PLANNING & ZONING COMMISSION
2007-2008 ZONING HEARINGS
RECORD AND REPORT
TUESDAY, NOVEMBER 6, 2007 9:30 a.m.

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

PRESENT: Harrison M. Robertson, Chairman
Lowry M. Bell, Jr., Secretary
Elizabeth S. Murphy, Member (arrived 9:35 a.m.)
John H. Schuler, Member
Alan S. Golboro, Member
William M. Guttman, Member
Leslie A. Shaw, Member
Eugene Lawrence, Alternate Member
Floyd Wideman, Jr., Alternate member
Veronica B. Close, Director of Planning, Zoning & Building
Paul W. Castro, Zoning Administrator
Timothy Frank, Planning Administrator
John C. Randolph, Town Attorney

ABSENT: Walter Anthony Dowell, Alternate Member (excused)

RECORDING SECRETARY: Deborah A. Morakis

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: There were no comments from the public at this time.

V. REGULAR AGENDA

A. <u>MINUTES: MAY 3, 2007</u>
Approval of the minutes of the Planning and Zoning Commission Meeting.

B. <u>MINUTES: JUNE 14, 2007</u>
Approval of the minutes of the Planning and Zoning Commission Meeting.

C. <u>MINUTES: JUNE 21, 2007</u>
Approval of the minutes of the Planning and Zoning Commission Meeting.

MOTION BY MR. SCHULER TO APPROVE THE MINUTES AS PRESENTED.
MOTION SECONDED BY MR. BELL.
MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL VOTE.

D. <u>ELECTION OF CHAIRMAN AND SECRETARY</u>
Being a candidate for re-election, Chairman Robertson turned the gavel over to Secretary Bell for this portion of the meeting.

Secretary Bell asked for nominations for Chairman. Mr. Schuler nominated Mr. Robertson. Mr. Shaw nominated Mr. Guttman. Secretary Bell stated that nominations were closed. Paul Castro presented the ballot forms and Attorney Randolph reminded the Commission to initial and date the ballot forms.

Attorney Randolph stated for the record that Mr. Lawrence will not vote since Ms. Murphy arrived (9:35 a.m.).

After counting the ballots, Ms. Close announced that Mr. Guttman was the newly elected Chairman with four votes. Mr. Robertson received three votes.

Mr. Bell then asked for nominations for Secretary. Mr. Schuler nominated Mr. Bell. Mr. Shaw nominated Mr. Golboro. There being no further nominations, ballot forms were again distributed.

Ms. Close announced that Mr. Golboro was the newly elected Secretary with four votes. Mr. Bell received three votes.

Chairman Guttman expressed deep gratitude for the wonderful work that Harrison Robertson has done over the years. "He has been a great chairman and a good personal friend," Mr. Guttman added.

Mr. Shaw suggested the Commission consider making a recommendation to the Town Council to extend the expiration date of all terms of the Planning & Zoning Commission

Members. Currently, terms expire in February. Since the Commission has now elected a new Chairman and Secretary, Mr. Shaw suggested that the Commission ask the Town Council to revise the regulations via a change in the ordinance, if necessary, so that the terms of this commission run concurrent with the zoning season and with the process of election of officers. Mr. Shaw also suggested extending the current terms to October.

MOTION BY MR. SHAW TO RECOMMEND TO THE TOWN COUNCIL THAT THE TERMS OF SERVICE OF MEMBERS OF THE PLANNING & ZONING COMMISSION BE ADJUSTED TO RUN CONCURRENTLY WITH THE ZONING SEASON, AND THE CURRENT TERMS BE EXTENDED UNTIL OCTOBER 2008, OR THE END OF THE ZONING SEASON, FOR MEMBERS WHOSE TERMS WOULD ORDINARILY EXPIRE IN FEBRUARY 2008. MOTION SECONDED BY MR. GOLBORO.

Discussion continued. Mr. Shaw added that he thought there would probably be a three-year transition period since all terms currently expire in February. Mr. Shaw stated that he did not want to lose the benefit of anybody presently serving on the commission because of this change. Mr. Shaw added, "I will let the Council work out the details; it is the principle I am looking at."

Mr. Golboro felt it was a good idea that terms should go through the summer since it is a planning session so the experiences on the Commission carry through to the beginning of the next zoning season.

Mr. Shaw clarified that he meant to extend all current terms from a February expiration to October of the same year, then start on the three-year cycle, leaving it to Council to resolve how the ordinance is written.

Ms. Close suggested that since the zoning season starts in October, the Commission may want terms to move back one month.

Mr. Shaw stated that the elections should then be moved to October and not be held in November since that is when zoning season starts; everything should run concurrent to the zoning season.

MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL VOTE.

2007-2008 Zoning Season Staff Report, Phase I

E. <u>PRESENTATION BY THE TREASURE COAST REGIONAL PLANNING COUNCIL ON THE ROYAL POINCIANA AREA PLANNING STUDY</u>

Chairman Guttman asked Ms. Close to give the Commission some background information and update the Commission on events leading to this presentation.

Ms. Close advised the Commission that a time-line for this project had been created starting with June 2007, when the Commission heard from four potential consultants for this project. At that time, the Commission made a motion to defer the final selection until hearing from Treasure Coast Regional Planning Council (TCRPC). The Commission's final motion was to rank the four firms and advise the Town Council that the Commission wished to hear from TCRPC. Ms. Close stated that she contacted TCRPC about the possibility of appearing before the Commission. Shortly thereafter, Ms. Close stated that she contact Mr. Bell to advise him that TCRPC could not participate in the RFP process and asked whether it was advisable for the Commission to still meet on June 21. Mr. Bell indicated yes and that meeting was kept in the schedule.

At the June 19, 2007 Town Council meeting, Ms. Close advised the Town Council of the Commission action: the four firms were ranked, but the Commission would like an opportunity to hear from the TCRPC. Ms. Close also advised the Town Council that TCRPC was not able to participate in the RFP process and therefore would not be appearing before the Planning & Zoning Commission. The Town Council discussed it and suggested that the Planning & Zoning Commission at their June 21st meeting, consider rejecting all of the consultants. There was a concern about the funding and the difference in funding between what TCRPC talked about and what the national firms were going to be charging. The Town Council had a number of comments regarding that; staff did a verbatim transcript and brought it back to the June, 21, 2007 Planning & Zoning Commission meeting. The Commission's first motion was to make any action on the item follow the regular procedures; that is, go through ARCOM, Landmarks and Planning & Zoning, but nothing would preclude a presentation by TCRPC, who could assist staff in going through the regular procedures. There was a concern that this would result in the Planning and Zoning Commission doing nothing on the item and so the staff talked to the Commission and suggested that some sort of fact-finding or steering committee be set up to identify different groups, identify the various elements to be involved, create a time-line and then staff would come back to the Planning and Zoning Commission. The Commission's final motion was to accept that proposal. Staff went back to the Town Council at their July 10, 2007 meeting and outlined that action to them, and the Town Council motion was to terminate the RFP process and reject all of the consultants. Town Council continued on and approved $135,000.00 to engage TCRPC and provide a specific scope of work to the TCRPC. Staff then went back to the Town Council in October 2007 with an approved scope of work, a time-line and an inter-local agreement. Town Council's latest action was to authorize $60,000.00 from the general fund contingency and $50,000.00 from a planning line item and each member of the Council gave the Town Manager three names for a steering committee. On November 5, 2007, Town Council adopted the list of the steering committee members, adding a representative of the Royal Poinciana Association. Staff circulated this list to the Planning & Zoning Commission. At the request of Mr. Robertson, staff has now brought in TCRPC to make a presentation to the Planning & Zoning Commission. Dana Little of the TCRPC's Urban Design and Town Planning Studio is prepared to make a presentation to the Planning & Zoning Commission.

Mr. Wideman stated that he has a problem about the way staff handled this very important situation. Mr. Wideman said, "To the best of my knowledge and after looking at all the minutes of our meetings, it was agreed at the June 14th meeting that Veronica Close would contact Treasure Coast to invite them to appear before the Commission. She said they could not do it. In the June 21 meeting, it was said that the Town Council was willing to permit the Planning and Zoning Commission to hear from TCRPC. Subsequent to that, when it was said that the Planning & Zoning Commission would hear from Treasure Coast, the staff has gone to the Town Council, gotten approval for TCRPC without any consultation with the Commission and now has a steering committee set up without any consultation. This is completely wrong. I don't see why this Commission should be bypassed if it is going to be effective at all on something this important. Now we are going to hear from TCRPC and it has already been decided by Town Council and so, what is the point? I think something is wrong in the way this thing is being handled and it should come to the Commission, if it is going to be effective at all, before it goes to the Town Council for their approval. No recommendation has come from this commission at all."

Mr. Shaw added, "I'm sympathetic to what was said and I'm not really disagreeing with it. The portion that I am supportive of is that I don't really understand what it was that we had in mind when we were talking about a steering committee. I thought that the steering committee that this board had suggested be formed, was a committee, in essence, itself - bringing in one or two extra people to represent the community."

Chairman Guttman answered that he believed the role of the steering committee was essentially one of a cheerleader and will have no power to make any decisions whatsoever.

