

**JOINT WORKSHOP
R-B Zoning District Prototype Guidelines**

**JOINT WORKSHOP WITH ZONING, LANDMARKS AND ARCHITECTURAL
COMMISSIONS**

March 20, 2000

9:30 a.m.

Town Council Chambers, 360 South County Road, Palm Beach

This represents a brief accounting of the record of this meeting. The tape of the meeting is available at the Planning, Zoning & Building Department.

The workshop was called to order by Robert L. Moore, Director of Planning, Zoning & Building. Staff persons present in addition to Mr. Moore were as follows: Robert J. Doney, Town Manager, John C. Randolph, Town Attorney, Veronica Close, Assistant Director of Planning, Zoning & Building, Paul Castro, Zoning Administrator, Timothy M. Frank, Planner/Projects Coordinator, Jane Day, Staff Preservation Consultant, Bill Brisson, Zoning Consultant, and Cynthia Delp, Recording Secretary.

COMMISSION MEMBERS PRESENT:

Zoning Commission

Jorge Sanchez
Harrison Robertson
Peter Broberg
Rita Taca
Eugene Lawrence
Rodney Fink
Richard Kleid
Michele Clarke-Royal
Martin Klein
James Bertles

Landmarks Pres. Comm.

Eugene Pandula
Jacqueline Albarran de Mendoza
Jack Pyms
Sari Wilkey
Ann Vanneck
Elizabeth Dowdle
Nikita Zukov
Jeff Smith

ARCOM

John Schuler
Floyd Wideman
Eric Adams
Lowry Bell
Marvin Rosenberg
Leslie Shaw
Sally Gingras
Morgan Wheelock

COMMISSION MEMBERS ABSENT:

Zoning Commission

None

Landmarks Pres. Comm.

Ann Blades
Judy Hoffman

ARCOM

Gilbert Messing

First, at the request of the Town Council, a presentation was given by Town Attorney, John Randolph and Town Manager, Robert J. Doney relative to service on Town boards and

commissions.

John C. Randolph, Town Attorney: Comments relative to the Sunshine Law & Voting Conflicts

The Sunshine Law has been in effect for several years, and it is a statute that says that all meetings of any board or commission of any municipality in the state are to be open to the public at all times and no rule or action is going to be binding except as taken at a public meeting. A meeting is defined as when any two or more of a particular body get together to discuss an item of business or any item which could be an item of business before that particular board. That means that two members cannot communicate on the phone, via memoranda, or even at a cocktail party relative to any matter than can come before the board where those members serve. There are criminal penalties for violation of the Sunshine Law. Also, actions taken subsequent to a violation of the Sunshine Law can be rescinded on that basis. You cannot ratify in the sunshine that which was conceived in the dark. If you speak to another board member during the course of a meeting, and you cannot be overheard via the microphones, someone could allege that you were violating the Sunshine Law. The same holds true for speaking during a meeting break. This is a very important aspect of service on the boards, and violations of the Sunshine Law have serious consequences.

Relative to **quasi-judicial hearings**, Mr. Randolph stated that the LPC and ARCOM act in a quasi-judicial capacity. The Zoning Commission acts, for the most part, in a legislative capacity, but can occasionally sit in a quasi-judicial capacity. Members of the LPC and ARCOM sit as judges, applying criteria that already exists by law. They hear facts and evidence as they relate to those criteria, and then make a decision based on the presentation. Members shall not impose their taste upon others. Members are there to determine how specific criteria have been met or not met. Because it is a quasi-judicial hearing, these board members must advise of any exparte communications. Exparte communications must be announced during the course of a public meeting and the member must declare with whom they communicated and the subject of that communication. If you visit a site, that constitutes exparte communication. Hearsay evidence can be submitted, but decisions cannot be solely based on hearsay evidence. He stressed the importance of including findings within a motion so that commission decisions are more defensible. The findings should directly relate to the criteria by which projects are reviewed.

Mr. Randolph addressed the issue of **Conflicts of Interest**. There are two types of Conflicts of Interest. The first is a Voting Conflict of Interest. He noted that each board member must make up their own mind as to whether they have a Voting Conflict of Interest. A Conflict of Interest typically occurs when the approval or denial of a project inures to the special and private gain of one's self, one's client, or a relative of a client. A member is not permitted to abstain from voting if he does not have a Conflict of Interest. Further, it is not appropriate for a member to leave the meeting in an effort of avoiding the declaration and filing of a Conflict of Interest. When a member has a conflict, the conflict must be announced and the nature of the conflict must be stated. Within 15 days of the vote, the member must file a Voting Conflict of Interest form.

