PLANNING & ZONING COMMISSION
2007-2008 ZONING HEARINGS
RECORD AND REPORT
WEDNESDAY, JANUARY 2, 2008 9:30 a.m.

I. CALL TO ORDER AND ROLL CALL: Chairman Guttman called the meeting to order at 9:30 a.m.

PRESENT: William M. Guttman, Chairman
Alan S. Golboro, Secretary
Lowry M. Bell, Jr., Member
Elizabeth S. Murphy, Member (arrived 9:32 a.m.)
John H. Schuler, Member
Leslie A. Shaw, Member
Walter Anthony Dowell, Alternate Member
Floyd Wideman, Jr., Alternate member
John S. Page, Director of Planning, Zoning & Building
Paul W. Castro, Zoning Administrator
John C. Randolph, Town Attorney

ABSENT: Eugene Lawrence, Alternate Member (excused)

RECORDING SECRETARY: Deborah A. Morakis

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

III. PROOF OF PUBLICATION: Mr. Castro verified that proof of publication had been accomplished with regard to this meeting.

IV. COMMENTS FROM THE PUBLIC: There were no comments from the public at this time.

V. CONSENT AGENDA

A. MINUTES: NOVEMBER 6, 2007
APPROVAL OF THE MINUTES OF THE PLANNING AND ZONING COMMISSION MEETING

Mr. Bell stated that at the November 6, 2007 Planning & Zoning Commission Meeting, prior to the motion he made to endorse the use of Treasure Coast Regional Planning Council there was quite a bit of conversation that he would like to have included in the minutes since he objected to the way the Town handled the matter, i.e., approving TCRPC without the Commission first having seen their presentation. Mr. Bell noted that there were a lot of comments that should be included in the minutes.

Mr. Castro advised the Commission that staff would be going to a more abbreviated form of minutes in the future.

Mr. Guttman asked that a short paragraph be added to the November 6, 2007 Minutes, before the endorsement resolution, to meet Mr. Bell's objections.

Mr. Schuler stated that on page 6 of the November 6, 2007 minutes, there is a comment he made, "there's not anything that comes out of it" and he asked that "it" be clarified to read "this approach."

Mr. Shaw stated that he greatly appreciated the depth of the minutes and stated that the minutes were "fabulous" and he would not like to see them abbreviated. Mr. Shaw stated, "To save paper, print on two sides. It is critical that the Commission have a good set of minutes for recollection purposes. Sometimes minutes are so short that you do not know what was said. We are approving minutes on concept more than content. By today's comments, you can see we are dealing with content."

Mr. Bell added that when he joined the Commission eight years ago, there were no minutes produced.

Chairman Guttman stated that as part of the 407-page comprehensive review of the Town's budgeting process, one of the cost-cutting items that was suggested was to resort to some sort of abbreviated form of minutes. Mr. Guttman added that he does not necessarily endorse that. Chairman Guttman noted that the language on the top of page 8 of the November draft minutes, (E) PRESENTATION BY THE TREASURE COAST REGIONAL PLANNING COUNCIL ON THE ROYAL POINCIANA AREA PLANNING STUDY, should be moved to page 3 in place of or following the 2007-2008 Zoning Season Staff Report, Phase I title. Chairman Guttman added that on page 22, there is a motion made by and seconded by Mr. Shaw that needs to be corrected.

Mr. Golboro noted that in the Summary of Planning & Zoning Commission actions, his name was misspelled.

MOTION BY MR. BELL TO APPROVE THE NOVEMBER 6, 2007 MINUTES,

WITH CORRECTIONS.
MOTION SECONDED BY MR. GOLBORO.
MOTION CARRIED UNANIMOUSLY.

B. MINUTES: DECEMBER 4, 2007
APPROVAL OF THE MINUTES OF THE PLANNING AND ZONING COMMISSION MEETING

MOTION BY MR. SCHULER TO APPROVE THE DECEMBER 4, 2007 MINUTES.
MOTION SECONDED BY MR. BELL.
MOTION CARRIED UNANIMOUSLY.

VI. REGULAR AGENDA

A. Old Business

1. Consideration of proposed modifications to Study Items 2, 6 and 7 of the Zoning Proposal Staff Report, Phase I.

Chairman Guttman asked Mr. Castro to also address Items 5 and 9, and stated that he had some non substantive comments on Study Item 10. Although not reflected in the minutes of the November meeting, in making the motion to approve Study Item 5, Mr. Bell said that the first paragraph of proposed 134-2103 (3) was made and approved subject to a correction that goes like this: "The Town Council shall grant or deny the application for the special exception with site plan review to complete the distribution electric substation." Although the summary of Study Item 9 properly reflects that the Commission approved 134-2 of the formula restaurant provision, subject to a modification that removed the word establishment, the language on page 6 in the summary does not incorporate that change.

Study Item 2
Mr. Castro provided an overview of Study Item 2 to encapsulate the discussion by the commission and modifications made when the Commission makes its recommendations, they will be provided to the Town Council. Mr. Castro stated that the consensus was to defer Study Item 2, have staff investigate more site specific language, and to include only the clubs to allow antennas, as a permitted use. Staff tried to simplify the language, which eliminates lots of more than 20,000 square feet, and simply includes all private clubs. If the commission likes this language, it can be incorporated in the motion.

Mr. Golboro stated that he thought the concern was that a private club (Trump) could place a tower for private use. His concern was that it has not been limited for cell phone purposes. Mr. Castro answered that this Study Item was for cellular antennas only, not towers. The antennas have to be stealth in design in order to fit in with the architecture of the building. Mr. Castro stated, "If Mr. Trump wanted to put an antenna on Mar-a-lago, the application would have to go to the Landmark Commission for approval."

Mr. Golboro thought staff was asking to be site specific. Chairman Guttman agreed and stated that he felt that was accomplished by referring to private clubs. The term antenna is a specifically defined term and refers to general cellular telephone.

Mr. Castro agreed and stated that staff felt comfortable with the language in the definition of an antenna as well as with the process itself. Staff could not specify some clubs and not others, so staff incorporated, as a permitted use on any club, the ability to place a stealth antenna provided it meets certain setbacks.

Mr. Shaw asked why towers were included and asked why a 50-foot setback was required for an antenna.

Mr. Castro stated that the language pertaining to towers was taken from existing language in the code and towers are only permitted on commercial properties by special exception. Mr. Castro stated, "The only new language is in add/delete format on page 2 and identifies antennas only. Most of the clubs abut residential property and staff felt comfortable with the 50-foot setback since almost all antennas have generators and staff felt that if it were 50 feet away, even though they would still have to meet the requirements for a generator setback, it was an appropriate setback for such large properties."

Mr. Shaw stated, "The antenna is a specific piece of equipment and if they wish to build an auxiliary building within the 25-foot setback of the property, you have not accomplished it. They can come in, put the auxiliary building with the generator within the setback requirements of the property which is 25 feet. How have you accomplished this at fifty? The antenna would be at fifty. Then if you are putting it at fifty, most of these buildings may not be. There are buildings such as the Beach Club, which may be set back from the road, but the side of the building is right on the road." Mr. Shaw stated that he was not sure what the purpose of the setback of a stealth antenna will accomplish to benefit the town.

Chairman Guttman stated that at the Sailfish Club, the present structure has more than a fifty-foot setback on all sides with the possible exception of the intracoastal. The Palm Beach Country Club would meet that requirement. The northern side of the Beach Club might meet that requirement. All of those clubs are two-story structures in contrast to a one story structure, where the setback requirement in the front would be 35 feet.

Mr. Bell stated that he felt that the Architectural Commission and the Landmark Commission would address most of these problems. Mr. Bell said he did not see a problem with the setbacks.

Mr. Shaw said, "You are not addressing the ancillary equipment. That's what Mr. Castro just said, that part of this was because of the ancillary equipment and that's the antenna and if the ancillary equipment is the issue, that needs to be included in this paragraph."

MOTION BY MR. SHAW TO APPROVE STUDY ITEM 2, ADDING THAT ANTENNAS AND ANCILLARY EQUIPMENT USED IN CONJUNCTION WITH THE OPERATION BE SET BACK 50 FEET FROM ALL PROPERTY LINES.
MOTION SECONDED BY MR. BELL.

Discussion continued and it was noted that ancillary equipment is required for the operation of antennas.

Mr. Golboro stated, "that doesn't work. Using the Beach Club as an example, the ancillary equipment should meet the side yard requirement, but they would never put it on the roof so it won't be able to meet the 50-foot requirement." Mr. Golboro felt ancillary equipment was covered in other areas of the code.

Discussion continued regarding standby generators and the control equipment used for antennas.

Chairman Guttman commented that generators are covered by a separate zoning provision in the Town Code of Ordinances. Mr. Guttman expressed concern that the regulations were getting excessive in trying to micro manage where all this equipment was being placed.

Mr. Dowell stated, "There is a real need and I hope to get this done. Treat it with a sense of urgency and not get boiled down in nit picking detail." Mr. Dowell agreed with Chairman Guttman and stated that he wished not to micro manage this issue. "Let the cell companies and property owners work out these details. They can talk to the neighbors and if a neighbor has a complaint, just use common sense. We have been dragging this on for two years."

