

MINUTES
ZONING COMMISSION MEETING
April 15, 2003 at 9:30 a.m.
360 South County Road, Palm Beach
Town Council Chambers

- I **Call to Order and Roll Call:** The meeting was called to order at 9:30 a.m. by Chairman James Bertles. Just prior to the roll call, Mr. Bertles welcomed the new members to service and congratulated existing members who were re-appointed and/or promoted.

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
 Joanna Golino, Member
 Nancy M. Murray, Alternate Member
 Elizabeth S. Murphy, Alternate Member
 Susan Markin, Alternate Member
 John C. Randolph, Town Attorney
 Robert L. Moore, Director of Planning, Zoning & Building
 Veronica B. Close, Asst. Dir. of Planning, Zoning & Building
 Paul W. Castro, Zoning Administrator
 William F. Brisson, Zoning Consultant

ABSENT: None

RECORDED AND TRANSCRIBED BY: Cynthia M. Delp

- II **Invocation:** By Mrs. Delp

- III **Pledge of Allegiance:**

IV **Procedures for Input by the General Public:** Mr. Bertles stated that the Commission will hear from staff relative to each agenda item first; then hear limited Commission questions; then hear public comment; and, finally the commission will hold discussion which may culminate in a vote on the matter.

V **Staff Presentation of the 2003-2003 Zoning Season (Ordinance #1-03)**

Mr. Castro stated that the purpose of today's meeting was to review the matters which had been approved by the Zoning Commission, and subsequently, the Town Council, and to solicit any study items which the Zoning Commission might recommend to the Town Council for study during the next zoning season.

A copy of Ordinance #1-03 had been previously distributed to the members of the Zoning Commission. Some topics addressed in that ordinance are as follows:

- A clarification of densities and intensities within the commercial zoning districts
- A change in the air conditioning ordinance to provide more flexibility for people building new homes, or putting new units on corner lots; and to implement a provision in the Standard Building Code as it relates to air conditioners on roofs.
- The ability for non-conforming docks, specifically the pier heads and groins and the dolphin piles, to be re-built provided that not more than one-half of the dock be eliminated at any one time.
- The revision of the development review application fees
- Clarification items related to landscape open space in the front yard (to replace language that was inadvertently omitted previously)
- The ability for the Mayor to break a tie vote relative to zoning items.

VI **Verbal Report on Sea Streets R-B Study Neighborhood Workshops**

Mr. Castro stated that after an overlay proposal had been brought forward to the Zoning Commission and the Town Council, neighborhood workshop meetings were held with residents from the Sea Streets, and any other interested members of the public. Staff mailed notices of the meetings to the affected residents, and also hand delivered notices. Mr. Castro noted that there were not many residents in attendance at those meetings, but a random sampling of persons did attend with a wide range of views. Staff attempted to illustrate the overall flexibility offered by the proposal. While some residents recognized that additional flexibility, others felt the proposal was too stringent. Some residents regarded the proposal as a taking of private property rights. Some felt it was a good first step in attempting to achieve regulations based upon the character of the streets. In response to comments heard at those meetings, staff, with Town Council approval, may refine the proposal for further review and/or action during next zoning season.

Mr. Robertson stated his opposition to the overlay proposal. He felt it was "a waste of time and money," since we already have a very progressive zoning code. As the CCR regulations have only been in effect for 2-3 years, Mr. Robertson thought they should be given a chance to work. He thought that it would be a mistake to attempt to micro-manage every street in town, which

would undoubtedly result in more staff and more time. He advocated dropping the proposal rather than pursuing it.

Mr. Kleid agreed with Mr. Robertson, referring to the proposal as “spot zoning,” and regarded it as a mistake to do overlay zoning in one or more areas of the town.

Mr. Bell admitted that he was undecided on this issue, but was interested to read the comments of the residents in the minutes of the workshops, particularly the comments of those residents who spoke in favor of the new construction on the Sea Streets, which they regarded as more beautiful than the homes which were replaced by said new construction. These comments indicate that ARCOM review worked to the satisfaction of at least some of these owners. Mr. Bell did not see much purpose in implementing the overlays either.

