

## Landmark demolition referendum unconstitutional, judge rules; to come off Nov. 2 ballot

By **JAN SJOSTROM AND DAVID ROGERS**

DAILY NEWS STAFF WRITERS

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Preserve Palm Beach and its leader, Patrick Flynn, have lost their battle to get a referendum on the Nov. 2 ballot protecting the Royal Poinciana Playhouse from demolition.

Palm Beach County Circuit Court Judge David Crow ruled Thursday in favor of the town's challenge of the constitutionality of the political action committee's proposed referendum requiring voter approval before certain landmarked buildings could be razed.

The court "does not doubt the sincerity and motives of the defendants, and those citizens of the town who signed the petition and those who support it or desire to preserve what many feel are historic landmarks in the town," Crow wrote. "However, no matter how laudable these goals may be, that decision is not by popular vote when that popular vote is in conflict with Florida statutes."

"We are pleased with the result," Town Attorney John Randolph said. Palm Beach County Elections Supervisor Susan Bucher removed the proposed referendum from the Nov. 2 ballot on Friday.

Flynn said he plans to appeal the decision.

"This is a serious thing," he said. "It's like tampering with an election."

"We gave them the deadline of Aug. 27," Bucher said. "They have an election in February. They could put it on the ballot then."

Flynn is president of the Palm Beach Theater Guild, which wants to reopen the 52-year-old John Volk-designed Playhouse as a theater.

As expected, members of the Town Council reached Friday applauded Crow's decision.

"I think that the Pat Flynn group tried to craft this new referendum to include more than five different parcels in order to get around Judge Crow's previous decision. The judge clearly said that did not do it," Councilman Richard Kleid said Friday.

In April, the PAC collected 970 signatures on a petition requesting the referendum.

The referendum removed from the Nov. 2 ballot would have, if approved, amended the town charter to require voter approval before landmarked public-access buildings could be demolished. Protected buildings would include, but not be limited to, the Royal Poinciana Playhouse, St. Edward Catholic Church, The Society of the Four Arts' administration building and King library, The Episcopal Church of Bethesda-by-the-Sea and three other structures.

The town claimed, in a lawsuit filed in June contesting the referendum's constitutionality, that the withdrawal of a landmark designation and the issuing of a certificate of appropriateness for demolition would qualify as a development order. In the town's opinion, development orders for properties consisting of fewer than five parcels, as all those covered by the referendum are, cannot be subjected to referendums under state law.

The town also faulted the referendum's language, which it said did not adequately define which structures would be affected.

Flynn, who represented himself and the PAC throughout most of the case, argued that because no development orders for the affected buildings currently exist, the court would be illegally ruling on a hypothetical case. As for the ballot language, the town is responsible for crafting it, he said.

Council President David Rosow decried the cost of the lawsuits. He said he expected the judge to rule as he did, because the legal change proposed by the referendum went against state law.

"I think it's unfortunate that so many residents are being given false information about the legality of these referendums. It would be appropriate if Mr. Flynn and Mr. McNamara (Preserve Palm Beach treasurer Laurence McNamara), both of whom are not residents, would obtain good legal advice before attempting this again," Rosow said.

"Each time they do this it costs the town money out of our budget to pay for the court costs and our lawyers to determine the constitutionality of their referendum," Rosow added. "That's money being wasted."

This is the second time the town has challenged a Preserve Palm Beach-sponsored referendum in court.

In November, Crow sided with the town, when it used similar grounds to the ones it cited in the landmarking case to object to the PAC's proposed referendum to add to the charter provisions of a 1979 property-use agreement shielding the Playhouse from demolition. If passed, town voters would have to approve changes to the agreement.

The PAC appealed Crow's ruling. The Fourth District Court of Appeal is scheduled to hear arguments in that case Oct. 5.

Councilwoman Gail Coniglio said she was comforted by Crow's second ruling.

"It does not solve the issue of whether or not there should be a Playhouse but it certainly tell us that we should do things in a way that is careful, methodical and legal," Coniglio said.

Various plans have been floated to demolish the Playhouse and build condominiums on the waterfront. The latest was proposed by Sterling Palm Beach, which withdrew a plan in March that called for razing all but the eastern facade of the Playhouse. Officials of Sterling Palm Beach, which the court allowed to intervene in the case, declined to comment.

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