Chairman Guttman asked Mr. Shaw if he would be willing to reconsider the motion. **MR. BELL WITHDREW HIS SECOND TO THE MOTION AND THE MOTION DIED.**

Chairman Guttman stated that he had some editorial suggestions to assist with the readability of the proposal and would provide those to Mr. Castro after the meeting.

MOTION BY MR. BELL TO APPROVE STUDY ITEM #2, AS PRESENTED, SUBJECT TO EDITORIAL CHANGES TO THE INTRODUCTION ONLY.
MOTION SECONDED BY MR. DOWELL.
MOTION CARRIED 6-1 AFTER ROLL CALL VOTE, WITH MR. SHAW OPPOSED.

<u>Study Item 5</u>

Chairman Guttman proposed a change to the language adding the word "application" to the beginning of the sentence which would address Mr. Bell's concerns. Mr. Guttman read the sentence as it exists now and proposed that it be changed to the following language, "The Town Council shall grant or deny this application for the special exception with site plan review to complete the distribution electric substation."

Mr. Golboro expressed his objection and explained that he felt it unnecessary because there are no substations on the island. Mr. Golboro repeated his objection and requested that his objection be reflected in the minutes.

After further discussion, Chairman Guttman asked for a motion to approve Study Item 5, reflecting the suggested correction to the first sentence.

MOTION BY MR. SHAW TO APPROVE STUDY ITEM 5 WITH CORRECTIONS.
MOTION SECONDED BY MR. BELL.
MOTION CARRIED 6-1 AFTER A ROLL CALL VOTE WITH MR. GOLBORO OPPOSED.

Study Item 6

Mr. Castro provided an overview of Study Item 6 and stated that he attempted to modify the language to simplify the proposal and the recommendation as it relates to eliminating the discussion about seats or benches and specifically tied it to tables. The language was modified to address tables or seats associated with tables and to eliminate any regulation of seating or benches that were for pedestrian use. Seating for tables for the consumption of or the sale of food would be permitted by special exception only.

Mr. Shaw felt some of the language was convoluted and suggested changes to the language as follows: "No stands or open counters and no tables intended for feeding, dispensing or consumption of food or beverage shall be permitted anywhere in the town unless such is contained within a building." Mr. Shaw asked why the outside portion would not count toward the maximum square footage. Mr. Shaw stated that it seemed that a restaurant could actually expand on its usable space without getting into a square footage requirement, but that any other merchant in town who decided he did not have enough space could not go out on the street and start selling his products. Any space pertaining to the restaurant, either inside or out, needs to be included. If they are going to incorporate outdoor space as a part of their business property, then it needs to be included." Mr. Shaw also stated that in Item B, 1-5 were not included in the C-WA district.

Mr. Castro answered, "That was policy decision making process and taken from existing language. More than 13 years ago, we never counted outdoor space as increasing gross lease-able area. That is existing language and a policy the Council has made in the past not to count that and it is existing regulatory language. The Council decided about three years ago to allow more flexibility for take-out food establishments, but only in the C-TS district and not on Worth Avenue."
Discussion continued and Ms. Murphy stated that she liked the policy of not having the outdoor seating count because it would encourage people to go outside.

Mr. Castro added that as a condition of approval for a special exception to have outdoor seating, an applicant would be required to demonstrate his Town-Serving status annually.

Chairman Guttman agreed with Mr. Shaw's initial comment that the beginning language was awkward and made several suggestions that would clean up the language. Discussion continued and Mr. Shaw added that he felt that the terms "sale" and "profit" were irrelevant.

Chairman Guttman restated the suggested changes, "No stands or open counters and no tables intended for the consumption of food, beverages or commodities to the public shall be erected or permitted in the Town . . . "

Mr. Bell asked about the last sentence that says, "provided the additional special exception shall not increase the allowable capacity." Mr. Castro stated that the Town does not allow any additional capacity for outside seating.

Mr. Dowell asked Mr. Randolph, "If we change the wording, has anything at the point of sale been changed, has anybody been harmed or helped? What difference does it make from a common sense point of view?"

Mr. Randolph felt that for clarification purposes, the word "sale" needed to be removed and suggested we make certain we are talking about the consumption of food or beverages.

Chairman Guttman added that if someone decided to donate food for use in connection with some fund-raising activity, it would be a gift and by removing the word "sale," we have made this ordinance as broad as possible.

Mr. Randolph explained the situation where Starbuck's had tables in close vicinity to the restaurant after the special exception had been granted and that Starbuck's had only been allowed a specific amount of seating. Then, some other tables appeared in the Esplanade which might have allowed other people to use the Starbuck's area for consuming products. Staff was trying to deal with that issue as well as with any other areas on Worth Avenue in the vias where there are benches and tables set up. Mr. Randolph stated, "We wanted to make sure they were for the use of the public and not for the use of a particular restaurant for the take-out sale or consumption of food for that business."

After further discussion, Mr. Randolph stated that the Town Council ultimately asked that this item be placed on the Planning and Zoning Commission's agenda so that it would be clear that these various tables that were placed within vias and within the Esplanade should be made part of a particular restaurant, if they are intended for that restaurant. Additional discussion took place regarding the nature of the complaints that had been made.

Mr. Shaw stated that he felt the Commission should be proactive and not reactive. Mr. Shaw said, "Where the Town's responsibility to the residents should stop is at the point of an enclosed area that is not open to the public other than by the fact that the landlord has allowed access." Mr. Shaw went on to say, "What happens inside the four walls of the Esplanade or in a via should not be under the regulation of the Town from the standpoint of use, but, rather, from the standpoint of public safety. If a landlord wants to allow his via to be cluttered to the detriment of his tenants that is between him and his tenants. On the other hand, if the Town wishes to control what happens to a restaurant or any establishment that is abutting a public street where it could be construed as a nuisance if it becomes excessive, the Town has an obligation to step forward." Mr. Shaw stated, "What happens in Via Gucci, in the Esplanade, inside the confines of their property, should simply be a landlord tenant relationship. Enclosed vias, not visible from the street, should not be under this control.

Mr. Castro stated that staff strongly disagreed and added, "Vias should be controlled through zoning, as it relates to what a tenant can do outside the confines of the tenant space. Not only as it relates to outdoor tables and the seating associated with that, but, also the display of merchandise."

Chairman Guttman stated that he shared Mr. Castro's view.

Mr. Golboro added that he felt both were right and that Mr. Guttman's correction to the language relating to tables, chairs and benches corrects that situation. Mr. Golboro asked, "Who controls all the architecture and sculptures out in the garden at Via Gucci? It is outside the retail area and is beautiful. We should not be controlling that and that would be illegal if we change the statute." Mr. Golboro added, "I like the way the Town functions as it is and the only way I could see to change the ordinance is to limit the tables."

Chairman Guttman emphasized that he intended that the changes made in the language to the C-TS district should also apply to the C-WA district and recommended some other minor corrections to punctuation.

MOTION BY MR. GOLBORO TO APPROVE STUDY ITEM 6 AND ACCEPT THE RECOMMENDATION TO MODIFY THE LANGUAGE IN SECTION 134-1111 AND SECTION 134-1161, WITH MODIFICATIONS OF THE SENTENCE THAT BEGINS IN (A) OF EACH PROVISION, AS STATED BY MR. GUTTMAN, TAKING OUT THE WORDS "BENCHES" AND "SEATS."
MOTION SECONDED BY MR. DOWELL.
MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL VOTE.

Study Item 7

Mr. Guttman stated that he thought that a line should be crossed out of the second paragraph and be substituted with language that indicates whatever the vote happens to be; leave the Arlington Plan and modify the Gainesville Plan to read as shown in the attached backup material. Chairman Guttman said that he would provide Mr. Castro with a copy of his recommended changes.

Mr. Randolph stated that he hoped he had capsulized, in his cover letter, that he felt the commission was going overboard in amending both of these plans and that the Arlington Plan had worked well for years. Mr. Randolph stated that the Gainesville Plan is used mostly in the North end of the island and concern came to light about the issue relating to construction vehicles being parked on the road and the difficulty the Police Department has experienced in citing vehicles that were parked illegally.

Mr. Randolph proposed that the Gainesville Plan be amended slightly to contain a provision to allow for visitor permits to be granted. These visitor permits would be issued in the form of two placards, and would be granted to the individual property owner and not to the tradesmen, service vehicle or visitor. Mr. Randolph stated that it would be unwieldy to require a service vehicle to go into the Finance Department to get a permit every time they wanted to conduct work. Mr. Randolph's recommendation was to place the responsibility for the issuance of these placards with the Finance Department and not with the Police Department.

Mr. Shaw asked why the word visitor was being used when talking about placards and Mr. Randolph answered that the placards would be used for visitors also. Mr. Shaw added that the issue is with service parking and construction parking and wondered why the Town could not accept the fact that a commercial vehicle is a commercial vehicle and assume that from the hours of 9:00 a.m. to 5:00 p.m. they were on location to do assigned work. Mr. Randolph asked how the Police Department would be able to figure out the difference between a commercial vehicle that would belong to a construction site and a commercial vehicle doing service.

