MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 6, 2000
RE: ZONING

I. CALL TO ORDER AND ROLL CALL

President Lesly Smith called the meeting to order at 9:40 a.m. for the 1999-2000 Zoning Hearing in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: President Lesly S. Smith, President Pro-Tem Allen S. Wyett, Councilman Jack L. McDonald; and Councilman Leslie A. Shaw. Councilman Samuel C. McLendon arrived at the meeting at 9:50 a.m., and Mayor Paul R. Ilyinsky was absent from the meeting.

Others attending all or part of the meeting were: Town Manager Robert J. Doney; Town Attorney John C. Randolph; Director of Planning, Zoning and Building Robert L. Moore; Zoning Administrator Paul W. Castro; Public Works Director Albert P. Dusey; Fire Marshal John T. Wandell; Assistant Police Chief Michael S. Reiter; Planner/Projects Coordinator Timothy M. Frank; and Town Clerk Mary A. Pollitt. Town Consultant William S. Brisson from Adley, Brisson, Engman, Inc. was also present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. The Pledge of Allegiance was led by President Lesly Smith.

III. APPROVAL OF AGENDA

A motion was made by Councilman Shaw to approve the agenda and was seconded by President Pro-Tem Wyett. On roll call, the motion passed 4-0 as Councilman McLendon had not yet arrived at the meeting.

IV. PROOF OF PUBLICATION

Responding to a question from President Smith regarding proof of publication, Town Clerk Pollitt verified that proof of publication was received.

V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC

President Smith explained each item would be considered individually, and each person wishing to speak should raise his or her hand. She requested that staff comments be heard before any comments from the audience were raised.

VI. 1999-2000 ZONING PROPOSAL STAFF REPORT, ITEMS 2 THROUGH 17 THE RECOMMENDATIONS AND REPORT OF THE TOWN ZONING COMMISSION, DATED DECEMBER 2, 1999, ON ITEMS 2 THROUGH 17

Robert Moore, Director of Planning, Zoning & Building, said that Attorney James Brindell would present the Breakers' P.U.D., as presented to the Zoning Commission, for the approval by the Town Council.

At the December 2, 1999 Zoning Commission meeting, the Commission's Report was reviewed and approved for transmission to the Town Council for consideration. At that meeting all interested persons were given an additional opportunity to be heard, and after due consideration, the Zoning Commission made the following recommendations on the proposed amendments to Chapter 134, ZONING, of the Code of Ordinances of the Town of Palm Beach which are identified in the "1999-2000 Zoning Proposal Staff Report." The changes and/or additions to the existing Code which were recommended by the Zoning Commission are "underlined", and deletions are identified by "~~strikeout~~". Changes made to the proposals by the Zoning Commission have been *identified in "bold" type.*

Item 2. On a vote of 6-1 (Mr. Sanchez dissenting), the Zoning Commission recommends conditional approval of the request to amend the Breakers PUD to construct a new golf and tennis pro shop, restaurant, locker room, cart and bag storage facility and bar as contained in the Applicant's submission. The conditions recommended by the Zoning Commission are:

a. **That modification # 8 in Resolution 1-98 (copy attached) be amended to move up the date for considering and acting upon the Pinewalk Waste Transfer Station. The recommended modification is that at least 30 days prior to the 2000-2001 Zoning Commission meeting in November, 2000, the Flagler System, Inc. shall submit a study of alternative locations within the Breakers Hotel property for the relocation of twenty-four dwelling units which are currently approved for Development Priority No. 8, (Phase 5) (the existing location of the Pinewalk Waste Transfer Station). In addition, Town staff will investigate alternative locations, which are not within the Breakers PUD, for the possible relocation of the said waste transfer station. Staff will provide this information concurrently with the report from the applicant during the 2000-2001 Zoning Season so as to enable the Zoning Commission to address this specific issue at its November, 2000 meeting;**

b. **The Breakers is to incorporate the provision for a valet parking service as recommended by the Town Administration; and,**

c. **The Breakers is to increase the turning radius for the southbound right-turn into the new entrance from North County Road, as offered by the Applicant during the Zoning Commission hearing.**

On a vote of 7-0, the Zoning Commission recommends approval, as recommended by the Town Administration, of the proposal to allow the uses in the R-D(2) zoning district (excluding the permitted density) in the PUD-A zoning district (The Breakers PUD).

