

RECORD AND REPORT
PLANNING AND ZONING COMMISSION
2005-2006 ZONING HEARINGS
Thursday, February 16 at 9:30 a.m.
360 South County Road, Palm Beach
Town Council Chambers

I 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
 Peter S. Broberg, Member
 Nancy M. Murray, Member
 Elizabeth S. Murphy, Member
 John Schuler, Member
 Alan S. Golboro, Member
 William M. Guttman, Alternate Member
 Walter Anthony Dowell, Alternate Member
 Leslie A. Shaw, Alternate Member
 John C. Randolph, Town Attorney
 Veronica Close, Director of Planning, Zoning & Building
 Paul W. Castro, Zoning Administrator
 William F. Brisson, Brisson Planning Solutions (Zoning Consultant)

ABSENT: None

RECORDING SECRETARY: Cynthia M. Delp

II INVOCATION AND PLEDGE OF ALLEGIANCE: By Mrs. Delp

Mr. Robertson welcomed the two new alternate members, Mr. Dowell and Mr. Shaw.

III CONSENT AGENDA

A. MINUTES, DECEMBER 15, 2005
 APPROVAL OF THE MINUTES OF THE PLANNING AND ZONING
 COMMISSION MEETING

MOTION BY MR. SCHULER FOR APPROVAL OF THE MINUTES.

MOTION SECONDED BY MR. BELL.

MOTION CARRIED UNANIMOUSLY. (Ms. Murphy did not vote since she did not attend the December 15, 2005 meeting. Mr. Guttman voted in her stead.)

IV REGULAR AGENDA

A. Old Business: Staff noted there was no old business to discuss.

Mr. Broberg stated that at the last meeting, Mr. Golboro had brought up the Neighborhood Index, but Ms. Close cautioned the commission not to discuss the matter since it had not been advertised as an agenda item. At the time, Mr. Randolph had commented that the commission could discuss the issue if comments were limited to general discussion, without any substantive action being taken. Mr. Broberg maintained that the commission should be free to discuss any planning and zoning matter which has been discussed during the zoning season, especially since all discussion must occur in the “sunshine” and since the commission meets so infrequently. If notice must be provided, the agenda should be inclusive of any pertinent planning and zoning matter to allow such discussion.

Mr. Randolph replied that traditionally, items have been noticed and discussions have been restricted to the noticed items. In the past, staff and the commission have been criticized when topics were discussed during a meeting without proper notice. Mr. Randolph noted that the Planning and Zoning Commission is advisory to the legislative body of the Town, and as such, needs to have the opportunity to discuss matters regardless of whether they were advertised or not. In an abundance of caution, however, he encouraged the members to notify staff if an item will be discussed so they may place the item on the agenda.

Mr. Guttman shared Mr. Broberg’s interest in having the freedom to discuss “big picture” planning and zoning matters at will, provided staff, within the notice procedure, advises the public that these types of discussions may take place. He agreed that no action should be taken by the commission without proper notice to the public, but felt that it is too constraining for the commission to be restricted to the agenda.

Mr. Robertson agreed that the commission should be free to discuss anything within the jurisdiction of the commission, even though it has not been noticed on the agenda, since discussion between members is restricted by the Sunshine Law.

Mr. Randolph added that as long as the commission discusses general “big picture” items, that is acceptable, but no specific re-zoning issues should be discussed. He again encouraged members who would like to discuss a certain matter to notify staff so the matter may appear on the agenda.

Ms. Close pointed out that staff has already added an item to the agenda “Comments of the Planning and Zoning Commission and Planning and Zoning Director” to address any other items which the commission may choose to discuss.

B. New Business

1. Consideration of Study Item on Implementing the Neighborhood Index Cubic Content Ratio in the R-B Zoning District and the Results of the Community Meetings on this subject.