Mr. Floyd Wideman asked what "inure to the special and private gain or loss" means. Is it

monetary? Mr. Randolph responded that there are several tests that can be applied to determine whether you have a Conflict of Interest: Size of class test, remote and speculative test, gain or loss test, and procedural issue test.

In addition to Voting Conflicts of Interest, there are Prohibited Conflicts of Interest. These are addressed in the State statutes also. A member cannot contract with or do business with an entity which is going to be coming in front of that member's board or commission. The Commission on Ethics has said it is not enough to recuse yourself on these matters. You also cannot have a continuing or frequently occurring conflict which might appear that it was a conflict between your private and public interests. There is an exception to that law which allows architects to serve on ARCOM, due to the language included in the ARCOM ordinance. The Landmarks Preservation Commission ordinance may not, however, contain language allowing the exception, i.e., does not contain language which would permit architects serving on the LPC to present in front of that board. So the exception, within the law, may not be applicable to the Landmarks Preservation Commission.

Mr. Randolph discussed the **Bert Harris Property Rights Act**. This statute is peculiar to the State of Florida. It allows a property owner, with regard to any regulations enacted after 1995, an opportunity to say that the government has inordinately burdened his property by enacting this regulation. This is particularly important with respect to the Zoning Commission. If a property owner feels that he has a legitimate burden placed upon his property by the government, he has the ability to file suit against that governing body. There is, however, a 180 day time period for the governing body to determine whether their action has burdened the property or not, and to negotiate with the property owner before suit is filed.

Mr. David Barton inquired relative to what he called an "Inherent Conflict of Interest," where a law is passed which favors a group. For example, if a regulation is passed which favors commercial interests, Mr. Barton feels that is an Inherent Conflict of Interest. He bases that on his statement that 97.5% of the tax base of Palm Beach is residential, but the persons seated on the boards have commercial interests. Mr. Randolph responded that such an example would probably not be a Conflict of Interest on the basis of the "size of class" test.

Mr. Schuler asked if a member leaves a meeting for several hours, should he announce that he is leaving. Mr. Randolph stated that the record should state that the member left the meeting and why they left the meeting.

Comments by Robert J. Doney, Town Manager: Mr. Doney distributed a large handout of information excerpted from the March 2, 2000 Special Orientation meeting with the Town Council. This information would be particularly applicable to the members of the commissions here today. The packet included a copy of the new Town Charter, passed February 8, 2000. Mr. Doney highlighted the names and years of service of the Department Heads. He commented that the Town is in the process of trying to improve the Town's Web Page.

JOINT WORKSHOP PRESENTATION

Robert Moore, Director of Planning, Zoning & Building stated that the Zoning Commission recommended to the Town Council, last year, to adjust the CCR in the ordinance to a sliding scale, eliminate the FAR, and to do a study of the north end relative to redevelopment there. The Town Council then enacted Ordinance 1-99, which changed the CCR to a sliding scale (taking effect the first part of May), and which proposed changes to the ARCOM ordinance, eliminating their review of gross square footage and gross cubic footage, i.e., taking them out of the size business. The change to the ARCOM ordinance is at the ORS now for review. The consultants have begun their review of the four study streets. Today, the commission members have an opportunity to offer input to the consultants. They are holding meetings with the neighbors on these streets as well as with architects, attorneys and professionals who deal with the code on a daily basis. The problem with the north end is not unique to Palm Beach, but is becoming prevalent in other upscale communities.

Marty Hodgkins, Planning Consultant with Duncan & Associates, introduced himself and Mr. Hank Skokowski of Urban Design Studio. They have been hired to develop a prototype for the redevelopment of the R-B Zoning District due to a concern about demolition of existing homes and the replacement of those homes with much larger dwellings. The intent of this meeting is to obtain the combined wisdom of the three commissions in the face of this problem. Meetings with the residents have resulted in an expressed concern to protect the existing character and ambiance of the neighborhoods, a need to maintain the north end as a family neighborhood, a concern over the number of two story dwellings, a concern to maintain privacy, and a concern to protect the uniqueness and variety of the neighborhoods. There is also a concern to maintain the rights of property owners. The basis of the study is a zoning approach, not an attempt to arrive at a pattern book.

