

**MINUTES OF THE SPECIAL
LOCAL PLANNING AGENCY & TOWN COUNCIL MEETING HELD ON
JANUARY 22, 1996 AT 5:01 P.M.**

LOCAL PLANNING AGENCY MEETING:

I. CALL TO ORDER AND ROLL CALL:

President Lesly Smith called the Special Town Council meeting, sitting as the Local Planning Agency, to order. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Smith, President Pro-Tem Jack McDonald, Councilmen Leslie Shaw, Sam McLendon, and Allen Wyett. Also attending were: Town Manager Robert Doney, Town Attorney John Randolph, Director of Planning, Zoning & Building Robert Moore, Zoning Administer Paul Castro, and Town Clerk Mary Pollitt. William F. Brisson, Consultant from Adley, Brisson, Engman, Inc. was also in attendance.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Mrs. Pollitt. The Pledge of Allegiance was led by President Smith.

III. PROOF OF PUBLICATION

Town Clerk Pollitt verified that proof of publication was received.

IV. APPROVAL OF AGENDA

Mr. Wyett made a motion to approve the agenda. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC

Mrs. Smith said the applicants and staff will speak first, and the general public will show hands for recognition by the chair.

VI. COMPREHENSIVE PLAN REVIEW

A. Small Scale Plan Amendment - 3000 South Ocean Boulevard, from Multi- Family High Density to Commercial

Mr. Randolph explained that the Town Council is sitting as a Local Planning Agency to consider the petition for a small scale plan amendment to the Comprehensive Plan relating to 3000 South Ocean Boulevard. The purpose of the hearing is to give consideration to the application. The Town Council will hear evidence that is presented by the applicant and any other evidence regarding the matter from the public. A recommendation will be made by the Council sitting as the Local Planning Agency to the Town Council, sitting as the Town Council, regarding an amendment to the Comprehensive Plan. This meeting is considered to be a quasi-judicial hearing; therefore, the witnesses will be sworn in, an opportunity for cross-examination will be provided, and a record of the proceedings will be made.

Town Clerk Pollitt administered the oath to all persons who will testify during the proceedings.

Mr. James Brindell, Attorney with the law firm Gunster, Yoakley, Faldez-Baldwin and Stuart, represented Mrs. Valerie Aspinwall, the owner of the property at 3000 South Ocean Boulevard. Mr. Brindell said that Mrs. Aspinwall has two requests: 1) a Comprehensive Plan amendment to the property at 3000 South Ocean Boulevard to a designation of Commercial; and 2) an application for rezoning of that property to C-TS, Commercial-Town Serving.

Mr. Brindell said that twenty-two exhibits were introduced into the record at the January 3, 1996, Town Council hearing. Mr. Brindell requested that those exhibits be accepted by the Town Council into the record for this meeting. Additionally, Mr. Brindell introduced new exhibits into the record in support of his client's applications. The new exhibits included:

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| Aspinwall
Exhibit no. 23 | Complete transcript of the 1/23/96 Town Council meeting with a table in the front identifying the excerpts that Mr. Brindell requested be introduced to support his client's applications; |
| Aspinwall
Exhibit no. 24 | The Town of Palm Beach Comprehensive Plan - Map 1-3, Future Land Use, dated May 1, 1989; |
| Aspinwall
Exhibit no. 25 | The Town of Palm Beach Comprehensive Plan - Provision regarding multi-family uses, page I-19, Plan adopted October 23, 1989, amended March 12, 1991; |
| Aspinwall
Exhibit no. 26 | The Town of Palm Beach Zoning Code, Section 2.10 (13.25), Definition of Commercial Uses; |
| Aspinwall
Exhibit no. 27 | The Town of Palm Beach Zoning Code, Section 2.10 (28.1), Definition of Hotel/Motel; |
| Aspinwall
Exhibit no. 28 | The Town of Palm Beach Zoning Code, A. Schedule of Lot, Yard and Bulk Regulations; |
| Aspinwall
Exhibit no. 29 | The Town of Palm Beach Zoning Code, B. Schedule of Use Regulations for Districts R-D(1), R-D(2), C-TS, and C-OPI; |
| Aspinwall
Exhibit no. 30 | The Palm Beach County Property Appraiser's Property Building Card for the Aspinwall property located at 3000 South Ocean Boulevard. |

Mr. Brindell mentioned that the building card addressed the appraisal issue that was discussed at the last meeting. Additionally, the property is zoned multi-family, although it is classified for appraisal purposes as commercial. Mr. Brindell requested those exhibits be included in the record on behalf of Mrs. Aspinwall's applications.

Mrs. Smith acknowledged that the Town Council accepted the exhibits, 1 through 30.

Mr. Brindell introduced Sandor Weinstock as a witness for Mrs. Aspinwall. Mr. Weinstock stated his home address was 525 South Flagler Drive, West Palm Beach, and his business address was 220 Sunrise Avenue, Palm Beach. Mr. Weinstock said he was a resident of Palm Beach County for forty-four years and was in the land development business for forty years. Mr. Weinstock stated he developed properties in the Town of Palm Beach for mostly residential (condominium) projects including 750 units located south of Sloan's Curve.

Responding to questions from Mr. Brindell, Mr. Weinstock replied he was familiar with Mrs. Aspinwall's property, and based upon his experience developing properties in the Town of Palm Beach, the property at 3000 South Ocean Boulevard was not suitable for the development of single-family, townhouse, or multi-family residential units. Mr. Weinstock explained the property is much too small and the location of the property next to the public beach is not desirable.

Mr. Weinstock said, for the same reasons, the property is not suitable to be developed for motel/hotel use or time-shares. The property is too small and does not have the amenities for a hotel or time-share. Additionally, the public beach is a detriment, and the property has no beach of its own.

Mr. Weinstock stated the property is suitable for the development of Town-Serving Commercial uses and that is the only use for the property. Mr. Weinstock reported that the Aspinwalls consulted with him regarding the uses of the property. Mr. Weinstock told the Aspinwalls many years ago that the property was not suited for residential use, and the neighboring properties in the immediate area would not be affected by any commercial use on the Aspinwalls' property. Mr. Weinstock said a commercial use of the property may be an advantage to the 3,000 residents who live south of Sloan's Curve who currently have limited commercial facilities in the area.

Mr. Wyett asked Mr. Weinstock if he was currently actively developing property in Palm Beach and when was the last time Mr. Weinstock built anything in Palm Beach? Mr. Weinstock replied he was not currently active but had built a single family home not too long ago. Mr. Wyett asked Mr. Weinstock if he had developed a condominium known as The Reef? Mr. Weinstock responded he had and he had built two condominiums on either side of Phipps Park. Mr. Weinstock said he did not consider Phipps Park the same type of public beach as is the Lake Worth Pier area. Mr. Wyett said he did not see many differences between public beaches. Mr. Weinstock replied Phipps Park has a very nice clientele that is different from Lake Worth where the pipe smoke at night wafts up towards the sky like a sea mist. Mr. Wyett reiterated that

fees are paid to park at the Lake Worth Beach and questioned if the definition of a "nice crowd is not really a personal opinion. Mr. Weinstock replied that all of his opinions are personal. Mr. Wyett believed that the same people go to Phipps Park as go to the Lake Worth Beach. Mr. Weinstock replied that was not true.

Mr. Wyett said he would like to establish the fact that Mr. Weinstock, on two separate occasions, built high quality, expensive condominiums--one completed sometime in the early '70's and one completed in the early 80's--and Mr. Weinstock had no problems selling expensive condominiums. Mr. Weinstock responded that, on the contrary, he used Phipps Park as a selling advantage, and had no commercial establishments in Phipps Park that affected the condominiums.

Mr. Randolph said he understood Mr. Weinstock's testimony to mean that all of the opinions expressed by Mr. Weinstock were personal opinion. Mr. Weinstock replied affirmatively. Mr. Randolph asked Mr. Weinstock if he had any expertise in professional planning--other than practical expertise as a developer--no degrees in planning? Mr. Weinstock replied negatively. Mr. Randolph clarified that Mr. Weinstock was not testifying at the meeting as a planner, and Mr. Weinstock does not have any degrees or memberships in any association relating to appraisals. Mr. Weinstock said he did not give expert advice regarding appraisals.

Mr. Randolph further clarified that Mr. Weinstock's statement regarding the development of the property for commercial use would not be detrimental to the Town was simply based upon his personal opinion. Mr. Weinstock agreed with Mr. Randolph's statement.

Mr. Randolph asked Mr. Weinstock if he would have the same personal opinion regarding the property to the south, the Beachcomber property, if the Beachcomber property became commercial property, because it is in a similar location, and that a commercial use would not be detrimental to the Town either? Mr. Weinstock responded that if a mixed use for the Beachcomber property was planned, his opinion would be very much the same.

Mr. Brindell asked Mr. Weinstock how large the properties were that Mr. Wyett referred to? Mr. Weinstock replied that the Reef was several acres in size, and the other project had 2,000 feet of ocean frontage. Mr. Weinstock noted that Mrs. Aspinwall's property is slightly under one acre, and that is the critical question. Mr. Brindell asked Mr. Weinstock if he were testifying as a professional developer, and his opinions and replies to the questions he answered were based on Mr. Weinstock, as a professional developer, would look at the property? Mr. Weinstock agreed with Mr. Brindell's statement.

Mr. Randolph said that Mr. Weinstock's opinions were based on speculation, and Mr. Weinstock had not made attempts to develop the property, either from a commercial standpoint or a residential standpoint. Mr. Weinstock agreed with that statement. Mr. Randolph asked Mr. Weinstock if he had an opinion regarding construction on the property under the terms of the Zoning Ordinance? Mr. Weinstock said he had an opinion, and it would be almost impossible to build residential units on this property under the terms of the Zoning Ordinance.

Mr. Brindell said Mr. Randolph's question was confusing. Mr. Randolph asked Mr. Weinstock if he knew what the Zoning Code requirements were and could residential units be physically built on the property? Mr. Brindell said Mr. Weinstock's answer related to the question if a developer, like Mr. Weinstock, would use this property for residential development. Mr. Brindell asked Mr. Weinstock if he, as a developer, would develop this property for residential use? Mr. Weinstock replied he would not.

