

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING
HELD ON FEBRUARY 9, 1998**

I. CALL TO ORDER AND ROLL CALL

President Lesly S. Smith called the Special Town Council Meeting to order at 5:01 p.m. in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Smith, President Pro Tem Leslie Shaw, Councilmen Sam McLendon, Jack McDonald, and Allen Wyett. Also attending for all or part of the meeting were: Town Manager Robert Doney, Town Attorney John C. Randolph, Director of Planning, Zoning, and Building Robert Moore, Zoning Administrator Paul Castro, Planner/Projects Coordinator Timothy M. Frank, and Town Clerk Mary Pollitt. William F. Brisson, a consultant from Adley, Brisson, Engman, Inc. was also present.

II PROOF OF PUBLICATION

Town Clerk Pollitt said proof of publication was received.

III. APPROVAL OF AGENDA

A motion was made by Mr. Wyett and seconded by Mr. McLendon to approve the agenda. The motion carried unanimously.

IV SECOND READING OF ORDINANCE NO. 1-98, ZONING AMENDMENTS, MODIFICATIONS AND ADDITIONS

Town Attorney Randolph read Ordinance Number 1-98 by title:

ORDINANCE 1-98

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2-74, AS AMENDED, THE OFFICIAL ZONING ORDINANCE OF THE TOWN OF PALM BEACH; BY AMENDING SECTION 2.10, DEFINITIONS, BY FURTHER DEFINING THE DEFINITION OF BUILDING HEIGHT AND HOW THE MEASUREMENT OF HEIGHT IS CALCULATED IN ALL ZONING DISTRICTS; BY AMENDING SECTION 4.20, APPLICATION OF REGULATIONS, SCHEDULE A, LOT, YARD AND BULK REGULATIONS BY ADDING LANGUAGE IN FOOTNOTE (14) THAT ALLOWS LANDSCAPE OPEN SPACE CREDIT FOR GRASS CRETE; BY ADDING CORRECTIVE LANGUAGE AND ADDRESSING THE MAXIMUM HEIGHT OF HOUSES WITH COMBINATION FLAT AND PITCHED ROOF STYLES IN FOOTNOTES (18) AND (18a) IN THE R ZONING DISTRICTS; BY MODIFYING THE C-OPI DISTRICT BY ADDING A HEIGHT REQUIREMENT FOR THREE STORY BUILDINGS AND CHANGING THE MAXIMUM LOT COVERAGE FOR TWO AND THREE STORY BUILDINGS; BY AMENDING SECTION 4.20, APPLICATION OF REGULATIONS, SCHEDULE B., SCHEDULE OF USE REGULATIONS BY ALLOWING SECURITIES OR FINANCIAL BROKERAGE AND TRUST COMPANIES AS A PERMITTED USE AND/OR SPECIAL EXCEPTION USE IN THE C-TS DISTRICT, BY AMENDING SECTION 5.15, LOT AREA BY ELIMINATING ACCESSORY STRUCTURES ASSOCIATED WITH SINGLE FAMILY DEVELOPMENT THAT HAS HAD A CERTIFICATE OF OCCUPANCY FOR AT LEAST FIVE YEARS, FROM THE REQUIREMENT OF A SPECIAL EXCEPTION WITH SITE PLAN REVIEW APPROVAL; BY AMENDING SECTION 5.22, PERMITTED SPECIAL EXCEPTIONS OF HEIGHT REGULATIONS BY MODIFYING THE REQUIREMENT THAT ALLOWS ONE TOWER AS AN ARCHITECTURAL FEATURE IN THE R-B DISTRICT BY PROVIDING A FRONT YARD SETBACK AND SPECIFICALLY EXCLUDING ENTRY FACADES AND PARAPETS AS A TOWER FEATURE; BY AMENDING SECTION 5.36, GARDEN WALLS AND FENCES BY MODIFYING THE

EXISTING LANGUAGE ON HOW TO MEASURE THE HEIGHT OF WALLS, FENCES, GATES AND GATE POSTS, AND BY PROVIDING A SETBACK FOR WALLS OVER FOUR (4) FEET IN HEIGHT THAT ABUT A ROADWAY TO ACCOMMODATE A HEDGE; BY AMENDING SECTION 5.51, MINIMUM YARD, LOT AND BULK REGULATIONS, BY MODIFYING THE REQUIREMENTS FOR UNENCLOSED ACCESSORY STRUCTURES BY SPECIFICALLY ADDRESSING SETBACKS FOR THOSE STRUCTURES THAT ARE TWO STORY OR OVER FIFTEEN (15) FEET IN HEIGHT; BY AMENDING SECTION 6.21, OFF-STREET PARKING (F), BY PROVIDING A FRONT SETBACK FOR PARKING LOT AREAS, BY INCREASING THE REQUIRED MINIMUM INTERIOR LANDSCAPE AREA FOR PARKING LOTS FROM FIVE (5) PER CENT TO TEN (10) PER CENT AND BY CHANGING THE REQUIRED PERIMETER LANDSCAPE AREA FOR PARKING LOTS FROM TEN (10) PER CENT TO FIFTEEN (15) PER CENT; BY AMENDING SECTION 6.21, OFF-STREET PARKING, BY ADDING A NEW PROVISION ALLOWING OFF-SITE SHARED PARKING IN THE C-PC ZONING DISTRICT; BY AMENDING SECTION 6.21(F) UTILIZATION OF YARDS, AND 6.21(H), UTILIZATION OF STRUCTURES, BY REQUIRING TOWNHOUSE AND MULTI-FAMILY REQUIRED OFF STREET PARKING TO BE ENTIRELY WITHIN A BUILDING STRUCTURE; BY AMENDING SECTION 8.23, REGULATION OF NONCONFORMING BUILDINGS AND/OR STRUCTURES, BY PROVIDING LANGUAGE TO ALLOW REMODELING AND REFURBISHMENT OF NONCONFORMING BUILDINGS AND/OR STRUCTURES THAT ARE NOT UNSAFE OR UNUSABLE BY LACK OF NORMAL MAINTENANCE OR ORDINARY DETERIORATION; BY PROVIDING A COMPLETION DATE OF SAID REMODELING AND REFURBISHMENT OF EIGHTEEN (18) MONTHS RATHER THAN ONE YEAR, AND BY PROVIDING A MORE STRICT THRESHOLD FOR THE AMOUNT OF DEMOLITION, RESTORATION AND RECONSTRUCTION THAT CAN OCCUR TO A NONCONFORMING BUILDING AND/OR STRUCTURE; BY AMENDING SECTION 8.24, TERMINATION OF NONCONFORMING BUILDINGS AND/OR STRUCTURES BY PROVIDING CLARIFICATION ON RECONSTRUCTION AFTER A FIRE OR OTHER CASUALTY OR ACT OF GOD, AND TO PROVIDE NEW LANGUAGE REQUIRING THAT NONCONFORMING BUILDINGS AND/OR STRUCTURES PARTIALLY OR ENTIRELY EAST OF THE COASTAL CONSTRUCTION CONTROL LINE COMPLY WITH ALL FEDERAL, STATE AND LOCAL LAWS RELATING TO THE COASTAL CONSTRUCTION CONTROL LINE; BY AMENDING SECTION 10.13, VARIANCES, BY ELIMINATING LANGUAGE THAT REQUIRES SECOND KITCHENS TO BE APPROVED BY THE VARIANCE PROCESS; BY AMENDING SECTION 11.10, TOWN COUNCIL ACTIONS ON AMENDMENTS, BY MODIFYING THE PROCEDURE FOR SUBMITTING ZONING APPLICATIONS AND TO ALSO SET A SPECIFIC DATE FOR THE DEADLINE FOR SUBMITTING REZONINGS, MODIFICATIONS OR AMENDMENTS TO THE ZONING ORDINANCE; PROVIDING FOR A PENALTY FOR A VIOLATION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREOF; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mrs. Smith asked for comments from the public. There were none.

