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MINUTES

PLANNING AND ZONING COMMISSION

October 2, 2003 at 9:30 a.m.

360 South County Road, Palm Beach

Town Council Chambers

I **Call to Order:** Chairman James Bertles called the meeting to order at 9:31 a.m.

II **Roll Call:**

PRESENT: James B. Bertles, Chairman
 Richard M. Kleid, Secretary
 Jorge A. Sanchez, Member
 Peter S. Broberg, Member
 Harrison M. Robertson, Member
 Lowry M. Bell, Member
 Nancy M. Murray, Alternate Member (arrived at 9:36 a.m.)
 Elizabeth S. Murphy, Alternate Member
 Susan Markin, Alternate Member
 Robert L. Moore, Director of Planning, Zoning & Building
 Veronica B. Close, Asst. Dir. of Planning, Zoning & Building
 Timothy M. Frank, Planning Administrator
 Paul W. Castro, Zoning Administrator
 William F. Brisson, Zoning Consultant

ABSENT: Joanna Golino, Member (Unexcused)
 John C. Randolph, Town Attorney

RECORDED AND TRANSCRIBED BY: Cynthia M. Delp

The invocation was delivered by Mrs. Delp, followed by the Pledge of Allegiance.

III **New Business:**

A. Review of Future Land Use Map and Zoning Map discrepancies

Mr. Frank explained that discrepancies occur between the Zoning Map and the Future Land Use Map within the Comprehensive Plan. Mr. Brisson provided an update on this matter explaining that nine (9) discrepancies have been found, and these are all mapping errors, rather than due to policy changes or intent. The errors have gone unnoticed for quite some time. At the last meeting of the Zoning Commission, the commission voted approval on nearly all of the staff's recommendations. When these discrepancy issues come before the Zoning Commission at its next meeting, three (3) of them will be handled under the Zoning agenda, as two of them are re-zonings, as opposed to Comp Plan amendment changes, and one involves an owner requested re-zoning to be made in conformance with the Comp Plan. Staff is recommending that the Comp Plan be changed rather than the zoning. The remaining six (6) items are all simple Comp Plan amendments. All of these will be discussed in detail at the next meeting.

B. Status Report on Comprehensive Plan Amendment

Mr. Frank had distributed notebook copies of the 1997 Comprehensive Plan to each of the commission members, but he remarked that staff noticed that some of the known updates were not included in the document. He asked the members to leave the notebooks with staff for updating and subsequent distribution.

Mr. Frank explained that the Comp Plan process is designed to be a five (5) year process, but quite often takes longer than that. To allow for that increased time, with this Comp Plan Amendment, some of the major elements have been extended out into the future to make it a more relevant document. Within the next year or two, the five year cycle will start all over again with the EAR, Evaluation Appraisal Report, which looks at how the Town has met the goals and objectives since the last plan. After that, work will begin on the new Comp Plan.

Mr. Brisson stated that during the last zoning season, the Zoning Commission reviewed several amendments to the Comp Plan. Most of them dealt with text changes to the Plan relative to what sort of land uses were appropriate to various land use categories, and the addition of intensity limitations such as coverage and height. The State Department of Community Affairs (DCA) had no objections to any of these proposals, though a few suggestions were made toward consistency, and several omissions or typographical errors were noted. Final adoption of the amendments is scheduled for review by the Town Council at its October 14, 2003 meeting. After that, all of the changes will be inserted, and sent to the State. In about 60-90 days after that, with State approval, the amendments will become law.

Mr. Robertson questioned how the Land Use Plan, within the Comp Plan, operates on a daily basis,

other than the fact that it is implemented by the Zoning Code. Mr. Castro responded that the goals, objectives and policies in the Future Land Use Plan are used as a tool to strengthen the Town's position relative to development regulations and with regard to variances, special exceptions and site plan review. The Future Land Use Map is used in conjunction with the Zoning Map as it relates to the intended future use of the property.

C. Review of Study Areas for planning

Mr. Frank had distributed a handout map labeled Planning Areas, which divides the town into 8 planning areas. He explained that during the meetings of the Strategic Planning Commission, a resident expressed a concern that the planning areas, as specified, made no sense. The planning areas were designated over fifteen years ago, and that work was actually done by Mr. Brisson's firm. Staff provided the map to the commission today for review and feedback at the December meetings of the Planning and Zoning Commission. If it is agreed that boundary changes to the planning areas are required, those changes, if approved, will be incorporated into the next Comp Plan.

