

RECORD AND REPORT
PLANNING AND ZONING COMMISSION
2005-2006 ZONING HEARINGS
Tuesday, October 3, 2006 at 9:30 a.m.
360 South County Road, Palm Beach
Town Council Chambers

1. **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 (present by telephone)
Peter S. Broberg, Member
Nancy M. Murray, Member (present by telephone)
Elizabeth S. Murphy, Member
John H. Schuler, Member
Alan S. Golboro, Member
William M. Guttman, Alternate Member (present by telephone)
Leslie A. Shaw, Alternate Member
Veronica Close, Director of Planning, Zoning & Building
Paul W. Castro, Zoning Administrator
Timothy M. Frank, Planning Administrator
William F. Brisson, Brisson Planning Solutions (Zoning Consultant)

ABSENT: Walter Anthony Dowell, Alternate Member (Unexcused)

RECORDING SECRETARY: Cynthia M. Delp

Mr. Robertson acknowledged that Mr. Bell, Mrs. Murray and Mr. Guttman would be participating by phone today. He remarked that telephone participation is “a practice that I deplore, but one that has apparently been declared legal by our learned counsel.” Mr. Randolph responded that telephone participation is legal, but it is a policy decision by the Town Council as to whether to allow it or not. Members participating by telephone cannot constitute a quorum of members.

2. **INVOCATION:** By Mrs. Delp

3. **PLEDGE OF ALLEGIANCE**

Let the record show that Mr. Broberg arrived after the pledge.

4. **PROOF OF PUBLICATION:** Mr. Frank confirmed that proof of publication was obtained regarding this meeting.

5. **PROCEDURES FOR INPUT BY THE GENERAL PUBLIC:** Mr. Robertson stated that the public will be allowed three minutes/person to address the commission. He asked if anyone wished to speak at this time. No one responded.

6. **APPROVAL OF THE PLANNING AND ZONING COMMISSION MINUTES FROM JULY 18, 2006 MEETING:**

MOTION FOR APPROVAL OF THE MINUTES BY MR. SCHULER.

MOTION SECONDED BY MR. GOLBORO.

MOTION CARRIED UNANIMOUSLY.

7. **EVALUATION AND APPRAISAL REPORT (EAR) - PRESENTATION OF DRAFT REPORT BY STAFF**

Ms. Close welcomed the members to the 2006/2007 zoning season. Today's subject is the second draft of the EAR. After consideration of the report, members should forward any comments to staff for incorporation into the report. The report, in its final form, will ultimately be reviewed by the Town Council, perhaps in November. It will then be transmitted to the Dept. of Community Affairs. She briefly mentioned some of the issues which will be deliberated in this zoning season, i.e., Royal Poinciana Way, including Testa's; consideration of transferring review authority for development review matters to another board; and, several other items.

Mr. Frank stated that the updated EAR had been distributed to the members well in advance of this meeting. Issues related to the Royal Poinciana Plaza have been expanded to include all of Royal Poinciana Way, regardless of the ongoing litigation relative to the Plaza/Theatre. Within the report, some of the page numbering is out of sequence, but this will be rectified in the future. Also, references to specific individuals will be deleted from the text. He, like Ms. Close, requested commission feedback for incorporation into the report. Mr. Frank noted that Ms. Sarah Hannah, Assistant Town Manager, will address the commission relative to safety and disaster management issues, and Mr. Jim Bowser, Town Engineer, will address engineering issues.

Mr. Robertson asked Mr. Randolph if there is any hope of a decision from the judge relative to the Royal Poinciana Plaza by next year. Mr. Randolph responded that this is possible. Mr. Frank directed the commission to Section V, Pages 23 and 24 of the report, noting that certain references to Royal Poinciana Plaza will be changed to Royal Poinciana Way. He noted that traffic in this area (Cocoanut Row/Bradley Place and Royal Poinciana Way) is already at a level

of service “E”, which is failing. Any increase in density in the Plaza will further negatively impact this intersection. In addition to issues relative to the Royal Poinciana Plaza, an application for the Testa’s property and surrounding area has been submitted which would add residential density to the area. The DOT has stated its plan to re-do the bridge which will also affect traffic. The Breakers has an approved PUD for this area as well. Mr. Frank stated that all of these factors must be considered in the EAR.

