PLANNING AND ZONING COMMISSION
2008-2009 ZONING HEARING
RECORD AND REPORT
TUESDAY, JANUARY 6, 2009, 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 (0:00:29)
Chairman Guttman called the meeting to order at 9:30 a.m.

PRESENT:
William M. Guttman, Chairman
Alan S. Golboro, Secretary
John H. Schuler, Member
Walter Anthony Dowell, Member
Eugene Lawrence, Member
Floyd Wideman, Jr., Member
E. James Ryan, Alternate Member
C. Tanner Rose, Jr., Alternate Member
John S. Page, Director of Planning, Zoning & Building Department
Paul Castro, Zoning Administrator
John C. Randolph, Town Attorney

ABSENT: Leslie A. Shaw, Member (unexcused)

Let the record reflect that Alternate Member Ryan will vote due to Mr. Shaw's absence.

RECORDING SECRETARY: Deborah A. Morakis

II. INVOCATION AND PLEDGE OF ALLEGIANCE (0:01:05)
Ms. Morakis gave the invocation and led the Commission in the Pledge of Allegiance.

III. PROOF OF PUBLICATION (0:01:58)
Mr. Castro stated that he had proof of publication.

IV. COMMENTS FROM THE PUBLIC (0:02:10)

There were no comments heard from the public.

V. REGULAR AGENDA (0:02:37)

A. MINUTES: December 2, 2008
Approval of the minutes of the Planning & Zoning Commission Meeting

MOTION BY MR. SCHULER TO APPROVE THE DECEMBER 2, 2008, RECORD AND REPORT.
MOTION SECONDED BY MR. WIDEMAN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

B. 2008-2009 Study Items, Phase III

1. Study Item 3. R-B to R-A re-zoning study, or modification in the R-B zoning district for lots 20,000 square feet or more in area to allow more cubic content ratio.
[CG&A] **(0:03:10)**

Mr. Paul Castro provided a brief overview of Study Item 3 and introduced Steve Belden of Calvin Giordano and Associates. Mr. Belden presented Study Item 3 to the Commission.

Attorney Jim Brindell, spoke on behalf of The Committee on Fairness in Zoning, which is made up of 41 parcel owners between Dunbar Road and Reef Road that he represents.

Attorney Maura Ziska spoke on behalf of her client, a property owner who would not benefit by this change since his project is over the Cubic Content Ratio (CCR).

After a brief discussion, Mr. Castro stated that this original study item was intended to look at only lake front properties, but, was later modified to also look at lots on the ocean that are zoned R-B, as well as lots in the middle that are more than 20,000 square feet. Mr. Castro stated that back in 1991 or 1992, the Planning & Zoning Commission was given the task to study the CCR. In 1995 or 1996, Staff was again directed to go back and reduce the CCR, thereby creating the sliding scale. Mr. Castro stated that Staff does not think there is enough control within the zoning code to eliminate the CCR.

MOTION BY MR. GOLBORO TO APPROVE THE STAFF RECOMMENDATION FOR STUDY ITEM 3.
MOTION SECONDED BY MR. WIDEMAN.
MOTION CARRIED 6-1 AFTER A ROLL CALL VOTE WITH MR. LAWRENCE DISSENTING.

C. Old Business

1. Study Item 4. Modify Ocean Vista Requirement in the Beach Area Zoning District Relating to State Law [CG&Z] **(0:25:20)**

Mr. Castro stated that he and John Page, Director of the Planning, Zoning and Building Department, went into the field with foam boards of 30, 36 and 40 inches to determine what height hedges could be without blocking the ocean vista. Mr. Castro stated that Staff's recommendation is to create an under story of four to five feet, which could be maintained using the State Code in a prospective manner, not retrospectively. Mr. Castro added that walls and other structures should be included in whatever standard may be recommended by the Commission.

Comments were heard from Resident Jack Maxey of 244 Nightingale Trail.

Attorney Ron Kolins, addressed the Commission and stated that he had prepared the "White Paper" which was previously distributed to the Commission. Mr. Kolins stated that for the Town to require or to create a distraction for drivers would be unsound public policy. Mr. Kolins asked whether the objective of the Town was to allow drivers and passengers to see the horizon or to have a beautiful roadway.

Mr. Ryan stated that after receiving "The White Paper," he traveled up and down the road and measured vegetation along the way. Mr. Ryan suggested that vegetation be measured from the root system and not from the crown of the road and that the planting of Seagrape plants west of the property lines or sea walls should be prohibited. Mr. Ryan added that he has never seen an accident caused by someone looking at the ocean vista.

