PLANNING AND ZONING COMMISSION AND LOCAL PLANNING AGENCY
RECORD AND REPORT
TOWN HALL – COUNCIL CHAMBERS – SECOND FLOOR
360 S COUNTY ROAD, PALM BEACH
TUESDAY, OCTOBER 18, 2011, 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 (9:30:53 a.m.)

Chairman Golboro called the meeting to order at 9:30 a.m. On roll call, Commission Members present were:
Alan Golboro, Chairman
John Schuler, Member
Eugene Lawrence, Member
Floyd Wideman, Jr., Member
Martin Klein, Member
C. Tanner Rose, Member
Angela D. Usher, Palm Beach County School District, LPA Member (arrived 9:32)
Lewis Crampton, Alternate Member
Jeffrey Cloninger, Alternate Member
Michael Spaziani, Alternate Member

Commission Members absent:
Leslie Shaw, Vice Chairman (unexcused)

Staff Members present were:
John Page, Director of Planning, Zoning, Building
Paul Castro, Zoning Administrator
Debby Morakis, Secretary to the Planning & Zoning Commission
For the record, Alternate Member Crampton voted in Mr. Shaw's absence.

II. INVOCATION AND PLEDGE OF ALLEGIANCE (9:32:51 a.m.)

Ms. Morakis led the Commission with the invocation and Pledge of Allegiance.

III. APPROVAL OF THE AGENDA (9:32:52 a.m.)

MOTION BY MR. KLEIN FOR APPROVAL OF THE AGENDA.
MOTION SECONDED BY MR. WIDEMAN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

IV. COMMENTS FROM THE PUBLIC ON ANY ITEM NOT ON THE AGENDA (9:32:53 a.m.)

Chairman Golboro called for comments from the public on any item not on the agenda. There were none.

V. APPROVAL OF SEPTEMBER 20, 2011 PLANNING AND ZONING COMMISSION / LOCAL PLANNING AGENCY MINUTES (9:33:08 a.m.)

MOTION BY MR. KLEIN FOR APPROVAL OF THE MINUTES OF THE SEPTEMBER 20, 2011 PLANNING & ZONING COMMISSION MEETING.
MOTION SECONDED BY MR. CRAMPTON.
MOTION CARRIED 6-0 AFTER A ROLL CALL VOTE, WITH MR. SCHULER ABTAINING.

Chairman Golboro noted for the record that he received a call from Ned Barnes of the Civic Association who called to apologize for being unable to attend the Planning & Zoning Commission Meeting due to a scheduling conflict with Congressman West.

VI. NEW BUSINESS(9:33:50 a.m.)

a. Comprehensive Plan Amendment and Zoning Ordinance Modification Application Report on the Testa Family, LLC, application. [Calvin Giordano & Associates]

Comments were heard from Tom Testa, of 221 Royal Poinciana Way, who addressed the Commission and stated that his family had always taken great pride in his home town and the opportunities it brought to him, and, added that his hope was to restore the main street to what it once was.

Attorney Frank Lynch gave a power point presentation that explained some components in the application, comparing this to the Garden Club plan which was introduced in 1929. Mr. Lynch added that the application was seeking to improve the situation in the area and added that all changes being asked for already exist on the block. Mr. Lynch gave examples, quoted the Comprehensive Plan and added that the application was seeking to swap reduced intensity of use for increased residential density. Mr. Lynch requested that the application, in its entirety, his power point presentation and the Curriculum Vitaes of Maziar Keshavarz, P.E. of Keshavarz & Associates and Christopher W. Heggen, P. E. of Kimley-Horn & Associates, Inc., be entered into the record.

Maziar Keshavarz, Consulting Engineer of Keshavarz & Associates addressed the Commission and stated that all infrastructure systems, existing and proposed, had been evaluated. Mr. Keshavarz testified that all systems including water, waste water, fire protection, irrigation, solid waste, and drainage, would be left better than what was there now.

Christopher Heggen, of Kimley-Horn and Associates, Inc., stated that an extensive analysis of traffic conditions had been performed. Mr. Heggen provided a summary and stated that the types of uses proposed would result in fewer gross traffic trips.

Mr. Lynch stated that his client was in agreement with the consultant's report prepared by the team at Calvin Giordano with only two exceptions. The minor issue was that his client would like to keep residential use as an option on the second floor where the consultant's report suggested commercial uses only. The major issue related to first floor residential use and Mr. Lynch said that the proposal required 50 foot setbacks from Royal Poinciana Way and Sunset Avenue. They agreed not to have residences directly on Royal Poinciana Way or Sunset Avenue and that residences would only be interior to the proposed redevelopment.

Mr. Castro presented the Commission with copies of letters that had been received in favor of the project.

