varied character. The proposal was then considered and it was decided that the sliding scale CCR implemented in 1998 should remain in place for additional time

to determine its true effectiveness on scaling down the size of new and renovated homes. In addition, Staff was asked to study a proposal which would have created a historic or conservation zoning district for one unique area of Town. That area, which encompassed Seaview Avenue, Seaspray Avenue and Seabreeze Avenue was evaluated during the 2002-2003 Zoning Season to create zoning regulations, based on existing lot, yard and area characteristics and was subsequently not approved.

In 2003-2004, Urban Design Studio conducted a maximization study of Ridgeview Drive and Jamaica Lane. That study identified existing pervious and impervious areas and homes on the lots on those streets and compared that to the maximum build-out that could occur on those lots using the existing code requirements. The second part of that study is being presented during the 2004-2005 zoning season.

(Report ends)

Mr. Moore remarked that staff has actually been studying this issue since the mid 1980s, and has tried several different approaches to arrive at a solution to this problem. The subject is certainly controversial, but staff feels that they have exhausted the subject, having studied it for approximately 20 years. Mr. Moore warned that the Planning and Zoning Commission may find the Urban Design Studio presentation startling. He urged the commission to concentrate on making recommendations to pass on to the Town Council for action, so that staff may move on to other important matters facing the town.

Mr. Russell Scott of Urban Design Studios gave a visual presentation of the possible results of maximization of the code provisions for the lots on Ridgeview Drive and Jamaica Lane, also taking into consideration the FEMA flood plain requirements and exploring CCRs of 3.5 Wide, 3.5 Tall, and 4.0. Mr. Scott explained that the study was not intended to form conclusions, but to accurately portray statistical information in a graphic format so that it could be used as a tool for further understanding of future development, and subsequent possible code revisions. Simple block models were used in the study, without attention to architectural design or landscaping. Certain building height norms were established for the study; one-story homes at 20 feet in height; and, two-story homes with a first floor at 12 feet, a second story at 10 feet, and 8 additional feet for the roof, for a total of 30 feet for a two-story home. Front setbacks were standard at 30 feet. Mr. Castro added that landscaping and design elements were eliminated from the study because staff did not want either of these elements to skew the affect of the massing shown in the study. Mr. Castro stated that the power point presentation of the homes under construction (using the sliding scale) in 2002 is available to the commission if they would like to see it again. Unfortunately, due to the hurricanes, homes being constructed in 2003 and 2004 have not progressed far enough to be included in the power point presentation.

Mr. Kleid called for staff comments. Mr. Castro echoed Mr. Moore's earlier comments that the subject has been studied for 20 years, and staff would like to resolve it this year. He encouraged the commission to make recommendations so the matter may move forward. Mr. Kleid then called for public comments.

Mr. David Barton, 216 Jamaica Lane, offered his comments. Mr. Barton stated that there are clearly four distinct sections in Palm Beach. He claimed that if someone wants a large house, there are sections of town where that is acceptable and expected. Huge houses are not desired on north end streets, however. The north end is a series of neighborhoods with distinct character. At almost every meeting, residents claim that they want to preserve the character of Palm Beach. Mr. Barton

commented that the character of Palm Beach is a neighborhood. The study has shown startling results of maximization. Mr. Barton feels that the Town's policies, specifically the code which allows maximization, are allowing the Town's patterns to change. Secondly, Mr. Barton stated that the Staff's power point presentation relative to how the CCR and sliding scale are working was an unfair way to assess the situation. Thirdly, Mr. Barton claimed that the Urban Design Studio presentation done today was incomplete because it does not show the impact of these large homes on the street behind them, especially when you consider the typical 10 foot rear setback. Lastly, Mr. Barton mentioned that the Town has no uniform policy relative to drainage, and this requires radical change. Ultimately, Mr. Barton made the following recommendations: 1) To complete the Urban Design Studio study showing the street next to it to see the impact of the CCR on the neighborhoods, and 2) This commission is a planning board first and a zoning board secondly. He beseeched the commission to retain the four distinct areas within the town; to be policy-driven rather than market driven, and to retain the character of Palm Beach that everyone who lives here wants.

Councilman McLendon questioned whether anyone has considered requiring 60% of the CCR on the first floor and 40% on the second floor. Mr. Castro responded that staff did look at that approach, but staff always wants to give the architect and the Architectural Commission the most flexibility possible to achieve good design. The 60/40 approach produces "a wedding cake effect" and less architectural design.

Mr. Schuler commented that the Planning and Zoning Commission should not drive Palm Beach architecture. This should be left to the Architectural Commission.

Councilman McLendon added that he knows of two new homes which were built up to 7.5 feet to meet FEMA requirements, and both were constructed with walls around them. During construction, however, insufficient fill was placed at those walls. As a result, in periods of heavy rains, surrounding properties and the Town's streets flooded. He stated that this subject requires attention.

Mr. Sanchez asked about the average CCR for the Sea streets. Mr. Castro responded that he believes that the average CCR there is in the mid-4's, 4.5 or 4.6. Mr. Sanchez remarked that the problem is that the R-B zoning covers an enormous area, and we try to make it fit all. This does not work. He offered three choices: 1) Stay the same, but change the CCR, which forces architects "to put a different type of meringue on their shoe boxes"; 2) adopt an R-B zoning with zoning overlays which respects each neighborhood individually; or, 3) eliminate the R-B district, and create zoning districts according to each neighborhood. He noted that the CCRs on the Sea streets are very large, yet these homes are highly admired. When these homes were constructed, the Town allowed more flexible setbacks and relaxed angle of vision requirements. Mr. Sanchez stated that we need to stop forcing architecture on the architects. Still, he acknowledged that there are streets in the north end where lower CCRs are appropriate.

