

Draft

PLANNING & ZONING COMMISSION
2006-2007 ZONING HEARINGS
RECORD AND REPORT
TUESDAY, APRIL 24, 2007

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

PRESENT: Harrison M. Robertson, Chairman
Elizabeth S. Murphy, Member
John H. Schuler, Member
Alan S. Golboro, Member
William M. Guttman, Member
Leslie A. Shaw, Member
Walter Anthony Dowell, Alternate Member
Eugene Lawrence, Alternate Member
Floyd Wideman, Jr., Alternate Member
Paul W. Castro, Zoning Administrator
Tim Frank, Planning Administrator
John C. Randolph II, Town Attorney

ABSENT: Lowry M. Bell, Jr., Secretary (absence pending classification)

RECORDING SECRETARY: Cindy Delp

- II. **INVOCATION AND PLEDGE OF ALLEGIANCE:** Mrs. Delp delivered the invocation and all joined in the Pledge of Allegiance.

Chairman Robertson stated that the Planning & Zoning Commission will miss Mrs. Delp, Mrs. Delp has been shifted to other duties in the Planning, Zoning & Building Department. The Chairman thanked Mrs. Delp for her service to the Commission.

III. **COMMENTS FROM THE PUBLIC**

Patrick Henry Flynn, President of the Palm Beach Theater Guild and former Town resident, stated that the Guild has a feasibility plan for the use of the Royal Poinciana Playhouse and plans to inspect the theater next month with a team of Architects, lighting and sound people, etc., and will provide a report to the Town Council as well as the Planning & Zoning Commission. Mr. Flynn presented a report to the Board which includes a history of the building, economic feasibility and a business plan. The Guild has six hundred members and is growing. People want a performing arts venue in Palm Beach.

Chairman Robertson spoke about a matter of great concern to him as Chairman of the Commission. One of the Planning & Zoning Commission members addressed a letter to the Mayor and Town Council and that letter appears to be written on behalf of the Planning & Zoning Commission. Mr. Robertson stated that members of the Commission should not be communicating with third parties without authorization from the Commission. The Commission operates as a Democratic organization, abiding by majority vote on issues. The Commission can authorize some representative to convey the Commission's position on any given issue. No individual member should write to the Mayor & Town Council, on his or her own. Chairman Robertson stated that he hoped this situation would not happen again.

Mr. Guttman did not wish to comment.

Mr. Schuler stated that he was in support of the Chairmans' position and suggested that the normal channel of communication from this Commission should come from the Chairman, if it is relative to a position of this Commission.

Mr. Golboro stated that the way the letter was written was a problem. All members of the Commission, as individuals and members of this Commission, should be able to send a letter to anybody. This Commission cannot get together because of the Sunshine Law. If an item is "disturbing" to an individual, that individual must write to the Council, who will distribute the correspondence for us. As individuals and as members of this Commission, we should not be restricted because we are on the Commission.

Mrs. Murphy added that she agreed with Mr. Golboro and that a channel to communicate is needed since not everything can be stated at a meeting or channeled through a commission. It is important to clarify that it is coming from an individual and also stated that she has always copied everyone so that it is a communication under the sunshine.

Mr. Shaw stated that while he agrees with many of the issues that were outlined in Mr. Guttman's letters, he is distressed by the need for them and wondered how the Commission, as a body, is going to respond to them. "Who does the Commission serve? Who is supposed to be providing the Commission with their information and who is the Commission's contact points? If you look at the history of how this Commission has operated in the last year, we are spinning our wheels. The Commission comes up with ideas. Then the ideas get churned, then go back to Staff. Staff comes up with their solution, the solution is brought to Council and then Council comes back with something else. In the packet that was sent to the Commission, one of the comments that came out of the Planning and Zoning Department was that Staff does not believe they can support year-round meetings. The Commission was asked by the Council for an opinion. The Council should not be asking the Commission's opinion. The Commission serves at the Council's request." Mr. Shaw stated that he believed the Town Council should make a determination of what is in the best interest of the community and the Town Council should then say "this is the edict of which we charge you." If the decision of the Town Council is that the Commission is to meet on a year round basis then that is the way it has to be and it is not appropriate for a memorandum to be coming back saying that the Staff doesn't think that it can

support it. That's between the Council and the budgeting process to make sure that things work. This is not the first communication that has been crafted at the hand of a member. Who is supposed to be crafting documents within this Board? Are we functioning as a Board or as a Commission? Should the Commission sit back, regroup and come up with guidelines of what the Commission is supposed to do and then actually accomplish something? It is not the fact that it happened, but the fact that it had to happen."