Mrs. Smith said item number VI. concerning the Worth Avenue Guidelines would be heard in total but would be heard only until 7:30 p.m. on this date and continued on Friday, February 13th, at 1:30 p.m.

Mr. McLendon made a motion to approve Ordinance Number 1-98. Mr. McDonald seconded the motion. On roll call, the motion carried unanimously.

V. ADOPTION OF AMENDMENTS TO THE BREAKERS PLANNED UNIT DEVELOPMENT - RESOLUTION NO. 1-98

Town Attorney Randolph read Resolution 1-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING RESOLUTION 1-97, THE BREAKERS PUD, BY MODIFYING, THE TERMS FOR LEASE OF THE PINEWALK TRANSFER STATION; BY EXTENDING THE DATE FOR RENEGOTIATION ON THE TRANSFER OF DEVELOPMENT RIGHTS FOR THE BREAKER PUD; BY PROVIDING A REQUIRED OFF-STREET PARKING FACILITY TEMPORARILY WITHIN PRIORITY AREA NO. 1, PHASE 1A OF THE PUD; BY APPROVING A REQUIREMENT FOR A PARKING STRUCTURE AT A FUTURE DATE; BY ELIMINATING THE REQUIREMENTS TO CLOSE THE PINEWALK AND ELIMINATE THE ASSOCIATED TRAFFIC SIGNAL; BY ELIMINATING THE REQUIREMENT TO PAVE SEVENTY PARKING SPACES ALONG THE PINEWALK ENTRANCE; BY APPROVING THE REQUEST TO POSTPONE THE CONSTRUCTION OF TWO HUNDRED PARKING SPACES; AND BY MODIFYING AND EXPANDING THE HOTEL FACILITIES

Mrs. Smith explained that this meeting had begun at 3:00 p.m. and modifications were made to the Breaker's P.U.D. Mrs. Smith said Attorney James Brindell, representing the Breakers, and the Breakers staff had concurred with the changes.

Mr. Brindell said that was correct and included the substitution of the alternate language on Modification 6.

Mr. Randolph said that was correct and that language was corrected over the break between the conclusion of the 3:00 p.m. meeting and

the 5:01 p.m. meeting. Additionally, in modification 11, a reference was made to the conditions that were placed upon the approval of the site plan review.

Mr. Randolph read the language for Modification 6:

"The Town and the Breaker's Palm Beach, Inc. have agreed that the Town shall be given an extension of the existing lease from the Breaker's Palm Beach, Inc. until December 31, 2012, for the Town's waste transfer station currently located on Development Priority No. 8, Phase 5, within the Breaker's P.U.D. as shown in the redbook, drawing number 5.

"The terms of said lease shall be the same as contained in the present lease and further said lease may not be canceled prior to December 31, 2012, without the approval of the Town of Palm Beach. Prior to December 31, 2001, the Town shall study alternative locations, not on the Breaker's Hotel property, for the transfer station and the Breaker's shall study alternative locations on the Breaker's Hotel property for the relocation for the twenty-four dwelling units currently approved for development, priority number 8, phase 5. Prior to December 31, 2001, the Town and the Breakers shall discuss their respective studies and resolve whether or not the transfer station will continue to be located on the Breaker's Hotel property."

Mr. Moore said a point of clarification was the last sentence which should not be in there as read. There should be a period after "respective studies".

Mr. Randolph said the other change was in item 11. Mr. Randolph read the change.

"Modification 11 On-site parking, Traffic Circulation Management. On-site parking and circulation shall be conducted in accordance with the document prepared by D.K.S. Associates, entitled, Parking and Traffic Management Program for the Breaker's Hotel, dated February, 1998, and attached hereto, and *subject to all the conditions of approval of the Site Plan Review Number 1-98, approved February 9, 1998.*

Mr. Brindell said that modification was acceptable.

Mr. Shaw asked if this modification precluded moving the transfer station to another site on the Breaker's property?

Mr. Brindell said it did not preclude any negotiations.

Mr. McLendon made a motion to approve Breaker's P.U.D. Resolution No. 1-98. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

VI. FIRST READING OF ORDINANCE NO. 2-98, ZONING AMENDMENTS, MODIFICATIONS AND ADDITIONS TO ORDINANCE 2-74, AS AMENDED AND THE WORTH AVENUE DESIGN GUIDELINES

Zoning Administrator Paul Castro identified the changes for Ordinance No. 2-98 since the last meeting and explanations for them.

Mr. Castro said that at the last meeting the staff believed that the maximum height in the Worth Avenue District was established based on the Zoning Code Book that was codified. He said that after research, it was found the table in the book was codified with the roman numerals on the wrong side of the table. Based on a review, the staff found the maximum height for a three story building which was a special allowance for a special exception in the Worth Avenue District was thirty-five feet. He said that an error was also corrected in the rear setback that was identified in the wrong column of the Zoning Code. The rear setback in the Worth Avenue District for one, two, and three story buildings is actually ten feet. When Ordinance Number 1-91 was adopted, it was ten feet with a footnote 10 that was attached to the side of the page.

Mr. Castro said the staff reviewed the maximum heights of the buildings taking into consideration the thirty-five foot maximum height that was established for that district. Based on review of several buildings on Worth Avenue, the floor to ceiling heights for the first and second floors, staff determined that a reasonable height to be attained would be a maximum of fourteen feet from the finished floor to the bottom of the top board. No established height was set for the second and third floors. The maximum height and the overall height were set.