Ms. Markin, having lived in the south end of town, now lives in the north end and thoroughly enjoys the neighborhood aspect of north end living. She commented that she would hate to see that change. She echoed Mr. Barton's concern about drainage, as that is a problem all over town. Regarding the CCR studies, she stated that people need to choose if they want more floor space or more ceiling height in the north end. There does not need to be another estate section in the north end. She stated her assurance the when given a choice, people who are motivated by money will maximize every lot every time.

Mr. Moore explained how CCR sets the limits of the “box” and that ARCOM decides how structures may be arranged within the “box” and that it is the Planning and Zoning Commission’s task to determine if that “box” needs to be reduced. Mr. Moore also noted that Staff has discussed new zoning districts and overlays to address the problem in the past, but these suggestions have always been disapproved.

Ms. Golino liked the idea of new zoning districts for the north end, but commented that the commission needs to deal with the CCR. She recounted how when she was on ARCOM, they typically approved applications with CCRs of 3.5 or less. She noted this is higher than most areas are developed in the north end, and that the 4.0 CCR represented in the Urban Design Studio presentation was “brutal.” She recommended taking the bold step to reduce the CCR to 3.5 as a starting point and then look into bonus zoning or other measures to allow development “outside the box”.

Mr. Kleid set forth the proposals before the Commission:

- a. Consider the recent study, and determine whether a CCR of 3.5 or 4.0 is appropriate;
- b. Stay where we are with the current sliding scale CCR
- c. Restudy the R-B and determine appropriate neighborhoods, perhaps during the EAR process for the Comprehensive Plan.

Mr. Robertson asked staff for their conclusions after having reviewed the study, and for staff recommendations. Mr. Castro responded that the houses are very large, even at a CCR of 3.5. When you review the homes built with the sliding scale, when complete with landscaping, they appear reasonable, but he noted that the code can be manipulated to get a larger home. Mr. Castro noted that staff has been recommending a CCR of 3.5 since before his employment with the town. He saw no reason to change that recommendation at this time. He noted, however, that 3.5 is a much higher CCR than most of the houses in the north end today.

Mr. Moore remarked that the presentation today was shocking, with all the homes on a street being maximized. In actuality, maximized homes are being built a little at a time at a rate of about 20-25 per year. As such, a pattern is being established for larger houses. Mr. Moore stated that he has always been a proponent of the approach that the individual street should be taken into consideration; that there should be an “evolution” rather than a “revolution” in building new homes; and that there be an attempt to reduce the size of the homes as they are being replaced on the streets. He agreed with Mr. Castro that a CCR of 3.5 is a good place to start, together with offering bonus zoning for meritorious architecture. The potential problem with that is how to define meritorious architecture.

Mr. Randolph commented that he is in agreement with Mr. Barton in regard to the fact that the Planning and Zoning Commission must make a policy decision first about what is desired for the north end. Going to a 3.5 CCR is not going to change the north end in Mr. Randolph’s opinion. From a zoning standpoint, if the desire is to preserve the neighborhood, that can be done. Formulas could be created for joined lots which would specify that their CCR could not exceed the average of the properties on either side of it. He felt this concept would be more effective than just changing the CCR. The study presented today has shown the result of everyone building to a maximum of 3.5 CCR, which produced a “barracks” look on the street. He stated that the commission, as a planning commission, needs to make a decision whether the character of the neighborhood should

stay as it exists, whether it should be slightly modified, or whether it should evolve into the appearance of the Sea streets. Until that decision is made, deciding on a CCR will not achieve the desired result. He encouraged the commission to make that decision, and then staff will develop whatever zoning regulations are necessary to effect those changes. Mr. Kleid stated that he agreed with Mr. Randolph's comments in this regard.

Mrs. Murray recalled that at the end of the last zoning season, the commission had asked staff to look at several streets, at the size of the homes that existed there versus the size of the homes being built. She asked whether that study was available. Mr. Castro responded that staff is prepared to move in that direction, but it has not been done yet.

Mr. Robertson stated that he wanted to see the neighborhood stay the way it is. As such, he made the following motion:

MOTION BY MR. ROBERTSON TO RECOMMEND TO THE TOWN COUNCIL THAT THE TOWN COUNCIL GO FORWARD WITH ITS PLANNING IN A MANNER SO AS TO PRESERVE THE NORTH END NEIGHBORHOODS IN A MANNER IN WHICH IT EXISTS TODAY, AND TO SUBSEQUENTLY DIRECT STAFF TO COME UP WITH FORMULAS SO AS TO ACCOMPLISH THAT.

It should be noted that members sought clarification of the motion. After discussion, Mr. Robertson said he is in favor of preservation, i.e., keeping things the way they are. Therefore, he was not allowing for gradual change in his motion.

MOTION DIED FOR LACK OF A SECOND.

MOTION BY MR. BELL THAT WE TRY TO PRESERVE THE NORTH END BY USING SOME SCALE THAT WOULD PERMIT A NEW HOME TO BE BUILT A PERCENTAGE (PERCENTAGE NOT SPECIFIED) LARGER THAN THE EXISTING HOMES ON THE STREET TO PRODUCE AN EVOLUTION OF HOMES RATHER THAN A REVOLUTION.

MOTION DIED FOR LACK OF A SECOND.