Mr. Sanchez stated that he spoke personally to several residents who did not attend the workshop meetings. In response to his inquiry as to why they did not attend, they consistently replied that they felt the overlay was good for the area. Mr. Sanchez commented that the overlay is the culmination of years of work, and it is a huge benefit to the Sea Streets and the town as a whole. The overlay serves to protect the Sea Streets. Without the overlay protection, or the creation of a historic district, he feared that the Sea Streets may cease to exist in their existing character. He offered a suggestion to the proposal that he felt would satisfy each property owner; that the owner should have the ability to choose whether they wish to be governed by the existing zoning code, or the overlay.

Mrs. Golino agreed with Mr. Sanchez, and felt the overlay is worthy of more study. As a previous long time member of ARCOM, she remembered hearing the complaints of Sea Streets residents as they watched the character of their streets changing. The overlay would work to “codify some of that character.” She did not support the viewpoint that this is “spot zoning” as many of the R-B regulations would still apply, and the overlay is simply on top of that. Residents need to know how the overlay will really be implemented, and they need to see visual representations of the result of implementing overlay zoning.

Mr. Castro and Mr. Moore stated that the overlay zoning proposal will be brought to the Town Council for a policy decision at their May 2003 regular meeting. The Town Council, of course, will have been provided a copy of the minutes from the workshop meetings, as well as the minutes of this meeting of the Zoning Commission. At that May meeting, a determination will be made as to whether to proceed with further study relative to the overlay, or to abandon the overlay concept. Mr. Bertles suggested that the Sea Streets residents be made aware, either via a mailing or an article in the newspaper, that this will be discussed at the May meeting of the Town Council.

Mr. Sanchez stated that in his speaking with residents relative to this subject, those who voiced strong objections to the proposal really did not understand it. He cautioned the Zoning Commission and the Town Council not to base future actions relative to this proposal on the very vocal objections expressed by a very small percentage of the 10% of Sea Streets residents who

attended the workshops, who in his opinion, did not understand the concept.

Mr. Bertles agreed with Mr. Sanchez that some of the opponents of the proposal really did not understand it. He commented that those who attended the workshops and objected to the proposal fell into three categories:

1. Those who felt they were being prevented from combining lots to achieve a nicer and perhaps larger home on a larger piece of property.
2. Those who felt their property rights were being taken away, thus reducing the value of their homes.
3. Those who felt that the proposal discriminates against the Sea Streets property owners, as the overlay does not apply to any other area of the town.

Mr. Bell disagreed stating that he thought most people did understand the concept, and cited Mrs. Polly Earl's comments, as an example.

Mr. Sanchez reiterated his belief that if the owner can choose to be under the existing R-B regulations, or abide by the overlay zoning requirements, any dissension could be quelled. Mr. Castro pledged that staff would look into that possibility for placement within a refined proposal, if the Town Council directs staff to proceed with study of the overlay proposal.

VII Comments Regarding Next Year's Study Items

Mr. Castro requested the members to offer any items they would like to have considered for study in the next zoning season, with the understanding that the Town Council must approve those items.

Mr. Robertson asked that Mr. David Barton be permitted to present his proposal for the creation of a Long Range Plan built on top of the Strategic Plan, which was just completed, and his proposal to have the Zoning Commission be the Town's Planning Commission. Mr. Bertles asked for other comments prior to hearing Mr. Barton.

Mr. Kleid requested that the suggestions within the Strategic Plan be followed, specifically referring to Page 28, "With respect to zoning kind of matters....", and on Page 29 where action plans and time frames are shown. He felt the Zoning Commission should study neighborhood impacts because the time frame is for the year 2003. He also referred to H3, Page 30, regarding the Lake Worth Casino area, which is ongoing and very timely for consideration. He would like to expand that study to take in the Lake Worth Casino area, the Steinhardt property and the land behind Murray's, both of which are owned by the City of Lake Worth. Also, he requested study of residential actions (Page 32), specifically 2A which deals with 2003/2004 zoning season.

Mr. Moore reported that the Strategic Plan was presented to the Town Council during the April meeting. The Town Council directed the Town Manager to put forth an action plan to bring forward the points in the Strategic Plan to the Town Council for implementation. Staff is prepared to move forward toward this goal, but only after the Town Council directs same.