Mr. Castro said that information is shown in the proposed, revised Worth Avenue Guidelines beginning on page sixty. Within the east end development area, staff reviewed the specific requirements as related to the coverages on first, second, and third floors attempting to emulate some of the established coverages in the 200-300 blocks of Worth Avenue. From the review of the existing requirements for the 100 block of Worth Avenue, knowing the intensity and height of the development that existed in the area, the staff recommends the figures that are shown in the Special Allowances. This language clearly shows the allowed coverages, as a special exception, on the third floor—those being the one story maximum coverage of seventy-five percent, the second story coverage of sixty-five percent, and the third floor coverage of a maximum of thirty percent. Commercial uses would be allowed on the third and second floors where previously only residential uses were allowed.

Mr. Castro said the staff's recommendation is to adopt the coverages with the guidelines in place that assured the residential appearance of the second and third floors and the promotion of the arcade architectural style. Mr. Castro said the recommendation includes adopting a maximum height of up to forty feet—no guarantee of forty feet—but as a special exception up to forty feet in the 100 block of Worth Avenue.

Mr. Castro said the staff also recommended providing an incentive as listed on page 63, item iv, of the Worth Avenue Guidelines to allow equipment rooms, stair towers, and towers used only as architectural features to be erected no more than forty percent above the allowable building height and occupy no more than fifteen percent of the ground floor area of such building. That was also to provide flexibility in

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terms of the roof heights in the district.

Mr. Shaw said he thought the Zoning Commission was asked to look specifically at one area of Worth Avenue, under the Guidelines that had been established. Mr. Shaw said the Zoning Commission and the Town Council now realize that Worth Avenue should be looked at as a whole. He said he thought the issue would be going back to the Zoning Commission for further consideration, and this actually is a starting point for a standard that will become the Worth Avenue Guidelines and possibly will be expanded to incorporate the Worth Avenue commercial areas.

Mr. Shaw said the way this is designed is too large a leap at this time. He said he thought the Town Council has to be sensitive to other residential areas that are impacted by the Worth Avenue district because this is a template that may happen to the rest of Worth Avenue.

Mr. Shaw suggested using a thirty percent second story, which is the norm for Worth Avenue, for the present. He said changing it to sixty-five percent maximum coverage is an excessive increase, his recommendation was a limit of fifty percent. Although he did not like the forty foot limit, he thought it was a necessity based on acceptable ceiling heights and building standards that need to be complied with. He thought it would rely on architectural design to make sure a hollow corridor does not exist on Worth Avenue—very tall, flat fronted buildings.

Mr. Shaw requested the issue of residential use be addressed. He said he believed that if commercial is going to be used on the second floor, that should not prohibit residential on the third floor. The governing factor of residential use is going to the same governing factor that exists with the building itself, and that will be the ability of parking on site that would have to be provided to meet the residential usage.

Mr. Shaw said he saw an inconsistency regarding the capacity of units—it first stated that a second story coverage of sixty-five percent be allowed before staff recommended fifty percent with a maximum of one resident per each fifty feet of frontage. Mr. Shaw said that meant if it were going to be developed for residential use, the potential is a fairly large apartment. He did not think the size of the apartment should be dictated, but should be left to the people who would rent the space or who would build it.

Mr. Shaw said the inconsistency is when the third floor is mixed with the second floor, the number is sixty feet. He said that should be consistent, but was not sure the limitation was needed. He said he would rather see the ability to provide small apartments, appropriate to individual needs, to make it useful.

Mrs. Smith asked Robert Wood, Chairman of the Zoning Commission, if he and Mr. Martin Klein realized they made a mistake in only looking at the 100 block of Worth Avenue?

Mr. Shaw said he apologized if he said that. He thought the Zoning Commission was requested to look specifically at the 100 block of Worth Avenue, and he hoped that the issue would be addressed during the next zoning season to look at the rest of the blocks on Worth Avenue.

Mrs. Smith asked Mr. Wood to clarify the issue for the record.

Mr. Wood said the Commission's job was to specifically look only at the impact of the 100 block of Worth Avenue. Mr. Wood said he asked that question several times for clarification to the members from the Building Department staff and Town Attorney Randolph. Mr. Wood said the Commission asked for clarification to determine if this issue would be considered spot zoning if only the 100 block were considered. Mr. Wood said they were told that from a planning standpoint, the three blocks were considered to be different planning elements, and they were within their jurisdiction to consider only the 100 block of Worth Avenue.

Mr. Wood said he did not think the Zoning Commission made a mistake in their deliberations after hearing the Town Council's discussion at this meeting.

Mrs. Smith asked for comments from the general public.

Mrs. Meredith Newton, Chairman of the Civic Affairs Committee, from the Garden Club of Palm Beach spoke on behalf of the club. She said the Garden Club is strongly opposed to the proposed substantive changes for the 100 block of Worth Avenue as well as any changes that may be proposed for the 200 and 300 blocks of Worth Avenue. Mrs. Newton said the Club objects to permitting second and third floors to be used as commercial space as long as they appear residential. She said that is like planting a garden and using artificial flowers. There is a small park that would be eliminated on the north side of the 100 block of Worth Avenue. She understood this park was originally set aside for parking space for the Esplanade. The Club would hate to see that park disappear. Mrs. Newton asked if that space was bound to the Esplanade by title or could it be separated?

Mrs. Newton said the Club believed the proposed zoning changes would not only have a severe negative impact on traffic, noise, parking, and the ambiance of Palm Beach, but would also serve as an opening wedge to permit other commercial development in the Town to the detriment of residential properties—not to mention the possibility of leaving the Town open to potential lawsuits. Mrs. Newton urged the Council to reconsider and vote down the attempt to degrade the character of Palm Beach.

Mr. Robert Grace, former Town Council member and former Zoning Commission Chairman, addressed the Town Council. Mr. Grace read the following letter to the Mayor and Town Council from himself and Thomas Mettler, Attorney and former member of the Town Council.

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Honorable Mayor and Town Council of Palm Beach

In 1991, a thorough study was made of the Worth Avenue commercial area by Adley, Brisson, Engman, Inc., the Town's Planning Consultants. Both the Town Zoning Commission and the Town Council worked on this study, and as a result a document of some seventy (70) pages was approved by the Town and incorporated into the Town's Zoning Code by reference.

During the study, much attention was given to the areas of Worth Avenue which had some residential uses above the shops on the ground floor. It was agreed that these residential uses introduced a special life, charm, and quality into the otherwise commercial buildings. Frequently, these residents introduced decor or planting to give the buildings a special touch. The residential presence made the area seem cleaner and safer after dark which promoted pedestrian window shopping perhaps before or after a dinner at a restaurant.