Mrs. Golino recalled that last year the Planning and Zoning Commission asked Staff to look into the neighborhood index idea which would establish an average index for size. She advocated setting a CCR limit. Mr. Broberg asked staff if a study has already been done to establish average CCRs for a given street. Mr. Moore responded that staff has begun to look at that, but have no data to give to the commission at this time. Mr. Castro stated that staff is currently studying seven streets in the R-B district for that very reason, and those results should be ready for the January meeting. The thought was that if the commission liked that concept, staff would move forward to study the remaining streets in the north end R-B district. Mr. Sanchez asked if this report would include flexible setbacks. Mr. Castro responded it would not. Mr. Sanchez commented that the architecture everyone wants to preserve, like the Sea streets, typically extends into the setback. So, these concepts fight each other. Mr. Sanchez questioned what is the north end. Mr. Moore responded that

it is Wells Road to the inlet, but the recommendations staff will make for the R-B will be for all R-B districts throughout the town. Mr. Castro added that staff tried to provide zoning for the Sea streets based on the character of that neighborhood, but the conclusion was that it was too cumbersome, flexible in some ways and too restrictive in others. It was felt that one area should not be over-regulated and others under-regulated. Staff's studies were then diverted to the issue of size rather than setbacks, lot coverage, or open space requirements.

MOTION BY MR. BROBERG TO FOLLOW THE RECOMMENDATION OF STAFF ON PAGE 1 TO CONCLUDE THIS PROCESS AT A LATER DATE WHEN THE COMMISSION HAS THE AVERAGES STUDY INFORMATION WHICH IS TO BE AVAILABLE FOR THE JANUARY MEETINGS.

MOTION SECONDED BY MR. BELL.

UPON A ROLL CALL VOTE, THE MOTION CARRIED 4-3, WITH MRS. GOLINO, MRS. MURRAY, AND MR. SANCHEZ OPPOSING.

Mrs. Golino was concerned about delaying action for more studies, which could take years until change is implemented. She questioned why a neighborhood index cannot be done more simply, like establishing that the CCR for a new project cannot exceed 110% of the existing average of the neighborhood houses within a certain number of feet, for example. Mr. Moore responded that staff cannot provide a street by street average, but will provide a seven street sampling. The question will become what percentage above that average will be acceptable.

MOTION BY MRS. MURRAY TO REVIEW FOUR HOUSES THAT HAVE JUST RECEIVED THEIR CERTIFICATES OF OCCUPANCY, AND COMPARE THEIR SIZES TO THE SIZES OF THE HOMES ON THE STREET.

MOTION DIED FOR LACK OF A SECOND.

Mr. Sanchez spoke in support of acting today on Mrs. Golino's aforementioned street by street neighborhood index approach, together with eliminating the largest and smallest CCRs from the calculations, allowing a small percentage for growth, and providing for some bonus zoning as an ultimate solution which accomplishes the goals mentioned here today. He did not feel that the commission needed to wait for more studies. Mr. Broberg and Ms. Murphy also spoke in favor of this concept, but the members were divided on the issue of whether to wait or act today.

MOTION BY MRS. GOLINO TO ELIMINATE THE SLIDING SCALE AND ADOPT A CCR OF 3.5 FOR THE R-B ZONING DISTRICT.

MOTION SECONDED BY MRS. MURRAY.

MOTION FAILED, 2-5, WITH ONLY MRS. GOLINO AND MRS. MURRAY SUPPORTING THE MOTION.

Let the record show that there was a short break from 11:15 a.m. to 11:21 a.m.

STUDY ITEM 18: Property owner request to amend the Breakers PUD to demolish and rebuild beach cabanas, add seating, modify the restaurant area, and add additional building area for service space.

Witnesses were sworn and Mr. Kleid called for ex parte communication. Mr. Kleid stated that he had gone to the Breakers and met with Mr. Leone and Mr. Gilmurray. He was shown where the proposed alterations would be, and he was oriented with respect to the project.

Attorney James Brindell and Paul Leone of the Breakers offered the presentation for the Breakers Hotel to demolish 56 existing cabanas, the Reef Bar and the cabana pool, and replace them with 20 new larger cabanas, a new larger Beach Bar and Grill, two new larger pools with spas, and a new pavilion, locker room/restroom building and laundry facility.

Mr. Brindell explained that the project produces no net increase in traffic, and a reduction of 16 parking spaces in the cabana areas. The intensity of use has been diminished along the south end of the property which is preferable to adjacent neighbors. Mr. Brindell reviewed the series of changes to the Breakers, part of their master plan, which have been approved over the years in the Breakers' continuing preservation and modernization efforts. Mr. Leone explained that this cabana project is necessary due to the age of the cabanas (47 years old), the quality of the cabana structures (structures failing due to age and proximity to the ocean, and not in keeping with the standards of the rest of the resort), and the function of the cabanas. With regard to function, Mr. Leone stated that over the past eight years, the Breakers has been scaling back, out of the cabana business. Also, Breakers management has determined that 80% of the guests and members use only 20% of the site, and guests seem to hover at the extremities of the site, along the ocean at the beach on the east side and at the cabanas on the west side. Most guests do not swim in the ocean, so more pool capacity is needed. The project will produce a much more lush and natural setting. The majority of cabana club members will lose their cabanas, but will be encouraged to join the Ocean Club. Mr. Leone reviewed a colored rendering of the project area with the commission members. Mr. Leone stated that the neighbors to the south are pleased with the project, but are concerned about trucks and construction traffic on Via Bethesda and Flagler Drive, and construction noise in general. Mr. Leone assured the commission that all efforts will be made to keep construction traffic from Via Bethesda and Flagler Drive, to keep construction noise to a minimum and to complete the project as soon as possible.

