

**PLANNING AND ZONING COMMISSION
2008-2009 ZONING HEARING
RECORD AND REPORT
TUESDAY, NOVEMBER 4, 2008, 9:30 a.m.**

Please be advised that in keeping with a recent directive from the Town Council, the minutes of all Town Boards and Commissions will be “abbreviated” in style. Persons interested in listening to the meeting, after the fact, may access the audio of that item via the Town’s website at www.townofpalmbeach.com or may obtain an audio recording (tape or CD) of the meeting by contacting Debby Morakis, Secretary to the Planning & Zoning Commission at (561) 227-6411. As a point of reference, you will find the recording times listed on these minutes at the beginning of each item.

- I. CALL TO ORDER AND ROLL CALL: (0:01:38)** Chairman Guttman called the meeting to order at 9:30 a.m.

Chairman Guttman congratulated and welcomed to the Commission new Alternate Member C. Tanner Rose, Jr.

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

ABSENT: None

RECORDING SECRETARY: Deborah A. Morakis

II. INVOCATION AND PLEDGE OF ALLEGIANCE: (0:00:52)
Ms. Morakis gave the invocation and led the Commission in the Pledge of Allegiance.

III. PROOF OF PUBLICATION (0:01:35)
Mr. Castro stated that he had proof of publication.

IV. COMMENTS FROM THE PUBLIC: (0:02:03)
There were no comments from the public at this time.

V. REGULAR AGENDA

A. Approval of August 5, 2008, Planning and Zoning Commission Record & Report. (0:02:35)

MOTION BY MR. SCHULER TO APPROVE THE AUGUST 5, 2008, RECORD AND REPORT.
MOTION SECONDED BY MR. GOLBORO.
MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL VOTE.

B. Election of Chairman and Secretary (0:03:02)

MOTION BY MR. SCHULER TO NOMINATE MR. GUTTMAN AS CHAIRMAN OF THE PLANNING & ZONING COMMISSION FOR THE 2008-2009 ZONING SEASON.
MOTION SECONDED BY MR. SHAW.
There were no further nominations.
MOTION CARRIED UNANIMOUSLY

MOTION BY MR. WIDEMAN TO NOMINATE MR. GOLBORO AS SECRETARY OF THE PLANNING & ZONING COMMISSION FOR THE 2008-2009 ZONING SEASON.
MOTION SECONDED BY MR. DOWELL.
There were no further nominations.
MOTION CARRIED UNANIMOUSLY.

C. 2008-2009 Study Items, Phase I

1. Study Item 4. Modify Ocean Vista Requirement in the Beach Area Zoning District Relating to State Law. (0:05:02)

Mr. Castro provided an overview of Study Item 4 and introduced Steve Belden and Sandra Lee with Calvin, Giordano and Associates, Inc., who were here to make a presentation and recommendation to the Planning & Zoning Commission. Sandra Lee made a power point presentation to the Commission and explained what is currently contained in the Town's code. Ms. Lee explained that the code now establishes a percentage of the lot width which must run from the front to the rear lot line as an ocean vista, and stated that the code requires that within the ocean vista area no vegetation shall exceed 30 inches in height, measured above Ocean Blvd., and, for the remainder of the parcel, the non vista area, hedges or growth shall remain to a height no greater than four feet above the surface of the Ocean Boulevard pavement. Ms. Lee stated, "All lands identified by the Town as being within the Beach Area Zoning District are seaward of the Coastal Construction Control Line (CCCL) and therefore, pursuant to Chapter 62 of the Florida Administrative Code, requires a permit from the Department of Environment Protection (DEP) for any activities on properties seaward of the established control line. There is dual jurisdiction within this zoning district." Ms. Lee explained that the Department of Environmental Protection has a publication entitled "Seagrape Trimming Guidelines" which provides specific details for trimming activities that the State does not consider detrimental to plants and these activities are exempt from permitting. Ms. Lee explained, "the conflict occurs between the Town's height limitations on vegetation with the State guidelines specific for existing native trees and shrubs that are more than 6 feet tall. Your current zoning code does not address newly installed material or invasive exotics. It just states vegetation as a whole."

