MEMORANDUM

To: Regional Planning Council Members

From: Staff

Date: September 18, 2009 Regional Planning Council Meeting

Subject: Local Government Comprehensive Plan Review
Draft Amendments to the Town of South Palm Beach Comprehensive Plan
DCA Reference No. 09-1

Introduction

The Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, requires that the Treasure Coast Regional Planning Council (TCRPC) review local government comprehensive plan amendments prior to their adoption. Under the provisions of this law, the Department of Community Affairs (DCA) prepares an Objections, Recommendations, and Comments (ORC) Report on a proposed amendment only if requested to do so by the local government, the regional planning council, an affected person, or if an ORC Report is otherwise deemed necessary by the DCA. If an ORC Report is to be prepared, then the TCRPC must provide DCA with its findings of consistency or inconsistency with the Strategic Regional Policy Plan (SRPP), and provide any comments and recommendations for modification on the proposed amendments within 30 days of its receipt.

Background

The Town of South Palm Beach is proposing text amendments to several elements and one amendment to the Future Land Use Map (FLUM) of the Town Comprehensive Plan. The Town has requested a formal review of the amendments by the DCA.

Evaluation

Future Land Use Amendment

The Town proposes to modify the FLUM by adding a note indicating that one property (current location of Palm Beach Oceanfront Inn) with the Multi-Family Residential FLUM designation contains a non-conforming hotel use that is to be allowed (see Exhibit 2). A number of text amendments to the Future Land Use Element also relate to this property.
Text Amendments (Pertaining to the FLUM Amendment)

A. Future Land Use Element

1. Revisions are made to the background section of the element regarding lands occupied by the Palm Beach Oceanfront Inn, the only commercial land use that exists in the Town. The text clarifies that the commercial use is grandfathered as a non-conforming use under the Multi-Family Residential FLUM category, and that redevelopment of this property will be permitted consistent with the Town Land Development Regulations (LDR).

2. New Policy 1.7 establishes maximum density, height and other standards for hotels.

3. Policy 2.1 is revised to indicate that the redevelopment of the existing commercial use to Town standards is considered consistent with the comprehensive plan.

4. Policy 2.2 is revised to indicate the existing commercial use may be continued and/or redeveloped to existing LDR standards.

5. Objective 5 and Policy 5.1 are also revised to indicate the existing commercial use is compatible with the comprehensive plan and that discontinuance of the use for the purpose of reconstruction shall not be considered an abandonment of the use.

B. Transportation Element

1. Policy 1.1 is clarified to indicate that existing land uses in the Town are not subject to the prohibition stated in the policy based on high traffic volumes.

Text Amendments (pertaining to the Town’s Water Supply Facility Work Plan)

The Town proposes to adopt by Ordinance a 10-Year Water Supply Facilities Work Plan (WSFWP) Sub Element as an amendment to the Town Comprehensive Plan. Reference is made in the Ordinance to add or amend policies in conformance with the adopted WSFWP. However, no new or amended policies were included with the amendment materials.

Extrajurisdictional Impacts

The Town noticed the amendments to the Palm Beach County Intergovernmental Plan Amendment Review Committee (IPARC). The notice was distributed on June 29, 2009. Council sent a memorandum to all local governments that were noticed by the IPARC Clearinghouse on July 13, 2009 seeking comments on extrajurisdictional impacts as a
result of the proposed amendments. As of the date of this report, no comments have been received.

**Effects on Significant Regional Resources or Facilities**

Analysis of the proposed amendments indicates that they would not have adverse effects on significant regional resources or facilities.

**Analysis of Consistency with Strategic Regional Policy Plan**

**Comments/Recommendations for Modification**

1. The Town should ensure that the plan is consistent with the City of West Palm Beach’s WSFWP which was adopted on December 15, 2008.

2. Policy 1.1 of the Transportation Element indicates that the Town will not permit uses that generate high traffic volumes. This policy is very subjective. The policy is to be revised to indicate that no current uses in the Town are considered to be generators of high traffic volumes, and therefore not subject to this policy. The policy should be further revised to be much clearer regarding the uses that are to be prohibited or the traffic volumes that are to be considered unacceptable.

3. Council has received correspondence (see Attachments) from citizens or organizations expressing concerns about the proposed amendments relating to the Palm Beach Oceanfront Inn property. As indicated previously in this report, this property contains a non-conforming commercial use on lands designated for residential use.

   By common definition, a non-conforming use is one that was recognized as a legitimate existing use at the time that a new comprehensive plan was adopted, but one that would not have been allowed within the FLUM designation assigned to the property in the new comprehensive plan. In most cases, local governments restrict the expansion of a non-conforming use and require conformance to the comprehensive plan once the subject property is proposed for redevelopment. However, in the case, the Town has not only proposed policies that authorize and legitimate the existing non-conformity, but are proposing to allow an expansion of the non-conforming use (subject to compliance with the Town’s LDRs).

   Some of the concerns expressed in the correspondence received by Council are that:

   - the proposed increase in height that is to be permitted to accommodate the additional units is incompatible with prevailing heights on the east side of SR A1A;
   - the non-conforming use is to be expanded, rather than brought into conformity upon redevelopment;
- the proposed increase in density (from 58 to 99 units) is not consistent with the current comprehensive plan and is too dense for a 1.1-acre property;
- the amendments were processed too quickly (only 18 calendar days from application to transmittal hearing), not allowing for adequate public input; and
- the proposed development may have a negative impact on existing beaches which are considered “critically eroded” by the Department of Environmental Protection.

The Town should respond to the concerns expressed by its citizens prior to adoption of the amendments. The Town should ensure that development approval conditions adequately address concerns regarding compatibility of use, height limits and potential negative impacts on beaches.

Consistency with Strategic Regional Policy Plan

The contract agreement with the DCA requires the TCRPC to include a determination of consistency with the SRPP as part of the written report to be submitted to the DCA. The TCRPC finds the proposed amendments to be INCONSISTENT with the SRPP.

Recommendation

The Treasure Coast Regional Planning Council should adopt the above comments and instruct staff to transmit the report to the Department of Community Affairs.