Veronica Close stated that staff knew that in a charrette process there is usually a steering committee of some sort that helps the consultants identify all of the stakeholders or all of the people who have an interest and to help solicit participation in the charrette study. The steering committee does not get involved in substance in the same way that the Planning and Zoning Commission does. The steering committee does not hear issues and decide issues. When staff talked to the Commission on June 19, there was a concern about ending up doing nothing for this particular project and so staff tried to think of a way to address all of the Commission's concerns. That is why staff came up with an alternate proposal for a fact-finding committee and that committee would have been different from this steering committee. That fact-finding committee would have actually served very much like the strategic planning commission that went out and solicited input, got all the information, came back and substantively considered the issues. When staff went to Town Council, the council said "no, we want to hire TCRPC and the TCRPC, like all the consultants, would like to have a steering committee." As Mr. Guttman has said, that steering committee really serves in the form of a cheerleading squad. When the council made the appointments, they tried to think of people in all areas of the community who could participate on this steering committee to help guide TCRPC to identify everybody they need to speak to and in the process, make sure there are venues, soliciting support for the proposal and encouraging participation. That is what the current steering committee is set up to do. They were appointed by the Town Council yesterday, and the committee includes three nominees from each council person plus one representative from Royal Poinciana for a total of nineteen people on this committee.

Mr. Shaw added, "So, then you've got 19 cheerleaders that are going to be directing and yet they have no authority. They are not really involved in any direction. I don't know that they understand it and I'm not sure why . . . I guess it is a mute point, they're there. Let's just move on."

Mr. Robertson stated, "I share Mr. Shaw's concern. I don't know why we need this cheerleading committee. This is the first time in all my years, I ever heard of a legislative body having a cheerleader section formed. Apparently, this is something that the bureaucracy is used to because the TCRPC asked that this committee be appointed. You've got a perfectly good Commission, which I suggest is representative of the members of the residents of the town. I think we should have done away with this citizens committee and rely on this Zoning Commission to do any cheerleading, if that is necessary. So, I support Mr. Wideman's concern."

Ms. Murphy added, "Based on what I'm hearing, it sounds like steering committee is a misnomer for this, because steering or sitting behind a steering wheel and calling it a steering committee puts the Zoning Commission at shotgun, or sitting in the back seat."

Mr. Schuler stated that he supports what Mr. Robertson, Mr. Shaw and Mr. Wideman said. "I think we get involved here in this Town on committees controlling committees and as a result, you get no action. There is not anything that comes out of the approach that's constructive to the point that you get decisions made. That is an important factor and I question this myself."

Ms. Close added, "Perhaps steering committee is the wrong nomenclature for that committee. TCRPC did ask us to set that up. They did ask the Town Council for a steering committee and they are best qualified to put your concerns at rest. They work very closely with them in a charrette process and find them to be very helpful". Ms. Close added that she felt Mr. Little should address the steering committee issue, "maybe he can shed some light on it."

Ms. Murphy added, "I like the idea of the steering committee and I was impressed with the names on there. It is a good start because feedback from the community and all the stakeholders is essential, but I'd like to see the planning board added to the committee".

Mr. Bell stated that he supports Mr. Wideman 100% and he felt it should have come back to this committee before going to Town Council for approval. "That is the way we voted a couple times during the hearings in June, that we should be the ones deciding and we wanted to hear them before going to Town Council. I'm not sure how it got bypassed."

Mr. Wideman asked "Did you make it clear to the Town Council when you went and presented and asked for approval to use TCRPC? Did you make it clear that this committee had never seen it, never voted on it and had no opinion to present to the Town Council. Was that clear to the Town Council when they voted to approve it?"

Ms. Close answered "Yes, we did. Staff outlined to the Town Council exactly the procedure that had been outlined to the commission and that the commission accepted. Staff did notify Council that it was the Commission's desire to hear from TCRPC. Unfortunately, the Commission did not take the action to terminate the RFP process so you could not hear from TCRPC. The Commission could not hear from TCRPC without terminating all of the actions regarding the other consultants. At the June 21st meeting of the Planning & Zoning Commission, the Commission did indicate they did not want to go forward with a study. At the July 10 Town Council Meeting, the Council said "No, we understand what the Planning and Zoning Commission wants to do. We have heard everything." The Council read the minutes and decided that they wanted to reject all the RFP's, select TCRPC and proceed with the study."

Mr. Wideman added "So, they were aware that we had not seen TCRPC and we had no information in it. We had nothing and had made no recommendation. They did it on your say so alone?"

Ms. Close added that other than the information that had been previously provided to the Commission, Town Council was aware that the Commission had not had an opportunity to meet with TCRPC at all.

Mr. Golboro acknowledged that there were three members of the Town Council in the audience to hear the Commission's arguments. "I want to cut this argument a little short, since I think that TCRPC, having been through this before, will be answering most of your negative remarks about the participation in the charrettes of this group that has been appointed by the Town Council, so let's proceed now."

Mr. Guttman emphasized that the Town Council unanimously asked the TCRPC to work with the Town on the Royal Poinciana Area Planning Study, so TCRPC has the full support of the Town and this Commission. "While you have heard some skepticism, the Commission will embrace the process and do everything it can to be helpful. We want to be actively engaged."

Dana Little, with the TCRPC gave a brief presentation to address the majority, if not all the issues that had been expressed. Mr. Little explained the term charrette is a term that embodies a very intense, working design session. The process that TCRPC, as a government agency uses, is a week long, fully transparent, fully open to the public process. The designers work side by side with the community. A charrette is TCRPC preferred process and the firm has been involved in over one hundred charrettes in the last twenty years. This process is important because it is fully transparent and involves everyone, especially when there are some divisive issues at stake.

Mr. Little stated that a charrette was just finished in Riviera Beach and it was one of the more difficult ones he has ever done. There was a lot of skepticism about the process, what was the steering committee for, who is making the decisions, etc. These concerns are very similar to the concerns that this Commission has expressed. Mr. Little added that because the process is fully public and fully transparent, everybody is an author. Everybody who wants to participate is encouraged to do so.

Mr. Little demonstrated with a slide sequence to explain the issues and stated that land-use planning and zoning is not enough. Mr. Little stated, "The mantra at TCRPC is to advance our planning from this, which is essential and is statutorily required, but to take it to the next step. To look at design and to look at city building on a block by block and lot by lot basis to understand how buildings relate to one another. Attached townhouses are in some cases compatible and some cases not compatible with single family houses. Where do new public parks and squares go? At this level of detail, at this level of articulation, you can actually count the number of street trees. Take it to this level, where we form the public space and we know what the character of the public streets are going to be. At the end of February, when we do the charrette we can have some computer animation so we can give virtual tours of whatever changes the community thinks are necessary in the Royal Poinciana District."

Mr. Little went on and added, "There are a lot of benefits to planning in the charrette method. Wide citizen support and ownership. We find in many communities where there are divisive issues, and not everybody agrees on certain things, when you have a groundswell of public involvement, you end up having a groundswell of public support. You have people coming before you supporting the plan as opposed to critiquing it or knocking it down because they were part of the creation of that. There are eight phases of a well run charrette. The charrette is seven days long starting on Saturday morning with a workshop, inviting the entire community and it is open to everyone to sit at tables and map out what some of the changes or improvements that this area or district needs. Prior to that, the steering committee is established. They are really a logistical team that helps us to get the word out, arrange things, get logistics, get studio in place, help with press releases, help get the word out. The steering committee may not be aware that this is their role yet. They are a logistical team to help us get the word out."

Mr. Golboro noted that Mr. Little had not covered at which stage the consultants would be brought in and Mr. Little stated that the consultant team would gathered for the week of the charrette and stated that the majority of their work would be done during the charrette.

Mr. Wideman asked for the definition of a stakeholder and asked how TCRPC would control who attends the charrette. Mr. Little answered that everybody is a stakeholder; residents, business owners, patrons, etc. Staff will decide who gets interviewed, the steering committee does not decide who gets interviewed. Mr. Little stated that one of the fundamental roles of the steering committee is to ensure that the citizens and business holders participate. Mr. Little stated that a charrette was like "controlled chaos" and that even architects, developers, planners and attorneys are invited to attend.

Mr. Shaw asked, "How will you get all this information in hand and be ready to go forward in February?" Mr. Little stated that TCRPC will not know everything before February, but will continue to learn throughout the entire process and will continue to learn right up through the report process. Mr. Little referenced his experience with the charrette in Riviera Beach.

Chairman Robertson suggested a registration book be maintained and that everyone coming to the Charrette should sign in and include their home address, business name and address, etc., and Mr. Little stated that would be done.

Mr. Schuler stated that one thing of concern to him was the infrastructure, traffic, sewer and water capacity. Mr. Little stated that TCRPC will be working with the utilities department, DOT, and Palm Beach County to gain an understanding of what the infrastructure is.

Mr. Schuler stated that there is a lot of concern about the amount of money being spent. Mr. Schuler said, "I may not be around, but there will be a lot of others that will be, and it is important that these issues be addressed."
Chairman Guttman stated that those items would usually be addressed in the Comprehensive Plan Amendments.