Mr. Maxey recommended that the Town of Palm Beach look at other neighboring communities to see how they handle vista laws.

Chairman Guttman added that only four residents have spoken about this issue and added that the Town has asked the Code Enforcement Department to be more proactive in their enforcement of this ordinance.

Mr. Paul Brazil, Director of the Public Works Department, clarified that he and his Staff meets with the Department of Environmental Protection (DEP) and Code Enforcement Department annually to review the Seagrape trimming needed on Town property. Mr. Brazil added that Public Works is also responsible for the majority of the street lighting system within the Town and stated that a sea turtle monitor, who is permitted through DEP, is retained by the Town to ensure compliance with DEP regulations. Mr. Brazil stated that the Public Works Department also works closely with FPL, as well as private property owners, in order to obtain compliance.

Attorney Randolph stated that the recommended changes were intended to bring the Town ordinance more into compliance with the State regulations by including verbiage to indicate that the State regulations would trump the Town regulations, if there was ever a dispute. Mr. Randolph added that there is also language included relative to the potential for the trespass of artificial light for marine nesting habitat when trimming existing vegetation. This proposal is intended to ameliorate the alleged inconsistencies between State and Town laws. This proposal does away with any distinction between the 48-inch rule, which was adopted in 1974, and, the Ocean Vista Rule, which is the 30-inch rule adopted in 1993, and which applies to only 50% of the property.

Mr. Castro clarified that the intent was to prospectively enforce the existing code, and, that any properties not grand fathered would need to meet the code as adopted by the Council.

Mr. Wideman suggested that a number other than 48-inches be used to measure across the board.

Chairman Guttman agreed with Mr. Wideman. Mr. Castro requested, and it was the consensus of the Commission, that the root system would be measured from grade.

Mr. Randolph recommended that the part of the regulation dealing with trees be based on State law and added that the Commission did not have to approve the wording of the Ordinance today. The Commission only needed to approve the concept.

After a lengthy discussion, the following motion was made:

MOTION BY MR. WIDEMAN TO ASK STAFF TO DRAFT A DOCUMENT WHICH REFLECTS A SINGLE HEIGHT ON SHRUBBERY BACK TO THE 1974 CONCEPT WITH WHATEVER HEIGHT IS CHOSEN (BUT NOT 48-INCHES, PROBABLY 42-INCHES OR LESS), AND, CONFIRM THE TOWN IS NOT IN VIOLATION OF ANY OF THE STATE STATUTES.
MOTION SECONDED BY MR. SCHULER.
Discussion continued.
Chairman Guttman added that a measurement below 42-inches would be a violation of State Law and asked that the motion of 42-inches be across the board.
MOTION AMENDED BY MR. WIDEMAN TO INCLUDE THE HEIGHT OF 42-INCHES.
AMENDED MOTION SECONDED BY MR. SCHULER.
Mr. Castro clarified that the Commission intended to include walls in that motion and that the measurements would be made from grade.
MOTION CARRIED 6 TO 1, WITH MR. RYAN DISSENTING.
Mr. Kleid asked if this measurement was being made from the street or grade

and Mr. Ryan stated that he felt the measurements should be made from the crown of the road, but, the maximum should be a number lower than 42-inches. Mr. Randolph confirmed that the measurement would be from the crown of road.

Chairman Guttman requested that Item 15 be heard before Study Item 15, since there were people in the audience for this item.

2. Study Item 5. Modify Restaurant Outdoor Seating
   [CG&A and Town Planning Staff] **(1:51:41)**

Mr. Castro stated that based on the direction received from the Planning & Zoning Commission, Staff redrafted the language related to outdoor seating. Staff attempted to create a special exception process and an administrative process, leaving in the regulations for a special exception within the two zoning districts where it was allowed, and, also creating the same existing language within the other zoning districts where outside seating was proposed. Mr. Castro added that this proposed language included a closing time of midnight for outside seating, and, regulations that specifically looked at outdoor seating adjacent to or abutting residential uses.

Chairman Guttman stated that he had provided Mr. Castro with technical comments prior to this meeting. Mr. Castro asked about the change of residential use to residential building and stated that his concern was for mixed-use residential/commercial uses. Chairman Guttman stated that would like to meet with Mr. Castro to go over this issue.

Mr. Golboro stated that he felt that all past comments and discussion were incorporated in Staff's proposal.