Mr. Frank introduced Ms. Sarah Hannah, Assistant Town Manager, to answer questions relative to Disaster Management, (found on page V-20 of the report). Mr. Shaw commented, from a resident’s perspective, that there seems to have been a void in communication, i.e., how the residents receive information in storm events when evacuation has been ordered. Residents are concerned about their properties and when they will be able to return to the island. The Town must determine where to draw the compromise between a resident’s need to access their property vs. the Town’s need to safeguard the town, and must keep communication lines open in a better way than has been done in the past. Mr. Golboro stated that the report does not address the coordination or lack of coordination between the Town and Lake Worth and West Palm Beach.

Ms. Murphy noted that burying utility lines should be noted on the list. Ms. Hannah stated she would be hesitant to include this in the EAR since burying the utility lines has not yet been approved by referendum. Ms. Murphy responded that it has been sanctioned by the town for several years, and felt it should be included in the EAR. Ms. Close noted that burying the utilities is mentioned in Section 5, Page 5 since it is being contemplated for the future. Ms. Murphy commented that this is both a safety and an aesthetic issue, and should be included in the EAR in both places.

Mr. Bell stated that if residents are out of town when a hurricane hits, they want to give access to someone else to check their properties. Ms. Hannah responded that the individual chosen must have written documentation from the property owner to be handed to the police at the check points. These individuals would be allowed access to the island the same time that residents are allowed back. Mr. Guttman commented that in the past two years, his caretaker used similar written documentation and was successful in gaining access to Mr. Guttman’s property.

Mr. Guttman asked Ms. Hannah to have the Planning and Zoning Commission see the materials yet to be written for Page V-21. Ms. Hannah acknowledged this request.

Ms. Hannah stated that the Town has improved relative to public information, but the biggest obstacle is that residents being allowed back on the island is totally dependent on the severity of the storm and the intensity of the damage and street blockage. While the Town is very conscious that residents want to get back to the island as soon as possible, safety must be the first priority. Ms. Hannah reiterated that the Town is continually working to improve communication with residents. During storm events, the Town’s website is kept updated and the Town is in constant contact with the news media. Ms. Hannah reported that the Town is investigating the purchase of a reverse 911-type device which can send out messages to residents’ cell phones or home phones, which will hopefully be ready for next season. She stated that the Town is open to

suggestions for improvement in this regard.

Mr. Golboro stated that those, other than property owners, who are attempting to enter Palm Beach after a storm event need a Town ID card from the Police Dept., and that a letter alone is not enough. He asked Ms. Hannah to publicize this so that ID cards can be obtained in advance.

Mr. Shaw asked that the Town recognize, appreciate, and increase its volunteer force. Training workshops for the volunteers were recommended.

Mr. Frank thanked Ms. Hannah for her participation in this hearing, which demonstrates the teamwork process in the EAR. He introduced Mr. Bill Brisson, Zoning Consultant, Brisson Planning Solutions, Inc. to continue with the presentation.

Mr. Brisson noted that some corrections have been effected on pages III-5 through III-10 relative to population figures, as a result of further examination of the identifiable units at the Breakers. On Page III-8, there is a new table for existing land use (Table 5) and some associated maps, which follow. The land use maps and calculations go all the way out into Lake Worth, and the acreage involved in the water is included. Mr. Brisson remarked, however, that the overall pattern of land use in the Town is essentially the same as in 1977.

Mr. Frank introduced Mr. Jim Bowser, Town Engineer, to discuss the Public Works portions of the document. These portions include Section V, Drainage, Infrastructure, Deteriorated Break Walls, Traffic & Parking, and Shoreline Protection. Mr. Bowser asked for questions and/or comments from the commission. Mr. Golboro questioned Mr. Bowser on water retention requirements. He replied that in 1994, the requirement was for 1" of retention, but as of 2000, the requirement changed to 2" of water to be retained on a property undergoing substantial remodels or new construction. Mr. Frank noted that drainage is addressed in Section III-20, paragraph 2G.

Please note that at this point, extreme technical difficulties were experienced which disrupted the meeting. The Chairman called for a five minute recess and asked Mrs. Delp to note, in the minutes, that the meeting was disrupted because of technical difficulties associated with the telephone participation process.

Before the interruption, Mr. Shaw had asked about the objectives in the EAR document. Mr. Frank explained that the Comp Plan is required to have measurable goals, objectives and policies. The EAR dovetails with the Comp Plan, but in order for the EAR to be reviewed without having a Comp Plan for reference, certain text from the Comp Plan will be inserted into the EAR.

