

TOWN COUNCIL MINUTES OF MEETING HELD ON JANUARY 23, 1995

I. CALL TO ORDER AND ROLL CALL: President Pro Tem Smith called the Special Meeting of the Town Council on Zoning to order at 5:01 p.m. on January 23, 1995, in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Pro Tem Smith, Councilwoman Royal, Councilmen Shaw and Goldsmith. Also attending were Town Manager Doney; Town Attorney Randolph; Town Clerk Peters; Deputy Town Clerk Pollitt; Director of Planning, Zoning and Building Moore; Planning/Projects Coordinator Frank, Assistant to the Town Manager Jakubiak and William Brisson from Adley, Brisson, Engman, Inc., Zoning Consultants.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Mrs. Peters. The Pledge of Allegiance was led by Mayor Ilyinsky.

III. APPROVAL OF AGENDA: Mrs. Smith suggested the agenda be changed to include items 7. and 8., Comprehensive Plan Review and the property rezoning application prior to the reading of the ordinance.

Motion made by Mr. Shaw to add item VII. COMPREHENSIVE PLAN REVIEW and item VIII. PROPERTY REZONING APPLICATION, 3000 South Ocean Boulevard to the agenda and approve the agenda. The motion was seconded by Mrs. Royal. On roll call, the motion carried unanimously.

IV. PROOF OF PUBLICATION: Mrs. Peters advised the advertisement had been published and proof of publication was received.

V. FIRST READING OF ZONING ORDINANCE NO. 1-95

The Council heard item VII. COMPREHENSIVE PLAN REVIEW before this item.

VI. FIRST READING OF ORDINANCE NO. 3-95

The Council heard item VII. COMPREHENSIVE PLAN REVIEW before this item.

VII. COMPREHENSIVE PLAN REVIEW

A. Small Plan Review

Mr. Moore stated this matter was deferred from the January 4, 1995, Town Council meeting on Zoning to allow Mr. Brisson and the staff sufficient time to calculate the maximum development of the property using current yard, lot and bulk regulations exclusive of any special exceptions and variances. He added copies of those projections were provided to the Mayor and Town Council members.

Mr. Randolph asked if the Council had reached a point where consideration would be given to the small plan amendment or would zoning issues be discussed?

Mr. Moore replied he was talking about zoning and what the property could sustain, and when the small plan amendment is discussed, the Council needs to adjourn and have a roll call for the Local Planning Agency.

Mr. Randolph said he understood the Chair indicated the Council would discuss the Small Plan Amendment.

President Pro Tem Smith stated the Town Council was adjourned and would reconvene as the Local Planning Agency.

Mrs. Smith called the Town Council sitting as the Local Planning Agency to order.

On roll call, the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Pro Tem Smith, Councilwoman Royal, and Councilmen Shaw and Goldsmith.

I. SMALL PLAN AMENDMENT

Mr. Moore continued that the maximum zoning calculations have been completed exclusive of special exceptions and variances and that was done in two phases. He introduced Mr. Brisson who covered the proposed maximum coverages.

Mr. William F. Brisson, Senior President of Adley, Brisson, Engman, Inc., Consultants, stated he was directed to look into the development potential of the property at 3000 South Ocean Boulevard. Mr. Brisson said he had developed a site plan, considered all the regulations in the zoning ordinance under the C-TS zoning, and, assuming no special exceptions or variances, two possibilities were developed. Mr. Brisson continued that a potential developer, based on parking and zoning requirements, could build up to 14,000 square feet of building on this particular site. He said the C-TS has a limitation that no property in that designation could have more than 15,000 square feet, the maximum gross floor area allowed in the C-TS district.

Utilizing the various parking requirements for retail development, Mr. Brisson stated that two buildings could be erected for a total of 14,000 square feet with the major building set back approximately 200 feet from the front with parking in a sub basement which is allowed within the C-TS district. He continued that the second building could be located somewhat to the east that containing about 2,000 square feet. Mr. Brisson said if the property owner wished to include a restaurant in that particular development, he would be limited to a 2,000 square foot restaurant since that is the largest allowed without a special exception.

Mr. Brisson said restaurants have a greater parking requirement and 11,000 square feet of retail space would be allowed with an additional 2,000 square feet of restaurant space. He stated

if someone wished to have a series of small restaurants, the square footage would drop approximately 1,000 square feet for every 2,000 square feet of restaurant use because of the increased parking requirement.

Mr. Goldsmith asked Mr. Brisson if a series of two or three smaller restaurants could be built at 2,000 square feet? Mr. Brisson replied in the affirmative.

Mrs. Royal asked if the property could be developed as a food mall? Mr. Brisson responded that if it were developed as a "food court", essentially under one roof, or a major establishment with small entities in an open area, that would probably exceed the 2,000 square foot requirement for each unit.

Mr. Moore replied that would be interpreted as one business under one roof and would require a special exception over 2,000 square feet. He continued that the design of the building would be a potential circumvention of the ordinance.

Mr. Brisson said the Town has a requirement for a separate entrance, and the C-TS section of the zoning code has requirements that would make the feasibility of a food court difficult.

Responding to Mrs. Royal's question concerning a shared central area for food stalls and separate outside entrances, Mr. Moore stated Mr. Brisson's proposals were constructed without any need for special exceptions or variances. Mr. Moore continued that any number of scenarios could be put together to meet the conditions; however, Mrs. Royal's description of a food court falls under the guidelines, and would be interpreted by the staff as one business under one roof.

Mrs. Smith asked Mr. Brisson to discuss the second floor roof top parking and the underground parking as related to his suggested plans.

Mr. Brisson said the basement or underground parking is allowed in the C-TS district; however, the roof top parking is a special exception use as would any second story use be. Mr. Brisson said his potential uses were limited to one story.

Mr. Moore pointed out that the previous approval for the restaurant was based on the remodeling of the existing building and would not be relevant to any of Mr. Brisson's projected uses.

Mrs. Royal recalled the Council has often granted restaurants increased square footage in excess of the 2,000 square feet allowable in the C-TS district in the past two years. Mrs. Royal continued that it was her impression that the Zoning Commission was going to study the possibility of increasing the 2,000 square foot requirement during the next zoning season since the number of applications to the Town Council brought the subject of the maximum 2,000 square feet requirement in the ordinance into question.

Mr. Brisson responded that issue would not affect the question of the number of square feet of the building that would be allowed on the site. He continued a larger restaurant may be allowed under changed conditions of the ordinance, but the retail space square footage would have to be reduced in kind because of the parking limitations. Mr. Brisson said that in no instance can any development of that site exceed 15,000 square feet.

Mr. Randolph asked that Mr. Brisson clarify, from a procedural standpoint, that the Town Council is sitting as a local planning agency to first give consideration as to whether there should be a small plan amendment. Mr. Randolph requested that Mr. Brisson define a small plan amendment, and if the small plan amendment passes, then Council as the Planning Agency can conduct a discussion concerning the zoning of the site. He continued if the small plan amendment does not pass, then further consideration would not be given to the amendment to the zoning. Mr. Randolph directed Mr. Brisson to address the proposal to change the Comprehensive Plan.

Mr. Brisson responded, since this is a quasi-judicial hearing, he would like to state his credentials and then go through his presentation on the Comprehensive Plan.

