



TOWN OF PALM BEACH

Recreation Department

RECREATION ADVISORY COMMISSION MEETING

November 14, 2007 Minutes

- I. **CALL TO ORDER** - A meeting of the Town of Palm Beach Recreation Advisory Commission was held on November 14, 2007, at the Recreation Center. The meeting was called to order by Mr. Michael Spaziani, Chairman, at 9:00 a.m. Commission members in attendance were Mr. Spaziani, Mrs. Milissa Agnello, Mr. Michael Andrews, Mr. Kenneth Schechet and Mr. Stuart Shulman. Alternate members in attendance were Mr. Joseph Della Giustina, Mrs. Rita Taca and Mr. Henry Jamison. Ms. Danielle Hickox arrived at 9:03 a.m. and Dr. Timothy Coffield arrived at 9:10 a.m. Staff members in attendance were Director Mr. Jay Boodheshwar, Assistant Directors Mr. Alan Brown and Mr. Rod Gardiner, Office Manager Mrs. Lisa Walkowich and Mr. Paul Castro, from PB&Z. Also in attendance was Town Council President Mr. Richard Kleid.
- II. **APPROVAL OF THE AGENDA** – Mr. Spaziani requested that there be a change to the agenda to first discuss the Seaview Park Athletic Field Renovation and the Palm Beach Day Academy's proposal to convert a section of their west field for parking and student drop-off/pick-up and then back to Old Business. Mrs. Agnello made the motion to approve the agenda with changes, seconded by Ms. Hickox all were in favor.
- III. **APPROVAL OF THE SEPTEMBER 12, 2007, MINUTES** – Mr. Spaziani asked for a motion to approve the September 12, 2007, Recreation Advisory Commission Minutes. Mr. Della Giustina made the motion to approve the minutes, seconded by Mr. Andrews, all were in favor.
- IV. **NEW BUSINESS** – Mr. Spaziani stated that he was going to have to step out of his role of chairman for this portion of the meeting and allow Mrs. Agnello to run the meeting because of a conflict of interest. He read a statement into the minutes, (this statement is attached) and said that he would be making comments as a resident of the community.

A. Seaview Park Athletic Field Renovation

1. **Project Overview and Time Line** - Mr. Boodheshwar stated that the field was in desperate need of a renovation. He summarized the chain of events and final outcome of this past spring relative to the public/private proposal to install synthetic turf and lights, including funding commitments from the Day Academy and Mr. Dan Borislow. After the ultimate rejection of the proposed synthetic field, staff communicated to the Town Council and residents that the Recreation Department would budget money in FY08 for a renovation with natural turf and that we would seek a financial partnership with the Day Academy for a 50% share in the costs of said project.

Mr. Boodheshwar said that cost of the project has been preliminarily estimated at \$400,000. He said that this would include stripping of the current turf, laser grading, the installation of a new type of turf, a Bermuda hybrid known as Celebration Turf and new irrigation which was desperately needed. Certain ancillary equipment would also be included.

2. Amendment Proposal to the Agreement between the Day Academy and Town for Use of Facilities

Mr. Boodheshwar stated that a request for cost sharing of the field renovation project was submitted to the Palm Beach Day Academy. The Day Academy Board has given preliminary approval for funding up to \$200,000, with a condition on the funding. The Day Academy Board proposed an amendment to the facilities use agreement, which would fix the terms of the agreement for 10 years. In addition, the amendment would also formalize the handshake agreement the Town has had with the Day Academy in the sharing of costs associated with ongoing routine maintenance of the field.

Mr. Boodheshwar said that the current agreement, which has been in place since 2000, automatically renews each year. He also reported that included in the agreement is a 90 day “out clause”, giving either party 90 days to cancel the agreement with written notice. If the Day Academy was to be given guaranteed use of the field for 10 years, the Town’s ability to opt out would cease until 2018, except in the case of a material default.

Mr. Boodheshwar said that their request for this guarantee is due to the fact that funding for the project would come from a recently completed bond issue. Their bond counsel has expressed an interest in the need for an amended agreement to be able to use proceeds from the bond to assist with the renovation.

Mr. Martin List, representing the Day Academy, said that in order for the school to use bond proceeds for property they do not own, they would need a constructive interest in the property, which would usually be for the term of the bond but the Day Academy felt that a 10 year agreement would be adequate. He said that all they were asking for was that the existing operating shared use agreement will stay in place for at least 10 years.

Mr. Della Giustina was opposed to giving the Day Academy a 10 year agreement and felt that the school could find funding from another source other than the bond to help pay for the renovation. He felt that if in fact they wanted a 10 year agreement then they should give the Town an interest in the lot to the west of their building. Since the Day Academy was being specific about the Town’s athletic field the Town should have the same guarantee about the school’s west field.