Mr. Frank continued by discussing how this draft differs from previous drafts of the EAR. He mentioned that the Royal Poinciana Plaza section (V-23) has been expanded in scope. Ms. Murphy added that on V-23, it indicates that she made a suggestion about a tunnel between Bradley Park and the Plaza. She stated that this was Ms. Markin's suggestion, and it is a great

one. Mr. Frank responded that all references to individuals will be deleted. Mr. Guttman questioned the timing related to the Plaza issue, commenting that it is ill-advised to study the Royal Poinciana Way area while there is ongoing litigation. He stated that he set forth his reasons for this opinion in his September 6th memorandum to the Planning and Zoning Commission. Mr. Guttman suggested that the Testa's application may require action before the Plaza matter may be heard. The ultimate goal would be to consider all of the impacts to this area at the same time, and formulate a comprehensive approach to the area, rather than reacting to one application before another.

Councilman Richard Kleid, 2660 South Ocean Boulevard, commented that the commission may have to move faster on the Royal Poinciana Way area because it is now known that the Royal Poinciana Plaza representatives are proposing to make application for a new waterfront plan at the Plaza. This proposal would include a Florida Stage Theatre, seating 300 persons, and three separate buildings, connected by passageways, which will house 80 hotel rooms, and a restaurant. Mr. Kleid believed that this proposal will probably be submitted as a Special Exception. He cautioned the Planning and Zoning Commission that "this particular study may be jump started by Testa's and the Royal Poinciana Plaza." Mr. Guttman recommended that the commission discuss how to proceed in this regard to be prepared for what might be a quicker required response than anticipated.

Ms. Close reported that the Town has issued a Request for Proposals for planning consultants for the next five years. A committee had been formed and has interviewed consultants. A recommendation to the Town Council has been prepared for the October Town Council meeting for retaining two consultants, Calvin Giordano Consulting Firm, a large, regional firm which is very adept in community visioning and urban design, and Iler Planning Group, a local planning firm, for other planning activities. If the Town Council grants approval of the consultants, staff will be meeting with them as soon as possible to get the planning study for Royal Poinciana Way started.

Mr. Guttman asked whether certain other nationally recognized planning firms were asked to participate in the Request for Proposals (RFP), namely Paul Goldberger, Robert Campbell or Alexander Garvin, and "if not, why not?" Ms. Close responded that standard RFP procedures were followed, and these firms did not respond to the RFP. Mr. Guttman found this to be very unfortunate, and stated his preference that the Town Council not make a decision on the consultants until a determination can be made as to whether the firms mentioned by Mr. Guttman are interested or not. Ms. Close responded that the Town can subcontract anyone in addition to the two consultants selected. Mr. Guttman continued to state the experience and qualifications of the persons he suggested. Mr. Robertson stated that Mr. Guttman had made his point, and noted that the Mayor and two members of the Town Council were present to hear his comments.

Mr. Golboro did not understand why the consultants are being hired now, and felt that it was unnecessary. He stated that the Town will have to review each of the development applications as each is submitted. Ms. Close responded that the Town has always retained outside planning consultants to provide the staff additional resources, while keeping full time staff numbers down.

The department's budget has included monies for outside consultants for years. Ms. Close stated that the planning consultants are being hired at this time so the Town can be pro-active rather than reactive to these development proposals by allowing residents to be involved in the planning for this important Royal Poinciana Way gateway to the Town. Mr. Golboro commented that this approach is "opening another Pandora's Box" because the Town will receive "fifteen different opinions on every subject." He stated that the Town is going to be required to act on the two applications being submitted, and will not be able to put them off for six months or one year. Mr. Golboro maintained that the Planning and Zoning Commission must be prepared to react to these particular applications rather than to a general overview of the area.

Ms. Murphy disagreed with Mr. Golboro stating that the Town needs the services of a nationally recognized planner. She had met with Alexander Garvin about a year ago, and at that time Mr. Garvin indicated his interest in working with the Town again. She wished she had known about the RFPs so she could have made sure his firm was notified. Ms. Murphy noted that she had asked twice before that the Planning and Zoning Commission have a planning consultant dedicated to serve the commission only, similar to the consultants which work with other boards and commissions of the Town. She questioned if this was being considered. Ms. Close responded that the Town Council chose against allocating budget funds for a consultant specific to the Planning and Zoning Commission.