Ms. Lee stated, "Our recommendation is for a modification to the Town's current zoning code to address all newly installed materials, require the removal of invasive exotic vegetation, and, to address the conflicts with the trimming of existing vegetation that is more than 6 feet tall."

After discussion, Mr. Castro explained that the ocean vista was created to create a scenic vista and the 30-inch height limitation currently in the code was to allow passengers to see the vista while driving down North and South Ocean Blvd.

Discussion continued and comments were heard from Bob Moore, former Director of the Planning, Zoning & Building Department who stated that he recalled when the State made a decision to change the Coastal Construction Control Line. Mr. Moore said, "This problem was introduced for study and since 30 inches was the height for fences, it was adopted as the height for vegetation. The Town historically enforced the DEP regulations. The intent was to provide the folks traveling from the

north to the center of Town a vista to enjoy during their drive.” Chairman Guttman wondered how involved residents were in the creation of this regulation at that time, since there is now a conflict.

Mr. Moore stated that the genesis for this ocean vista regulation was requested by the Mayor and Town Council, to bring to the Planning & Zoning Commission for their review and recommendation.

Comments were heard in support of this change from several residents of the Town.

Jerry Goldsmith of 285 Colonial Lane, stated that he was the Chairman of the Zoning Commission at that time and a few residents from the North end did call, a few came in for that Thanksgiving hearing and requested sight lines for their homes, that was a public concern.

Former Mayor Yvelyne Marix, of 1570 No. Ocean Blvd., addressed the Commission and stated, “Being able to see the ocean was considered one of our Town’s assets. It was not done only for those who live there. It was done as part of the Town assets.”

Dr. Sten Lilja of 1330 North Ocean Blvd., stated that he was in attendance at the meetings in question on January 26, 1993 and February 8, 1993. “As residents, it is precious to us to look out at the ocean and boats. Don’t let the State take it away from us.”

Mr. Lawrence stated that root growth generally follow the same pattern as the leaves. “If you top these trees, you are reducing the roots. It is debatable if these plants are giving much protection to the dune.”

Mr. Randolph clarified that this issue came about as a result of cabanas and walls that were being built and hedges that were being planted that tended to block the view of the ocean. Mr. Randolph stated, “As a result, the Zoning Commission gave consideration to an ordinance which prospectively acted to require certain heights to exist in hedges and walls and buildings going forward. The 30-inch rule has always been applied prospectively for someone that is coming in to build a new house, new structure on the beach, or put new plantings on the beach. The 30 inches is not something that is being required by the Town retroactively.” Mr. Randolph stated that there were some notices that initially were sent out in error by the Code Enforcement Department that dealt with the 30 inches. Mr. Randolph stated that he advised the Code Enforcement Board that the 30-inch rule only applies to people going forward. Mr. Randolph explained that the 48-inch rule, which is applied retroactively, had a

provision which allowed the Code Enforcement Board to order that bigger trees or hedges be cut down to 48 inches. Mr. Randolph stated that there were two things in front of the Planning & Zoning Commission today. What is the purpose of the ocean vista ordinance and do you want to continue it? What is being proposed here today is really a clarification of the way in which this law is now being enforced. If someone has a 6-foot tree and the Town says we want more than a certain percentage cut down, and we don't do this, what they are proposing would say, this is what the Town would like to happen, if the state does not go along with it, you will not get a permit to do it, so the Town law would not be in effect. The Code Enforcement Board has been enforcing this very fairly. They have used their discretion in favor of the property owner in regards to trees that are going in an east/west direction. They have been trying to enforce it on the hedges that go in a north/south direction that fully block the view of that property for 100 to 150 feet. In those instances, they have only been requiring that they cut to 48 inches which is not in violation of DEP. The Town has enforced its ordinances properly, except in the case of some notices that went out in error. The purpose of this amendment is to codify the manner in which the Town is now enforcing its ordinances.