Ms. Close provided some history relative to the genesis of the Neighborhood Index concept. It began when the Strategic Planning Commission met and advocated an “evolution rather than revolution” concept, relative to sizes of homes. The Planning and Zoning Commission and the Town Council have been dealing with the size of homes for over 25 years. A maximization study, from a few years ago, looked at open space with regard to storm drainage. It became clear that there would be a significant loss of open space as houses continued to develop under the present code over the years. Both the Planning and Zoning Commission and the Town Council directed staff, in 2004, to study the concept over the summer. The basic concept of the Neighborhood Index was presented to the Planning and Zoning Commission in the 2005 zoning season. The Planning and Zoning Commission modified the concept, and it was ultimately presented to the Town Council, as modified. The Town Council directed staff to refine the concept over the summer of 2005 and solicit community input in the fall, followed by a report to the Planning and Zoning Commission and the Town Council in 2006. This item had been originally scheduled for the March meeting of the Planning and Zoning Commission, but at the commission’s request, was moved up to today’s meeting.

Bill Brisson, Planning Consultant, explained that the Neighborhood Index CCR concept was based upon the recommendation of the Planning and Zoning Commission. It was later refined by the commission to look at the area within 400 linear feet of a subject property on both sides of the street to determine an average CCR for that part of the street, and then apply a factor of that CCR average (125%) to the individual homes, with an allowance for garages. A street would then be divided into various street segments which would then be used to calculate the neighborhood index for each property. No one would be required to build a home with a CCR of less than 3.0, nor allowed to build a home with a CCR greater than 4.5. No variances would be permitted for the CCR and no bonus provisions related to CCR would be applicable. The Town would use a consultant to calculate the neighborhood averages and to identify the specific 400 ft. distance. The applicant would pay for the consultant’s services. The CCR regulations would sunset after five years unless reaffirmed by the Town Council. (Mr. Brisson referred to the example shown on Page 5 of the staff’s report.)

Mr. Brisson summarized the impacts of the Neighborhood Index proposal as follows: (He noted that these figures do not give any extra allowance for garages.)

If the calculated CCR results in a decrease, the decrease would typically range from 14% to 25%.

If the calculated CCR results in an increase, the increase could be as high as 15% to 16% above what is allowed now.

Mr. Brisson stated that the same information was presented to the residents at two community meetings. He noted that 100 residents attended the first meeting, while 102 attended the second one. At those meetings, a questionnaire was distributed to the attendees. Mr. Brisson relayed the results of the questionnaire as follows:

118 of the respondents, or **90%** of the persons who responded on the forms were **opposed to the Neighborhood Index concept**.

Only **10%** (5 persons or 5 properties) were **in favor of the Neighborhood Index concept**, and half of those felt the concept needed work.

Mr. Brisson noted that some petitions were submitted during the course of the community meetings. The first of these was from the North End Property Owners Association, from July of 2005, which explained the position of the 86 persons (68 property owners) who signed the petition in opposition to the Neighborhood Index concept. In September of 2005, another petition showing opposition to the concept was signed by 188 persons (135 properties). In summary, 264 persons representing 203 properties (mostly from the north end), or 13% of the residential properties in the entire R-B district, who signed a petition, were opposed to the proposition. This should not be interpreted to mean that the remaining 87% of properties were in favor of the proposal; it simply means they did not participate in signing the petition.

Mr. Brisson stated that while greater attendance and more questionnaire participation would have been welcomed, it was clear that the majority of those who participated were opposed to the Neighborhood Index concept. The responses also indicated that most of the residents felt that ARCOM does a good job.

With regard to staff's recommendations, there remain questions as to whether there is really a problem with the size of homes. Are the homes really too large for their surrounding area, and are the residents really concerned about their size? Most of those who responded did not feel that there is a problem. The staff is still concerned that the Neighborhood Index concept is overly complex and difficult to administer. As such, staff recommends against implementation of the Neighborhood Index CCR.

Mr. Guttman questioned what would happen if the neighbors to the left and right of the subject property did not cooperate with the consultant attempting to calculate the average CCR. Mr. Castro responded that it was contemplated that most of the data would be on hand in the Planning and Zoning Department's records. In some cases, that information may not be available, in which case the County's data base, our own GIS system, aerial photographs, and onsite laser calculations would be utilized.