Mr. Golboro stated that he felt that everyone thinks that the Royal Poinciana Study lacks the word "area". Mr. Golboro suggested that TCRPC and the newspaper publicize the scope of the project, and emphasize that it is not just Royal Poinciana.

Mr. Little stated that the similarities between Riviera Beach and some of the issues in Palm Beach are striking. TCRPC can not change everyone's perception.
Mr. Bell asked if a motion for approval of the use of TCRPC was needed, and Ms. Close answered that a motion was not needed, but would be helpful. Mr. Bell stated that he would like to make a symbolic motion, since Town Council has already approved the use of TCRPC.

Mr. Guttman stated that he also had several questions and would then entertain the motion. Mr. Guttman asked who would head the team and if professionally trained facilitators would be used for the charrette and Mr. Little stated that he believed it would be Marcella Camblor who would head the team and also stated that TCRPC does not use professionally trained facilitators. TCRPC uses professionally trained planners and designers. Chairman Guttman asked Mr. Little to give thought to maintaining decorum. Mr. Guttman wondered if TCRPC got the second phase assignment, would they help with changes in the zoning code and Mr. Little stated they would.

Chairman Guttman then thanked Mr. Little and stated that his presentation was excellent.

Mr. Bell stated that he would like to make a motion to symbolically approve the use of TCRPC. Mr. Shaw stated that he would second that motion if Mr. Bell would change the word approve to endorse. Mr. Bell agreed to change the word to endorse. The motion was then restated:

MOTION BY MR. BELL TO ENDORSE THE USE OF TREASURE COAST REGIONAL PLANNING COUNCIL.
MOTION SECONDED BY MR. SHAW.
MOTION CARRIED 6 TO 1 AFTER A ROLL CALL VOTE, WITH MR. ROBERTSON OPPOSED.

F. 2007-2008 ZONING SEASON STAFF REPORT, PHASE I

A. Study Item 1. Study Point of measurement for building height, overall height and cubic content (where applicable on lot along the Atlantic Ocean).

Paul Castro, Zoning Administrator, commented that the first item on Phase I was difficult for staff to put together. Last year the Planning and Zoning Commission, after discussion with architects in the community, moved forward with the proposal as presented and actually recommended to the Town Council to defer the ocean side of that proposal and adopt the lake side. "When staff went to the Town Council, we had recommended adopting both since it was more flexible than the existing code and to come back to you after studying it over the summer with a proposal based upon looking at different information and taking into consideration comments from the public and the Planning and Zoning Commission."

Mr. Castro continued, "The first part of the first study item is about the ocean part and is for the higher lots along the ocean and the second part of the proposal is for the lower lots that we did not consider last year, those lots from Via Agape to Sloan's Curve, which we believe the language needs to be changed to be more flexible." Mr. Castro demonstrated with a graphic that attempted to present, in a drawing format, that the first part of the proposal is for those houses on the dune. "What staff recommended in the proposal was an option to either use the Florida Building Code plus two feet, which is what was adopted by the Town Council last year and is much more flexible than the highest crown of the road, or to use this proposal which staff's concern, as it relates to the proposal, was that if we were going to allow people to build to the same elevation as the highest house on either side, that the proposal should also take into consideration the existing character of the houses on either side. The homes built years ago were not built to the maximums and they were built further back on the dune to take advantage of the dune. The proposal was to allow them to build at the elevation of the highest house but the maximum height could not be more than five feet above what the average was of the houses on either side and that it be placed similarly to the houses on either side. Our experience has been that when residents or property owners come in to build a house on the dune, they've always wanted to build closer than the neighbors on either side and there has been objection and concern about the loss of a view and the privacy of the back yards." Staff's recommendation was to come up with an average of the rear setbacks on the houses on either side and the average of the front setbacks on either side and the house could be displaced in that manner.

Mr. Castro said, "It is fairly complicated, and that is why it is here for discussion. Staff believes this would work and if someone didn't want to take advantage of the higher elevation they could still build at 17 feet 4 inches, or the maximum height in some cases might be 25 feet."

Mr. Golboro asked how many houses were involved and Mr. Castro answered that there were about 25 properties and that most of these properties have not been improved.

Mr. Golboro then stated "If we change the code for these few houses, the ones on the ocean both south and north, the architects will come in for variances for various other things, so why change the code?"

Mr. Castro responded and explained that in terms of the analysis, staff listed some of the benefits and some of the detriments to adopting this proposal. "One of the problems with adopting a more flexible code is that it would not reduce the number of variances for those types of homes. Staff is not sure it wants to reduce them as it relates to the displacement of the homes up on the dune in those locations. Staff felt that the flexibility provided with 17.4 feet NGVD is close to adequate in most cases except for some of the higher elevations homes on South Ocean Blvd. and North Ocean Blvd. where the homes are built higher. Some of these homes are 1 ½ stories or 1 story homes that cover more expanse of the property. Staff was attempting to address some of the concerns that were raised last year from the architects and Planning and Zoning Commission, to try to come up with some type of scheme that would provide more flexibility."

Mr. Golboro asked "In essence, staff is not recommending these changes?"

Mr. Castro added that to come back with a proposal to provide the flexibility there should be some thought to how that house would be built to the same elevation thirty years ago, and how would it fit as an in-fill large estate house with the neighbors on either side. "That was staff's concern. Staff wanted to present something to the Planning and Zoning Commission that would propose flexibility, but in order to get flexibility, there were some constraints to deal with."

Mr. Shaw added that he felt this proposal was not much of a modification being made, but was more of a clarification and stated, "there is a sense of logic that is being offered. Staff needs to identify the parcels that are potentially affected by any zoning change to see if it justifies the time and effort. We have already invested the time, the money and the thought process, it is a question to look at what the recommendation is. This is a simple formula." Mr. Shaw stated, "I don't see the negative of endorsing this. If we are not going backwards, let's move on."

Chairman Guttman asked if there was a conflict between the state building code requirements for these properties and our current zoning code.

Mr. Castro added, "what the state requires is that you build to the bottom of grade beam of 15.4 feet and from there, what was proposed last year was to add 2 feet for the slab. The state also dictates that you cannot move any soil west of the CCL. The dirt all has to stay east of the coastal line. If someone builds a basement, all of the soil has to stay east of the CCL. That is part of the argument raised when they come to Town Council . We cannot move soil west of the CCL and that requires them to come to the Town for variances."

Mr. Guttman asked "If we went with the first proposal which calls for the more flexible proposal, would the Architectural Commission or the Landmarks Commission still have a say in the size of the house as it relates to the neighbors?" "As long as there is a place for ARCOM or Landmarks to weigh in on the neighborhood issue, if we could create enough flexibility and to reduce the number of variances, that would be a benefit".

Mr. Castro stated that from staff's standpoint, while trying to reduce the number of variances we do not want to impact the neighbors. " The reason for these constraints we are proposing is so that if you do need a variance it may not be a point of measurement variance, it might be a side yard or rear yard setback variance. This proposal does limit the zoning footprint in which to form the clay within. If an architect wants to move outside of that form, they would need to come to the Town Council for relief, but with the input of the neighbors."

MOTION BY MR. BELL TO APPROVE OPTION 1 OF STUDY ITEM #1.
MOTION SECONDED BY MR. SHAW.
MOTION CARRIED 6 TO 1 WITH MR. GOLBORO OPPOSED.

Mr. Castro went on with the second part of the study item and stated that staff strongly recommends to modify the provision placed in the code about four years ago for the lots in an unusual situation on South Ocean Blvd., between Sloan's Curve and Wideners, where the street is much higher that the lot. "The lots start at elevation 20 and go down to elevation five. Several years ago, we placed in the code a provision that changes the point of measurement as you step down off the lot . The problem is that you cannot build a house if a third of the lot is east of the CCCL and they have to be built at a minimum of

17.4 feet NGVD. Staff wondered if anyone would buy a $20 million dollar lot and put the finish floor of the house two or three feet below the road?" What staff is recommending is that the Point of Measurement be the crown of the road back to 50 feet west of the CCL and then it become the grade of the property. Mr. Castro demonstrated with a drawing, the CCL map and aerial photos. Mr. Castro stated that these properties are so large they could easily screen the pool decks.

Mr. Golboro stated that his concern was with the 50 feet because there are some homes that are not single family lots.

Mr. Castro answered that this was for Via Agape south and includes only the houses that are ocean to lake, single family lots.

Mr. Shaw asked if the lots in this area were still R-AA lots and Mr. Castro answered yes.

Mr. Bell asked if 50 feet was sufficient and Mr. Castro stated that staff looked at existing conditions and felt it was.

MOTION BY MR. SCHULER TO APPROVE OPTION 2 OF STUDY ITEM 1.
MOTION SECONDED BY MR. BELL.
MOTION PASSED UNANIMOUSLY AFTER A ROLL CALL VOTE.

B. <u>Study Item 2. Study allowing wireless telecommunication antennas in the single-family zoning districts.</u>

Mr. Castro presented this study item regarding the placement of antennas and towers and stated, "Towers would only be allowed in the commercial district and on Town property and there are very strict setback requirements and it would be difficult for someone to put a tower because there is a 1000 foot notice requirement. Towers would have to be stealth in nature to allow more flexibility so that we could have better service. This proposal was intended to allow an antenna on property within the large estate or RB district provided the lot was a certain size and it has to be a very large lot and the setbacks are stringent."

