

TOWN OF PALM BEACH

Information for Town Council Meeting on: July 13, 2022

To: Mayor and Town Council

Via: Kirk Blouin, Town Manager

From: Wayne Bergman, MCP, LEED® AP, Director of Planning, Zoning & Building 

Re: Town Council Concerns Over New Public Notice Ordinances and Repealed Notice and Application Requirements

Date: June 27, 2022

GENERAL INFORMATION

It has been brought to my attention there is concern on the part of some residents that language was omitted from the Architectural Review Committee (ARCOM) Ordinance in 2021 that inadvertently removed protection to neighboring properties. The subject memorandum seeks to clarify that the amendments approved with the adoption of Ordinance 06-2021 offer increased public access and transparency with the development review process. Please recall that the primary objectives of the Planning, Zoning and Building Development Review application changes were to improve and heighten the public's right to know of pending development projects in their area. While, at the same time, facilitate professional control of the development submittal procedures. Having said that, the notice requirements for not only ARCOM, but also the Landmarks Committee and Town Council, were vetted by both commissions, Town Council, and the public, with professional planning staff input, to establish the *Uniform Development Review Procedures*, pursuant to Ordinances 06-2021, 07-2021 and 08-2021.

Subsequently, staff updated the application form and submittal checklist, initiated pre-conference meetings with applicants, began mail noticing, implemented monthly newspaper advertisements, and created a new yearly calendar of deadlines. Simply stated, staff began professionally handling incoming land use applications, which include a full review for sufficiency, zoning compliance, comprehensive plan consistency, and design review.

With regard to the June 14, 2022, email, attached for reference, the following language was removed with the adoption of the *Uniform Development Review Procedures* and is the subject of this memorandum.

- All mailed meeting notices must include a drawing of the project; and
- Only 4" x 6" photographs could be used in ARCOM applications; and
- Revisions to ARCOM plans be filed 10 days prior to the ARCOM meetings.

Below please find responses that are intended to provide a better understanding of what has been substituted to improve the public access and government accountability in the development review process.

1. **Graphic Depiction.** Prior to the adoption of the *Uniform Development Review Procedures*, mail notices were prepared by the applicant to their individual liking that included with a copy of the application, a graphic depiction of the proposed structure(s) with landscaping elevations. With the *Uniform Development Review Procedures*, the mailing notice is now prepared by staff with industry-standardized language that includes a map of the area, legal notice language, the statutory authority under which the action is proposed, and the date, time, and place of the public hearing. Further, the notice provides instructions and a link to access the proposed plans for review, both in digital and paper format.

Staff concurs that neighbors should be aware of future projects in their area. However, it is speculative to send drawings, illustrations, or renderings of future projects to neighbors as part of the public notice as the elevations may not be approved as presented in the mailing notice, if at all. As evidenced below, please see a canvas of selected municipalities asking the question as to whether graphic depictions of projects are included within the public notice:

SAMPLING OF MUNICIPALITIES PHOTO/RENDERING INCLUDED IN PUBLIC NOTICE?	
City of Boca Raton	No
City of Delray Beach	No
City of Coral Gables	No
City of Fernandina Beach	No
City of Fort Lauderdale	No
City of Fort Pierce	No
City of Key West	No
City of Naples	No
City of West Palm Beach	No
Town of Highland Beach	No
Town of Jupiter Island	No
Village of Bal Harbor	No
Village of Gulfstream	No
Village of Key Biscayne	No
Village of Pinecrest	No
City of Charleston	No
City of Savannah	No
City of St. Augustine	No
Town of Nantucket	No

What all of these municipalities do provide is unfettered access to the complete set of plans as both online digital resource readily available for review and a physical set in the municipal Hall with professional planning staff available as a source to aid in understanding the submittals. It is a common understanding that providing a selected illustration/rendering/photo of the proposed project can be risky, ambiguous, misleading, and, at times, deceptive. Renderings are conceptual images, not technical plans. The images presented in these conceptual and appealing drawings may

provide an unrealistic expectation of what is being built and may not depict the actual final building design. A design changes frequently from its initial submittal, be it through staff, public input, and/or Commission design direction comments.

Backup material from the Public Notice requirements of the above 19 municipalities, supporting the Town's Uniform Development Review Procedures, can be provided upon request (large document).

Further, in a recent meeting with a prominent land use firm, staff questioned the group of three land use attorneys if renderings or illustrations of proposed developments should be included with the Town's public noticing to surrounding neighbors. In unison, they all advised to not have proposed renderings made a part of the public notice. It is staff's strong recommendation that the Town continue to not embed in an ordinance the requirement of a graphic depiction of the project, as it inadvertently conveys uncertain information to the public.

2. **Color Photos.** The former requirement only permitted 4"x6" photographs to be included in ARCOM applications. The removal of this requirement was twofold. It was staff's professional opinion that this requirement was inappropriately embedded in an ordinance. Secondly, there may be instances where thumbnails, 3"x3", 5"x7", or full-page photo sizes are better suited for presentation purposes. The requirement for a restrictive size of the color photos was removed from the ordinance and placed in the application checklist.

Staff maintains that current color photos are an integral part of the submittal requirement that aid staff review and the Commissioners with imagery of existing conditions and of the surrounding area. However, the decision on the specific size of the photos (and whether photos are even required) should be a departmental policy decision that staff finds is "project specific" as to what size photo would best represent any given project. Further, to embed within the code of ordinances an exact size of photographs has the potential grounds for appeals of entire applications for incorrectly sized photos, i.e., 3-³/₄" x 5-¹/₂" in lieu of the code mandated 4"x6". (Please refer to the current uniform checklist and the mention of photographs). It is staff's strong recommendation that the Town continue to not embed in the ordinance the size requirement for color photos of a project as this requirement is procedural and site specific.

3. **Plan Revisions.** Prior to the adoption of the *Uniform Development Review Procedures*, applicants were able to file ARCOM plans up to nine (9) days prior to an ARCOM meeting. At that time, revised plans were being filed for almost every ARCOM application on any agenda. This limited period of time did not allow staff time to review the changes. Similarly impactful, neighbors were only made aware of those changes if they attended the public meeting and not given time to determine the potential effect on their property. Legally, without ample review time, staff was not able to determine if proper noticing was now affected due to the plan changes. It was staff's professional opinion that this allowance granted to the applicant jeopardized accountability in the development review process. The language was removed for these reasons. It is staff's strong recommendation that the Town continue to not allow revisions to ARCOM plans nine (9) days prior to a public meeting in the ordinance as it impacts the transparency of the process to the public.

Lastly, it is worth noting, since October of 2021, 150 applications have been advertised in the Palm Beach Daily News 30 days prior to the public meeting. Simultaneously, all development plans that are the subject of each application on their respective agendas are now available online for review also 30 days prior to the meeting.

Staff will be available at the July 13, 2022, meeting to discuss this topic and confirm our position that the new process provides improved oversight of pending development projects.

Attachments:

June 14, 2022 Email

Copy of uniform application and uniform checklist

Copy of deadline calendar