Mr. Shaw felt that visitor parking should not be permitted.

Mr. Schuler asked where a resident would go to obtain the permit and how time consuming it would be to get the placard?

Mr. Randolph answered that it would take no more time than to obtain the annual residential parking placard and would be done at the same time each year. These placards or permits would be obtained at the Finance Department.

Mr. Golboro objected for two reasons and stated, "One reason is we are a Town that everybody touches, you can touch the Police Department and make the phone call. A few people are complaining about construction vehicles. We are changing the old regulations. We're having to get home permits. If a plumber comes to my house, the plumber will park in one of two open spaces in my driveway and if next door or down the block, the construction site is controlled. The problem is you are trying to regulate the minor part of the problem. The construction parking is a problem, not visitor parking." Mr. Golboro disagreed with the proposed change in the parking regulations.

Mr. Randolph stated that this has been an issue the Town Council has wished to address for several years. Mr. Randolph stated, “There are often circumstances when a service vehicle would have no room to park on site, or the owner may not want the service vehicle parking in the driveway. Very often you will see service vehicles parked on the street.”

Mr. Golboro added that the problem only occurs when there is a construction project on the block.

Mr. Dowell added that the Police have been harassed by homeowners about cars that are parked on the streets that don’t belong and which totally compromise Crime Watch. Mr. Dowell stated, “This problem goes way beyond construction. During the surfing season, I’ve come home to find some guy nude in my front yard taking a shower.” Mr. Dowell suggested that we try what is being proposed to see if it can work.

Chairman Guttman added that the entire North end is not included. This is the “controlled parking residential area,” which is a defined term and there is a procedure in place in the code. Chairman Guttman proposed a change in the language from “the owner” to “such owner” referring back to the definition clause.

Mr. Randolph added that this only deals with the Gainesville Plan so it would be the owner or operator within the Gainesville Plan and not throughout the North end.

Chairman Guttman added that the present version of the Gainesville Plan deals only with visitor parking proposed additional language changes throughout the code to cover service vehicles. Mr. Guttman suggested the language be changed from “visitor permit or permits” to “visitors/service permits.”

Mr. Golboro suggested the use of signs for “parking by permit only.”

Mr. Randolph stated that this solution is limited in its application and does not deal with the whole North end, only the streets that are covered under the Gainesville Plan.

Discussion continued and Mr. Randolph stated that there needs to be certain criteria that apply on a particular street in order to constitutionally allow us to treat parking of visitors differently than parking of residents and that is why the Arlington Plan and Gainesville Plan were adopted. Mr. Randolph stated, “At this point, all we are talking about is attempting to deal with this through streets that are designated as part of the Gainesville Plan. This will not deal with the whole situation in the north end and perhaps this is something that needs to be looked at in a different way at a different time.”

Chairman Guttman commented that this situation is constitutionally very sensitive. The Town has adopted the Gainesville and Arlington Plans because they are court tested plans.

Mr. Wideman stated that he was confused by this whole thing and asked who decides which streets are permit parking streets? Mr. Wideman stated that he drove up and down the four streets surrounding Town Hall and noted that there were 188 designated parking spaces and only 52 were occupied. All signs indicate "permit parking only" and Mr. Wideman added, "I think we have overdone this permit parking. Who makes that decision?"

Mr. Randolph stated that the Police Chief and the Town Manager make the decision based on specific criteria set forth in the ordinance. Mr. Randolph stated that the full Gainesville and Arlington Plans were provided to the Commission with their backup, which sets forth the various criteria that needs to be met in order for a street to be designated as a permit parking only street under either plan.

Mr. Shaw stated that this problem exists all over the island and that this ordinance will not address it. Mr. Shaw asked if there were any streets north of the country club that are impacted by the Gainesville or the Arlington Plan and Mr. Randolph answered that there are 22 streets in the north end that are affected by the Gainesville Plan.

Mr. Shaw acknowledged the problem with construction vehicles parking on the street and the differential between construction and service vehicles. Mr. Shaw stated, "I do not see how this is going to do it."

Mr. Randolph answered, "That this will do it in a limited way with the tools that we have available today to work with. Beyond this point, perhaps we need to come up with a Palm Beach Plan as opposed to an Arlington or a Gainesville Plan to deal with those other streets in the north end. It would be legitimate for you to recommend to the Council that you would like to see this applied more broadly so that it could deal with the entire north end or the entire section of town if that can be done legally. The question is, in the meantime, if you wish to at least apply this to the 22 streets in the north end where the Gainesville Plan is already in existence."

Chairman Guttman added that he did not feel that 22 was an insignificant number. After further discussion, the following motion was made:

MOTION BY MR. BELL TO APPROVE STUDY ITEM 8, AS MODIFIED BY MR. GUTTMAN.
MOTION SECONDED BY MR. DOWELL.
MOTION CARRIED 5-2 AFTER A ROLL CALL VOTE WITH MR. GOLBORO AND MR. SHAW OPPOSED.

2. Consideration of proposed modifications to Study Items 8 and 11 of the Zoning Proposal Staff Report, Phase II.

<u>Study Item 8</u>

Mr. Castro summarized the Intersection Vision proposal and stated that American Consulting Engineers of Florida provided a presentation to the Commission in December 2007 and the Commission took some actions and that staff attempted to incorporate those actions into Section 134.1637 for discussion purposes. Mr. Castro stated that staff also believes there needs to be action on the actual proposal by American Consulting Engineers as well as staff's recommendation that the intersection vision proposal only apply to residentially zoned areas. Mr. Castro commented that there is a word missing on page 5, "the Planning & Zoning Commissions actions "modify" the compliance."

Chairman Guttman stated that he could not read and understand this ordinance and could not apply it. As an attorney, he would not be able to explain it to a client.

Mr. Castro stated that staff would place reflectors within each intersection vision triangle on the residential streets so that someone would be able to see where the intersection vision triangle would be.

Chairman Guttman asked how a resident who objects to where those reflectors were placed would contest the decision and Mr. Castro answered that the resident would meet with the Public Works Department who would use the diagrams that are listed in the ordinance to lay the triangles out and explain to the resident, his attorney, or his engineer. Mr. Castro stated that an ordinary engineer or a planner could look at the dimensions and understand them.

Chairman Guttman asked if there was a way to reduce this to more understandable language before recommending enactment of this ordinance. Mr. Guttman stated that most architects and land -use planners in town would not have any idea how to do this, and added that he felt a parking engineer of the sort that wrote this would be able to figure it out.

Mr. Castro added that the diagrams and illustrations would be included as part of the ordinance. Mr. Bell commented that with the diagrams included, the ordinance would be much easier to understand and added that his biggest objection was requiring residents to remove their vegetation from within the sight triangles within six months.

Mr. Castro added that this is more flexible than the existing code, but that staff felt with the flexibility, it also required that it be more complex to identify the areas. Mr. Castro stated, "Staff or a consultant would have to identify each of the intersection vision areas and then go out and put down the actual reflective pavement markings on each street so residents could see where those would be. If someone had a problem, staff would be happy to go out and educate the public as part of implementation."

Chairman Guttman stated that he was concerned that if the Commission were to recommend this ordinance and the Council was to adopt this ordinance there would be a lot of residents that are going to feel that they were blind-sided and would not like the results. Chairman Guttman suggested the town hold a workshop and ask a consultant to come in to set out the reflective warnings on each street to give people some sense of what they will have to face if this proposal goes forward.

Mr. Golboro asked Mr. Randolph if we had a definition of "structure" and if a wall would be defined as a structure. Mr. Golboro also suggested that the word "maintained" be added to require that vegetation be maintained at 30 inches and added that he felt any engineer could follow the site line directions as outlined in the proposed code.

Mr. Randolph answered that a definition of "structure" exists in the zoning code and stated that a wall is considered a structure.

Mr. Bell asked Mr. Schuler, who lived on Jungle Road, how he felt about cutting down 157 feet of those high hedges along County Road. Mr. Schuler acknowledged that it would be a problem for a property owner to have to go in and cut down big hedges and rework the entire landscape. Mr. Schuler stated that Mr. Castro had approached him and suggested that he cut back his hedges and they did that so you could see going south. The property owner to the north did not cut back and that was a more difficult situation which could have been alleviated further so the issue would not have been a problem.

Ms. Murphy suggested that "or portions thereof, higher than 30 inches" be added after "all structures." Ms. Murphy stated, "Second, regarding Mr. Schuler's remarks, in light of the need for public safety, it is important to sweep the entire town and not have any grand-fathering provisions; maybe we could extend, but I'm not in favor of extending the six-month period. I think it is really important. It is just not safe to drive around when you cannot see where you are reaching out to. We are fortunate that we have not had accidents thus far. So, I would be against any kind of grand-fathering other than landmark structures where we have talked about alternative solutions, for example, having a stop sign or changing the direction of a road or other things that are more cumbersome. That might be better than affecting an important landmark."