Mr. Shaw asked how many properties would fall under the 25 thousand square foot minimum and also asked, "If we are not permitting towers and we have height limitations to our buildings, is it realistic to assume or expect a provider to put a stealth antenna on a building that is 25 feet high, assuming that the resident will attach this antenna to the side of their house. Do we not have sufficient properties between town owned property, the dock, the country clubs that would be sufficient to provide the coverage and the service so that we don't have to figure out how to disguise an antenna that you will never disguise?" Mr. Shaw stated that he was opposed to this idea.

Mr. Tom Bradford, Deputy Town Manager, explained that the concept was put forth by staff to the Town Council to make it so that the Town would have additional opportunities to have antennas in Town particularly in the north end. Mr. Bradford did not know how many properties were affected by this, but did know that the Palm Beach Country Club and the Sailfish Club would be affected by it and that these were two properties the Town was interested in. Due to the height of those buildings, an antenna installed there would provide better service on the north end.

Mr. Bradford advised the Commission that Verizon has received a permit to begin the construction of their antennas on the Breakers Towers. AT&T has been approved by the state historic preservation officer, or they are awaiting that approval and then they can begin their construction. T-Mobile is also in negotiations with the Breakers to do the same thing. "When we get these antennas at these highest points in Town, we will improve service in all but the extreme north end and the extreme south end. About a year ago we addressed the abilities to allow antennas on multi-family dwellings, so the south end has been taken care of. The north end is the only area still lacking. This opens up the door for the Country Clubs to have something on their roofs to provide better service. The inlet dock is a possibility but is right-of-way and not real property and the Palmo Way property is already a permitted use."

Mr. Shaw stated that if two specific properties are targeted, then should the limitation be 50 thousand or 100 thousand. "Change the number from 25 to 100 and we can move on. There are quite a few 25 thousand properties, but it should not be a permitted use on residential properties."

Mr. Golboro asked if the east or west side of the Palm Beach Country Club was being considered and Mr. Bradford thought that the ridge on the east was higher than the west. From Bahama Lane, where Boyd Park is, there is a slight rise.

Mr. Golboro stated that the ridge runs north-south on the west side of the property. Mr. Golboro agreed with Mr. Shaw and felt this should be site specific rather than general.

Discussion continued about towers being permitted on town-owned property only and it was stated that a tower is a special exception use in commercial areas.

Chairman Guttman stated, "there seems to be a great demand amongst north-enders for improved cellular telephone service and assuming the Country Club or the Sailfish Club agrees to put antennas on their buildings, how far would we get in improving service?"

Mr. Bradford could not state with certainty how it would improve service, but added that generally speaking, the solution to the problem of strong and ubiquitous service is the strategic location of towers and/or antennas on the island or on the mainland so that the service area becomes covered and stronger. It has the potential to help.

Chairman Guttman felt that it would be good to add an antenna on the dock. The dock would be town owned property so we would not need to worry about the 100 rule.

Mr. Bradford confirmed that the goal was to provide better service.

**MOTION BY MR. SHAW TO APPROVE STUDY ITEM 2, AS WRITTEN WITH THE LOT SIZE BEING INCREASED TO 100,000 SQUARE FEET.
MOTION SECONDED BY MS. MURPHY.**

Mr. Bradford asked if it would not be better for staff to go back and verify that the Sailfish Club would fit within the 100,000 square foot criteria.

The question of whether we could make this site specific was raised and Mr. Randolph stated that he would prefer the Commission make it site specific. Mr. Randolph added that he was concerned about allowing commercial uses in residential zones.

Mr. Bradford added that antennas are now allowed on residential, multi-family in the RD1 and RD2 zoning district.

Chairman Guttman felt it would be better to be site specific.

Mr. Shaw asked if it should be site specific or type specific.

Mr. Randolph added that these were all special exceptions within residential zones. "We can figure out a way to describe it as long as staff knows your intent and so that they know where these things are going and not going to be cropping up in residential zones."

MODIFIED MOTION ACCEPTED BY MR. SHAW. Mr. Shaw wondered if staff should rewrite this and bring it back.

Mr. Castro stated that staff's original proposal was to make it a permitted use on lots of 25,000 square foot or more. He said, "what we can do is to make it a special exception use and make it site specific or size specific so that all that would fit into it would be the clubs on the north end of town and also a few clubs on the south end."
MR. SHAW ACCEPTED THE MODIFICATIONS, ADDING THE BEACH CLUB. MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL VOTE.

C. Study Item 3. Proposed increases in the application fees for comprehensive plan and zoning applications.

Mr. Castro explained that the fee schedule has only been changed twice in the past thirteen years and the last time was approximately three to four years ago. Staff is looking to recoup more of what the actual cost of processing these applications would be. "The Town has not been charging what it costs to process an application considering the time involved between staff time, between the Town Engineer, Town Attorney, Fire Rescue, Police as well as the Planning & Zoning Department and the Town Managers Office. It is staff's recommendation to modify and increase these fees." Mr. Castro gave an example using zoning text amendments. "This proposal says that an application is

$100.00 and if the item is going to be studied, the fee would go to $4,000.00. There is a lot of time that goes into evaluating the item, as well as staff and consultant time, which can sometimes be recouped", Mr. Castro said.

Mr. Shaw stated that he thought that the cost of any zoning change was borne by the applicant on an hourly basis. Mr. Castro stated that anything done in-house was not recoup-able.

Ms. Murphy stated that she did not have any objection with increasing fees, but suggested clarification in the ordinance to state existing actual costs, making it clear that we are not just hiking up the cost. Ms. Murphy also suggested now would be the time for making a much more significant penalty charge for altering historic vegetation.

Mr. Randolph stated that was a good point, but that would be a different subject and would be related to penalties. Penalty fees could apply to many things and staff would have to give the Commission advice about the maximums that would be permitted by state statute. At this time, that is not something staff is looking at.

Ms. Murphy recommended that it be a future study item and Ms. Close stated that staff was doing an analysis of operations now and would add that as a suggestion.

Mr. Schuler stated that some of these increases are double and some are more than double and stated that he would like to see the analysis.

Chairman Guttman stated that in the background paragraph, staff is trying to recoup the cost of the overhead. "What percentage do you consider to be overhead and what percentage is increase in fees?"

Mr. Castro stated that the majority was manpower and stated that with a re-zoning application the notice requirements are 1000 feet to every property owner and that could be substantial.

Chairman Guttman asked how the amount of staff time was estimated and Mr. Castro stated that he took the average number of cases each month, estimated the amount of departmental staff time involved and included an estimate of the amount of time for other staff members. "Sometimes things are deferred so we take the most easy case and the most complicated case and average these."

Mr. Golboro objected highly because the state has mandated cost savings. "You are paid by the tax-payers and now you are putting the Town Council in the position of getting our income other ways. These are drastic changes and I would not recommend any of these to the Town Council."

Ms. Murphy said "If these were actual costs, then absolutely, they should be paid."

Mr. Golboro said, "they are being paid, our taxes pay their payrolls."

Chairman Guttman stated that he thought the funding of these types of activities did not come out of property taxes, but were paid from the schedule of fees.

Mr. Golboro felt staff was putting the Town Council in an embarrassing position by increasing these fees this drastic amount at this time.

Mr. Shaw stated "the normal use of one's land where they need some assistance in order to go forward, meaning they need a special exception or a variance, maybe that's the part that should not have an adjustment. If I have a piece of property and I want to do something, I should be able to at minimal expense." Mr. Shaw stated he could support a true 100% cost borne by the applicant. "Maybe we should not be taxing the resident for processing an application for which their taxes have already paid and not put it in the budget. Maybe we should dismantle the Building Department from the standpoint of any sort of review or maybe leave the variances and special exceptions alone and change all the fees for those things that are truly out of the norm."

Ms. Murphy disagreed. "Our taxes pay for a fixed number of employees. Staff gets overwhelmed and goes out and requests authorization to hire more people. These fees are for people who are requesting to do something additional. If they can be traced back to what is proposed, this is the time to tighten our belts. This kind of analysis, while painful, had it been done two or three years ago, this is an opportunity to look at costs and as a resident I would not want to pay a lot more taxes to have a larger full-time staff just in case residents have a need. It's good to be tight. With regard to extra requests, pass off some of that costs to the resident."

Ms. Close stated that the message Town Council is expressing is that if requests are applicant driven, or it is something the applicant wants, their philosophy is that the taxpayers should not pay the costs, the applicant should pay the costs. There are circumstances that would merit a reduced cost. If a person is buying a business that has a special exception and they are not making any changes, they are still required to come before Town Council. Perhaps those fees should be reduced. Many communities are now going to an hourly rate. Items are time stamped, similar to the legal profession. The Town does not have a tracking system like that so staff has used past records to estimate the costs in staff time and advertising costs to process these applications.