Attorney Brindell addressed the Town Council and introduced Paul Leone, President and COO; Alex Gilmurray, Vice-President of Finance; Danny Miller, Director of Golf & Grounds; and a number of consultants.

Mr. Brindell said it was important for the Breakers Hotel to continue to compete on a world wide resort basis at the present top end of the market, and these improvements marked a continuing commitment from the Kenan family to achieve that status. He said the planned improvements totaled approximately $14 million of construction bringing the total over the last decade to over $100 million, and several million dollars additional interior work will be done also.

Mr. Brindell explained the proposal is to amend the Breakers' P.U.D. master plan to consolidate the golf and tennis club facilities in one building on the west side of South County Road with an architectural program keeping with the historical buildings at the hotel, especially the cottages.

Mr. Brindell said a golfer playing eighteen holes of golf at the Breakers will cross South County Road at least six times. The new proposal results in crossing the road only two times. He mentioned the tennis parking would increase from thirty-eight spaces to eighty spaces with no reduction in spaces on the east side of South County Road. The existing golf club house, dining room, and bar will be maintained, and the balance of the space in the golf club house will be utilized for general hotel support services and offices. He said the existing cart barn will be replaced with green space. The fourteen tennis courts will be reduced in number to ten with five of them remaining lighted, as previously approved. A deep water well and a reverse osmosis system will be installed to supply the property's irrigation requirements (440,000 gallons per day).

Mr. Brindell explained the club house was a three level program combining tennis and golf with approximately 31,000 square feet of air conditioned space. Additionally, covered porch areas and a porte cochere are planned.

Mr. Brindell reported that the traffic plan satisfied Palm Beach County's traffic concurrency and the Town's traffic concurrency requirements. Mr. Brindell outlined the number of projected trips and the level of service impact upon the area. He said the parking needs for the project were approached in three different ways–uses in the club house, a land use requirement, and valet parking.

Mr. Brindell said that maintenance work would be done on some of the buildings on Pine Walk. Concluding his presentation, Mr. Brindell summarized that all of the requirements of the Town's Code were met, that the project would not have any significant adverse impact, that it will add parking spaces and some green space.

President Smith asked that all participants speaking at the meeting be sworn in by the Town Clerk. The Town Clerk did that.

President Smith asked for ex parte communications from the Mayor or any Town Council member.

Councilman McDonald stated he had none, although Mr. Brindell called to arrange a meeting with him. Mr. McDonald said he did not think it was necessary to meet with Mr. Brindell, and there was no meeting.

President Pro-Tem Wyett said he met with Attorney Brindell and the President of the Breakers.

President Smith said she did not meet with anyone.

Councilman Shaw said he met with Mr. Brindell and Mr. Leone and discussed the project.

Councilman McLendon said he met with Mr. Brindell and Mr. Leone at the Breakers to discuss the project.

Mr. Moore referred to the Zoning Commission's conditional approval for the project with conditions outlined on page two of the Zoning Commission's report; specifically, "Item A, modification 8 in Resolution 1-98 be amended to move up the date for considering and acting upon the Pine Walk Waste Transfer Station. The recommended modification is that at least thirty days prior to the 2000-2001 Zoning Commission meeting in November of 2000, the Flagler System, Inc. shall submit a study of alternative locations within the Breakers' Hotel property for relocation of the twenty-four dwelling units which are currently approved for development, priority no. 8, phase 5, see existing location of the Pine Walk Transfer Station. In addition, Town Staff will investigate alternative locations which are not within the Breakers P.U.D. for the possible relocation of said Waste Transfer Station. Staff will provide this information, concurrently, with a report from the applicant during the 2000-20001 Zoning Season so as to enable the Zoning Commission to address this specific issue at its November, 2000, meeting. Item B. The Breakers is to incorporate the provision of valet parking service as recommended by the Town Administration, and Item C. the Breakers is to increase the turning radius for the southbound, right turn into the new entrance from North County Road as offered by the applicant during the Zoning Commission hearing."

