PLANNING AND ZONING COMMISSION
LOCAL PLANNING AGENCY
RECORD AND REPORT
TUESDAY, JANUARY 19, 2010, 9:30 a.m.

Please be advised that in keeping with a recent directive from the Town Council, the minutes of all Town Boards and Commissions will be "abbreviated" in style. Persons interested in listening to the meeting, after the fact, may access the audio of that item via the Town's website at www.townofpalmbeach.com or may obtain an audio recording (tape or CD) of the meeting by contacting Debby Morakis, Secretary to the Planning & Zoning Commission at (561) 227-6411. As a point of reference, you will find the recording times listed on these minutes at the beginning of each item.

I. CALL TO ORDER AND ROLL CALL (9:30:13 a.m.)

Chairman Golboro called the meeting to order at 9:30 a.m.

On roll call, Commission Members present were:

Alan Golboro, Chairman
Leslie Shaw, Secretary
John Schuler, Member
Eugene Lawrence, Member
Floyd Wideman, Member
C. Tanner Rose, Member
Martin I. Klein, Member
Lewis Crampton, Alternate Member
Jeffrey A. Cloninger, Alternate Member
Michael Vincent John Spaziani, Alternate Member

Commission Members absent: None

Staff Members present were:
John Page, Director of Planning, Zoning, Building
Paul Castro, Zoning Administrator
John C. Randolph, Town Attorney
Debby Morakis, Recording Secretary

II. INVOCATION AND PLEDGE OF ALLEGIANCE (9:30:16 a.m.)

Ms. Morakis gave the invocation and led the Commission in the Pledge of Allegiance.

III. APPROVAL OF THE AGENDA(9:31:32 a.m.)

Chairman Golboro called for a modification of the agenda at Item IV to include comments from the Commission Members.

MOTION BY MR. KLEIN TO APPROVE THE AGENDA, AS MODIFIED.
MOTION SECONDED BY MR. SHAW.
MOTION CARRIED UNANIMOUSLY.

IV. COMMENTS FROM THE PUBLIC ON ANY ITEM NOT ON THE AGENDA(9:32:13 a.m.)

Alex Ives of the Preservation Foundation distributed to the Commission Members a report prepared by the Town's Historic Preservation Consultant, Jane Day that updated the Town's Landmarks Manual.

Comments were heard from Chairman Golboro who apologized for the last meeting of the Commission. Mr. Golboro suggested that in the future, all agendas be reviewed by the Chairman or the Secretary for approval prior to distribution and suggested that all correspondence being submitted to the Town for consideration by the Commission should first be distributed to the individual to whom it is addressed and then be forwarded to the Commission. It was also suggested that all correspondence be submitted before the later of last mail on the Friday preceding the meeting or for emails, 12:00 p.m. on the Friday before the meeting. Any correspondence coming in after those times would have to be delivered personally by the sender at the meeting.

Attorney Randolph clarified that there was no obligation on the part of staff to circulate correspondence if it comes in beyond a date, but noted it cannot be precluded from coming in as a public record.

It was also noted that this proposal was similar to the policy the Town Council utilizes regarding submittal deadlines. After discussion the following motion was made:

MOTION BY MR. KLEIN TO URGE THAT MATERIALS FOR CONSIDERATION BY THE COMMISSION BE SUBMITTED BY NOON ON THE FRIDAY BEFORE THE MEETING.
MOTION SECONDED BY MR. WIDEMAN.
MOTION CARRIED 7-0 AFER ROLL CALL VOTE.

V. STAFF COMMUNICATION RECOMMENDING THAT THE LOCAL PLANNING AGENCY (LPA) DEFER FINAL ACTION ON ORDINANCE NO. 1-10 AND ORDINANCE NO. 2-10 UNTIL NO SOONER THAN FEBRUARY 16, 2010 (9:40:10 a.m.)

Chairman Golboro called for a motion to accept staff's recommendation to defer final action by the LPA on Ordinance No. 1-10 and Ordinance No. 2-10 until no sooner than February 16, 2010.