Mrs. Agnello asked how the project would be affected if there was no shared funding of the project. Mr. Boodheshwar said that we wouldn't be able to do the complete project as planned. He said that it might be possible to do the project in phases but in the long term it would cost the department more money. Mr. Shulman felt that it wouldn't be in the Town's best interest to refuse the money and he had no problem giving them a 10 year agreement. Mr. Jamison and Mrs. Hickox stated that they also did not have a problem giving the Day Academy a 10 year agreement. Mr. Jamison said that the Commission would be short sighted to leave \$200,000 on the table when the 10 year agreement really made no difference since the Day Academy has always had use of the field. (Ms. Hickox departed from the meeting at 10:00 a.m.)

Mr. Della Giustina felt that there needed to be a reciprocal agreement that included the school's west field. Mr. List said that he was not authorized to negotiate the terms of the agreement, it was not appropriate and he would have to go back to the board. Mr. Boodheshwar said that what we are talking about is the entire agreement not only the field, as the field is only one of the facilities that are part of our shared use of facilities agreement. Mr. Della Giustina clarified that he was requesting that the specific facilities associated with the agreement be listed in the proposed amendment.

Mr. Della Giustina asked what the time line was for the project because he was going to suggest tabling this item and revisiting it at another meeting. Mr. Boodheshwar said since the Commission was not scheduled to meet until January, staff would not be able to take this item back to the Council until February and that would definitely impact the project timeline. He suggested that the Commission could hold a special meeting in December so that staff could take this item to the Town Council in January. He felt that we could probably slow down construction drawings and possibly still hit our window.

Mr. Andrews commented that he would assume the Town is behind this from what we have heard today. He wanted to know if the Recreation Staff was in favor of the agreement. Mr. Boodheshwar said that staff is working under the assumption that the Town has had a relationship both written and unwritten with the Day Academy for many years, and not having any knowledge that we are planning on changing that relationship, we are just looking at being prudent with our funds. He stated that we have an outside partner who shares in the wear and tear of the field and we felt that it would be appropriate that they have a share in the costs for reconstruction of the facility.

Mr. Kleid, president of the Town Council stated that the Town Council had not looked at this particular issue and what they would be looking for was the Recreation Commission to study the issue and give the Council their advisory opinion. He said that Council would take their recommendation into consideration when rendering a final decision.

Mr. Della Giustina made the motion to approve the proposed amendment, with the 10 year fixed term, but the amendment must also include a specific list of facilities that are relative to the agreement, including the entire Day Academy's west field. Seconded by Mr. Shulman.

Mr. Andrews said that he was against the idea of specifying the facilities. He said that the agreement as it is written has worked in the past and did not see why it would not work in the future.

Mrs. Agnello called for a vote. The motion passed with Dr. Coffield, Mrs. Agnello, Mr. Shulman and Mrs. Taca in favor of the motion. Mr. Andrews and Mr. Schechet were against and Mr. Spaziani abstained. Mrs. Taca an alternate member was voting in place of Ms. Hickox who had left the meeting earlier. (Mr. Jamison departed the meeting at 10:15)

B. Day Academy Presentation for Use of School's West Field for Parking and Student Drop-off and Pick Up

Mr. Boodheshwar said that included in the back up information was a memorandum from Dr. van der Bogert, Head of School for the Day Academy, and project information relative to the proposed parking lot and student drop-off/pick-up area. Mr. Boodheshwar invited the representatives from the Day Academy to speak on this matter and provide additional details.

Mr. Brian Seymour of Gunster Yoakly and representing the Day Academy expressed his concern about Mr. Spaziani's letter, stating that past proceedings were not relative to the situation at hand. He said, "I think our purpose here today is to give you some of the history and show you what is actually being proposed for the property."

Dr. van der Bogert said that she had come to discuss the initial proposal, get feedback from the Commission and come up with a final proposal that will work for the school as well as its neighbors. She said that a traffic study was commissioned by the Town and out of that came a recommendation that the Day Academy should take a look at trying to develop a plan for on site parking. She said that the packet the Commission had received is a proposal that the school will be taking to Town Council in December for proposed on site parking with a student drop-off and pick-up turn around. She said that the necessity for the parking came about because parking on the north side of Seaview was not allowed, the permits that the school had gotten from the Town had been revoked and since the change in direction of the street, parents were driving into the sun in the mornings creating a dangerous situation dropping children off in the street. She said that there would not be lights and no busses will use the area. Dr. van der Bogert said that only half of the field was going to be used still maintaining some green space.

Mrs. Agnello said that she was concerned about losing the green space. She said that pick-up and drop-off of children at school as well parking is not just a Day Academy problem, it is a problem that all schools have and to lose that field and harm the neighbors behind it, was just not worth it.

Mr. Spaziani, of 322 Seaspray Avenue, stated as a citizen he was concerned about the reciprocal interest that we share in that field, that it is part of the joint use agreement with the Recreation Department and protecting the neighbors. Mr. Seymour said that the primary reason for building this space was for parking. He said that the Day Academy lost spaces on Seaview, lost spaces the other night when the town took away placards and it was hard to teach kids when the teachers don't have a place to park. He said that we are trying to work with the Town and work with the neighbors but we do have a real parking issue.

Mr. Andrews asked how often the Recreation Department used that field. Mr. Gardiner said that staff uses the west field for small special events, the after school program, summer camp, and sports practices when the Town's athletic field is being used by the Day Academy.