Mr. Randolph raised a point. "Not on the overall policy question you have been discussing, but a minor policy question within the list... the cost of an appeal of an administrative decision is going from zero to $1500.00. It could be argued that an appeal of an administrative decision is not something that an applicant wants or is applicant driven. The applicant might think that the administration is wrong and want an opportunity to convince the Town Council that. Do you want to charge him $1500 to challenge the administrative decision. If the Administrative official thinks they are right, why would it cost them $1500 to prepare to prove that they're right?"

Mr. Castro added that some of the thoughts behind his discussion with Mr. Randolph were that it costs at least that much to do the research and analysis and to prepare the report to go to the Town Council. "If they upheld the administrative decision of staff there should be a fee, and if it were to be overturned, maybe there should be no cost to the applicant."

MOTION BY MR ROBERTSON TO APPROVE THE INCREASE IN FEES.
Chairman Guttman asked Mr. Robertson if he would consider adding the comments that Mr. Randolph made. Mr. Robertson said no since he thought Mr. Randolph was wrong.
MOTION SECONDED BY MS. MURPHY.
MOTION PASSED 4 TO 3 AFTER A ROLL CALL VOTE WITH MR. SCHULER, MR. GOLBORO AND MR. SHAW OPPOSED.

D. Study Item 4. Proposed administrative approvals of site plan reviews for single-family homes.

Mr. Castro explained that this item was deferred from last year. This item had been inadvertently left out as a recommendation to Town Council and staff was bringing it back to the Planning and Zoning Commission so that the Commission could make a recommendation to Town Council. Staff is proposing to modify the language to allow site plan approvals that involve non-conforming platted lots to be administratively reviewed as part of a building permit application in order to issue permits for new single family homes. It would still go the Architectural Review Commission. There would still be notice to the neighbors, and ARCOM could still look at form. There are only single family homes in the RA, R-AA, or RB Zoning District.

Mr. Bell asked who would be the staff that would do the review.

Mr. Castro answered that it would be the Director of Planning, Zoning & Building or his or her designee, or it could be the building official. This would not pertain to new single family homes that need a variance. Those would still go to Town Council. It would be for a single family home on a non-conforming platted lot that met all of the other requirements, i.e.; setbacks, CCR, lot coverage, landscaped open space, etc. Those are issues staff felt could be processed and still go to the Architectural Commission to address any of the concerns that might be raised by a neighbor.

Mr. Bell asked for clarification – is it for new homes only?

Mr. Castro stated that un-platted lots in the subdivision were approved by Town Council at that time. "The thought was that if the lot was un-platted, the Town Council never got the first bite of the apple. The Town Council never approved the plat. It just developed over time. We have many cases where we have lots in the Town that were never approved by the Town Council and never recorded platted lots. Those should be lots that have to get approval from Town Council."

Discussion continued and Mr. Guttman added, “I’m in favor of this with one exception, but if they ask for a variance or a special exception we are complicating the situation.” Mr. Guttman stated that he would prefer the delegation to the Director of Planning, Zoning and Building only in the case of a platted lot with no associated variance or special exception.

Mr. Randolph asked “Does the provision in the code relating to where a person owns an adjacent lot still apply? In other words, if a person has a platted lot and also owns a platted lot next to it and together they form a conforming lot, would that be exempted from this provision?”

Mr. Castro answered, “It gets more complicated than that since that provision states that if someone owned two lots and the lot next to it is vacant, they cannot be split. If someone owned two lots and both lots had homes on them and they wanted to tear down one of the homes on one of the lots, the way it’s been ruled in the past, they could come to the council. If they were both platted lots and non-conforming they could come in and get approval from ARCOM and then go straight to building permit.”

Mr. Randolph added, “In the past, when a lot straddled a lot line of two platted lots we have made them go to Town Council for approval to build two houses on those two platted lots if they didn’t conform. In that situation, would we make them go to Town Council or would those two platted lots get administrative approval now?”

Mr. Castro stated that if there were two non conforming lots, platted by the Town Council and there was a house that straddled both lots, they could come in and ask for ARCOM approval to build on both lots unless they needed a variance. Then it would go to the Town Council for a variance. If someone owned a house next door, with a vacant lot and garden and deck, they could not split that since there was not a house on the other lot.

Mr. Shaw asked, “Why not change the code to say it is a legal building lot? Why do we need administrative site plan approval?”

Discussion continued and Ms. Close stated, “Staff is saying that if it is a platted non-conforming lot, you can build on it. That is what the code would say if we make the changes. All staff did is take out the provision that it requires Town Council approval. Therefore, when a person comes in with a non-conforming platted lot, they would simply go through the regular process as anybody else would who is entitled to build a house on the property”.

Mr. Castro said that every permit goes through a site plan approval process, either administratively or through Town Council.

Mr. Randolph stated, “The Town changed the code some time ago because platted lots that did not meet the width or lot regulations were required to get a variance”. Mr.

Randolph advised the Town against that since it would be 'a taking'. If someone had a platted lot and they did not meet the requirements and they couldn't do anything with their lot, that would be a taking. They changed it to not require a variance, but to require a site plan review. Site plan reviews are required to go to the Town Council. They just want to acknowledge that it meets site plan review, but the site plan will be reviewed by staff. I don't think it matters which way you do it."

Mr. Shaw stated, "I would rather see it from the standpoint of friendship and simplicity, that if someone has a platted lot, they can build on it. They don't have to get somebody's approval. The approval is there. What staff is doing is simply looking at the application. It's not like they can deny anything. We are not talking about staff approving anything."

Mr. Randolph said, "Staff cannot deny anything as long as it meets all of the other regulations in the code and the only thing it's going to do is go to ARCOM.."

Chairman Guttman said he felt there was some advantage in a double check. "If you want to build a new home on a platted lot that is non conforming, then you've met the requirements." Chairman Guttman asked what the fee for this would be.

Mr. Castro answered that the fee for this type of application used to be $500.00. Now the fee for a site plan review of a single family home on a non conforming un-platted lot would be $1000.00. For a platted lot requiring site plan review, there would be no fee because it would be handled in the normal course of department business. There would be no related fee other than the permit fee.

Chairman Guttman stated that there is some advantage to making sure the platted lot meets the other requirements.

MOTION BY MR. BELL TO APPROVE STUDY ITEM 4 AS PRESENTED.
MOTION SECONDED BY MR. ROBERTSON.
It was noted that Mr. Castro will make a correction in #8 to say "unplatted".
MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL VOTE.

E. Study Item 5. Study the creation of zoning regulations for distribution electrical substations.

Chairman Guttman asked for background information for Study Item 5 and said, "Despite the fact that the state law has changed, it will be difficult for FPL or any other electrical utility to come in and put in an electrical sub station." Mr. Guttman asked staff to comment on how important it is to have those sub-stations in order to get adequate electrical service in town.

Mr. Castro stated, "There is an electrical distribution system in Lake Park and when Riviera Beach was looking to build the grandiose plan to the south of Lake Park, they were going to triple the size of the distribution system. Lake Park had no power to control because we had no regulations in place."

Mr Castro stated that this item actually came up from the Town Manager's Office as well as Public Works, related to the existing conditions in the Town. "We have no electrical distribution systems in the Town or any demand for them at this time. What staff was attempting to do was to be proactive based on some legislation that happened two years ago. FPL lobbied the state heavily about zoning regulations and what could happen as it relates to the siting of these distribution sites within jurisdictions similar to what the school did in terms of trying to be exempt from zoning regulations for municipalities. What staff did was to come up with some constraints relative to setbacks and actual demand for the siting of a station in the town and drafted these regulations to address where these actual distribution stations could be. They would have to be on very large pieces of property and would have to go through an exorbitant amount of red tape as it relates to the Town Council and be able to demonstrate the demand and if there is the demand for one, they would approve it based upon being set back 50 feet from the property lines, granted the walls are fairly high, but are back from the principal structure anywhere from 8 to 14 feet in height with hedges in front with extensive landscaping requirements around the perimeter. While we do not have any sub stations in the town today, staff wanted to be proactive and provide these regulations for the future."

Mr. Lawrence asked what an electrical sub-station was, how big they are and wondered if there were any pieces of property on the island large enough to accommodate one.

Mr. Castro answered that electrical sub stations can be anywhere from a couple hundred square feet to thousands of square feet. They typically have all of the large equipment and look similar to what is across from the Kravis Center on Okeechobee Blvd. Mr. Castro stated that there are some Town owned properties large enough and also that there could be some condemnation since it is considered an essential service". Mr. Castro added, "granted, it would be very expensive, but when it comes to FPL and being able to provide sites, it is not outside of their realm anywhere within the Town since essential services are permitted anywhere within the Town right now.

Mr. Golboro added that a substation is a station that takes high power down to low power. It is the transmittal of the service from the main power sources and takes it down to the distribution system. "What happens in the future? We are not going to get a substation here because our power sources are already cut down. What happens if we go into other types of electrical uses? Who knows. Maybe we will be doing windmills off the ocean. We are dreaming of something that does not happen here because of the facility that we are divided by a piece of water that the power has to come under. We are not the source of original power. You are limiting the ability to go into other methods of powering this island up. I am very concerned with this type of limitation at this time".

Mr. Castro responded and said, "I do not know many individuals who would want one of these facilities close to them and while we do not have the demand or foresee the demand for one of these in the future, if there is ever a need that comes up in the future and we might need to change this type of regulation, we would be bringing it in front of you ASAP as it related to essential services for the community."