Attachments
List of Attachments

Attachment

A    July 1, 2009 letter from Joan McManus, President, SPB Preservation, Inc.
B    July 10, 2009 letter from Beverly L. Reed, resident
C    July 13, 2009 letter from Deborah Robinson, member of Town Planning and Zoning Board and resident
D    July 27, 2009 email from Marilyn and Jack Katzman, residents
E    August 6, 2009 email from Christine Mang, resident
F    August 6, 2009 email from Stella Jordan, resident
G    September 10, 2009 letter from Neil M. Schiller, Esq. of Becker and Poliakoff
SPB PRESERVATION, INC.  
3570 S.Ocean Blvd. #606  
South Palm Beach, Fl. 33480

July 1, 2009

Department of Community Affairs  
Ray Eubanks, Plan Processing Administrator  
Division of Community Planning  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399

Re: South Palm Beach, Ocean Inn

Dear Mr. Eubanks,

South Palm Beach Preservation, Inc. is a Florida not-for-profit corporation dedicated to address public issues affecting the quality of life in the Town of South Palm Beach, Florida.

We are writing to you about the recently submitted amendments by the Kosova Realty Corporation to the Comprehensive Plan of South Palm Beach.

Our Barrier Island is very fragile and the Beaches of South Palm Beach have been declared as “critically eroded” by the State of Florida and the Department of Environmental Protection. The Town of South Palm Beach and Lantana Municipal Beach (R133.5-137.8) comprises 0.8 mile of critical erosion threatening private developments, recreational interest at the public park as well as endangered wild life and it habitats. The increase in traffic will impact our bridge openings and hurricane evacuation, as well as, emergency services and will perhaps call for a widening of A1A which in return will destroy our walkways and recently implemented and installed bike routes.

The developer’s “vision” of a high-rise building, a major hotel/condominium 99 units with time share units built on 1.1-acre site- will neither be profitable nor harmonious for our town in its present proposed scale and completely out of character. We strongly oppose the project in its present scale. We would like to point out that we are not opposed to growth or anyone improving their property but favor a redevelopment as long as it adheres to the height, density and setbacks requirements established for the entirety of the Town. We are also very concerned that once concessions have been made it would just be the beginning and open the door to developers and many subsequent projects. There is also the factor of the “Venturi Effect”: high-rise buildings on the beach cause erosion because tall buildings deflect winds, causing air to pass through a small area and increasing the air’s velocity, therefore causing even more damage in a hurricane. We are hopeful that DCA can help protect the beaches and the interest of the citizens of South Palm Beach
In 1974 a small group of citizens spoke out against high-rise construction along AIA in South Palm Beach. They valued their small city’s ambiance and character and feared that South Palm Beach’s skyline would become another Miami and destroy their quality of life and that of its future citizens. Therefore, all Ocean Side buildings were limited to a maximum height of 60 feet and 33 units per acre to which all previous developers adhered with one exception, The Concordia East Building which exceeds by far the Town’s Comprehensive Plan.

Kosova Realty cites this building as a benchmark, although the lot on which it sits is twice as wide as the Ocean Inn’s lot and has, according to figures provided by the Town Hall, side setbacks of 52-feet, 5 times wider than those proposed by the Ocean Inn.

In the past citizens had a voice in their communities. Now it is difficult to be heard let alone oppose mighty developers who are skilled in the “approval process”. We desperately need DCA’s help in order to be heard and we respectfully request DCA’s thorough and careful consideration of the proposed amendments to the comprehensive plan and the detrimental impact to the environment and our Ocean habitats, and the quality of life of the South Palm Beach citizens.

Thank you.

Sincerely,

[Signature]

Joan McManus
President, SPB Preservation, Inc.

cc:

Governor Charlie Christ
State Senator Jeff Atwater
State Representative Adam Hasner
US Congressman Ron Klein
Department of Education, Alex Carwell, Administrator
Department of Agriculture & Consumer Services, Wendy Evans
Department of Environmental Protection, Jim Quinn
Department of State, Susan Harp, Historic Preservation Planner
Florida Fish & Wildlife Conservation Commission, Mary Ann Pool
Office of Tourism, Trade, &Economic Development
Department of Transportation - District Four, Gerry O’Reilly
Treasure Coast Regional Planning Council, Terry L. Hess
South Florida Water Management District, PK Sharma
### Palm Beach County

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Attachment B

3570 South Ocean Boulevard, #909
South Palm Beach, FL 33480
July 10, 2009

Via email and facsimile
Town of South Palm Beach
Martin Millar, Mayor (xpfdfl@aol.com)
Charles McCrosson, Vice-Mayor (ischecross@aol.com)
Dr. Don Clayman, Council Member (enatty59@bellsouth.net)
Dr. J. Flagello, Council Member (drjflagello@aol.com)
Brian Merbler, Council Member (brianmrbler@gmail.com)

Re: Grave Concerns regarding Amendment to Comprehensive Plan

Dear Town Council Members:

I write to you (again) today with great concern for the decision of the Council to approve the amendment requested by the Palm Beach Oceanfront Inn to change the Comprehensive Plan of the Town of South Palm Beach.

My main concern and the issue at hand is that NO explanation has been given as to why the Council would change their decision from a mere few months ago at which time much time and effort were spent by the members to NOT approve a change to the Comprehensive Plan at the request of the Inn. The Mayor opened the June 22nd meeting with his concerns about the town budget and then led immediately into consideration for the amendment to the plan by the Inn. I found this totally inappropriate to the order of this Regular Town Council Meeting with this being Number 10 on the agenda. I do not find the Mayor’s concerns a justifiable reason to change the entire plan of the town. Everyone (and every entity) are struggling financially in the present economy; however, there are many other options to pursue than the quoted potential revenue the proposed new Inn would bring. The present Inn is in arrears of taxes of several hundred thousands of dollars right now – why would anyone realistically believe this would be any different in the future? I was very pleased to meet the new CPA introduced at the meeting onboard for the Town for his expertise for our future financial strategies.

In an email to the Town Council members (the evening of the vote) I requested an explanation as a tax paying citizen of this town of why the vote had been changed almost over night. By copy of this letter, I again request an explanation of why the Council finalized the Comprehensive Plan without the Inn’s proposed changes mere months ago to now agreeing to the amendment (opening up opportunity for all others to take advantage of this change and building more high rises in South Palm Beach).