Referring to the site plan for the project, President Smith said she thought the project could be moved further to the west to allow additional entrance room going into the project, and suggested the elimination or moving of the one tennis court on the southwest corner. Mrs. Smith said this would provide additional room for the stacking of cars in the porte cochere area preventing cars from backing up on County Road.

Paul Leone, President and Chief Operating Officer, addressed the Town Council and stated the key orientation within the entire site plan is the opportunity to view the 18th hole on the golf course from the building, and that building is situated in the only position that allows that. Mr. Leone alluded to the traffic plan submitted that addressed the issue of stacked parking. Mr. Leone said if there were a problem, which they were not anticipating, the cars could simply be diverted to the right, sending them into the length of the lot to the north rather than reconfigure the entire site and eliminate a tennis court.

Mr. Moore suggested that the Breakers owned additional land that would allow the moving of a tennis court without reducing the number of tennis courts.

Mr. Leone replied that would interfere with the driving range which was not very large presently. Mr. Leone pointed out another key point regarding the orientation of the building to the 18th hole was the congregating point of the golfers going to the first hole to tee off. If the building were changed, there was a chance the golfers teeing off would drive into the congregating crowd.

Councilman Shaw said he was concerned with the traffic coming off South County Road, but he also had concerns with the single lane entrance and thought it should be widened into two lanes as it comes into the property. Mr. Shaw stated he was also concerned about the massiveness of the building which is set back a minimum, within Code, from the street, and if it would be moved inward, the width of the tennis court, that mass would be pushed off of the street, more in keeping with the fact that the hotel is well back from the street.

Responding to questions from President Smith, Mr. Brindell said the top of the clear story on the drawing is 48'2" high; to the main roof, second floor roof, is 33'4"; and 25'6" to the bottom of the fascia of the second floor.

(The Breakers' representatives took a break to consider comments made by the Mayor and Town Council. The remainder of the discussion took place after Item 10 was heard.)

Mr. Brindell referred to the site plan and the issue of stacking cars noting that the width of the out bound lane was increased to 22 feet to have two lanes. He said the width of the driveway to the porte cochere is 24 feet wide or essentially two lanes. Mr. Brindell said with the valet parking, the existing width, and increasing the inbound lane to 22 feet, 30 cars could be stored without having to utilize any operational stacking in the parking area itself. He said the issue concerning President Smith could be managed and addressed more effectively than originally thought.

Mr. Brindell addressed the issue of mass and pointed out that there is and will be a hedge of approximately fifteen feet in height all along the front of the property. He added there will be trees and landscaping behind that hedge varying from 25 to 35 feet high, and the building will be difficult for pedestrians or car occupants to see. He noted a certain portion of the top of the building will be visible and cited the setbacks from the street for the various elements of the building.

Mr. Brindell pointed out on the site plan the position of the building as it related to the vistas on the 1st, 2nd, and 18th fairways, and the farther west this is would be moved, the vistas would be changed to see some less desirable elements.

Assistant Police Chief Michael Reiter said he agreed with the Town's traffic consultant that the plan does address and improve the most significant existing public safety problem which is the crossing of the golf carts. He stated he did have concerns regarding a possible queue at the driveway entrance during peak times for both golf and tennis tournaments. He suggested that could be alleviated by a substantial appropriate number of valet parkers, and the Police

Department would recommend that the Town Council require a special assignment, overtime police officer to control the traffic during any special events or any other times should it become a problem.

Phil Tokich, Frederic R. Harris Traffic Consultants, addressed the Town Council, and said one of his first concerns was the traffic, as it entered the driveway, having to go through the porte cochere and then cross itself to get into the parking lot area. Additionally, traffic exiting the lot would have to cross the same area. Mr. Tokich said the traffic numbers were not large, but he had a design question regarding putting the conflict point so close to County Road. He commented a new conflict point was established with a design change when a car coming north on County Road makes a left turn into the parking lot and a car coming south on County Road makes a right hand turn and wants to go into the porte cochere. He said that means they have to cross each other, and the Town does not have a specific Code requirement for that reservoir space which is a storage space before a cross aisle is encountered, but the initial review suggested the reservoir space should be as long as possible.