Mr. Brisson offered staff's opinion relative to the project. As there is no intensification in use, no adverse affects to the patrons, and a sufficient landscape buffer between the construction site and the neighbors to the south, staff recommends approval of the application with the proviso that the applicant shows documentation or assurance that the noise from the pool equipment building will not adversely affect the property to the south. Mr. Castro added that all construction traffic should be kept off Via Bethesda and Flagler Drive. He also mentioned that the bulkhead will eventually be raised to the minimum elevation required by code, 14.33 ft. NGVD. This will be a site plan issue later.

There were no comments from the public.

MOTION BY MR. BELL FOR APPROVAL WITH THE STIPULATIONS RELATIVE TO ACCESS FOR CONSTRUCTION VEHICLES BEING KEPT FROM VIA BETHESDA AND

FLAGLER DRIVE, AND THAT POOL EQUIPMENT NOISE WILL BE SUFFICIENTLY BUFFERED BY LANDSCAPING.

**MOTION SECONDED BY MR. BROBERG.
MOTION CARRIED 7-0.**

STUDY ITEM 5: Complete work as identified in the Strategic Plan related to planning and zoning items.

- A. Review and strengthen “town-serving” commercial development ordinance**
- B. Tighten commercial development standards to prevent certain uses which are determined to be inappropriate in the Town**
- C. Explore way to promote retention of small and independent Town-serving businesses**

Mr. Brisson explained that with regard to A., staff recommends no change at this time based on the fact that these regulations have stood the test of time and have withstood legal challenges.

Relative to B., staff has suggested that the following be added to the code for the C-WA zoning district: “Drive-in retail facilities are not permitted.”

MOTION BY MR. ROBERTSON TO ACCEPT STAFF’S RECOMMENDATION FOR STUDY ITEM 5, “B”, TO PROHIBIT DRIVE-IN RETAIL FACILITIES IN THE C-WA, COMMERCIAL WORTH AVENUE DISTRICT.

**MOTION SECONDED BY MR. BELL.
MOTION CARRIED 7-0.**

Relative to C., Mr. Brisson explained that the Town’s Strategic Plan seeks to promote small and independent Town-serving businesses. As such, the Town has, within the past year, allowed additional outdoor seating for smaller restaurants to promote more of these businesses. When the C-TS and C-WA districts were created, they were envisioned for retail and personal services, not offices. When the districts were created, offices were not allowed at all on the first floor. Since that time, however, the code has been changed allowing offices on the first floor provided they do not have any frontage or entrance onto a sidewalk which fronts on a roadway. Variances are also available for office use. The combination of the code changes and the variances have increased the competition for first floor space, and an office can typically afford a higher rent for a Palm Beach address than a small business. Staff is suggesting deleting the allowance for offices on the first floor in both districts.

Mr. Castro added that staff is seeing a continuous infiltration of office uses on the first floor, often after having obtained a variance. Staff feels that this interferes with the pedestrian flow, and strolling of these commercial areas, and as such, is inconsistent with the original intent of these zoning districts when they were created. Grandfathered office spaces on the first floor will be honored, as long as the use is maintained (regardless of the proprietor), and the space is not vacant for two years.

Ms. Markin cautioned the commission to be very careful to protect the small businesses which encourage pedestrian strolling in the commercial areas.

MOTION BY MR. SANCHEZ FOR STUDY ITEM #15, “C”, APPROVING STAFF’S RECOMMENDATION TO DELETE THE LANGUAGE IN THE ZONING CODE ALLOWING FOR OFFICES ON THE GROUND FLOOR IN THE C-TS AND C-WA DISTRICTS.

MOTION SECONDED BY MRS. GOLINO.

Under discussion, staff clarified that banks would still be a permitted use on the first floor in the C-TS district, but would not be permitted in the C-WA zoning district on the first floor if this provision is approved.

MOTION CARRIED 6-1 WITH MR. ROBERTSON VOTING AGAINST.

STUDY ITEM 7: STUDY A PROPOSAL TO INCREASE REQUIRED OFF-STREET PARKING FOR ALL TYPE OF RESIDENTIAL DEVELOPMENT BASED ON THE SIZE OR NUMBER OF BEDROOMS.

Mr. Brisson stated that it has been suggested that the larger the home and the greater the number of bedrooms, that more off street parking should be required. Mr. Brisson provided a history of off-street parking requirements as set forth in the Staff Report. He stated that staff has researched ordinances around the state and country, and found that seldom are more than 3 parking spaces required per dwelling. He discussed other findings of that research as well. After studying this issue, staff has suggested that off-street parking requirements be increased slightly for one and two family dwellings, and for townhouses and multi-family dwellings (three units or more). As the size of the dwelling increases, the number of off-street parking spaces required increases as well. Mr. Castro explained, for example, that if there is a two car garage, and four cars are regularly parked on site, the other two cars must be parked in a place on the site so they may easily maneuver on and off site without any other cars having to be moved. This means that two vehicles may not legally be parked in front of the garage doors.

Mr. Sanchez remarked that there must be a decision about what is more important; that is, green space or parking. He thought that increasing off street parking, especially in the north end, will negatively impact the character of the north end. He felt that the parking requirements should be looked at in relation to green space, impervious surfaces, etc.

Mr. Castro explained that an increase is needed not only for residents’ vehicles, but also for the service vehicles, maids’ vehicles, etc. which visit a site, with the objective to remove as many cars from the street as possible.

Mr. Bell asked if the parking requirements might be considered at the same time as the Planning and Zoning Commission considered the CCR in January. Ms. Murray expressed her concern over the effect of the increased parking requirement on impervious surfaces and green space.