Because of my grave concern for this rapid change in vote (which has not been explained) I also copy this to many agencies involved in this process. These governing agencies need to be aware that many of the citizens of South Palm Beach voted solely for Mayor Millar on his campaign promise that “I will NEVER allow a high rise building in the Town of South Palm Beach”. He looked many citizens in the eyes and promised this – what happened to change his mind? I have a real concern for what happened to change that promise. The Major has yet to give the residents of South Palm Beach (and particularly his hardworking campaign workers) a viable explanation to that question.

The residents of South Palm Beach (myself included) are not against business growth, improvements or opportunities for the Inn. It actually is just the opposite. The Inn (as our abutting neighbor) is a rundown eye sore and they are in violation of several health and building codes that the Town I believe is aware of, but does not seem to be enforcing. What might be the reason for that?

Neither the attorneys for the Inn, nor the owners of the Inn ever answered the question (with specificity) when asked if they planned to sell to a developer once the amendment was approved. Does the Town Council have a definitive answer to this question?

Again, particularly for the governing agencies copied herein, the Town of South Palm Beach is 5/8 of a mile long – the majority of residents purchased in this town because of its small community atmosphere, because it is not a commercially over run strip of A1A on the ocean. Few of these areas exist along our beautiful coastline of Florida.
today. A small motel/restaurant is welcome in this town by the residents.. but one within the flavor of this Town’s beauty and unique character and with consideration for the majority of the residents (and their best interest).

Though we all realize change happens, my purchase at the Tuscany (as compared to many other condo buildings) seven years ago was solely based on my research with the Town regarding the building height regulations. The argument for the Inn based on the height of the Concordia is a very poor one as I listened carefully to the Planning Board Chairman state “that was a mistake and I am not sure who was responsible for the height of that building being allowed”. Why would we use a “mistake” as an example for a proposed 99’ building – why wouldn’t we learn from that ‘mistake’? I do not understand.

For members of the Council who have been quoted saying that it is just the Tuscany and the Horizon East residents who have a problem with the recent vote of the Council on this amendment, you need to be aware that is incorrect as I know many in this town with the same concerns, not just these two condos. Everyone also needs to be aware of the fact that the Town Council chose to hear this amendment and vote when only approximately 25% of the residents are here. Request was made at the meeting to delay the vote (or to initiate workshops between all parties involved) until the other 75% of the residents are here. Many part-time residents of this town don’t have any idea what has transpired and as one Council member made note of “the Hatfields and McCoys”.. that battle will be heard loud and clear when the part-time residents return to find what has gone on behind their backs.

I request ALL addressed (or copied) on this letter to listen very closely to the residents of the Town of South Palm Beach. We are a small group of residents in a quaint little town but we have a huge concern and a LOUD VOICE that needs to be heard.

I could go into many more details but again, please go back to the basics and investigate why a well thought out Comprehensive Plan finalized a few months back would be amended so soon. The residents need and deserve an explanation.

I await your response to my grave concerns as a resident and voter of the Town of South Palm Beach. Please feel free to contact me at 547-8720 or sopalmbev@aol.com. Thank you kindly.

Sincerely,

/s/ Beverly L. Reed
Copied to:

Department of Environmental Protection  
Attn: Jim Quinn, Environmental Manager  
Office of Intergovernmental Programs  
3900 Commonwealth Blvd, Mail station 47  
Tallahassee, FL 32399-3000  
jim.quinn@dep.state.fl.us

Department of Transportation, District Four  
Gerry O'Reilly, Director of Production & Planning  
3400 West Commercial Blvd  
Fort Lauderdale, FL 33309  
gerry.oreilly@dct.state.fl.us

Department of Community Affairs  
Ray Eubanks, Plan Processing Administrator  
Division of Community Plan 2555 Shumard Oak Blvd  
Tallahassee, FL 32399  
ray.eubanks@dca.state

Department of Agriculture & Consumer Services  
Wendy Evans, Administrative Assistant II  
Bureau of Planning and Budgeting  
PL-8, The Capitol  
Tallahassee, FL 32399-0810  
evansw@doacs.state.fl.us

Department of State  
Susan Harp, Historic Preservation Planner  
Bureau of Historic Preservation  
500 South Bronough Street  
Tallahassee, FL 32399-0250  
sharp@mail.dos.state.fl.us

Treasure Coast Regional Planning Council  
Terry L. Hess, AICP, Planning Director  
301 East Ocean Blvd, Suite 300  
Stuart, FL 34996  
thess@tcrpc.org

South Florida Water Management District  
P.K. Sharma, Lead Planner  
Post Office Box 24680  
West Palm Beach, FL 33416-4680  
psharma@sfwmd.gov

Florida Fish and Wildlife Conservation Commission  
Mary Poole, Director  
Office of Policy and Stakeholder Coordination  
620 South Meridian Street, Farris Bryant Building  
Tallahassee, FL 32399-1600  
MaryAnn.Poole@MyFWC.com

Office of Tourism, Trade and Economic Development  
Mary Helen Blakeslee, Chief Analyst  
Suite 2001, The Capitol  
Tallahassee, FL 32399-0001  
maryhelen.blakeslee@myflorida.com
July 13, 2009

Treasure Coast Regional Planning Council
Terry L. Hess, AICP, Planning Director
301 East Ocean Blvd, Suite 300
Stuart, FL 34990

Dear Ms. Hess:

I am writing to express my opposition to the proposed comprehensive plan amendments from the Town of South Palm Beach recently submitted to the Department of Community Affairs and your agency for review and recommendations.

As a current member of the Town of South Palm Beach Planning and Zoning Board and a town resident since 2004, I have participated in the process of the reaffirmation and recommendation of the Town of South Palm Beach Comprehensive Plan as approved and adopted in December 2008. At that time, the Town Council reaffirmed the Comprehensive Plan as originally adopted in 1989 with no changes to the land use zoning designations, density or height restrictions. The Town through a lengthy process spanning almost three years, of public hearings and workshops, approved the plan based on the input they received from all agencies, consultants and citizens.