Councilman Shaw said his suggestion for two lanes at the entrance was not at the street, but his suggestion was one lane coming off the street and then widening to two lanes which would eliminate Mr. Tokich's concern. Mr. Shaw said the width at the entrance is 14 feet and 22 or 24 feet on the exit on the revised plan. He explained his suggestion was to leave the 14 foot entrance at the street and once a car was in approximately half way to widen it out by moving the tree on the site plan. He said if his design would mean losing a parking space, the space could be added back in on the diagonal on the end.

Mr. Brindell offered to accept Mr. Shaw's suggestion.

Mr. Leone said he preferred Mr. Shaw's suggestion as opposed to the two lanes coming in from County Road.

Councilman McLendon confirmed that would be a 30 foot radius in that area.

President Smith said she was concerned with the 48 foot height of the proposed building which would be approximately 8 feet less than the Breakers Row Two apartment house. She said it would be seen from the street.

Mr. Brindell responded this building had step down elements whereas the Breakers Row Two had one continuous width.

President Smith said she thought it was a great building but it would have an impact on County Road and suggested it could be moved back at least 30, 40, or 50 feet. She questioned that part of the existing driving range may be included in future development plans precluding using any of the driving range for this project.

President Pro-Tem Wyett said he agreed with President Smith and moving the project back by moving one tennis court would solve some of the problems with mass and parking.

Responding to a question from President Smith regarding the issue of setbacks from the street, Mr. Leone responded the driving range was already under-sized and the tennis courts were reduced to ten in number–at least four short of what the Breakers would like to have. He continued the building is oriented to the 18th hole and that is the basis of a golf operation. He added there is no room to the east or the west to move the building.

After discussion regarding the moving back of the building, Mr. Leone agreed the building could be set back 15 feet.

President Pro-Tem Wyett brought up the subject of a possible traffic tie up during tournaments and requested the Breakers make a pledge not to hold tournaments during season that did not originate in the hotel itself.

President Smith suggested the Breakers could control any potential parking problems by using either valet parking or additional parking at the hotel and utilizing shuttle services.

Responding to President Smith's question regarding potential traffic problems during tournaments in season, Assistant Police Chief Mike Reiter said he was not aware of problems in the past; however, any event that had sixty or so people arriving at the same time should have a special assignment, overtime officer plus an increase in valet parkers.

Responding to Councilman Shaw's concerns regarding the requirements for the number of persons allowed by zoning and the fire marshal in an area, Architect Steve Foley, Peacock and Lewis Architects, said Councilman Shaw's statements were correct and that was how the code was calculated for egress, stair, exit widths, etc. requirements. Mr. Foley said if a seating plan is submitted showing the seating layout and configuration of the dining area, then that is what the occupancy can be.

Chief Elmore said the seating capacity would be established in accordance with the directions of the Fire Prevention Code, and the occupancy could not be greater than that.

Mr. Brindell replied that the Breakers would like to be able to work within the 150 seats pursuant to the overriding guidelines that the Fire-Rescue Department has on occupancy.

Mr. Moore noted that the parking is figured on the basis of 150 seats, and that is what will control the issue.

Mr. Brindell confirmed that 150 seats was the correct number–the seats would be merely be configured in different ways–inside or out.

President Pro-Tem Wyett brought up the issue of the Pine Walk Transfer Station, an agreement with the Town, and expressed the concern that there was no other site in Town to relocate the trash transfer station used by the Town. President-Pro Tem Wyett said he wanted to establish an agreement with the Breakers in connection with the current request that would incorporate the trash transfer station in a long term lease.

Mr. Brindell said the current lease expires December 31, 2012, and was extended in 1998.

President Smith asked if the Breakers would like to extend the lease another thirty years beyond 2012?

Mr. Brindell said he would defer to Mr. Leone.

Responding to questions from President Smith, Mrs. Earl replied the lease with the little Red School House in Phipps Park was for a period of 99 years for a dollar per year.

Mr. Leone responded he did not have the authority to agree to something of that nature, and that would be an enormous gift to the Town. Mr. Leone said he respectfully disagreed with the idea of bringing this issue up in conjunction with the zoning request. He said the Breakers struck a deal with the Town until 2012, and this was a very unique situation. He noted the Breakers had been in the Town for 106 years, and the Breakers expected to be in the Town for the next 100 years. He continued the Town will have other opportunities–five or six parcels within the next ten or twelve years. He said the company will look at the entire remaining spectrum with the idea of accommodating the Town.