Mr. Brisson stated his name is William F. Brisson, Senior Vice-President of Adley, Brisson, Engman, Inc. Mr. Brisson continued he has been with the firm for 23 years, he is a member of the American Institute of Certified Planners, American Planning Association, and the Florida Planning & Zoning Association. Mr. Brisson said he has been working with the Town of Palm Beach since the early 1970's and was instrumental in preparing the Town's Comprehensive Plan in 1975. Mr. Brisson said he and Mr. Frank prepared the 1989 Comprehensive Plan which is now in force and is the subject of the proposed amendment. He continued he has personally assisted the Town during its zoning seasons for the last fifteen years and has prepared some 20+ comprehensive plans for municipalities throughout the state, amendments for a number of communities including small plan and major plan amendments under the current legislation for the Growth Management Act, was accepted as an expert witness in planning and economics 17 times in circuit courts throughout the state--4 times on behalf of the Town of Palm Beach.

Mr. Brisson said his Technical Memorandum, dated December 5, 1994, was previously discussed at the January 4, 1995, meeting and his letter of January 12, 1995, with the attached technical memorandum showing the maximum development potential for 3000 South Ocean Boulevard was discussed at this meeting.

Mr. Brisson stated the application requesting the change to the Comprehensive Plan meets the criteria for a small scale development activity plan amendment according to the State Statutes. He continued the site contains approximately 1.8 Palm Beach Acres that is presently designated as multi-family, high density residential in the Town's Comprehensive Plan. Mr. Brisson said the request to re-designate the land to "commercial" in the Comp Plan and subsequently change the zoning designation from RD-1, a multi-family medium density residential category to commercial, C-TS.

Mr. Brisson said when the Comprehensive Plan was being prepared and he was working with the Town in the late 1980's, consideration was given to changing the land use designation of this particular piece of property at that time. He continued it was suggested that this site be changed to commercial; however, the feeling was that the Town has never had the policy to encourage changes in land use by its own actions, particularly those that might intensify land uses. He said at that time, the radio station had been operative for 35-40 years, and no pressures or applications had been presented to alter that particular use. He added, because of that, the decision was made to

leave the land use as residential in the Comp Plan until such time as it might become appropriate. Mr. Brisson said another reason was the possible opportunity that the land could have been incorporated with the Beachcomber property, and if the land were re-developed, it could have been re-developed under the residential use or perhaps an expanded hotel/motel use. He said either of these uses would have been consistent with the Comp Plan and would simply have needed a zoning change to the higher residential district, RD-2. Mr. Brisson said for these reasons, he felt the Town had moved in the direction of implementing the Comprehensive Plan in limiting the potential for intensification of land use by keeping that particular residential land use intact with that classification at the time it was adopted.

Mr. Brisson said the small plan amendment is not dealing with any specific land use, specifically as restaurants or retail. He elaborated that the scale of uses allowed under that land use activity is the subject in question; however, if there is a proposed specific use, such as a restaurant, the Council should look at that to determine if it is consistent with the Comp Plan.

Mr. Brisson recalled the request for a parking lot on this site a couple of years ago required a change to commercial and would have required a change to C-TS zoning district. He continued he recommended denial because the property owner wanted a parking lot, and it was clear that the parking lot would not be used by Town residents or Town persons but would be used by people visiting the Lake Worth Casino area. He said that change would not have been consistent with the Comp Plan, and no other proposed use was brought forward at that time.

Mr. Brisson stated the Comp Plan amendment must be consistent with the aspects of the Plan that have been adopted by the Town. He said he had reviewed the Comp Plan, and the requested commercial designation under the Comp Plan is consistent with the Town's Comp Plan for the reasons listed:

1. It does not violate revisions of Objective Two which relates to maintaining a predominately residential character of the community
2. It will not appreciably alter the character of the immediate area--the nearby uses are more commercial than residential
3. The change to commercial will not violate the Town's provision in its policy 2.3 which refers to minimizing tourism inflow or that of Objective Two which relates to maintaining the level of commercial uses necessary to meet the needs of the Town's residents

He added the Town has endeavored to maintain the existing level of commercial use in the area and minimize this potential increase in intensity by keeping the original residential density on this property while there was no pressure for residential development.

Mr. Brisson stated the situation has changed since the radio station no longer exists, and there is pressure and a request to re-develop this property in a commercial sense. He said the Town should look at that Comp Plan change in the new context, since this was envisioned to be an appropriate move in 1989 but the Town withheld the change to avoid encouraging the intensification. Mr. Brisson continued that other sites in the immediate area border high density residential sites with C-TS designations.

Mr. Brisson said he did not believe the re-designation of this property will create a level of commercial use which is in excess of what is appropriate for the area, nor will it violate policy 2.4 which relates to discouraging uses which are likely to attract patronage on a regional level. Mr. Brisson stated only the C-TS zoning category which is appropriate and adequate for this site if a commercial land use designation is granted and none of the other categories are appropriate either in the context that they were developed for specific geographic and locational factors and their intents and purposes do not meet this particular situation.

Mrs. Smith asked Mr. Brisson if he and the Staff had considered changing the Comprehensive Plan to accommodate the Beachcomber property to the south of this site in 1989, and, if so, what were the results?

Mr. Brisson responded no land use changes were considered for the Beachcomber at that time, because if the subject site at 3000 South Ocean Boulevard were changed, the Beachcomber site would not have had to have a land use change since it would be compatible as a buffer from the recreational/commercial to the commercial at the subject property leaving the high density residential at the Beachcomber site. He continued the Comp Plan would allow a hotel on that site; however, the zoning is RD-1. He stated the land use designation could not have been changed, but possibly the zoning could be changed to RD-2 which would then allow a hotel and take away the non-conforming status.

Mr. Brisson said the two properties will have different Comp Plan designations--only the one at 3000 South Ocean Boulevard is appropriate for commercial. He continued that the commercial designation is not appropriate for the Beachcomber property; however the Beachcomber property may be looked at for a zoning change--not a Comp Plan change.

Mrs. Smith asked Mr. Moore if he shared Mr. Brisson's opinions?

Mr. Moore responded the two properties could be looked at in the same fashion as the properties to the north are looked at, and the Lake Worth Casino divides Palm Beach at that point where C-TS is the zoning for the property to the north and the former radio station would have that designation also. He continued the zoning change would create a transitional zone moving from the high volume recreational/commercial of the Lake Worth Casino area to C-TS to RD-2 which would legitimize the current nonconformity of the Beachcomber Motel.

Mr. Randolph explained the quasi-judicial nature of the proceedings. He stated this portion of the proceeding relating to the re-zoning of a particular parcel of property and the Comprehensive Plan amendment may indeed be interpreted to be a quasi-judicial proceeding; therefore, everyone involved needs to be advised that it will be run in the same manner as a court proceeding is run. He continued that everyone will have an opportunity to speak, and persons wishing to speak will be sworn in along with those staff persons who have already spoken. Mr. Randolph said that everyone will have an opportunity to question or cross-examine everyone who makes a statement.

Mayor Ilyinsky said, once again, the Town finds itself on the wings of a dilemma. He said two salient factors are:

1. The Beachcomber is different from the average motel and hopefully can be treated with kindness and compassion
2. An owner has vested rights in property and granting the request for zoning at 3000 South Ocean Boulevard to commercial status would honor the owners' vested rights to his property as well as permit the possibility of a small drug store type or other type of shop that would be convenient to residents of the south end who must go across the bridge for their needs.