The plan as adopted specifies that there is one hotel that is operating as a non-conforming use. This non-conforming use was specifically addressed in the 1989 version of the plan. In 1989 version and current version of the comprehensive plan, the hotel was allowed to continue to operate as a non-conforming use, but if redeveloped, it would not be allowed to continue as a commercial property, but would be required to conform to the current multi-family residential zoning at 33 units per acre. The hotel property was purchased by Kosovo Realty Inc. in July 2002. You have received their proposed changes to our comprehensive plan sent to you on June 26, 2009 by the Town of South Palm Beach.

The Planning Board voted to reject the proposal as presented and as one of those voting to reject the proposed amendments I wish to make known to the DCA and other agencies my reasons for voting to reject:

- The proposed amendment by Kosovo Realty changed the language of the comprehensive plan to imply that the current operating hotel had proven its compatibility with the town. I do not believe that this is the case, nor was there any evidence presented at the public hearing to support this language change. In fact, the commercial use of this property has continued to disrupt the residential community. The building is currently in a blighted state of repair and there has been years of complaints due to noise and disruptions to the residential community because of this commercial use.
- The proposed amendment asked for an underlying land use change from multi-family residential to commercial. There is currently no commercial zoning in the
Town of South Palm Beach. As stated above, in the updating of the comprehensive plan less than six months ago, the designation of this property as a non-conforming use was reaffirmed and was ardently supported by the citizens of the town.

- The proposed amendment asked for a change in height to 95ft, which exceeds our current height restriction of 60ft on the east side of A1A. The only reason presented for the height increase was due to economic necessity to allow for more hotel rooms and due to the 500x100ft lot size. I felt that the height should remain within the current comprehensive plan limits, as have all other new buildings except one since 1989. That building has a property three times the size of the proposed site.
- The proposed amendment also asks for zero lot line setbacks. It was my belief that zero lot line development with commercial development was detrimental to all the citizens of the Town, as well as the abutting properties to the north and south. Passing zoning and comprehensive changes that negatively impact other properties was not something I could support.
- The proposal is also requesting an increase in density that creates that was also not in keeping with the current comprehensive plan.

Lastly, I voted against the proposed comprehensive plan changes because the residents of the Town of South Palm Beach were not given the opportunity to participate in a public hearing on this matter. This is a community of part-time residents, which in season is over 4,000 residents; during the summer less than 800 are in town. The petitioners filed for this change on June 4, 2009. The Planning and Zoning Board meeting was called for June 16, 2009, just twelve days later. The rejected proposal then went forward to the Town Council on June 22, 2009, just four business days later.

For a community that spent almost three years in public hearings and discussions around the Comprehensive Plan and the public input and processing of that Comprehensive Plan, this was a slap in the face to all those residents that worked to reaffirm the residential land use of the Town of South Palm Beach. The public should include the residents of this community, not just the few summer residents. Therefore, for all the reasons outlined above, please reject the Comprehensive Plan Amendment as sent to you by the Town of South Palm Beach.

Sincerely,

Deborah J Robinson
3570 S. Ocean Blvd #412
South Palm Beach, FL 33480
From: GINGI30@aol.com [mailto:GINGI30@aol.com]
Sent: Friday, July 24, 2009 2:58 PM
To: thess@tcrpc.org; gerry.oreilly@dot.state.fl.us; sharp@mail.dos.state.fl.us
Subject: (no subject)

To Whom It May Concern:

As a resident of South Palm Beach, I strongly oppose the change to the proposed amendment to our Town’s Comprehensive Program.

Please deny this Comprehensive Plan Amendment request of the basis of our town council failing to meet the requirements dictated by Florida Statue 163.3181 (2). As these same requirements are cited in our town Comprehensive Plan. However, they were not followed. If all measures had been undertaken in this statute under (2) as required, perhaps the town could have come to an agreeable alternative. We want to work with our town leaders, but demand that they also work with us.

Thank you for your kind consideration and support for the concerned citizens of our wonderful town.

Sincerely,

Marilyn & Jack Katzman
3570 So. Ocean Blvd.
Apt. 601
South Palm Beach, Fl. 33480

A bad credit score is 600 & below. Checking won’t affect your score. See now!

7/27/2009
Stephanie Heidt

From: Terry Hess [theiss@tcrcp.org]
Sent: Thursday, August 06, 2009 9:02 AM
To: sheidt@tcrcp.org
Subject: FW: Redevelopment of Ocean Inn, South Palm Beach

----- Forwarded Message ----- 

Dear Mr. Hess,
As affected parties, we are writing to you about the submitted amendments by the Kosova Realty to the comprehensive plan of South Palm Beach, regarding the construction of a high rise hotel/condo. We are very concerned as to the effect it will have on A1A in our area. The increase in traffic will most likely call for a widening of A1A which in return will destroy our walkways and recently implemented and installed bike routes apart from the fact that it will impact emergency services and hurricane evacuations.
We would like to point out that we are not opposed to a new building in place of the Oceanfront (the owners have allowed the property to deteriorate) but feel that the town would be better served to keep it within the limits of the town's plan.
South Palm Beach is a barrier island less than 5/8m long. We have 2 Hotels already within walking distance to the North and East and do not need another major hotel/condo with 99 units on a 1.1 acre site.

We therefore, respectfully that you give this matter careful consideration. Please, let me know if you received this letter.

Thanks you,
Christine Mang
Tel: 561.388.8754
847.303.5739
Tuscany residents, 35705 Ocean Blvd.
South Palm Beach, FL 33480
3570 S. Ocean Blvd
South Palm Beach, FL 33480

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Lanigan@TDS.net

Mr. & Mrs. B. Krasnow # 205
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Mr. & Mrs. Costa # 206
Tel: 585.7628

Allen Ross # 210
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Ms. Sultan # 405  
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Mr. & Mrs. Fiorella # 408

Mrs. M. Godine # 409  
Tel: 588.8651

Mrs. H. Musson # 501  
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Mrs. Dearth # 503  
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Mr. & Mrs. Testani # 704

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8/6/2009
Stephanie Heidt

From: Terry Heas [thess@tcpc.org]
Sent: Thursday, August 06, 2009 9:03 AM
To: sheidt@tcpc.org
Subject: FW: South Palm Beach, FL - Amendment to Comprehensive Plan

From: Stele Jordan [mailto:sgjordan17@gmail.com]
Sent: Wednesday, August 05, 2009 1:53 PM
To: gerry.oreily@dot.state.fl.us; thess@tcpc.org
Subject: South Palm Beach, FL - Amendment to Comprehensive Plan

