From:	Paul Castro
To:	Kelly Churney
Cc:	Kathleen Ruderman
Subject:	FW: 11,164 FOOT CLUB? When in Doubt, Best to Just Follow the Law...
Date:	Tuesday, February 06, 2018 2:03:08 PM

Kelly,

I am not sure if this is a duplicate.

Paul

From: Steven Jeffrey Greenwald, Esq. [mailto:3102724@gmail.com]
Sent: Tuesday, February 06, 2018 10:21 AM
To: Danielle Hickox Moore <DMoore@TownofPalmBeach.com>; Bobbie Lindsay <BLindsay@TownofPalmBeach.com>; Margaret Zeidman <MZeidman@TownofPalmBeach.com>; Julie Araskog <jaraskog@TownOfPalmBeach.com>; Richard Kleid <RKleid@TownofPalmBeach.com>; Town Council <TCouncil@TownofPalmBeach.com>; Gail Coniglio <GConiglio@TownofPalmBeach.com>; Paul Castro <PCastro@TownofPalmBeach.com>
Subject: 11,164 FOOT CLUB? When in Doubt, Best to Just Follow the Law...

To the Council, Mayor and Mr Castro: (Please forward to all on Council)

When in doubt, it is best for everyone involved to just follow the law, apply to the facts. Pretty **simple in this case. And all are required to follow this law,** residents, the little businesses on County Road, and **also** the **Carriage house developer** too. Attached, that simple **zoning map** you know well, with C-TS (certified town serving) in purple.

There are other zones, like the Worth Ave zone, bigger establishment commercial zones. But the **tiny strip** where the giant private club is to be located is a **special little area** we know is called **C-TS**. It is a small area with limited parking and historic little residental streets, with small houses with **tiny (or no) driveways,** Phipps Plaza, Seaview, Seaspray Seabreeze. That is why the little area (where the giant club is planned) is Zoned C-TS.

In the law it says C-TS should be: **"small scale" "retail" "personal" "professional"** etc., and that is what we know has been there in the past. Below are relevant parts of **134-1106.** Pretty **easy to read,** take a look:

"Sec. **134-1106**. - Purpose and limitations.

The purposes of the **C-TS town-serving** commercial district are to:

(1) Create, preserve and enhance areas of attractive, **small-scale, retail, personal and professional/business services** to be developed either as a unit or in individual parcels, **providing for the frequently recurring needs of town persons...**

...Then** there is another part of that law that says the **biggest a business can be in the C-TS would be 3,000 sq feet.** The businesses there now follow the law nicely: Lewis pharmacy, the dog groomer, the tile store, Capehart Photo, the new Peterson decor, etc. And we all know the **prior resturant was about 3,000 (or less).

Take a look at the simple Town of Palm Beach Law of the less than **3,000 sq foot** size reqirement for anything in the C-TS area:

... maximum gross leasable area. The permitted uses in the C-TS town-serving commercial district, with a maximum of 3,000 square feet gross leasable area... are as follows...
(copied from Sec. 134-1107 - Permitted uses).

...then the law outlines types of businesses that could be allowed, such as food stores, clothing stores, drugstores, barber shops, beauty salons and jewelry stores (and some others, without need to elaborate). Note there is no allowance for a large private club, either way there is this **strict rule** all (including developers) must follow: **"maximum of 3,000 square feet"** requirement.

I did not write this Town Code, and it is on the Town's website for all to see. (Many residents have now become aware of the law).

The club **developer knew** (or should have known) very well of this **well published zoning law** (on all town zoning maps) the **3,000 square** foot rule when he bought the properties. We all are required to **follow the law**, including the **developer.** We **cannot easily change the law** just for him.

Especially when **giant club** planned is **far larger** than 3,000 square feet, it is **11,164 feet total** planned!

IT IS IN FACT: 2,081+2101+2490+369+938+3185. So a **total** of **11,164** Square feet in size! Amazing, in an area where **by law it is limited to 3,000 square feet.** (This is **fact,** taken from Kimberly-Horn planned list of spaces of Carrage House Club, including combined buildings, and sleeping areas). It is good to know the truth.

So the only way to develop this giant club is to get a **SPECIAL EXCEPTION.** Special exception means just that. It is only granted in **very special** situations, especially if they they want a club almost **400% larger than allowed by law.** There are strict requirements for granting.

We all know that this area of County Road, between **Phipps and (really) Seaspray,** is one of the busiest corners in Palm Beach, with **children being picked up from school**, with **parents waiting in line to turn onto Seaview** (requiring police to direct traffic) and the **new larger recreation center** (with possible night events) also requiring a turn onto Seaview.

And amazing but true, the **loading zone** is at the **corner of Seaview and County**. Loading will be large and small trucks daily, all day long to service this huge club's evening activities. And there is no parking lot for the club to use in the **day time** for as many as **178 patrons** during/including an unknown frequency of "special events" (taken verbatum from last hearing: **118 patrons** in daytime plus **60 more** during **"special events"** as yet undefined, with no limit stated as to frequency of these **"special events"**).