Mr. Brindell asked Mrs. Pat Danielski, 241 Edmore Road, West Palm Beach, a realtor with Barclay's in Palm Beach, to provide testimony. Mrs. Danielski responded to questions from Mr. Brindell and stated she was experienced in marketing both residential and commercial properties in the Town and had a listing for Mrs. Aspinwall's property at 3000 South Ocean Boulevard during the period from March, 1992, until April, 1993. Mrs. Danielski stated a contract, contingent upon variances being granted by the Town, was written in April, 1993 for commercial use. Mrs. Danielski said she had absolutely no success obtaining buyers for the purposes of residential development. The listing price of the property was \$990,000 before the contract was signed, and the price offered by the contract purchaser was \$800,000, under the assessed valuation at the time. Mr. Brindell asked Mrs. Danielski if the property was listed prior to Barclay's listing? Mrs. Danielski replied that earlier listings attempted to market the property as multi-family by Robert List for \$1.35 million at least one year prior to Barclay's listing.

Mr. Brindell established that the price was originally set at \$1.35 million, reduced to \$990,000, and Mrs. Aspinwall subsequently accepted a contract for \$800,000.

Mrs. Danielski said the property was always marketed for residential using local advertising, advertising through out South Florida, advertising in real estate publications, and contacts through the local hotel business. Mrs. Danielski reported the responses received through her hotel contacts did not materialize after the interested parties saw the plat plan and the restrictions imposed by the Zoning Code. Mrs. Danielski added that the Lake Worth Public Beach had a negative effect on potential buyers. The property, in her opinion, is not suitable for building a hotel, because R-D(2) zoning allows twenty-four units which is under the break even point of eighty-five to one hundred units. Additionally, the property is not large enough to allow the necessary amenities for a hotel or a time-share facility. Mrs. Danielski stated the logical use of the property is for the development of Commercial-Town Serving use.

Responding to questions from Mr. Wyett, Mrs. Danielski replied the property was never marketed under R-D(2) zoning during 1992-93 because the radio station was a grand fathered use. Mr. Wyett noted that 1992-93 were recession years in the economy, not good years in the real estate industry, and were not representative of a true marketing period such

as 1996-97. Mr. Wyett continued that the entire strip of property from Sloan's Curve south was vacant for many, many years, and almost twenty years were required to develop the strip. A two year period of time is not sufficient to determine if the property can be sold under a R-D classification as proposed.

Mr. Randolph clarified with Mrs. Danielski that the property was included in the real estate multiple listing category as well as with Palm Beach and West Palm Beach Boards. Responding to questions from Mr. Randolph, Mrs. Danielski replied that Barclay's listing ran from March, 1992, to May, 1993. During that period, Mrs. Danielski reported only one contract was obtained; however, additional interest during that time did not result in any contracts. Mr. Randolph clarified with Mrs. Danielski that during the approximately fourteen month period, in addition to not having any residential contracts, only one contract was generated for potentially commercial use with addendums for Town Council approval.

Mr. Randolph reiterated that the property was marketed before Barclay's listing for \$1.35 million, and Barclay's advertised the property for \$990,000, ultimately receiving an offer of \$800,000. Mr. Randolph confirmed with Mrs. Danielski that the original 1972 purchase price paid by Mrs. Aspinwall was \$80,000.

John Jorgensen, Attorney representing the Beachcomber Motel, asked Mrs. Danielski what the asking price was for the property when it was marketed as residential? Mrs. Danielski replied the price was \$990,000. Responding the additional questions from Mr. Jorgensen, Mrs. Danielski said that absolutely no buyer would pay any price for the property if it were used for residential purposes. Mr. Jorgensen asked if the property could be sold for residential purposes if the price tag was \$100,000? Mrs. Danielski replied negatively. Mrs. Danielski reported the negative factors for residential use were: 1) no direct beach access; 2) a pumping station owned by the Town of Palm Beach is on the South Ocean Beach side of the property; 3) set backs for access to the property make it difficult to construct any residential structures; and 4) the frontage is only 100 feet, and all of these factors existed during the time the radio station operated in that location. Mrs. Danielski said nothing changed since the radio station went out of business.

Mr. Jorgensen verified with Mrs. Danielski that a contract was obtained on the property for \$800,000 that was conditioned on a variance be obtained for the purpose of building a restaurant on the location, and the Town Council granted a variance to construct a restaurant.

Responding to follow-up questions from Mr. Randolph, Mrs. Danielski replied she was a realtor and a broker, not an appraiser. Mrs. Danielski stated she had no planning experience and vicarious experience appraising properties. Mr. Randolph clarified that Mrs. Danielski's testimony reflected her experience as a realtor. Mr. Randolph asked Mrs. Danielski if she was aware, under the Town's Zoning Ordinance, of the number of residential units that could be placed on the property, zoned R-D(1)?

Mrs. Danielski replied ten to eleven units would be allowed, and R-D(2) zoning would allow thirteen. Mrs. Danielski continued that because of the configuration of the land and the setbacks required, the feasibility exists for only nine units.

Mr. Wyett asked if the nine units were based on a three story building? Mrs. Danielski replied affirmatively. Mr. Wyett asked what conditions would apply if the property were zoned R-D(2), thirteen units, with the right to apply to the Council for approval of two additional stories? Mrs. Danielski replied those facts were considered in her analysis; however, insufficient space existed to provide the needed amenities.

Mr. Wyett asked how the reduction from \$1,350 million to \$990,000 was determined? Mrs. Danielski replied she did not have the listing at \$1,350 million, and the current real estate picture at the time determined the price of \$990,000. Responding to Mr. Wyett's questions concerning setting the price based on the number of buildable units, Mrs. Danielski responded that the property was marketed in different ways, residential-multi family, and different factors were used to determine the asking price. Mrs. Danielski said the method of using the value of the land to "per unit" value was not used, because it did not work. Mr. Wyett pointed out that was Mrs. Danielski's opinion that form of pricing did not work. Mr. Wyett suggested the value of the land may have been less than \$990,000. Mrs. Danielski replied that the land may be worth less than \$990,000 because of the zoning.

Mrs. Danielski confirmed that the Town Council issued a variance on the contingency offer of \$800,000 for the property, and the Town Council's approval was based on twenty-one contingencies to the variance. Mrs. Danielski said it was possible the approval with the contingencies could work at the time the variance was granted.

Mr. Brindell questioned Bob Moore, Director of the Planning, Zoning & Building. Mr. Moore stated he had been employed by the Town since January, 1981, and Director of the Planning, Zoning & Building Department since February, 1982. Mr. Moore stated he was not a planner by training, education, or experience; however, his background is business administration. Responding to questions from Mr. Brindell, Mr. Moore said the commercial designation of property as shown on the Future Land Use map in the Town's Comprehensive Plan is devised to be compatible with the residential properties in Town. Mr. Brindell asked if the Plan showed virtually all of the commercially zoned property is adjacent to some residentially designated property? Mr. Moore agreed that the vast majority of the commercially designated property is adjacent or does abut residentially zoned property of one form or another.

Mr. Brindell asked Mr. Moore if he agreed that the commercial zoning districts in the Town's zoning code are designed to implement the Comprehensive Plan policies by providing further means to assure that the commercial properties in the Town will be compatible with nearby residential properties? Mr. Moore responded that is one of the goals of the plan; however, Mr. Moore could not cite the specific location of that goal in the plan. Mr. Moore stated the zoning code

implements the Comprehensive Plan.

Mr. Brindell asked Mr. Moore if the examples of commercial land uses as shown on the Future Land Use map that have designations of "commercial" and are examples of commercial uses abutting residential uses included the areas along and adjacent to Royal Poinciana Way, Royal Palm Way, North and South County Roads, Worth Avenue, and just north of the City of Lake Worth Beach property? Mr. Moore responded affirmatively. Mr. Brindell asked Mr. Moore if the smallest concentration of commercial land use designation in the Town's Comprehensive Plan as shown on the Future Land Use Map occurs south of Sloan's Curve and adjacent to the Lake Worth Beach property as compared to the concentrations of commercial uses in the Worth Avenue, Royal Palm Way, North and South County Roads, and Royal Poinciana Way areas? Mr. Moore replied affirmatively.

Mr. Randolph said he understood Mr. Moore's testimony stated the commercial uses adjacent to residential uses are, under the Comprehensive Plan, compatible to residential uses. Mr. Moore said that was his testimony. Mr. Randolph said that other residential areas abut or are contiguous to commercially zoned areas within the Town--other than the 3000 South Ocean Boulevard property. Mr. Moore concurred with Mr. Randolph's statement.

Mr. Randolph asked Mr. Moore, with his experience with the Town, if he had an opinion as to what happens to a residential area when a commercially zoned area is rezoned to allow a portion of the residential area to be rezoned commercially? Mr. Randolph asked Mr. Moore if the rezoning has a tendency to erode the residential character of the adjoining neighborhood? Mr. Moore replied he had not any experience with rezoning residential property to commercial property and could not answer the question with any authority.

Mr. Randolph noted that since Mr. Moore was employed by the Town in 1981, he had not seen the Town Council rezone any property from residential to commercial. Mr. Moore confirmed that statement. Mr. Randolph asked Mr. Moore if the Town Council had stated any reasons for the lack of rezoning. Mr. Moore replied he heard that the Town Council believed that the commercially zoned property was to support residential property. Mr. Moore remembered that commercially zoned property had been rezoned to residential but not the reversal.

Mr. Brindell referred to the commercially zoned Royal Poinciana area and asked Mr. Moore if that area included real estate offices, investment offices, a theater, cleaners, tailor, pet grooming, law office, bank, art gallery, dentist, doctor, flower shop, hair salon, and two restaurants? Mr. Moore agreed with that statement. Responding to Mr. Brindell's questions concerning the Palm Beach Towers, located to the south of Royal Poinciana Plaza, Mr. Moore replied the condominium was converted from hotel use to condominium use. Mr. Brindell confirmed with Mr. Moore that 44 Cocoanut Row, Palm Beach Towers, is shown as "residential" on the Comprehensive Plan. Mr. Moore stated the restaurant in Palm Beach Towers is a grand fathered use from the former hotel that was retained in a commercial space in the basement when the remainder of the building was changed to condominium use.