Department of Transportation, District Four
Gerry O'Reily, Director of Production & Planning
3400 West Commercial Blvd.
Fort Lauderdale, FL 33309

Dear Mr. O'Reily:

Our town of South Palm Beach is a one-corridor (A1A) town with no regularly scheduled public transportation other than one day a week on Wednesday. The impact of building a 99 density condo/hotel with accessory uses, will impact traffic not only from a standpoint of hotel guests, but also those wishing to use the bar, restaurant, spa and whatever other amenities are offered under "accessory uses". Furthermore, the staff to operate such a hotel/condo, restaurant, bar, spa and whatever else they plan will have a need for transportation 24 hours each day of the week. Since Kosova Realty will not reveal their plans to us until this amendment is approved (and our Town Mayor, majority of the council, Town Attorney, Town Manager do not even see this as a problem) we do not even know what they are requesting!

Kosova Realty, the applicant who wants to change our Comprehensive Plan, is a single-site owner of a non-conforming use 1.01 acre site. If this plan passes as transmitted, it will mandate changes to our Land Development and Zoning codes. The Town Attorney's argument that this is not a zoning change is based upon their writing the Amendment in such a way to include what they call restrictions, said restrictions including the very Land Development and Zoning Codes which would normally prevent such an endeavor. They have even included zero side setbacks which is clearly zoning, not to mention density also being included, with the density being three times that of what is now acceptable. Everything they have included is extremely loose compared to what our current Plan, Land Development and Zoning Codes allow. Even more disturbing, THESE LOOSE GUIDELINES ARE WRITTEN IN AS BEING FOR ONLY THIS ONE SITE - No one else in the town will be allowed to do what this one site is approved for by our Council.

You know where I am headed here. If we approve a plan for a single site owner which in fact will change our Land Development and Zoning Codes as well as our Future Land Use Map, the purpose of a Comprehensive Plan is lost. A Comprehensive Plan is to be well thought out, include community involvement, workshops, and a chance for each affected person to be heard and responded to. The process of drawing up the Plan or an Amendment is one that is intended to prevent Political persuasion and hasty decisions that may not be in the best interest of the community. The constituents of our town are being robbed of this.

The applicant as well as our town council and town attorney rushed through this proposal, with it being received by Town Hall on June 4. Our Local Planning Agency nor the residents or our town had any input to this proposed amendment. It was passed on to the Local Planning Agency after the Town Attorney, Mayor and Town Manager, as well as another Councilman, worked with the applicant to ensure it would meet the

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applicant's needs to ensure they would not be hampered by trying to change Land Development Codes and Zoning Codes later. THIS PLAN IF APPROVED WILL MANDATE THOSE CHANGES.

I am an affected party on two levels; I reside in the town but also my property abuts the site in question. Since the Future Land Use Map is being changed in the Amendment 1 and all other abutting property owners should have received notification. We did not. Please ensure any and all studies required are done in a well-thought-out manner.

Thank you. Please confirm delivery of this communication. I am emailing this as my letter was returned.

Sincerely,

Stella G. Jordan
3580 S. Ocean Blvd. 5F
South Palm Beach, FL 33480
561-547-9997
sgjordan17@gmail.com

8/6/2009
September 10, 2009

VIA E-MAIL: THESS@TCRPC.ORG

Treasure Coast Regional Planning Council
Terry L. Hess, AICP, Deputy Director
301 East Ocean Boulevard, Suite 300
Stuart, FL 34990

Re: Draft Amendments to the Town of South Palm Beach Comprehensive Plan (DCA Reference No. 09-1)

Dear Mr. Hess:

Please be advised that the undersigned firm has been retained by the Tuscany of Palm Beach, a condominium association of over 100 residents, to voice its staunch opposition to the above captioned text amendment.

The Tuscany of Palm Beach is a small condominium association generally located at 3570 S. Ocean Avenue, Palm Beach, FL, which is directly adjacent to the property at issue. In its proposed land use amendment, a hotel/commercial developer, through the Town of South Palm Beach, is seeking to obtain a commercial land use designation to build a high intensity commercial project, directly adjacent to our client’s quaint residential community. As the following letter will serve to illustrate, despite the Town of South Palm Beach’s creative attempt to increase its ad valorem revenue, the proposed text amendment violates fifty four years of growth management and is:

1) inconsistent with the ultimate vision and goals of the Town of South Palm Beach, a residential community;

2) the request is inconsistent with the Town of South Palm Beach Comprehensive Plan and Land Development Code, which explicitly prohibits any uses other than residential uses within the town;

3) the requested amendment fails to demonstrate need for a more intense commercial use;
4) the proposed amendment has not provided an Environmental Assessment to analyze the potential issues that could arise when redeveloping a site in a coastal management area;

5) the amendment is incompatible with the surrounding uses;

6) the Town of South Palm Beach failed to formally review the proposed amendment;

7) the proposed amendment does not adequately restrict the Commercial land use designation to ensure that the site cannot be redeveloped in the future as a different, more intense use;

8) the Florida Department of Community Affairs issued seven (7) objections to the proposed plan amendment; and

9) the amendment fails to justify the request. As a result, the residents of the Tuscany of Palm Beach urges the Treasure Coast Regional Planning Council to reject the proposed amendment.

The following Land Use Planning Analysis outlines the inconsistencies of the proposed land use change with the Goals, Objectives and Policies of the Town of South Palm Beach Comprehensive Plan:

Section II. LAND USE ANALYSIS

The Town does not have any areas identified as blighted areas since the entire housing stock of the Town is in good condition. The only inconsistent use with the character of the Town currently existing is the motel for The Town is a residential community housing a primarily retiree population. The only non-residential private property is located at 3550 South Ocean Boulevard, currently occupied by the Palm Beach Oceanfront Inn ("Existing Commercial Use"). The property is the only Existing Commercial Use in the Town. The Existing Commercial Use has demonstrated over time its compatibility with the predominately primarily residential nature of the Town. The Existing Commercial Use existing on the motel-site is grandfathered in and will may continue to exist until its redevelopment. When it redeveloped, the Existing Commercial Use will conform with the residential character of the community. All regulations governing hotel/condominium hotel and accessory uses included in the Land Development Code.