Ms. Murphy agreed with Mr. Golboro's comment about why the consultants, selected by the RFP, were being brought in at this late stage, but remarked that it is better that they are going to be involved than to not have them at all. Ms. Murphy stated that she lives and works very close to the intersection of Royal Poinciana Way and Cocoanut Row/Bradley Place, and noted that it is a very important gateway to the Town. She stated that while the Town must be fair to both applicants for the Testa's and Royal Poinciana Plaza projects, any increase in density will hurt Palm Beach and that Palm Beach needs more services on the island. Regarding Bradley Park, she agreed with Ms. Markin's suggestion for the tunnel to the Plaza. Ms. Murphy maintained that the traffic turning north onto Bradley Place from Royal Poinciana Way poses danger to vehicles and pedestrians as they are in the right lane and quickly have to merge left. Lastly, her research has revealed that when Flagler owned both the Breakers and the Royal Poinciana Hotel, there was a wonderful pedestrian shaded path from one to the other, which is now part of the golf course. So, with regard to visioning for the area, Ms. Murphy will recommend to the Breakers that such a shaded pathway be recreated within the Breakers PUD, and perhaps it might lead to the Plaza.

Mr. Shaw stated that he is amazed that Royal Poinciana Way is zoned as a single use zoning district. He noted that the Town has the ability to invoke "zoning in progress" to allow time to review planning for this area. He also suggested not limiting it to Royal Poinciana Way, but to include the area all the way to Park Avenue, as these are also primarily commercial properties. He recommended that these development applications not be considered individually, and urged the Town to be pro-active and look at the whole picture. He asked that all presentations for the area include a maximum as built plan, including everything that is approved now, like the Breakers PUD and the Seagull Cottage (proposed to be moved to Bradley Park). Mr. Shaw felt

Plaza. He asked if the Town Council was required to act on it. Mr. Randolph replied that this would be an application for Special Exception, and criteria for review of Special Exceptions is already established. There is no means to prohibit an applicant from applying for a Special Exception. The applicant has the burden of proving that they meet the Special Exception criteria, and then the burden shifts to the Town to offer its opinion as to whether the criteria have been met, or not met, and why.

Mr. Schuler wanted to clarify that it is not a foregone conclusion that this area must be changed. Ms. Close assured him that this is not the case.

Mr. Guttman stated that even if a Special Exception is denied, there is nothing to prevent an applicant from returning in the future with a re-zoning proposal for the Royal Poinciana Plaza. Mr. Guttman advocated establishing “zoning in progress” to afford the Planning and Zoning Commission the necessary time to establish a documented plan for the area without being inundated with separate development applications for the area. Mr. Randolph stated that “in regard to legislative matters, as opposed to quasi-judicial, you can declare zoning in progress in the event you are making a study, and you don’t wish to see anybody contravene the purposes of that study as long as you do that prior to an application coming in.” With regard to the Testa’s zoning change application, Mr. Randolph stated that a determination would have to be made as to whether applications already received would be exempt from a declaration of zoning in progress or not.

Mr. Guttman stated that the Planning and Zoning Commission needs to be prepared to deal with these applications as they arrive. So, he advocated that long range planning be done, and that the right consultants be utilized to guide the process. Applicants, he thought, should have to submit diagrams showing exactly how the proposed development will appear when built. Mr. Guttman stated that the owners of these properties are seeking to increase the redevelopment value of their properties by seeking modifications to the zoning code, and the only way they should be permitted to do this is by conforming to the long range plan for Palm Beach.

Ms. Close indicated that the staff is reviewing the Testa’s application and believes it will need a Comp Plan amendment prior to any re-zoning. She assured the Planning and Zoning Commission that the Town will be considering these proposals in accordance with all legal requirements. Applicants rights will be respected, but the Town will exert all of its rights as well.

Mr. Frank stated that it is clear that the Town is in a much more pro-active state than ever with respect to comprehensive planning. He supported Mr. Shaw’s request for a clear visual representation of the results of any approvals which are already in place as well as for any proposal which will be presented. In summary about the EAR, he welcomed any commission members to forward comments for possible inclusion in the report.

Mr. Schuler commended staff for this presentation and he stated he looks forward to further refinements of the EAR.

that the best place for Seagull Cottage is at the Par 3 Golf Course so that it can be restored and used by the Town. He commented that Seagull Cottage would use too much green space in Bradley Park, and is not appropriate for the visioning of the area. Mr. Shaw posed the question whether mixed use would be so bad for the area. He strongly recommended against combining the development applications, stating that we should deal with the applications which have already been submitted.

