

**ROYAL POINCIANA PLAZA  
LANDMARKS MEETING  
January 20, 2010**

There are many questions which arise as a result of this application, many of which go beyond the substance of the application itself but go to procedural issues.

The first is how can this application even be before you for consideration when, if it is approved as submitted, it will be in violation of the Town's comprehensive plan, the Town's zoning ordinance and the 1979 Agreement between the Town and the predecessors in interest to the Royal Poinciana Plaza. The answer to that, as I believe you all know, is that the Town Council has referred the matter to you and has asked that the Landmarks Preservation Commission be the first Town body to consider the application and that it be considered without regard to potential future changes to the 1979 Agreement, the comprehensive plan or the zoning ordinance of the Town, but rather focus on the architectural and historic preservation considerations within your jurisdiction. This was a unanimous decision of the Town Council. Its intent was obvious. It was to give the Council direction in regard to these matters prior to the Town Council, the LPA and the Planning and Zoning Commission going through the exercise of rezoning, comprehensive plan changes and even considering changes to the 1979 Agreement as, if there is no agreement in regard to the landmarking aspect of this project, there may be no need to consider comprehensive plan or zoning amendments or the 1979 Agreement.

The second question is, even though the Council has referred this to you, does your Commission, by the terms of its own enabling ordinance, have the jurisdiction to consider this application. I believe it does on the basis of code Section 54-71 (d) which

provides that your Commission shall exercise only those powers and duties granted by the code and those powers and duties that may be assigned to it at a later date by the Town Council. The Town Council has assigned to you the duty to review this application first, prior to the Town Council giving consideration to the potential comprehensive plan and zoning changes and the 1979 Agreement.

The third question then becomes, did the Town Council have the authority to refer this to the Landmarks Commission for review when the application is inconsistent with the Town's current comprehensive plan and zoning ordinance and is in violation of the 1979 Agreement which has been upheld by the court. I believe it is inherent in the rights of the Town Council to assign such a task to one of its commissions as long as it is not asking that commission to violate any law. If the Council were asking you to ignore the laws of comprehensive planning or zoning or even the 1979 Agreement, it would obviously be a violation. But they are not asking that. They are only asking you to look at the architecture and historical aspects of this application, those functions within your jurisdiction, leaving those matters within the Council's jurisdiction to the Council.

It is argued that for this board to grant a Certificate of Appropriateness, which would then allow a demolition permit and construction permits, would be in violation of existing laws of the Town and in violation of state law which requires that any development order granted must be consistent with the overriding comprehensive plan and zoning laws. That is a correct statement of the law. It is not anticipated, however, that any action you take in regard to the granting of this application, if that is the action you elect to take, will result in the issuance of a Certificate of Appropriateness and thus

a demolition permit and construction permits. Any approval you give will be conditional, i.e., it will not be an approval of a Certificate of Appropriateness. That approval cannot come until all conditions have been met. Therefore, there will be no Certificate of Appropriateness issued as a result of any conditional approvals which may come from the Commission, nor will any permits be granted, nor will any construction take place prior to all conditions being met.

Concerns have been stated that if Landmarks gives an approval of this application, we will see the wrecking ball come to the theater building before any court has an opportunity to address any challenge that may come as a result of such an approval. My previous comments should allay those fears, as no permits will issue until all conditions have been met.

It has been argued that this Commission does not have the authority to grant conditional approvals because your code says your powers include only approval of the application, denial or deferral, and does not state approval with conditions. I believe inherent in any right to approve, is the power to attach conditions to such approval. As a matter of practice this Commission has attached conditions to previous approvals.

A fear that has been stated to me is that if Landmarks were to approve any part of this application, it would put in jeopardy the 1979 Agreement which contains a provision that if changes are made by the Town which allow for further development opportunities, the Agreement becomes null and void. This is a legitimate concern, as is the concern that an approval may create development expectations which may invoke provisions of the Bert Harris Act. Because any approval will be conditional only, I do not believe that is a risk. However, to further address that matter, staff is suggesting as a

condition of any approval, that the owner and lessees enter into an agreement that such an approval does not create additional development opportunities as referenced in the 1979 Agreement and does not create any expectations beyond those that already exist in the 1979 Agreement, the comprehensive plan and the Town's zoning code and that action of the Landmarks Commission shall not be considered passage of a regulation which would invoke the provisions of the Bert Harris Act.

Finally, I understand there may be a few people who disagree with my opinion and who, because I represent the Town Council which referred this to Landmarks in the first instance, feel that my opinion may be biased in favor of the action of the Town Council. They suggest, therefore, that Landmarks seek an independent legal opinion in regard to the ability of the Landmarks Commission to entertain this application. It is indeed your prerogative to request that the Town Council authorize such an opinion. I call your attention, however, to the fact that on June 10, 2008, this issue was addressed by the Council and it was the consensus of the Town Council to not hire any additional legal representation for the Landmarks Preservation Commission.

I have tried to address those questions which I anticipated might arise. I would be happy to answer any other questions you may have.