Mr. Wideman agreed with Ms. Murphy and stated that the whole point of this is public safety and that there have been 21 accidents as reported at our last meeting. Mr. Wideman said, "Just because someone has to cut down a big hedge, we should not give someone a year and half to do it. That would be ignoring the public safety aspect. If we are going to have this, then six months would be ample time to redo the landscaping. It is unfortunate that they have to do it, but it is in the interest of the people in this town."

Mr. Bell disagreed and stated, "In the estate section there have been plenty of people who have gone by the last requirements of redoing their intersection sight lines and now with this study they will have to do it all over again and I just can't see why you should have to do it again. It is certainly ample what we have there now. You can see around and pull out."
Chairman Guttman stated that this will be a major hardship for some residents. Mr. Guttman added, "The public safety factor does resonate big time with me. That said, I think we should do one of two things, either not make any recommendations until we have had some sort of workshop so that the community understands the public safety issues involved and the approach that we are recommending to the Town Council. Alternatively, then I would suggest that we recommend to the Town Council that immediately, if they wish to follow this recommendation with some language modifications, they immediately call for a series of workshops after they have adopted the ordinance so that residents understand what they are in store for. I think it will cause a lot of angst in the community."

Mr. Wideman stated that he remembered the number of intersections involved was no where near the total of intersections in the Town and the affect on the public would be minor. "To have a town workshop to handle maybe 30 or 40 people is kind of a waste of time", Mr. Wideman said.

Chairman Guttman asked how many intersections were involved and after discussion, it was suggested that the number of properties involved was approximately 120. Chairman Guttman stated that was not an insignificant number and would hate to see those residents be blind-sided.

Mr. Dowell asked if staff had talked to individual owners to get the owners to trim back their hedges and Mr. Castro answered that staff had not approached anyone for the intersection vision areas.

Mr. Dowell asked if compliance could accomplished with some code enforcement action.

Mr. Golboro stated, "When the DOT was doing the renovation along A1A, the guy running the project stated that a lot of the walls were on their property. They took the easy way out and avoided those walls." Mr. Golboro stated that he was concerned about the three or four intersections at Wideners Curve to Sloans Curve and asked if we could force FDOT to enforce their rights of property to get some of those walls down or make them put something up so that people coming out of those streets can see. Mr. Golboro stated that he was not sure that FDOT owns a lot of that land, but felt they might and requested town staff look into this.

Ms. Murphy requested that when explaining to residents how this will be enforced, staff remind residents that this was as far as we could go in terms of not using the much more stringent methods. Ms. Murphy added, "We must not lose sight of how we got to this point."

Mr. Shaw stated this is a good example of the town trying to reach a happy compromise because the current existing regulations are far more restrictive. Mr. Shaw stated, "If the town were to go forward and talk to all the property owners to come into compliance, following the existing regulations, we would find a lot more shrubbery being cut back. In essence, approving this and then implementing this and following through would have a much softer hand than if we were to implement and follow through with the current plan. Secondly, on one side of the conversation of the table we are talking about public safety and the need to go forward with it. On the other hand, we are acknowledging the fact that we have been dragging our feet for three years. If it is a public safety issue, then we have to go forward. If it is not a public safety issue, then we can take some time. Given that it is an issue and there are some problems, we should go forward and if there is an obstructed or obscure driveway, a sign should be put out. If there will be an intersection where the shrubbery won't be cleared within a reasonable amount of time then it behooves the property owner to post a town-approved sign that simply says "Obstructed view, Caution". Mr. Shaw added that he thought residents should be given enough time to under plant and suggested that something be done to give relief, administratively, so that it does not become a bureaucratic and time nightmare for the council. "If they have to review everybody's application to see whether or not six months is excessive on their side."

Chairman Guttman added, "When the Commission first considered this, Town Council Member Richard Kleid, who was Chairman of this Commission at the time, the Commission could find no evidence that it could be a big public safety issue, but as a practical matter, the Commission under Mr. Kleid's leadership, was unable to uncover any recent examples of crashes or other public safety accidents. I'm not saying this is not a public safety issue, because I believe it is, but before we go down this road, we ought to involve the people that are affected by it. It doesn't mean that this Commission needs to absolutely go with what a majority of those residents have to say, but this is a complicated piece of legislation we are talking about enacting and public education and awareness, particularly by those that are going to be affected is very important."

Mr. Shaw stated, "I beg to differ with you in the process, not so much in the facts. This is a lessening of an existing set of rules." Mr. Bell did not agree. Mr. Shaw stated, "You should not have to educate somebody about the fact that something is being rolled back a little."

Mr. Guttman then asked Mr. Shaw, "Then are you being critical with Mr. Castro, Code Enforcement and everybody else for not enforcing our existing laws?" Mr. Shaw stated, "If you want to start, start at the top. The majority of our rules and regulations in town..........."

Chairman Guttman stated, "That is not a satisfactory answer to me". Mr. Shaw added, "Then enforce the regulations you have on the books today and I don't think you need to start with an education process. This is a good step forward because I think there is an understanding that what is on the books may not be as practical which is why there may have been a sort of less aggressive approach." Mr. Shaw stated that he felt six months was too short a time to put into affect and that perhaps, one year would be more realistic.

Mr. Bell asked Mr. Castro why he thought this was less than what we had before.

Mr. Castro answered, "The proposed regulation is substantially more flexible than the existing code provisions because it is not measured from the property line. It is actually measured from the roadway pavement, not the property line and it affects fewer properties than the existing code does. There are some that it will substantially affect, but those are intersections that are or could be determined to be not very safe to get out or enter into. More than 90 percent of the properties in town do not meet the existing code provision. The second question that was in front of the Planning & Zoning Commission is, "Do you want to retroactively implement a provision that is more flexible than the code is today, because in the past, even though we have a more stringent provision in the code, we've only implemented that provision at major renovations or new construction and that was part of the question asked of the Planning & Zoning Commission at the last meeting."

Mr. Bell added, "Back to the six month deal, I would defy anybody to tear their hedges down this time of year and then try to put them up later. It should be at least a year if you are going to implement this thing, which I definitely oppose."

Mr. Castro added that the month was left blank, but would probably be the month of May or June when that code provision would become effective.

Ms. Murphy stated, "Three things. First I disagreed with Mr. Guttman, this is absolutely a public safety issue. Second, when we are talking about tearing out hedges, no hedge needs to be torn out if it is a hedge in the sight intersection if it is cut down to the appropriate height and I understand that the hardship is to have to purchase new hedges for the step-back, but as a pragmatic matter, if you have an existing 20 foot hedge and the objection is that you are losing privacy, really, the most you will gain on a first floor level is ten feet and that is not hard or expensive to install. When you have a second story you have less of a privacy issue because the sight diagonal is a greater depth. We should remember that this is a provision that has not been enforced. The Town's existing regulations are much tighter than what is being proposed and that is a gift to the Town. The proposed regulation is much less strict than what the DOT or other agencies would use, and if we leave it like it is and have the DOT enforce on their own property, then you will have a lot of residents really screaming, so this is a nice compromise and because it is a public safety issue, we should recommend to the Town Council to adopt this language and maybe extend the six months to an eight month period, but not much more."

Mr. Golboro stated that the time limit for compliance would be the most difficult thing to sell to the population. Mr. Golboro stated, "Everyone will agree it is good for public safety that these corner view lines be spread out." Mr. Golboro suggested that instead of having a date of implementation, that whenever anybody comes in for a permit for an excess estimated to exceed $100,000 or similar, that they be required to meet this code. Instead of using the fifty percent rule, lets put a dollar value on a permit request and require that they implement this rule".

Chairman Guttman stated "Unless you are going to postpone implementation of this provision for six months, eight months or a year, or whatever it is, I strongly urge the Town Council and staff to conduct some sort of educational program so that people know what is in store for them. I assume that the reason the present code provision is not being enforced is because that those same residents object strenuously and vigorously to what is presently on the books and unless we are going to get a modicum or a consensus buy-in that this is a true public safety issue, and I am in the camp that believes this is a public safety issue, but I am not one of those residents that lives on one of those corners we are talking about. We need to get some sort of buy-in and I don't care if we do it beforehand or after hand, but if you do it after hand, the only risk that you run is if there is an outpouring of opposition to it, which in turn leads to a sense that we should not enforce it, it becomes embarrassing for everybody. It becomes embarrassing for this Zoning Commission. It becomes embarrassing for the Town Council. The only reason the present ordinance is not being enforced is because people know there would be a cry and they would be banging down the walls of this Town Hall if you enforce it."

Mr. Castro stated, "One thing that could help satisfy Mr. Guttman, as it relates to the diagrams, is that we could add under the intersection there is a specific from the line of sight to the travel lane, 11.3 feet. If we could put that in there, that would significantly help in terms of identifying that on a per case basis. From the travel lane itself, at the middle of the intersection, 11.3 feet back is where that one vertex would be. That would help substantially."

Mr. Schuler agreed with Mr. Guttman. Mr. Schuler suggested that he would like to make a motion to defer this item until the next meeting and ask staff to come up with some other suggestions to alter the plan to make it more feasible and acceptable

Mr. Castro stated, "This is pretty much as far as we could go in terms of making it more acceptable".