Mayor Ilyinsky recommended the re-zoning of the property to C-TS thus providing the potential of 2,000 square feet per occupant without an application for special exception that the Town of Palm Beach may or may not grant. He noted the residents of the south end have pointed out very accurately that a high intensity restaurant would probably cause additional traffic problems and nuisances; however, he underlined his undeniable and undying faith in the rights of a property owner to develop his property to within the scenario allowed by the Town in which it finds itself.

Mayor Ilyinsky reiterated, although he had enormous sympathy for the Beachcomber, whatever is done with the property at 3000 South Ocean Boulevard, that the owner of the property should build a large and very, very soundproof wall. He suggested planting the wall out with ficus and hopefully all that would be seen would be green space and they would not have the bad restaurant residues. He continued the property owners' rights must be protected, and he is diametrically opposed to denying that property owners' rights.

All members of the public who would be testifying or addressing the Council were sworn in by Deputy Clerk Pollitt.

Ray Royce, Attorney representing the owners of the Beachcomber property located adjacent to and immediately south of the property in question, addressed the Council. Mr. Royce said Mr. Randolph was correct in stating this is a land use plan matter first and then a zoning hearing; however, one cannot talk about the land use plan change without attempting to anticipate and understand what is likely to be built on the property. Mr. Royce continued that once the land use plan decision is made by the Council, it will follow that if the land use plan is changed to commercial, it is entirely logical and reasonable to then approve the Commercial - Town Serving district. Mr. Royce stated the real point of discussion has to come at the land use stage; although a specific site or restaurant plan is not presented at this time.

Mr. Royce stated his clients' major concern throughout the entire process has been the fact that residents of the Beachcomber are sleeping close to the property line at 3000 South Ocean Boulevard albeit a residential or commercial sleep. Mr. Royce continued additional concerns are the noise issues, odors and other annoyances of a commercial use adjacent to an area where residents are residing.

Mr. Royce said he is aware of many of the problems that exist when restaurants are adjacent to residential dwellings. He cited the example of the 264 North County Road restaurant; and while these decisions concerning these businesses are difficult, something could be designed to establish different businesses with separate entrances, as previously suggested, but these could create quite a nuisance for the neighbors.

Mr. Royce said the property was acquired when it was operated as a radio station by the owners, was operated as a radio station for many years, and the radio station was sold by the current owners and that long term use was abandoned by the owners. Mr. Royce maintained that they do not have a vested right to the commercial use of the property; although they did have a vested right as the owners and operators of a radio station that was a nonconforming use of the property. He continued the requested commercial use is different and not a vested use, and they seek to improve their property rights and not to preserve them.

Mr. Royce stated the owners of the property did receive approval to operated a restaurant on the site with various limited conditions. Mr. Royce said the owners are not without uses or options. He suggested the restaurant or many of the other things that could be built under the land use plan designation and under the Commercial-Town Serving use would, in fact, not be town serving. Mr. Royce recalled that Mr. Brisson had stated at an earlier meeting that additional traffic for the restaurant might not be generated since many of the people using the public beach would be utilizing the restaurant. Mr. Royce said that many of the people who are attracted to the Lake Worth Casino area would frequent this site, and the only access to the restaurant at this time would be from the Lake Worth road to the Casino area.

Mr. Royce said that the building is faced to the north to maximize the commercial exposure and that would attract the people who patronize the Lake Worth Beach. Mr. Royce continued that, although this is a very difficult decision, this is an example of spot zoning. He said that the area to the north is different because that area has an R-D2 situation unlike the area south of the Lake Worth Casino.

Mr. Royce suggested further consideration be given to the issue because it may be difficult to develop this property in a residential mode, and the Council may not have the choices in front of them they need to make a compassionate decision from the standpoint of the Beachcomber and at the same time make a reasonable decision for the owners of the property.

Mr. Royce suggested a limited zoning category that would limit obnoxious uses and night time uses and be more compatible with a residential type setting could be entertained by the Council. He continued that the suggested C-TS change is an act of desperation, and the Town has, in the past, gone to the trouble of designing special districts for Worth Avenue and Royal Poinciana Plaza.

Mr. Royce said the Council should not make this land use change at this time but, if at some point in the future, the Council proposes to have some different use than currently allowed, that a category be designed that will not only protect the improved property rights of the owner and at the same time will treat with tenderness and compassion the concern of the residential properties to the south. He continued that provisions could be built in to a category to protect the property owners to the south.

Mr. Royce stated the owners of the property have no vested rights to a decision during this zoning season, this evening or this week. He said that with a difficult situation, it is entirely reasonable for the staff to design a transitional zoning category which could balance the interest of all concerned. Mr. Royce urged the Council not to adopt the land use plan change and not to zone the property Commercial-Town Serving.

Mr. Philip Krupp, 3100 South Ocean Boulevard, addressed the Council and stated he bought his condominium unit eight years ago and paid \$800,000 for it. He said that a group of people are requesting permission to put a commercial enterprise on the site at 3000 South Ocean Boulevard. Mr. Krupp said that commercial enterprise will immediately depreciate all of the property in that area, and the advantage to the Town of having the property reassessed and receiving added income will be offset by the tremendous amount of depreciation that will take place in the residential area.

Mr. Krupp stated he moved to the Palm Beach area from Ft. Lauderdale to be away from heavy commercialization, and he questioned the reasoning for destroying a beautiful, residential area by allowing commercial development. Mr. Krupp added the west side of AlA, owned by Lake Worth, is littered with trash and bottles, and the Town's property in the area is well maintained.

Mr. Krupp said dozens of the neighbors in the area will be unhappy if this change is approved.

Mr. Abraham Sohn, 3100 South Ocean Boulevard, addressed the Council and stated he had been in the real estate development business up north, and spot zoning, as this is, has been strictly taboo. He said a residential area should not be destroyed with spot zoning, and commercializing a small section of land for the benefit of a new owner is absolutely horrible. He continued the owner of this property bought the property knowing the zoning of the land, and there is no reason for a transfer of zoning. Mr. Sohn added, if the new owner cannot live with the granted variance, he can return to the original zoning designation. Mr. Sohn summarized a commercialized property would destroy the neighborhood.

Mr. Jack Skotnik, 3100 South Ocean Boulevard, stated he is a commercial developer from the north and is currently developing two pieces of commercial property. He continued that when this type of request is received in the north, the type of industry or the type of commercial development, with the tenants, that will be on the site is considered. Mr. Skotnik said this case is spot zoning. He added that Mr. Brisson stated commercial entities exist around the site; however, that is not true since the commercial is at least 1,000 feet away. Mr. Skotnik said this property is residential and should be left residential. He summarized the traffic on South Ocean Boulevard is extremely heavy and this will only add to it and make the traffic worse.

Mr. Philip Savage, 3030 South Ocean Boulevard, stated he was an eleven year resident of the area, and a series of stores in a strip plaza as described earlier in the meeting is completely inappropriate. He questioned the parking situation for the site if that should occur and the traffic flow from South Ocean Boulevard.

Mr. Savage, after learning setbacks could be from 10 to 30 feet, said a strip mall with lighting using those setbacks would create an undesirable effect, and a residential use would be preferable. Mr. Savage urged the Town Council to keep the zoning designation as it is and not alter the zoning plan, but consider the Beachcomber property in any new studies.