The Planning and Zoning Commission arrived at a consensus that this issue should be deferred and considered at the same time the Staff presents its proposals for increased open space in the R-B district (Study Item #14).

Mr. Kleid asked the members if they wished to continue with the remaining study items today, or whether they wished to adjourn for the day and continue tomorrow morning. It was noted that the Royal Poinciana Plaza item was legally noticed for tomorrow, December 2, 2004. As such, the commission had to reconvene on December 2, 2004, even it was just to defer the Royal Poinciana Plaza item to the January hearings.

By a show of hands, the commission moved to postpone consideration of the balance of the zoning study items until 12/2/04 after the Royal Poinciana Plaza issue comes before the Commission, and to reconvene the meeting at 9:30 A. M. on 12/2/04. The meeting was recessed at 12:25 p.m. until the following morning, December 2, 2004, at 9:30 a.m.

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December 2, 2004

The meeting of the Planning and Zoning Commission, recessed from the previous day, was reconvened by the Chairman at 9:30 a.m. on December 2, 2004 in the Town Council Chambers at 360 S. County Road in Palm Beach, Florida. Upon roll call, a quorum of the members of the Planning and Zoning Commission was present as follows:

PRESENT:

Richard Kleid - Chairman
Lowry Bell - Secretary
Peter Broberg - Member
Joanna Golino - Member
Nancy Murray - Member
Harrison Robertson - Member
Jorge Sanchez - Member
Elizabeth Murphy - Alternate Member (arrived at 9:34 a.m.)
Susan Markin - Alternate Member
John Schuler - Alternate Member

STAFF PRESENT: Robert L. Moore, Director of Planning, Zoning & Building (at 9:50 a.m.)
John C. Randolph, Town Attorney
Veronica Close, Asst. Director of Planning, Zoning & Building
Paul W. Castro, Zoning Administrator
Timothy M. Frank, Planning Administrator
William F. Brisson, Zoning Consultant, Adley, Brisson, Engman
Cynthia M. Delp, Recording Secretary

STUDY ITEM 17: Property owner requests for amendments to the Future Land use Element of the Comprehensive Plan and Zoning Code to allow mixed use commercial and residential development in the Royal Poinciana Plaza.

Mr. Kleid stated that he has received a letter dated November 17, 2004, directed to him as Chairman, from Attorney Jim Brindell relative to the Royal Poinciana Plaza application wherein a deferral to the January 28, 2005 meeting was requested to allow the applicant to hold additional planning sessions and to solicit more comments and suggestions relative to the proposal. Mr. Kleid read the letter into the record.

As the applicant would like more time before the hearing and due to the holidays approaching, Mr. Brindell modified his request to continue the matter to January 27, 2005 for the sole purpose of setting a specific future hearing date before the Planning and Zoning Commission.

MOTION BY MR. BELL TO DEFER THE ROYAL POINCIANA PLAZA APPLICATION TO THE JANUARY 27, 2005 MEETING FOR THE PURPOSE OF RE-SETTING A MEETING DATE FOR THE FUTURE.

**MOTION SECONDED BY MR. SANCHEZ.
MOTION CARRIED 7-0.**

STUDY ITEM 8: Study the Town Zoning Code and the Comprehensive Plan, regarding submerged lands of Lake Worth as they relate to zoning, bulkhead and mean high water line issues.

Mr. Kleid called for declaration of ex parte communication. None were declared.

Mr. Randolph stated that this is a clarification and a housekeeping item because staff feels the existing code is clear in prohibiting the construction of structures west of the bulkhead line along Lake Worth. Staff's recommendation is to declare on the Future Land Use Map that those areas which lie west of the bulkhead line are Conservation Area. Mr. Randolph recommended that this item not move forward today due to pending litigation with the Town by an individual who believes that he has been prevented from building as a result of the code as it exists. As such, he did not feel it was prudent to change the code at this time. Mr. Randolph also was concerned about the Bert Harris Property Rights Act. Persons do not have a right to sue under the Bert Harris Property Rights Act relative to regulations which were in effect prior to the adoption of Bert Harris in 1995. These regulations were in effect prior to that date. For regulations adopted after the Bert Harris Property Rights Act, a person has a right to file an action against the Town for any inordinate burden placed on the property. So, to change the code now to adopt a Conservation District could pre-dispose the Town to litigation. As such, Mr. Randolph asked that the status quo be preserved.

MOTION BY MR. ROBERTSON THAT NO ACTION BE TAKEN RELATIVE TO THIS ITEM TODAY.

**MOTION SECONDED BY MR. BELL.
MOTION CARRIED 7-0.**

Mr. Kleid brought the commission's attention to a project in Lake Worth, south of the Lake Worth bridge, in an area called Tyler's Island (in the water on the east or Palm Beach side). The applicants want to build five large apartment houses on islands to be placed in the submerged water. Mr. Kleid

noted that the Town has no control over this development, but various civic organizations and the Town have gone on record in opposition to the project.

STUDY ITEM 12: Study a provision to allow office use on the first floor with direct street frontage in the C-TS zoning district.

Mr. Brisson stated that increasing vacancies have been noticed particularly along South County Road

between Royal Palm Way and Worth Avenue. A considerable number of vacancies in a commercial area is not healthy, but staff agrees that there would be a significant problem to allow offices on the first floor. Some vacancies may be due to landlords waiting for office tenants from whom they can extract higher rents.