Mr. Kleid acknowledged that his recommendations for study items are made subject to Town Council approval.

Mrs. Golino requested to see a study showing how the sliding scale is working so far. Mr. Castro responded that very few homes have been built by the sliding scale to date, so a few more years of data would be warranted for such a study. Mr. Moore, however, thought that staff could show the Zoning Commission some examples of construction built according to the sliding scale by next fall. He suggested that the members could, on an individual basis, visit those sites to judge the effect themselves. With direction, staff could assemble a package with addresses and photos, but a site visit would be preferable. There was consensus from the members that staff should prepare this package for the members.

Mr. Bertles asked that the Town Council consider not only what is being built, but what could be built under the current code, i.e., “a maxing out study.” This would give a good indication of what Palm Beach could look like in years to come. Mrs. Golino supported this study, and thought it would be interesting to use the Sea Streets for the study. Mr. Moore responded that this would be very time consuming and expensive, and it could not be done in house for the whole R-B district. Mr. Bertles narrowed the field by suggesting 3 to 4 mid-town streets, 3-4 mid-north streets, and 3-4 streets far north as a sampling. Mr. Moore reconsidered saying that it would be possible, with those parameters, to accomplish this study.

Mr. Bell asked that staff look at three story towers in the R-A and R-AA zoning districts, and the possibility of making them larger, as well as the possibility of making them habitable space.

Mrs. Murray asked for a review of the new construction sites, together with a comparison of these to a relative max build out. She wondered if, in fact, they were maxed out. Mr. Moore responded that 99% of them are maxed out under the present code.

Mr. Kleid requested a study of the number of variances granted in the calendar years, 2001 and 2002, the nature thereof, and those directly related to new homes, expanded or renovated homes, and to beach cabanas. Mr. Moore noted, for the record, that 9 out of 10 construction projects do not require variances. Mrs. Golino commented that on Page 31 of the Strategic Plan, such an exercise has already been done. Mr. Kleid noted that the information in the Strategic Plan deals with new homes, and does not deal with expanded or renovated homes, or new beach cabanas, Mr. Moore responded that this information can be provided if the Zoning Commission requests same.

Mr. David Barton, Jamaica Lane, offered the following comments: As a preamble, he praised the Mayor and Town Council, and the Town Staff for excellent work. Mr. Barton noted that he has been involved for the last 30 to 40 years in planning activities for various governmental entities. He stated that he attended every Strategic Planning Board meeting that he could, read all of the documents associated with it, and participated in the meetings making suggestions, etc. When the Strategic Plan was completed, Mr. Barton was disappointed because it was incomplete with “too many things left hanging,” and too many concepts rather than specifics. The Strategic Plan

must apply to this Town Council and all Town Councils to come. The lack of planning process in the town has led to the current problems the town is experiencing. Zoning regulations were not created with flood zones in mind. The Town Council has been reactionary, not forward thinking. All town boards and commissions should be proactive, and not fear the Town Council. The Palm Beach Charter includes the right to have a Planning Commission, but the Town Council does not have the time to do it. Every Planning Commission does the first formulation of the 5 year Capital Program. There must be reconciliation with the state mandated Comprehensive Plan, and the Zoning Commission is the right group to do this work.

Mr. Barton's presentation was quite lengthy, and upon Mr. Bertles' request, Mr. Barton summarized his proposal as follows:

1. The Zoning Commission should be and act like a Planning Commission first, and secondly, as a Zoning Commission
2. The Zoning Commission should take the responsibility for the initial formulation of the 5 year Capital Program.
3. The Strategic Plan should not be allowed to remain in an incomplete condition. They need to be translated into a Long Range Plan.

Mr. Bertles stated that he agreed with Mr. Barton in his advocating that the Zoning Commission "take the bull by the horns and run with it." He asked for clarification from the staff relative to the action plan.