Discussion continued at length. Mr. Ryan commented that he wanted to be sure that any Ordinance adopted by the Town include a maintenance provision. Mr. Randolph stated the draft ordinance does have a maintenance provision in it.

After additional comments were heard, the following motion was made:

MOTION BY MR. SHAW TO APPROVE THE “HOUSEKEEPING CHANGES” AND CLARIFICATION AS OUTLINED IN THE PROPOSAL, AND TO MODIFY THE TOWN CODE FROM “MUST BE AT 30 INCHES” TO “MUST BE NO LOWER THAN 42 INCHES.”

Chairman Guttman asked if Mr. Shaw would modify his motion to have the local law be congruent with the state law.

Mr. Shaw stated that would be nice, but, the Town law would be a “may,” the state law would be a “must.”

John Page, Director of Planning, Zoning & Building Department, stated that the purpose behind this study item was to make certain that the local ordinance and the state statute “sync up.”

Chairman Guttman stated that his preference would be to outreach to the residents and said he detected that a number of Commissioners wanted to make the local law and the state law congruent.

MR. SHAW MODIFIED HIS MOTION TO ACCEPT THE “HOUSEKEEPING ISSUES” BROUGHT FORWARD BY THE RECOMMENDATIONS AND TO MAKE THE TOWN CODE CONCURRENT WITH THE STATE CODE OF 42 INCHES, IN LIEU OF 30 INCHES MEASURED FROM THE SOIL.

Chairman Guttman asked about trees. Mr. Shaw stated that trees were not part of his motion.

MOTION SECONDED BY MR. WIDEMAN.

Discussion ensued about the motion which included being stricter than State law and the point of measurement.

MOTION CARRIED 6-1 AFTER ROLL CALL VOTE, WITH MR. GOLBORO DISSENTING.

Chairman Guttman called for a motion with respect to trees.

**MOTION BY MR. SCHULER THAT THE TOWN COMPLY WITH THE STATE RULES REGARDING TREES.
MOTION SECONDED BY MR. WIDEMAN.**

Mr. Castro asked for clarification of the motion and stated the Town requires that the trimming be consistent with the Department of Environmental Protection. Discussion continued.

MOTION DIED.

After further discussion, Council member Rosow stated that he was very confused. “We are talking about shrubs and we are talking about trees and we are talking about shrubs that are neglected and become trees. I feel the Commission should be discussing the aspect of our ordinance and if we comply with the State, become less restrictive on the height of the bushes and insist on maintenance. Those are the principle issues.”

Discussion continued. Chairman Guttman agreed that this has been a confusing conversation and stated that it was a compelling argument to have one rule. Discussion continued and Chairman Guttman passed the gavel to Mr. Golboro.

**MOTION BY MR. GUTTMAN TO RECONSIDER ONE UNIFORM RULE THAT STRUCTURES AND LANDSCAPING NOT EXCEED 42 INCHES AND THAT THE SITE MEASUREMENTS AND OTHER REQUIREMENTS RELATING TO THAT BE IN CONFORMITY WITH STATE LAW.
MOTION SECONDED BY MR. DOWELL.**

Mr. Castro asked that the Commission also consider walls and hedges and suggested that they be consistent.

MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL VOTE.

Mr. Golboro turned the meeting back over to Chairman Guttman and Chairman Guttman asked for a motion to have the State law apply at the local level. Mr. Randolph stated that State law does apply at the local level and after further discussion, the following motion was made:

**MOTION BY MR. SCHULER TO HAVE THE TOWN USE THE STATE LAW WHEN CONSIDERING TREES IN THE BEACH AREA DISTRICT.
MOTION SECONDED BY MR. WIDEMAN.**

Mr. Lawrence noted that DEP does not have laws, they have guidelines.

Mr. Castro advised the Commission that adopting this provision would preclude the Town from requiring property owners to trim trees which had been allowed to overgrow. The proposed language requires residents who have done so to apply for a DEP permit to trim the trees. If the permit is granted, they are required to trim them but if denied, the Town does not require the trimming. It requires compliance only of the owner can get a DEP permit. This allows more flexibility than existing code.