MOTION BY MR. KLEIN TO DEFER FINAL ACTION BY THE LPA ON ORDINANCE NO. 1-10 AND ORDINANCE NO. 2-10 UNTIL NO SOONER THAN FEBRUARY 16, 2010.
MOTION SECONDED BY MR. SHAW.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

VI. PLANNING AND ZONING COMMISSION ITEMS:

A. Approval of December 8, 2009 Planning and Zoning Commission Minutes.

MOTION BY MR. SHAW TO APPROVE THE MINUTES OF THE DECEMBER 8, 2009 PLANNING & ZONING COMMISSION MEETING.
MOTION SECONDED BY MR. KLEIN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

B. Planning and Zoning Commission Hearing on the Testa Family, LLC, Application to Amend the Town's Comprehensive Plan and Zoning Code [Item was deferred from the December 8, 2009 Commission Meeting] [Town Staff].

After a brief discussion, the following motion was made:

MOTION BY MR. SHAW TO DEFER HEARING ON THE TESTA FAMILY LLC APPLICATION UNTIL MARCH 16, 2010.
MOTION SECONDED BY MR. KLEIN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

C. ORDINANCE NO.1-10

Ex parte communication declarations were made.
AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE COMPREHENSIVE PLAN OF THE TOWN OF PALM BEACH, AS AMENDED, IN ACCORDANCE WITH THE LOCAL GOVERNMENT COMPREHENSIVE PLANNING AND LAND DEVELOPMENT REGULATION ACT, BY AMENDING THE FUTURE LAND USE ELEMENT TO INCLUDE THE ROYAL POINCIANA MIXED USE OVERLAY AREA IN THE MANNER AND FORM ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE; PROVIDING FOR SEVERABILITY; REPEALING ALL

ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE . [Marcela Camblor]. Royal Poinciana Mixed Use Overlay Comprehensive Plan Amendments

Chairman Golboro called for public comment.

Arnold Hoffman of 150 Bradley Place, noted that the President and members of the Council of the Biltmore Condominium Association were present representing a majority of the residents at the Biltmore who are opposed to the proposal for a vast overlay area.

Frank Lynch, representing the Testa family, stated that the Testa application deals with a five acre parcel which is much smaller than the piece being considered in the ordinance. Mr. Lynch stated that changes to the Comprehensive Plan had to be addressed first and that at some point the project would need ARCOM review.

Bobbie Lyndsay of 212 Caribbean Road asked about hotel/motel use and the density of six dwelling units per acre.

Paul Castro, Zoning Administrator, explained that the Comprehensive Plan changes are for the entire commercial land use category.

Anne Pepper of 333 Seaspray Avenue, read a prepared statement opposing the proposed amendments.

Paul Castro clarified that timeshares are not permitted in the overlay.

Greg Young of Edwards Angel Palmer and Dodge, here on behalf of the Parc Regent Condominium with Jay Denger, General Manager, stated that it would be helpful to see staff's presentation and reserved the right to make comments later.

John Page, Director of the Planning, Zoning and Building Department recapped what happened since the last meeting of the Planning & Zoning Commission and LPA. Mr. Page stated that staff reviewed proposed changes to the zoning text after receiving direction from the Commission, then amended the proposed text to the Zoning Ordinance.

D. ORDINANCE NO. 2-10

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING

CHAPTER 134, ZONING, BY AMENDING ARTICLE I, SECTION 134-2, DEFINITIONS AND RULES OF CONSTRUCTION, BY AMENDING THE DEFINITION OF STORY AND CREATING DEFINITIONS FOR MIXED USE, MIXED USE AREA, PUBLICLY ACCESSIBLE OPEN SPACE; AMENDING ARTICLE VII, OVERLAY DISTRICTS BY CHANGING THE ARTICLE TITLE TO THE ROYAL POINCIANA MIXED USE OVERLAY AREA AND CREATING OVERLAY REGULATIONS FOR PERMITTED AND SPECIAL EXCEPTION USES, ACCESSORY STRUCTURES, OUTDOOR SEATING, A DEVELOPMENT REVIEW PROCESS, MINIMUM LOT AREA, WIDTH AND DEPTH REQUIREMENTS, DENSITY, SETBACKS, HEIGHT AND OVERALL HEIGHT, LOT COVERAGE, LANDSCAPE OPEN SPACE AND PUBLICLY ACCESSIBLE OPEN SPACE, OFF-STREET PARKING AND A PERFOMANCE MONITIORING AND SUNSET PROVISION IN THE FOLLOWING SECTIONS: SECTION 134-1501 PURPOSE AND INTENT; SECTION 134-1502 ESSENTIAL DEVELOPMENT CONCEPTS, SECTION 134-1503 PERMITTED USES; SECTION 134-1504 ACCESSORY USES; SECTION 134-1505 SPECIAL EXCEPTION USES; SECTION 134-1506 ACCESSORY STRUCTURES; SECTION 134-1507 SPECIAL REGULATION FOR STANDS, SEATED DINING AREA AND OPEN COUNTERS FOR EATING AND DRINKING; SECTION 134-1508 GENERAL REVIEW PROCESS; COMMERCIAL USES; SITE PLAN APPROVAL FOR NEW BUILDING, NEW BUILDING ADDITIONS OR CHANGE IN PERMITTED USES OVER CERTAIN FLOOR AREA; SECTION 134-1509 LOT, YARD AND AREA REQUIREMENTS-GENERALLY; SECTION 134-1510 PARKING STANDARDS; SECTION 134-1511 PERFORMANCE MONITORING AND SUNSET PROVISION; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE. [Staff] Poinciana Mixed Use Overlay Land Development Regulations