MOTION BY MR. GOLBORO TO ACCEPT STAFF'S RECOMMENDATIONS ON STUDY ITEM 5.
MOTION SECONDED BY MR. WIDEMAN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

3. Study Item 6. Intersection Vision Study
   [ACE and Town Planning Staff] **(1:56:24)**

Mr. Castro introduced the Study Item and stated that this would not be incorporated retroactively and would be for a major renovations or new construction. Mr. Castro stated that Staff did provide some language for a waiver process and from that standpoint, looked at specifically letting the Architectural Commission or Landmarks Preservation Commission consider any waiver relating to a major renovation or new home construction. Some language also deals with issues of who would be responsible to place the markers down and when they would be installed. Mr. Castro stated that this would not be enforced retroactively, but, would be triggered by a new home or a major renovation.

Mr. Wideman asked the Commission to keep in mind that the primary reason for this Study was public safety, not aesthetics.

Chairman Guttman stated that at the last meeting, it was voted that public safety issues clearly took precedence over aesthetic issues and added that in some special circumstances, ARCOM should be given the opportunity to review waiver requests, taking into consideration public safety. Mr. Guttman asked what party would be legally responsible for laying out markers in the road and expressed his concern with a potential liability issue.

Brian Merson with American Consulting Engineers addressed the Commission and stated that the surveying communities regularly lay these site triangles out and added that a surveyor would do this which would reduce the cost and burden to the Town. Mr. Merson suggested that the markers could be provided by the Town thereby providing some consistency and stated that no significant defects were seen in the ordinance as presented.

Mr. Golboro stated that he felt it was time to take action and move ahead with implementation.

Mr. Brazil explained the review process and stated that the civil engineer and the land surveyor usually propose a design, the Engineering arm of Public Works reviews the design before anything is approved. The same engineer who reviewed the proposed plans also reviews it in the field and this has been successful.

Chairman Guttman called for a motion to approve Study Item 6 with some amendments. Discussion continued regarding the height of permitted vegetation being 30-inches or 36-inches. Mr. Guttman's concern was the liability in drawing the markers and felt the permitted height of vegetation should be 36-inches.

Mr. Merson stated that it would be a policy decision and that there could be some flexibility.

Susan Markin stated that her major concern was safety and asked the Commission to reconsider a 30-inch maximum height instead of 36-inches, and, urged the Commission to keep it at 30-inches but to allow a growth factor of 6-inches.

After additional discussion and comments, the following motion was made:

MOTION BY MR. GOLBORO TO APPROVE STUDY ITEM 6, AS PRESENTED BY STAFF AND AS AMENDED BY MR. GUTTMAN'S COMMENTS WITH THE FOLLOWING EXCEPTIONS: THE 36 INCH REQUIREMENT, BACKPLANTING AND THE REQUIREMENT THAT PUBLIC WORKS BE RESPONSIBLE FOR THE INSTALLATION OF THE MARKERS. THE COMMISSION CONCURRED WITH STAFF'S RECOMMENDATIONS ON THOSE ITEMS.
MOTION SECONDED BY MR. WIDEMAN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

Let the record reflect that Study Item 15 was heard out of order at the request of Staff.

4. Study Item 15. **(1:45:00)**
   (a) Zoning Amendment Application to Modify the Off-Street Parking Requirement for Retail Uses in the C-PC Zoning District [CG&A]
   (b) Modify the Parking Requirement for Retail Uses in all Commercial Zoning districts as proposed by the Town's Consultant and Staff [CG&A]

Chairman Guttman apologized to Mr. Eubanks for being harsh at the last Planning & Zoning Commission Meeting.

Mr. Castro stated that this item was deferred from the last Planning & Zoning Commission Hearing in order to provide the applicant and an objector an opportunity to address some issues. Mr. Castro stated that in the interim, Staff came upon some language in the 1979 agreement that dealt with the Royal Poinciana Plaza redevelopment that concerned Staff regarding provisions for off-street parking and some grand fathering for off-street parking. Given that this information was found last Friday, Staff was concerned about moving forward without doing further research. In the interim, Ms. Ziska understood Staffs concerns and requested a one-month deferral. Mr. Castro stated that Staff is concurring with the applicant to defer this at least one month to give Staff an opportunity to further research this issue relative to both the agreement and the amendment.

Chairman Guttman stated that it seems this matter has become a matter of contractual interpretation and is a contractual dispute. Mr. Guttman felt this was beyond the purview of the Planning & Zoning Commission and should be settled by Staff and the Applicant and anyone else other than the Planning & Zoning Commission.

MOTION BY MR. GOLBORO TO POSTPONE STUDY ITEM 15 UNTIL THE FEBRUARY 3, 2009 PLANNING & ZONING COMMISSION MEETING.