Analysis: The proposed language outlined in Section II of the Town’s Future Land Use Element completely contradicts the planning efforts that have existed since the establishment of the Town. The proposed language will give the existing boutique Palm Beach Oceanfront Inn a commercial land use designation, which will afford it the opportunity for dramatically intensified commercial uses in the future. The Town of South Palm Beach has established itself as a residential community and enforced that vision by
implementing Objectives and Policies into their Comprehensive Plan that prohibit the development of commercial or non-residential uses within the Town's limits. Giving the Palm Beach Oceanfront Inn a Commercial land use designation will eradicate 34 years of growth management planning, and a prior commitment to maintain this community's low-intensity residential lifestyle.

The Applicant has not clearly demonstrated how the change in land use to Commercial will affect the site's compatibility with surrounding residential uses. Until this point, the Town of South Palm Beach has never permitted the development of any Commercial uses and has strived to maintain and to ensure the residential character of the community. The proposed land use change will have a significant impact on the surrounding residential developments and will allow a multitude of unwarranted uses within the residential community.

Section III. FUTURE LAND USE MAP

Map 2 illustrates future land uses in South Palm Beach. With one exception, all existing land uses correlate to land uses depicted on the Future Land Use Map. The Existing Commercial Use (motel) has been eliminated from the Future Land Use Map since it is an isolated commercial activity in conflict with the desired residential character of the Town. Remains a grandfathered use in the multiple family residential land use category. Redevelopment of a hotel/condominium hotel on the site will be permitted subject to compliance with all regulations governing hotel and accessory uses included in the Land Development Code and the density, intensity, setbacks and lot coverage standards set forth herein. Neither this Comprehensive Plan nor the Land Development Code will limit or affect the type of ownership of the Existing Commercial Use or the individual rooms therein, whether or not the property is developed.

Analysis: The Town of South Palm Beach has allowed the Palm Beach Oceanfront Inn to operate unlawfully, with an incompatible land use and zoning, most likely because of its incredibly low intensity, which enabled it to blend in with the surrounding residential community. The proposed land use change, which legalizes this use, will yield to the development of a more intensive commercial use in complete violation of the Comprehensive Plan. It is important to note that nowhere in its plan amendment does the Town seek to limit or otherwise restrict the commercial intensity. The Town has offered zero safeguards that the redevelopment of this site will maintain a low commercial intensity. In fact, the Town has remained purposefully silent as to this point as a greater commercial use will yield a larger ad valorem tax to help reduce the municipality's budgetary woes. Accordingly, the proposed text amendment is not consistent with the intent of the Town as defined by the Comprehensive Plan.

SECTION IV. GOALS, OBJECTIVES, AND POLICIES

Policy 1.7: Land Development Regulations adopted to implement the comprehensive plan shall be consistent with the following density and maximum height requirements for hotels:
A. Permitted Density: 2.85 hotel rooms = 1 dwelling unit
B. Maximum Height = An elevation of 97.8 feet NGVD-29 to the highest finished roof surface for a flat roof and mansard roof and to the average height between the plate and ridge for a gable, hip, or gambrel roof. National Geodetic Vertical Datum (NGVD) is the datum plane of reference used in the Town for all elevations. Building height measurement standards shall apply as defined in the Land Development Code.
C. Minimum Setbacks:
   1. Front: Forty (40) feet
   2. Side: Ten (10) feet; shall not apply to a parking garage which is allowed at zero (0) feet
   3. Rear: Ten (10) feet
D. Maximum Lot Coverage: Seventy-four (74) percent

Analysis:
The proposed language defines land development regulations for hotels, but it intentionally fails to include language that would regulate or restrict other uses that could be developed in the future under the Commercial land use designation. Given the Commercial land use designation on the site, future Applicant’s could request high intensity commercial uses, which are not in line with the long held goals and visions of the Town of South Palm Beach and its residents. In fact, in the wake of Senate Bill 360, the Town would be hard pressed to deny such a request.

The Maximum Lot Coverage being proposed for the hotel is in excess of what is allowed currently for multi-family residential developments in the Town. The Applicant is proposing a Maximum Lot Coverage of 74% for the redeveloped site. Currently, the Town’s Land Development Regulations allow a Maximum Lot Coverage of 35% in both multi-family districts. This proposed lot coverage modification seeks to undo 54 years of land planning to preserve the community’s open space. The change in the Land Development Regulations increases the intensity and building coverage on the site, creating a use that completely violates the long range vision for the Town of South Palm Beach as a residential community.

OBJECTIVE 2:
Future development and redevelopment activities will conform with the land use pattern depicted on the Future Land Use Map and with the existing uses within the Town and be consistent with the sound planning, principles, minimal natural limitations including soil capabilities, the goals, objectives and policies contained within this plan, and the desired predominately residential character of the Town.

Analysis:
The designation of the site as a Commercial use contradicts the planning and principles that have been established by the Town of South Palm Beach. The proposed change in land use is not consistent with the goals, objectives or policies of the Town’s Comprehensive Plan. Furthermore, the Applicant did not address the natural and environmental limitations of the site during the amendment process.
Treasure Coast Regional Planning Council  
Mr. Terry Hess, AICP  
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**Policy 2.1:** All future development and redevelopment activities shall reinforce the Town’s image as an ocean-front predominately residential community. Redevelopment of the Existing Commercial Use to the standards and in the Land Development Code and not exceeding the density, intensity, setbacks and lot coverage set forth herein shall be considered consistent with this policy.

**Policy 2.2:** New non-residential land uses other than the necessary public facilities shall be prohibited anywhere in the Town. The Existing Commercial Use shall be allowed to continue and be redeveloped subject to the standards included in the Land Development Code and not exceeding the density, intensity, setbacks and lot coverage set forth herein.

**Analysis:** The proposed language defined under Policy 2.2 is not consistent with the Town’s goal of remaining a predominately residential community. The proposed language states that “new” non-residential developments are prohibited in the Town. However, it does not place a restriction on the types of developments that could occur on this site, given the Commercial land use designation. The language does not provide a guarantee that the site will only remain a low intensity commercial use.