President Pro-Tem Wyett responded that everything has a price, although everything was hypothetical, and he thought it was not a big problem that an agreement could be made prior to the finishing of the certificate of occupancy of this project. He said he would like to see this settled during his and the other Town Council members' tenure.

Mr. Leone said that accelerating it by a year would probably be doable, as recommended by the Zoning Commission, and would place a lot of pressure on the Breakers.

President Pro-Tem Wyett said he did not want to see the issue put off much longer, and he would like to see it tied to something. The Town had some leverage before the projects were complete. He noted the major problems and cost that would be encountered if the Town had to truck vegetation off the island, one truck at a time. He said he would like, as a condition of the certificate of occupancy, to have this solved by January, 2001.

President Smith clarified that Mr. Leone was in the position to talk to the Kenans about it, and perhaps they will extend the lease for a thirty year period.

Mr. Brindell said that under the Zoning Commission's proposal, the Breakers would have to present their study regarding Pine Walk and the Town would have to present its study thirty days prior to the Zoning Commission's hearings with the understanding that the Zoning Commission would then make a recommendation on a final resolution of an issue that the Town Council would consider in January, 2001, and could spill over into February and March.

Attorney Randolph said he did not think it was appropriate to tie this condition to a certificate of occupancy. Councilman McDonald said he agreed with that statement.

Mr. Randolph said it was another issue if the Town Council wanted to tie it to the issuance of a permit; however, the Town would be in a position of issuing a certificate of occupancy, and the Breakers would be entitled to entry while this problem was being negotiated.

Councilman McDonald suggested the issue of Pine Walk could be tied to the next appearance of the Breakers after the Zoning Commission meetings of next year, and the Breakers would be expected to deal with this issue after the Zoning meetings when they came before the Town Council regarding any matter associated with the P.U.D.

President Smith asked Mr. Leone what the next foreseeable issue would be that would come before the Town Council?

Mr. Leone responded he thought the next appearance would be in two years.

Mr. Brindell said the Breakers would have to provide their analysis by August, 2000, and the Town would have to provide its analysis of alternative sites; that package would be presented to the Zoning Commission in November with the Zoning Commission making a recommendation to be considered by the Town Council in January, 2001.

Mr. Moore said, absent the Breakers wanting to do another building that is not in the P.U.D. itself, the Breakers has the flexibility to develop pretty much any place they want within the property itself with the remaining residential properties, and the deadline to start is 2012. He said that is why the Pine Walk issue is tied to the 2007 date, and there is no driving need for the Breakers to come back to the Town Council with the Pine Walk issue until 2007; although, this issue may be presented to the Zoning Commission next year.

Mr. Brindell said he did not agree with Mr. Moore that was the conclusion from the Breakers' point of view. He said the study had not been done by the Breakers yet.

President Smith recalled other plans since the 1970's have been discussed with apartment buildings lining Royal Poinciana Way and suggested discussions should take place between the Town and the Breakers regarding the best possible situations for both, perhaps without spending money on studies that will not give answers either party is looking for. She asked if there were some way that the negotiations on the fate of Pine Walk could be discussed between Staff, Mr. Brindell, or Mr. Randolph before the issue goes back to the Zoning Commission?

Attorney Randolph asked if President Smith were asking if the Pine Walk arrangement could be worked out before the Town Council concluded the issue before it regarding the reconfiguration of the golf course and the golf club house?

President Smith replied she did not intend to tie it into the present discussion.

After further discussion, Councilman McDonald requested a date be selected when the Breakers would return to discuss the Pine Walk issue.

Town Manager suggested Public Works Director Dusey address the Town's concerns related to the site.

Mr. Dusey said that Pine Walk is key to the garbage collection services and to do something would have major implications for the Town.

President Smith suggested the Town Council pick a date to review the issue.

Councilman Shaw proposed using the recommendation of the Zoning Commission to accelerate this process on an informal basis and that the Breakers, Attorney Randolph, and Public Works Director Dusey meet in an attempt for a mutual suggestion to be presented at the October, 2000, meeting. He continued that if that cannot be done, it would be agreed that the lease is extended through 2025 and that a formal proposal be developed within the next two years after that.