Mr. Spaziani, speaking as a resident, said that there was a declaration of use agreement by the Town of Palm Beach dated June of 2000, where the parking in the west field was to be limited to 12 school events per year and with the stipulation that when the school uses the west field for parking it will be required to use valet services. He said that the last three weeks he has seen this field used at least 12 times with no valets. Mr. Spaziani said that he wanted the principal to comment, why they were illegally parking in that field. Mr. Seymour said that the Day Academy was not going to get into a legal argument whether they were in violation of any rules or regulations at this time. Mr. Spaziani said that the purpose of bringing this out is that the school specifically made an agreement with the Town and now they are going back on that agreement. He said, "We want an agreement with someone who is going to stick to the agreement and you have not done that."

The Commission reviewed the plan for the parking lot. Mrs. Agnello voiced her concern about the drop off area, even with the parking lot; cars would still be backed-up down Seaview waiting to get into the parking lot. Mr. Andrews asked how many cars could be queue into the area. The Day Academy responded with approximately 19 cars.

Mr. Schechet said that it was stated that that the primary reason for the parking lot was parking, however he did not gather that from the back up material that the Commission had been given. He said from reading the back up material you are led to believe the primary reason for the parking lot is for the drop-off and pick-up of children. (Dr. Coffield departed the meeting at 10:40 and Mrs. Taca departed the meeting at 10:45)

Dr. van der Bogert said that the primary reason for the project is parking. However, the parking lot could be utilized for drop off and pick up of children, creating a safer environment.

Mr. Shulman asked Mr. Castro if he had any input on this plan. Mr. Castro said that the Town's traffic engineers were concerned about integrating parking with the queuing for the school with all of the traffic entering and emptying out of the same entrance to the parking lot instead of possibly two places. He said staff was concerned about the impact on the neighbors behind the school, the lack of lighting in the parking lot and the drainage.

Mr. Dell Giustina asked how many feet of green space would be left after the parking lot was built. The architect said approximately 150 to 200 feet. Mr. Dell Giustina asked if there was a program to promote car pooling and how many teachers car pooled. Dr. van der Bogert said that they offer financial incentives to get staff to car pool and approximately 10 people currently carpool but that it was difficult because of the teachers varying schedules.

Mr. Spaziani said that as a neighbor, he was concerned with the parking lot and especially the drop-off and pick-up of children directly behind his home. Mr. Andrews asked if the Day Academy was indeed going to speak with all the neighbors that this might affect. Dr. van der Bogert said that letters had been sent out and that the school had spoken with several, but not all of the neighbors.

Mr. Schechet asked staff that if the parking lot was built, given the use of this field now, would staff still be able to do the same things with the remaining green space. Mr. Gardiner said that yes, the modified field would still be big enough to hold practices and provide the necessary space for the current programs and events that take place there.

Mr. Della Giustina asked if the Day Academy had done anything about staggering the arrival and dismissal times. A Day Academy representative stated that over the next two years approximately 60 less students would be attending the Palm Beach campus due to the merging with the Day Academy of the Palm Beaches, so staggering arrival times was not necessary, but that didn't mean that the parking was not necessary.

Mr. Spaziani asked how they were going to protect the neighbors' property rights and property values. Mr. Seymour said that the Day Academy was here today to discuss concerns relative to the Recreation Department and suggested that if Mr. Spaziani had some specific concerns that they meet at a different time to discuss those concerns. He said that the school has always attempted to work with neighbors and work with the Town. Mr. List of the Day Academy said that one of the suggestions they heard from a neighbor was adding a wall on the property line so sound bounces off the wall and stays on their side. It would not be visible because the hedge would remain. He said that it would be an enormous expense but they were willing to do that if that is what it takes to be a good neighbor.

Mr. Della Giustina made a motion to advise the Town Council to reject the proposed parking lot due to the loss of open green space. Seconded by Mrs. Agnello.

Mr. Andrews said that he felt very uncomfortable voting at this particular time because he did not feel that there was enough information and he didn't feel a vote was even necessary. He said that rather than having to vote no because of the reasons just stated he would rather not vote on the matter at this time. Mr. Shulman agreed and felt that the Commission was being premature voting on any recommendation. Mr. Schechet said that with what was presented today he felt concern about the lack of green space and how recreation programs would have to be modified. He said that the primary focus should be how this parking lot will impact Recreation and he felt that more information was needed before a vote could be taken.

Mrs. Agnello called for a vote on the motion. The motion was defeated, with Mr. Andrews, Mr. Schechet and Mr. Shulman against the motion. Mrs. Agnello and Mr. Della Giustina voted in favor of the motion and Mr. Spaziani abstained. Mr. Della Giustina and alternate member was voting because two regular members had left the meeting earlier. Mr. Andrews, Mr. Schechet and Mr. Shulman wanted to make it clear that their no vote did not mean that they were in favor of the parking lot, but rather that they did not feel that there was enough information to make a fair vote.

Meeting was adjourned for a short break at 11:05 and reconvened at 11:15.