At **night**, there will be in excess of **244 members <u>plus no limit given yet as to nightime guests</u>** (per the last hearing, as of this date, the total amount of persons in the buildings as of this date is still **unknown, 350? ... more?**) and a parking lot with only 68 spaces, blocks away on Royal Palm Way. Hours of operation (amazing but true) till **2 am** Thursday thru Saturday, and until **midnite on Sunday** thru Wednesday.

And the **Club valet dropoff will be directly (somewhere) on County Rd,** at a very busy traffic hour, when all drivers are in a hurry, going up and back from north end to south end to other dinners/events at the Breakers, other restaurants, etc. Will there be a **constant lineup of cars** blocking traffic at this essential part of County Rd in high season?

Now lets look at the very **simple law,** and **think about the above facts:**

Sec. 134-229. - Requirements for granting.

The requirements for granting a special exception use under this chapter are as follows:

... (2) The use is so designed, located and proposed to be operated that the **public health, safety, welfare** and morals will be**protected.**

... (8) **Adequate ingress and egress to property and proposed structures** thereon and **off-street parking and loading areas** will be provided where required, with particular reference to **automotive and pedestrian safety and convenience, traffic flow and control, and access in case of** fire or **catastrophe.**

... (14) The proposed use will not place a **greater burden than would be caused by a permitted use on municipal police services due to increased traffic or on fire protection services due to the existence of or increased potential for** fire/**safety** code violations.

All of the above and more, is probably why **Paul Castro**, Town of Palm Beach top Zoning official, and various **Zoning resident Board Members** continue to advise Town Council to **just vote no** to the club.

Confusion on Court Review, Shifting burden and the Snyder cases:

Ever since *Bd. of County Comm'rs v. Snyder*, 627 So. 2d 469 (Fla. 1993) (*Snyder II*), there has been some confusion. But since *Snyder* some towns are still not aware the Supreme Court made clear (and the Attorney General's office has tried to notify towns) that the standard of review is still: **if the zoning decision of council is "fairly debatable" it must be upheld by the Court**.

Also, the Florida Appellate Courts (and Courts throughout the US) have told lower courts repeatedly to **not sit as a super zoning board.** Raskiewicz v. Town of New Boston, 754 F.2d 38, 44 (1st Cir. 1985) ("... **courts** do **not sit as a super zoning board** or a zoning **court** of appeals."); Hubenthal v. County of Winona, 751 F.2d 243 (8th Cir. 1984)

<u>Town Council should not make its decision on fear this developer may seek judicial review, the council has full authority.</u>

See below the cited reasons:

Still the law today: *Thomas v City of West Palm Beach*, the Florida Supreme Court , 299 So. 2d 11 (1974) the Florida Supreme court cites: *Harrell's Candy Kitchen v. Sarasota-Manatee Airport Authority* (Fla. 1959), 111 So. 2d 439. The **Supreme Court** cases the **Circuit Court must today follow:**

"Zoning regulations duly enacted pursuant to lawful authority are presumptively valid and the **burden is upon him who attacks such regulation to carry the extraordinary burden** of both alleging and proving that it is unreasonable and bears no substantial relation to the public health, safety, morals or general welfare. **Courts will not substitute their judgment** as to the reasonableness of a particular rule or regulation where such has been duly adopted pursuant to lawful authority **when such reasonableness** is **fairly debatable**... ." (111 So. 2d at 443, 444)

See also, this is the law today: **"Courts should not substitute their judgment as to the reasonableness of a regulation when such reasonableness is fairly debatable."** Dragomirecky v. Town of Ponce Inlet, 891 So. 2d 633 (Fla. 5th DCA **2005**).

See also, *Raskiewicz v. New Boston,* 754 F.2d 38 (1st Cir. 1985) ("We begin by noting that this court has repeatedly said that ... courts do **not sit as a super zoning board or a zoning board of appeals**."); *Mayhew v. Town of Sunnyvale*, 964 SW 2d 922 (1998).

Some confusion on standard of review, shifting burden of proof and the Snyder Cases: since *Bd. of County Comm'rs v. Snyder*, 627 So. 2d 469 (Fla. 1993) (Snyder II) there has been some confusion, according to the Supreme Court itself. **Attorney general opinion No 3087** (1997) says towns need to look to the newer Supreme Court case of *Martin County vs Yusem*, 664 So. 2d 976 (1995). The AG Opinion explains that the **"fairly debatable" standard of review is still the law** per *Yusem:*

The **Florida Attorney General, opinion 3087**: "The court in *Yusem* acknowledged that there is "much confusion" surrounding the proper procedural vehicle for challenging a local government's decision on amendment to a comprehensive plan, and said its opinion will clarify procedures to be used."

The **Supreme Court** in Yusem:

"(W)e expressly conclude that amendments to comprehensive land use plans are legislative decisions. This conclusion is not affected by the fact that the amendments to comprehensive land use plans are being sought as part of a rezoning application in respect to only one piece of property," the court said. "(A)ll comprehensive plan amendments are legislative decisions **subject to the fairly debatable standard of review.** We find that amendments to a comprehensive plan, like the adoption of the plan itself, result in the formulation of policy."

Respectfully your neighbor, Steve

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