Mr. Brindell referred to the north side of Royal Poinciana Way, along Cocoanut Row, where the Palm Beach Biltmore and the Royal Poinciana South are located. Mr. Brindell asked Mr. Moore if those were both residential projects - multi family living? Mr. Moore replied the Biltmore was a hotel conversion into condominium, multi family use. Mr. Moore confirmed the location of a Publix supermarket across the street from the Biltmore and a number of commercial, retail shops, service type shops exist within a one block radius.

Mr. Brindell confirmed with Mr. Moore that Worth Avenue was one of the world's leading retail streets that attracts visitors from all over the world. Mr. Moore agreed with Mr. Brindell's statement that Golfview Road which immediately abuts Worth Avenue to the south, is a single family, residential street.

Mr. Randolph said, that in the event this property were not changed to commercial as applied for and would remain residential, supporting commercial services are located nearby to residents of the area as well as for the residential units that could be built at 3000 South Ocean Boulevard. Mr. Moore agreed with that statement.

Mr. Wyett referred to Exhibit 30 which states the building on the property is commercial, not the land, and therefore, no reference was made by the County Tax Appraiser's office to the land designation.

Mr. Brindell requested rebuttal time later in the meeting in addition to some closing comments.

Mr. Randolph said for the purposes of this hearing, the Town would like to incorporate and adopt the record of the previous meetings of the Town Council relating to consideration of this matter, including any and all evidence which was presented at those meetings. Mr. Randolph requested the Town Council President accept that recommendation. President Smith agreed to accept the record and that evidence.

Mr. Randolph questioned Paul Castro, the Zoning Administrator for the Town. Mr. Castro stated his area of expertise is zoning and the zoning code as it relates to the Comprehensive Plan. Mr. Castro said he has a masters degree from the University of Oklahoma in Regional and City Planning in addition to eight years of experience with various municipalities in zoning and comprehensive planning.

Mr. Castro, responding to Mr. Randolph's question, said he conducted a study of the zoning and land use history of 3000 South Ocean Boulevard. Mr. Castro said the property was purchased in 1972 as determined by information in the original application for rezoning and the Comprehensive Plan Amendment. Mr. Randolph asked what Mr. Castro's study

revealed related to the land use classification and the zoning of this property in 1972 when it was purchased by the applicant? Mr. Castro responded the land use designation in 1972 was multi family and the zoning was also a multi family residential zoning classification. Mr. Castro presented a 1972 zoning map that indicated the zoning for 3000 South Ocean Boulevard at that time. Mr. Castro noted that the zoning classification on the 1972 map was R-C for the subject property with a note that the zoning for that property changed in 1974 to an R-D(1) designation. Mr. Castro said the R-C and R-D(1) designations were and are still basically the same, residential and multi family uses with single family allowed.

Mr. Randolph requested the land use map be accepted as an exhibit for the Town. President Smith accepted the exhibit.

Mr. Castro stated he studied the land use of the area in 1972, and the land use designation for the property was a moderate density, residential. Mr. Castro reported that subsequent Comprehensive Plans designated the property as a multi family, residential property. The zoning classification changed slightly over the years. Responding to continued questions from Mr. Randolph, Mr. Castro stated he conducted a study related to the land uses abutting, and contiguous to the subject parcel at the same time he studied the subject property.

Mr. Randolph asked Mr. Brisson if he stated his experience and qualifications at a previous meeting where the subject property was discussed? Mr. Brisson responded affirmatively, and a copy of his curriculum vitae, consisting of five pages, was introduced into the record. Mr. Randolph asked Mr. Brisson if he recalled at the last meeting stating that from the standpoint of planning, a residential land use is a reasonable land use for the subject property. Mr. Brisson agreed with that statement, and that is still his opinion.

Mr. Brisson stated his firm has been engaged by the Town as planning consultants since 1974, and he personally has been involved with all of the planning efforts since 1977. Mr. Randolph requested Mr. Brisson to recall the history of his first involvement with the subject parcel from the standpoint of the land use plan. Mr. Brisson replied he was responsible, in large part, for preparing the Town's 1979 Land Use Plan, the Comprehensive Plan, as a result of the 1975 Comprehensive Planning Act, commonly known as the LGCPA. That act required the Town to prepare a Comprehensive Plan, and Mr. Brisson and other members of his firm worked on that particular plan. At that time, the Future Land Use Designation for the subject property was shown as one of the forms of multi-family development.

Mr. Randolph asked Mr. Brisson if he made a determination in 1979 as to the land use of the property as residential was reasonable for the subject parcel? Mr. Brisson replied he included the property as residential, and the property was zoned residential in an earlier plan. No changes in the surrounding area were noted to warrant any consideration of changing the land use of that particular parcel.

Mr. Randolph asked Mr. Brisson if he recalled the previous dates of land use plans that designated this property as residential? Mr. Brisson responded that the first plan he was aware of was prepared by Candue Fleissig in 1970, and the property was shown as multi-family/residential at that time. Mr. Brisson stated he had a copies of the 1970 plan, the 1974 plan prepared by his firm, the 1979 plan, and the 1982 plan, and all had the same land use designations, multi-family/residential. Mr. Randolph said he would like to introduce the 1970, 1974, 1979, and 1982 land use plans, showing the residential land use on this property, as exhibits. Mrs. Smith replied the exhibits were accepted.

Mr. Randolph asked Mr. Brisson if he were familiar with the land uses of the adjoining parcels in 1974 to 1979 when Mr. Brisson's company was working on the Comprehensive Plans? Mr. Brisson replied affirmatively. Mr. Brisson displayed the original presentation board used at the original Zoning Commission and Town Council meetings which showed the existing land uses on the property.

Mr. Randolph requested that Mr. Brisson point out on the sketch the uses that existed on the subject parcel and on the surrounding properties in the area as early as 1977 and advise if any changes have occurred from that date forward.

Mr. Brisson explained that Howard Johnson's Restaurant (presently Murray's Diner) was located on the north side of the Lake Worth bridge; north of that was the Howard Johnson's motel; across A1A on the east side, north of the Lake Worth Casino, a series of banks and offices were located (similar to the existing uses); Kreusler Park was located north of the Lake Worth Casino; the Casino area was essentially the same as it is now; the radio station, WPBR, was located on the subject property; and the Beachcomber Motel was located to the south of the radio station; immediately south of that was the Palm beacher, a multi-family condominium; and across A1A to the west was a multi-family project converted to time-share (recently converted back to a multi-family fashion). Mr. Brisson reported that all of the present uses were basically the same as when he first reviewed the area in 1977.

Mr. Randolph asked Mr. Brisson if he made a determination that a residential land use for the subject property was reasonable when he first viewed the property? Mr. Brisson responded that, having seen the previous Comprehensive Plans which designated the subject property "residential", no changes had taken place that would warrant a change, and a residential use was acceptable at that time.

Mr. Randolph asked Mr. Brisson if he had remained conversant since 1977 to date as to the land uses in the surrounding area and if it were his position that no substantive change has occurred?

Mr. Brisson replied that was his position, and no substantive changes have been made in the surrounding area.

Mr. Randolph asked if it would be correct to assume if the land use was reasonable in 1979 as residential and no substantive changes have occurred, then a land use of residential today would also be a reasonable use? Mr. Brisson responded affirmatively.

Mr. Randolph asked Mr. Brisson if change has occurred in the character of the area, which, in Mr. Brisson's opinion as a planner, would necessitate a change in the land use of subject property from residential to commercial? Mr. Brisson replied that no changes of any substance have been made in the area, and, therefore, no compelling reason exists to change the land use on that particular property.

Mr. Brindell noted that Mr. Brisson pointed out on the existing land use exhibit that on the north side of the Lake Worth property, commercial activity exists, i.e. diner, office building, and a Howard Johnson's. Mr. Brisson agreed with that statement. Mr. Brindell said that area was zoned C-TS (town-serving), except for the Howard Johnson's motel which is zoned R-D(2).

Mr. Brindell said that immediately north of the office building (C-TS zone), a multi-family residential project exists. Mr. Brisson concurred with that statement. Mr. Brindell asked Mr. Brisson if that use were inherently incompatible? Mr. Brisson replied, "not necessarily." Mr. Brindell stated that immediately to the north of the multi-family project, the Ocean Grand and Hilton hotels are located. Mr. Brisson agreed with that statement. Mr. Brindell asked if those were not commercial projects? Mr. Brisson responded the hotels were a non-residential use and allowable use in a residential district, but they are essentially a commercial style use. Mr. Brindell asked if the zoning code defined these two properties as "commercial"? Mr. Brisson replied he believed the Code did.

Mr. Brindell asked if the two hotels were allowed to have restaurants and lounges and provide banquet space, etc.? Mr. Brisson responded they were allowed to do that within the limitations of the zoning code itself.

Mr. Brindell asked if a hotel could exercise those uses to attract a substantial amount of traffic? Mr. Brisson replied affirmatively.

Responding to Mr. Brindell's question, Mr. Brisson said he stated "residential" is a reasonable use of Mrs. Aspinwall's property. Mr. Brindell asked Mr. Brisson from what perspective he considered that to be a reasonable use? Mr. Brisson responded he considered that to be a reasonable use from a planning perspective, because it was determined to be an acceptable use throughout many years and nothing has changed to indicate that it is not appropriate.

Mr. Brindell asked if Mr. Brisson concluded that a Comprehensive Plan change to "commercial" with a following rezoning to C-TS would be appropriate as represented in this year's report to the Zoning Commission? Mr. Brisson agreed with that statement. Mr. Brindell asked if it would be consistent with the overall package of policies in the city's Comprehensive Plan? Mr. Brisson replied it would be consistent with the plan, in his opinion.

Mr. Brindell said that one of the objectives of many planners is to attempt to have neighborhood type commercial associated close to residential users to reduce the amount of travel time by vehicles and to simply make it more convenient or, in some cases, to enhance the ambiance. Mr. Brisson responded that statement could be goal-driven in appropriate situations, and is not necessarily something that all communities are striving for in light of other objectives and goals those communities might have. Mr. Brisson said that situation would be considered acceptable.