For this reason, the Worth Avenue Design Guidelines, as the above-mentioned document was entitled, stressed the value to the Town and to Worth Avenue of promoting mixed commercial and residential usage in future development or redevelopment on Worth Avenue. Please see attached copy of page one of the Document, said page being entitled Purpose and Intent.

Since it is common knowledge that residential use does not bring as high a lease return as commercial use, the Guidelines provided what it called Special Allowances for development incorporating mixed commercial and residential use. These Special Allowances were mainly increased building coverage of the lot, i.e., square footage, and the ability to have a third floor whereas the limit otherwise was two stories. These allowances were to be given to the developer of the property in exchange for providing the desired residential usage.

In the ordinance change currently before the Council, there has been a drastic change in the above quid pro quo arrangement. No longer is there a requirement for residential use. A new phrase has been concocted, "The appearance associated with residential design". Please see Item D, Criteria for Approval of Special Allowance, note circled section for this exact language. It must again be emphasized that the prior requirement for residential use was based upon the real benefits of residents being in the structure, and had little to do with appearance. This new substitution of appearance for reality completely misses the point. It is degrading to the sensibility and dignity of the Town to take such a craven position with respect to the giving of Special Allowances. The Special Allowances in the meantime have been increased, please see bottom of attached page called "Page 61 of W.A. Guidelines".

Aside from the above items of lack of quid pro quo, there is serious legal deficiency in that the phrase "Appearance associated with residential design" is basically arbitrary and undefinable. It should be remembered that the Town must be in the position to deny as well as grant the Special Allowances. A structure with great architectural merit as a commercial building for retail use may be denied these Special Allowances just because someone feels it does not have that "Appearance associated with residential design".

If the Town feels it does not want to impose a residential use requirement, so be it. Just remove the residential use requirement, remove the Special Allowances originally intended as a reward for inclusion of residential use, and get on with the Town's business in a dignified manner.

If the Town feels it does want to continue the effort to have residential use mixed with commercial use, that also is very simple. On the two last pages attached hereto, are the necessary amendments to make to Ordinance 1-98, now before you, to continue that effort. (To continue the effort to have residential use mixed with commercial use, simply move to omit the underlined portion of the last item under the heading "Urban Design Objectives" on page 57 of W.A. Guidelines) Making those amendments at this time will allow you to continue to consider the Neiman-Marcus application as before.

Sincerely,

(Signed)

Robert M Grace
Thomas M. Mettler

Mr. Grace said he hoped he had made it clear what he was striving for, and he wanted to make it absolutely clear that this had nothing to do with the Neiman-Marcus application but has to do with the ordinance and his involvement with what he called the "pollution control" effort. He thought the Town's ordinances were being polluted with noxious verbiage with the appearance associated with residential design in lieu of sticking with either having it and its benefits or giving it up and going along with the Town's life.

Mr. Grace said he did not think anyone who lived in the Town could have thought up the language in this ordinance change. It had to be brought in by someone who does not understand the ambience of the Town of Palm Beach.

Mr. Caldwell "Blitz" Robinson, former Town Council member, addressed the Mayor and Town Council. Mr. Robinson read a prepared statement as follows:

"Let me urge you not to accept the recommendations made by the Zoning Commission at the first reading of the proposed changes to the zoning ordinances.

"At the November 17th meeting of the Zoning Commission, on page 2, paragraph 1, the Commission states, 'The Town wishes to preserve the historic architectural character of Worth Avenue' which is a worthy goal.

"However, it goes on to state, 'but it also wishes to ensure the economic viability of the entire Worth Avenue District and its commercial structure. This is not the responsibility of either the Zoning Commission or the Town Council. If landlords charged rental rates to allow Town-serving merchants to exist, the Avenue should return to a Town-serving nature and the original personality of Worth Avenue could return.

"The report continues, 'Recently there seems to be increasing competition from the downtown area of West Palm Beach, there is concern existing regulations do not encourage that type of development and redevelopment preferred for Worth Avenue; perhaps they are

too restrictive.' That again is not the concern of the Town Council to compete with subsidized real estate development, regional malls or special opportunities offered to attract tenants. Worth Avenue proved itself out of the competitive market years ago, and that is the only reason that the tenant mix is so lopsided. One must sell a high ticket item to pay the rent. The Town has no responsibility to make developers successful.

"In the third paragraph of that same page 2, it states that, 'That has not been proven to be an incentive.' Since when is it the responsibility of the Town to provide incentives for development, when the residents who elect the Council members are screaming for less development, fewer car trips, less congestion and a better quality of life.

"Paragraph 4, page 2, states, 'Perhaps in order to allow continued economic development and encourage the type of development as in the 300 block, the regulations should be changed.' The only changes that are needed are reductions in asking prices and more realistic rental rates, rather than competing with the Gardens Mall and other regional malls. If West Palm Beach were to offer a 'gallery of galleries' with every imaginable asset and opportunity to art galleries or jewelers, you would see the same threatened exodus. It has happened before and it will happen again, but it is not the responsibility of the Town Council to make these decisions.

"On page 3, para 3, there is a reference to reducing gross floor limitations. That will only lead to more larger, non Town-serving tenants. That portion of the Code should remain unchanged. The present economic values of residential real estate are such that the third and even second floors one block from the ocean should be of the highest interest to a residential developer, if the sales price of the land were commensurate with economic values for such development.

"Further on page 3, it states, 'which would hopefully encourage development in the 100 block. That again is not the purpose of either the Zoning Commission or the Town Council.

"Never give up underlying zoning ordinances, trusting on the special exceptions and variances that might be made by future Councils. The zoning ordinances must remain the firm foundation so that special exceptions and variances are not so numerous as to make the entire zoning code, questionable in the eyes of a judge or Court of Appeals. Palm Beach is not the apple of the eyes of the County Court System and never will be.

On page 5, Commission Sanchez remarked that it is his understanding the 100 block of Worth Avenue is having difficulty with second floor rentals. Is it not obvious that first floor offers more visibility? Also, the rental rates for the less visible tenants on the second floor are expensive. One might question the past one hundred tenants who left Worth Avenue to ask why they left. The answer would be universally, we were driven out by high rents.

"Remember that a national or international tenant can run a store on Worth Avenue as a loss leader and mark it up to the advertising budget, thereby paying out of market rental rates. That creates an unfair disadvantage to a truly local Town-serving merchant who must survive on gross sales and net profits.

"Many who have moved, are paying as much as 25% of their former Worth Avenue rents, have no parking congestion and are making better profits. Worth Avenue has priced itself out of the Town Serving market, but as a governing body, let the laws of supply and demand rule, rather than creating incentives and encouragement for further development.