Ms. Murphy stated, for the record, that she had met with Mr. Del Deo and Mr. Boykin to discuss this matter. She noted that her experience drawn from the community meetings is that there was almost no support for the concept. Residents are concerned with privacy and loss of light. She noted her still present concern over the results of the maximization study, but did not feel that

adopting the Neighborhood Index was the answer. A possible solution is to look at ways, in addition to working with ARCOM, to encourage property owners who are building new homes to present their pre-plans to their neighbors. Also, she suggested looking at “apparent mass” as an interesting concept. This would encourage plans for large homes that still include plans for privacy for the neighbors, maintenance of light and air for neighbors, and paying more respect to established setbacks. Lastly, she thanked all of the residents who attended the community meetings for their participation.

Mr. Golboro complimented the staff for studying this issue, especially Ms. Close for her efforts. He commented that the Planning and Zoning Commission cannot legislate air rights, or prohibit a person from building a home which permits views into a neighbor’s pool. He stressed the importance of neighbors being aware of zoning requests made for their neighborhoods. He suggested that the Town of Palm Beach adopt the practice of some other communities in placing a small sign on the subject property 60 or 90 days prior to the hearing, announcing that this property is being considered for some sort of development approval. He felt that notifying property owners by mail was insufficient. Mr. Golboro also stated that loss in property value is not addressed in the staff’s report, but should be considered. He advised that while splitting the R-B zoning district may be a good idea, it should not be attempted at this time. Mr. Golboro noted with regard to the larger issue, trying to control growth, that Palm Beach will change regardless of whether that change is welcome or not.

Mr. Schuler asked Mr. Brisson to elaborate on his comment regarding ARCOM. Mr. Brisson responded that most people thought that ARCOM is doing a good job. Mr. Castro clarified that some people do not believe that ARCOM is doing as good a job as they could with regard to CCR and setbacks primarily. Mr. Schuler remarked that ARCOM can control a lot of these issues, and advocated allowing ARCOM to do just that...i.e., to mold and shape a home to its piece of property.

Mr. Robertson acknowledged Town Councilwoman Susan Markin in the audience, as he had done earlier with Town Councilman Richard Kleid.

MOTION BY MR. BELL TO ACCEPT THE RECOMMENDATION OF STAFF TO ABANDON THE NEIGHBORHOOD INDEX CCR CONCEPT.

MOTION SECONDED BY MR. GOLBORO.

Ms. Murphy stated that while she supports this motion, she suggested that a document be formulated and given to real estate professionals or neighborhood associations to present some guidelines for new property owners which would encourage them to show/share their contemplated plans to their neighbors before making plans with an architect.

Mr. Golboro noted that a problem exists when owners are absent and leave the construction and/or approval process to their architects and decorators. He felt it is very important for “the Town to have the right to say “No”.

Mr. Broberg responded that this is exactly the function of ARCOM, and ARCOM will not approve a project until the changes they require are effected. He agreed with Mr. Schuler that ARCOM does a good job for the most part.

Mr. Robertson offered his opinion that ARCOM does a good job, but should emphasize landscaping and setbacks for the second floor.

Mr. David Barton of Jamaica Lane commented that the maximization study revealed that there is a problem with zoning. He hoped that the motion on the floor to abandon the Neighborhood Index concept does not ignore the fact that the problem still exists.

Mrs. Murray commented that she understands the economic concerns presented by those who oppose the Neighborhood Index concept, but noted that the economic impact of the proposal was not studied. As a resident of the north end, Mrs. Murray stated "I seriously feel that some of those streets are being overbuilt. I don't think that the CCR, the way we've discussed it, is the way to go, but we have a problem."

Ms. Close asked the commission if they would like the maximization study to be presented again, especially for the new members, at the March meetings of the Planning and Zoning Commission. Mr. Robertson responded that this would be acceptable and suggested that staff arrive at some recommendations of how to deal with the results of the maximization study.