**OBJECTIVE 5:**
Eliminating existing land uses which are incompatible or inconsistent with the Future Land Use Element of the plan at such time as any existing non-conforming use is discontinued or abandoned for six consecutive months or for eighteen months during any three year period. Discontinuance for the purpose of reconstruction in accordance with an approved site plan consistent with the Land Development Code shall not result in elimination of the Existing Commercial Use if completed within forty (40) months of the issuance of a building permit, unless extended by Town Council action for good cause shown.

**Policy 5.1:** Expansion or replacement of land uses which are incompatible with the Future Land Use Element of the plan shall be prohibited. The Existing Commercial Use is determined to be compatible with the Future Land Use Element of the Comprehensive Plan.

**Analysis:** The existing use on the site, Palm Beach Oceanfront Inn, is a low intensity commercial use that has been deemed compatible at its current land use designation and intensity. However, other uses that, in the future, can be constructed under the Commercial land use designation are not be compatible with the Goals, Objectives and Policies of the Town’s Comprehensive Plan. The Applicant does not adequately address the impact that other commercial uses will have on the Town of South Palm Beach and it’s residents.

**Policy 1.1:** Land uses generally regarded as generating high traffic volumes shall be prohibited in the Town. Existing uses within the Town are not generally regarded as those that generate high traffic volumes.

**Analysis:** The proposed amendment to the Town of South Palm Beach Comprehensive Plan will allow all levels of commercial uses and specifies in Policy 1.7 that if developed as a
hotel/motel, may increase the density, thus generate additional traffic. There is no
doubt that the redevelopment of this site and the provision of greater density and
intensity will significantly increase the traffic volumes. This increased traffic intensity
is in direct conflict with Policy 1.1 and all recent growth management regulations
relating to traffic on the barrier island.

Accordingly, the proposed change to the Future Land Use Map is inconsistent with the Goals, Objectives
and Policies defined in the Town of South Palm Beach’s Comprehensive Plan:

CHAPTER 3
FUTURE LAND USE ELEMENT

I. EXISTING LAND USE DATA
The only commercial use in the Town is comprised of a motel containing 58 units. It exists as a non-
conforming use, since the existing Zoning Ordinance of the Town does not allow any commercial use in
South Palm Beach.

Analysis: The Town of South Palm Beach’s Comprehensive Plan recognizes the Palm Beach
Oceanfront Inn as an unlawfully permitted inconsistent use within the Town that is
not compatible with the ultimate Goals and Vision for the Town. The Town has
established itself as an oceanfront residential community and has grandfathered the
Palm Beach Oceanfront Inn into the system as a nonconforming use. The intent of the
Comprehensive Plan is to allow the existing non-conforming use to remain, even
though it was inconsistent with the residential community housing a primarily retiree
population, however if the site was to be redevelopment it must conform to the
standards of the Town of South Palm Beach Comprehensive Plan and be redeveloped
as a residential use. The change in land use of the site to Commercial is in direct
contradiction to the Goals and Objectives of the Town, which explicitly states that no
commercial uses are to be permitted. The proposed land use amendment would seek to
undo 54 years of growth management plans.

Due to the fact that no land uses other than residential are allowed in the Town, the residents of South
Palm Beach must rely on adjacent communities for their commercial, retail and professional office
services. There have been no negative impacts from this arrangement on the past, and none are anticipated
in the future due to the built-out nature of the Town.

Analysis: The Town of South Palm Beach’s Comprehensive Plan has taken into account the
residential character and built out nature of the Town and has such concluded that the
commercial uses that exist in surrounding municipalities are sufficient to serve the
Town’s residents.

The Applicant did not submit a Demonstration of Need when requesting the land use
change and text amendment to the Town’s Comprehensive Plan. The Town has
previously determined that there was adequate commercial development surrounding
the Town and that no commercial was needed within the Town's limits. The Applicant has not adequately demonstrated why the Town's previous findings were inaccurate and why there is a sudden need for a commercial use.

The following are hotels/motels that exist within a three-mile radius of the Palm Beach Oceanfront Inn:

Palm Beach Ritz Carlton
100 South Ocean Boulevard
Munilapan, Florida

Fairfield Inn and Suites Palm Beach
2870 South Ocean Boulevard
Palm Beach, Florida

Omphoy Ocean Resort
2842 South Ocean Boulevard
Palm Beach, Florida

Four Seasons Resort
2800 South Ocean Boulevard
Palm Beach, Florida

South Palm Suites
1401 South Federal Highway
Lake Worth, Florida

New Sun Gate Motel
901 South Federal Highway
Lake Worth, Florida

Gulfstream Hotel
1 Lake Avenue
Lake Worth, Florida

Sable Palm House Bed and Breakfast
109 N. Golfview Road
Lake Worth, Florida

The Mango Inn
128 N. Lakeside Drive
Lake Worth, Florida

Hummingbird Hotel Bed and Breakfast
631 Lucerne Avenue
Lake Worth, Florida
The Town does not have any areas identified as blighted areas since the entire housing stock of the Town is in good condition. The only inconsistent use with the character of the Town currently existing is the motel, for the Town is a residential community housing a primarily retiree population. The commercial use existing on the motel site is grandfathered in and will continue to exist until its redevelopment. When redeveloped, the use will conform to the residential character of the community.

Analysis: The Town has firmly established that there is no need for non-residential uses within the Town’s limits. The Palm Beach Oceanfront Inn has been grandfathered into the system and can continue to remain as a nonconforming use until redevelopment, at which time it must be redeveloped as a residential use to comply with the character and prior mandates of the Town.

III. FUTURE LAND USE MAP

Map 2 illustrates future land uses in South Palm Beach. With one exception, all existing land uses correlate to land uses depicted on the Future Land Use Map. The existing commercial use (motel) has been eliminated from the Future Land Use Map since it is an isolated commercial activity in conflict with the desired residential character of the Town.

Analysis: At the time of the Comprehensive Plan update in October 2008, the Town removed the use designation for the Palm Beach Oceanfront Inn in order to maintain land use consistency. The Town determined that a commercial land use designation would be in conflict with the character of the Town as a residential community. A change in the land use designation to Commercial would be inconsistent with the Goals, Objectives and Policies that have been established by the Town.

IV. GOALS, OBJECTIVES, AND POLICIES

Policy 1.1: Land Development Regulations adopted shall regulate the use of land consistent with this element and ensure the compatibility of adjacent land uses.