Mr. Brindell asked Mr. Brisson if a significant amount of commercial situations where commercial abuts residential exists in the Town of Palm Beach? Mr. Brisson replied these situations have existed form many years. Mr. Brisson said the Comprehensive Plan is a plan for the future; however, the past must be recognized. Most of those existing situations built up over a time period of many years, and the Comprehensive Plan was not intended to change those situations; however, the Plan was intended to achieve the goals of the community and to limit increased intensity in commercial development throughout the Town.

Mr. Brindell asked Mr. Brisson if he agreed that close association of neighborhood type commercial uses with residential uses has generally worked well? Mr. Brisson replied that in the Town of Palm Beach with the manner the laws have been implemented and the planning, the uses have generally worked well.

Mr. Brindell noted that the Zoning Code required many of those types of commercial uses to undergo special exception review. Mr. Brindell asked if the special exception review is one of the vehicles the Town uses to insure that the relationship between commercial and residential remains compatible? Mr. Brisson responded that the relationship has worked when the best policy has been to allow that land to be commercial. The review has been used to mitigate any potential impacts, but it assumes a policy that particular land is acceptable and is generally desired by the community (the Town Council), at any given time, to be commercial.

Mr. Brindell asked that when the review has occurred, have not the controls been effective? Mr. Brisson replied he thought they were.

Mr. Randolph asked Mr. Brisson if he would agree that one of the Town's stated policies has been to maintain the residential character of the Town and not to allow commercial encroachment into the residential areas? Mr. Brisson agreed that had been included in every Comprehensive Plan that has been written for the Town.

Mr. Randolph asked if Mr. Brisson agreed, as a planner, that a risk of eroding the residential character of a residential district when a residential property is rezoned to commercial within that district? Mr. Brisson responded affirmatively and any move of that nature needs to be considered very carefully to be determined from both a planning and a policy standpoint to determine the appropriateness for the community.

Mr. Wyett, referring to Mr. Brisson's previous comments that the commercial/residential relationships in the Town have been satisfactory, asked if Mr. Brisson was informed of the problems the Town has with Bradley Place, Phipps Plaza, Jo's Restaurant (across from Town Hall), and the concerns of the residents from Gulfstream to Worth Avenue? Mr. Brisson responded affirmatively, and concurred that those concerns were addressed previously when he mentioned problems exist in individual areas. Future actions need to be reviewed for the possibility for problems in the areas where commercial use would be expanded.

Mr. Brindell noted that Mr. Randolph implied that a commercial use on Mrs. Aspinwall's property might represent an encroachment in the residential, and when that occurs, further encroachment can be anticipated.

Mr. Brisson replied Mr. Randolph did not cite any particular property but a general planning principle.

Mr. Brindell asked Mr. Brisson if he would consider changing Mrs. Aspinwall's property to "commercial" an encroachment of the implications that Mr. Randolph suggested? Mr. Brisson responded that he would probably not consider this an encroachment as far as Mrs. Aspinwall's property was concerned. Although, the question is interesting, that is not a major aspect in determining if this property should be changed to commercial.

Mr. Brindell confirmed with Mr. Brisson that the property immediately to the south of Mrs. Aspinwall's property is a motel which is a commercial activity that has existed for many years. Mr. Brindell said the property to the south of the (Beachcomber) motel is a condominium property. Mr. Brisson agreed with those statements. Mr. Brindell asked Mr. Brisson if Mrs. Aspinwall's property were changed to commercial, would he expect the condominium to the south to become some commercial operation because of that? Mr. Brisson replied he did not believe it probably would.

Mr. Brindell stated Mrs. Aspinwall's property, although currently designated and zoned residential, has, in fact, been used for a commercial activity for some fifty years. Mr. Brisson agreed with that statement.

Mr. Randolph asked Mr. Brisson if he had conducted any study to determine, under the existing Zoning Ordinance, the type, size, and number of units that could be placed on the property under the current land use of residential? Mr. Brisson replied his study including drawing up site plans for the property, using the conditions allowed under R-D(2) zoning, basically 13 units per acre. Mr. Brisson said his plans incorporated setbacks, lot coverages, and land development requirements in the Code. If two, two-story buildings were constructed on the site, thirteen units could be built with an average unit size of approximately 1,800 square feet. Mr. Brisson presented the example of six, two-bedroom units with 2,175 square feet, three one-bedroom units with 1,500 square feet, and four one-bedroom units with 1,463 square feet or an average of 1,800 square feet per unit.

Mr. Brisson said if a three story building, 35 feet high, were constructed, ten two-bedroom units with 2,175 square feet and three one-bedroom units with 1,450 square feet for an average unit size of approximately 2,077 square feet could be built.

Mr. Randolph asked Mr. Brisson if his conclusions were based on the applicable, existing zoning regulations? Mr. Brisson responded affirmatively.

Mr. Randolph asked Mr. Brisson if he were aware that an increase in story height would be allowed under a special exception? Mr. Brisson replied a special exception in the R-D(2) district allows a building to be either four or five stories high. Mr. Brisson said he had prepared a general analysis site plan for that possibility also. A special exception allowing five stories, 55 feet high, would also need a variance for at least one side yard setback because the setbacks in the R-D(2) district are based upon the height of the building. Mr. Brisson said his general site plan assumes a variance would be granted for one sideyard setback at ten feet. Mr. Brisson reported that all of the examples had thirteen units, and the variation was the size of the units.

Mr. Wyett asked Mr. Brisson if the sizes of the units he presented in his examples were similar to sizes of units south of Sloan's Curve? Mr. Brisson said he could not be sure of that.

Mr. Moore replied, to the best of his knowledge, that would be an average that would fall within the average of the many apartments in that area in his opinion.

Mr. Brindell asked Mr. Brisson if his plans provided any particular amenities? Mr. Brisson replied negatively; however his plans did provide for parking and meeting all of the requirements. Mr. Brisson agreed that his analysis was basically a series of hypotheticals based upon compliance with the Zoning Code, providing thirteen units, and the open space in the plans (40-60% of the site) which, in some instances depending upon the design, could be used for various amenities.

Mr. Brindell noted that some of Mr. Brisson's plans required a special exception or a variance. Mr. Brisson replied that the one five story plan required a special exception and a variance for a side yard setback. The remainder of the plans did not require any variances other than the fact the lot width is 100 feet and that would require a variance but not a special

exception.

Mr. Brindell asked Mr. Brisson if his plans were tested from a marketing point of view? Mr. Brisson replied he did not. A Comprehensive Plan or a Zoning Ordinance are not geared to a given market at a given time for a specific property. The market changes from year to year. Mr. Brisson said that a planner would like to make sure that the land is not undisputedly inappropriate; however, the market vagaries cannot be relied upon for one individual property, because they change from year to year.

Mr. Brindell said he wanted to be clear that the designs were not necessarily marketable. Mr. Brisson concurred that his designs was not intended to address that.

John Jorgensen, Attorney for the Beachcomber Motel, asked Mr. Brisson if he were familiar with policy 2.3 of the Comprehensive Plan which states in part that the Town would take all technical and administrative measures legally available to minimize the change or transition of existing low density areas or structures to more intensive use patterns? Mr. Brisson responded affirmatively.

Mr. Jorgensen asked Mr. Brisson if he agreed that if the Town were to deny this request for a change or amendment to the Comprehensive Plan, that denial would be consistent with the policy 2.3? Mr. Brisson replied it would be consistant.

Mr. Jorgensen asked if such a denial for a request for an amendment to the Comprehensive Plan would be one of the legal measures available to the Town for purposes of maintaining low density versus more intense use? Mr. Brisson replied it could be.

Mr. Jorgensen asked Mr. Brisson if he was aware of any changes or circumstances that would support the Town's decision to contradict policy 2.3 and to permit a more intensive use of this property based upon his review of the subject property? Mr. Brisson responded that he had not observed any changes in the surrounding land uses or physical conditions that would compel changes in the land use category to commercial uses. Mr. Brisson stated no compelling reasons exist for any change.

Mr. Jorgensen asked Mr. Brisson if he were familiar with policy 2.4 of the Comprehensive Plan which encourages town-serving commercial uses versus a commercial use which would encourage use by regional patronage as opposed to Town people. Mr. Brisson responded he was familiar with that section. Mr. Brisson concurred with Mr. Jorgensen's statement that, for purposes of reviewing this Comprehensive Plan amendment, at least a portion of the patrons who would be visiting any commercial use on the subject property would be regional patrons as opposed to town-serving. Mr. Jorgensen asked if such use by regional patrons would be contradictory to policy 2.4 of the Comprehensive Plan? Mr. Brisson responded that his report stated, in his opinion, it would not be contrary to the Comprehensive Plan to change the land use designation to commercial; however, it would also not be contrary to allow it to remain residential. Mr. Brisson said, that while both of those land uses may be acceptable under the Comprehensive Plan, it is important to remember that the Comprehensive Plan will frequently contain a number of land use designations which could be suitable for the same piece of property. Mr. Brisson said a determination must be made to see if anything has changed in the Town's policy or has anything changed in the surrounding land uses that would compel the Town to change it to commerical? Mr. Brisson stated he did not believe any compelling reason exists; however, he cannot state it would be contrary to the Plan to change it to commercial. This is essentially a policy decision for the Council to determine which is preferable and which of these uses allows the Town to arrive at its goals and objectives as it sees them. Both uses are acceptable.

Mr. Jorgensen asked Mr. Brisson if he agreed that a denial by the Town of this proposed amendment to the Comprehensive Plan would be consistent with the Town's Comprehensive Plan? Mr. Brisson replied affirmatively and stated the retention of the existing land use would be consistent.

Mr. Brindell asked Mr. Brisson if it were not correct that the definition of town-serving does not require that 100% of the users or patrons be town residents or town guests or town employees? Mr. Brisson agreed with that statement. Mr. Brindell explained the definition requires that more than 50% be in one of the three categories. Mr. Brindell stated, and Mr. Brisson agreed, that many of the visitors to Worth Avenue or neither town residents, employees, or guests of the Town.