Eric Javits, Vice-President of the Palm Beach Biltmore Condominium Association expressed his concern about traffic and parking and added that he felt this would be a substantial improvement to the aesthetics on Sunset Avenue.

Leslie Evans, property owner of 249-253 Royal Poinciana Way, presented for the record a "Petition Approving the Testa Application" on which he had gathered nine signatures. Mr. Evans stated that two of the buildings that he owns in the area have passed their useful life and were no longer economically feasible and noted the decrease in density in the area.

Paul Leone, President of the Breakers Palm Beach, Inc., addressed the Commission and said he was here as a resident and neighbor representing the largest property owner in the area and as a fan of Testa's and family business. Mr. Leone stated that the Breakers was in favor of supporting the Testa Application. Mr. Leone added, "There is a need for improvement here and there is an opportunity to stimulate improvement on a street that has seen a deterioration of physical structures and landscaping and a degradation of service to our Town. I am as concerned about our residents as the business community. On the downside, if Testa's cannot move forward with a reasonable development, we could end up dealing with a stranger. I would rather deal with the Testa's family. We are very much in support of helping them in any way we can as neighbors, residents and business people."

Laurel Baker, Palm Beach Chamber of Commerce, stated that she was here as someone who has lived, worked and raised a family in Palm Beach for many years. Ms. Baker stated that she would like the Commission to step back and remember the mission they were here to serve and added that she wanted the Testa's project to move ahead.

John Archer, President of The Royal Poinciana Way Association thanked the Commission for their consideration of the Testa proposal. Mr. Archer stated that he felt the Testa family would never propose anything to Palm Beach that would do anything but enhance the culture of Palm Beach.

Shelly Eichner of Calvin Giordano and Associates presented her report which included some suggested changes and added that staff was generally in concurrence with the technical aspects and found the proposal consistent with the Comprehensive Plan. Ms. Eichner explained some of the staff recommended changes and the rationale for those changes. Some of the recommended changes included removing the threshold criteria for property improvement age, requiring a minimum of 50% parking in a below grade structure with the balance of parking being provided on site, commercial and office uses on the first floor without residential uses on the first floor. The recommendation would require an updated traffic study. Ms. Eichner went on to explain some proposed zoning code changes.

Paul Castro, Zoning Administrator, clarified that staff was not recommending office use on the first floor but would prefer to see retail continuity and flow. Mr. Castro then pointed out another staff recommendation requiring underground parking be required to be below the grade of the street, not allowing the grade of the property be raised. Mr. Castro then added that staff would also recommend the site plan approvals be processed through the Town Council and the Architectural Commission in lieu of the Planning & Zoning Commission.

Frank Lynch stated that he and his client were in agreement with all staff recommendations with the exception of first floor residential uses.

Paul Castro added that staff believed by allowing residential use on the first floor the project would no longer be a mixed use development, it would then be a residential development.

John Page, Director of Planning, Zoning, Building Department stated that several letters of support had been received by staff and presented them for the record.

Chairman Golboro called for ex parte communications and declared that he had met with Tom Testa and Frank Lynch many times. Mr. Cloninger stated that he had met with Tom Testa and Joe Scheerer about 1 year ago. Mr. Spaziani stated that he had also met with Joe Scheerer several years ago.

Comments were then heard by Commission Members and Mr. Spaziani stated that he was in favor of redevelopment, that he felt the area needed a lot of work, and that his main concern was the requested intensity. Mr. Spaziani also asked if the underground parking would be available for only this property.

Mr. Lynch stated that the renovation would result in a decrease in the number of trips to the property and added that the underground parking would be dedicated for this property alone. Mr. Castro added that the parking would be intended for this site and leasing out parking spaces would not be permitted without Council approval.

Comments were heard from Jeffrey Cloninger who asked how this became an overlay, why staff would recommend bars and lounges in the area, and, added that his concern was that the area would become a "Clematis Street."

Mr. Castro addressed the comments explaining those uses were now permitted, but, with staff's proposal, they would have to obtain Council approval for a restaurant or a bar as well as outdoor seating.

Mr. Crampton asked if the rest of the block zoning was not changed by the application. Mr. Castro stated that right now, those properties were in the C-TS Zoning District, but, would be permitted to develop under those zoning district regulations or come and demonstrate through the criteria in the RPVOA to get the higher density and height.

Comments were heard from Mr. Rose who stated that he felt there was an opportunity to present something useful to Town Council. Mr. Rose added that he was generally supportive of the proposal, subject to all staff comments, but, he felt first floor residential should not be permitted and a revised traffic study would be needed.