"On page 8, Mr. Brindell expresses concern that his client has made a significant investment in Worth Avenue, and has an interest in several other properties, that his client is proposing a project for both sides of Worth Avenue. That is not even a valid consideration of the Zoning Commission, nor is it a concern of the Town Council. It is a matter of choices of investment made in the past. Even the perception that there is any governmental responsibility to reward any investor through zoning changes is a travesty.

"Yes, there are businesses that are leaving Worth Avenue, but it is due to economic matters and differences in their leases, as well as an improper tenant mix on the entire avenue. If a significant percent are there to acquire objects of art, it is unlikely that a shirt or necktie is on the same shopping list.

"I, for one, remember when I used to do all of my holiday shopping for my wife and four children on Worth Avenue. I can remember when I used to purchase most of my clothes there as well as books, toys, and affordable jewelry. Few if any of those merchants are still there, and they all told me that they were forced out by higher rents. If you want Worth Avenue to become Town-serving, let the laws of supply and demand settle the difference, not amendments to the zoning laws.

"Throughout the entire Zoning Commission meetings, I read reference after reference that Mr. Brindell made. If his job were to set the state for the alleged applicant, Neiman Marcus, why was he there in the first place? Neiman Marcus was not even under consideration.

"Three Commissioners had to recuse themselves, due to potential conflicts of interest, but the agent for the developer was given an open hand to convince the remaining commission members. To me, the fact that the ultimate applicant was given so much time, for an alleged application that was not even under consideration, was offensive and out of order.

"Neiman Marcus is an excellent retail store, but that should not tempt the Council to even consider to change ordinances that will effect the Town of future decades. Neiman Marcus will undoubtedly advertise their products as far north as Jupiter and as far south as Boca Raton. That will reflect in more car trips daily. The fact that other tenants are moving to West Palm Beach is good news. There will be fewer bridge crossings, less density, more parking and a return to a Town-serving commercial district.

"I urge the Council to reject these recommendations at the first reading of the ordinance."

Karen Roselli, an Attorney with the law firm of Becker and Polikoff, who represented the Winthrop House Condominium Association and

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the Kirkland House Condominium Association, addressed the Town Council.

Ms. Roselli said the residents of these condominiums are very concerned about the development of Worth Avenue and the proposed amendments before the Town Council which serve to facilitate the development of a Neiman Marcus store in the 100 block of Worth Avenue.

Ms. Roselli said while the original goals and objectives of the Town for the use and design of Worth Avenue were laudable and in the public interest, the proposed changes are not. The amendments do not apply uniformly to all Worth Avenue but rather are tailored specifically for the 100 block for the purpose of removing the existing use regulations which make it extremely difficult to develop the Neiman Marcus project as presently proposed.

Ms. Roselli said that no matter what kind of gloss or spin that is put on it in an attempt to justify the proposed amendments, it remains clear the driving purpose and motivation behind these amendments is to pave the way for Neiman Marcus to come to Worth Avenue. It removes current zoning impediments to that project. The rezoning, in actuality, only applies to only one portion of the 100 block of Worth Avenue in view of the existing developed properties, the Winthrop House, the Kirkland House, and the Esplanade.

Ms. Roselli said changing the zoning code for the preference and full benefit of one developer at the expense of the residents of the Town is an unlawful, private purpose. In zoning law, this is called "spot zoning". It is unconstitutional and illegal because it violates fundamental property rights in violation of due processing and equal protection clauses of the United States Constitution.

Ms. Roselli said that despite the lack of a public purpose, there are other serious problems with the ordinance. If the Town passes the ordinance, there will be problems with the granting of the special allowances. The criteria for granting special allowances is better described as the lack of criteria; particularly with respect to building height and mass. Unlike the criteria for obtaining a variance, the special allowance criteria really have no teeth. There are no concrete and definite standards—rather vague, subjective variables which allow the Town broad and uncontrolled discretion in granting or denying a special allowance.

Ms. Roselli said this is a Town-serving district and it is difficult to understand how a retail establishment of this size, authorized by these amendments, could in good faith, be considered by the Town of Palm Beach as Town-serving.

Ms. Roselli urged the Town Council to vote against the amendments to the zoning code and the Worth Avenue Design Guidelines. As guardians of the public trust, she said a vote against the amendments is a vote in favor of the public interest.

Mr. Louis Pryor, Co-Chairman of the Palm Beach Civic Association, addressed the Town Council. Mr. Pryor read the following prepared statement:

"Since last summer, the Palm Beach Civic Association has monitored the proposal to change the Worth Avenue Guidelines and thus pave the way for a Neiman Marcus Store. Our efforts have focused on educating Civic Association directors and Palm Beach residents through our forums, bulletins and briefings.

"During this process, we discovered considerable support for Neiman Marcus on Worth avenue, but we also found much concern about the potentially negative impact of this store on the community. In particular, residents worried about the additional traffic generated by Neiman Marcus customers; the influx of shoppers from greater Palm Beach County and beyond; and the added burden of extra vehicles on the limited parking space available in our Town.

"We are certain the Town Council plans to closely review the Neiman Marcus application to ensure these problems will be addressed and resolved. From a resident's point of view, the Town-serving priority for this or any other Worth Avenue store is pivotal.

"At the Civic Association, we believe this priority and the preservation of our core land-use values ought to guide your deliberations. The Neiman Marcus proposal is a convincing illustration of the need to think and plan long-term. Decisions made without fully considering future impacts on the community can result in far-reaching, often unfavorable, consequences.

"We are concerned that the special exception practice before the Town Council sometimes resembles spot zoning. We wonder whether Sunrise Avenue, for instance, has been over-commercialized through the special exception process with unintended spillover consequences for Park Avenue residents.

"If the Worth Avenue Guidelines are revised, we believe they should contain certain conditions that allow the Town Council to block other merchants seeking to locate or expand their businesses in the 100 block if that would create traffic congestion, excessive parking problems, or other public nuisances.

"Soon, Neiman Marcus will appear before the Town Council with specific plans. When considering their request, we support you in imposing sufficient regulations and constraints to protect and preserve the quality of life we enjoy in our Town."

Mrs. Polly Earl, Executive Director of the Preservation Foundation, addressed the Town Council. Mrs. Earl said she understood the recommendations for changing the zoning code were presented and justified, at least partly, on the basis that the 100 block of Worth Avenue was different in character from the traditional, historic blocks of Worth Avenue. She said she did not understand the reason behind using the guidelines for the 100 block of Worth Avenue as a template for possible later changes in the historic part of Worth Avenue.

Mrs. Earl said the Preservation Foundation is on record as opposing this zoning change as not being the proper procedure to address this situation. The normal procedure would be to have a building design to fit the zoning, and in this case, it seems the zoning is being designed to fit the building.