Mr. Moore agreed with Mr. Castro but added there are also sea grape trees that are seaward of the CCCL that do require trimming.

MOTION CARRIED 6 TO 1 AFTER ROLL CALL VOTE WITH MR. SHAW DISSENTING.

Chairman Guttman asked if the topic of walls had to be addressed at this time and Mr. Randolph asked if Staff could work on the ordinance and bring it back to the Commission at a later date. Chairman Guttman agreed.

2. Study Item 5. Modify Restaurant Outdoor
Seating.(1:57:20)

Chairman Guttman asked Mr. Castro to provided an overview of Study Item 5. Mr. Castro introduced Steve Belden of Calvin, Giordano and Associates, Inc., who summarized their report for the Commission.

Mr. Belden made a presentation based on the report. Discussion ensued about the proposed regulations. Based on the discussion, the Planning & Zoning Commission directed Staff to defer Study Item 5

MOTION BY MR. GOLBORO TO DEFER STUDY ITEM 5.
MOTION SECONDED BY MR. WIDEMAN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

The meeting was adjourned at 12:15 p.m. for lunch.

Chairman Guttman called the meeting to order at 1:45 p.m. and stated that Mr. Klein would not be in attendance for the remainder of the meeting.

3. Study Item 7. Create Condo-Hotel Regulations. (2:41:12)

Steve Belden gave some background on this study item and stated, “Due to escalating growth patterns, the Town faces a need to define and provide criteria for condominium hotels in the zoning and land development regulations. On February 11, 2008, the Town Council held a special meeting to discuss zoning and one of the items on the agenda was to study the potential impacts of condominium hotels and to propose zoning regulations. Council voted to continue zoning in progress regarding condo-hotels and directed staff to study the issue in further detail and work with the Planning & Zoning Commission. Condo-hotels can be described as a vacation home within a hotel building. The term condo-hotel may be broadly applied to describe a variety of ownership arrangements within a hotel setting, the condo-hotel allows for the sale of individual rooms or units. Condo-hotel unit owners may use or place them in a hotel pool when not in use, sharing rent revenues. Any proposed text amendments to the Town’s Code of Ordinances should provide comprehensive definition, including criteria for condo-hotel development, separating them from condominiums and hotels or motel establishments. Condo-hotels should be operated and governed in the same manner as conventional hotel facilities. Ignoring the need to differentiate condo-hotel developments from hotels and or condos introduces concerns with density. Hotel and residential condominium developments have different development restrictions in the Town’s Code.” Mr. Belden stated that a major difference is in the density. “As hotels are allowed double the number of rooms as a residential condominium or apartment development. For example, a multi-family

zoned property has a maximum density of 13 dwelling units per acre in the R-D (2) High Density district, whereas the maximum density for a hotel in this district is 26 units per acre.” Mr. Belden recommended that the density for a condo-hotel be limited in a range between the Town’s current hotel and the multi-family density restrictions.

Mr. Belden also stated that another concern that should be re-evaluated is the parking requirements for accessory commercial units within hotels and condo-hotels. Mr. Belden provided a list of proposed condo-hotel requirements.

Chairman Guttman stated that he had provided drafting comments to Mr. Castro.

Mr. Golboro stated that a condo-hotel can be a method of financing and ownership and added that condo-hotels must be furnished in a uniform way.

Attorney Randolph stated, “The state law does not allow us to regulate a form of ownership and that is why their task has been to come up with criteria that will differentiate their uses.”

Mr. Castro stated, “The conversion of hotels to condo-hotels has been a real problem. It has increased the demand for parking, even though on paper they may look fine. The Heart of Palm Beach converted and reduced their density but they tripled the amount of commercial activity that is going on there. Staff was instructed to look at this issue.”

Chairman Guttman added that he felt there needed to be a definition for a condo-hotel and noted that condo-hotels are regulated nationally.

Mr. Page stated that he thought the Town Council sees this as a new emerging land-use trend and one that has just recently become recognizable. Mr. Page stated that regarding the parking issue, there have been a number of hotels that have been converted and that has resulted in an increase in the number of vehicles.

