

MEMORANDUM

To: Town of Palm Beach
Palm Beach Landmarks Commission
Palm Beach Planning, Zoning & Building Department

From: Palm Beach Theater Guild, Inc.

Subject: Violation of Town Landmarks Rules and Landmarked Status of Volk's Playhouse
(Landmarks Case Number COA-22-003 and Zoning Case Number ZON-22-018)

Date: February 15, 2022

In place of the historic, landmarked Poinciana Playhouse in Palm Beach, WS Development and INNOVATE Corp. are proposing to create a flexible-use event space renamed as the "INNOVATE Institute", which apparently will promote a profile for the holding company INNOVATE Corp. The applicants ask the Palm Beach Landmarks Preservation Commission to allow them to alter the historic Playhouse building by cramming retail shops, art galleries and commercial events into the Playhouse building, while impairing and altering the architecture, visual presence and historic cultural significance intended and designed by renowned Palm Beach and theater architect John Volk.

The application to alter and impair the landmarked aspects of the Poinciana Playhouse has been submitted to the Town of Palm Beach by INNOVATE Corp. and by RPP Palm Beach Property LP ("RPP") (the "Applicants"). RPP appears to be a related company or affiliate of mall developer WS Development. The alterations that the Applicants seek are prohibited by the Town Code, by the Town's Comprehensive Plan, by a 2007 court order and by a visionary and forward-looking March 6, 1979 Agreement with the Town (the "1979 Agreement"), an agreement that was put in place and honored by prior Town Councils in order to prevent the kind of relentless commercialization, intensification and destruction of architectural and cultural history and heritage that the Applicants now seek. Among other alterations, WS Development and the Applicants wish to alter exterior walls, the scale and the historic and architectural significance and nature of the landmarked theater building, including by removing hundreds of theater seats and replacing them with retail and commercial uses that the Town has long disapproved of and prohibited in the Playhouse space.

Proper notice of the Applicants' proposal was required to be given to neighboring residents, but this precondition for any approvals by the Town was not complied with, rendering the notice and application insufficient, misleading and unacceptable for Town or Landmarks approval. Among the plans, documentation and details that were omitted from the Applicants' Notice to the residents, for example, was the crucial description of what is actually intended for the "INNOVATE Institute" that Applicants seek to have supersede the renowned and historic Poinciana Playhouse theater. The omitted disclosure by the Applicants is buried in a "Town Serving" exhibit that was not provided in the Notice that Applicants claim to have sent to Town

residents. The “INNOVATE Institute” plan presented by Applicant INNOVATE Corp. reveals no expertise or background of the Applicant directed to theater or historic preservation. The “INNOVATE Institute” plan ignores and abrogates the historic cultural vision shared by the Town and architect John Volk of an important “theater” of the scale and nature that Volk designed and that the Town landmarked and protected. Instead, “INNOVATE Institute” plans an event space, “not exclusively limited” to theater use, as the law requires, “with a small format theater that caters to modest productions designed for smaller audiences.” The “INNOVATE Institute” exhibit otherwise avoids reference to the required use of the Playhouse as a “theater” (but the exhibit at some length touts INNOVATE Corp. as a “platform” of “assets” that include the “largest steel fabrication and erection company in the USA”, a “broadcast station group” and a “life sciences” company whose “technologies” include a “revolutionary device to lighten and brighten skin”). I understand from statements of the Applicant side that the altered Playhouse building’s 400 seats will be moveable or removable, an aspect of the plans of the Applicants that is not adequately disclosed in their application but that could be used to vitiate the nature of the landmarked Playhouse as a “theater”.

The event space that the Applicants and “INNOVATE Institute” intend, in the guise of a “cultural arts center” enshrouded in retail shops and art galleries, is in direct violation of the historic nature, utilization, significance and landmarked status of the Playhouse as a “theater” of scale and national and historic importance, located very deliberately on the intracoastal Lake Worth waterway and carefully designed by John Volk for its visual role and impact in the Poinciana Plaza, as shown by the copy of the February 21, 2007 Designation Report that accompanies this Memorandum (the “Designation”). Further details of the historic significance, scale and contemporary intention and understanding of the Playhouse are contained in the copy of a March 1958 article in ‘The Social Spectator’ accompanying this Memorandum. The article by Edwin Colin Dawson explains some of the historic context of the Playhouse as “America’s newest contribution to theater architecture”, notes its highly successful reception on its creation and states that Volk’s theater is “an architectural masterpiece with no peer in our contemporary American scene”. The historically significant visual aspects of the Playhouse in relation to its setting, as designed by John Volk, are shown in the accompanying photos of the Poinciana Playhouse and Poinciana Plaza from the Library of Congress collection.

The Landmarks Commission is entitled and required to consider Volk’s intended scale, utilization and historic significance of the Playhouse, pursuant to Chapter 54 of the Town Code, and the impact of the proposed alterations on the architectural and historical integrity of the structure, particularly in light of the demolition of walls and other features proposed by the Applicants. The Commission is not required to accept a shallow, superficial and narrow interpretation of landmarks, historic significance and architecture as little more than surface aesthetic preferences and appearances. The Applicants’ proposed changes to the Playhouse will alter the configuration of the west wall and other walls of the building, will alter the size and appearance of the façade, will extend and add features, will remove architectural details and will threaten the scale of the building. Even if some alterations are allowable, the resulting structure will still be required to be used only as a “theatre”.