Mr. Max Schorr, 2778 South Ocean Boulevard, stated he has lived in Palm Beach for over twenty years and recalled the change and growth, mostly residential, during that period of time.

Mr. Schorr reported that the traffic in the Lake Worth Bridge area is tremendous and continues into the late hours of the night. He continued that the Town residents want to stay away from commercial use as much as possible. He pointed out any additional commercial use in the area under discussion will bring more people from Lake Worth and surrounding areas. He continued the residents of Palm Beach will not benefit from the change and urged the Council to be careful before any commercial use is considered in that area other than a use that would be quiet and not attract more people.

Mr. Everett Aspinwall spoke on behalf of his wife, Valerie Aspinwall, the owner of the property at 3000 South Ocean Boulevard. Mr. Aspinwall stated he and his wife were somewhat confused since they had read in the newspaper that some non-Palm Beach residents, ages 63-89, may not stay for a few weeks or months during the season at the neighboring Beachcomber Motel if a restaurant is opened next door at 3000 South Ocean Boulevard.

Mr. Aspinwall stated the Town Council had already approved a change from a nonconforming use as a radio station which it was from 1941 until last year to nonconforming use as a restaurant. Mr. Aspinwall continued the Town Council had already approved a site plan for such a restaurant, and it is difficult to understand why some people continue to waste the Council's time by bringing up the question "if". He said the subject of the hearing should not be "if" but how to best recognize the right of the property owner to go ahead and develop this parcel according to plans already approved by the Council. Mr. Aspinwall stated the approved plans do not interfere with the right of the Beachcomber to remain "like Palm Beach used to be", as quoted on the front page of the Shiny Sheet.

Mr. Aspinwall recalled Palm Beach as it used to be would conjure up the image of the Royal Poinciana Hotel rather than the Beachcomber Motel. He added the plans do not prevent the Beachcomber to continue to remain quaint and charming which may be a natural result of not doing much over the years to improve the buildings, and no one is asking them to change anything including the access of the Beachcomber residents to the beach through the property at 3000 South Ocean Boulevard which they have enjoyed for many, many years.

He stated that Loy Anderson has attempted to appease the neighbors' concerns over months and months of negotiations and tried to accommodate incessant demands for stipulations and making the property unsuitable for any development at all. Mr. Aspinwall said the Beachcomber wants to halt or delay the approved actions of the Council that were determined to be fair, proper and desirable development for the property. He continued that it is because of these demands and the threat of litigation from the neighbor to the north, the City of Lake Worth which is considering a massive development of Lake Worth Municipal Beach. Mr. Aspinwall said he is requesting the Council, in the interest of fairness, to modify the Comprehensive Use Plan and to grant the change in zoning to what it has been since 1941 which is Commercial-Town Serving. He added they are not trying to

destroy or change anything, but to proceed with the approved Town Council plans and make it possible for a restaurant to operate on that site according to the approved stipulations without the threat of continued harassment and litigation.

Mrs. Sandra Goldberg, 2000 South Ocean Boulevard, addressed the Council speaking as a citizen and not representing any group. Mrs. Goldberg said the residents of the south end of Palm Beach are very proud of the beautification established surrounding the properties. She stated, as a representative to the Citizens Association South of Sloan's Curve, she attended a recent meeting where many delegates at that meeting raised concerns over the proposed plans for 3000 South Ocean Boulevard. She continued a recommendation was made that a letter of concern be sent to the Town Council stating the concerns if any commercial project was approved for the site.

Mrs. Goldberg said she was also concerned for the rights of the property owner, and the property should be developed as the owner wants to; however, the interests of the people who live in that area should also be protected.

Mrs. Goldberg suggested a category fitting that property should be designed with limited night use as additional traffic will aggravate an already over crowded situation.

Mrs. Eileen Curran, 3170 South Ocean Boulevard, addressed the Council and has lived in the Town for five years. Mrs. Curran stated she was surprised that the Lake Worth Bridge with its parcel of land to the Ocean bisects the Town of Palm Beach. She continued no signs on the Lake Worth Bridge indicate the Town of Palm Beach exists south of the Lake Worth Bridge, and the southern residents who pay Palm Beach taxes were not identified as Palm Beach residents since no signage direct anyone south of the parcel of land that is part of the City of Lake Worth.

Mrs. Curran said the needs of the residents south of the Lake Worth Bridge need to be considered. She stated she purchased her property because it was a highly residential area and felt that it was a beautiful and protected area.

Mrs. Curran reported that a heavy flow of traffic comes over the Lake Worth Bridge every night and drives toward the beach in the City of Lake Worth and appears to go nowhere. Mrs. Curran asked if a restaurant were constructed on the site that would attract additional cars, what is the plan for police protection for the residents south of the City of Lake Worth that intersects Palm Beach Island. She said it is time to consider those residents since other open areas, such as Kreusler Park, the Lake Worth Pier, the Casino and 4.3 miles of beach, attract a large number of visitors. Mrs. Curran asked if the Town had a plan to cooperate with the City of Lake Worth to use their police services as well as the Town of Palm Beach Police to monitor the traffic? She said the residents of the south end need to know those plans before the interests of the financial futures of persons who are interested in developing a piece of property.

Paul Prosperi, Attorney for the applicant, said the property in question is 100 feet wide and 400 feet long and is bordered by approximately 1200 feet of property owned by the city of Lake Worth. He stated that approximately three months ago, the City Planner from Lake Worth appeared before the Town of Palm Beach's Zoning Commission and stated the City of Lake Worth had submitted the Casino property to a developer for the purpose of increasing the access and usage of the Casino to the citizens of Lake Worth. Mr. Prosperi continued that the existing 600 car parking would be double decked.

Mr. Prosperi reported that traffic counts from March and July, 1994, that indicated the traffic count at that site was 20,638 cars per day during season and 15,931 cars per day in the off season. He continued that these cars loop around the access road to the Casino area, and that is the existing traffic count.

Mr. Prosperi said with the existing zoning and land use designation, four houses or a maximum of eight townhouses could be built on that site, set back ten to thirty feet from the roadway where the minimum of 15,931 cars to 20,638 cars would pass by daily. Mr. Prosperi questioned if anyone who had spoken previously would buy any property with that kind of traffic flow. Mr. Prosperi said the point he was making was the Town of Palm Beach's permitted use on that site was the four residences or the eight townhouses. He continued the problem is really the Lake Worth Casino property which has plans for redevelopment with increased traffic, and if the Lake Worth Casino property is compatible with the existing zoning and land use plan designation.

Mr. Prosperi said during a period between April and September, the City of Lake Worth had 420 incidents reported in the Casino area. He continued that the 420 incidents included 47 robberies, thefts or burglaries; 39 trespasses, criminal mischiefs or resisting arrests; 22 batteries or disturbances; 17 suspicious persons; 5 hit and runs; 2 narcotics; 1 weapons and 284 traffic misdemeanors. Mr. Prosperi noted that a great amount of police activity occurs on that site presently, and if the parking is doubled, those figures could be expected to increase. He said this is not the only piece of property that suffers from close proximity to the Lake Worth Casino property. He continued that the property to the north, zoned C-TS, suffers, but has been almost without incident. Mr. Prosperi stated that in fairness and legality, there is no distinction between the property located immediately to the north of the Casino and the property located immediately to the south of the Casino.