After further discussion, the following motion was made:

MOTION BY MR. GOLBORO TO RECOMMEND TO THE TOWN COUNCIL THAT NO ACTION BE TAKEN ON THE FINANCING SIDE AND THAT ALL CONDO-HOTELS CONFORM TO THE HOTEL REGULATIONS AS EXISTING.

Mr. Castro stated that the hotel regulations that exist basically allow a

maximum density of double the density of residential, they allow for commercial uses within the hotels by special exception, as well as other similar uses that are allowed within all of the commercial zoning districts. There is a maximum threshold for the percentage of commercial amenities within a hotel and there is no outside advertising or appearance of any commercial use allowed outside of the hotel.

MOTION SECONDED BY MR. DOWELL.

MOTION CARRIED 5-2 AFTER ROLL CALL VOTE WITH MR. LAWRENCE AND MR. GUTTMAN DISSENTING.

4. Study Item 12A. Revise Deferral Requirements for Special Exceptions, Variances and Site Plan Reviews. (3:09:35)

Mr. Castro stated that this item was implemented as a Town policy in March 2008. Staff has provided the language within the framework of the code as it relates to the initial deferral, the second deferral and the third deferral. Mr. Castro stated that there have been many occasions where development items have been deferred at the applicant's request, even before getting in front of the Council, or, as a result of a large amount of discussion in front of the Council. Mr. Castro stated that some cases have been deferred by as much as a year even though there is a specific provision about how long applications can be deferred. Staff has identified the language that the Council has adopted in policy form.

Mr. Guttman stated that in an effort to improve the language, some technical draft suggestions have been provided to Mr. Castro.

Mr. Castro stated that at the last Town Council meeting, the Council did say that if a deferral was at the request of the Architectural or Landmark Commission, it would not be counted as a deferral under these guidelines.

Mr. Lawrence stated that he felt that should be included in this item since items can go back before the Architectural Commission numerous times.

MOTION BY MR. SCHULER TO APPROVE STUDY ITEM 12A, WITH THE ADDITION AS SUGGESTED BY MR. LAWRENCE.

MOTION SECONDED BY MR. DOWELL.

MOTION CARRIED UNANIMOUSLY AFTER ROLL CALL VOTE.

5. Study Item 12B. Modify Off-street Parking Requirement for Principal of Equivalency. (3:13:00)

Mr. Castro stated that this was a housekeeping item and said, “Although this language has been in the code for many years, we have never calculated parking based upon the cubic content ratio. The Principal of Equivalency is a code provision that gives credit for parking for existing commercial or multi-family residential uses. To intensify the use, you must provide the difference in parking between the use that was there and the more intense use being proposed in the space. The Principal of Equivalency is based upon the parking standard in the Code.” Mr. Castro stated that Staff recommends this amendment to the code provision to base the Principal of Equivalency calculations on the schedule of off-street parking regulations in the Code.

**MOTION BY MR. WIDEMAN TO APPROVE STUDY ITEM 12B.
MOTION SECONDED BY MR. GOLBORO
MOTION CARRIED UNANIMOUSLY AFTER ROLL CALL
VOTE.**

6. Study Item 12C. Modify the Completion Deadline for Renovation of Non-Conforming Buildings. (3:15:09)

Mr. Castro stated that this item came to light as a result of construction related activities. If work is not completed within a time frame it has to become a conforming building and sometimes that is an unrealistic task and quite cumbersome and expensive for a property owner when a contractor is not on schedule. Staff is proposing to create completion deadlines, similar to the building code deadlines in Chapter 18, and in the event that the restoration is not completed by the time-line established in the Building Code, allow for corrective action to be taken by the Town Council.