MOTION BY MR. SCHULER TO DEFER STUDY ITEM 8 UNTIL THE NEXT MEETING AND ASK STAFF TO COME UP WITH SUGGESTIONS OF HOW TO ALTER THE ITEM TO MAKE IT MORE FEASIBLE AND ACCEPTABLE. MOTION SECONDED BY MR. BELL AND ASKED STAFF TO INSTALL REFLECTORS ON COUNTY ROAD.

Mr. Castro stated that staff could do some aerials to demonstrate.

Ms. Murphy asked if it would be possible to have an overlay of what the existing code provides so that residents can see how much smaller the sight triangles will be and therefore, could appreciate the compromise.

Mr. Castro asked for specific intersections that staff should provide overlays of. Ms. Murphy asked if it would not apply in all cases and Mr. Castro stated that there would be certain intersections where there would be no impact and some intersections that would have substantial impact. Mr. Castro suggested that he bring worst case scenarios and best case scenarios back to the Commission.

Mr. Bell suggested staff go down County Road to El Bravo, El Brillo, El Vedado and Jungle Road and install reflectors. Mr. Castro stated those would be the worst case scenario intersections and staff could do that.

Ms. Murphy added, "It seems like the objection is that it is onerous to those who presently are so far out of compliance with the code that it would cost a lot more money for them to bring themselves into compliance. Because this is a public safety issue and because it is intended to benefit everybody that is on the roads, what about taking a certain percentage from a line item to subsidize those 10 or 20 percent. It is benefitting everybody else and there is a policy argument that those residents are coming into compliance for the benefit of everyone."

Mr. Bell added, "What about those that are presently in compliance and you are asking them to change."

Mr. Shaw stated that he has seen ways of writing ordinances so that people who are in compliance today would not be put out of compliance. Mr. Shaw stated, "As far as the motion is concerned, I would ask that it be defeated only from the standpoint that again, this commission is not empowered to do anything. This Commission is only a recommendation body that goes to the Council. Any modifications to anything that we do can be modified by the Council. If we don't do anything, in essence we are telling the Council, "Don't bother to act on it", the reality is they could pass it without our doing anything and in essence, it is their decision to do whatever gets done. I would rather see us go forward and make the decision or recommendation to do this and I would like to ask if we could look at a grand-fathering clause to be amended to it and since it is ultimately in the Council's purview to go forward. There is also an issue of zoning season. If we do not act within a reasonable period of time, it is never going to get there for another year. So, we have a deadline and every day we delay something, pushes it off and the last possibility of our doing something would be the March meeting. We have two meetings after this to do anything that is going to get to the Council which will give them the opportunity to act. And if we don't do it, we're another year behind the eight ball. Please keep that in mind when you keep saying "lets defer it, lets ask staff to come up with another solution"."

Chairman Guttman stated, "I don't know how quickly the staff can put together, in terms of the motion that is on the table right now, some visuals and hold a workshop involving just the streets that would be affected. If you cannot do it that fast, and I can understand why you can't, but I could not in good conscience, vote to approve something that would blind-side a considerable number of residents who in the past have shown themselves willing to ignore our existing ordinance on the topic even if the one that we are considering is more flexible. I think we need to have a community dialog with those people that are being affected."

Ms. Murphy commented regarding the grand-fathering language and stated, "For me, it's important to segregate the 10 percent who are presently in compliance from the 90 percent who may have been in compliance when their house was built in the last 80 years, but I certainly don't think we should put the 90 percent on the same platform as the ten. I would be in favor of not grand-fathering the 10 percent but having a more gracious or liberal amortization period for them."

Mr. Castro stated, "At the last meeting, the reason why there was no grand-fathering provision included was because the existing provision in our code does not provide the sight triangles that staff felt comfortable in implementing. Yet, they're more onerous. The second part of that and the reason why the Planning & Zoning Commission and staff, unlike staff's recommendation, only recommended to clear the landscaping out of the sight intersections and not structures was because that was more do-able over a longer period of time with an appeal process to the Council to give the people extra time over and above whether it is six, eight months or a year. What I was planning to do, in terms of deferring to the next meeting, was to further clarify some of the sight triangle language for Mr. Guttman, because his concern and I saw that when looking at it a little bit closer in terms of an exact dimension, providing that in the plan and taking maybe three scenarios that are very onerous and three scenarios where there may not be any impact and providing aerials with some diagrams that our consultant can do for us, to bring those back to show you in the worst situations what might happen. But, to go back and have workshops with each of those streets would take a substantial amount of time, and Mr. Guttman understands that we're not prepared to do that at this point in time."

Mr. Guttman asked if the residents could all be invited to the next meeting where the Commission considers this issue and asked if staff could call the residents.

Mr. Castro answered that would be between 300 and 400 residents and that he did not think we could do that between now and the next meeting.

Mr. Bell stated that he thought staff could do the three or four blocks to show the Commission for the next meeting.

After further discussion, Mr. Castro stated that could be done. Chairman Guttman felt that was terribly selective and problematic. Mr. Guttman said, "If it is impossible to accomplish that, then so be it." Mr. Castro said he would look into it. Mr. Castro stated that it would take a substantial amount of staff time to notice every resident of every intersection on every residential street, all over the island.

Chairman Guttman suggested that perhaps the Civic Association could help in placing some of those telephone calls. Mr. Bell suggested that Mr. Kelly could put a notice in the newspapers. Mr. Castro stated that he would like to work with the Chairman on this to see if this is do-able.

Mr. Schuler and Mr. Bell both said that was acceptable to them. Mr. Castro stated that if staff was not able to do it, then staff would work with the Chairman and to bring this back at the next meeting for further discussion.

Mr. Castro restated the modifications to the motion as follows: **"THIS ITEM IS GOING TO BE DEFERRED FOR STAFF TO PROVIDE THREE OR FOUR BEST AND WORST SCENARIOS OF THE INTERSECTION VISION TRIANGLES AS PROPOSED TO THE PLANNING & ZONING COMMISSION, ALONG WITH CLEARING UP SOME OF THE LANGUAGE TO BRING BACK TO THE COMMISSION AS IT RELATES TO THAT SPECIFIC INTERSECTION VISION REQUIREMENT. IN ADDITION, IN THE INTERIM BETWEEN THIS MONTH AND NEXT MONTH, STAFF WILL SEE WHAT IS INVOLVED IN TRYING TO CONTACT EACH RESIDENT THAT WOULD BE IMPACTED BY THIS REGULATION AND INVITE THEM TO THE MEETING TO DISCUSS THE ISSUE."**

Mr. Randolph asked if this would come back at the February or March meeting and Chairman Guttman added that he felt the motion should include the month, depending upon the difficulty in contacting the residents.

Mr. Castro added that it would be March, but that if it was not feasible to bring it back in March, then staff could make a report at the February meeting.

MODIFICATION TO THE MOTION ACCEPTED BY THE MAKER AND SECONDER. MOTION CARRIED 5-2 AFTER ROLL CALL VOTE WITH MR. GOLBORO AND MR. SHAW OPPOSED.

Mr. Golboro added that he felt that most of the work was already done and stated, "The Commission saw sketches of it and saw the presentation from the Consultants. The new sketches will be a repeat of the same thing we've seen. That is one of the reasons why I voted no and I voted no for the simple reason that the most difficult thing that we are avoiding and that is how we are going to implement this program and we have not discussed that. We are shoving all this other work on you and the most difficult thing for the Council will be asking us how this it to be implemented and this is my biggest concern. As you heard, I made a proposal and idea of how it can be implemented and I think that's what needs study, not necessarily the minor adjustments to what you are proposing. Yes, if I saw these drawings and the technical end of it, I'd understand it. I think Mr. Wideman would also. But, what good is this that we are going on and postponing this for sixty days and thirty days. We keep putting this bloody thing off. Let's face it. Let's get it done!"

Study Item 9

Chairman Guttman asked Mr. Castro to address Study Item 9 and suggested the need to substitute the word "restaurant," which is a defined term in Section 134-2 of the Palm Beach Zoning Code for the word "establishment," which is not a defined term. Mr. Guttman also stated that there were some grammatical mistakes in paragraph 3 of the Formula Restaurant definition that he would address later. Mr. Castro advised the Commission that the word would be eliminated under formula restaurants and that he attempted to include the interior design as part of the elements in terms of formula restaurants.

Mr. Guttman commented that the definition was pulled out of the Sanibel Island ordinance which read pretty well. Mr. Guttman read a section of that ordinance and offered some suggestions for amendments.

MOTION BY MS. MURPHY TO APPROVE STUDY ITEM 9 AS AMENDED. MOTION SECONDED BY MR. SHAW.

Chairman Guttman stated that he had a brief interview with the Palm Beach Post about the number and they asked him "Why 3?" and he said, "Why not 5? Why not 9?" There is no intellectually convincing reason to fix on any particular number. At heart here, is we are trying to block this kind of restaurant and that is what is involved. Then three is as good as five or nine. We are trying to recommend the adoption of this prohibition against formula restaurants is to block Starbuck's like restaurants from coming to Town. There are wonderful chain restaurants and I patronize them. There is a sense that this is something not for the Town of Palm Beach. The number makes no difference. The idea is to block them."