Mr. Della Giustina said that because he was on the defeated side of the previous motion to reject the parking lot proposal due to the loss of open green space, he made a motion to reconsider. Seconded by Mr. Shulman. Mrs. Agnello asked if there was any discussion. Mr. Shulman said, "I think we still need more information to see what they offer to do for the neighbors." Mr. Spaziani asked what information Mr. Shulman and the others needed. Mr. Shulman said that he would vote yes on the motion if some kind of conclusion or satisfaction would be done for the neighbors. His concern was that the neighbors were protected and at this point he didn't know if they were. After further discussion, Mrs. Agnello called for a vote. Motion passed with Mrs. Agnello, Mr. Della Giustina, Mr. Shulman and Mr. Schechet in favor. Mr. Andrews and Mr. Spaziani abstained.

Mr. Spaziani reclaimed leadership of the meeting as chairman. He asked Mr. Boodheshwar if the Day Academy would receive a copy of the minutes because he didn't want them to be confused as to what had been said when they were present vs. what was discussed after they left. Mr. Boodheshwar suggested that a special Commission meeting be scheduled in the very near future to approve the minutes from this meeting, as the next regular Commission meeting wasn't until January. He felt that it would be appropriate to do this, so that Town Council would have an approved record of the Commission meeting to include in their consideration of the Day Academy's proposal.

The Commission decided to hold a special meeting on November 28, 2007, at 9:00 a.m. to approve the minutes and address any other items that may be necessary.

V. OLD BUSINESS

A. Par 3 Master Plan Presentation

Mr. Boodheshwar gave a power point presentation and complete report including preliminary cost estimates regarding the Par 3 Master Plan. Mr. Steve Hall, a resident representing the Par 3 Group, reviewed a couple of points in the report, spoke about going after financial commitments from residents and asked the Commission if they had any questions.

Mr. Shulman said that he thought the master plan was fabulous but felt that going forward with the project would not improve the financial picture of the golf course. He also expressed some concern for the funding sources.

Mr. Spaziani thanked Mr. Hall for all his efforts thus far and for his continued support and dedication to the golf course.

VI ANY OTHER MATTERS

Mr. Spaziani said that he was concerned with members not staying for the full meeting. He felt that it was very important for everyone to stay for the entire meeting. Mr. Boodheshwar suggested a letter encouraging continuous attendance throughout the meeting. Mr. Spaziani agreed and asked if staff could draft a letter for his signature.

A. Fiscal Year 2008 Action Plan

Mr. Boodheshwar said that staff had finalized the fiscal year 2008 Action Plan. He asked the commissioners to look at the report and get back with him if they had any questions.

B. Staff Report – This Report is attached.

VII. ADJOURNMENT – Meeting was adjourned at 12:00 p.m.

**RECREATION ADVISORY COMMISSION
Record of Attendance 2007**

<u>Regular Members</u>	1/10/07	3/14/07	4/26/07	5/9/07	9/12/07	11/14/07
Mr. Spaziani	P	P	P	P	P	P
Mrs. Agnello	P	U	P	P	P	P
Mr. Andrews	U	E	P	P	P	P
Dr. Coffield	P	P	P	P	P	P
Ms. Hickox	P	P	P	P	U	P
Mr. Schechet	P	P	P	P	P	P
Mr. Shulman	E	P	P	P	P	P
<u>Alternate Members</u>						
Mr. Della-Giustina	P	P	P	P	P	P
Mr. Jamison	P	E	U	E	P	P
Mrs. Taca	P	P	U	P	E	P

LEGEND: P = Present
 E = Excused
 U = Unexcused
 A = Absent Pending Classification as “Excused” or “Unexcused”

**RECREATION ADVISORY COMMISSION
Conflict of Interest Record 2007**

<u>Regular Members</u>	1/10/07	3/14/07	4/26/07	5/09/07	9/12/07	11/14/07
Mr. Spaziani						
Mrs. Agnello						
Mr. Andrews						
Dr. Coffield						
Ms. Hickox						
Mr. Schechet						
Mr. Shulman						
<u>Alternate Members</u>						
Mr. Della-Giustina						
Mr. Jamison						
Mrs. Taca						

LEGEND: X = Conflict of Interest

Letter from the Chairman

I am a member of the Harvard Faculty Club, I sit on the Harvard College Admissions Committee as an interviewer, I was a former high school teacher and coach, I taught high school in the Panama Canal, worked with emotionally disadvantaged children and have 10 years experience with the Town of Palm Beach Recreational Commission. Thus, I have dedicated a large portion of my life to children. As you may know, I have two of the most wonderful children in the world, Brittany and Michael Jr.

Waking up in the morning and hearing the Palm Beach Day Academy children laughing and talking behind my house makes me feel wonderful. I have great respect for a fine education. Both of my two children study at Harvard and Andover in the summer and at Cardinal Newman during the school year. So, I fully believe in giving your children the best education that you can.

The Recreational Advisory Commission will be presenting two items that will affect the Town of Palm Beach and the neighbors on Seaspray Avenue. I unfortunately cannot be involved with either of these items, for legal reasons. The purpose of this brief opening is to assist the commission in making these key items fair for all parties. I would further indicate that those you have suggestions and comments, to please rise, state your name, address and proceed.