Mr. Prosperi noted that the 3000 South Ocean Boulevard property owner has a neighbor, the Casino property, that is not governed by the Town of Palm Beach. He continued the subject site is currently vacant and not contributing one car per day to the traffic flow, and the property owner is only attempting to find a use for this property. Mr. Prosperi noted a list of stipulations has been agreed to find that use; this property owner is entitled to a use for the property, and he is entitled to not be discriminated against. Mr. Prosperi said that unless a legally justified reason exists why he should be treated differently from the property owner immediately north of the Lake Worth Casino, then no legal basis exists for the Town to deny this request.

Mr. Prosperi cited Mr. Brisson's earlier statements regarding his recommendation to change this land designation at some future time from 1989. He said the property owner did not think, at that time, to raise the issue himself. Mr. Prosperi stated no differences exist between the bank building property, Murray's Palm Beach Diner and the subject property regarding the zoning status. He stated this application has nothing to do with the property owner trying to avoid any of the stipulations which this property owner has already entered into, but is an attempt to bring the land use plan and the zoning in compliance with the use granted by the Town Council, because the property owner is under threat of litigation from the City of Lake Worth. Mr. Prosperi stated he believed

the Council has but one choice in this matter and he hoped that it would include an understanding of the particular problems that this property owner faces, and his desire to work with the community concerns.

Mr. Max Schorr requested the Council explain to him exactly what this discussion was about?

Mrs. Smith replied the Council is talking about a Comprehensive Plan review, an amendment to the Small Plan for the Town of Palm Beach. She continued that the application that was granted for the restaurant was approved in September, 1994, and that was different from this discussion. Mrs. Smith said that the applicant is requesting to change the Comprehensive Plan of the Town of Palm Beach in perpetuity. She noted they received permission to put a restaurant in the existing building with certain stipulations, and the applicant stated at that time they had Ruby Tuesday's Restaurant as a tenant; however if the restaurant is a viable tenant then the approval with conditions which were not totally amenable to the Beachcomber still apply. Mrs. Smith stated the approvals do apply and will be in effect until September, 1995. Mrs. Smith said the applicants cannot add on to the present building.

Mr. Schorr asked why the applicant is not satisfied with the Town Council approvals that were received, and why is it necessary to request the zoning changes?

Mr. Moore responded the property is currently zoned RD-1 which is a residential designation, and the radio station was a nonconforming use since 1941. He continued the approved restaurant was to occupy the building that the radio station had occupied, and this request is to change the zoning and the Comprehensive Plan to reflect the use of the property.

Mr. Randolph suggested the owners answer Mr. Schorr's questions.

Mr. Prosperi responded he had shown the approved site plan for the restaurant to Mr. Schorr. He stated that the owner wishes to conform the land use designation and the zoning to the use so that the owner is not subject to a legal attack from the City of Lake Worth as they have indicated they may pursue because the variance might be technically deficient. Mr. Prosperi said the City of Lake Worth has the right to pursue legal means, and as long as the City of Lake Worth has the right to raise the issue on some number of occasions, the owner cannot go forward with his plans because no tenant or purchaser would commit the financial resources to go forward with the legal threat unresolved.

Mr. Schorr stated he knew the Council approved the use of the property as a restaurant, and he thought the owner wanted to use the site for a restaurant. He continued, apparently, the owner finds that his previous approvals are not adequate or sufficient.

Mr. Royce recalled a specific site plan for a specific 5,500 square foot restaurant with a list of 22 or 23 conditions was previously approved by the Town Council. He added the land use plan change and subsequent zoning change will give the owner the option to build a building of approximately 11,000-14,000 square feet, and the land use change would allow the owner to remove the existing building and construct a new one with uses other than restaurants. Mr. Royce said the existing restrictions for the approved restaurant would be removed if the building were demolished. He said approvals of these requests will allow the owner to broaden his options tremendously, and he requested the requests be denied.

Mr. Philip Krupp asked the Council who actually owns the property in question? Mrs. Smith responded the owner is Mrs. Valerie Aspinwall.

Mr. Krupp said he listened to the argument that the property owners have the right to develop their property; although it will be at a tremendous expense to the surrounding residence. Mr. Krupp asked Mrs. Aspinwall if someone would purchase the property if she had the proper zoning or would she hold the land?

Mr. Aspinwall responded the intention is to sell the property.

Mr. Krupp said this was about the opportunity to make some money at the expense of the neighbors. He said tens of millions of dollars have been spent by the residents at 3100 South Ocean Boulevard, and these residents' wishes should be considered.

Mr. Abraham Sohn said the lawyer for the owner made mention of various hypothetical claims that the City of Lake Worth had made. Mr. Sohn said those claims were far in the future, and if and when that occurs, the owner could then appear at the Town Council and prepare a proper application.

Mrs. Smith announced to the Council members that the Council would be in executive session.

Mr. Goldsmith asked Mr. Randolph for his opinion on the legal consequences of not granting the change to the Comprehensive Plan land use plan as outlined and changing the zoning in this case.

Mr. Randolph replied the applicant, in the event the land use plan and ultimately the zoning change were not made, would have the opportunity to go to court and challenge the decision not to rezone. Mr. Randolph did not want to elaborate what would be included in a law suit of that nature; however, Mr. Prosperi has indicated, as far as he is concerned, there is not a reasonable use for the property for his client, and his client is being treated differently than a similar use to the north of this property. He assumed that in the event there would be a challenge, these are the types of things that would be brought up as well as the fact that the Town's experts have indicated an appropriate change would be to commercial. Mr. Randolph declined to give an opinion of a court's opinion regarding this matter.

Mrs. Royal asked Mr. Randolph if the Town Council were to grant the requests and allow the rezoning, would other interested parties who did not want to see it rezoned go to the court of appeals?

Mr. Randolph replied they could either go to a court of appeals by way of certari or, as would the applicant, file an independent action--either side could do the same.

Mr. Shaw stated one of his great concerns was the traffic that could be generated in the event something else were done to the property. He asked if the Council could control the traffic situation and be able to say that no approvals of variances for certain uses for the land would be given based on police or public safety issues?

Mr. Randolph replied that these types of questions would not be addressed at this meeting since these types of restrictions based on amendments to the zoning may be considered contract zoning. Mr. Randolph said the Council would have an opportunity for site plan review at a later time regarding the uses, and traffic, access points, hedging and buffers could be considered at that time.

Mr. Moore concurred with Mr. Randolph's remarks and added that any of the uses required, a special exception or uses over 2,000 square feet, would allow the Council to have vast control over the situation and any new construction would be subject to a site plan review.

Mr. Randolph explained the applicant has had an approval for a restaurant from the Council and that has conditions attached to it, and it is their intent to go forward with that project. He continued if the zoning amendment passes, the applicant would not be compelled to go forward with the project, and the applicant could return with a plan that would not necessarily require a special exception or a variance from the Town Council. He added they could go forward only with the site plan review.

Mr. Goldsmith noted that other Town reviews would then become viable, ARCOM, etc. He added none of the Town's rights of review would be given up.

Mrs. Royal questioned the statement, "...that 14,000 square feet of development would be possible without the need for any special approval...".

Mr. Moore replied the caveat that is there states the development can be in 2,000 square foot increments, and if a mall type of situation were developed, it would be calculated and required to be one business with a mall in it. He added that a site plan review would be required on any new construction, and the type of business would have to be stated at the time of the site plan review to allow the calculation of the parking places.