Martin Klein, Secretary of the Zoning Commission, said the Zoning Commission after hearing extensive testimony from the Town staff,

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the Town's consultant, and from members of the public, concluded that the future of the Town could be enhanced and its heritage could be preserved by permitting certain limited development of only one block—the 100 block of Worth Avenue. Mr. Klein said it was important to note, in response to Mrs. Earl, that the Commission did not approve a particular project nor could it since there was no application filed. It was reasonable to assume that if the Guidelines were modified, there will be an application by a local developer who lives in the Town, by or on behalf of Neiman Marcus. That application will come before the Town Council as a special exception request and will be subject to such limitations as the Council, in its wisdom, shall impose.

Mr. Klein said the Zoning Commission did conclude that the development patterns along the Avenue are not homogenous—the 200 and 300 blocks being the most representative of the style and character that is most associated with Worth Avenue. Development of the east end or the 100 block as contemplated by the revised Guidelines, would only be in keeping with existing structures on the block, the Esplanade and the bank building, but would also permit continued economic viability in a location where it would have the least impact upon and not detract from the architectural and historic heritage of Worth Avenue.

Mr. Klein said the Zoning Commission has shown a willingness to tackle present and future problems by modifying items where appropriate; however, always keeping in mind the central issue of preserving the Town.

Mr. Klein said arguments will be made for both sides. On balance, he and the Zoning Commission believed that a limited modification of the Guidelines is a proper step for the Town of Palm Beach to take.

Mr. Klein said, on behalf of the Zoning Commission, he would urge the Town Council to adopt these recommendations.

Gary Brandenburg, an Attorney with the law firm of Carlton Fields, represented Mr. and Mrs. Stanley Franks who live at 148 Peruvian Avenue which is directly behind the block that has been identified to have additional development allowed.

Mr. Brandenburg said he agreed with others who spoke previously about Comprehensive Plan concerns including parking and traffic issues. Mr. Brandenburg said he considered this issue to be a clear case of spot zoning considering the history and facts of the matter.

Mr. Brandenburg said when towns consider increasing the heights of buildings, they usually increase the setbacks from the side yards and back yards. In this particular instance, the opposite is being done. The building is being allowed to increase in height and also allowed to be built closer to the Franks' property.

Mr. Brandenburg said the idea of tiering has been explained very well, but in almost 100% of the instances he observed when tiering occurs, it happens in the front of the building so it appears tiered back from the main street. The effect on the Franks' property will be a straight wall, very close to the back of their lot line. When the forty foot height is added to the forty percent variation that is allowed for architectural features, that would mean that within ten feet of the property line, a fifty-six high wall could potentially be built. When that is added to the mass of the building that is proposed, the result will be a massive building that is going to block the light, the breeze, and the view. It will affect the Franks in a negative fashion.

Mr. Brandenburg asked the Town Council to consider the impact on the Franks property—not to move ahead with approval and perhaps send the issue back to the Zoning Commission for another year of review.

Ed Kassatly, President of the Property Owners Association of Worth Avenue, Board Member of the Chamber of Commerce and the Worth Avenue Association, said he was not speaking on behalf of those groups but he was speaking as a sixty-four year resident of Palm Beach.

Mr. Kassatly said he loved the Town and Worth Avenue. He said he welcomed Neiman Marcus; however, the size of the building should be kept with existing zoning and not larger than the current store of Saks Fifth Avenue.

Mr. Kassatly said this is a Town-serving Council, and the residents of Palm Beach are entitled to a beautiful community, good churches, and wonderful retail experiences that have existed in the Town since 1923—when his father started a business in Palm Beach.

Mr. Kassatly said that Neiman Marcus, when they come to Palm Beach, should be on an even par with Saks Fifth Avenue. If Saks Fifth Avenue, as a national chain, can make it, he saw no reason why Neiman Marcus given the equal opportunity of same size, or even slightly larger, could not make money in Palm Beach. He said a 56,000 square foot store would be completely out of line and would distort the 100 block of Worth Avenue and would produce excess traffic and noise. The Town residents were there first—before this store was planned.

Mr. Kassatly said Worth Avenue will survive with or without Neiman Marcus. He said Neiman Marcus should feel welcome in Palm Beach, but the project should be in proportion of what the Town needs from them.

Jim Exline, a Certified Land Planner located at 330 Clematis Street in West Palm Beach, represented the Mid Ocean Condominium Association which is located north of the 100 block of Worth Avenue.

Mr. Exline said his comments related only to the proposed zoning changes and did not relate to the proposed Neiman Marcus store. Mr. Exline said he had four areas of concern: one was the compatibility with the abutting residential uses; proposed rear setbacks; proposed building heights; and proposed building intensities. He said the staff report did a good job comparing the compatibility with the existing commercial buildings on Worth Avenue; however, there was little or no discussion concerning the compatibility with the abutting residential uses. This was one of the main concerns he thought the Council should review in considering the proposed revisions.

Mr. Exline said consideration should be given for setbacks for commercial uses and residential uses. There is a difference in the intent to separate these types of uses. The ten foot setback would be compatible if it were abutting another commercial use. Unfortunately, single family and multi-family uses abut the 100 block of Worth Avenue, and this is the main concern.

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He said the proposed revisions would allow three story commercial buildings. In common planning practice, if the commercial building height is increased that abuts residential uses, the setbacks are increased. This allows for the increase in noise levels, shadowing, and a decrease in air and light.

Mr. Exline said the proposed revisions will increase building intensity and increase the building's square footage by 100%. With that increase, traffic and other items will increase.

Mr. Exline said the impact on abutting residential uses will increase, and consideration should be given regarding mitigation. The commercial properties in the 100 block of Worth Avenue will probably double in value, and the abutting residential properties will be impacted by the quality of life.

Mr. Exline said the Mid-Ocean Club strongly objects to the proposed revisions for the Worth Avenue Design Guidelines that would allow reduced setbacks, increased building heights, and increased lot coverages without consideration of impacts on the abutting residential uses.

Vincent Bytner, a realtor and official of the U. S. Tennis Association, said the Neiman Marcus store will be a plus for the realty business. He said all the ladies will be happy to shop there.

Fred Edson, a resident of the Mid-Ocean Club, said he lived at the Mid-Ocean Club for approximately 3.5 years. He said he and his family are now faced with the prospect of intense noise with the proposed store. This will also be a deterrent for their real estate investment, and he strongly opposed any changes to the restrictions of the zoning code.

Mrs. Elise McIntosh, a resident of S. Lake Drive, said she has seen many changes in Palm Beach, and she would not like to see Palm Beach lose its respectability. She urged the Town Council not to change the zoning code.