Mr. Page and Mr. Castro explained some of the changes to the zoning text which include: elimination of building types and graphics; residential density of 6 units per acre; a second story now permitted by right rather than by Special Exception; a third story proposed for use with caveats (the size of the third story cannot exceed 50% of the lot coverage and the square footage of the third floor is carved out of the permissible square footage on the first and second floor); lot coverage changing from 70% to 80%; underground parking now allowed at 100% lot coverage; rooftop parking allowed, but, must be landscaped or screened to the satisfaction of ARCOM; decrease the off-street parking for commercial use to .6 of existing parking standard; the parking standard for residential units reduced to 1.5 spaces for 1-bedroom units and 2 spaces for 2 or more bedroom units; proposed regulations allow for on-street parking in front of the land use to count toward the parking total; alimentation of the use of curb-cuts on Royal Palm Way for those lots with thru access on Sunset Avenue; overlay rules remain optional; continuation of sunset provision.

Paul Castro stated that he met with Mr. Lawrence to review the ordinance. Mr. Castro stated that his concern in drafting the revised ordinance was that the setbacks for side yards are now much different. Mr. Castro asked for input from the Commission.

Eugene Lawrence stated that he felt staff had done an excellent job in putting this ordinance together and recommended its approval.

Mr. Klein stated that he agreed with Mr. Lawrence.

A brief discussion continued regarding side setbacks, parking, commercial standards and variances.

Councilman Bill Diamond of 220 Wells Road asked if in either of these ordinances there was any other affect on any other geographical part of the town and Mr. Page answered no.

Mr. Castro suggested the elimination of language in Ordinance No. 1-10 regarding timeshares and hotels.

A discussion took place regarding the Commission's legislative decisions in creating the Ordinance and comments were heard from Attorney Randolph.

Mr. Shaw stated that he was opposed to rooftop parking and added that he felt the Comprehensive Plan should be changed annually.

Mr. Crampton commented that he felt the area looked tired, tattered and worn and agreed that the parking standards should be relaxed.

Mr. Schuler stated that timesharing should be taken out and that the esthetics should be left to the Landmarks and Architectural Commissions.

Mr. Klein stated that he felt it was important to preserve the nature and character of the community.

Mr. Page stated that he wanted to bring the issue of publicly accessible open space to the Commission's attention and asked for direction from the Commission. Mr. Castro explained the details of open space in the Ordinance.

Chairman Golboro stated that he met with the Biltmore and the Towers

Condominiums and expressed some of their concerns. Discussion continued.

All Commissioners agreed that the mixed-use area would not be compatible to single family dwellings.

Mr. Castro described the definition of property line and side yard setbacks and a brief discussion ensued.

Chairman Golboro recommended postponing any decision until a determination is made if Publix purchased additional land.

Mr. Rose stated that he had a problem with delaying a decision.

Attorney Randolph urged the Commission to consider the use of property and not the ownership of property in making a decision.

Mr. Shaw stated that a grocery store is an asset to any community, but, not when they cause congestion. Mr. Shaw added that he would love to see Publix move off the island and suggested the Town help them do so.

Mr. Klein agreed it was time to move forward.

Robb Allen of 150 Bradley Place agreed with Mr. Shaw regarding rooftop parking, but, stated that he did not want to see Publix leave the island or build rooftop parking.

Mr. Castro stated that he had seen draft plans for Publix, but, neither show rooftop parking.

John Grosskoff, General Manager of Palm Beach Towers urged the Commission to reduce the size of overlay area to the original five acres.