Ms. Murphy remarked that the results of the maximization study horrified her, especially in contemplating that these results could evidence themselves within a five year period. In contrast, she stated that she has learned that the building trend has been more evolutionary than first believed. The number of new houses built in the last five to ten years, and their corresponding CCRs, was a lesser number than originally thought. So, while the results of the maximization study may have been shocking, the process of maximization has been gradual over time. She stated that the commission needs to acknowledge that some people still believe there is a problem, even though the majority of persons do not think a problem exists. She suggested that the commission should explore concepts such as bonus zoning, working with homeowners (pre-architect) who are about to develop land, encouraging setbacks, working with landscaping, and the concept of management of "apparent mass."

Mr. Guttman saw nothing to gain in staff presenting the maximization study again, unless staff can simultaneously provide "a sense of the pace of change." He encouraged staff to present any new and creative ideas relative to this issue to the commission for consideration.

Mr. Barton strongly urged the commission to look at the maximization issue now, since in his opinion, Ridgeview Drive, for example, is already almost maxed out now.

Mr. Shaw stated that one of the perceived problems with the Planning and Zoning Commission is that the commission "spends too much time looking at the inevitable, and not being creative and trying to come up with ideas that are going to work." With regard to financial loss, Mr.

Shaw did not know if unrealized gain was defensible in court. He noted, however, that property values continue to increase; that the Town is evolving into having a year round population rather than a seasonal one and evolving from having an older population into a younger family-oriented population. Mr. Shaw commented that years have been spent discussing the fact that “one size doesn’t fit all” with regard to the R-B zoning district. He recommended taking an affirmative action on ideas which can be addressed, like fixing the sliding scale if it is felt to be flawed. “I think that we’ve got a lot of tools that we have in the code today that need to be tweaked, and I don’t know that we really need to be looking at brand new ideas, but refine what we already have.”

Ms. Murphy clarified that in her earlier comments she did not mean that the new members should not see the maximization study. She noted that the commission now has knowledge that the results of the maximization study will not happen quickly.

MOTION CARRIED UNANIMOUSLY.

2. Set a Meeting Date to Consider the Staff Recommendation on the Alternate Development Standards, the proposal by Siemon and Larsen, P.A. and the Practical Difficulties Test

Mr. Castro noted that the Planning and Zoning Commission is already meeting on March 23, 2006 and March 24, 2006, and staff recommends that these items be discussed on those dates. As such, Mr. Robertson asked the members to mark their calendars appropriately.

V COMMENTS OF THE PLANNING AND ZONING COMMISSION AND PLANNING AND ZONING DIRECTOR

Mr. Bell asked if the presentations on March 23rd and 24th will be staff presentations or done by consultants. Mr. Castro responded that Todd Messenger of Siemon and Larsen will make a presentation relative to alternative development standards. Mr. Robertson inquired about the two letters from Town Attorney John C. Randolph relative to alternative development standards. Mr. Castro responded that this information can likewise be discussed on March 23rd and 24th.

Mr. Robertson stated his bias in favor of the practical difficulties test, and stated his opposition to the alternative development standards as he feels they will “clutter up” the code which is already too complex and difficult to administer.

Mr. Guttman read a prepared statement into the record. The following is a summary of those remarks. Mr. Guttman stated that at the January 17, 2006 Town Council meeting, he addressed certain policy questions relative to the proposed alternative development standards and the proposal to replace the “undue hardship” standard with a “practical difficulties” standard. These two proposals will be considered by the Planning and Zoning Commission at their March meetings. He noted that there are currently two proposals for alternative development standards...one drafted by Siemon and Larsen and the other drafted by Mr. Randolph. Following