Mrs. Smith asked Mr. Moore to recap the zoning status for the properties to the north, south and west, and Mrs. Smith wanted an explanation of the property used for time sharing.

Mr. Moore replied the properties are as follows:

1. Parking lot located to the left of the Lake Worth bridge, owned by the City of Lake Worth that was the site of the approach to the old Lake Worth bridge.
2. North of the parking lot is Murray's Palm Beach Diner, the, old Howard Johnson's Restaurant, which is Commercial-Town Serving.
3. North of the Diner is the RD-2 District which is the Howard Johnson's Hotel, painted shocking pink at the moment.
4. North of Howard Johnson's are the residential condominium units that are on the west side of South Ocean Boulevard.
5. Directly across from the residential condominium units is 2875 South Ocean Boulevard, a large two story commercial building which contains a beauty shop, bank, and offices with a parking lot adjacent to the City of Lake Worth.
6. East of 2875 South Ocean Boulevard toward the Ocean is Kreusler Park, a Town owned piece of property that is operated by Palm Beach County.
7. South of 2875 South Ocean Boulevard and Kreusler Park is the Lake Worth Casino property, approximately 1200 feet running south, which has a mixed recreational and commercial use including restaurants, retail shops, recreational facilities, beaches and a large parking area.
8. Across from the Lake Worth Casino area and to the south of the Lake Worth bridge is a submerged piece of land that belonged to Milton Steinhardt. He was successful obtaining development rights going through the court system; however, to this date, those rights have not been used because the Corps of Engineers has not given permission to develop the area. The development rights were a mixed use of commercial, restaurant, residential and hotel.
9. The subject property at 3000 South Ocean Boulevard is located immediately to the south of the Lake Worth Casino property on the east side of A1A. The property is 100' wide x 400' deep and has no frontage on the Atlantic Ocean. The City of Lake Worth owns the Ocean frontage. The Town of Palm Beach has a pumping station on the southwest corner of the property (bordering South Ocean Boulevard). The Aspinwalls own submerged land directly across A1A to the west but rights to develop that land have long since been taken away by the State of Florida, unlike Mr. Steinhardt who had a legal case 20+ years ago.
10. The Beachcomber Apartments are directly south of the subject property and the property is approximately 300' wide and 400' deep. The motel-apartment complex contains some 50 units used as overnight facilities and long term facilities for the season.
11. To the west, on the Intercoastal, is a piece of property that was filled that is approximately 100 feet wide identified as the Palm Beach Resort and Beach Club used as a time share and is rented by the month.
12. South of that on the east side is 3100 South Ocean Boulevard which is a multi-family coop, not a condominium.

Mrs. Smith asked Mr. Moore if time share units would be permitted at the Beachcomber under the present zoning?

Mr. Moore responded the restrictions associated with the RD-1 district do not permit time share units.

Mrs. Smith said all the discussions have centered around the Aspinwalls and the radio station, and they obviously have not been denied the use of their property since they have the permission for a restaurant on the site. She added the Beachcomber appears to be in the wrong zoning district, and perhaps should be changed from RD-1 to RD-2. Mrs. Smith suggested that both parcels could be referred to the Zoning Commission and have them both reviewed as they relate to the Lake Worth Casino, the multi-family buildings and the time sharing property.

Mrs. Smith said the proposed amendment to the Comprehensive Plan may have been premature as these two properties should have been reviewed by the Zoning Commission.

Mrs. Royal concurred with Mrs. Smith's comments.

Mr. Goldsmith stated that Mr. Aspinwall would have to wait one more year for a decision after waiting several years.

Mrs. Smith replied that Mr. Aspinwall requested permission for a restaurant and received it.

Mr. Moore interjected that the applicant did request permission for a parking lot on the site in 1990 and that was rejected because it was not town serving.

Mr. Moore added that the RD-1 district does not permit time sharing uses; however, RD-2 does permit time sharing as well as motel and hotel uses.

Mrs. Smith noted that if the Beachcomber property were rezoned from RD-1 to RD-2, that would give them better use of their property also, and this issue could be addressed by the Zoning Commission.

Mr. Moore replied that change would remove the Beachcomber from a nonconforming status which it is currently, and it would be an improvement in the zoning.

Mayor Ilyinsky stated, although the situation is convoluted, the applicant has permission to have a restaurant on the site, and the cleanest way to handle this situation is to change the zoning to C-TS. Mayor Ilyinsky added the Town still retains enormous control over the applicant's proposed uses, and if the zoning is changed, Mr. Prosperi will have to return to the Council and present new plans. He said no damage to the condominiums to the south would occur; although some increase in traffic may be noted.

Mr. Goldsmith made a motion to approve the amendment to the Comprehensive Plan as recommended and written. The motion died for lack of a second.

Motion made by Mr. Shaw to send to the Zoning Commission the recommendation that the properties at 3000 South Ocean Boulevard and the Beachcomber at 3024 South Ocean Boulevard be reviewed and look at zoning classifications that would secure the use of the land and protect the residents; that the properties be considered together and Staff should study both parcels before they are sent back to the Zoning Commission. The motion was seconded by Mrs. Royal.

Mrs. Royal said she understood the applicant has not been denied the use of the property in the intervening time. Mrs. Smith replied that was correct, and the approvals for the restaurant are in place until September, 1995, with the conditions that were previously approved.

Mr. Randolph said the members are sitting as the Local Planning Agency considering an amendment to the Comprehensive Plan, and this motion will be a recommendation to the Town Council, and the Council, when reconvened, will have to consider a similar action.

The motion carried unanimously.

III. ADJOURNMENT: The Local Planning Agency adjourned.

The Town Council reconvened at 7:05 p.m.

Mrs. Smith called the Town Council meeting to order.

Mrs. Smith asked if anyone had additional items to be added to the agenda.

Mr. Doney replied that a special meeting will be held Wednesday, January 11, at the West Palm Beach Auditorium concerning the proposed I-95 interconnect at Palm Beach International Airport, and he requested that an item be added under "Any Other Matters" on the I-95 Interchange at the Airport.

Mr. Doney also requested an item concerning a charitable solicitation be added for the Palm Beach Community College.

On roll call, the following Elected Officials were found to be present: Mayor Ilyinsky, President Pro Tem Smith, Mr. Shaw, Mrs. Royal and Mr. Goldsmith.

Motion made by Mr. Goldsmith to approve the revised agenda with the addition of the I-95 Interchange item and the Community College Charitable Solicitation item. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Peters affirmed proof of publication for this meeting was received.

Mr. Randolph stated the first item to be considered at this meeting should be the recommendation of the Local Planning Agency.

Motion made by Mr. Shaw to approve the recommendation of the Local Planning Agency to have the issue of the property referred to as 3000 South Ocean Boulevard and the adjacent property

referred to as the Beachcomber to go back to the Zoning Commission for consideration next zoning season. The motion was seconded by Mr. Goldsmith.

Mr. Goldsmith asked if zoning could be reviewed before next fall. Mr. Moore replied the zoning season was November 1 through April 30, and this could be brought up under special hearings and special conditions.

On roll call, the motion carried unanimously.

Mr. Randolph said, that as a follow up to the motion, because the amendment to the Small Plan Amendment was deferred and because the Comprehensive Plan has not been amended to allow the property to be commercial, there will be no need to give consideration to the application to rezone the property from RD-1 to C-TS.