Mr. Brindell asked Mr. Brisson if the Town needs to take into account the interests of the individual when evaluating changes to the Comprehensive Plan? Mr. Brisson replied the Town does; however, the Town would have to consider the individual property owner especially if the consideration of the land use category was changed to something that might adversely affect the property owner, i.e. a reduction in density or a reduction in intensity. Mr. Brisson said he did not believe the Town is compelled to consider the fact that the individual property owner's property has to be increased to his investment expectations, but rather than any action taken should not denigrate, except to the extent acceptable under the law, that particular property owner's interest.

Mr. Randolph said he wanted to make sure that the sketch plan, referenced by Mr. Brisson, portions of the 1970, 1974, 1979, and 1983 Comprehensive Plans, and the original map were introduced and accepted into the record. Mr. Randolph asked that Diane Jenkins address the Council.

Diane Jenkins, President of Jenkins Appraisal Services and a real estate appraiser, addressed the Town Council. Ms. Jenkins reported she has a Business Administration degree from the University of Florida, has been a real estate broker for 20+ years and appraised real estate during that entire time, is a State certified general real estate appraisor, has MSA

designation through the National Association of Master Appraisers, and is qualified in the Circuit Courts as an expert witness.

Mr. Randolph entered Ms. Jenkins' Curriculum Vitae into the record. Mr. Randolph asked Ms. Jenkins what task she was requested to perform regarding the subject property?

Ms. Jenkins replied she was asked to consider whether or not the subject property was reasonable for a residential use. Responding to Mr. Randolph's question, Ms. Jenkins stated the subject property suffers from certain constraints including a size constraint due to the 100 feet width, and location constraints because it is adjacent to a public parking area. Ms. Jenkins said she first considered if other residential uses have been developed adjacent to public parking areas. The second step was to consider if other sites that were only 100 feet wide were in the process of being developed with a multi-family type of use.

Mr. Randolph said he understood Ms. Jenkins considered the location and the constraints of this particular piece of property and other properties with similar constraints. Mr. Randolph asked if Ms. Jenkins considered any other issues?

Ms. Jenkins explained she reviewed the public records information to clarify issues related to the subject property. The tax records in the County describe the building's use as "office" and the land is described as multi-family. Ms. Jenkins inspected the subject property and considered the problems someone would have trying to develop the site. Ms. Jenkins added that a large part of her background was in residential development for fifteen years, and she held a building contractor's license which has expired. Ms. Jenkins said she was comfortable making this analysis with her background.

Ms. Jenkins presented two exhibit boards and a copy of a report from the Appraiser's office to be introduced into the record.

Ms. Jenkins said the Reef Condominium is located next to the Phipps Park parking area, and one building within the condo is located directly adjacent to the public parking area. Ms. Jenkins compared this to the subject property's location adjacent to the Lake Worth public parking area. Ms. Jenkins cited the Imperial House located adjacent to the Lantana Public Beach as another example and explained some of the differences. Ms. Jenkins identified the Boynton Beach park area where a very large residence was located next to the parking area. Ms. Jenkins reported that a very nice residential home was built on higher ground next to the parking lot at the Boynton Inlet. Additionally, four locations in that area were similar to the examples given.

Ms. Jenkins reported that sites exist along A-1-A that are located next to public facilities such as in Delray Beach.

Mr. Randolph asked that Ms. Jenkins' boards be introduced as exhibits for the Town.

Mr. Brindell said he would like to lodge an objection on the grounds of relevancy and materiality given that the sites are not all in Palm Beach.

Mr. Randolph asked Ms. Jenkins what the purpose was for conducting the research that she did? Did it relate to the determination to see if a market existed for residential units on the subject residential property?

Ms. Jenkins replied the assignment was to consider if a residential was or was not reasonable for the subject property, and, although it was not stated, for residential use to be reasonable, a market has to exist for residential use.

Ms. Jenkins continued that she attempted to locate other similar sites as they related to the 100 foot width and could be used for multi-family use.

Ms. Jenkins reported three very recent sales of properties that were very similar to the subject property and could have been used in conjunction with an appraisal to determine the value of the property. Ms. Jenkins presented handouts to the Mayor and Town Council that provided details for those three properties with similar situations in Delray, Highland Beach, and Boca Raton. Ms. Jenkins pointed out that parcels are actively moving in the market place with multi-family projects being constructed. Ms. Jenkins noted that the subject property obviously suffers from not having beach access behind it and having the Town's pumping station in the front. Ms. Jenkins pointed out that each site has different problems and constraints and as an appraisal issue, those differences are addressed and adjustments made. Ms. Jenkins said she did not appraise the property, but a market does appear to be there for the subject property comparing it to other recent sales in the area. Ms. Jenkins concluded there was a residential market for the subject property.

Mr. Randolph asked Ms. Jenkins if she examined the sale of any other units before making her determination?

Ms. Jenkins replied she considered other properties that were closer in proximity to the subject property; however, no land sales were made closer to the property because no vacant land is available. It was reasonable to go outside the subject property's area to find similar vacant land. Condominium sales throughout the various buildings in the area of the subject property were and continue to be active. The price range of these units is dramatic, and the sizes of the units vary from 700 square feet to approximately 5,000 square feet. Ms. Jenkins suggested the subject property, if developed, would fit somewhere in the middle of the area's existing units.

Mr. Randolph asked Ms. Jenkins to state her ultimate conclusion after conducting all of her research?

Ms. Jenkins responded that she concluded a residential market exists for the subject property. Ms. Jenkins, noting all of the sales activity, said it was too bad the property is not being actively marketed at this time. Ms. Jenkins said after doing a quick Multiple Listing search, she did not find the listing for the subject property.

Mr. Randolph asked Ms. Jenkins if she thought it was reasonable that the property could be developed with a residential use? Ms. Jenkins replied affirmatively.

Mr. Randolph asked Ms. Jenkins if she checked the Multiple Listing Service to determine if the property had been actively marketed within the last several years? Ms. Jenkins said she had done that and had checked the expired listings, but the listing did not come up. Ms. Jenkins suggested the listing might drop off the system after a certain amount of time.

Mr. Randolph asked Ms. Jenkins if she had an opportunity to review the affidavits that were submitted into evidence by Mr. Brindell, specifically, the affidavit by Carol Thompson, Aspinwall exhibit number 9? Ms. Jenkins replied affirmatively. Mr. Randolph referred to page 3 of that exhibit which indicated, "...given the Aspinwall property's location between two existing commercial uses, i.e. the Lake Worth Casino and the Beachcomber, commercial retail development represents an infill." Mr. Randolph asked Ms. Jenkins if she had an opinion regarding the accuracy of that statement?

Ms. Jenkins replied she did not look at the subject property as in "infill" property, because many of the communities along the beach have apartments, co-ops, hotels with no segregation between them. a motel may be a commercial designation under the Town's plan, but it is not perceived as a commercial use because motels are next to residential uses all of the time. Ms. Jenkins did not consider the Beachcomber as a "commercial" use in that sense.

Mr. Randolph, referring to the same affidavit, said a statement made by Carol Thompson said, "From a market and land planning perspectives, the site is logically a commercial site rather than a residential one." Mr. Randolph asked Ms. Jenkins if she had an opinion regarding the accuracy of that statement?

Ms. Jenkins responded that her research showed that logically the subject property is residential, because properties are developed residentially next to parking areas, and residential properties are currently active. Ms. Jenkins said it is a good site that should have residential possibilities.

Mr. Randolph, referring to an affidavit by Kimberly M. Anderson, Aspinwall exhibit number 11, asked Ms. Jenkins if she knew who Kimberly M. Anderson is? Ms. Jenkins responded affirmatively that she was a land planner with the firm of Gunster, Yoakley.

Mr. Randolph referred to page two of the affidavit and read the statement: "That 3000 South Ocean Boulevard is clearly not suited for a residential designation." Mr. Randolph asked Ms. Jenkins if she had an opinion regarding the accuracy of that statement?

Ms. Jenkins replied that Ms. Anderson looked at the property differently, but clearly from an appraiser's standpoint including values, the property is typical of residential use.

Mayor Ilyinsky asked Ms. Jenkins why Ms. Thompson and Ms. Anderson's conclusions disagreed with Ms. Jenkins' conclusion?

Ms. Jenkins replied that Ms. Thompson and Ms. Anderson were not appraisers but were land planners or marketing experts.

Mayor Ilyinsky asked Ms. Jenkins if the crime rate in an area was considered when an appraisal was made? The Mayor cited the high crime rate around the Lake Worth Casino area versus the lesser crime rates in the areas used for comparison by Ms. Jenkins.

Ms. Jenkins responded that frequently land sites have certain conditions that require certain remedies that would have to be done to develop sites. Ms. Jenkins said this site would probably require a wall along the property plus landscaping to develop the property, and perhaps variances for setbacks would be needed also. Ms. Jenkins, responding to comments from Mayor Ilyinsky, said she had not heard or seen any testimony from another appraiser regarding the evaluation of the property; however, a land planner and a marketing person expressed their opinions of the property.

Mr. Randolph presented the boards, Residential Units Adjacent to Public Parking Lots and Vacant Multi-Family Land Sales, used by Ms. Jenkins as part of the record.

Mr. McLendon asked Mr. Randolph if a nonconforming use is grand fathered for a property, was there a period of time, if that use were not used, that the permitted use would expire? Mr. Randolph replied the property could either be intentionally abandoned or unintentionally abandoned. If the property is intentionally abandoned, no period of time is necessary for the abandonment. If the use is abandoned for two years (or as stated in the Zoning Ordinance), then the use is abandoned and cannot be revived. Mr. Randolph said that in this particular case, the use for a radio station has been abandoned.

Mr. Brindell asked Ms. Jenkins who hired her to appear at this meeting? Ms. Jenkins replied Mr. Randolph contacted her; however, the Town of Palm Beach is her employer. Mr. Brindell confirmed with Ms. Jenkins that she was at the meeting

on behalf of the Town of Palm Beach to essentially oppose the application? Ms. Jenkins responded negatively and said that was not her assignment. Ms. Jenkins said if that had been the assignment, she would not have accepted it. Ms. Jenkins said the request was to look at the property and consider whether or not it was reasonable for a residential use. Ms. Jenkins added she would never accept an assignment where someone had already told her what her decision would be.