Ms. Close reminded the commission that all applications must be reviewed by the commission without bias. She appreciated the comments made by the commission thus far, and stated that this is exactly why the Town wants to be pro-active. She thought it might be a good idea for the planning consultants to meet with the Planning and Zoning Commission first so they can get determine how the commission feels about these issues and then guide the process toward consensus. The process will include community visioning meetings. Mr. Golboro again stated that this will “open a Pandora’s Box” and it will split the Town. He maintained that there will be no consensus on Royal Poinciana Plaza or Testa’s, and the consultants will not be able to achieve consensus either. He advocated individual review and action toward each of the applications, rather than being considered as one large, combined project. Mr. Robertson advised Mr. Golboro to attend the Town Council meeting next week to make his viewpoint known.

Ms. Markin, 1450 North Lake Way, Town Council Member, acknowledged that planning and visioning are difficult, and consensus is difficult to achieve. With regard to the Town Council making decisions relative to these development applications, Ms. Markin stated that the Town Council is subject to legalities, ordinances and the zoning code, and because of that it is difficult to find ways to turn applications down when they are not best for the Town. Since very little pro-active planning has been done to date, and there is nothing adopted in writing to address the plan or vision for this area, the Town Council will be forced to make decisions on the applications. As such, she advised the commission to support any measures which will help to accomplish documented planning for the Town, as this will equip the Town Council in their decision-making.

Mr. Golboro responded that if the consultants had been hired two to five years ago, it would be understandable, but to try to do this now as a combined set of projects, with certain applications already on the table, is very difficult. Ms. Markin reiterated that the Town needs a plan for that area of the Town, for without a plan, the Town will be at the mercy of skilled real estate lawyers.

Mr. Robertson asked Mr. Randolph if the Town Council could inform applicants that the Town has embarked on a study of the entire area, and will not make any decisions on applications until that study is complete. Mr. Randolph responded that “zoning in progress” would have to be declared. He also mentioned that the Town is in the EAR process now as a statutory requirement, and that staff is proposing the planning consultants to do visioning for the Town for incorporation into the Comp Plan.

Mr. Robertson stated that Mr. Kleid has indicated that an application is forthcoming for the

Ms. Murphy commented regarding the Seagull Cottage referendum. She agreed that it is not only not binding, but it may, in fact, be invalid. She maintained that residents were not informed that they were the intended protected class referenced in the E. R. Bradley will, i.e., that the residents were intended the gift of the Bradley Park green space. By placing the building in the park, the residents are losing their intended gift. Mr. Murphy thought that it would be prudent for the Town to hold another referendum which would include all applicable information, and would list all possible locations for the cottage.

Mr. Schuler asked if "zoning in progress" would eliminate the move of the cottage to Bradley Park. Mr. Randolph responded that it would not necessarily eliminate it. He explained that "zoning in progress" is typically very specific, with the terms of the "zoning in progress" clearly defined. A moratorium would prohibit any building permits from being issued for that area. Mr. Shaw explained that it was not his intent to suggest that all building permits be prohibited. His suggestion was that nothing can be done which can change the use of the land and would require variances, special exceptions, or Comp Plan amendments.

9. ANY OTHER ITEMS

Mr. Golboro stated that he and Mrs. Murray had asked the Town Council consider that the Planning and Zoning Commission be appointed to hear variance requests. (Study Item #9) Mr. Golboro thought that the study item, as written, was very restrictive and did not capture the intent of his request. Such a proposal would mean that the Planning and Zoning Commission would meet year round, and the zoning season would need to be extended. Ms. Close acknowledged that Item #9 is written as shown per the instruction of the Town Council. She stated that when this study item is discussed, staff will be sure to inform the Town Council that if the review authority is transferred to the Planning and Zoning Commission, it would require year round meetings and an extended zoning season. Mr. Golboro advised that these factors be disclosed as soon as possible, including the additional staff required. Ms. Close assured the commission that staff will present all impacts for such a change.

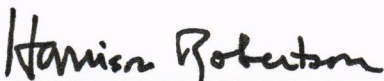
10. ADJOURNMENT

MOTION BY MR. GOLBORO TO ADJOURN THE MEETING AT 11:37 A.M.

MOTION SECONDED BY MR. SCHULER.

MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,



**Harrison Robertson, Chairman
Town of Palm Beach
Planning and Zoning Commission**



**Lowry Bell, Secretary
Town of Palm Beach
Planning and Zoning Commission**

cmd