Mr. Schuler asked if this issue should be eliminated and brought back and Mr. Castro stated that this item could be re-advertised, if necessary.
MOTION SECONDED BY MR. WIDEMAN.
MOTION CARRIED 7-0 AFTER A ROLL CALL VOTE.

5. Consideration of the draft Summary of Planning and Zoning Commission Actions from the November 4, 2008 and December 2, 2008 meetings. [Town Planning Staff] **(2:25:00)**

Mr. Castro provided an overview of the Summary of Planning and Zoning Commission Actions and explained the format of the draft. Mr. Castro stated that he would incorporate the language as recommended by Staff and which was supported by the Commission for adoption. This document includes information such as when and how many times each study item was considered by the Planning & Zoning Commission, and, the Commission's final action. Mr. Castro added that Study Item 4 (Ocean Vista) would be brought back to the Commission for further consideration at the February meeting, when Mr. Randolph would provide language for the Commission to reconsider. Mr. Castro stated that he would summarize the Commission's actions, incorporate the Commissions recommendations and provide this report to the Town Council at the February Town Council meeting.

6. Status Report on Objections, Recommendation and Comments (ORC) Report from the Florida Department of Community Affairs [Town Planning Staff] **(2:27:00)**

Mr. John Lindgren, Town Planning Administrator, stated that the ORC report was received on November 24, 2008. The Town's response must be submitted within 120 days. Mr. Lindgren stated that there were fourteen objections and seven comments made by the Florida Department of Community Affairs, most of which were minor in nature. The one significant issue was the objection of how the Town addresses affordable housing. Mr. Lindgren stated that Staff is researching how other communities in this area handle that issue and stated that Staff will meet with Iler Planning Group to brainstorm and go over the other objections and comments. Mr. Lindgren added that Staff plans to present the draft of the written response to DCA to the Planning & Zoning Commission at the February Planning & Zoning Commission meeting so that the Commission can make a recommendation to the Town Council for their ultimate recommendation or approval.

7. Update on the Royal Poinciana Area Planning Study.

[Town Planning Staff] **(2:31:30)**

Mr. John Page provided the Commission with a brief history and update on this Study Item. Mr. Page reported that the Town Council, at their December meeting, condensed this issue to the Royal Poinciana Way District, which is geographically defined as the area bounded by Royal Poinciana Way, Sunrise Avenue, Bradley Place and North County Road. The Town Council stated that it wanted to continue forward to Phase II of the study work which would involve any necessary changes to the Town's Comprehensive Plan and Zoning Ordinance which would be necessary for development or redevelopment to occur within this Royal Poinciana Business District. The Council referred this issue back to the Planning & Zoning Commission and requested that the Commission determinate what recommendations could be made to the Council without the use of outside consultants, which will identify the issues that may require a consultant. The Town Council has requested feedback from the Commission regarding redevelopment of the area.

Chairman Guttman stated that he felt there were three major issues that needed a consensus, if a consensus exists, involving the Royal Poinciana Business District. These issues are: population density, height of mixed-use buildings, and lot coverage. Mr. Guttman stated that his take on what the Town Council decided last month was that if a consensus could be reached, the Town Council would then authorize the next step, which would be the writing of the rules for the proposed Royal Poinciana Business District.

Council Member David Rosow added that there was one other element critical to this process; that is, to ensure there is sufficient resident input to the process. Mr. Rosow suggested that the Planning & Zoning Commission hold no less than two well advertised meetings so the public could come and express their desires about the Royal Poinciana District. Susan Markin added that there is one other element and that is the opportunity for the Planning & Zoning Commission to look at what exists in that district now and to codify what is there now, if that is what residents want to keep there.

Discussion continued and it was the consensus that input from the community was desired.

Mr. Rosow stated that he was not personally in favor of "spot zoning", and, that he could care less if the district remains as is or if the residents want it changed. "We owe Testa's a response, they have waited patiently for years."
Chairman Guttman stated that he wanted to have two or three meetings

during the month of March and starting with the Testa application. Mr. Guttman stated the application proposes to amend the Comprehensive Plan to modify three existing policies: to allow an increase in the maximum building height in any commercial zoning district from three to four stories; to allow for an increase in the maximum lot coverage from 75% to 85% in any commercial zoning district; and, to allow for a maximum density of 30 dwelling units per acre in any commercial district. Chairman Guttman suggested that the Planning & Zoning Commission reconsider, with the input from the community, the appropriate height, lot coverage and density for the Royal Poinciana Way Business District from a Palm Beach driven planning perspective based in part on the first charrette. Mr. Guttman stated that he has also asked the Civic Association and Mr. Page to provide an update on the Testa Application and our town-driven planning process at a Civic Association forum in February. Mr. Guttman said he would personally ask the Shiny Sheet to widely report the fact that the Planning & Zoning Commission would be engaged in this issue. He also asked the Preservation Foundation to get as many of their members to participate as possible.