Mr. Bertles inquired as to the practical aspects of planning areas. Mr. Brisson responded that the planning areas were developed and incorporated into the Town's 1975 Comp Plan. He explained that more information relative to the planning areas can be found in the Supporting Documents of the Comp Plan. He commented that until now, there has probably been no practical application of the planning areas in the town; i.e., there was nothing that was really based on them. With the recent emphasis on neighborhood planning, the planning areas could be used much more effectively to identify common characteristics, and future goals and objectives for smaller areas of the town.

Mr. Sanchez commented that certain streets which are being lumped together in one planning area are really quite different. Mr. Moore reminded the members that they need to look beyond zoning characteristics when considering planning divisions as there are eight or nine other elements in the Comp Plan that need to be considered for the individual planning areas. Acknowledging the fact that quite often a planning area includes multiple zoning districts, Mr. Frank reiterated that these planning divisions were done purely for planning purposes. Mr. Kleid noted that the map should be more clearly defined with street names clearly visible, etc. Mr. Brisson responded that the street names are listed within the Supporting Documents of the Comp Plan, together with small descriptions of the planning areas, although he admitted that those descriptions would most likely have to be updated. These particular pages from the Supporting Documents will be provided to the members with the corrected copy of the Comp Plan notebook.

Ms. Close stated that since the December meetings are dedicated to the many zoning study items, the planning areas should be discussed at some point after the December meetings. That will provide the members additional time to consider the matter, while not interfering with or adding to the December agendas.

Ms. Markin inquired whether anyone has done a history of the variances granted within a given planning area. Mr. Frank responded that this has been reviewed in a general way, but not in tabular form. Ms.

Close added that staff was asked to study what sections of the code are most frequently the subject of variance requests. Staff is in the process of doing this research. In the past, when staff has looked at incidences of variances being granted, the Town Council has decided that it is better to allow flexibility with the variance process than to try to change the zoning code to fit a specific situation.

D. Status Report on Commission name change

Ms. Close stated that in keeping with the commission's request that the name of the Zoning Commission be changed to the Planning and Zoning Commission, the Town Council adopted an ordinance in August of 2003 effecting that change in Chapter 2 of the Code of Ordinances. It must likewise be changed in Chapter 134 of the Code of Ordinances, and this will be carried as a zoning study item in December.

E. "Planning 101"

Mr. Frank distributed an outline for this discussion relative to an introductory look at planning. He explained that power transcends from the federal government to the states, and the states then delegate that power to the local municipalities, providing for what is termed as "home rule." It was Mr. Frank's opinion that in considering a local municipality, planning and zoning determines how a community looks and feels, and as such, is extremely important.

A comprehensive plan is an all encompassing document which is used as a tool to implement the goals and objectives of the community; i.e., the official policy statement of the town. The zoning ordinance is a part of the comp plan. The first comp plan in Florida was done for the Town of Palm Beach in 1929 by Bennett, Parsons and Frost, a Chicago firm.

701 Planning is a term referring to the 60's and 70's, when the federal government funded comprehensive planning for communities. All 49 states, other than Florida, still use 701 planning which allows the comp plan to be very different than the zoning ordinance. Florida uses the Florida Statutes, Chapter 163, which specifies that the comp plan cannot be in conflict with the zoning ordinance. Chapter 163 was supplemented by Rules 9J-5 and 9J-11 which are procedural documents as to how to do the plan.

Mr. Frank stated that most of the zoning in the country stems from New York statutes, as most decisions were challenged in the state of New York first. Zoning regulations do implement the Comp Plan. Relative to variances, several criteria should be met before a variance is granted. Most of the variances granted do not satisfy all of the specified criteria, but communities exercise the latitude to grant them nonetheless. As a generally accepted principle, it is taught that if 10 variances have been granted for the same subject within a year, the zoning ordinance should be re-studied.