Mr. Brindell asked Ms. Jenkins if any of the three comparables used in her study were located in the Town of Palm Beach? Ms. Jenkins responded they were not, and as explained, she did not find anything in multi-family sales in the Town of Palm Beach.

Mr. Brindell asked if he were correct in noted that each of the three examples had ocean frontage? Ms. Jenkins responded they did, and she was aware that the Aspinwall property does not have ocean frontage, as mentioned in her presentation.

Mr. Brindell asked if the three development examples used represented Palm Beach and were they comparable to the situation regarding the Aspinwall property? Mr. Brindell asked if Ms. Jenkins was familiar with the City of Lake Worth's evaluation and potential re-development plans for the Lake Worth property? Ms. Jenkins responded she was not familiar with the City of Lake Worth's plan.

Mr. Brindell asked Ms. Jenkins if she was aware of the number of units that could be built on this property under the current zoning? Ms. Jenkins responded she initially questioned if a site plan had been prepared for the property and if thirteen units could be built on the site that would be allowed by zoning. Ms. Jenkins explained her request initiated the site sketches from Mr. Brisson, because she wanted to be sure that thirteen units could be built. Ms. Jenkins said she assumed the property was reasonable for residential use and did not value the site for thirteen, twelve, or whatever. Ms. Jenkins said her conclusion was that the property could be developed for multi-family residential use.

Mr. Brindell asked Ms. Jenkins what land price per unit the property would support if developed residential? Ms. Jenkins replied she had not appraised the property and could not provide a specific value without an appraisal. Responding to Mr. Brindell's question regarding a per forma on the property, Ms. Jenkins said she had used her own rough, evaluation numbers for reasonableness without doing any type of appraisal on the property.

Mr. Brindell noted that Ms. Jenkins did not work out the likely costs of the projects as shown on Mr. Brisson's site sketches, and make the determination that the land, in its particular physical location, could support those costs, once a sales price was affixed.

Ms. Jenkins responded that she considered the numbers that units were selling for, i.e. a twelve unit development with a land costs of \$1,200,000 which is a large base. Those units are \$350,000 in a pre-construction state and although they have site constraint problems due to the location, similar development could be done on this site in her opinion. Mr. Brindell replied that the units may be nice but questioned the marketability of such units on the Aspinwall property. Ms. Jenkins said she did not know and reason it would not be marketable, and a developer would be attracted to do such a project because very few sites exist along the beach area.

Mr. Brindell asked Ms. Jenkins how she would deal with the Lake Worth Beach property, which is not an amenity? Ms. Jenkins noted that she originally said this site has problems, and if these problems did not exist, the site would have been developed years ago. When most of the properties in an area have been developed, the remaining properties always have some problems, and this particular property would have to have a wall or some type of heavy landscaping for privacy. The backs of the units would probably be located toward the Lake Worth parking areas on the north and east.

Mr. Brindell asked Ms. Jenkins if she were aware that the subject property was on under contract from May, 1993, through December, 1995? Ms. Jenkins responded she heard that at this meeting. Mr. Brindell said that would explain why Ms. Jenkins could not find the listing in the Multiple Listing Service. Ms. Jenkins replied that she had also researched the pending properties in the Multiple Listing and did not find it.

Mr. Brindell asked if Ms. Jenkins was a land planner by training? Ms. Jenkins responded affirmatively.

Mr. Wyett said he took exception to the statement that the subject property is in a crime area, because he lived in that area seventeen of the twenty-two years he has lived in Palm Beach. Mr. Wyett added he heard of several plans for the re-development of the Lake Worth property, but he was not aware of any existing plan that is under consideration by the Lake Worth Council or Commission. Mr. Wyett said that no imminent plans for development seem to exist, although he had heard one of the plans called for apartment construction on the Lake Worth property or an office tower and mixed use.

Mrs. Smith asked if anyone from the audience would like to speak?

John Jorgensen, Attorney representing the Beachcomber Motel, said he would like to readopt the statements made on the behalf of the Beachcomber Motel at the January 3, 1996, Town Council meeting in opposition to the amendment to the Comprehensive Plan. Mr. Jorgensen said it appeared grounds were presented to have a amendment or change in the land use, and competent, substantial evidence or grounds were presented to deny. Mr. Jorgensen said that policy 2.3 under the Town's Comprehensive Plan which again discourages the Town from taking any actions to intensify the use of property and states the Town should attempt to use all technical and legal methods available to avoid making increases in density or intensity of use of the property. Mr. Jorgensen said the Town ought to be guided by that principle when deciding the case,

and the facts that are in mitigation against making a change to this amendment of the Comprehensive Plan should be considered. Mr. Jorgensen said that the Beachcomber Motel has been located in Palm Beach for over forty years and has a residential character in actual, practical use through its design for multi-family, although it is a motel. Mr. Jorgensen stated that no changes have occurred in the area since the original Comprehensive Plans were done by the Town, starting back in the 1970's. The Beachcomber Motel, the Aspinwall property, and the Lake Worth Casino are still functioning. The only change has occurred was the selling of the radio station license, and Mrs. Aspinwall is the one who is seeking to change the area. Mr. Jorgensen said Mrs. Aspinwall's hardship concerning the land is self-imposed. Mr. Jorgensen said Mrs. Aspinwall sold the radio station license, no longer has a non-conforming use, and wants to amend the Comprehensive Plan to allow the use to change from residential to commercial. This would be the only change in the area, and if that change were allowed to take place by the Town, the problem perceived by Mrs. Aspinwall would be shifted to the Beachcomber property. Mr. Jorgensen said the Beachcomber Motel strongly requests or suggests that the Town Council deny the amendment to the Comprehensive Plan, and this would be in keeping with the compatible land uses that are residential in character since no changes have occurred in the surrounding area that would warrant an amendment to the Comprehensive Plan from residential to commercial.

Mr. Rodney Fink was sworn in by the Town Clerk.

Mr. Rodney Fink, Co-Chairman of the Citizens' Association South of Sloan's Curve, reported the Association stated their feelings concerning the change at their January 3rd meeting. Mr. Fink said the Association's members are strongly opposed to the change. They are concerned with the security problems, the increase in traffic that would result, the noise from possible late hours, the disruption of a residential feeling, and the general disruption of the ambience of the entire neighborhood.

Mr. Brindell concluded that 3000 South Ocean Boulevard is a very difficult piece of property. Mr. Brindell said that after people have lived in an area, they do not want any change, especially if it does not cost them anything to maintain the status quo. Mr. Brindell added that many people are inclined to allow others to absorb the costs of the luxury of status quo, and that is one of the difficulties in this case and evaluating the proposal and the opposition to it. Mr. Brindell stated that this property has, in fact, been a commercial operation for over fifty years. The property next door, the Beachcomber, has been commercial for nearly that long or longer. Clearly, the Lake Worth Beach operation is a commercial operation. Comparable property, on the opposite side of the Lake Worth property, is zoned C-TS and abuts residential with apparently no problem. Mr. Brindell said very little Commercial-Town Serving zoned property exists south of Sloan's Curve and 27% of the Palm Beach residents live south of Sloan's Curve. Mr. Brindell continued that commercial zoning is a logical use for the subject property, and the residents south of Sloan's Curve would be better served by the addition of C-TS zoned property. Mr. Brindell stated nothing is wrong with having Commercial-Town Serving adjacent to residential uses as it occurs throughout the Town and is one of the reasons the Town is what it is. The link has always been the Town Council and the Zoning Code in the very generous use of the Special Exception process.

Mr. Brindell stated that Mrs. Aspinwall as attempted to sell the subject property, and the price has been dramatically reduced. Mr. Brindell pointed out the County's appraised value is higher than the \$800,000 asking price, and property appraisers tend not to be overly optimistic from a market's point of view. Mr. Brindell said from all of the points of view of the ability to control impacts of Commercial-Town Serving, relative to the property's tremendous site constraints and the comparables for this property, as pointed out by Ms. Jenkins, all are beach front properties, and this property is not. Mr. Brindell said parking lots, public swimming pools, and public fishing piers next to properties are not considered amenities. Mr. Brindell said he had not heard anything from the interested parties who spoke at the meeting saying that "some horrible thing" will happen on this property if it is commercial that would not be adequately dealt with by the Town Council under the Zoning Code and the Special Exception process.

Mr. Brindell said a small amount of commercial activity on this site would not affect properties that are over 300 feet south of the site with a motel in between which the Town Council is considering expanding by changing the zoning to R-D(2) which would allow thirty or forty additional units on the property including a restaurant and a lounge. Mr. Brindell warned that although the Beachcomber may be a low scale operation presently, the four acre site could be re-developed as a large scale operation.

Mr. Brindell stated that Mrs. Aspinwall could not find a developer that wanted to develop her one acre property as a motel or hotel. Mr. Brindell said the Town Council could control any perceived negative impacts if the property were developed, and he did not think any basis existed for those fears to become reality. Mr. Brindell asked the Town Council to make the difficult decision to grant the request to amend the Comprehensive Plan to commercial and subsequently to Commercial - Town Serving zoning on this property. Mr. Brindell summarized the history of Mrs. Aspinwall's property regarding the attempts to rezone the property.

Mr. Randolph said the Town Council, acting as a quasi-judicial body, had heard all of the evidence, and the determination should be based on the evidence presented. In weighing the evidence, Mr. Randolph said the Council must consider the expert testimony that was heard. Other testimony that was given could be considered; however, non-expert testimony has been determined by the courts not to be, by itself, competent, substantial evidence.

Mr. Randolph advised that the public discussion should be closed and have discussion among the Council members to arrive at a determination. The determination will be on the basis of the Town Council sitting as the Local Planning Agency with a recommendation as to whether or not to grant the petition to amend the land use plan, and any motion that is made, either for the amendment or against the amendment, should incorporate findings.

Mr. Wyett said having resided at 2500 South Ocean Boulevard for many years, he did not expect to fall out of bed to buy some groceries, sundries, or gasoline or whatever may be on that site. Mr. Wyett continued that he went to Manalapan or across the Lake Worth Bridge to make those types of purchases and did not think that any compelling need would be served by having commercial space added to this particular area of Town.