Mr. Schuler stated that he felt the area needed to be upgraded and added, "it can be a very attractive area if properly done from an architectural standpoint. There is no question about that. My real problem is the density of the project. If we allow one group to do this, then how do we handle other applications for density increases. That is a major problem that I have commented on at other occasions here at this meeting and at other meetings that we have held at other locations. I still believe that and I see no relief as far as Testa's is concerned relative to handling that particular question and objection."

Mr. Wideman read a quote from the Comprehensive Plan and added that he had become quite disappointed in what happened on Worth Avenue since it was now primarily jewelry stores and no longer provided services to the residents in Town. Mr. Wideman stated that he felt the Testa Application was well done, but, he strongly disapproved of adding residential uses in that area.

Mr. Lawrence stated that he had been in favor of revitalizing this area for six years.

Mr. Klein stated, "It's time we moved forward. This is a big piece of unfinished business." Mr. Klein added that he was in support of the Special Exception process for third and fourth stories.

Angela Usher, Palm Beach County School District, stated that in accordance with

Florida Statutes, the District had to review any proposed changes to density. Ms. Usher stated that using the standard School District multiplier, the impact would be minimal to none.

Chairman Golboro asked if staff could take Commission comments and questions and put together a report for the Commission before it voted.

Paul Castro stated that based on direction from the Commission, staff was hoping to put together a formal ordinance for the Commission to consider as the LPA and make a recommendation to the Town Council next month.

Chairman Golboro stated that he disagreed with the requirement to have residential and recommended the elimination of fire escapes as projections. A brief discussion took place regarding the waterproofing of the site.

After a brief discussion,
MOTION BY MR. ROSE TO ADOPT THE TESTA PROPOSAL, SUBJECT TO COMMENTS FROM STAFF, A FURTHER TRAFFIC REPORT, AND, AGREEMENT TO AMEND MOTION TO INCLUDE OTHER ITEMS AS SUGGESTED BY MR. GOLBORO.
MOTION SECONDED BY MR. KLEIN.
Mr. Castro asked for clarification of the "other items" and a brief discussion ensued. Following the discussion, Mr. Rose stated that he felt the other items and further amendments should not be included with the motion.
MOTION AMENDED AND RESTATED BY MR. ROSE: TO ADOPT THE TESTA PROPOSAL SUBJECT TO COMMENTS FROM STAFF AND A FURTHER TRAFFIC REPORT.
MR. KLEIN ACCEPTED THE AMENDED MOTION.
MOTION CARRIED 6-2 AFTER A ROLL CALL VOTE. WITH MESSRS. SCHULER AND WIDEMAN OPPOSED.

Chairman Golboro called for a 10 minute break at 11:10 a.m. Chairman Golboro called the meeting to order at 11:30 a.m.

Mr. Castro stated for the record that the next meeting of the Planning & Zoning Commission / Local Planning Agency was scheduled for Tuesday, November 15, 2011, at 9:30 a.m. Mr. Castro stated that a legal ad would be placed in the newspaper to advertise it.

b. Proposed Changes to the Beach Area Zoning District Regulations.

Paul Castro stated that based on comments from the Code Enforcement Division and Planning & Zoning Commission at the September 20, 2011, Planning & Zoning Commission meeting, staff met with the Code Enforcement Division to come up with a proposal relative to two changes to Chapter 134 which deal with exotic species.

Raychel Houston, Code Enforcement Department, stated that her Department had been working diligently on this issue. After a brief discussion,

MOTION BY MR. WIDEMAN FOR APPROVAL OF STAFF'S RECOMMENDATION.
MOTION SECONDED BY MR. KLEIN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

c. Climate Change-Green Initiatives and Smart Growth Policy Issues.

Mr. Page provided the Commission with a report of his findings on what other communities were doing and how the Town was on track to accomplish this goal, including water conservation, reducing energy consumption, fuel efficient vehicles, more tree canopies, etc. Mr. Page stated that he had visited with several staff members in the City of West Palm Beach who indicated they would be willing to visit the Commission to provide additional information.

Mr. Crampton stated that he served on the Sustainability Advisory Committee in West Palm Beach and thanked Mr. Rose for bringing this issue up.

Mr. Rose stated that he felt it would be a good idea to have staff from West Palm Beach come here to talk to the Commission to see what was working and what was not working there. Mr. Rose indicated that he would be interested in hearing about adaptive measures and urban forestation.

It was the consensus of the Commission that staff would invite the City of West Palm Beach to come to a future Planning & Zoning Commission meeting.

d. Commercial Motion Picture Making Code Review.