Mr. Moore commented that he agrees and disagrees with Mr. Barton. He noted that the administrative part of the Town's Code of Ordinances states that the Zoning Commission should review all matters referring to municipal planning. Over the years, planning issues have been brought to the Zoning Commission as an advisory board to the Town Council, the official planning agency of the Town. The Strategic Planning Board has proposed long range plans, but the Town Council must authorize moving forward with their recommendations. The question again has come up as to whether the Zoning Commission is a Planning Commission. Mr. Moore stated that the Zoning Commission is, indeed, a Planning Commission, but in order to be named as such, an ordinance change is required. With regard to the Strategic Plan, it is not just "sitting on the shelf," as has been suggested by Mr. Barton. Only one more month is needed for the Town Council to begin dealing with these issues. The planning items will come to the Zoning Commission for input. Mr. Barton must give the Town Council the chance to act, as the report has just been received by them after two years of work. Regarding the 5 year Capital Plan, it is done annually by the Public Works Department. Mr. Barton would have the Capital Plan on the Zoning Commission agenda annually for advice and consent, which would represent a huge change in the duties of the commission. In the past, the Zoning Commission has only reviewed the Capital Plan in conjunction with updates to the Comprehensive Plan, approximately once every five years. In summary, Mr. Moore believed the Town was moving in the right direction. An ordinance change is required to change the name of the commission. He noted that the Town Council wants the Comprehensive Plan and the Strategic Plan to mesh, and the Town Manager is to begin to lay out the process.

Mr. Bertles, stating his agreement with Mr. Barton, commented that Mr. Barton has a different point. He advocates that the Zoning Commission be responsible for constructing a specific Long Range Plan for zoning issues, and recommending changes and initiatives to the Town Council. Mr. Bertles does not feel that the Zoning Commission acts as a planning commission now; rather, that the Zoning Commission is more reactionary. Mr. Barton wants the Zoning Commission to be forward thinking relative to planning in an advisory role. The Comprehensive Plan is not specific enough and does not set the vision for the Town. The question is...does the Town Council want the Zoning Commission to do that, and does the Zoning Commission want to do that. If the Zoning Commission does not have the authority to do planning, Mr. Bertles stated he would prefer not to be called the Planning Commission.

Mr. Barton questioned how such a good town got into these problems, i.e., drainage problems, traffic issues, over building, etc. He recommended that the Town be policy driven, not market driven. Why is redevelopment so encouraged? The Zoning Code allows it to happen. If the Zoning Code permits “maxing out,” it will be done. A Planning Commission serves to predict, prevent and fix things before they happen.

Mr. Bertles thanked Mr. Barton for his comments, calling him the catalyst for the Strategic Planning Board.

MOTION BY MR. BELL RECOMMENDING TO THE TOWN COUNCIL THAT THE ORDINANCE BE CHANGED TO ALLOW THAT THE NAME OF THE ZONING COMMISSION BE CHANGED TO THE PLANNING AND ZONING COMMISSION.

**MOTION SECONDED BY MR. ROBERTSON.
MOTION CARRIED UNANIMOUSLY.**

Town Council President William Brooks thanked the Zoning Commission for their work and welcomed the new members. Relative to the Strategic Plan, the Town Council has just voted to “accept” the study, but has not “adopted” the study. The Zoning Commission will play a critical role in working through the items included in the plan. He assured the commission that the Strategic Plan will not “be on a shelf,” lying dormant and unused. At the next Town Council meeting, there will be an agenda item relative to some of the questions contained in the Strategic Plan. He looked forward to a cohesive and cooperative approach to solving the problems facing Palm Beach.

Mayor Lesly Smith stated that yesterday she gave a speech entitled “Beyond the Strategic Plan.” She stated that the Strategic Planning Board is well aware of Mr. David Barton’s opinions and suggestions. While Mr. Barton’s input was greatly appreciated, Mrs. Smith reminded the audience that the Strategic Planning Board met for two years, both monthly and sometimes twice monthly. This was a very fine group of citizens who worked very diligently to birth the newly submitted Strategic Plan. She was very pleased that the Zoning Commission voted to change their name to the Planning and Zoning Commission, but hoped they would also adopt the duties related to that title, and be willing to devote the time involved to do the work. She speculated

that this expanded role would take twice as much time as the commission is investing presently.