Mr. McDonald asked Mr. Randolph if anyone qualified as an expert witness who was heard at the meeting?

Mr. Randolph replied that Diane Jenkins, Bill Brisson, Paul Castro, Bob Moore, and Mr. Brindell presented some witnesses he considered experts in the areas of real estate and development. Mr. Brindell added that Sandy Weinstock is considered an expert in the area of residential development and Mrs. Danielski is an expert as a realtor in terms of marking property.

Mr. McDonald asked Mrs. Danielski if her contract expired in 1993? Mrs. Danielski replied the property was under contract and the property was not marketed while under contract.

Mr. Shaw mentioned that the Town has other residential areas that abut parking areas, and the values of those properties have not been affected. Mr. Shaw gave the examples of Worth Avenue and also in the north end of Town where beach area definitely exists. Mr. Shaw said the subject property was not the only property in Town that has that feature or restraint, and the Town has an obligation, as pointed out under policy 2.3 of the Comprehensive Plan, to maintain a low density and not to expand the use. Mr. Shaw said Mr. Brindell mentioned that the Council is always open to suggestions if a concrete plan were presented to the Council rather than speculation. Mr. Shaw said a key point was that the Council does not know what is planned for the subject property. The property has been considered residential in a residential area, and no justification has been presented to shift from that position without some cause and use that would come together.

Mr. Wyett agreed with Mr. Shaw, stating that there were a number of locations in the Town where residences adjoined parking areas, that had not been mentioned by the expert.

Mr. Wyett made a motion that a petition to amend the Comprehensive Plan by way of a small scale land use amendment not be approved, for the reason that the evidence presented did not support such change, indicating that the residential land use classification on the property was reasonable when first imposed and was still reasonable today. The petitioner had purchased the property when such residential land use was in place, and there had been no substantial change in the character of the property or surrounding properties from 1972 to today.

Mr. Shaw seconded the motion. On roll call, the motion carried unanimously.

VII. ANY OTHER ITEMS

Mr. Robert Moore, Director of Building and Zoning, addressed the Town Council, stating that the Evaluation and Appraisal Report had been submitted, and he asked that the members of the Town Council study it, as it would be the subject of the 5:01 P.M. meeting on February 5, 1996. Mr. Moore commented that two other public hearings would be on April 9, 1996 at 5:01 P.M., and April 23, 1996 at 5:01 P.M.

VIII. ADJOURNMENT

Mr. McDonald made a motion to adjourn the meeting; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

TOWN COUNCIL MEETING OF JANUARY 22, 1996 (reconvened)

I. CALL TO ORDER AND ROLL CALL

The meeting was reconvened by President Smith at 7:25 p.m. in the Town Council Chambers. On roll call the following elected officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Jack McDonald, Councilmen Leslie Shaw, Sam McLendon, and Allen Wyett. Also in attendance were Town Manager Robert Doney, Attorney John Randolph, Director of Planning, Zoning & Building Robert Moore, Zoning Administrator Paul Castro, and Town Clerk Mary Pollitt. William F. Brisson, Consultant from Adley, Brisson, Engman, Inc., was also in attendance.

II. PROOF OF PUBLICATION

Town Clerk Pollitt attested to the proof of publication.

III. APPROVAL OF AGENDA

Mr. Shaw made a motion to approve the Agenda. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

IV. COMPREHENSIVE PLAN REVIEW

- a. Small Scale Plan Amendment - 3000 South Ocean Boulevard, from Multi-Family High Density to Commercial (FIRST READING OF ORDINANCE NUMBER 2-96)

Town Attorney Randolph stated that the question was whether the Town Council wished to accept or reject the recommendation of the Local Planning Agency. He suggesting giving Mr. Brindell the opportunity to address the issue.

Mr. Brindell stated that he would like to include as part of the record all of the exhibits and testimony presented on behalf of Mrs. Aspinwall on January 3, 1996, as well as the exhibits and testimony presented earlier in the day, (January 22, 1996) preceding the current meeting.

Mr. Randolph pointed out that the Town of Palm Beach should do the same in adopting the previous record and testimony; then the appropriate procedure would be for the Town Council to accept or reject the recommendation of the Local Planning Agency. If the recommendation was accepted, the reasons for doing so should be incorporated within the motion.

Mrs. Smith represented that the Town would accept the material of Mr. Brindell, we well as the material of the Town in this issue.

Mr. Shaw made a motion to accept the recommendation of the Local Planning Agency. Mr. McDonald seconded the motion.

Mr. Randolph clarified that the motion was to accept and adopt the recommendation of the Local Planning Agency, incorporating the findings made within that recommendation.

On roll call, the motion carried unanimously.

V. PROPERTY REZONING APPLICATIONS

- a. 3000 South Ocean Boulevard, R-D(1) to C-TS, R-D(2) or C-OPI (FIRST READING OF ORDINANCE NUMBER 3-96)

Town Attorney Randolph stated that the applicant had petitioned for a change in the land use plant, to commercial; in the event the land use plan change was accepted, for a rezoning to either C-TS or C-OPI. There had also been some consideration given at previous hearings to give consideration to rezoning the property from R-D(1) to R-D(2), in the event the property was not zoned commercial. Mr. Randolph noted that the applicant had not made an application to amend the zoning from RD-1 to RD-2, in the event the property was not zoned commercial. Mr. Randolph noted that the applicant had not made an application to amend the zoning from RD-1 to RD-2, but had submitted the application for commercial use. He suggested that before moving forward on the rezoning, it should be determined what the applicant would find acceptable.

Mr. Brindell stated that it would be helpful, for the record, if there were some clarification of the applications--the vote had been not to grant the application to amend the Comprehensive Plan to commercial; there was another application for rezoning to C-TS.

Mr. Randolph replied that if the Comprehensive Plan was not amended, then the Town Council could not grant the petition to rezone the property to a commercial land use classification. There was no need for a specific motion on that, because there was no authority of the Town Council to rezone it to commercial.

Mr. Brindell stated that the Town Council could move to deny the application, and that completion was needed in this regard.

Mr. Randolph stated that could be done within a Zoning Ordinance Amendment, which would rezone the property from R-D(1) to R-D(2), if the petitioner found that acceptable.

Mr. Brindell replied that since the R-D(2) Rezoning Proposal was a Town initiated proposal, he believed it would be cleaner to have the Town Council vote to deny the application for rezoning, and then take up the Town initiated request for rezoning. He explained that the appeal time on the Comprehensive Plan would begin tomorrow, and it would be much more logical if the denial of the two petitions had the same appeal time running from the same date, and not become involved with another action which may be taken that would incorporate a different appeal time.

Mr. Randolph explained that he had no objection that a motion be made in regard to the petition for rezoning; that the rezoning application for commercial be denied on the basis of the previous action of the Town Council, that it was not appropriate to amend the Land Use Plan.

Mr. Shaw clarified that the option, at this point, was to change the land use from R-D(1) to R-D(2), and questioned if the increased use of the land would be permitted if the use was left as R-D(1)?

Mr. Moore replied negatively.

Mr. Brindell repeated that he would like to have the record clear as to the disposition of the rezoning application.

Mr. Randolph clarified that, in order to tidy things up, Mr. Brindell would like a motion from the Town Council denying the application for rezoning from R-D(1) to C-TS on the basis of the previous decision made by the Town Council that the Comprehensive Plan not be amended.

Mr. McDonald made a motion to deny the application for rezoning from R-D(1) to C-TS; seconded by Mr. Shaw. On roll call the motion carried unanimously.

Mr. Wyett made a motion to change the zoning from R-D(1) to R-D(2); seconded by Mr. McDonald.

Mr. Randolph stated that he wanted to make certain that there was no objection to the change, because it had not been requested by Mr. Brindell and his client.

Mr. Brindell confirmed that had not been asked for; they had stated their position regarding the appropriate rezoning for the property, and he wished to incorporate into the record that the Town had initiated the current rezoning proposal.

Mr. Randolph explained that he did not want to face a claim at a later time that the applicant had not applied for an R-D(2) zoning classification, and considered it inappropriate for the Town Council to move forward with such an application. He added that he did not want an argument that the Town did not have the right to rezone the property to R-D(2) because there had not been an application for that.

Mr. Brindell expressed that Mr. Moore had testified in the prior proceeding that it was not the recommendation of Town Staff to leave the property in R-D(1).

Mr. Moore responded that the staff had not recommended that the property be left in R-D(1).

Mr. McLendon remarked that it seemed unnecessary to rezone what the applicant had not asked for, and suggested that the property be left at R-D(1).

Mr. Wyett asked Mr. Randolph for his recommendations.

Mr. Randolph stated that he had no objection to the Town giving consideration to rezoning the property from R-D(1) to R-D(2), because he believed there was evidence to support such a change, and there had been appropriate advertising. He was attempting to avoid a situation where the application would attack the change from R-D(1) to R-D(2) on the basis that it had not been part of the application.

Mr. McDonald asked the Town Clerk to read his motion.

Town Clerk Pollitt stated the motion read as recommending changing the property from R-D(1) to R-D(2).

Mr. Moore stated that he would read the recommendation from the consultant and Town Staff:

"The question of what to do with 3000 South Ocean Boulevard is less clear, nevertheless, it is our opinion that any one of the three alternative zoning districts addressed above, R-D(2), C-TS, or C-OPI, is more appropriate than the present R-D(1) designation."

He clarified that there had been no recommendation from Town Staff to leave the property zoned as R-D(1).

Mr. McDonald restated that he recommended approval of the change of use, based on the staff report. The motion was seconded by Mr. Wyett.

Mr. Randolph read the Ordinance 3-96:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE 2-74, AS AMENDED, THE OFFICIAL ZONING ORDINANCE OF THE TOWN OF PALM BEACH, APPROVING A ZONING CHANGE FOR CERTAIN REAL PROPERTY ON THE EAST SIDE OF STATE ROAD A-1-A, IMMEDIATELY SOUTH OF THE CITY OF LAKE WORTH PIER PROPERTY, FROM A ZONING DESIGNATION OF RD-1, MODERATE DENSITY RESIDENTIAL, TO RD-2, HIGH DENSITY RESIDENTIAL; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR SEVERABILITY, PROVIDING AN EFFECTIVE DATE.