The first topic today is the Renovation of the Town of Palm Beach Athletic Field. Jay will give a short history on the condition of the field and the proposed items relating to the field. It has been suggested that the Day School contribute \$200,000 towards the renovation of the field. I believe it is in the best interest of the Town to renovate the field with its own money. The Day School in turn wants a 10 year agreement and then wants to have a constructive interest in the land to allow for the expending of bond proceeds on land they do not own. This sounds like a sub-prime loan by granting a constructive interest to someone who does not own the property to obtain financing. I believe that the required improvements to the Town's field is the responsibility of the Town and to grant a legal interest in the property would not be prudent. Therefore I am suggesting that the Town deny this proposal and renovate the field with its own money and keep all of its legal interest to the land.

Should the town approve this agreement, the Town must not give a constructive interest and should insist that upon this agreement that the Town have a reciprocal use of the eastern and western fields of the Day Academy for the Town's use. This should be a 10 year agreement to maintain both the eastern field and the western field as green space.

The second topic in the proposal by the Day Academy will be a 35 car asphalt paved parking lot with a turn-around. This will cover a majority of the green space on the western field of the Day Academy. They will present some excuses that the Sun is in their eyes when they drive and safety concerns. I talked to the Town of Palm Beach Police who insisted that there was not a safety issue, that the officer specifically instructed the Principal on how to handle this drop-off.

In my hand I have the brief of the law suit by the neighbors on the eastern field of the Palm Beach Day Academy. Here are some of the results. This is from the Circuit Court of Fifteenth Judicial Circuit in Palm Beach County Appellate Division, Case No 99-3611 AY.

(Letter from the Chairman – page 2)

Here are some excerpts from this ruling which should be considered in the Town's decision and the decision of the Palm Beach Recreational Advisory Commission. The Day School, located at 241 Seaview Avenue in the Town of Palm Beach for 68 years, is a special exception use in a residential (RB) zoning district. It is a private school that provides K through 9 grades. The school is on a parcel of property that is 1,100 feet in length and 100 feet in depth and is abutted on the east, west and north by residential homes. The philosophy of the school has been to serve a few students well.

One of the main concerns of the citizens of this neighborhood is the dramatic adverse impact on property values.

Page 29 of the petition states:

Granting the Day Schools Requested Variances will not be in harmony with the general intent and purpose of the Zoning Code and Such Variances will be injurious to the area involved and otherwise detrimental to the public welfare. John Underwood, an appraiser of 28 years experience, opined that the property values would be adversely affected, the proposed variances and special exceptions would increase the intensity of the use and would be too close to the residential development, thus having a dramatic impact on property values. That evidence was not rebutted.

On page 8 of the petition a Mr. Kolins argued that the criteria for granting a site plan review had not been met because the Day's School's request would adversely affect the public's interest. He presented a property appraiser who testified that granting the Day School's zoning application would substantially injure property values, and was incompatible with the surrounding residential neighborhood and the intended purpose of the zoning district in which it was located.

With an MBA in Real Estate Appraising from the University of Florida and a graduate degree from Harvard in Real Estate Development, I can assure you that the dramatic adverse impact on this neighborhood with the proposed parking lot/turn-around will be in the millions. And as you have just witness, this same opinion was noted in the Fifteenth Judicial Court.

The school will attempt to prove that they suffer from a hardship due to the lack of parking.

A variance is not a matter of right, but is a "variation: from the strict regulations of the Zoning Code. The Code required that the Town Council must and shall find that the criteria listed in Section 134-201 has been met before it can grant a variance.

- 1) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are applicable to other lands, structures or buildings in the same zoning district.
- 2) That the special conditions and circumstances do not result from the actions of the applicant.
- 3) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings, or structures in the same zoning district.

(Letter from the Chairman – page 3)

- 4) The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.
- 5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
- 6) That the grant of the variance will be in harmony with the general intent and purpose of the ordinance, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The Town Council can only grant a variance if the above criteria is proven. *City of Naples vs Central Plaza of Naples*. All of the criteria must be met, not just one or some of them. Section 134-201, Town of Palm Beach Zoning Code.

The arguments which follow demonstrate that the Town Council's approval of the Day School variances was not supported by competent substantial evidence and did not comply with the essential requirements of law that govern variances. The issue presented is a legal, not factual, one. The legal issue is whether the evidence presented by the Day School was legally sufficient to grant the variances. The member of the Town Council expressly recognized the fact that the evidence was legally insufficient, and yet it ignored the requirements of its Zoning code.