Mr. Golboro added, "If we went into the power business and brought direct service from the source to here, we would need a distribution sub-station. We would need the sub-station rather than the other power company. This is the type of thing that other larger communities do. I would be concerned about putting this on the books because it would restrict our ability to do things. It is something that we don't want on the island and it is something we will not have on the island unless we want it."

Ms. Murphy concurred with Mr. Golboro's concern for limiting alternative energy sources.

Mr. Bell read from page 12, second paragraph, "They'll grant or deny properly completed electrical sub-station...." "How can they deny it if it has been completed? I think you should change the word completed."

Ms. Close stated that staff meant that the development plan application is complete and the word "application" needs to be included.

Mr. Schuler asked if we did go to underground distribution in Town, how would this affect residential transformers? Mr. Bradford answered that as long as transmission facilities were not coming to the island it would have no affect. "Unless we were in the power distribution business, we are not likely to ever get a sub-station on the island. So, this would have no affect on us if we went underground and continued to be a consumer as opposed to retailer or a wholesaler of power". Mr. Bradford advised the commission that the feeder stations are in West Palm Beach and Lake Worth, on the mainland.

Mr. Shaw stated that there is always a possibility that something like this can happen and that the primary purpose for substations is because it is less expensive to transmit higher voltages over long distances than lower voltages. "If the demand for power keeps increasing as there is an increased demand for housing and development in the West Palm Beach area, I'm not so sure that I would say with a negative voice that we will not have a substation on this island. I could easily see FPL deciding to bring in a major transmission line and dropping down by the Country Club or one of the bridges down by Sloan's Curve. I would not want to say there is no way that they wouldn't bring in a major transmission line aerial across the intra-coastal as they have in other areas," Mr. Shaw stated. "We talked about how we balance our budgets and our costs and how we operate our schedule. Staff has already spent the time and gone through this. Maybe the discussion of do we want this in the system should have been discussed before we went through the expense of drafting the ordinance or this piece and deciding it." Since it has already been done, Mr. Shaw recommended to accept it with the same concerns as to what happens in the future, what we create, we can taketh'. If we decide in 10 years there is a problem, we go back and modify the code." Mr. Shaw continued, "I would rather see us as conservative and if there is a change, go back and modify our existing code as we do."

Mr Lawrence stated that this town is 85% built out and commented that the town is doing fine with the transformers it's got, adding that 69kv is huge.

Mr. Shaw stated, "I'm not talking about our needs. I was talking about if the existing substations can handle what they are feeding us and if they would elect to put a sub-station here rather than triple the size of a sub-station in West Palm Beach. That's what would concern me."

Mr. Lawrence did not feel that was a realistic fear.

MOTION BY MR. SHAW TO APPROVE STUDY ITEM 5, WITH CORRECTIONS.
MOTION SECONDED BY MR. BELL.
MOTION CARRIED 5 TO 2 WITH MR. GOLBORO AND MR. GUTTMAN OPPOSED.

F. Study Item 6. Study proposed changes to the regulations for outside tables and seating in the commercial zoning districts.

Mr. Castro advised the commission that within the last year, staff has taken a look at the provisions in the code in the C-WA and C-TS district that allow outdoor seating. "The code provision reads for outdoor seating which is associated with the service of food or beverage or is similar to other types of uses and is not permitted unless you receive special exception approval from Town Council. We have many areas of Town where we have benches and some tables and seating on Worth Avenue and in some of the vias and other areas that have not been regulated in the past because there has not been any service associated with those tables, chairs and benches. Those have been put there for the convenience of the pedestrians, the public and the shoppers. Because of the situation that arose relative to a matter staff decided with direction from the Council to proceed forward with the study to look at those specific provisions and to formulate a recommendation and to make some modifications to close up some loopholes or strengthen our regulations as it relates to seating relative to restaurants outdoor seating and to also put in some provisions that would specifically provide for as a permitted use, outdoor benches and chairs for the convenience of the public since it was not addressed anywhere in the code. This was staff's attempt to provide changes to the regulations that addressed all of those issues, not only within C-TS and C-WA zoning district, but also to allow for pedestrian seating and chairs and benches in other commercial districts in the town. Staff proposed a modification that would not allow any tables or associated seating within 50 feet of any type of restaurant or take out food establishment similar to Sandwiches by the Sea or Pastry Heaven, and while we were formulating the item there was discussion about take-out, prepared on-site food use. This is cumbersome language but when talking about prepared food and food establishments, you have Scotti's that has prepared food, but that is not prepared on site. There are grocery stores and other type of establishments that are really not restaurants or take-out type of food uses. Staff tried to provide a provision that would not include merchant retail types of establishments that only sold snacks or beverages. The language staff proposed was to modify a provision to limit when you could have tables and chairs, but also what type of furniture could be used and how it could be approved. Staff did not want to see any type of cheap furniture or furniture that was not meant for outside use. Mr. Castro also stated that as conditions of approval of a special exception, there needed to be a clear sidewalk and that the outside tables and associated seats would have to be covered by a solid awning and could not be taken from inside. Seating could not be placed within 50 feet."

Mr. Wideman asked who decides whether the outside tables will negatively impact the appearance of the subject party and Mr. Guttman commented that was an objective standard.

Mr. Castro stated that was fairly broad language and answered that under those specific provisions, the Town Council would make the determination on special exception uses and the outside seats that are more than 50 feet away would be something that staff would be looking at relative to the negative impact. Staff was concerned that the language be more broad, but allow staff to make a subjective determination.

Mr. Castro stated that staff would also recommend a provision that has been taken out of the C-TS district that requires all special exception outside seating arrangements come back to the council every year to get approval. Staff's point is that if it has not been a nuisance or a problem, there is no need to bring it back to Council every year. If there is a problem or situation related to non compliance with the conditions of approval of the special exception or they are a nuisance, there are means to bring them back, either in front of the Town Council or the Code Enforcement Board for corrective action.

Mr Bell's recommendation was to "start all over again" and commented that this was the most convoluted set of regulations he has ever seen. Mr. Bell asked why it could not be reduced to two pages and asked why staff wanted seating to be 50 feet away.

Mr. Castro answered that staff felt it was a reasonable distance from the front door of any establishments that sold take out food. A business would not be able to circumvent the code by having a neighbor put out seats.

Mr. Randolph asked whether a person could have tables outside the 50 feet without special exception? Mr. Castro stated that would be permitted and this provision would not regulate those. The concrete benches that are in the vias would be grand fathered in. If anybody in a via wanted to put in a new table outside of the 50 feet from a restaurant, that would be permitted with six conditions.

Ms. Murphy commented that the last provision of most of these sub-sections is not only ambiguous, but also is not enough and suggested staff consider requiring ARCOM approve planters, landscaping and lighting so there would not be a bare sidewalk with tables and chairs around it. Ms. Murphy's second comment was whether staff was taking into account parking spaces dedicated to five-minute or ten-minute intervals so that we do not have people stopping and creating a hazard.

Mr. Castro answered that on-street parking is not being considered in this proposal. Only the regulation of tables, chairs and benches that have not been regulated in the past are included. The way the code exists now, anybody could put out tables and chairs so long as they were not serving food.

Mr. Golboro asked how we could expect heavy tables and chairs to be taken in every night, from over 50 feet away. Mr. Golboro suggested that the regulations be changed to require that the seating only be secured.

Mr. Castro stated that staff is not anticipating that the business would put their tables and chairs 50 feet away in order to be able to put them out there. They would not be permitted, even if they are on different property, to put out tables and chairs and the distance is 50 feet and only if they are not serving food or beverages. If food is to be served, they would need a special exception.

Discussion continued and Mr. Schuler agreed with Mr. Bell that this regulation is too lengthy and confusing as it is and suggested that this regulation be consolidated to two or three pages.

Mr. Lawrence commented that there is weather resistant furniture available that is of materials other than what is enumerated in the regulation and suggested that the regulation simply say "properly weather protected". Also, a possible avenue that might consolidate this regulation is to put it into Section 8 Supplementary Conditions instead of in each zoning district. Mr. Lawrence commented "we have laws on top of laws on top of the laws and we need to be reducing laws and not increasing laws and how much of this do we really need to regulate?"

Mr. Randolph gave some background on how this started. "In order for a place like Starbucks, for example, to have outdoor seating, they have to come before the Town Council and get outdoor seating approval. They would be given a certain number of seats by special exception. However, the way our codes reads it says that tables at restaurants are tables that are served. A Starbucks or another restaurant could put in tables outside their restaurant and say "we're not serving those" and they could get around requesting a special exception for outdoor seating simply by saying "we're not serving at those tables". Mr. Randolph stated that what staff was trying to address here was to close that loophole so as to provide that someone has to get a special exception for any tables whether they serve them or not, if those tables are within 50 feet of the restaurant. Fifty feet is arbitrary, but it was a measurement that we felt could be used by a restaurant to serve or to allow patrons to come in and get a cup of coffee or a sandwich. The problem that staff was trying to eliminate was to keep people from using our code as a loophole to have more tables than they could otherwise get by a special exception from the Council. Perhaps this goes too far, but that is the problem that is being addressed."