Mr. Bill Diamond, 220 Wells Road, stated that his intent was not to open up the Town to full scale motion picture production. Mr. Diamond stated that virtual property tours were being used by realtors and magazines and wedding and other social photography or filming would be a violation of the existing code. Mr. Diamond said, "My goal would be to look at this regulation and craft something so as not to make illegal what is already going on and not turn this into Hollywood East."

Bill Metzger and Anne Metzger, 277 Esplanade Way, stated that they helped the Producers and Director of the motion picture "Parker" that was recently shot here by facilitating their use of the Town opportunities that are provided by the current code. Mr. Metzger stated that he realized the zoning code was a key component to sensible progress in growth and added that he would be a proponent to restudy the code.

Mr. Page noted that the Town Council had also directed this issue to go to the Ordinances Rules and Standards Committee.

Chairman Golboro suggested a combined meeting of ORS and the Planning and Zoning Commission to review motion picture making.

Attorney Randolph recommended that the Commission review the zoning ordinance and give their comments to the Town Council.

Mr. Page explained the two separate ordinances that govern film making and Mr. Castro explained the types of changes that were being proposed. A discussion ensued and comments were heard from Chairman Golboro and Mr. Klein. Mr. Castro stated that he envisioned that ORS might come up with recommendations that the Commission would want to weigh in on.

Chairman Golboro called for comments from the Commission and Mr. Lawrence stated that he felt the privacy in residential communities should be preserved. Mr. Wideman and Mr. Schuler agreed. Mr. Rose agreed but wondered about birthday parties and home weddings that were filmed and photographed and wondered if anyone had been sanctioned.

Attorney Randolph stated that as long as those events were not being filmed for commercial purposes, the Town had not been enforcing the ordinance. Mr. Randolph reminded the Commission to be content neutral so as to avoid any constitutionality problems.

Mr. Crampton stated that he would be willing to look at the ordinances to craft restrictions and definitions.

Mr. Cloninger asked for clarification about filming on any street and Mr. Randolph clarified that this ordinance did not address news making and documentaries.

Mr. Spaziani stated that he was not in favor of filming in residential areas due to safety and security concerns. A brief discussion ensued.

MOTION BY MR. LAWRENCE TO REQUEST STAFF TO EXAMINE THE CURRENT ORDINANCES INVOLVING FILMING IN RESIDENTIAL AREAS TO FIND REFINEMENTS THAT MAY BE FOUND TO ALLOW NON-INVASIVE ACTIVITIES.
MOTION SECONDED BY MR. WIDEMAN.

Mr. Klein commented that he felt this would run the risk of blurring the distinction between the residential and commercial districts.

Mr. Castro asked for clarification of what would be considered non-invasive activities. Discussion continued and Mr. Rose asked if an amendment to the motion might be considered to look at the definition of commercial motion pictures. Comments were heard from Attorney Randolph and Mr. Castro, who asked for further direction and the discussion continued.

MR. LAWRENCE WITHDREW HIS MOTION.
MR. CRAMPTON WITHDREW HIS SECOND.

After discussion, it was the consensus that staff would look at better describing or defining what constitutes personal but non-commercial filming in residential zones, prohibiting filming in hotels or clubs in residential zones, and would bring an ordinance back to the Commission for consideration.

e. Staff Discussion regarding the Yacht Broker Use in Commercial Zoning Districts.

Mr. Castro explained that more than twenty years ago there was a conscious decision made in the interpretation of the code that a real estate office or a brokerage office was an office type use and not retail since products being sold were off-site. From that standpoint, a yacht broker came in and wanted to go on the first floor of Royal Palm Way. Mr. Castro explained that this would have been prohibited by the code unless it was interpreted that this was also an office use. Once that determination and interpretation was made that this was an office use, a yacht broker in the retail districts on the first floor could not be permitted. Mr. Castro then explained that since then, two yacht brokers come in, one wanting an office on Worth Avenue and the other an office on Peruvian Avenue. There was a debate at Town Council and Council directed staff to come to the Planning & Zoning Commission for discussion purposes of staff's interpretation.

Comments were heard from the Commission and it was the consensus that yacht brokerages were not a retail use and staff's interpretation was correct.

VII. COMMENTS OF THE PLANNING AND ZONING COMMISSION AND PLANNING, ZONING AND BUILDING DIRECTOR (11:52:06 a.m.)

There were no comments from the Commission or from Mr. Page.

VIII. ADJOURNMENT (11:52:25 a.m.)

MOTION BY MR. SCHULER TO ADJOURN AT 12:18 P.M.
THE MOTION WAS SECONDED.
MOTION CARRIED UNANIMOUSLY.

Respectfully Submitted,

Alan S. Golboro, Chairman Town of Palm Beach Planning & Zoning Commission	Leslie A. Shaw, Secretary Town of Palm Beach Planning & Zoning Commission