Mr. Ryan suggested that the meetings be on consecutive days or weeks. Chairman Guttman suggested that a third meeting be held during the month of March and requested that Mr. Page determine what dates would be convenient during the middle to end of March. Mr. Page agreed to do so.

8. Report on action taken by Town Council on additional 2008-2009 zoning season study items [Town Planning Staff] **(2:58:52)**

Mr. Page reported that Staff collected a list of proposed zoning season study items in the spring and reported this list to the Council in May 2008. The Town Council pared down this list to approximately twelve items. Mr. Page stated that Chairman Guttman presented an annual report to the Town Council in November 2008. The Council discussed the list of zoning season study items and asked if the list should be expanded. In December 2008, Mr. Page provided the Council with some background data indicating that the list of 19 study items was pared down to 12 study items and also presented the Town Council with the probable cost to expand that list, which could approach $125,000.00. This amount was not budgeted and Town Council decided to stick with the original list of study items.

Mr. Page added a footnote here and stated that the Town Council's Ordinances, Rules and Standards Committee met several times this fall and discussed the off-street parking requirement. There was concern that a more stringent off-street parking requirement was needed for large, new homes, and, the Council requested that Staff create a more stringent parking requirement recommendation for the Planning & Zoning Commission to consider soon.

9. Report on limiting the Planning & Zoning Commission's

planning role to land use issues unless pre-approved by Town Council [Town Planning Staff] **(3:03:16)**

Chairman Guttman stated the he has identified areas where he felt the Commission should not be doing planning, such as Coastal Management, water, Historic Preservation, etc. Chairman Guttman stated that at the last Planning & Zoning Commission meeting, Alan Golboro asked Staff a question about Capital Improvements and Staff made a point of saying they would like to take Capital Improvements off the template since they felt that was within their bailiwick. In the memo to the Town Council, Staff said that unless preauthorized by the Town Council, the Commission's planning role should be limited to land-use based matters. Chairman Guttman pointed out in his report to the Council some of the tensions that are inherent in trying to figure out how to adequately plan without stepping on other peoples toes and asked the Town Council to try to back the Commission as much as they could so that the Commissions planning function was a meaningful process.

John Page agreed with Chairman Guttman and stated that he did not think the Council intended to restrict the planning work that the Commission does, but, with the exception that the Council was careful about seeing that the work that the Commission does should not duplicate the work that anybody else in Town is already doing. The issue of potable water and coastal management are two excellent examples of work already assigned to other groups, councils, or committees, etc. Mr. Page stated that when the Commission determines it would like to expand its role to include an in-depth analysis of some other study item, he would take that to the Council for approval.

Mr. Golboro stated that he felt the Commission should have a list of planning items on tap that Staff and the Commission are working on and added that he felt the Planning portion of the Commission's job is understated.

Chairman Guttman stated that the Commission was asked by the Town Council to define the Commission's planning role and one of the suggestions made was that the Commission be named the Town's Local Planning Agency. Chairman Guttman stated that he realized the Commission had to be sensitive to the mission of other bodies. The Commission ranked the list of planning issues it wanted to study. The Town Council denied this request since these items involved the expenditure of money. Chairman Guttman suggested that at the February Planning & Zoning Commission Meeting, the Commission attempt to identify planning issues it would like to focus on.

VI. COMMENTS OF THE PLANNING AND ZONING COMMISSION AND

PLANNING, ZONING AND BUILDING DIRECTOR. **(3:14:24)**

Mr. Page stated that in December he discovered an error in getting communications to the Commission and stated that he would see that problem gets fixed and does not happen again.

Mr. Golboro wanted to thank the Manager of the Biltmore condominium who fixed an unsightly condition that existed on the Lake Trail side of the building. Mr. Golboro stated that he mentioned the condition to the Manager after a Council meeting, and, the Manager acted immediately to correct the condition.

VII. ADJOURNMENT **(3:15:48)**

MOTION BY MR. SCHULER TO ADJOURN AT 12:45 p.m.
MOTION SECONDED BY MR. RYAN.
MOTION CARRIED UNANIMOUSLY WITHOUT THE BENEFIT OF A ROLE CALL.

Respectfully submitted,

William M. Guttman, Chairman	Alan S. Golboro, Secretary
Town of Palm Beach	Town of Palm Beach
Planning & Zoning Commission	Planning & Zoning Commission

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