Page 17:

An applicant has the burden of establishing that it has met the Zoning Code standards that would entitle him to a variance. *Gomez vs City of St. Petersburg* (1989). The necessity of providing a "hardship" in order to obtain a variance is well settled in Florida. As a prerequisite to the granting a variance, an applicant must prove an exceptional and undue hardship peculiar to the property involved and not shared by other property owners in the area. *Nance vs Indialantic* (1982). The applicant must demonstrate that denial of the variance would deprive him of beneficial use of this property. *Metropolitan Dade County vs Betancourt* (1990) and must also prove that no reasonable use can be made of the property without the variance. *Bernard vs Town of Palm Beach* (1990). A legal hardship exists only where the property is "virtually unusable" *Maturo vs City of Coral Gables* (1993). Where land is zoned for residential use, deprivation of all beneficial use is proven only when it is established by competent evidence that the land cannot be used for any of the purposed permitted in such district. The hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.

The variances granted in this case were not justified because the Day School did not, and could not, prove that no reasonable use could be made of its property without the variances.

It is a long-standing principle in zoning law that in seeking a variance, the hardship cannot be self-created. *Josephson vs Autry* (1957). The hardship must arise from "circumstances peculiar to the realty alone, unrelated to the conduct or to the self-originated expectations of its owners" *Coral Gables vs Geary* (1980). The Day's School hardship is self-created because its self-expectations and personal preferences as manifested in its construction plans differ from the standards established by the Town Zoning Code. A legal hardship cannot be "in the eye of the beholder" *Bernard vs Town of Palm Beach*.

(Letter from the Chairman – page 4)

A property owner cannot knowingly design a building too large for his lot and expect variances in order to accommodate the building on the lot.

In the present case, many years ago the Day School chose to place its school in the midst of a residential community. When the Day School purchased the residential lots upon which to operate a school, it was well aware of the property's size, that it was only 100 feet in depth and that it was surrounded by residential homes. It obviously knew that the services its school could render were limited based on the size of the property, and the fact that it must comply with the Zoning Code's requirements.

The hardship that the Day School claims in a result of its own self-originated expectations in expending its physical facilities to provide more student activities and accommodate more students. While the Day School contends that the expectations are those of the students, and therefore they are not self-created by the school itself, that argument is disingenuous. The Day School is applying for the variances and is doing so because it wants to meet certain needs that it now perceives that the school has. Nothing has changed except the school now wants to expand its facilities and that alleged hardship is created by the school's own self-expectations regarding expansion. Not only does expansion needs not constitute a legal hardship, but they were self-created. Accordingly, the Town Council's approval of the Day Schools variances fails to meet the essential requirements of law and is not supported by competent substantial evidence.

Conclusion

Under the testimony and evidence presented, the criteria for granting the variances was not met, and therefore the Town Council's decision granting the variances should be quashed. Since the Town Council improperly granted the variances, the Town Council's approval of the site plan and review and special exceptions, which are contingent upon the granting of the variance, must also fail.

With this in mind, I direct the Commission to look to the past for guidance. That the school and the Town has lost this battle in court before and will lose again. That it is the responsibility of this Commission to make wise decisions and to deny this request to protect this green space and the neighbors' private property rights and values.

A declaration of Use Agreement was signed with the Town of Palm Beach and the Palm Beach Day School. A settlement with neighbors regarding the parking issue on the eastern field was noted at \$52,296.10 for legal fees.

Mr. Leone came in front of this commission months ago wanting to push the artificial field. His prolific speech on pornography, obesity and the need for open space for children to play was moving. Yet, he will come in front of you today pushing for the complete opposite of those statements, and try to convince you of the importance of covering the field with asphalt and concrete.

(Letter from the Chairman – page 5)

As a citizen I would like the commission to fully understand the implications of both of these proposals. To fully understand the loss in private property rights and property values to the neighbors, the underlying stress and financial costs that will be involved with fighting these issues in court, the overbearing feelings of being harassed by this school not knowing when the next attempt to further develop this beautiful piece of Palm Beach.

I would like the Council to understand these issues and think of the citizens of this town and not be sympathetic to a non-town serving school. To think how the increased enrollment of the Day School, the Public School and the new Jewish School has had on the citizens of this community. The Council must stop further development by a special exception commercial use within a residentially zoned neighborhood. Once this wonderful piece of real estate is gone and paved, this further paves way for future development of this property. Today I say “No” to the paving of this beautiful price of property.

Town of Palm Beach



Recreation Department

STAFF REPORT

November 14, 2007

ADMINISTRATION

Comprehensive Review of Town Operations

Staff is fully immersed in the process of reviewing all operations of the Recreation Department, as part of a broader “Comprehensive Review of Town Operations” initiative. Items addressed will include staffing levels and scheduling, levels and types of service provided, expenses, revenue, program subsidies, current policies and procedures, etc.

A final report to the Town Council is planned for the end of the year, with subsequent special meetings to engage the community as a whole. The Recreation portion of the report will be provided to the Commission once complete.

Department Action Plans

As of the September 30, 2007, results of the FY07 Action Plan were very successful, with 90% of the 140 items addressed. The FY08 Plan has identified 70 tasks for completion. As of October 30, 2007, 25% of these tasks are already in progress or complete. See the attached report for more details.

RECREATION CENTER

Seaview Park Athletic Field

A complete renovation of the Seaview Park athletic field is slated for the summer of 2008 and a financial share partnership (up to \$200,000) was pursued with the Palm Beach Day Academy. Preliminary approval has been received from the School. However, as a condition of the funding support, the Day Academy Board has proposed an amendment to the existing facilities use agreement with the Town, which requires review and approval from the Town.