Mr. Schuler commented that there may be some disagreement from time to time. But, when there is a disagreement, any of those comments should be fed to the Chairman and let the Chairman distribute those to the Town Council.

Mrs. Murphy stated that feeding any information to the Chairman, while not in a publicly noticed meeting, is a violation of the Sunshine Laws. At any time, when the Commission is not in chambers and at a publicly noticed meeting, any communication between any of the Commission Members has to be to all of the Commission Members and the Town Clerk with copies to staff.

Town Attorney, Skip Randolph reminded the Commission that any communication related to this Board should be done at a meeting of the Commission. Sending communications or comments to the Chair, inviting a response, could be a violation of the Sunshine Law. Mr. Randolph suggested that any communication be done through Staff so that Staff can make the correspondence available in the Commission's packets.

Mr. Golboro objected and stated that as an individual, anytime he wished to get up before the Council to give his personal opinion, he should be permitted to do so. Mr. Golboro stated that he should not have to send his opinion to the Chairman, just because he serves on this Commission.

Mr. Randolph responded and said that as an individual, Mr. Golboro could get up before the Town Council and state his personal opinion. Mr. Randolph cautioned the Commission Members of potential violations of the Sunshine Law when writing letters.

Mr. Golboro stated that he did not think the letter from Mr. Guttman should be representative of the Commission. Mr. Golboro felt that Mr. Guttman's intention was to be an individual who serves on this Commission.

Mrs. Murphy reiterated that it is important to clarify if a person is speaking as an individual and not on behalf of the Commission. Care must be taken when communicating with the Chairman or with each other and the test applies each time there is a communication. Each of the Commissioners has an obligation, on a case by case basis, to make sure communication is done properly. One practical solution could be to hold Commission meetings more frequently.

Mr. Shaw suggested that communication be sent via email to one person, either the Town Manager or the secretary, and not to an individual member on the Commission, include a copy to the rest of the Commission members or let Staff forward it to them. If there is a response necessary, respond to all. There is no gag order. This matter could have been handled at this meeting. In the future, if there is a disagreement with Staff or with procedures, these meetings

should be used as the forum for communication.

Chairman Robinson stated that the criticisms of Staff mentioned in the letter that was sent to the Mayor and Town Council would be dealt with later in this meeting.

IV. **REGULAR AGENDA**

A. Minutes, March 19, 2007

MOTION BY MR. SCHULER TO APPROVE THE MINUTES OF THE MARCH 19, 2007 PLANNING & ZONING COMMISSION MEETING.

MOTION SECONDED BY MR. GOLBORO.

MOTION CARRIED 6-0-1 AFTER A ROLL CALL VOTE.

CHAIRMAN ROBERTSON ABSTAINED SINCE HE WAS NOT PRESENT AT THE MARCH 19, 2007 MEETING.

B. Old Business

1. Report on the Evaluation and Appraisal Report

Paul Castro, Zoning Administrator for the Town of Palm Beach, addressed the Commission and stated that included with the Commission's packets was a memorandum, with an attachment, that identifies that the Evaluation and Appraisal Report was found to be sufficient by the Department of Community Affairs on April 2, 2007. The required time table for the approval of these amendments is twelve months after that letter was received, or eighteen months, if an extension is received. The next step for Staff is to work with the consultants to create the EAR based Comprehensive Plan amendments which will be brought to the Commission in October with possible recommendation in November to take to the Town Council to adopt. Those amendments are provided to implement the changes that the Planning & Zoning Commission and the Town Council sent to the Department of Community Affairs.

Mr. Golboro asked if the work to shorten the roads by one foot in each lane was included in this state report?

Mr. Castro answered that this was not part of Staff's recommendations. That is more of a technical aspect rather than a policy issue.

Tim Frank, Planning Administrator for the Town of Palm Beach, addressed the Commission and stated that the Evaluation and Appraisal Report and Comprehensive Plan are land use tools. The land use element does not change. If we were changing the width of the right-of-way, that would be included in the comprehensive plan. There is no such proposal to do that. There are some technical proposals advanced by DOT as to what to do inside that right of way.

Mr. Golboro asked if Staff had to include in the report the shortening of the right-of-way width by one foot in each lane.