Discussion continued regarding punitive action and penalty fees. After discussion, the following motion was made:

**MOTION BY MR. LAWRENCE TO APPROVE STUDY ITEM 12C.
MOTION SECONDED BY MR. GOLBORO.
MOTION CARRIED 6-1 AFTER ROLL CALL VOTE WITH MR.
SHAW DISSENTING.**

7. Study Item 12D. Create an Administrative Site Plan Review Approval. (3:37:26)

Mr. Castro stated that this item came up over the last year from the Town

Council when the Council had projects before them that did not increase density or intensity of use and were multi-family or commercial projects that typically require site plan approval. Staff is recommending approval of this administrative site plan review process which requires Development Review Committee oversight and would also require a recommendation from them before the Director could make a decision on site plan review.

Chairman Guttman stated that he had provided draft comments to Mr. Castro. Mr. Guttman suggested that the term “intensity of use” be defined.

Mr. Shaw stated that he felt that the property owner notice and legal advertising should be a requirement.

Mr. Castro stated that when the waiver process was created last year, it became more cumbersome than hoped and noted that adding a notice provision would be a burden requiring additional time for the approval process.

After additional comments were heard, the following motion was made:

**MOTION BY MR. DOWELL TO APPROVE STUDY ITEM 12D.
MOTION SECONDED BY MR. LAWRENCE.
MOTION CARRIED 5-2 AFTER ROLL CALL VOTE WITH MR.
SHAW AND MR. WIDEMAN DISSENTING.**

8. Study Item 12E. Modify the Definition of “Structure”.

Mr. Castro stated that over the years, several temporary structures have appeared such as a residential condominium barge on the lake, swing-sets, temporary carport structures, tennis court re-bounding boards, basketball hoops, etc. Staff felt that the term “structure” needed to be better defined.

**MOTION BY MR. WIDEMAN TO APPROVE STUDY ITEM 12E.
MOTION SECONDED BY MR. SCHULER.
MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL
VOTE.**

9. Study Item 12F. Define Commencement of Work for Zoning and Completion Requirements for Zoning Approvals.

Mr. Castro explained that currently in the Code there is language relating to special exceptions and variances, and a time line for which implementation or commencement must begin as well as a completion deadline. Mr. Castro stated that Staff is recommending the elimination of one of the words, either “implementation” or “commencement.”

After a brief discussion, the following motion was made:

**MOTION BY MR. SHAW TO APPROVE STUDY ITEM 12F.
MOTION SECONDED BY MR. SCHULER.
MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL
VOTE.**

D. Phasing study items during the 2009-2010 zoning season beginning in October 2009. (3:47:00)

Chairman Guttman stated that in October 2008, the regular meeting of the Planning & Zoning Commission was cancelled due to the holidays and the fact that the only item on the agenda was the election of officers. Chairman Guttman stated that Mr. Page and Staff has agreed to submit zoning proposals for consideration by the Planning & Zoning Commission beginning in October 2009.

Mr. Golboro stated that he had received comments regarding the cancellation of the October meeting and noted that the Council does want the Commission to meet monthly.

Chairman Guttman stated that one of the agenda items for the next meeting of the Planning & Zoning Commission will be a proposal to extend the zoning season from October to May to year-round and that does not address the planning initiatives.

Mr. Golboro agreed with Chairman Guttman.

Chairman Guttman noted for the record that the Planning & Zoning Commission unanimously decided to start reviewing proposed zoning items at its regular meeting in October 2009 and thereafter.

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

Mr. Page stated that a Planning & Zoning Commission meeting schedule would be distributed to the Commission members in the near future and

reminded the Commission that the Planning & Zoning Commission meetings are regularly scheduled on the first Tuesday of each month. Mr. Page noted that new building permit software (EDEN) has been implemented in the building department within the last 30 days. Mr. Page added that this has been a vary large transition that has involved a lot of Staff time. Mr. Page noted that in the next few weeks there would be some new faces within the Planning & Zoning Department. Both the Planning Administrator position now vacant after the retirement of Tim Frank, as well as a vacant plans examiner position will be filled.

VII. ADJOURNMENT

MOTION BY MR SCHULER TO ADJOURN AT 2:56 P.M.
MOTION SECONDED BY ALL.
MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

William M. Guttman, Chairman
Town of Palm Beach
Planning and Zoning Commission

Alan S. Golboro, Secretary
Town of Palm Beach
Planning and Zoning Commission

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