Ms. Markin commented that there is a problem with the landlord at the building where Amici's Restaurant formerly existed, and the building behind it. This landlord is not a Palm Beach resident and is not responsive to the Town's needs and concerns. This landlord did not update or maintain the building as needed for the tenants. She felt the Town needs to take a more aggressive stand with landlords like this and how to control them. Perhaps there could be a limit on how long a tenant space could remain vacant. In any case, more offices are not wanted in this area. Parking is also very much an issue for any tenant in this area, and solving the parking problem would encourage the spaces to be filled. Mr. Kleid mentioned he believed the Town is taking more punitive action through code enforcement. Mr. Moore responded that the Town is taking code enforcement action and that this is a landlord problem; but that the Town would not want to get into controlling rents or similar actions. He suggested the Town might consider a study to "vision" how this area may redevelop, perhaps under a re-zoning to C-OPI, or by allowing additional uses under current zoning.

Mr. Moore further explained the town-serving concept and suggested if the area were rezoned to C-OPI, the new uses would have to provide parking. He noted that the Esplanade and Nieman Marcus provide more parking than the demand they generate. He suggested that the property in this area (corner of S. County Rd. and Royal Palm Way) could result in providing additional parking for the immediate area.

Mr. Sanchez recalled that through the 50s, 60s, and 70s, Royal Palm Way was town-serving and "is now a town-serving blight." Also, the Royal Poinciana Plaza which was once full of small shops is now mostly offices. Mrs. Murray said if the area was re-zoned to C-OPI, there would just be more banks there. Ms. Golino did not want to change the zoning and said that now is not the time to look at this area due to the abnormal traffic situation caused by the construction of the bridge and that, if it is necessary, the Town should look at the area after the construction is completed. Mr. Broberg recommended that the code not be changed, and suggested that offices not be permitted on the ground floor anywhere, including the vias. He did not like the idea of C-OPI zoning in the area in question as he too recalled the days when small shops were predominant. Ms. Markin commented that while we all want to retain the pedestrian window shopping concept, we do not want the Town to have to cater to landlords holding out with vacancies in order to force a zoning change.

Mr. Moore noted that the Comprehensive Plan refers to blighted residential areas, but does not include blighted commercial areas, and that perhaps reference to and treatment of blighted

commercial areas should be included in the Comprehensive Plan. He also explained that the Town Council brought up the issue about this commercial corner and would like the Planning and Zoning Commission's input and recommendation.

Mr. Schuler commented that 40 years ago, the Town was more oriented to smaller town-serving businesses. Worth Avenue was full of unique boutique type shops where the unusual was sold. Few of these shops exist today. He also recalled that the Royal Poinciana Plaza was all retail in its early years. He felt that offices on the first floor will ruin the Town.

Ms. Markin suggested the Town consider regulations that would require that vacant commercial spaces not look vacant, but look like they are occupied. They should also be climate controlled to avoid mold problems. She was particularly interested that the spaces look occupied as seen from the street, and that they not become an eyesore.

Mr. Moore mentioned that the Town just passed an ordinance that vacant storefronts have to be reviewed by ARCOM or the Landmarks Commission for approval. The question remains...what should an empty storefront look like?

Ms. Murphy mentioned she liked the "mom & pop" stores that used to be in the Royal Poinciana Plaza and would like to see more on Royal Palm Way. She's also been bothered by shuttered residential uses, and advocated developing regulations that the shutters not be left in a closed state for long periods of time. She would like to see a requirement that landscaping be maintained, especially on vacant properties. If owners do not do this maintenance, she suggested that the Town undertake the property maintenance and then charge the property owner. Ms. Murphy said that such an ordinance was discussed in West Palm Beach.

Mr. Moore asked for a copy of the West Palm Beach legislation so that he and Mr. Randolph can review it for possible implementation here. Regarding the shutters, Mr. Moore was not sure how much enforcement power the Town could have in this area. Mr. Broberg added that the City of Hallendale has an ordinance that shutters must come down within 10 days after a storm event. Mr. Moore responded that he believes that would apply to occupied buildings, but he will check the Hallendale ordinance.

MOTION BY MR. BELL TO ACCEPT STAFF'S RECOMMENDATION TO PROHIBIT OFFICES ON THE GROUND FLOOR IN THE C-TS DISTRICT.

MOTION SECONDED BY MR. BROBERG.

MOTION CARRIED 7-0.

MOTION BY MR. BROBERG TO TABLE ANY REDEVELOPMENT STUDY ON THE TOWN CENTER SECTION TO A FUTURE DATE, AS HE DID NOT THINK IT WAS NECESSARY, AND BECAUSE HE FELT THE SHOP VACANCIES ARE CYCLICAL AND WILL FILL UP AGAIN, OR THE VACANCIES MAY BE AFFECTED BY THE CONSTRUCTION TRAFFIC WHICH WILL EVENTUALLY BE RESOLVED.

MOTION SECONDED BY MRS. GOLINO AND MR. ROBERTSON SIMULTANEOUSLY.

THE MOTION CARRIED 6-1, WITH MR. KLEID OPPOSING.

STUDY ITEM 14: Increasing the landscape open space in the R-B zoning district

Mr. Castro provided the history and background pertaining to this issue and, using a graphic, explained the intent of the proposal and how it would work. He explained that the proposal would increase the landscaped open space by 5%, from 40% to 45%, with 50% of that being required to be perimeter landscape.

Mr. Broberg mentioned that people build houses for themselves, not their neighbors, and he did not see the need to dictate where the landscaping should be, except for the required landscaping in the front yard. While he would not object to increasing the landscaped open space to 45%, he suggested the proposed perimeter landscaping requirement would encourage building “boxes.”

Mr. Sanchez agreed with Mr. Broberg and noted that the proposal is a “well-intended mistake.” He mentioned that homes come before ARCOM and this is where the landscape should be reviewed. It should not be legislated. He referred to the north end and how certain existing requirements put in place over the years have created inflexibility. He also noted that the road is there for parking, and too many provisions are being made for automobiles.