Mr. Bell said, "Three is not the correct number and that no number is really correct for that matter. Why do we need an ordinance to cut out a named restaurant in this Town? Then we would not have Bice's and there are better restaurants that could come to Town and have their own name and I cannot see the reason to keep them from doing it."

Ms. Murphy stated that it is intangible, but was comfortable with three and could live with something like five. "It is important to have objective criteria that will keep only either local or very special venues here." Ms. Murphy stated that someone had mentioned Ruth's Chris Steak House would be great here and that she saw a sign that they were opening another location.

Mr. Shaw stated that his real objection was to make sure that we don't find our town inundated in fast-food drive-in facilities that are not going to necessarily directly cater to the ambience or the quality of life. Mr. Shaw added, "I don't think that Ruth's Chris Steak House or PF Chang's is an issue. The general public controls what succeeds and what doesn't succeed and the reason we were adamant about not seeing a McDonald's, a Starbuck's or a Subway and some of these others come in is we were concerned who they were going to cater to and how it was going to impact the residents as a whole." Mr. Shaw stated that it did not matter who owned the stock in a restaurant.

Mr. Bell added, "here, here".

Chairman Guttman stated, "Again, that is a perfectly legitimate perspective on the issue and I think the one that Ms. Murphy articulated about the localness of both our retail and restaurant establishments seems to be an important, widely held value in this community. I think this is why we are looking at the ordinance we are looking at. I don't want to cast aspersions on chains, because there are wonderful chains and I do use them. I think there is a sense of localness in terms of our commercial activities that is part of our culture and that is what this ordinance is trying to address."

MOTION CARRIED 5-2 WITH MR. SHAW AND MR. BELL OPPOSED.

Comments by Chairman Guttman were heard at this point.

<u>Study Item 10</u>

Chairman Guttman advised the Commission that, in an effort to save time, he would meet with Mr. Castro later and provide comments regarding Study Item 10. Chairman Guttman then asked Mr. Castro to proceed with Study Item 11.

<u>Study Item 11</u>

Mr. Castro stated that staff took comments from the meeting and the discussion and eliminated many of the specific conditions as it related to entertainment, based on minutes and the Planning & Zoning Commission consensus for regulating entertainment uses within restaurants, provided only three types of conditions relating to restaurants for discussion only. Item B was originally 100 square feet of entertainment area and that was changed to 40 percent. Maybe that should be 40 percent of the front of the house for entertainment purposes and that would include the staging area as well as the dancing portion if they wanted to have entertainment. Under item C, the hours have been changed to provide more flexibility. Friday and Saturday were changed to 1:00 a.m. instead of midnight and Wednesdays and Thursdays at midnight and during the week until 11:00 p.m.

Mr. Shaw stated that a band performance should fall under accessory. "The idea behind this was the ability to have some live music. How big is a band? Live music with a piano player, a singer or some type of a soloist, that is what this is implying. I am questioning the minimum standard of not to exceed 40 percent, that is, 40 percent of the area of the restaurant, not of the floor space including kitchen and bathrooms, etc. That is huge. There will be nothing but a bar and a dance floor. As far as the hours, if you want them to end at 11:00 then you should tell then 10:30 because it will take them a half hour to shut down. Why is Wednesday any different than Sunday through Tuesday and I would ask that on a weekday, which should include Wednesday and Thursday, the hours of operations should be anytime up to 10:30 p.m. or 10:45 p.m., so it is finished at 11:00 and we don't have to synchronize our watches. Back off the time on the weekends too."

Ms. Murphy stated that she was not sure how she felt about band performances and added that 40 percent of the floor area of the restaurant was not a problem, if they want to clear tables for dance and fun that is fine with her. Some restaurants are a lot smaller than others and she wanted to give them a chance to be able to have accessory use. Ms. Murphy stated that the hours should be uniform throughout the week. Sunday through Thursday hours should end at midnight and Friday and Saturday hours should end at 1:00 a.m.

Mr. Wideman stated that he also had a problem with the word band since it could mean an 8 or 10 piece orchestra and that would draw too large a group. Mr. Wideman then asked about a disc jockey with amplifiers and tapes or records. Mr. Castro stated that would be permitted.

Chairman Guttman stated that a resident had asked him the same question and he had reached the opposite conclusion until he refocused on the words "and/or similar entertainment activities" and he found that very problematic because of the answer just given by Mr. Castro. Mr. Guttman added that he thought he shared the same concern about band performance and thought he knew we did not mean a large or big band and was uncertain if small band performances or musical duos or combos would be the correct wording. Mr. Guttman stated, "We are talking about 1, 2 or 3 instruments and the idea of similar entertainment activities is a black hole in which anybody can do what they want to do." Mr. Guttman suggested removing "and/or similar entertainment activities" and that would be restricted and if other members of this Commission feel that a disco type of environment with CD's is something that this Commission thinks is appropriate we ought to address it right on. In addition, Mr. Guttman stated that in section B, we need to say not "the dance floor" because there may not be a dance floor, but we ought to say "any dance floor" and because their may not be one and after the word "entertainment area shall not" insert ", in the aggregate,"with commas before it, "shall not exceed" but Mr. Guttman was unsure of the appropriate size to be inserted here. Chairman Guttman stated, "I don't want to be a hard-nose about whether this is 12:00 or 1:00 but we used to have in the first version of this ordinance, a distinction between times for entertainment by restaurants with entertainment that abutted a residential area and ones that did not and I thought that was a worthwhile distinction. For example, if a restaurant with entertainment is in a commercial district, I really don't care if they continue until 1:00 a.m. or not, but if on the other hand, it abuts a residential district, then I guess I do care. You had a nice little chart in the prior version of this. The only objection I had to the outside limit of 1:00 is potentially in the case where a restaurant is carrying on entertainment activities abuts a residential area."

Mr. Wideman commented that we should say "live music and recorded music" because discos can be even noisier than a piano and a singer and we should be more specific. Mr. Wideman stated that should be allowed, but should be controlled. He wanted to be sure they could not set up two huge amplifiers and blow the walls out.

Mr. Randolph stated that what he was saying would work under the way it is written because they are not accepted.

Mr. Guttman stated that his preference would be to enumerate the type of entertainment activities that we want and not fall back on some sort of generic permission.

Mr. Shaw stated that the root of this was that some of the restauranteurs stated that they needed to have some form of light entertainment to attract people and bring them in. Mr. Shaw said, "Let's make this an accepted accessory use. Not a redesign of the restaurant. Make it simple and limited and make it so that it does permit live music with one or two players. Do not allow it to allow a DJ or canned music. There is a difference between background music and an activity and I think that if we do control it, again, 40 percent lets go look at what happened in the original Bradley's. Here is a place that was a restaurant and by the time it was the evening, if you are going to allow 40 percent of a restaurant this will end up becoming a use for dance area. I don't know what is going to happen. We have a few that could easily do it. I think this has to be a percentage of the seating area rather than of the establishment so at least you are correlating how big the place is as to how big the percentage is."

Ms. Murphy suggested adding the word "voice" in section1 or vocals because that is technically not music. It is human music and we should add that in and encourage that. Ms. Murphy added, "I do not think we should have recorded music. It is nice to have live music and scratch the idea of recorded music. Probably take out band performances and add back in about abutting residential neighborhoods and houses of worship. We might have had something in there about schools, but that is mostly daytime, so not much of a problem. We should also take out "and/or similar entertainment activities" since that could mean a lot of things. Finally, I am fine with the 40 percent, but, if everyone else is not, then I would recommend making it a prorated floor area and not just a fixed number."

Chairman Guttman agreed that it should be a percentage then asked, "a percentage of what?" Discussion continued and it was noted that staff should further tinker with the language. Mr. Castro stated that his concern was that he wanted to bring this to the Council in February. Mr. Castro suggested that since he had to push back the Intersection Vision Study Item, maybe both items could be combined together and brought to the Commission in February. Mr. Guttman said March would be fine.

Mr. Schuler stated that he would like to see band performances not to exceed three pieces, a combo or something of that nature incorporated.

Mr. Bell read into the record, excerpts from an article printed in the Shiny Sheet on Sunday, December 23, 2007, Local Voices, "Commerce needs infusion of ideas". Mr. Bell requested that this article be entered into the record. (A copy is attached)

Ms. Murphy stated, "Here, here to what Lowry just said." Ms. Murphy requested action to recommend language so this item could get before the Town Council next month.

Mr. Shaw followed up on that comment and made a motion to approve with the following changes: under Item #1 to read "live performances with up to three performers, musical or voice." Mr. Shaw stated that he would like to modify in the minimum standard, section B to read 40 percent of the public seating area, modify C so that it is Sunday through Thursday until 10:45 p.m. and Friday and Saturdays to remain as is.

Ms. Murphy asked if she could add something about abutting residential neighborhoods and houses of worship and Mr. Shaw stated that his only reason for not including that is that the noise ordinance is already very specific about them.

Mr. Randolph asked about people who live above retail stores in commercial districts and stated that there is quite a bit of this. Some of these residents in these commercial districts have complained about places that are close by.

Mr. Castro stated that the reason he had not included anything residential was because he could not recall any restaurant that does not have residential either above it, next to it or abutting it.