Mr. Randolph believed that to simply ask for a name change does not accomplish the intended goal discussed in this meeting today. The Town Council may ask the Zoning Commission to take on additional duties whenever they so desire, and this ability has always been in place. He posed a question to the members, however, as to whether they merely wanted a name change, or a role expansion as well. This question resulted in the members expressing their individual viewpoints as to the extent of planning duties that they envision for the commission. While some members preferred a more limited planning role, others expressed a desire to take a bold step into planning. Mr. Randolph read from the Code of Ordinances relative to the duties of the Zoning Commission as follows: "The Zoning Commission shall act in an advisory capacity to the Town Council in all matters related to municipal planning and development." While this language could be interpreted as all encompassing, it has typically been interpreted to be limited to zoning matters and land use. The Code states further, "That the commission shall follow the concepts and content of the Town's Comprehensive Land Use Plan in all planning, zoning, and development related deliberations and decisions." Mr. Randolph remarked that the Comprehensive Plan includes all categories, even those beyond land use and zoning. Mr. Moore added that this includes the Capital Improvement Plan, and reiterated that an annual involvement in the Capital Improvement Plan by the Zoning Commission would be a huge change in the Town's function.

MOTION BY MR. KLEID TO ASK THE TOWN COUNCIL FOR DIRECTION AS TO THE AUTHORITY OF TASKS OF THE PLANNING AND ZONING COMMISSION, I.E., IS IT LIMITED TO LAND USE ONLY, OR EXPANDED TO TOTAL LONG RANGE PLANNING, OR IS IT JUST A TITLE CHANGE AND CONTINUE WITH THE COMMISSION STUDYING THE TOWN'S COMPREHENSIVE PLAN.

MOTION SECONDED BY MR. BELL.

Mr. Moore asked for the inclusion of the concept of the integration of both the Strategic Plan and the Long Range Plan in the motion. Mr. Kleid indicated that he would accept that inclusion, as he envisioned the Strategic Plan as being the springboard to the Long Range Plan.

When Mr. Bertles commented that he was unsure of the implications of the motion, Mr. Randolph attempted to clarify the issue. It appears that without giving the Town Council any direction as to what the Zoning Commission wants, the Zoning Commission is asking the Town Council how they want to assign the planning duties. Mr. Randolph stated the Town Council can already ask the Zoning Commission to take on a certain role to implement the Strategic Plan. Mr. Barton, however, is asking that the Zoning Commission act as the Long Range Planning Commission to do something beyond what has been suggested in the Strategic Plan. The motion asks for direction from the Town Council with regard to both of those approaches. Mr. Bertles felt that the Zoning Commission should make a specific recommendation to the Town Council as to the role the commission wishes to play. His own opinion was that the Zoning Commission

should take over long range planning as it relates only to zoning, land use, and re-development, as that is a big enough job.

Mr. Goldblum stated that the Town Council has asked the Town Manager for a prioritization of the Strategic Plan recommendations. Although the Town Council would be very happy if the Zoning Commission would take over much of the planning duties associated with it, it cannot be accomplished within the number of meetings currently held by the Zoning Commission. Much more time and many more meetings will have to be devoted to the task.

Mrs. Delp re-stated the motion for the record.

MOTION CARRIED 5-2, WITH MR. BROBERG AND MR. BERTLES VOTING AGAINST.

Reverting back to a discussion relative to next year's study items, Mr. Bell stated that he would like to take another look at water retention, looking for a more definitive approach. He would recommend the elimination of swales completely, and would advocate permanent cisterns under the lake.

Mayor Smith thought that the Town Council may wonder how much time the commission is willing to invest into expanded duties. She suggested a polling of the members to see if they would be willing to meet at least monthly (for the 8 months of the year that they are permitted to take action) for all day meetings.

Mr. Barton stated that in review of all of the Town issues of concern, the greatest of these is control of water, both "too much" and "too little." He wondered what body would be assigned to review this issue. He also clarified that it was never his intention that the Zoning Commission would be involved in the annual Town budget, but instead with the 5 year Capital Budget.

Mr. Moore noted, for the record, that if the number of Zoning Commission meetings is going to increase to monthly meetings, some of which could go on for more than a day, additional staff will be needed.

Chairman Bertles polled the members to see if they would be willing to have monthly meetings.