Mr. Frank stated that the right-of-way was not being adjusted but that the width of the improvement was being adjusted.

2. Planning & Zoning Commission's Role

Mr. Castro stated that in the past, the Planning & Zoning Commission had discussed setting a regular day each month to meet. The Commission had also talked about expanding their role and possibly becoming the local planning agency for the Town of Palm Beach. The Town Council also talked about expanding the role of the Planning & Zoning Commission and this is on the agenda for further discussion of the Planning & Zoning Commission if they so choose.

Mr. Shaw stated the Planning & Zoning Commission had spent enough time discussing their role and felt it was time the Town Council make a decision as to what the Planning & Zoning Commission's role should be and the Commission should abide by Town Council's decision. Commission members are appointed by the Town Council to serve and if members cannot serve under the terms and conditions that Council sets forth, members have a choice to make. The Planning & Zoning Commission should also take this opportunity to discuss the role of the Planning & Zoning Department. There are changes that are going on in that department and Mr. Shaw suggested the Town Council give serious consideration to reevaluating the role of the Planning & Zoning Department. Mr. Shaw suggested that it could be time for the Planning & Zoning Department become two departments. There is some change at the higher end that is coming forward now and with the space issues in Town Hall, this could be an opportune time, that the Building Department become a stand alone department dedicated with the staffing and the expertise to handle building as needed in the Town of Palm Beach and that the Planning & Zoning Department also be a stand alone department with its own Director which would allow us to work closer with them where they would not be as distracted with building issues because they are wearing multiple hats. This would be a more streamlined and more efficient way for all of us to work.

Mr. Guttman agreed with Mr. Shaw that at the last meeting the debate of enhancing the scope of the commissions role was discussed at length. Mr. Guttman stated that he thought the reason this matter was on the agenda was to discuss something that staff had in mind for additional activities that the Planning and Zoning Commission might want to consider.

Chairman Robertson stated that the Town Code states clearly that the Planning & Zoning Commission is an advisory body to the Town Council with no final decision making power. The Staff is advisory to the Planning & Zoning Commission but Staff is also free to have their own position separate and apart from the position of the Commission. That is controversial and will be taken up later during this meeting during the Royal Poinciana Area Study matter and the criticism of the Staff in Mr. Guttman's letter that was referred to earlier.

Mr. Golboro stated that one of the things that should be recommended to the Town Council is that the Planning & Zoning Commission hear some of the agencies that are functioning here on the island such as FDOT. They have meetings with Staff and with the public but they never go on record. An example, FDOT promised at a Citizens Association meeting that they would

improve the drainage at the Par 3 Golf course. They did not improve the drainage, they worsened it by raising the drains. FDOT was never on the record. If FDOT would appear before the Planning & Zoning Commission, they would be on the record and Council could review that record with these agencies. Mr. Golboro would recommend to the Town Council that these agencies report to the Planning & Zoning Commission. Another point, concerning the Planning & Zoning Commission role, something that he asked about one year ago, did Staff ever look into the three suppliers of water to the golf courses, where the water is available for drinking with a slight improvement to it. Palm Beach Country Club, the Everglades Club and the hotel have permission and are taking water from there and the Town should investigate the possibility of obtaining drinking water from that source.

Paul Castro responded to the comments of the Planning & Zoning Commission and started with Mr. Guttman's comments. Mr. Castro said that Mr. Guttman was right relative to coming back to the Planning & Zoning Commission with some recommendations from Staff about an expanded role. There are some good points that were made relative to the more short term issues rather than long term issues like the bike right-of-way. The issue of the water, which has been taken to the Town Managers Office and are following up with the Public Works Department on those issues. It is something Staff needs to communicate better and get back to the Planning & Zoning Commission in terms of follow up there. At this point in time, Staff is not prepared and that is why were looking for more input from the Planning & Zoning Commission because the role of the Planning & Zoning Commission today everyone has there own ideas. Mr Shaw suggested splitting the Department. Mr. Guttman commented about the Strategic Planning Commission that was created and why was the Planning & Zoning Commission not involved with some of those issues that are really planning issues. That is something that Staff will explore and come back to the Planning & Zoning Commission with. We are just a sounding board and hearing some of these issues today, bringing those back to Veronica Close and preparing something for your reconsideration later. The Planning & Zoning Commission we have heard often that they wanted to meet regularly or that they did not want to meet during the summer time, we brought to the Town Council the issues of the Planning & Zoning Commission and at the time, the Planning & Zoning Commission brought to the Town Council that they continue to hear variances, special exceptions and site plan reviews, for the most part. What Staff would like to do is to further explore that as it relates to what the role of the Planning & Zoning Commission is as it relates to these agencies as brought up by Mr. Golboro. Mr. Castro stated that he was not prepared to address that issue at this time.