Ms. Murphy stated that we need to scratch "and/or similar entertainment activities" in section 1 and that "band performances" is gone because of Mr. Shaw's suggestion.

Chairman Guttman commented that he would like to start Section B with "any dance floor" and in the aggregate.

Mr. Shaw read #1: "Live performance with up to three vocal or instrumental performers. It was suggested to increase the number to allow a trio and quartet." After discussion, it was decided to not to exceed four performers, vocal or instrumental. So you have live music and tv.

Mr. Randolph asked, "So that means no background music coming from a radio?"

Mr. Shaw stated that was already permitted elsewhere in the code. Other members of the commission asked, "It is?" Mr. Randolph stated, "You are dealing with it now. The following entertainment uses are permitted and we are being specific. We weren't specific before so we did allow it before. Now you are being very specific as to what you allow and now you are only allowing live music or television sets."

Mr. Wideman asked if that meant you could not have background music and Mr. Bell commented that you need to have background music. Mr. Shaw agreed and said he thought it was in a separate part of the code.
After further discussion, the following motion was made:

MOTION BY MR. SHAW TO APPROVE STUDY ITEM 10 WITH MODIFICATIONS THAT ALLOW NO MORE THAN FOUR VOCAL OR INSTRUMENTAL

PERFORMERS AND TO ALLOW PRERECORDED BACKGROUND MUSIC. MOTION SECONDED BY MS. MURPHY. MOTION CARRIED 7-0 AFTER ROLL CALL VOTE.

B. New Business

1. Royal Poinciana Area Planning Study Status Report (RPAPS)

Chairman Guttman reported that on December 20, 2007, he attended a meeting of the Society of the Four Arts at which Marcella Camblor of the Treasure Coast Regional Planning Council (TCRPC) presented an overview to members of the Royal Poinciana Area Steering Committee of the seven day charrette process. Mr. Guttman stated that he had lunch on December 27, 2007 with Ms. Camblor. Mr. Guttman recounted his take on some of the matters at the December 20, 2007 meeting. "The RPAPS Charrette is tentatively scheduled to begin at 10:00 a.m. on Saturday, February 16 and conclude on Friday, February 22 with a presentation of a preliminary report from 7:00 p.m. to 9:00 p.m. In between those dates, the TCRPC design studio is tentatively scheduled to work daily from 9:00 a.m. to 9:00 p.m. without further input from residents who attended the kick-off meeting. The Steering Committee (SC), however, has not fixed a final schedule for the charrette because the week chosen by the TCRPC happens to coincide with Presidents Day school vacation and with many children and grandchildren in Town, the SC is concerned that holding the charrette during that period may decrease attendance." During their luncheon, Ms. Camblor told Mr. Guttman that she now prefers starting the Charrette a week later, on Saturday, February 23. That day would be devoted almost exclusively to envisioning what Palm Beachers want the study area to represent and constitute in the years to come. Residents who are unable to attend the opening session on Saturday will be given an opportunity to voice their vision for the study area during any of the subsequent, mid-week design sessions, but will not otherwise participate in the design process. At the conclusion of the charrette week, the SC will review the results and sometime during the week beginning April 21, the TCRPC expects to submit a final report to the SC and then to this Commission for review. Ms. Camblor emphasized that the SC is not a regulatory agent and were not proxies for Palm Beachers. The SC's main roll is to help the TCRPC identify stakeholders, encourage residents to attend the week-long charrette and assist in publicizing the charrette. Ms. Camblor also knows that each of us is a stakeholder and I've sent Ms. Camblor a copy of all of our telephone numbers. Finally, Ms. Camblor remarked that leading up to that week, the SC could modify the boundaries of the Royal Poinciana Area Study and her remark concerned me because it crosses over, in my view, to this Commission's area of responsibility. In the course of our December 27 luncheon, however, Ms. Camblor reversed herself and agreed that any changes in the boundaries of the study area would have to be brought to us and not the SC."

Mr. Guttman proceeded to ask Mr. Page to update the Commission on the RPAPS.

Mr. Page commented that he was new to the process and stated that he met Marcella for the first time several weeks ago when the first SC meeting was held. He was pleased with the professionalism that he saw in her and felt the TCRPC was well equipped with the experience they have had in working in other communities to move forward with this process. Mr. Page stated that 13 of the 19 appointed SC members were in attendance at the first meeting. Staff will do the best job it can in keeping them notified and posted of upcoming meetings well in advance of those meetings and involve them in determining the dates of those meetings. Mr. Page stated that he sensed these were members who will be very involved and have a lot of strong feelings and input and will be participating in a strong direct way. Ms. Camblor was correct in noting that this work is being assisted or aided by a cast of professionals. She will be bringing in architects, landscape architects, engineers and retailers and planners and involving quite a team in analyzing the data that is being collected and will use their collective input when making their recommendations to the Town. There will be opportunities for the public, owners and tenants to be involved and the public is always welcome to these meetings.

Mr. Shaw stated that he spoke to two members of the SC and the perception of their role was not the perception of what he thought. "In Mr. Guttman's statement, he made the comment that the report is going to be given to the SC and again, why? It is not because they are not entitled to have it, it's the perception of what their role is. Their role is to sort of make sure that the meetings take place, and get everything organized. I want to make sure that there isn't a feeling from the public that they are the focal point or the communication point for what is happening, because they are not. I don't think that it is fair to them to be put into a position where they are being asked to either review or respond to a report when, in essence, as individuals they are welcome to respond, but as a committee, that does not appear to be their role. The definition of a cheering team has been used, but I am not so sure that many of them understand it, and I hate to see this thing get to a point where there is a major disagreement sometime in February as to what their role is and that they think they are the ones that are making the decisions."

Mr. Guttman stated that he is trying to be sensitive to that and that is why he attended the SC meeting and why he met with Ms. Camblor. Mr. Guttman said, "To some degree, the mission has been set by the TC and we do not have the prerogative to interfere with that. Your comments will be in the record and obviously, this is a sensitive issue of boundaries between the role of the SC and this Commission and I hope that between JP and Marcella Camblor, both of whom I have a very high regard for, that they manage to navigate those shoals as best they can."

Chairman Guttman realized that he had overlooked Study Items 10 and 11 and stated that, in the interest of saving time, he would like to meet with and give Mr. Castro his comments on Item 10 later. Mr. Guttman asked Mr. Castro to discuss Study Item 11.

2. Comprehensive Plan Evaluation and Appraisal Status Report

Mr. John Page, Director of the Planning, Zoning and Building Department, presented a verbal report on the Comprehensive Plan Evaluation. Mr. Page advised the commission that Mr. Tim Frank, who has been assigned the responsibility for walking the Commission through the updated Comprehensive Plan process is on vacation this week, but did leave this update. Mr. Page stated that a few weeks back, Mr. Frank concluded his last meeting with the consultant and the consultant committed to completing the draft with our staff comments the first week of January. Mr. Page stated that he would do all that he could to see that those comments were distributed to the Planning & Zoning Commissioners with as much advance notice as possible so that we can be looking at those draft changes next month. Mr. Page stated that as part of the update, we are going to be replacing the maps in the Comprehensive Plan with digital graphics and hope to have that material back in February.

VII. COMMENTS OF THE PLANNING AND ZONING COMMISSION AND PLANNING, ZONING AND BUILDING DIRECTOR

Mr. Page reported that at the last Planning & Zoning Commission meeting, the Commission compiled a list of planning items and voted on the most important planning functions. There was a list of 22 to 24 items generated by the Commission. The top 5 were enumerated in a memo to the Town Manager and Mayor and Town Council. Mr. Page explained that Mr. Golboro telephoned him to ask that one of the items that appeared on the list of items to be voted on entitled, "The Greening of town elements" include further clarification. Mr. Golboro was referring to encouraging alternative energy sources and exploring energy alternative sources in municipal structures and town functions of all kinds.

Mr. Golboro added, "to assist the buildings and owners to some alternate thinking about alternative power supplies."

Mr. Page stated that was not voted as one of the top five vote getters by the Commission, but staff felt it was important to bring that clarification back to the Commission. Mr. Page stated that he will be reporting the results of that vote to the Town Council next week.

Mr. Guttman added that he felt it was important for the members of this Commission to focus on the fact that when this Commission ranked it, Mr. Golboro's item was titled "Town Greening" and it made it into the top five. Mr. Guttman stated that he had no problem in re-characterizing the item, but wanted to know the consensus of the Commission about shifting from a vague term like "greening" to a much more precise phraseology.

Ms. Murphy stated that she recalled that it was one of her items too, and, it focused on reducing the dependency on surrounding areas. Ms. Murphy requested the item include along with alternative energy sources, alternative water sources to deal with our drought issues.

Mr. Wideman stated he would find it problematic to try to expand this greening concept to include alternative water sources when it was actually not one of the top five.

Mr. Bell asked, in light of the new tax situation, is this greening going to cost a lot of money for the staff to research? Chairman Guttman rephrased the question and asked Mr. Page if staff would need consulting time in researching alternative energy sources.

Mr. Page stated that the Council will determine whether to fund these projects.