Hank Skokowski distributed a handout entitled: "Town of Palm Beach, R-B Zoning District Design Guidelines, Joint Meeting." He reviewed the document briefly, particularly noting Page 5, "Mass, Bulk, and Scale Determinants," and the back page, "Mediterranean Road, Block Analysis: Existing, Permitted and Preferred Building Mass & Bulk," and then took comments from the audience. So what is the preferred condition? Where is change likely to go? How can we manage that change?

George Michel, 310 Mediterranean Road: There had been an interesting comment made at a previous meeting about the gardens on Mediterranean Road. His comment was that the gardens are really in the street. He asked those present to consider the realism of what goes on in the north end and on Mediterranean Road. The gardens are out in the street, with piles of yard debris in the right of way for four days at a time. You can't see the homes from the "gardens." He also felt that ARCOM reviews a set of plans, but they don't see the reality of what happens when the house is actually built and landscaped. In the past, he had to go to ARCOM and the Town Council for a gate approval. He was turned down because you couldn't see the house. The gate would only hide part of the driveway, not the house. He pointed out that by looking at graphics, you don't always get the real picture.

David Barton: Inquired as to the budget for the study project. It was noted that \$90,000 was the

budgeted amount. He also felt that zoning has been done in the Town which is out of context with the long range land use plan of the town.

Bob Moore: Responded to Mr. Barton by saying that the Town has a Comprehensive Plan developed in 1929. The Zoning Ordinance was enacted in 1927. The purpose of today's meeting is to have the members of the various commissions participate with these consultants. Of course, the public is welcome also, but the focus today is on the opinions of the board members. He urged the board members to take advantage of this opportunity today.

Martin Klein: Commented about the widely divergent characteristics of the various neighborhoods of the north end. Was thought given to breaking up the R-B district into smaller sub-districts?

Hank Skokowski: We are aware of the differences between the study streets and have talked about the sub-districts.

Ann Vanneck: Discussed potential landmarks in the north end and how new regulations may affect landmark protection of these structures.

George Sanchez: It is interesting to hear that the residents want to preserve character and green space on their streets. He referred to the handout, "Existing, Permitted and Preferred." He stated that quite often existing buildings encroach in the setbacks, but these buildings usually have more architectural character and more green space. He asked the consultants to concentrate a great deal on setbacks.

Leslie Shaw: An overlooked point is that the impact of a structure is not only what is on the street side, but on all sides.

Jacqueline Albarran de Mendoza: Reiterated the importance of custom zoning that had been discussed.

James Bertles: Inquired as to the consultant's time line.

Marty Hodgkins: Within the next 60 days, some basic recommendations will be forwarded to staff for their review.

Paul Castro: There will be another joint meeting in October to go over the consultants' recommendations. In November, the matter will be heard by the Zoning Commission, and then in January by the Town Council.

James Bertles: Noted that most of the old landmarks in the Town are quite large. It is not size that matters. It is the appearance of the structure. He hoped that the consultants will come forward with some specific recommendations on incentives to provide character, personality, and diversity in the construction and renovation of homes.

Hank Skokowski: There is the question as to whether the recommendation will be made for regulations, guidelines or a mixture of both.

Gentleman in the rear: (did not give his name) The width of the street and the vegetation on both sides of the street determines a large interest in the street. If the streetscape is strong enough, the architecture becomes less important.

Hank Skokowski: You cannot rely on landscaping. The building is a much more permanent fixture and must be addressed.

Leslie Shaw: We should be silent regarding the square footage of basements as a way to provide space for a family which would not detract from the neighborhood. If a basement is allowed, there may be no need to go up, i.e., add a second story.

Floyd Wideman: Commented that he always hears lawyers say ... this is a neighborhood in transition What does this really mean?

Hank Skokowski: Neighborhoods are always in a state of transition or change.

Eric Adams: ARCOM always says that landscaping is not an excuse for poor architecture. He invited the consultants to attend the ARCOM meeting this week.

Wendy Victor: The placement of the house on the lot is an issue. Gardens are better on the side than in the front or back of the house as it is more useable to the resident..

Martin Klein: Invited the consultants to attend a Town Council meeting to see the Special Exceptions and variances which are reviewed and approved. Several hundred variances are granted annually.

Paul Castro: Thanked everyone for coming, and asked those present to contact staff or the consultants with any further ideas. He announced the meeting to be held this evening at 7 p.m., for the North Ocean Boulevard residents.

Cynthia M. Delp
Recording Secretary