Mr. Castro responded that the Town has been trying to relieve on-street parking and that there is plenty of room on a 16,000 square foot lot (the threshold where additional parking is required under the proposal contained in Study Item 7) to accommodate the increased landscaping and parking requirement.

Ms. Markin noted the streets in the north end are very narrow and not sufficient to provide for adequate parking for each house. The streets must be accessible, especially for emergency vehicles. She agrees that additional parking need to be accommodated on site, but in the appropriate manner. She noted there may be some justification for the perimeter landscaping requirement, especially when it serves to cover or disguise a neighbor’s property walls.

Mr. Sanchez noted that ARCOM looks at the need to buffer between properties and wants to keep the requirement as it is now. He urged residents to be involved in the ARCOM process when new homes are being built in the neighborhood.

Ms. Markin suggested that ARCOM should be supported through the zoning ordinance.

Ms. Murphy believed there should be a requirement for perimeter landscaping as one cannot count on their existing or future neighbor having good taste. Ms. Murphy suggested that perhaps only 50% of interior landscaping (e.g., landscaping within a courtyard) should be counted towards the landscaping requirement.

Mr. Castro responded that we need to have these guidelines available for the architect during his

design phase, prior to ARCOM, so the architect and owner know what can be done.

Mr. Brisson advised the commission that for homes over 3,000 square feet, the existing code requires that a property have three (3) parking spaces. Mr. Sanchez responded that this is where the code fights the expressed desires for the Town. On one hand, everyone wants to maintain the north end small house charm, recognizing that many of the existing homes there do not even have a garage, and most have no more than a one car garage. On the other hand, we are now proposing that houses need at least 3 on-site parking spaces, two of which come from a two car garage.

MOTION BY MR. BELL TO INCREASE THE LANDSCAPED OPEN SPACE TO 45%.

MOTION SECONDED BY MR. SANCHEZ.

MOTION CARRIED 7-0.

MOTION AMENDED BY THE MAKER AND SECONDER TO STIPULATE THAT THIS IS FOR THE R-B AND R-C ZONING DISTRICTS. ALL VOTING MEMBERS AGREED.

MOTION BY MRS. GOLINO TO APPROVE THE STAFF RECOMMENDATION TO REQUIRE THAT 50% OF THE LANDSCAPED OPEN SPACE REQUIREMENT BE REQUIRED TO BE PERIMETER LANDSCAPING.

MOTION SECONDED BY MR. KLEID.

MOTION FAILED 2-5, WITH ONLY MRS. GOLINO AND MR. KLEID SUPPORTING THE MOTION.

STUDY ITEM 7: Proposed increase in residential parking requirements

MOTION BY MR. BROBERG TO DEFER THIS ITEM TO THE JANUARY 27, 2005 MEETING.

MOTION SECONDED BY MR. BELL.

MOTION CARRIED 7-0.

STUDY ITEM 15: ALLOWING TELECOMMUNICATIONS ANTENNAS IN THE PUD-A ZONING DISTRICT

Mr. Castro explained that several years ago the Town undertook the project of regulating telecommunication antennas, towers and equipment within the Town. An ordinance was adopted in the 1996/1997 zoning season. That proposal allowed stealth antennas on Town owned property provided ARCOM or Landmarks Preservation Commission approval had been secured. Also,

necessary agreements with the Town needed to be drafted and executed. The intent of the code was to prevent this equipment from going into locations where they were not appropriate. As a special exception, stealth antennas were allowed in the commercial zoning districts only. They were specifically precluded from residential districts and PUDs. There has been a request by the Town Council to review having a stealth antenna located in the Breakers PUD-A district. The Breakers has experienced dead area when trying to communicate. We have provided them the ability to put in facilities that would benefit them only, and not outside providers. The Breakers would like the ability to place a stealth antenna facility (Verizon) at their location and to be able to co-locate, along with co-locating on Town sites if necessary. The Town Council believes that it may be prudent to permit this to provide the residents with better communication. Staff recommends that the proposal be approved.

MOTION BY MR. BROBERG FOR APPROVAL.

THERE WAS NO CALL FOR A SECOND AT THIS TIME TO ALLOW FOR DISCUSSION.

In response to Mr. Robertson's question, Mr. Castro explained the definition of a stealth antenna.

MOTION BY MR. ROBERTSON FOR APPROVAL OF THE STAFF RECOMMENDATION AS SET FORTH ON PAGE 21 OF THE STAFF REPORT TO ALLOW THAT ANTENNAS AND TOWERS SHALL BE EITHER A PERMITTED USE ON THE TOWN OWNED PROPERTY OR A SPECIAL EXCEPTION USE IN THE TOWN'S COMMERCIAL AND PUD-A ZONING DISTRICTS.

MOTION SECONDED BY MR. BELL.

Under discussion, Mr. Sanchez commented that placing these antennas on a property is very lucrative for the property owner. He questioned why it is not being placed on a town building so the Town can keep the revenue. Mr. Castro explained that when the ordinance was originally drafted, the Town and its consultants believed that the North Fire Station, the Town Hall and the South Fire Station had a line of sight capability and an area sufficient to co-locate enough facilities to serve the communication needs of the Town. For that reason, they were made a permitted use on Town owned property and a special exception use on commercial properties, excluding residential properties and PUDs. This would provide the majority of the revenue for placement of telecommunication equipment to the Town.