V. FIRST READING OF ZONING ORDINANCE NO. 1-95

Mr. Randolph read the ordinance:

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; PROVIDING AMENDMENTS TO ARTICLE 5, ENTITLED, "SUPPLEMENTARY LOT REGULATIONS" BY AMENDING SECTION 5.15, "LOT AREA", PROVIDING FOR GREATER BUILDING SETBACKS ON LOTS OF 60,000 SQUARE FEET OR GREATER IN R-A AND R-B DISTRICTS; BY AMENDING SECTION 5.51, "MINIMUM YARD, LOT AND BULK REGULATIONS" BY REDUCING ALLOWABLE DISH ANTENNA SIZE IN THE R-AA DISTRICT AND BY ALLOWING CERTAIN SIZE DISH ANTENNAS MOUNTED ON BUILDING ROOF; TO PROVIDE AMENDMENTS TO ARTICLE 6 ENTITLED, "SUPPLEMENTARY USE REGULATIONS", BY AMENDING SECTION 6.21, "OFF-STREET PARKING" TO INCLUDE A NEW PARKING REQUIREMENT FOR GROUP HOMES AND FOSTER CARE FACILITIES; TO INCLUDE A NEW PROVISION FOR SHARED PARKING IN COMMERCIAL ZONING DISTRICTS; BY AMENDING SECTION 6.33, "SIGNS IN COMMERCIAL DISTRICTS" BY ELIMINATING DISPLAY TIME FOR TEMPORARY SIGNS ADVERTISING SPECIAL EVENTS; TO AMEND SECTION 6.54, "ACCESSORY COMMERCIAL USES IN A HOTEL", PROVIDING REGULATION ON TEMPORARY DISPLAY AND SALE OF MERCHANDISE; TO PROVIDE AMENDMENTS TO ARTICLE 8 ENTITLED, "NONCONFORMITIES" BY AMENDING SECTION 8.15, "TERMINATION OF NONCONFORMING USES", ALLOWING NONCONFORMING USES WITHIN TOWN DESIGNATED LANDMARK STRUCTURES BE CONTINUED IN THE EVENT A DESTROYED LANDMARK STRUCTURE IS RECONSTRUCTED; PROVIDING FOR SEVERABILITY; PROVIDING A PENALTY FOR A VIOLATION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Motion made by Mr. Goldsmith to recommend approval of the first reading of Zoning Ordinance 1-95. The motion was seconded by Mr. Shaw.

Mrs. Smith requested comments from the audience. There were none.

Mrs. Royal suggested amending the section referring to shared parking in commercial zoning districts to prevent the shared parking from being too close to residential areas.

Michael Tammaro, Attorney with the law firm of Carlton, Fields, Ward, Emmanuel, Smith & Cutler representing the Royal Poinciana Apartments and Murray Pergament, addressed the Council. Mr. Tammaro stated his concern is the effect the shared parking will have on his clients if patrons from E. R. Bradley's who exit the premises at 3:00 - 4:00 a.m. are allowed to park in certain areas. Mr. Tammaro continued that Bradley's received permission to enclose their patio area, an enlargement of a previously existing nonconforming use. He stated his clients supported the approval of that variance request because it would hopefully mitigate the noise from Bradley's during the late hours; however the area was never enclosed.

Mr. Tammaro said the shared parking ordinance is a fine ordinance in principle; however, his concern was that the Publix parking lot across the street from Bradley's would be utilized adding to an already poor situation. He added the Code was written so that for an existing use, no further consideration is necessary from the Town. He continued that even for a nonconforming existing use, the only requirement is special exception approval, and the criteria for that approval are written into the code--primarily if enough parking space is available and whether the parking space would be available through a shared parking arrangement in perpetuity. He continued that it does not address the potential for conflicts that Mrs. Royal raised. Mr. Tammaro requested that the issue not be passed until the apparent omission is addressed.

Mr. Brisson responded that Mr. Tammaro was correct, and no provision was in the amendment relative to the impact upon adjoining properties other than meeting the appropriate parking requirements that are set forth under the two sections. Mr. Brisson stated Bradley's could petition to use the Publix parking lot provided that the two uses would be at different times of the day to avoid conflict. He continued that this would require Council approval.

Mrs. Smith clarified that Bradley's would have to appear before the Town Council requesting shared parking with Publix if this amendment were approved with the conditions listed under A. and B. of the amendment.

Mr. Randolph said he would have to consult with Mr. Brisson to be sure certain language was incorporated in all the appropriate spots in this section of the ordinance, but it is possible to provide language to cover these concerns. He added the Council must also give consideration as to the effect of the shared parking arrangement to residential properties within a certain number of feet, and the Council could not issue a denial if this were not incorporated into the language.

Mr. Randolph, responding to questions from Mrs. Smith, stated the alternatives would be if the Council is not comfortable with the shared parking amendment at all, the Council could delete from the first reading the shared parking amendment and look at it in the following season; pass as

is; or incorporate some language to address the problem--a substantive amendment that would be included in the first reading and the language would be refined for the second reading.

Mrs. Smith recalled it was a Council member who suggested the issue of shared parking as an important issue for this zoning season, and it should not be put off for another year.

Mr. Randolph asked if the Council should be able to give consideration to the effects this would have on adjoining properties at the time the application is submitted, or if the Council wishes the shared parking arrangement not to apply to parking lots that abut residential areas.

Mr. Moore replied that few, if any, parking lots any where in Town do not abut residential zoning districts, since the Town is 90% residential. Mr. Moore said each situation would be considered individually, and additionally, a traffic study would be required.

Mrs. Smith recalled the traffic study was an issue previously since the applicant would be required to pay for the study.

Mr. Randolph said, if as Mr. Moore stated, it would make no sense to preclude shared parking if the lot abutted residential areas, then the current ordinance could be clarified to provide that there is not entitlement to shared parking and that the granting of the shared parking will be solely at the discretion of the Council and that the Council may give consideration to the effect the shared parking would have on adjacent areas.

Dick Weinstein, President of the Biltmore, 150 Bradley Place, stated he and several of his neighbors were concerned about the impact parking at the Publix parking lot by patrons of E. R. Bradley's would have on the Biltmore should this amendment be approved. Mr. Weinstein stated Bradley's is an enormously popular place with young people, and it is very active and disruptive for the people who live at the Biltmore. Mr. Weinstein requested the Council establish a special zoning district along Bradley Place. He recalled the approval the Island National Bank received was conditioned so that the parking lot could not be used for other purposes at night.

Mr. Shaw commented a reason this item was one of the study items this year was that the need had been identified of the large number of patrons at places like Bradley's, and the idea was to make it easier for everyone.

Mr. Weinstein replied Bradley's has become a watering hole for the County and is a regional use rather than a town-serving use. He suggested if additional parking is approved, this will attract even more people, and Bradley's sent out announcements recently to many people with happy hour information, most of whom were not residents of Palm Beach.

Mrs. Smith mentioned to Mr. Weinstein the entire issue would be moot if Publix chose not to lease their spaces to Bradley's. She added, before parts of the ordinance were changed, pressure could be put on the various parking lot owners NOT to lease their parking spaces to after hours spots.