James Brindell, Attorney representing the Murray Goodman Company on behalf of Neiman Marcus, introduced Bert Tansky, C.E.O. and President of Neiman Marcus. Mr. Brindell said that after he made some remarks, Ron Kolins, Gene Lawrence, Henry Skokowski, and Anna Cotrell would speak.

Mr. Brindell described exhibits he was submitting: a letter from architect John Belle who has reviewed the Guidelines and proposed changes and reached the conclusions that he thinks they are appropriate changes and modifications given the objectives of the Guidelines relative to the quality and style the Guidelines say should be achieved on the Avenue. (Support Exhibit 1)

Mr. Brindell said Support Exhibit 2 is Worth Avenue Building Characteristics prepared by Gene Lawrence's group. Support Exhibit 3 is a block by block diagram from the 300 block to the 100 block regarding the measurement of building facades. Support Exhibit 4(a) is a board of photographs of the 200-300 blocks of Worth Avenue. Exhibit 4(b) is a series of six photographs of the 100 block of Worth Avenue. Exhibit 5 is a copy of a letter from James Ponce. Also included are resumes of Ron Kolins, Gene Lawrence, Anna Cotrell, and Henry Skokowski.

Mrs. Smith said at the meeting one month ago she requested the language in paragraph four be stricken, "ensure the continued competitiveness and economic viability of Worth Avenue will hold". This language was taken out a month ago and is not in the code at this time.

Mr. Brindell said the issue of spot zoning was raised. He said Ron Kolins will address the issue and the conclusion was reached that it was not spot zoning. More than one property owner is involved in the 100 block of Worth Avenue. Most of the issues related to parking, traffic, setbacks, and design are the issues that will be presented to the Town Council in the context of a specific application for a specific application and site plan approval.

Mr. Brindell said the proposed amendments which are being considered by the Town Council do not automatically give any property owner any entitlement to the benefits of those amendments. Mr. Brindell said the proposed amendments, based on the data, are consistent with the physical characteristics of Worth Avenue. Mr. Brindell noted that Brooks Brothers, the Everglades Club, Via Parigi, and Via Mizner could not be built under the Guidelines with the current limitations that are in place. However, those are the buildings the Guidelines refer to and want to emulate as the best of Worth Avenue.

Mr. Brindell said it was important for the Town to look at its own zoning code and note the definition under "purpose" of the Worth Avenue District. One of the key concepts is that it is a comparative, pedestrian shopping zone. It is the only commercial district described that way.

Mr. Brindell said the proposed changes are in the public interest and will facilitate the integration of the 100 block into the building character of the 200 and 300 blocks which is what the Guidelines state on page 4 should happen, thereby strengthening the long term economic and therefore the physical viability of the Avenue and its unique quality and character oriented to pedestrian comparison shopping. Mr. Brindell said it is in the public interest to have this happen. The Guidelines state that the 100 block of Worth Avenue is ready for redevelopment.

Mr. Brindell said the Town-serving issue will be addressed in any proposal that Neiman Marcus would make to the Town Council. Mr. Brindell said the location of Worth Avenue in Mid-Town is around the corner from residential uses, and that is the nature of the area. People living in Mid Town cannot expect to have the same isolation from pedestrians and vehicles as do residents of the north and south ends of Town—they are different settings, and they function differently.

Mr. Brindell said there are 141 residential units presently in the 100 block of Worth Avenue. The Kirkland House and the Winthrop House are on the easterly corners of the 100 block and have six and seven stories respectively. These are fairly large and massive buildings. When these buildings were developed, the zoning was changed to allow residential on a commercial street.

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Mr. Brindell, responding to Mr. Brandenburg's comments regarding the tiering effect on the front of the project, said Mr. Lawrence had designed a third floor that would be all the way to the front of the building and tiered in the back. Two story buildings already exist on parts of the properties that would be affected by the project.

Attorney Ron Kolins said he would render an opinion on two of the legal issues that had been presented to the Town Council. Mr. Kolins said the issue of spot zoning was clear, and this was not spot zoning. He said spot zoning is a concept to prevent one individual property owner from having the right to use his property in a way that is repugnant to the surrounding area and contrary to the public interest. Spot zoning is a change in the use of property which destroys the character of the surrounding neighborhood or area and creates disharmony with the uses around it. Mr. Kolins said the proposed amendment to the Worth Avenue Guidelines is first and foremost not a rezoning. He said that theoretically an amendment to an overlay guideline could rise to the level of spot zoning, but to do so such a change would have to change the uses in that particular area as compared to the uses around it. Mr. Kolins said that what is proposed with this change is simply a change in the guidelines to allow the formerly recognized inferiority of the architecture and design of the 100 block of Worth Avenue to be improved so that it becomes more consistent with that found in the 200 and 300 blocks of Worth Avenue. It does not change the use but remains retail just like it is presently.

Mr. Kolins said there are seven criteria that the courts consider when deciding an issue is spot zoning. Of the seven criteria, not a single one is met for this particular case.

Mr. Kolins presented a chart listing criteria with comparison statements.

1. The change is not compatible with the Comprehensive Plan.
2. Does this change primarily benefit only one owner?
3. Are there benefits to the community at large?
4. Does it relate only to one parcel?
5. Does it relate to a very small parcel?
6. Is the use that is going to result different from the prevailing use in the area?
7. Is the parcel an island isolated from similar uses?

Mr. Kolins said the second legal issue that was raised was the sufficiency or existence of the standards in the Guidelines for special allowances. Mr. Kolins said the Guidelines have standards and criteria for special allowances that are an amalgamation or a bundle of criteria which include the purpose for a special allowance. These are defined in such a way as to designate the purpose for which they must be given. There are restrictions on the eligibility for special allowances and limits on the relief that can be granted. After those items, specific criteria are listed for the granting of special allowances.

Mr. Kolins referred to Section 6.40 (q), where Special Allowances in the C-WA zoning district are subject to a special exception process including appearing before the Architectural Commission.

Architect Gene Lawrence said he would like to address the issue of the land coverage as discussed earlier in the meeting. Mr. Lawrence presented photographs of the 300 block of Worth Avenue and noted that the first floor land coverage goes up to 80% for structures in this block and average just under 75%. The second floor coverage goes as high as 75% and averaged 66%. The third floor goes as high as 36% and averaged 35%. The percentage increases are not giving advantages to the other end of Worth Avenue but creating a level playing field.

Mr. Lawrence said some of the buildings in the 300 block are six or seven stories high, and the building heights in the 100 block will be significantly lower than what exists on the other end of Worth Avenue.