On roll call the motion carried unanimously.

- B. 3024 South Ocean Boulevard, R-D(1) to R-D(2) (FIRST READING OF ORDINANCE NUMBER 4-96)

Mr. Randolph read Ordinance 4-96:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ORDINANCE 2-74 AS AMENDED THE OFFICIAL ZONING ORDINANCE OF THE TOWN OF PALM BEACH, APPROVING A TOWN INITIATED APPLICATION FOR A ZONING CHANGE FOR CERTAIN REAL PROPERTY LOCATED ON THE EAST SIDE OF STATE ROAD A-1-A, APPROXIMATELY 100 FEET OF THE CITY OF LAKE WORTH PIER PROPERTY, FROM A DESIGNATION OF RD-1, MODERATE DENSITY RESIDENTIAL, TO RD-2, HIGH DENSITY RESIDENTIAL; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. John Jorgenson, representing Beachcomber Motel, graciously accepted the Town initiated rezoning of the property.

Mr. Wyett made a motion to accept Ordinance 4-96; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

C. 2880 South Ocean Boulevard, 2875 South Ocean Boulevard, Richard C. Kreusler Memorial Park, C-T.S. to C-OPI (FIRST READING OF ORDINANCE NUMBER 5-96)

Mr. More stated that there was o action needed on this item.

VI. FIRST READING OF ORDINANCE NUMBER 1-96:

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 SECTION 6.21, "OFF-STREET PARKING" BY PROVIDING SHARED PARKING PROVISIONS IN THE C-T.S., C-WA AND C-OPI COMMERCIAL ZONING DISTRICTS, BY AMENDING SECTION 2.10 "DEFINITIONS," BY ADDING NEW DEFINITIONS FOR BAR/LOUNGE AND NIGHT CLUB, BY AMENDING SECTION 4.20 B. "SCHEDULE OF USE REGULATIONS" BY ADDING A NEW ITEM (18) IN THE SPECIAL EXCEPTIONS COLUMN IN THE C-T.S. DISTRICT TO INCLUDE NIGHT CLUBS AND BY CHANGING "DRINKING ESTABLISHMENTS" TO "BARS AND LOUNGES" IN ITEM 1. PERMITTED USES, BY AMENDING SECTION 4.20 A. "SCHEDULE OF LOT, YARD AND BULK REGULATIONS: BY ADDING NEW FOOTNOTES (28) AND (29) APPLICABLE TO THE R-A AND R-B DISTRICTS WHICH PROVIDES FOR SETBACKS, LOT COVERAGE AND OPEN SPACE BASED ON THE LOTS SIZE AND DIMENSION; BY ADDING A NEW PROVISION FOR SIDE YARD SETBACKS FOR LOTS IN THE R-A AND R-B DISTRICTS THAT ARE 150 FEET OR MORE IN WIDTH; BY AMENDING SECTION 4.20 B. "SCHEDULE OF USE REGULATIONS" BY FURTHER LIMITING PRIVATE SOCIAL, SWIMMING, GOLF, TENNIS AND YACHT CLUBS IN THE R-A, R-A, AND R-B DISTRICTS; BY DELETING PRIVATE SOCIAL, SWIMMING, GOLF, TENNIS AND YACHT CLUBS I THE R-C, R-D(1) AND R-D(2) DISTRICTS; BY AMENDING SECTION 6.40(1) "SPECIAL EXCEPTIONS" BY PROVIDING MORE DEFINITIVE CRITERIA FOR TOWN-SERVING REQUIREMENTS; BY AMENDING SECTION 4.20 A. "SCHEDULE OF LOT, YARD AND BULK REGULATIONS" FOOTNOTE #27, BY CLARIFYING SPLIT LEVEL REGULATIONS IN THE "R" DISTRICTS; BY AMENDING SECTION 6.21 "OFF-STREET PARKING" SUBSECTION (h) UTILIZATION OF STRUCTURES (1)" BY PROVIDING INCENTIVES FOR TOWNHOUSE OR MULTI-FAMILY DEVELOPMENT IN THE r-C, r-D(1) AND r-D(2) IF REQUIRED OFF-STREET PARKING IS PROVIDED UNDERGROUND OR WHOLLY UNDER BUILDING; BY AMENDING SECTION 6.21 "SCHEDULE OF OFF-STREET PARKING REQUIREMENTS" BY INCREASING OFF-STREET PARKING REQUIREMENTS FOR MULTI-FAMILY DEVELOPMENT IN THE R-C, R-D(1) AND R-D(2) DISTRICTS; BY AMENDING SECTION 5.11 "EXISTING BUILDING LOTS" BY ALLOWING SINGLE FAMILY DEVELOPMENT ON NONCONFORMING LOTS IN THE R-A, R-A AND R-B DISTRICTS, PROVIDED SITE PLAN REVIEW APPROVAL IS GIVEN FOR PLATTED LOTS, AND SPECIAL EXCEPTION AND SITE PLAN REVIEW APPROVAL IS GIVEN FOR UNPLATTED LOTS; BY AMENDING SECTION 5.22(d) "PERMITTED EXCEPTIONS TO HEIGHT REGULATIONS" TO ALLOW TOWERS IN THE R-B DISTRICT AS AN ARCHITECTURAL FEATURE; BY AMENDING SECTION 5.22 "PERMITTED EXCEPTIONS TO HEIGHT REGULATIONS" TO PROVIDE A SEPARATE REGULATION FOR EXEMPTIONS FROM THE MAXIMUM HEIGHT REQUIREMENTS IN THE R-A, R-A AND R-B DISTRICTS AND ALLOW AIR CONDITIONING UNITS NOT EXCEEDING FOUR (4) FEET IN HEIGHT IN ALL "R" DISTRICTS; BY AMENDING SECTION 5.31(a) AND 5.32(a) TO INCLUDE ACCESSORY BUILDINGS IN THE EXISTING PROVISIONS FOR ALLOWING BUILDING ROOF EAVE OVERHANGS AND ARCHITECTURAL FEATURES INTO SETBACKS I THE R-A, R-A, R-B, R-C, R-D(1) AND R-D(2) DISTRICTS; BY AMENDING SECTION 6.12 "SWIMMING POOLS" BY REDUCING THE STREET SIDE YARD AND STREET REAR YARD SETBACKS FOR SWIMMING POOLS AND REQUIRING BUFFERING HEDGES AND WALLS; BY AMENDING SECTION 5.36(b) "GARDEN WALLS AND FENCES" BY INCREASING THE SETBACK FOR GATEPOSTS AND GATES FROM THE STREET; BY AMENDING 4.20, SCHEDULE B. "SCHEDULE OF USE REGULATIONS IN THE C-WA DISTRICT TO ELIMINATE THE SUNSET PROVISION FOR THE WORTH AVENUE DESIGN GUIDELINES; BY AMENDING SECTION 2.10 "DEFINITIONS" BY CHANGING THE DEFINITION TERM "CHURCH" TO "HOUSE OF WORSHIP" AND ALLOWING HOUSES

OF WORSHIP TO BE LOCATED IN LEASED SPACE; BY CHANGING THE DEFINITION OF DINING ROOM TO INCLUDE SERVICE TO PRIVATE CLUB MEMBERS AND THEIR BONA FIDE GUESTS; BY AMENDING SECTION 5.50 "STATUTE AND/OR SCULPTURE" TO EXCLUDE STATUTES AND/OR SCULPTURES FROM THE SITE PLAN REVIEW REQUIREMENT AND REQUIRING EITHER ARCHITECTURAL OR LANDMARK COMMISSION APPROVAL; 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.

Mr. Randolph asked if the title incorporated all of the changes that were anticipated, and leave in the title anything that was not passed by the Town Council at the last hearing?

Mr. Paul Castro, Zoning Administrator, replied that the ordinance title reflected the action taken by the Town Council at the meeting of January 3, 1996.

Mr. Randolph ascertained that the title was correct, and that no deletions should be made.

Mr. Moore and Mr. Castro replied affirmatively.

Mr. Adrian Winterfield addressed the Town Council, respectfully inviting the attention of Town Council to the fact that there was a proposed definition for private club discussed by the Zoning Commission, and since they had been unable to reach a conclusion, it had been put off until next year. He remarked that it seemed bizarre to rezone to prohibit something when what was being prohibited was unclear, because the definition may be changed from this year to next year. He presented the argument that any prohibition of clubs was an unnecessary overreaction, and if memory served him, he perceived that the prohibition had been limited to residential zones, and he suggested that the best way of handling this would be to postpone the matter until next year, since there was no danger of compromising any position because it would obviously be zoning in progress. It would be unlikely for any club to make application between this time and the zoning season of next year, and it would be far more difficult to change once a decision had been made. He respectfully called attention to the definition of house of worship, and declared that he had submitted an alternative entitled religious use, and concluded that the two should be considered.

Mr. Carlos Martin, architect, commented on Item 18, which was on the R-A, R-A, and R-B districts for residential, which did not include the structure for housing elevators and stairways, or skylights in the permitted exceptions to height regulations. Mr. Martin questioned the constraining of these types of architectural features, and suggested that it be reviewed.

Mr. Moore replied that the remarks of Mr. Martin were well taken, however, architects had attempted to use the ordinance as it now existed in order to exempt themselves from the height requirements by calling elevator towers an additional architectural feature in order to gain extra height. There had been a problem with that, and the Zoning Commission had considered this when making changes.

On roll call the motion carried unanimously.

Mr. Randolph reported that Mr. Castro had presented him with a deletion from the title: 19 lines down, "PUD, C-T.S., C-WA, and C-PC" should be stricken from the title.

Mr. Moore replied that the language of the ordinance itself incorporated that.

Mr. Shaw agreed to incorporate that in his motion, and Mr. Wyett agreed to incorporate that in his second.

VII. ANY OTHER ITEMS

There were none.

VIII. ADJOURNMENT

The meeting was adjourned at 8:00 p.m.

Mary A. Pollitt
Town Clerk