In addition to notice and disclosure to residents, the Applicants’ application should be “comprehensive”, but it does not disclose the complete plans and material information of the

Applicants, including in regard to the regional magnet restaurant they apparently have in mind or the docks adjacent to the Playhouse building, which appear in a rendering published in a recent Town & Country article on the Poinciana Plaza (see accompanying copy). The application also fails to adequately demonstrate and disclose the ownership, control, sustainability and interests of the Applicants and their plans. In regard to ownership and control, for example, related parties of the Applicants may include commercial lessees and users of the Poinciana Plaza and may also include principals, supporters and investors of the Sterling Group, whose earlier proposal to demolish the Playhouse to build 30 five-story condominiums was strongly opposed and rejected by Town residents and the Town (see the accompanying exhibits). In many ways, the Applicants' current plan appears to be a retread of Sterling's efforts to replace theater revenues with real estate and retail revenues, although after the ability to build condos was defeated, the "owner" group has admitted in the Applicants' application that the 1979 Agreement requires that the Playhouse building be used as a "theatre of the performing and/or visual arts and for lectures or other special events". (Under the 1979 Agreement "visual arts" uses must be in a "theatre", not an art gallery.) Landmarks may or may not have overlapping authority with the Town and Town Council to do due diligence as to whether related parties of the Applicants will be benefitting from revenue sought to be derived by alterations to the landmarked Playhouse.

The Applicants' application has been submitted to the Town's Landmarks Preservation Commission (the "Landmarks Commission") in an apparent attempt to obtain a superficial gloss of "cultural" acceptability for a knowingly unlawful proposal, in advance of a March 9, 2022 Town Council session that the Applicants and WS Development arrogantly seem to expect will result in the Council on the spot abrogating the law, the landmarked status of the Playhouse and the cultural heritage of Palm Beach. This Memorandum is submitted to the Town of Palm Beach and to the Landmarks Commission and Planning, Zoning & Building Department ("Planning & Zoning") in connection with the Applicants' highly questionable application, which is pending under Landmarks Case Number COA-22-003 and Zoning Case Number ZON-22-018 (the "Application"). Background on the expertise and standing of the Palm Beach Theater Guild, Inc. and its supporters is set forth in exhibits accompanying this Memorandum.

The Town's Planning, Zoning & Building Department has submitted a PZ&B Staff Memorandum dated February 16, 2022 to the Landmarks Commission in regard to the Applicants' Application (the "P&Z Memorandum"). In a shockingly improper move, the Staff Memorandum attempts to preempt and abrogate the 1979 Agreement and to coach and prompt the Landmarks Commission to ignore the law. In this apparent attempt to aid a favored developer and Applicant group, Planning & Zoning staff make a number of false and misleading statements. The P&Z Memorandum tries to lead the Landmarks Commission to believe that the requirement in the 1979 Agreement that the Playhouse space will be "used...only for use as a theater" "will remain with the proposed programming" as a "fundamental condition". The P&Z Memorandum asserts in misleading fashion that "other clauses within the Agreement are largely no longer relevant to the 2022 Code and/or the property itself." To support this incorrect position, the P&Z Memorandum makes the circular argument that the alterations proposed in the Applicants' own unapproved Application are themselves reasons that make aspects of the 1979 Agreement "largely no longer relevant", including alterations characterized as "the voluntary demolition, restoration and reconstruction that results in the demolition of more than 50% of an exterior wall (or roof)." In another misleading reference, the P&Z Memorandum does not

disclose that “subsequent 19 amendments” to the 1979 Agreement are not the kind of major amendment that might be implied, but rather were almost entirely provisional amendments to allow parking in West Palm Beach or other parking arrangements. The P&Z Memorandum not only improperly disdains the 1979 Agreement, the Code and Comprehensive Plan, it also contravenes the Deed for the property and a 2007 court order that requires that the Playhouse be “maintained and operated” as a theater, and the P&Z Memorandum is inconsistent with the views of the Town extending back to the time of a May 2005 letter from Town Attorney John Randolph (see accompanying exhibit copies).

The P&Z Memorandum states an improper, false conclusion in aid of the Applicants that is simply wrong and indefensible. The Memorandum states, in regard to the still visionary and forward-looking 1979 Agreement that has protected the historic and cultural heritage of Palm Beach: “It is for this reason, along with the passing of over 40 years since the Agreement’s inception that the applicant seeks to create a properly updated document to rely on for future purposes.” This conclusion promoting the interests of the Applicants is incorrect and improper and should not have been indulged in by Planning & Zoning.

References and incorporation of the record and exhibits in this Memorandum refer to and incorporate all of the documents submitted by the Applicants as part of the Application, as well as the public record of the Town Code, Comprehensive Plan and minutes, proceedings and other records of the Town of Palm Beach, the Town Council and the judicial and adjudicative authorities that have considered the Poinciana Playhouse and Poinciana Plaza. Additional exhibits are also submitted in connection with this Memorandum.

The Applicants’ Application fails to meet Town landmark standards and admittedly violates the Town Code, Comprehensive Plan, 1979 Agreement and applicable law and must be rejected by the Landmarks Commission.