Mr. Weinstein responded that the Council recognized the need to protect the residents of Bradley Place when a restriction was put on Island National Bank prohibiting them from leasing their spaces at night. He continued if additional parking is granted in the area, the property values will be affected, and suggested the separate zoning district is the answer.

Mrs. Smith asked Mr. Randolph if the geographic area for shared parking should be changed or should the issue of the shared parking be deferred until the next zoning season? She asked Mr. Randolph if he would be able to make the necessary corrections as discussed at this meeting to the zoning ordinance before the next reading?

Mr. Randolph replied if the Town was drawn up into geographic areas for the purposes of shared parking, it would be difficult since the Zoning Commission did not consider this aspect during their hearings and residents did not have the opportunity to address those issues at the Commission meetings. He added he would hesitate to amend the proposed ordinance in that way without readvertising the ordinance.

Mrs. Smith said a motion had been made and seconded before the previous discussion took place. Mr. Goldsmith asked Mr. Moore to explain the provisions of the Publix parking lot.

Mr. Moore responded Publix' lot was for their use only.

Mr. Goldsmith asked if Publix would not have to appear before the Council if they were seeking approval for shared parking in the future? He asked if that would not be true for anyone seeking permission for shared parking?

Mr. Brisson replied that was true unless a provision was inserted into the ordinance that relates to the impact upon adjoining properties. He added there is no such provision in the ordinance now.

Mr. Goldsmith clarified, if the ordinance is passed, the applicant would still have to appear before the Council to implement the shared parking. He continued the Town Council would be able to deny, in this case, Publix or Bradley's the right to have shared parking in the Publix lot.

Mr. Randolph replied the current ordinance has certain criteria to be considered by the Town Council in order to determine to grant or not to grant shared parking. He continued no provision is in the current ordinance which indicates they may take into account the concerns of abutting, adjacent, or affected property owners. He said a substantial argument could be made if an application were received for shared parking and there was nothing in the ordinance that dealt with that; therefore, the Council could not turn that proposal down. Mr. Randolph said the suggestion being made, other than the one dividing the Town into geographic areas, is, "Can we amend the Town Ordinance this evening to allow the Town Council to take those things into account when applications come before them."

Mr. Randolph continued two alternatives have been proposed:

1. The Council simply delete the particular section concerning shared parking from the ordinance and revisit this matter during the next zoning season

2. The Council could provide direction for changing the language of the existing section.

Mrs. Smith said a motion was on the floor, made by Mr. Goldsmith and seconded by Mr. Shaw, and requested either a vote be taken or Mr. Goldsmith withdraw or amend the motion.

Mr. Goldsmith replied he would amend the motion to not eliminate the Town Council's ability to deny any specific site and the Town Council should approve all sites. He requested Mr. Randolph to adapt appropriate language for the motion. He continued he does not want to remove the Town Council's ability to turn down a specific site.

Mr. Shaw seconded Mr. Goldsmith's approach and suggested that if it is agreeable with Mr. Randolph, to add, "Council approval may be denied predicated on impact to local residents".

Mr. Goldsmith said he accepted Mr. Shaw's amendments to the motion.

Mrs. Royal said she would like to see this comfort granted to all residents who have residences impacted by shared parking, and all should enjoy the benefits.

Mr. Randolph requested a clarification of the original motion.

Mrs. Pollitt said the original motion was to approve the first reading of Ordinance number 1-95. Then the ordinance was amended: Section 6.21 stating the applicant had no entitlement to shared parking; parking is solely at the discretion of the Council and consideration shall be given to joint, adjacent and abutting property owners. She continued, the phrases, "not eliminating any site", and "all must come to the Town Council for approval were added".

Mr. Randolph recalled during the early part of the discussion, before public comment, a motion was made by Mr. Goldsmith to adopt the ordinance on first reading, and that was the original motion that did not receive a second. Mr. Randolph continued that the motion that was on the floor was the motion made by Mr. Goldsmith to adopt the ordinance on first reading with an amendment to Section 2 to allow shared parking only upon approval by the Town Council, and the Town Council will have the right to grant or deny parking based on the impact to the immediate neighbors. Mr. Randolph stated the intent of the motion is that there is no entitlement to shared parking; that shared parking can only be granted by the Town Council, and the Town Council, in granting or approving shared parking, shall take into consideration the impact on affected neighbors. Mr. Randolph said he could not, at this meeting, incorporate the specific language at each spot within the ordinance but it is enough to amend the ordinance at this meeting to incorporate that language. He added the specific language could be brought to the next meeting on February 6, 1995.

Mrs. Smith asked Mr. Randolph if the Council were not comfortable with the language that he was proposing for Section 2 and voted "no", would the entire zoning ordinance be turned down?

Mr. Randolph replied that it would not affect the entire zoning ordinance, and if the Council were not happy with the amendment, the section related to shared parking could be deleted and revisited during the next zoning season.

On roll call, the motion carried 3/1 with Mrs. Smith casting a negative vote.

Mrs. Smith explained she was not comfortable with the language nor the circumstances that were created that did not provide enough security for the residents.

VI. ANY OTHER ITEMS

Mrs. Smith said the first item to be considered is the scheduled meeting on January 25th, Wednesday, for the Palm Beach International Airport. Mrs. Smith stated a good deal of discussion concerning this matter had been in the paper and around the Town of Palm Beach that the perception was the Council has done nothing to protest the Palm Beach International Airport extension. Mrs. Smith said this is not true and recalled the Town Council passed Resolution 24-89, opposing any expansion--before the interchange was mentioned. She continued that in March, 1992, the Town Council formally adopted a position against any expansion and the runway extension, and the I-95 interchange was first introduced in 1993. Mrs. Smith said from the time the interchange was announced, the Town opposed the interchange, and letters were sent in March, 1993; February, 1994; and April, 1994, stating that opposition. She continued the Town will be represented at the Wednesday meeting, and she found it surprising that no one from the public was present to express views on this subject. Mrs. Smith called for support from the public via the press and civic organizations for the Town Council's ongoing protest to any airport expansion.

Mr. Goldsmith noted that individual members of the Council have protested this issue many times over the years.

Mr. Jakubiak stated a new letter is being drafted from the Mayor in opposition that will be submitted to the Florida Department of Transportation.

Mayor Ilyinsky added he and former Mayor Cudahy have been attending these meetings for 12 years and have continuously voiced opposition to the expansion.

Mrs. Smith requested Mr. Jakubiak compile a chronology of the Town's participation and objections to the expansion, the lengthening of the runway and the I-95 interchange. She added the public may find it easier to see what the Town has been doing over the years if that list were available.

Mr. Shaw suggested an analysis showing all the communities who are opposed to this program be prepared because not many of the communities are for it. He added Palm Beach will be affected more than communities in the north and south ends of the County, and he suggested the support is coming from the areas not so directly affected.

Mrs. Royal requested a copy of the list of the Town's objections over the years be sent to Mrs. Gulden at the Civic Association.

Mrs. Peters requested approval for a fashion show to be held by the Palm Beach Community College, Charitable Solicitation permit number 338-95, in early February subject to Departmental approvals.

Motion made by Mr. Shaw to approve Charitable Solicitation permit no. 338-95. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

VII. ADJOURNMENT

A motion was made by Mr. Goldsmith to adjourn the meeting. The motion was seconded by Mr. Shaw. The motion carried unanimously.

There being no further business, the meeting was adjourned.

Mary A. Pollitt
Deputy Town Clerk