Mr. Lawrence again reiterated "How much stuff do we want to regulate? For people to sit outside and enjoy a sandwich is not so objectionable."

Mr. Shaw added that he has a problem with the concept. "Traditionally, outdoor dining was regulated in the Town because there was a concern that restaurants were going to spill out of their confined four walls and infringe both with noise and other nuisances into the street. For many years, the philosophy of the Town was that we were not going to permit outdoor dining. Personally, I don't think the Town should get involved in the regulation of permitting or not permitting outdoor dining on private property. That is, if a landlord has a via or has a piece of property that has an internal or totally enclosed section, that it should fall under the purview of the Town to regulate how he keeps it unless you want to go so far as to say "we're going to regulate how they water their flowers and we're going to regulate how they put a statue in their garden". Mr. Shaw added that the square footage of the table or the size of the table should be used as part of their leased usable permitted space, taking into consideration that if a restaurant moves tables outside, they would have to give up table space inside because they are reallocating space outside. The Town should not be telling property owners how to deal with the outdoor dining in their environments, but when it comes to the sidewalk, they should not be encroaching on any sidewalk. Whether it has an awning or not would only be for convenience of their clients, but the area needs to have a railing and some other defined line to distinguish what is the sidewalk and what is their property. There are very good, high-quality materials available and many of them are in resin and if you want to get into "what it looks like" then perhaps that should go to ARCOM. The layout is confusing, there is an issue of philosophy."

MOTION BY MR. BELL TO ASK STAFF TO REVIEW COMMENTS MADE TODAY.

Chairman Guttman commented that this was overkill. "We are going to be taking up as an agenda item in the second study phase regulations on fast food establishments and I think we have lived with this sort of thing being unregulated for many years without any problems and it seems like utter overkill based upon one situation which may never happen again if we adopt a proposal that restricts or bars fast food establishments." Mr. Guttman called for a motion to eliminate the requirement of applicants to come back to Council annually for special exception approvals. "Staff has said that they are going to start enforcing it if we don't do that and that is understandable, but it also seems to be a waste of time" Mr. Guttman said.

MOTION BY MR. BELL FOR STAFF TO RESTUDY THE ENTIRE ITEM.

Chairman Guttman stated that this is not in the regulations at the moment.

Ms. Murphy suggested, "Rather than restudy all of this, just take into consideration having the appearance of the outside of restaurants, including what is already approved by ARCOM, include tables and chairs to the extent that they use them. If it doesn't look nice there should be some kind of an approval process and if you fall below that then you lose the right to have it there or you get fined. Just focus on the appearance."

MOTION SECONDED BY MR. SCHULER.

Chairman Guttman stated there were more comments to be heard from the Commission and invited Ms. Markin to address the Commission.

Councilwoman Markin stated, "This is in front of you because we spend a lot of time at the Council analyzing and coming up with recommendations for various restaurants as to what their seating is. Seating is based on capacity of parking, etc., depending on the location of the restaurant. When we go to this extent to allocate proper seating for an establishment, a lot of thought and conversation in zoning and coding goes into those decisions and for any establishment then to be able to undermine the amount of seating that has been allocated to them for parking reasons, etc., by doing outdoor seating are playing games with the outdoor seating and undermines the whole process that we go through and it is extensive relative to our conversation at the Council level for approvals for the restaurants. Every restaurant, if given the opportunity to expand even by two seats or one table, they will do that. It is money and dollars to them. That is one reason why this is kind of a critical issue, or could be a critical issue if you ignore it." Ms. Markin asked why we need to look at tables, since benches in vias or in the Esplanade are quite appropriate for people to be able to sit at as long as they are substantial benches that cannot be blown around or picked up and thrown through a window in the evening, unlike what is currently there, which is fold-up aluminum chairs that could easily be moved or thrown. We should just look at the capacity to add benches to various areas so people can have a place to sit and enjoy coffee or a snack without the capacity or potential to be able to take food from a take out and go and sit at a table. Ms. Markin suggested to remove the "phrase-ology" of tables and chairs and think about it in terms of benches. Some of the prettiest benches around Town are made of teak and the capacity for wood is not included in the verbiage in the codes."

Mr. Shaw suggested that before there is a vote on the motion to restudy this item, the Commission needs to give a defined list of where staff should go with this. Mr Shaw stated "I don't think the seating is the issue outside/inside since when they get approved it is subject to capacity. As far as, if they are cramming in extra chairs, that's Code Enforcement. The code is clear on this."

Mr Randolph stated that this was what caused the whole problem. "Staff wanted to use Code Enforcement, but there wasn't anything illegal about tables that are not used to serve food or sell merchandise. Code Enforcement could not cite a person in a via, whose landlord has placed tables right next to the restaurant that were not approved by the Town Council. This is not a control of the restauranteur, but if a landlord of a via chooses, perhaps at the request of a restaurant, to put tables next to that restaurant, but that restaurant doesn't serve food or sell merchandise, they do not fall within our code."

Ms. Close commented that there are two things staff knows are needed. One is to possibly change the requirement to come back every year. The second thing staff is concerned about is properly regulating special exception outdoor seating. That regulation could be as simple as a four or five word change or addition to a paragraph in the code to the extensive proposal before the Commission. Ms. Close suggested the Commission consider directing staff to do the very simple wording change in the one provision or possibly putting together one brief section that removes consideration of benches and just addresses tables within a certain perimeter of a restaurant.

Mr. Lawrence suggested to include seating and not just benches, which would eliminate the table and asked if Mr. Bell would consider amending his motion to include the non-renewal of the special exception.

AMENDED MOTION ACCEPTED BY MR. BELL.
AMENDED MOTION SECONDED BY MR. SCHULER.
MOTION CARRIED 6 TO 1 AFTER A ROLL CALL VOTE, WITH MR. SHAW OPPOSED.

Mr. Schuler asked how this regulation would be affected if the benches are put out by the landlord.

Mr. Randolph stated that the language would be watched, but the intent was to regulate it no matter who put the seats within 50 feet of a restaurant, either the landlord or the tenant. Mr. Randolph stated that he was assuming, by virtue of the motion, that no one is pursuing the recommendation by Mr. Shaw that we not regulate those vias that are fully enclosed but that we only regulate those that are on the sidewalk.

Chairman Guttman stated that he heard staff say that they could accomplish the goal with four or five words or maybe two sentences.

Let the record reflect that Mr. Lawrence voted in the absence of Mr. Robertson.

Study Item 7 was heard before Study Item 6, since Mr. Bradford had a scheduling conflict.

G. Study Item 7. Creation of visitor parking permits for residential permit parking programs; Ordinance No. 21-07 and Ordinance No. 22-07.

This item was taken out of agenda order as it was presented by Mr. Tom Bradford, Deputy Town Manager, who had an afternoon conflict.

Mr. Bradford stated that the Town has reviewed its parking and traffic issues. During study of these issues, it was suggested that visitor permits be allowed under the Town's two residential parking plans, i.e., the Gainesville Plan and the Arlington Plan. The intent of the study item is to make temporary visitor parking code provisions the same for areas served by both parking plans.

Mr. Bradford reported that Ordinance No. 21-07, related to this issue, had prematurely received approval upon first reading by the Town Council, without having first been brought to the Planning and Zoning Commission during the zoning season for review and recommendation. He assured the Commission that the matter was clearly open for discussion and comment, and it should not be construed to be "approved" by the Town Council at this time.

Mr. Bradford attempted to clarify the proposal. He explained that under existing code provisions temporary parking permits can be obtained on an "as needed" basis. The proposal would change that by allowing an owner to purchase two (2) visitor permits which would be valid for a year. The resident would retain these permits and provide them to visitors and/or service persons who need to park in "resident only" parking spaces. The visitor and/or /service person, upon completion of the visit or service, would then return the parking permit to the resident.

Mr. Randolph clarified that under the Arlington plan, there is a provision which states that the parking provision shall not apply to service or delivery vehicles. In short, no permits were required for these individuals; they were automatically waived.

Mr. Guttman agreed that deliveries should be allowed without permit, as Mr. Randolph stated. As for guests, permits should be obtained on an as needed basis, according to established rules.

Mr. Guttman was concerned about having a street lined with cars. He preferred a regime where every homeowner has two parking permits; allow deliveries, and obtain guest permits as needed.

Mr. Robertson registered his absolute opposition to the proposal as he has witnessed parking which has blocked access to his own home and to the homes of others. "This is really opening up a hornet's nest." if every homeowner had access to this number of parking permits. He felt that no problem exists which merits this type of ordinance.

Mr. Golboro inquired whether "parking" has been defined in the ordinance. Mr. Randolph stated that "parking" is not defined. Mr. Golboro countered, then, that if it is not defined, delivery permits are excluded anyway because they do not "park". He recommended that the Town define "parking", and that construction persons be encouraged to park on the job site.

Ms. Murphy stated that "this is a nightmare" which could lead to tremendous abuse. She posed the question as to what guest parking permits would go for on eBay. "We should work with the system rather than giving out something that's going to be impossible to police."