Analysis: The proposed change to Commercial land use for the Palm Beach Oceanfront Inn site is inconsistent with Policy 1.1 of the Town’s Comprehensive Plan. The site is surrounded by residential uses on the north and south, and is adjacent to the Atlantic Ocean to the east. An increase in intensity would be incompatible with the surrounding residential uses. The Justification Statement provided as part of the Comprehensive Plan Amendment request does not adequately address the compatibility issues with the surrounding residential development that would occur as a result of the change to a Commercial land use.

OBJECTIVE 2: Future development and redevelopment activities will conform with the land use pattern depicted on the Future Land Uses Map and be consistent with the sound planning, principles, minimal natural limitations including soil capabilities, the goals, objectives and policies contained within this plan, and the desired...
residential character of the Town.

**Analysis:** The proposed land use change to Commercial and redevelopment of the Palm Beach Oceanfront Inn site is not consistent with Objective 2 of the Town’s Comprehensive Plan and does not conform to the land use pattern depicted on the Future Land Use Map. The proposed Commercial land use designation is inconsistent with the planning efforts of the Town to maintain the area as a residential community.

**Policy 2.1:** All future development and redevelopment activities shall reinforce the Town’s image as an ocean-front residential community.

**Analysis:** The proposed change to Commercial land use for the Palm Beach Oceanfront Inn site is inconsistent with Policy 2.1 of the Town’s Comprehensive Plan. The change in land use to Commercial and proposed redevelopment of this hotel will cause an increase in intensity on the site and does not reinforce or support the Town’s image as an ocean-front residential community. The Town’s Comprehensive Plan has established the site as an inconsistent use throughout the Town’s fifty-four year history. The hotel has been grandfathered into the system and is allowed to remain, until redevelopment, when the Town determined that it should be redeveloped as residential in order to properly blend in to the residential community.

**Policy 2.2:** Non-residential land uses other than the necessary public facilities shall be prohibited anywhere in the Town.

**Analysis:** The Palm Beach Oceanfront Inn has been recognized as an inconsistent use in the Town’s Comprehensive Plan and, in the event of redevelopment, is required to comply with the residential standards established by the Town. Any increase in non-residential land uses that will occur as a result of the proposed land use change would contradict the Goals, Objectives and Policies established in the Town’s Comprehensive Plan, as it will increase the intensity of an already inconsistent use.

**OBJECTIVE 3:**
Protect natural resources from development and redevelopment activities.

**Analysis:** The Applicant did not submit an Environmental Assessment as part of the request and has therefore not addressed the issues that could occur as a result of redevelopment activities. Environmental issues that should be addressed include:

- **Coastal Dune (CCCL) Protection:** A Florida Department of Environmental Protection Construction Control Line permit will most likely be required for the project. This may include complying with a Sand Preservation Ordinance.
- **Sea Turtle Protection:** All lighting visible from the beach needs to meet the ordinance requirements.
- **Asbestos Survey:** For any demolition that is required, an Asbestos Survey may be required. Depending on the results, an Abatement Plan may need to be developed for the proper disposal.
**Phase 1 Environmental Assessment**: A Phase 1 Environmental Assessment is recommended to determine the potential for a Recognized Environmental Concern (REC).

**Policy 3.1**: Any development or redevelopment on an ocean-front parcel anywhere in the Town shall be adequately set back from the Coastal Construction Control Line and shall include restoration and re-vegetation of the dune system.

**Analysis**: An Environmental Assessment was not included as part of the submittal package, therefore any conflict with the Coastal Construction Control Line has not been addressed.

**Policy 3.2**: The developer/owner of any site shall be responsible for the on-site management of runoff in a manner so that post-development runoff rates, volumes, and pollutant loads do not exceed pre-development conditions.

**Analysis**: An Environmental Assessment was not included as part of the submittal package, therefore runoff rates and pollutant loads have not been addressed.

**Objective 4**: Issue development orders and permits for future development and redevelopment activities only if public facilities necessary to meet level of service standards as adopted in the Plan are available concurrent with the impact of the development.

**Analysis**: The impact the Commercial land use designation and subsequent increase intensity will have on public facilities was not addressed as part of the submittal package.

**Policy 5.1**: Expansion or replacement of land uses which are incompatible with the Future Land Use Element of the Plan shall be prohibited.

**Analysis**: The Palm Beach Oceanfront Inn is has been established as an inconsistent use by the Town of South Palm Beach. The change in land use to Commercial and proposed redevelopment and subsequent expansion of the facility directly contradicts the Goals, Objectives and Policies of the Comprehensive Plan and will further increase the incompatibility of the site with the surrounding residential uses.

**Policy 6.1**: Prior to approval of development or redevelopment within the Town, an assessment of the impact of the proposed activity shall be undertaken to ensure that coastal area population densities do not exceed that which can be safely and efficiently evacuated in the event of a storm.

**Analysis**: The Applicant did not address the evacuation issues that could arise in the event of a storm in the Comprehensive Plan Amendment request.
Attached for your review, is the Florida Department of Community Affairs' Objections, Recommendations and Comments Report (ORC Report) that is dated September 4, 2009. The ORC Report identifies seven (7) different objections to the proposed Comprehensive Plan Amendment that require satisfactory resolution before adoption.

After careful review of the aforementioned it should be readily apparent that the proposed amendment is in complete violation of the Town of South Palm Beach's Comprehensive Land Use Plan. The proposed amendment seeks to undo fifty-four years of growth management planning and a municipality's staunch desire to maintain the lifestyle of its low intensity residential community. The Florida Supreme Court has routinely recognized land use plan amendments should not be adopted on a whim. In the instant scenario, the municipality, in a knee jerk reaction to its own fiscal crisis, has not clearly considered the full impact and weight of this amendment. Accordingly, on behalf of the residents of the Tuscany of Palm Beach, we urge the Treasure Coast Regional Planning Council to step in and to reject the proposed land use amendment.

We are happy to answer any questions.

Best regards,

[Signature]
Neil M. Schiller
For the Firm
List of Exhibits

Exhibit

1. General Location Map
2. Future Land Use Map
Exhibit 1
General Location Map
Town of South Palm Beach

South Palm Beach