Mr. Frank gave a brief list of key court decisions which have affected municipalities. In *Ambler Realty vs. Euclid Ohio*, a real estate company challenged a municipality to enforce their zoning. This case went to the United States Supreme Court which ruled that for the health, safety and welfare of the

community, the community can have a zoning ordinance and practice planning principles. In Mt. Laurel, New Jersey, there was a control on the value of a house at construction, and the square footage required. It became an affordable housing issue. This case attacked planning and zoning as we know it, but it was sustained, as long as the regulations were applied equally for all. The Penn Central decision dealt with landmark preservation, and whether landmarking structures can be upheld in the courts. It was upheld, for the most part, and is used to protect landmarks throughout the country. This case brought about the start of transfers of development rights (TDR's). In Golden vs. Ramapo, Ramapo was a small rural community which was affected by a new bridge which was built across the Hudson River. Soon, the small town, once 2.5 hours away, became closely convenient from New York City. With the advent of the bridge, the small town experienced nightmarish growth to such a degree that the town did not have sufficient funding to provide needed infrastructure. Ramapo employed TSC's, timed and sequential controls, to attempt to control the rate of development. The town was challenged by a developer, but the courts upheld Ramapo's right to those controls. In Penfield, NY vs. the NAACP, the NAACP challenged the community claiming that the community had to provide affordable housing. While Penfield was a community of upscale similar housing, it was determined that Penfield was in a region, and participated in that regional government. As the region did provide affordable housing, it was ruled that Penfield did not have to provide same. In Richfield, Ohio vs. Forrest City Development Corp., Richfield had an area that was zoned for a shopping mall, but there was a school next to it. The town did not want the mall in that location, so they went to a public referendum to change the zoning at the proposed mall site. The court ruled that zoning cannot be changed by a referendum. The Burt Harris Property Act, particular to Florida, is intended to prevent communities from taking development rights from individuals with regard to their properties.

Mr. Bertles mentioned that in his review of the Comp Plan he saw a lot of language referring to decisions from the mid-90's which were to be implemented over a five year period, and questioned whether that language will be updated. Mr. Frank responded that each time that the Comp Plan goes through the typical cycle, an Evaluation Appraisal Report (EAR) must be done to examine what goals and objectives have been accomplished. All of the issues mentioned by Mr. Bertles have either been addressed, or will be addressed with the next EAR. Staff also uses a matrix, developed by Mr. Brisson's firm, to track progress of completion of Comp Plan items.

Mr. Bertles, reading from the distributed ordinance which changed the name of the commission, said that the ordinance reads that the "commission shall follow the Comp Plan." He questioned whose responsibility it is to review and modify the Comp Plan. Mr. Frank responded that it is the responsibility of the Town Council as the Local Planning Agency (LPA), but the Town Council may delegate that review to the Planning and Zoning Commission to act in an advisory capacity to the Town Council.

Mrs. Murray noted that over the years, she has seen economic hardship be presented and accepted as a reason for granting a variance. Mr. Frank responded that economic hardship is not an acceptable criteria for granting a variance.

Let the record show that there was a short recess at 10:38 a.m.

The meeting re-convened at 10:45 a.m.

F. Review of final Zoning Study Items/Rezoning

Mr. Castro offered an overview of the December agenda, and distributed the final list of Town Council approved zoning study items for the 2003/2004 zoning season. In reviewing the list, Mr. Castro noted that some of the items were Town Council requests; some were Zoning Commission requests; and some were Staff requests. He gave a brief overview of the three applicant oriented study items, and noted that surrounding property owners will be notified of these applications. These study items will be incorporated into the report to the Planning and Zoning Commission. The report package will be delivered to the commission members by November 1, 2003.

Mr. Castro noted, relative to zoning study item #6, that Ridgeview Drive and Jamaica Lane were chosen for this maximization study. The study will give a graphic comparison of the existing conditions on those streets versus the conditions on those streets if maximized as to mass, scale, landscaped open space, and pervious/impervious area. Mr. Bell mentioned that he thought that the Zoning Commission had requested 3-4 streets to be studied. Mr. Castro responded that the scope of the project was too large to do 3 or 4 streets, and the expense, per street, became a consideration. Staff felt that an in depth study of two streets would be preferable. Mr. Castro noted that architecture was not considered in this study. Mass and scale are the specific focus.

Mr. Castro reminded the commission that in August, they were sent a report which staff prepared relative to the homes built in 2001 and 2002, and with regard to variances, site plan reviews and special exceptions granted for those projects. Staff requests that, prior to the December meetings, the members go to visit each of the sites listed in the report to get a feel for the character of the streets and the houses that were built on those lots.