Mr. Shaw stated, "I would like to make a motion that during the budgetary review of the town, that the depth and level of presentation of the minutes not be one of the sacrificial items. It is extremely important that we get the minutes in the manner we get them and ask that the Council please be aware that this is not a place to cut back." Mr. Bell added, "here, here".

Mr. Shaw added, "this is one of the best sets of minutes I remember getting and I'm able to refer back to and understand what we did and the impact of it."

MOTION BY MR. SHAW TO RECOMMEND TO THE TOWN COUNCIL TO RETAIN THE CURRENT SYSTEM OF PROVIDING THIS COMMISSION WITH A FULL SET OF MINUTES.
MOTION SECONDED BY MR. BELL.

Mr. Shaw stated that he liked the way the minutes were presented, with so much information and a lot of verbatim content. Chairman Guttman added, "In contrast to a more abbreviated, action-type minutes, which might not be more than two pages."

Mr. Golboro requested that the Commission finish the recommendation to the Town Council regarding the greening before voting on this motion.

Chairman Guttman asked for a consensus of the Commission and asked if the Commission was okay with Mr. Page reporting to the Town Council on the five prioritized study items over the summer, re-characterizing the last one as a study of alternative energy sources rather than using the more vague term of greening.

It was the consensus of the Commission that the last item, which was referred to as "greening", be re-characterized for clarification purposes for Mr. Page's presentation to the Town Council.

Chairman Guttman asked Mr. Randolph if it was permitted for the Commission to vote on the form of the minutes without it having first been advertised and Mr. Randolph stated that it would be permissible. Chairman Guttman called for a roll call vote on the minutes motion.
MOTION CARRIED UNANIMOUSLY AFTER A ROLL CALL VOTE.

VIII. ADJOURNMENT

It was the consensus of the commission to adjourn at 12:55 p.m.

Respectfully submitted,

____
William M. Guttman, Chairman
Town of Palm Beach
Planning and Zoning Commission

____
Alan S. Golboro, Secretary
Town of Palm Beach
Planning and Zoning Commission

dam

attachment: December 23, 2007 Shiny Sheet, Local Voices, "<u>Commerce needs infusion of ideas</u>"

Palm Beach Daily News
Sunday, December 23, 2007

LOCAL VOICES

Commerce needs infusion of ideas

By BRUCE GENDELMAN
Special to the Daily News

As a permanent Palm Beach resident I can't begin to explain how fortunate and delighted I am to live on this very special island. The weather is fabulous, the people are interesting, the homes are beautiful and the superlatives go on.

But, as a member of the Palm Beach Chamber of Commerce, I struggle with the very important task of helping business stay vital.


Mr. Gendelman

Operating a successful business is, under the best of circumstances, a challenging endeavor. But it is difficult for a new business to secure a strong foothold when presented with seemingly excessive obstacles — permits, signage, inspections, hours of operation, parking. All have their place, but it's difficult to maintain enthusiasm for a dream when everything seems to be approached from a negative.

For many years the caché of Worth Avenue had no equal; today, multiple nearby destinations offer directly competitive retail environments, with extensive shopping choices, multiple entertainment options, quality restaurants, attractive architecture, and, most notably, easier parking. A Florida magazine recently highlighted the 50 best shopping districts in Florida, and Palm Beach didn't even make the list!

We can achieve helpful stimulation of community spirit by changing the way we think about business. The town "allows" business that is "town-serving," which is defined by who the town decides, based upon unclear criteria, is worthy.

A town-serving business should include more than just (some) residents — everyone on the island should be a beneficiary, including our guests, businesses and their personnel. The Chamber of Commerce, the Palm Beach Civic Association and Town Council must recognize that without vital and exciting businesses, we are no more than a "bedroom community" with isolated residents behind closed gates. Empty storefronts are counterproductive to town serving and clearly not the highest and best use.

A comparison can be made by looking at another enclave of fortunate American living — Aspen, Colo. Aspen has the same wealth demographics as Palm Beach, has a lower average age per resident and is often more informal, but it has been able to achieve a very noticeable sense of community that can be emulated by Palm Beach.

Aspen actively promotes itself in a businesslike manner using a lifestyle image featuring its outdoor environment, residential housing stock excellence and tourist destination options, and is anchored by its business offerings and vitality. The town of Aspen has frequently sponsored events that bring community together: an Americana Fourth of July parade, a Saturday farmers market, children's events and musical and intellectual festivals. Aspen encourages mass transit, is pedestrian friendly and has a pro-business approach in supporting local establishments. In stark contrast to Palm Beach, Aspen didn't debate whether a Starbucks should be allowed; it even encouraged the national chain to have outdoor tables and chairs.

To understand why some towns are thriving while others are stagnant, we should look at desirable features. While not an all-inclusive list, some of those features are easy to identify and clearly fit the profile of Palm Beach:

- **Safe, beautiful, clean location:** We have the best police force in the nation, exceptional homes, condos and estates, and daily garbage pickup.
- **Convenient transportation:** PBIA is seven minutes from town.
- **Interesting people:** No other place is even close. Captains of industry, titled foreigners, yoga instructors, well-educated professionals, socialites, internet tycoons, famous radio hosts,

Palm Beach could follow lead of community-minded Aspen.

rock stars, the Donald, "old and new money" families, surfers, gourmet chefs — you name it, we have it.
- **Cultural and historical assets and events:** The Flagler Museum is beyond belief. The original Mizner and Fatio architecture on homes and commercial buildings is unique and a draw.
- **Exceptional financial professional services:** There certainly is no place in the country with more outstanding private bankers, wealth management firms and lawyers per capita.
- **Exceptional medical care:** Top notch medical care options are improving with the Cleveland Clinic and Johns Hopkins outreach clinics.
- **Entertainment options and nightlife:** Palm Beach is the society ball capital of the world. While other entertainment options are limited, there are several late night bars and restaurants; Cucina, McCarty's and Taboó are always hopping, and we have CityPlace in West Palm for movies.
- **Performing and visual arts** (in West Palm): The Norton provides world-class art opportunities and the Kravis has a significant and varied performance schedule.
- **Shopping:** We need help! In order to thrive, retail business needs a combination of visits and wealth. We have wonderful stores, but the national luxury merchants have other options and many of our local merchants are under stress. Parking appears to be the number one issue. Also, we can promote the unique qualities of Palm Beach to tourists with an effective public relations effort with our hotels banding together to lead this effort.
- **Dining:** There are many fine options, including no shortage of outdoor Italian dining, but little else for those who like dining "al fresco."

While Aspen has its mountains, wilderness and trout-filled rivers, Palm Beach is blessed with 13 miles of beach, 7 miles of Intracoastal bike paths, boat docks, the Flagler Museum, the Four Arts, a Par 3 golf course, a recreation center and tennis courts. Our fine hotels include The Breakers — one of the best hotels in the world. If we agree that commerce brings vitality to a town, the question we should be asking is: What do we do to make our community more desirable for commerce?

Aspen has a FREE bus system, using hybrid buses that greatly help relieve traffic problems. What if seasonally we "asked" all town employees and all retail and office workers (who don't have their own on-site parking) in our retail districts to park in one of two town-contracted parking lots near the south and north bridges? For about the cost of the PB Cats program, we could have 18-hour-a-day, continuous free loop shuttle bus service. This could open up more than 1,000 parking spaces for consumers, allowing all-day easy access; everyone wins. Retail sales would increase and, over time, the selection and quality of stores would also increase, filling empty storefronts. In addition, the expense for those individuals or employers who pay for parking would be gone.

What if tourists could ride water taxis to West Palm Beach from the town docks or at waterfront establishments rent kayaks, sail boats, bikes and roller blades? What if activities for our children and grandchildren were offered that brought excitement and vitality?

Imagine the Palm Beach Grill located as part of a carefully redeveloped Royal Poinciana site, featuring outdoor seating, a dock to welcome boating guests, a beautiful view of downtown West Palm Beach across the water sipping cocktails as the sun sets or the Fourth of July or SunFest fireworks burst overhead.

Imagine the vias on Worth Avenue and a revitalized Royal Poinciana Way with the Testa's rebirth leading the way, small shops, luxury condos, full storefronts where you could enjoy a snack outside and go nighttime shopping at unique stores and entertainment venues.

Let's further develop a sense of community and encourage business in town. In doing so, we will help existing businesses to remain viable and attract new merchants willing to invest their ideas and dollars in serving the town for everyone's benefit.

Bruce Gendelman is a Palm Beach resident, secretary of the Palm Beach Chamber of Commerce and president of the Bruce Gendelman Co. Inc.

HOW TO SUBMIT LETTERS

The 'Palm Beach Daily News' welcomes letters to the editor.

By mail: Please mail or bring your letters to: Palm Beach Daily News, 265 Royal Poinciana Way, Palm Beach, FL 33480

By fax: Our fax number is (561) 655-4594.

By e-mail: To editor@pbdailynews.com

Please include your name, address and daytime phone number for us to verify your letter. We routinely edit letters for brevity, accuracy and good taste. We publish only original letters written to us, not copies of letters to others or open letters.

Letters must be received by 5 p.m. Thursday for publication in Sunday's Opinion page.