Tim Frank of 230 Pershing Way, West Palm Beach, representing the Towers Condominium stated that he was concerned about hearing that parking requirements were too onerous.

Polly Reed of 231 Chilean Avenue stated that she hoped the ordinance would be strong enough to deter property owners from neglecting properties.

Eric Javits of 150 Bradley Place stated that he does not want a magnet for more traffic and that he felt rooftop parking is an abomination. Mr. Javits warned the Commission to be cautious.

Greg Young on behalf of the Parc Regent Condominium, added that this area is the main entrance for the Condominium and their concern was safety, traffic impact, parking, massing and density. Mr. Young asked questions regarding town-serving requirements; balconies, setbacks and floor area; and objected to the parking reductions.

Mr. Castro stated that there are no changes to the town-serving requirements and discussion continued.

Mr. Rose stated that he felt the Commission has bent over backwards to address concerns of the Town and the neighborhood.

Neil Aronstan, President of the Biltmore Condominium Board stated that they support the measured development improvement of the neighborhood and requested moderation.

Mr. Crampton stated that he felt this Commission was coming to the conclusion that some flexibility is desirable, and, added that any changes to these ordinances would take place within the existing framework of citizen oversight.

Jay Denger, General Manager of Leverett House Condominium stated that they are concerned about the canyon affect on Sunset Avenue created by very tall buildings.

Mr. Cloninger stated that he felt the Commission was going in the wrong direction and must be careful and deliberate and added he does not want to see Publix disappear or expand.

Mr. Klein added that he believes the record shows this Commission has been more deliberative and has considered these items for years.

Chairman Golboro suggested a motion be made to bring this item in its final form back next month to the Planning & Zoning Commission for a vote as the Commission and then the LPA.

Discussion continued.

MOTION BY MR. KLEIN TO RECOMMEND ADOPTION OF ORDINANCE NO. 2-10, AND FOR THE COMMISSION TO MEET NEXT MONTH AS THE LPA TO CONSIDER ITS APPROVAL. MOTION SECONDED BY MR. LAWRENCE.

Discussion continued and Mr. Castro asked for more clear direction from the Commission regarding rooftop parking and visibility. It was determined that rooftop parking should be removed.

MR. KLEIN WITHDREW MOTION TEMPORARILY.

Mr. Castro asked for clarification about hotel and time share.

MOTION BY MR. SHAW THAT ROOFTOP PARKING BE EXCLUDED. PERMANENTLY COVERED PARKING IS PERMITTED.
MOTION SECONDED BY MR. WIDEMAN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

MOTION BY MR. SHAW TO ELIMINATE THE REDUCTION MULTIPLIER OF .6 (NO REDUCTION IN PARKING).
MOTION FAILED FOR LACK OF SECOND.

MOTION BY MR. SHAW TO REMOVE SECTION 1 UNDER PARKING STANDARDS FROM ORDINANCE NO. 2-10.
MOTION DIED FOR LACK OF A SECOND.

MOTION RENEWED, AS MODIFIED, BY MR. KLEIN TO INCORPORATE CHANGES MADE REGARDING ROOFTOP PARKING AND ANY OTHER CHANGES RECORD SHOWS WERE AGREED TO.
MOTION FAILED.

A brief discussion took pace regarding side yard setbacks.

MOTION BY MR. ROSE THAT SIDE YARD SETBACK BE ZERO UP TO 25 FEET.
MOTION SECONDED BY MR. SHAW.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

A brief discussion took place regarding setbacks.

MOTION BY MR. SHAW TO MODIFY THE FRONT YARD SET BACK (SECTION 5C) FROM FIVE TO 15 FEET ON ALL OTHER STREETS.
MOTION SECONDED BY MR. ROSE.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

MOTION BY MR KLEIN TO APPROVE ORDINANCE NO. 2-10 AS MODIFIED, AND, TO RECOMMEND ITS ADOPTION BY THE LPA AND TOWN COUNCIL.
MOTION SECONDED BY MR. ROSE.

Attorney Randolph clarified that the Commission was just authorizing staff to bring these changes back to the next meeting in which the Commission would sit as both the Planning & Zoning Commission and the LPA.

Comments were heard from John Grosskoff, Tim Frank and Eric Javits.

MOTION CARRIED 6-1 AFTER ROLL CALL VOTE WITH MR. SHAW OPPOSED.

Mr. Page stated that Ordinance would be brought back with the changes next month.