Since the source of the Day Academy’s ability to share in the cost of the field renovation is expected to come directly from a recently completed bond issue, their bond counsel has expressed the need to have a constructive interest in the land to allow for the expending of bond proceeds on land they do not own. The proposed amendment gives the Academy that constructive interest (a 10 year period). The Recreation Commission will give consideration to the request at its November 14, 2007, meeting and Town Council is expected to review the proposal at the December 11, 2007, meeting.

Youth Programs

The Fall Session is running strong, and will continue through the first week of December. The Fall Session offers a mix of enrichment, pre-school, and youth athletics programs. Registration was been strong for the 20+ programs offered. The new Start Smart program was well received, with Soccer finishing on October 25. Start Smart programs, a program of the National Alliance for Youth Sports, has replaced Itty-Bitty pre-school athletic programs. The children, aged 3-5, learn about organized soccer in a fun, non-threatening environment. All of the Start Smart programs provide the opportunity to work one-on-one with a parent or guardian, as the program format is parent/child; and includes safe and developmentally appropriate equipment. Up next for Start Smart is the basketball program beginning in January.

Also, we continue to partner with the Palm Beach Soccer Academy (PBSA) offering a competitive, traveling soccer league for ages 7 to 16 years old. The full length season, which runs through February, offers practices and participation in local tournaments and games. Their staff conducted a hands-on coaching clinic for our Activity Leaders/Coaches (supplementing their National Youth Sport Coaching Association training). PBSA was also scheduled to offer a skills and drills clinic for the participants of our recreational soccer league and their traveling league this past weekend.

As with the flag football program, we will continue the Code of Conduct for Parents with the recreational soccer league in an ongoing effort to enhance and improve the experiences for participants and parents/spectators.

Adult Programs

The Fall Session for adults began in October, with most programs running 8 weeks. Our Fall Session will offer 12 various enrichment and/or fitness programs. The programs include language, fitness/toning, ballroom dancing, visual arts (such as calligraphy, painting/watercolor, and pottery), history classes, and featured the return of Tai Chi. Mr. David Waschko offers a version called Golden Breath. Golden Breath Tai Chi, and Mr. Waschko, has proven so popular, staff is looking into offering a second class each week. We have already begun receiving inquiries about the upcoming winter session and its full slate of programs.

After School Program and Camps

We continue to offer an after school program on a full time basis to Palm Beach Day Academy & Palm Beach Public School students Monday through Friday. The program is at full capacity, as it was last school year. Our Winter Camp registration will begin November 5 for residents.

Community Special Events

The Halloween Happenings event took place on Tuesday, October 30th, and proved once again to be a great family night out. It continues to be one of our most successful events. All the ghouls, ghosts, monsters, the young and young at heart, had smiles on their faces and a good time!

Upcoming Winter 2008 Session

The Winter 2008 Session begins on Monday, January 7th, with registration for residents beginning on Monday, November 26th. Most Winter Session classes will run 9 weeks, and we are scheduled to again offer 20+ youth classes, with 15 adult programs also being offered.

TENNIS PROGRAMS/FACILITIES

Court Usage

FY 07 overall court usage for Seaview and Phipps combined was up 1.11% over the previous fiscal year with revenue up 7.04% as well. Although we surpassed last year's figures we had a very slow summer at both facilities, including a significant drop off in youth participation. We also suffered from a drought situation interspersed with short heavy rainfalls that kept Seaview courts closed for significant periods for recovery and repairs. Phipps however continues to show consistent growth in court usage with a year to date increase of 20.71%. Seaview suffered a 9.02% decrease year to date, primarily in youth participation.

Seaview Park Tennis Center

The courts at Seaview are in excellent shape. We had a situation with the light fixture between courts 2 and 3, which became unstable due to rust. We had hoped to nurse it through the season until the renovation this coming summer; however, repairs were made on November 7th to ensure safety throughout the season.

Phipps Ocean Park Tennis Center

The maintenance building is nearly complete. The roof still needs tile and some concrete work. The project is anticipated to be complete by Thanksgiving. The drainage/run-off issue at the back of courts 1 and 3 will be addressed shortly with the installation of an extension of the trench drain system which should relieve or eliminate the run-off of material onto the sidewalk area. The canopy that was lost to Tropical Storm Barry has been replaced; however we then promptly lost the one between courts 5 and 6. This one has been ordered and was scheduled to be replaced on November 1st but was delayed due to the winds from TS Noel. It should be replaced by November 10th.

Youth Programs

The fall junior clinics are in full swing with 68 participants, a small drop from last year with the advanced match play session being canceled due to low enrollment.