Mr. Randolph explained that the ordinance is drafted to require applicants to first seek a location on a Town-owned building to ensure that the revenue returns to the Town. In order to place telecommunication equipment in the commercial district, an applicant must demonstrate that service would not be adequate from a Town-owned facility. Mr. Moore stated that the Breakers' engineers have studied placement on Town buildings, and have determined that their equipment cannot be co-located on any Town buildings. The problem, according to Mr. Moore, is that it is not just an antenna being placed, but also electrical support equipment. There is no space available on the Town Hall or other Town buildings, preventing co-location on the roof.

Mr. Bell asked whether there is telecommunication equipment on all of the fire stations. Mr. Moore

responded that there is no equipment on the South Fire Station. At the North Fire Station, Nextel is preparing to install their equipment. From the Town Hall roof, AT&T is already operating and Nextel is nearly operational. Mr. Bell stated that, personally, he has experienced cell phone communication problems on the island, and supports working toward a solution to the problem. It was his stated opinion that the Town should have the revenue, if at all possible.

MR. BELL WITHDREW HIS SECOND TO THE MOTION.

Mr. Robertson felt this matter should easily be approved as the Breakers is a vital part of the community; they have demonstrated necessity to the Town, and the inability to locate the equipment on a Town building; and must still obtain approval from the Landmarks Preservation Commission or ARCOM. **Mr. Robertson** felt the Breakers should be given the opportunity as requested, and **renewed his motion. There was no seconder at this time.**

Ms. Murphy questioned whether there are other commercial owners who are viable candidates for telecommunication towers. It was her opinion that if the purpose of the Breakers request is to facilitate their users' communication needs due to the fact that their users do not have good reception at the Breakers location, most or all of the revenue should belong to the Town. She felt the Breakers is not in the telecommunication business, and should not have such a lucrative side business. Ms. Murphy also questioned whether an installation at the Breakers would bring about a change to the skyline.

Mr. Moore responded that the antenna would be stealth, located in the tower of the Breakers, and not visible. Regarding the revenue, there is nothing established to permit shared revenue for telecommunication towers. Our ordinance does provide that the Town is the first choice for location. Failing that, however, commercial locations may be sought. Mr. Randolph added that in order to locate on commercial property, an applicant must satisfy 8 criteria before a special exception is granted.

Mr. Schuler asked about the amount of revenue that the Town would be missing. Mr. Randolph stated that we are not missing revenue if the equipment cannot be located on Town-owned property.

Mr. Tom Bradford, Assistant Town Manager, responded that the revenue is approximately \$24,000 per year for each tower/antenna installation. Verizon has informally stated that their equipment will not work on Town-owned property, but have not submitted evidence to that claim, although they are aware of the requirement for same. Mr. Kleid added that Verizon will still have to go through the Special Exception procedure. In response to a question, Mr. Bradford noted that there is only one stealth antenna on Town-owned property which is up and running, Nextel is currently working to activate two other locations on Town-owned property.

Ms. Murphy advocated that the Town lease the rooftop from the commercial property owner, in this case, the Breakers. This type of proposal would allow the Breakers to have the benefit of improved telecommunication services for themselves and their guests, and provide the Town with the revenue, minus a lease fee. Mr. Kleid commented that Ms. Murphy is suggesting a win/win situation. Mr. Randolph questioned how the Town could induce a property owner to allow this, but with regard to this particular Breakers application, perhaps such an arrangement could be agreed upon without making any change to the code.

Ms. Markin asked who the Town has on staff with the technical knowledge to make validations of a company's claim that their equipment cannot be located on Town-owned property. Mr. Bradford responded that the Town uses a consultant from New Jersey, radio frequency engineers, to provide this service.

Ms. Markin commented that cell service on the island is terrible, and something must be done to improve it.

Mr. Bell inquired about the generation of this request for change to the code. Mr. Moore responded that this is a staff-sponsored request as evidenced by the fact that no representatives from the Breakers were present today in the audience.

Mr. Kleid reiterated that the commissioners must remember that placement of this equipment is not automatic. The applicant must still go through the special exception procedure and prove their case.

Mr. Broberg feared if placement on the Breakers tower is allowed, one of the highest points in the Town, the Town may lose their leases for location on Town-owned buildings. Mr. Bradford responded that since they are already operating from the Town Hall building and shortly from the North Fire Station, it would be extremely difficult for them to prove that they could not successfully operate any longer. Mr. Randolph noted that height of a building must be coupled with good line of sight in order for an installation to work.

Mr. Bradford noted that this item was brought to the Planning and Zoning Commission for two reasons: 1) Because cell phone service in the Town requires improvement; and, 2) since telecommunication equipment is permitted by special exception in the commercial districts, and the Breakers Hotel is clearly a commercial enterprise, it seemed odd not permit an installation at the Breakers simply because it is a PUD.

MOTION BY MR. ROBERTSON TO ADOPT THE STAFF RECOMMENDATION AS SET FORTH ON PAGE 21 OF THE STAFF REPORT ALLOWING TELECOMMUNICATION ANTENNAS IN THE PUD-A ZONING DISTRICT.

**MOTION SECONDED BY MR. BROBERG.
MOTION CARRIED 6-1, WITH MR. BELL OPPOSING.**

ADJOURNMENT:

The meeting was adjourned to December 16, 2004 at 9:30 a.m. by the Chairman at 11:40 a.m.

Mr. Moore noted that at the December 16th meeting, the Planning and Zoning Commission will review the minutes from the December 1 and December 2 meetings.

Respectfully submitted:

Richard Kleid - Chairman
Town of Palm Beach
Planning and Zoning Commission

Joanna Golino - Secretary
Town of Palm Beach
Planning and Zoning Commission