Henry Skokowski from Urban Design Studio said he would comment on the question if the proposed amendments serve a public purpose, and whether the amendments are in conflict with what the original intent or the use of the design objectives were supposed to be for Worth Avenue. Mr. Skokowski said he was pleased to see that in the Guidelines, there was a clear statement in the Worth Avenue Design Goals that stated the goal was to protect and enhance the Avenue's market appeal for the benefit of the residents of the Town. "The Avenue's role as an architectural statement expressing the Town's image is an important one. The Avenue's charm and its visual appeal is critical to its role as a viable, prestigious, retail market place." Mr. Skokowski said that was the foundation on which he thought the Town was working.

Mr. Skokowski said that Mr. Lawrence's information indicated the formulas, the numbers, the standards and guidelines that have been used to date are not really reflective of what exists. He said in his role as a consultant to a community, one of the most important things to understand when writing design guidelines, is to ask what are the existing characteristics in addition to what the desire of the Town is in what it wants to achieve in terms of its urban design vision.

Mr. Skokowski said the purpose of design guidelines is to become very specific or customize the land development regulations. Very often, design guidelines single out landmarked buildings, pedestrian plazas, etc. Mr. Skokowski said there was no question in his mind that as the existing characteristics of the 100 block of Worth Avenue are considered, they do not reflect what is desirable on Worth Avenue.

Mr. Skokowski said one of the principles in urban design is to create a terminus or an anchor in an environment, and the west end of Worth Avenue has that terminus, but on the east end, it simply dissipates. He said the important thing is what is the relationship of a building to the community? How does it fit into the character and the urban design of that street or town?

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Anna Cottrell, a certified Planner, said she looked at the proposed changes in the Guidelines. She said, in her opinion, it is appropriate to look at the 100 block of Worth Avenue only. Ms. Cottrell said there is no usable potential for some of the buildings on the north side of Worth Avenue, and they need to be demolished. This block has some undesirable characteristics. There are a number of pedestrian breaks, and a parking orientation that is in the middle of the block that breaks up any real pedestrian interest on the north side of the block. There is no identifying architectural theme as well as no architectural tie to the balance of Worth Avenue.

Ms. Cottrell noted that the 200 and 300 blocks of Worth Avenue already meet the intent of the guidelines. The fundamental characteristics of those two blocks that are in common are apparent.

Ms. Cottrell discussed the relationship of pedestrians to the facades on Worth Avenue.

Ms. Cottrell said the proposed changes keep with the intent of mixing residential and commercial. The mix keeps activity on the street, and is very desirable in an area that is anchored by residential units on the east end of Worth Avenue. Ms. Cottrell said it was appropriate to induce development that will allow the emulation in the 100 block that is already occurring and to have those kinds of building proportions that meet the guideline intent of maintaining a pedestrian scale of orientation.

Mr. Brindell said he had no one else to present information. He said the information presented provided good justification for the Town Council to make the guideline changes, and it will help the 100 block of Worth Avenue to become more like the other blocks of the Avenue.

Jesse Newman, President of the Chamber of Commerce, said the people in the Kirkland House and in the Winthrop House live on sites that were previously occupied by a hotel on one side and the Lido Pool on the other side--both commercial entities. Other hotels existed north to Peruvian Avenue. A Standard Oil gas station was on the corner. Worth Avenue closed for five months when no one was around.

After the condominiums were built in the south end of Town, the stores stayed open year round. Mr. Newman said that Worth Avenue has a world-wide reputation--of quality, service, and integrity. He said that Visa recognizes Worth Avenue as one of the eight famous destination shopping streets in America.

Mr. Newman said the way Worth Avenue used to be was as he described. He said he thought the Town would be remiss, in the long run, if the Town did not consider the opportunity for Neiman Marcus to locate there. They are the quintessential retailer in America.

Mr. Newman said he did not think there had been a decrease in any of the property values in the Kirkland House or the Winthrop House over the years. The Worth Avenue business community has conducted themselves in such a manner that they can live contiguously with residential units. Mr. Newman said the quality and reputation of Worth Avenue is something the residents of Palm Beach can be proud of.

Linda Spina, President of the Mid Ocean Condominium Association submitted photographs of the Mid Ocean condominiums. She said, if Neiman Marcus is built, the noise will be incredible, and the quality of life will be very different from what the residents are used to. She said she expected the guidelines that were in place in 1993 when she purchased her property should be honored. She asked that special attention be paid to the residents' needs.

Ms. Spina stated she was not opposed to Neiman Marcus locating in the Town, but she was opposed to the mass of the building being discussed.

Responding to questions from Mr. McLendon and Mrs. Smith, Mr. Moore said that the existing buildings on Worth Avenue--bordering on the Peruvian Avenue properties-- are closer to the property line than the ordinances would permit now.

Mr. Lawrence pointed out the position of the Mid Ocean Club in relation to the proposed Neiman Marcus store.

Responding to Mrs. Smith's request for the background of the park on the north side of Worth Avenue and its relationship to the Esplanade, Mr. Moore said the area to be considered as part of the Neiman Marcus project includes a park area that was connected by unity of title to the Esplanade. The net parking spaces required were twenty-two or twenty-three when two restaurants opened on the second floor. In lieu of building a parking lot and at the presentation of the late David Faust, the Town entered into an agreement with the Esplanade. If in fact they needed a parking lot to take care of the additional vehicles the seating required, the park would be converted to an asphalt parking lot at the option of the Town. Mr. Moore said that agreement is in place, and he had not had discussions with Neiman Marcus regarding their intentions for the park.

Mrs. Smith remembered that the Esplanade had ample parking with the valet parking and stacking procedure. Mr. Moore confirmed that.

Mr. Lawrence, answering Mr. Wyett's question, said there were 340 self-parked cars in the Esplanade.

Mr. Wyett asked Mr. Lawrence to diagram the setbacks of the three floors on the proposed Neiman Marcus building looking down from the top of the structure.

Mr. Lawrence diagramed the tiered effect and the setbacks.

Mr. Wyett confirmed that the second floor and the first floor are a vertical wall for the proposed store.

Mr. Randolph said it was important in consideration of this amendment to the zoning ordinance to not give consideration to the specifics of any building that might be built.

Mrs. Smith said the public session part of the meeting will remain open when the meeting is continued on Friday, February 13, 1998.

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Mr. Brindell concluded that a three story building could be built on Worth Avenue with ten foot setbacks with residential usage on the third floor under the present guidelines.

Mr. Brindell said the important point is that part of any process for a review application is to address issues that were brought up at this meeting.

Mr. Moore said the building could be done under the present conditions with very difficult variances, and Mr. Randolph had stipulated a qualifier also.

VII. ANY OTHER MATTERS

There were none.

VIII. ADJOURNMENT

President Smith said the meeting will reconvene at 1:30 p.m. on Friday, February 13, 1998. The public session will carry over to the next meeting. The meeting adjourned at 7:40 p.m.

Prepared by:

Mary A. Pollitt
Town Clerk