The Junior Singles tournament was held on 3rd and 4th with an overall participation of 23 eager young players. The tournament was held at the Phipps facility this year for the first time due to the two closed courts at Seaview. Winners were: Boys 10 – Franco Pappalardo, Boys 10 Consolation – Jim Oelsner, Boys 12 – Clayton Stone, Boys 12 Consolation – Wyatt Robinson, Boys 16 – David Scaff, Girls 10 – Luciana Pappalardo, Girls 14 – Laura Cole

Adult Programs

The Halloween Doubles Round Robin was held on October 31st at the Phipps facility despite the threat of Tropical Storm Noel. Everyone had their costumes ready and elected to go forward with the event rather than reschedule. We had 20 participants this year, a drop off due to the storm, and a good time was had by all. They played an abbreviated round of games due to the recurring bands of wind and rain, followed by indoor games and refreshments.

In the fall season we will be hosting (2) Ladies League Teams at Seaview. The A-1 and A-2 team finished in the top quarter of their division and we are hoping for a championship possibility this year.

Maintenance

We had several short heavy rainfall days resulting in significant material loss at the Seaview facility. Staff was able to rapidly repair the courts and return them to prime condition with minimal down time to the customers. We are looking forward to the completion of the Seaview renovation from a maintenance stand point, as the courts at Phipps were able to withstand the rainfall with little or no down time and less maintenance recovery work.

Seaview Tennis Center Renovation

Final revisions to the construction plans are nearly complete and will be ready for bidding during the winter months. Construction is expected to begin in late April 2008, with an estimated six months for completion. Alternative play sites will be established well in advance of construction, to provide tennis players additional facility options along with the Phipps facility.

Interim Head Tennis Pro

Donna DeFrances has begun settling in as the new pro for fiscal year 2008. Many necessary changes have begun, the most significant one being the transition of the teaching services accounting procedures to a modern computerized system. This will allow for a much more efficient tracking and processing of accounts.

PAR 3 GOLF COURSE

Play Information

A total of 28,952 rounds were played during fiscal year 2007. During the same period in fiscal year 2006, 31,118 rounds were played. There were 32 outings and 5 leagues of various sizes were hosted this year, proving that the Par3 is a popular venue for group activities. This year's season has started slowly due to 17 days of rain and high winds in October. The end of October has seen play severely affected due to Tropical Storm Noel.

Golf Course Issues

The golf course is in very good condition entering the season. The beach sand intrusion onto the golf course has ceased due to the growth of the vegetation planted last April. The storms and winds of October have burnt the turf on the fairways and greens. As the winds subside and our irrigation can cover dry areas, this situation will improve.

Clubhouse Improvements

The Clubhouse interior has been painted and new carpeting will be installed in November. The entrance walls have also been repaired and painted.

Master Plan

The Par 3 Master Plan has been completed and will be presented on Nov. 13th to the Town Council and on Nov. 14th to Recreation Commission. The Par 3 Citizen's Group has committed to initiating private fundraising efforts to assist with the costs for implementing the master plan. Once complete, a financing proposal will be presented to the Recreation Commission and Town Council at a later date for final direction regarding the scope of the project.

In summary, the critical elements of the Par 3 that require upgrading are clear: (1) **Bunkers** have lost their shape and character and should be restored, (2) **Greens** should be rebuilt to USGA

standards and re-grassed with Paspalum turf, (3) **Fairways** and **Tees** are contaminated with a multiple of grasses and should be re-grassed with Paspalum as well, (4) the **Irrigation System** is antiquated, in disrepair, and should be replaced and a new **Water Source** installed, and (5) a **Landscaping Beautification** plan, using native flora, should be incorporated to enhance the course's aesthetics. Included in the Master Plan is an optional, but desirable recommendation for rebuilding a two story clubhouse at the northeast corner of the parking lot. The existing facility is outdated and small and has no view of the ocean or Intracoastal Waterway. This would allow the clubhouse to gain a view of the ocean and the ability to store golf carts inside the structure.

TOWN DOCKS

Operations

The Season is here already. Last week we had a brush with Noel, and the South eastern end of the state received pounding waves which seriously eroded already damaged beaches and dunes. The Town Docks had no problems. Staff doubled mooring lines and removed boarding ladders as the high winds and lunar phase cause higher than normal tides. We hope Noel will be the last of this summer's storm threat.

All planned maintenance has been complete with the exception of the painting of the piling caps. Completion will be dependent on tide and boat traffic.

Transient Dockage revenue finished 7% higher in FY07 than the previous year. We had 15 fewer transient visitors which mean fewer boats stayed longer at the docks. Total Town Dock revenues ended the year 2% or \$62,000 higher than last year while operating costs came in \$20,000 behind last year. A 6% rate increase was approved by council at the regular September Town Council meeting.

Lake Drive Park Master Plan

New planters have been added to the entrance areas of each dock along with the addition of hedge material. The bicycle racks have been replaced with new and better looking ones and the rack areas have been upgraded with pavers and gravel. All three (3) of the dock buildings have been repainted and the Australian Dock parking area and bike path along Lake Drive Park have been resealed and re-striped.

Work is continuing on the relocation of the Brazilian and Peruvian oil collection sites. The design is complete and permits are in process. Preliminary work is also underway on the Peruvian Dock extension and the D-15 pump station has been painted green as planned.

- End of Report -