Mrs. Golino: Yes; feels it is part of the responsibility

Mr. Bell: Yes, except for two months during the summer.

Mr. Sanchez: Yes, but felt that the meetings may not have to be as long as some are anticipating.

Mr. Kleid: Yes

Mr. Bertles: Yes, with the proviso that the scope of their responsibilities be limited to the planning duties associated with land use, redevelopment and zoning; to take on

the “whole ball of wax” is unrealistic as the Zoning Commission is advisory, only, to the Town Council, and the Town Council is the body which brings together all of the various aspects of planning for the town.

Mr. Broberg: Yes, but with the limitation to land use, redevelopment and zoning

Mr. Robertson: Is typically out of state from June through September, but is willing to return for meetings during that time period if necessary because he believes strongly in participating in long range planning.

Mrs. Murray: Yes, but with the limitation to land use, redevelopment and zoning

Ms. Murphy: Yes, but with the limitation to land use, redevelopment and zoning

Ms. Markin: Yes; if this commission doesn't do it, who will? Will there be a separate Planning Commission?

MOTION BY MR. BROBERG THAT THE ZONING COMMISSION TELLS THE TOWN COUNCIL THAT WE ARE WILLING TO TAKE ON A PLANNING ROLE FOR ZONING MATTERS, LAND USE MATTERS AND RE-DEVELOPMENT MATTERS, AND ALL MATTERS ASSOCIATED WITH THE STATE MANDATED COMPREHENSIVE PLAN.

MOTION SECONDED BY MR. SANCHEZ.

Mr. Robertson voiced an objection to the motion as he felt the Town should have some agency charged with the responsibility for formulating and updating a true Long Range Plan. By adopting this motion, no one is designated to assume that function. He also felt that this motion reduces the effect of the previous motion sponsored by Mr. Kleid. Mr. Randolph stated, that after this vote, the Chairman has requested that there be another motion which would have the Zoning Commission take on all of the planning duties.

MOTION CARRIED 5-2, WITH MR. KLEID AND MR. ROBERTSON VOTING AGAINST.

Please note that Mr. Sanchez left the meeting at this time, 11:25 a.m.

MOTION BY MR. KLEID THAT THE ZONING COMMISSION TAKE ON ALL OF THE RESPONSIBILITIES OF A LONG RANGE PLANNING GROUP, WITH THE REASON THAT IF THE DUTIES ARE SEPARATED, THE TOWN COUNCIL WILL HAVE TO TAKE ON THE REMAINDER OF THE PLANNING WORK, OR ANOTHER COMMISSION WILL HAVE TO BE APPOINTED TO DO THE REST OF THE PLANNING WORK, AND THAT WILL CAUSE COMPLICATIONS.

MOTION SECONDED BY MR. ROBERTSON.

Under discussion, Mrs. Golino stated that since the Zoning Commission is responsible for reviewing the Comprehensive Plan, all the long range strategic planning issues are already incorporated into that plan. Since the Zoning Commission has jurisdiction over the Comprehensive Plan, in their asking to have planning authority, she noted that the Zoning Commission already has it. Mr. Bertles responded that the Comprehensive Plan is a “macro” look at the issues, while the long range planning group must delve into the issues in detail. Mr. Kleid asked the members not to vote for or against the motion based upon a belief that the Zoning Commission has that authority under the Comprehensive Plan, as this would not present a clear message to the Town Council.

MOTION FAILED 4-3, WITH MR. BROBERG, MR. BELL, MRS. MURRAY, AND MR. BERTLES VOTING AGAINST.

VIII Any other Items

Mr. Castro reported that staff will schedule a new member orientation meeting in the near future, and will ask all existing members to attend as well.

Let the record show that Mr. Robertson left the meeting at 11:40 a.m.

The next meeting of the Zoning Commission will be held in October for review of Comprehensive Plan issues. It will most likely be held during the first week of October.

Mr. Randolph clarified when the Zoning Commission can meet. Unless a meeting is held to re-zone an area, or make amendments to the code, the Zoning Commission is not precluded from meeting at other times of the year, other than the prescribed season, October through May.

IX Adjournment:

The meeting was adjourned at 11:45 a.m subject to a motion made by Mr. Bell.

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