that January Town Council meeting, Mr. Guttman drafted language for a practical difficulties standard, and mailed that draft to staff, Mr. Randolph and Todd Messenger of Siemon and Larsen. He hoped at the March Planning and Zoning Commission meetings, that staff would present just one inclusive draft of the practical difficulties proposal and the alternative development standards for consideration. Mr. Guttman noted that while some residents over time have not been pleased with the development within the north end, the north end residents overwhelmingly rejected the Neighborhood Index concept and/or making regulations more stringent. He stated that the Siemon and Larsen Report demonstrated that the Town Council grants an inordinate number of variances, which would suggest that the Zoning Code is too stringent. Mr. Guttman stated his belief that the "Zoning Code does not fit the Town's evolving functional and aesthetic demands. If you share this perspective, then we should pursue ways to meet those demands while remaining faithful to our common values and our community's unique character and heritage of architectural excellence" Mr. Guttman was of the opinion that more detailed standards would promote less risk for unintended consequences; and on the contrary, the more general the standards, the greater is the risk for unintended consequences. It follows that creating more detailed standards is a more difficult task for the commission. He stated that at the March meetings of the Planning and Zoning Commission, the commission may be able to arrive at a balance between detailed and general standards, and failing that, may have to consider some form of the practical difficulties standards. "In March, we'll have to satisfy ourselves that the ultimate standards we recommend to the Town Council reflect our community's shared values and our Town's future character."

Councilwoman Markin welcomed the new members of the commission and wished them well. Secondly, she thanked the staff and the existing members for their efforts with regard to planning and zoning within the town, and for the knowledge imparted to her while she served on the Planning and Zoning Commission which will now help her in her service as a town councilwoman.

Mr. Sam Boykin, 285 Jamaica Lane, stated that the north end residents have been involved in making their opposition known relative to the Neighborhood Index for the past 11 to 12 months. He noted that after today's motion to abandon the concept, he feels much more comfortable. Mr. Boykin, in referencing Mr. Barton's earlier remarks, hoped that the north end residents would not be faced with yet another battle in the near future. He urged the commission to handle these size issues architecturally. In keeping with this viewpoint, Mr. Boykin stated that the north end residents are planning to hold a forum of architects to discuss these matters, independently, and in a positive way. He thanked the commission for all of their assistance.

Mr. Ralph Del Deo, 265 Fairview Road, thanked staff for their cooperation, particularly Ms. Close whom he said always treated him with courtesy even though she may or may not have agreed with his point of view. He stated that the north end residents would like to be cooperative and inclusive, and would like to provide any assistance they can in the interest of keeping the north end a beautiful place to live. Mr. Robertson suggested that a representative of the north end residents group attend each of the meetings of the Planning and Zoning Commission.

Ms. Murphy stated her bias in favor of alternative development standards and the undue hardship test, both applied evenly. Ms. Murphy's opinion was that the practical difficulties standard was too subjective, and she feared problems with the Burt Harris law.

Mr. Golboro reminded the members that the commission is a planning and zoning commission, with emphasis on the planning. He noted that planning comes before zoning. Mr. Golboro felt that the commission should meet more often during the year, and should hear zoning issues on behalf of the Town Council.

Mr. Dowell stated that he will need much more information relative to the alternative development standards so that he feels comfortable answering questions from the public. Mr. Guttman hoped that staff would provide that information.

Mr. Dowell stated he believes strongly in neighbor input, but he felt that just because notices regarding proposed development are sent to neighbors, that does not mean that the individuals necessarily received that mailing. He advocated a telephone notification plan and sending notices by registered mail. Ms. Murphy suggested that the Town's TV station and web site be used to disseminate this information as well. She also suggested that perhaps neighborhood representatives could either post or distribute the information within their neighborhoods. Ms. Close clarified that property owners within 300 feet are mailed notices via regular mail, and abutting property owners' notices are mailed via certified mail with return receipt requested. Mr. Dowell again stated his request that staff should contact residents by phone, and "make every effort to track people down."

VI ADJOURNMENT

MOTION BY MR. SCHULER TO ADJOURN THE MEETING AT 10:45 A.M.

MOTION SECONDED BY MR. BELL.

MOTION CARRIED UNANIMOUSLY.

The next meeting of the Planning and Zoning Commission will be held on Thursday and Friday, March 23rd and March 24th at 9:30 a.m.

Respectfully submitted,

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

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

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