Mr. Shaw questioned if the existing parking plans, which have stood the test of time, can be modified without challenging their validity. Mr. Randolph responded that "these particular plans have not been attacked, but they have been drafted based upon plans that have been supported."

Mr. Shaw noted that these parking plans were designed to help the homeowners in areas where no off street parking was available. He felt that the idea of adding two more permits for guests for modest sized homes is "a little extreme." He recommended offering one (1) permit to the resident instead, but noted his concern that these permits will be sold. He also recommended placing a time limit on guest permits. Mr. Shaw cited the red parking permits being used in Phipps Plaza as examples of parking permits which are working well. Mr. Shaw felt that the proposed ordinance is excessive, and favored one (1) three month or seasonal permit for a fee.

Mr. Robertson felt the "whole idea is very dangerous:; that people should have guests use driveways for parking; and, that the proposal is unnecessary, and may lead to chaos as worded.

Ms. Murphy called this a matter of numbers, and suggested that there is not enough parking available on the island for each home to be issued either 1 or 2 parking permits.

Mr. Shaw attempted to clarify that these permits are "strictly for those half dozen, dozen, streets in Town that already have a plan (parking plan-resident permit parking only), not for the whole Town. Mr. Bradford confirmed that this is correct.

Mr. Randolph commented "maybe we're using a bazooka when maybe we should be using a BB gun."in attempts to make the Arlington plan the same as the Gainesville plan. He explained that this was initiated in relation to construction parking in the north end. It became clear that it was necessary to distinguish construction parking from delivery persons or service vehicles. "The Gainesville plan did not have the exemption for service and tradesmen. It only had a provision which allowed temporary visitor permits to be granted by the Police Dept. and it didn't say how many. Anyone could come in at any time and get whatever visitor permits they could prove to the Police Dept. that they needed." The current proposal developed so that owners could give their permit placards to tradesmen, so the Police Dept. could see that the person was parked legally and was not part of a construction site. Mr. Randolph did not believe that there is a problem in the Arlington plan areas, and suggested that perhaps the proposal should specifically address the Gainesville plan areas instead. He stated staff will work on this.

MOTION BY MR. BELL TO DEFER THIS STUDY ITEM.
MOTION SECONDED BY MR. GOLBORO.
MOTION CARRIED UNANIMOUSLY.

G. <u>COMPREHENSIVE PLAN EVALUATION AND APPRAISAL STATUS REPORT (VERBAL)</u>

Mr. Tim Frank advised the Commission that the Comprehensive Plan Evaluation and Appraisal Report has already been passed, adopted and approved by the State. This report recommended modifications to the Comprehensive Plan and so they are called EAR based amendments. Iler Planning Group was hired as a consultant to carry this through and to move forward with these EAR based amendments in this zoning season. Their report was due on October 30. There has been a change of personnel in their firm and the person who was the lead on this report is no longer with the firm. However, the draft report is nearing completion and is missing only one component which involves the West Palm Beach water supply system. This report should be available in two weeks and within the next couple weeks, staff will be forwarding this report to the Planning & Zoning Commission for study. This item will be on the agenda at the next meeting of the Planning & Zoning Commission.

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

Ms. Close thanked Mr. Robertson, on behalf of staff, for all of his help throughout his tenure. Mr Robertson's guidance has been invaluable and he has assisted staff greatly and given staff many good ideas and instructions which was greatly appreciated.

Ms. Close advised the Commission of an invitation to a talk being presented by Jane Day at 11:00 a.m. at the November 28, 2007 Landmarks Commission Meeting. Ms. Day will be talking about the architectural history of the town, the landmark program, evaluating architectural styles, the historic site survey and the tax abatement program.

Ms. Close added that a draft of the annual report by the Planning and Zoning Commission that has been traditionally been done by the Chairman has been prepared and will be presented to the Town Council at the next Town Council Meeting. Staff has put together a list of bullets and would like the Commission to provide input so this report can be finalized and sent on the Town Council.

Ms. Close added, "There are about three other items that will be appearing on the agenda. Copies will be distributed as soon as they are approved. One is the annual Zoning in Progress letter that says that once zoning season starts, any items on zoning season agenda are subject to "zoning in progress", which means that the Planning, Zoning & Building Department cannot issue any permits in contravention of the existing code or what is being proposed. Staff is also this year including a resolution declaring a zoning in progress in the Royal Poinciana Area and that would mean that, if adopted, no permits for new construction, facade changes, or additions to properties could be undertaken during the course of the study. That is due to expire if adopted in March 2008. That will be considered by the Town Council at their Tuesday meeting."

Ms. Close said, “Starting this Friday, the new Director of Planning, Zoning and Building Department will be John Page, aka ‘JP’ who hails from Cedar Falls, Iowa. JP will be starting on Friday and I am sure that you will see him at Tuesday’s Council meeting and at your next Planning & Zoning Commission Meeting in December. He will be formally introduced at that meeting.”

Mr. Shaw asked if staff kept a running list of all study items that had been proposed and not acted on and asked what happens to those items that have not been studied.

Mr. Castro advised that he had gone back over the past seven years and only found a couple of items that had not been studied. Some of these items have been coming back to the Council and Council sets priorities of what items are to be studied. There were nineteen items and of those nineteen items, sixteen were studied.

Chairman Guttman suggested that staff provide the Commission with a list of items that are still “open” before the meeting in which the Commission takes up recommendations to the Town Council for items that should be studied before the next zoning season.

Mr. Golboro stated that Council has put water as a very important item on their agenda and added that The Civic Association has specifically appointed a group to study this item. Mr. Golboro objected to the fact that the Civic Association is studying this and felt that the Civic Association should be reporting to the Commission and the Commission should be taking this up with staff.

Chairman Guttman commented that last season, at the Town Council’s request, the Commission was asked to define the Commission’s planning role. The consensus was that the planning role should be land-use based and not outside of land use parameters, but the Commission recommended to the Town Council that the Town Council appoint the Planning & Zoning Commission as the planning agency under the Comprehensive Planning Act. The Town Council has never considered that recommendation. Mr. Guttman stated that he was still uncertain as to what his colleagues on the Commission felt their planning role is and felt that help from the Town Council was needed.

Councilwoman Markin commented about her interpretation of the discussion Council had regarding the planning capabilities of the Commission and added, “I am a strong proponent of the Commission doing more planning. When it was determined that the Commission was not willing to meet year-round, some of the planning capacities and potential study items were not going to be included.” Ms. Markin stated that at the beginning of each season, Council is asked to prioritize what items should be studied and come up with a list of the top five items.

Mr. Shaw added that those items - beach nourishment and under-grounding are not coming to the Commission and stated that the fifty-percent rule had more value and it would have been time better spent working on that than the elevations of a few houses on the ocean.

Ms. Markin stated that staff comes to the Council and provides Council with the list of study items that are recommended by the Planning & Zoning Commission. The Council looks at that, goes through it, and basically approves everything that is on the list. Ms. Markin stated that she was in support of the Commission taking on more planning activities.

Mr. Golboro stated that last year, Town Council voted that the Commission be a twelve-month Commission and be available to meet twelve months of the year.

Mr. Wideman stated, "In the Annual Report, staff listed some of the primary study items the Commission will be considering this year and the first item is to "conduct the Royal Poinciana Area Study". Will the Commission be conducting the study of the Royal Poinciana Area?"

Ms. Close commented that there are two separate processes that the Town Council uses. The first is for the Town Council themselves and for direction of staff as a whole. They review major initiatives in Town and select five to address during the coming year. Those are major items encompassing the entire Town.

Ms. Close continued and said that the Planning & Zoning Commission last year voted to become a year-round commission and staff advised the Town Council of that. "The Town Council has taken no actual line, one way or the other, so they are assuming that you are going to meet year-round. In March or April, staff will come to you with a list that we keep running of any items we have heard mentioned by the Commission, Town Council or that anyone has brought up during the course of the previous year that they think the Planning & Zoning Commission ought to study. Staff brings that to you, you review the list and make your recommendations. Staff takes that list along with your recommendations and our recommendations to the Town Council in April or May or June and Town Council makes their final selection and the direction to staff as to what items will be studied. The Planning & Zoning Commission is provided with the final action, what staff was directed to study."

VII. ADJOURNMENT

MOTION TO ADJOURN BY MR. SCHULER.

Mr. Castro stated that staff went back five years and looked at the study items and there were only two items that Council did not take action on. The rest of the items Council decided to not study at all or to defer. The two items deferred were intersection vision and non-conforming structures. Staff provided the Planning & Zoning Commission with the list. The "fifty-percent rule" is on the list, but it is not on the list to be studied this year.

Mr. Golboro stated that he had offered one item that is not on the list, traffic. He was concerned with the traffic on the south bridge and the north bridge, not parking but traffic.

Chairman Guttman asked Ms. Markin to take up with Town Council whether or not Council wished this Commission to study traffic. Mr. Guttman stated that he did not want to duplicate an effort by Town Council regarding the traffic issue or any other large project.

MOTION TO ADJOURN SECONDED BY MR. BELL.
MOTION UNANIMOUS TO ADJOURN AT 3:45 P.M.

Respectfully Submitted,

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

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1/15/08 minutes amended