Mr. Bell stated that he had asked for a study item relative to three story towers in the R-A and

R-AA districts. Mr. Castro responded that the Town Council did not want to allow for additional flexibility as it relates to towers in the large estate districts. Staff was directed not to proceed with that study item. There was also an item proposed by Mr. Bell relative to swales, but the Town Council did not authorize staff to proceed with that item either.

In response to a question by Mr. Broberg, there was some discussion relative to the area behind the bank at 255 South County Road. Mr. Castro and Mr. Brisson explained that the Land Use Map shows the property as commercial, while the zoning of the property is R-B. This is a scrivener's error on the Land Use Map. Staff will recommend that the land use be changed to "a more reasonable land use other than commercial because it abuts directly up against single family in the R-B district."

G. Overview of new policy of review by the Landmarks and Architectural Commissions of Development Review items.

Ms. Close stated that in May of 2003, John Schuler, Chairman of the Architectural Commission, addressed a letter to the Town Council suggesting that if ARCOM could review variance requests, ARCOM could provide architectural input to the Town Council prior to the variance being granted. For example, if by reviewing the architecture, ARCOM determines that the architecture could be acceptably changed to alleviate the need for a variance, the Town Council should know that. The Town Council asked staff to work with the chairmen of both commissions to develop a policy. That work has been done, and the policy has been summarized in a memorandum to the Planning and Zoning Commission dated September 18, 2003 from Ms. Close via Mr. Moore. The Town Council adopted the policy in September. The policy works as follows: As staff meets with applicants for variance, special exception or site plan review, using the specified criteria in the policy, a determination will be made as to whether this project is appropriate for such a preliminary or informal review by either the LPC or ARCOM. It will not take an applicant any longer to obtain necessary approvals as a result of the new policy, but the applicant will have to present to ARCOM or the LPC twice, once informally, and then formally. The policy will go into effect in January 2004, and will be a work in progress for a nine month period, after which the policy may be abandoned, or may be heard as a study item for the Planning and Zoning Commission. During the nine month period, changes will be made to the policy as required.

Staff estimates that about 2-3 projects may be processed in this manner per month. The LPC and ARCOM have the ability to agree, disagree, or suggest changes to the variance request. Ms. Close emphasized that neither the LPC, nor ARCOM, will address hardship issues within this policy, but will deal solely with the architecture. She noted that an applicant has the ability, based upon comments from ARCOM or the LPC, to make modifications to the plans prior to Town Council review as long as the variance request is not increased.

H. Discussion of Board Appointment Qualifications and Continuing Education per recommendation in Strategic Plan adopted by the Town Council

Mr. Moore distributed a memorandum dated October 2, 2003 to the Planning and Zoning Commission

from Veronica Close via Robert Moore relative to this subject. He asked the members to review the enclosed information in preparation for discussion at the December meetings, as this will be an agenda item.

Other Business:

It was noted that the next meeting of the Planning and Zoning Commission will be on Monday, December 1, 2003 and Tuesday, December 2, 2003. As such, Mr. Bell questioned why this October meeting was held so early in the month; why it couldn't have been held later in the month; and why so much time was scheduled between meetings. Ms. Markin agreed with Mr. Bell that the meeting should be held later in October when all members are back in town for the season. It should be noted, for the record, that at the April 15, 2003 meeting of the Zoning Commission, the proposed date of this meeting was discussed. At that time, staff announced that the meeting would most likely be held during the first week of October. The selection of the October 2004 meeting date will be re-visited at the April 2004 meeting of the Planning and Zoning Commission.

A new Financial Disclosure form, Form 6F, was distributed to the members. "Form 6F is the disclosure form required to be filed within 60 days after a public officer or employee who is required to file FORM 6 (the yearly Financial Disclosure Form mailed to your home address) leaves his or her public position. The form covers the disclosure period between January 1 and the last day of office or employment within that last year." The form should be re-distributed to members of the Planning and Zoning Commission as they leave office.

IV Adjournment

MOTION BY MR. BELL TO ADJOURN THE MEETING AT 11:15 a.m.
MOTION SECONDED BY MR. KLEID.
MOTION CARRIED UNANIMOUSLY.

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