E. Town-Serving Regulations [Town Staff]

Chairman Golboro called for discussion on Town-Serving.

Anita Seltzer requested that it be put on record that eleven different maps were presented to the residents.

Mr. Page stated that after Mr. Rose and Mr. Klein did an analysis of the town-serving regulations, staff prepared an analysis of the town-serving ordinance and three elements that cause staff some concern.

Mr. Castro provided a summary of three issues staff has had regarding the enforcement side of the town-serving regulation. Mr. Castro stated that one issue was with the 2000 square foot limitation and added that a study would need to be done if there was a policy decision to change the 2000 square foot threshold. Another item of concern to staff was the conditions of approval placed on some town-serving uses requiring town-serving documentation be provided on an annual basis and to have more definitive criteria for the types of documentation the applicant must provide to the town to prove town-serving.

Mr. Crampton stated that he would be in favor of a close review of the town-serving requirements and asked how long such a study would take, how much this study would cost, and, who would be able to do it.

Mr. Castro stated that Bill Brisson of Adley and Associates did the original study and is the most familiar with the town-serving regulation and how that was adopted. Mr. Castro stated that he thought there might be an RFP process and that the study would be about a six month process. Mr. Castro stated that the Town Council may send this to the Ordinances, Rules and Standards Committee for further consideration. Discussion continued.

Mr. Shaw stated that he was not bothered by the 2000 square foot limitation, but, by the use of the gross leasable area vs. net leasable area. Mr. Shaw suggested that providing evidence of town-serving should be required at the first year, third year and then as needed per staff recommendation. Mr. Shaw asked if this should be addressed through ORS.

Mr. Castro stated that zoning issues come to the Planning & Zoning Commission first, once transmitted to the Town Council, the Town Council can refer to the ORS for a recommendation.

Bob Moore, representing the South County Road Association as a Director, endorsed Mr. Castro's statement that excluding Mr. Randolph, Mr. Brisson would be the person most familiar and knowledgeable about town-serving regulations. Mr. Moore stated that he was surprised that more of the business community was not here. Mr. Moore stated that he hoped the Commission would act positively and recommend that it is time to take another look at the sizes and the town-serving concepts.

Additional comments were heard from Mr. Shaw and Alex Ives of the Preservation Foundation.

Chairman Golboro stated that his concern was the cost to small Mom and Pop operations to prove town-serving annually.

Additional comments were heard from Mr. Shaw and Mr. Moore. Mr. Moore stated that the annual submittal of town-serving documents to the town before the issuance of a business tax receipt is an onerous requirement and is quite costly.

John Page stated that if there is to be any change in the 2000 square foot threshold there would have to be a lot of data collection and analysis done. Mr. Page suggested the Commission allow staff to come back in February with a description of how much work could be done in-house, how much would have to be farmed out, etc and give the Commission a more complete package for direction. If a decision were made, this recommendation would have to go to the Council for approval and budgeting.

Mr. Spaziani stated that he felt the 2000 square foot limitation should stand since it has worked in the past and the town prevailed in court.

Mr. Klein stated that he felt it was essential to have a town-serving regulation to preserve the character of the town. Mr. Klein added that he would like to see some update on the numbers and the Commission would be prudent in doing that and urged that this study be done expeditiously with Mr. Brisson.

Chairman Golboro suggested staff bring back some statistics as soon as possible and Mr. Page agreed to collect as much information as possible and bring it back next month.

Mr. Cloninger noted that the Town needed to be careful in hiring another consultant when the budget is so tight and added that the amount of vacant space has to do with the economy more than with the town-serving requirements.

Mr. Shaw stated that so the business community knows what to do, he would like to see a resolution prior to the expiration of business tax receipts, which falls on September 30.

VII. COMMENTS OF THE PLANNING AND ZONING COMMISSION/LOCAL PLANNING AGENCY AND PLANNING, ZONING AND BUILDING DIRECTOR(12:21:45 a.m.)

Mr. Page reminded the Commission that they would meet as the LPA on February 16, 2010.

VIII. ADJOURNMENT

MOTION BY MR. SCHULER TO ADJOURN AT 12:22 P.M.
MOTION SECONDED AND CARRIED UNANIMOUSLY.

Respectfully Submitted,

Alan S. Golboro, Chairman Town of Palm Beach Planning & Zoning Commission	Leslie A. Shaw, Secretary Town of Palm Beach Planning & Zoning Commission