Chairman Robertson called for a motion to consider setting a regular time for meetings.

3. Setting a Regular Date and Time for Planning & Zoning Commission Meetings

MOTION BY MR. SHAW THAT THE PLANNING AND ZONING

COMMISSION MEET ON A YEAR-ROUND BASIS, ON THE FIRST TUESDAY OF EACH MONTH AND THAT IT WOULD COMMENCE WITH THE OCTOBER SCHEDULE OF THIS YEAR. THAT DURING THE SUMMER MONTHS THAT THERE BE WHILE SCHEDULED MEETINGS FOR JULY AND SEPTEMBER BUT THEY WOULD NOT NECESSARY BE HELD. AND THERE WOULD BE NOT LESS THAN 30 DAYS ADVANCE NOTICE THAT THOSE MEETINGS WOULD BE CONSIDERED CANCELLED BASED ON WHAT MATERIAL OR IF THERE IS ANY MATERIAL IT WOULD BE ACTIVE. THESE WOULD BE CONSIDERED SCHEDULED MEETINGS UNDER THE CODE SECTION WHICH REQUIRES ATTENDANCE. MOTION SECONDED BY MR. GOLBORO.

Mr. Castro reminded the Commission that the Planning & Zoning Commission can meet year-round on any comprehensive plan issues but can not meet on any zoning issues outside of the months between October and May. If the Planning & Zoning Commission would like to expand the zoning season, Staff could bring that to the Town Council.

Mr. Shaw commented that he was referring to the commission meeting and was not addressing a change in the zoning season. The zoning season is a specific time period during which certain things transpire. The attendance or the meeting of this commission does not have to be limited to that time period. Meeting year-round would allow the Commission to review staff reports and act in a planning capacity and expand our responsibilities to the community.

Mr. Robertson strongly opposed the motion and stated that commission only needs to consider matters that are brought before the Commission by Staff, which is currently only one person, Mr. Castro. Most of the Commission Members are out of town during the summer months and it is not necessary to require that the Commission members attend twelve meetings per year.

Mr. Wideman disagreed with the Chairman and stated that all other Commissions and Boards meet year round. There are Members of those Boards and Commission who commute.

Mr. Shaw stated that he does commute and has been doing that for many years. Mr. Shaw stated that was a commitment he made when he asked to be appointed. Every person who has been appointed to this Commission in the last year knows that this issue has been on the table. There are sufficient opportunities to ask for an excused absence and since it is up to the Town Council to decide what are the grounds for excused or un-excused absences and the number of excused or un-excused absences and the Town Council could "grandfather" those members of this Commission in for an excused absence because of the change of rules. We should not be hampered by the fact that somebody is not in town. In the re-build that the Town is going through, from a technical standpoint, that we, as every

other Board throughout the country and the world, will be able to meet by telephone in a teleconferencing mode. Mr. Shaw requested that it be clear that he was asking that the Town Council recommend and make the decision that the Planning & Zoning Commission meet.

Ms. Murphy was in favor of the motion and felt the Commission should meet year round.

MOTION CARRIED 4 TO 3 AFTER A ROLL CALL VOTE WITH MR.GUTTMAN, MR. DOWELL AND CHAIRMAN ROBERTSON OPPOSED.

4. Discussion of the Election of Chairman and Secretary for the Planning & Zoning Commission

Mr. Castro stated that a memorandum was provided to demonstrate the history of the zoning season used to operate and how it operates today. The intent of having the election of the Chairman and Secretary at the first meeting of every zoning season was to ensure that there was continuity through the following year and through the election of new Planning & Zoning Commission Members. Staff would recommend that elections be held at the first meeting of the Planning & Zoning Commission in October.

Mr. Shaw commented that it would be pointless to have a board with a zoning season with one set of dates,

5. Update on the Royal Poinciana Planning Study

C. New Business

1. Staff Presentation of the 2006-2007 Zoning Season (Ordinance Nos. 1-07, 5-07 and 8-07)

2. Presentation on Next Year's Proposed Study Items and Comments and Suggestions on Any Other Items for Consideration