Councilman McDonald questioned if Mr. Leone could agree to that condition at this meeting?

Attorney Brindell replied that Mr. Leone would have to check with the Kenan family if the lease could be extended to 2025.

President Pro-Tem Wyett made a motion to approve the project conditionally with the condition the Town and the Breakers get together on final disposal of the trash site and the extension of the lease.

Councilman Shaw said his suggestion was to conditionally approve the application with the changes of moving the pavilion 15 feet and to include the parking changes as agreed; in regard to the Pine Walk property, a plan on an informal basis be drafted before next October which would leave the existing lease as it is, and if that cannot be mutually agreed to, that within a two year period thereafter, a formal agreement is finalized and the lease be extended to 2025.

Councilman McDonald responded the Breakers' project may be finished before that time frame is concluded.

Mr. Brindell replied he and Mr. Leone were not in any better position to agree to that than the 99 year lease as Mr. Leone previously explained. He added he was concerned about the position that put the Breakers in relationship to the application before the Town Council.

President Smith asked for the Town Attorney's opinion regarding the motion and the idea of a conditional approval.

Mr. Randolph replied the Town Council could grant a conditional approval; however, the Breakers is in the same position in regard to that as they would be to any extension of the lease, not knowing. He said he thought the only thing this motion did other than what was proposed by the Zoning Commission was that in the event no agreement was reached by next October, the lease would be automatically extended to 2025.

Mr. Brindell said he thought the Town Council would automatically be guaranteeing themselves an extension of the lease without the lessor agreeing to it, and that presented a problem. As opposed to the Zoning Commission's recommendation which was to live with the framework that was hacked out, was to accelerate that study by a year, and that was acceptable to the applicant.

Mr. Randolph said he did not see the distinction between making that a condition and deferring this and giving the applicant an opportunity to go back and talk to their principals. Mr. Randolph said if it were not appropriate for the Town Council to place an extension on a lease condition on an approval of a club house that has no bearing on the location of the Pine Walk, then it is just as inappropriate to place the conditions that are being discussed today; however, if it is the Town Council's desire to see the applicant entertain that proposal, the Town Council could defer action on the project to give them the opportunity to see if their principals would approve it.

Mr. Brindell responded that Mr. Randolph was correct in the sense that the more appropriate way to deal with this issue is a side agreement between the Town, as a lessee, and the Breakers as a lessor of this real estate that is outside the ambit of this approval. Mr. Brindell expressed concern with deferring the project resulting in the project being behind in schedule.

Mr. Randolph agreed a side agreement could be entered into in a relatively short period of time if a twelve or thirteen year extension was the issue.

Mr. Leone said the project is enormous, and the Breakers needs to start on it immediately, if approved.

Mr. Brindell said many advances and new technology have been developed regarding the issue of trash, and he hoped the Town would look at viable options in the future.

President Smith asked if there was a second to President Pro-Tem Wyett's motion. There was none, and the motion died for lack of a second.

Councilman McDonald made a motion to approve the project with the changes that were recommended by the applicant and the Police Department; the entry way; move the building back approximately 15 feet; and the condition placed upon the applicant by the Zoning Commission during their approval to determine what to do with the disposal site property with the Breakers by the end of next Zoning Season. The motion was seconded by Councilman Shaw.

Zoning Chairman Martin Klein addressed the Town Council and said the Zoning Commission understood that this would be resolved by the Commission by a recommendation to the Town Council at the next Zoning Hearing. Questions of studies and reports were mentioned, but it was clear to the Commission that the Commission would be in a position to make a recommendation as to a resolution of this problem during the upcoming Zoning Season.

President Smith asked if the Zoning Commission was talking about a continuation of this Zoning Season or was it put off until January, 2001?

Mr. Klein responded it would come to the Zoning Commission for a resolution in November, 2000.

Mr. Randolph said he understood the motion was made like that.

President Pro-Tem Wyett said he thought it was a Zoning Commission subject, but it is up to the Breakers to tell the Zoning Commission where they would most like to have these units moved to.

Mr. Klein said the Breakers was going to come to the Zoning Commission over the course of the summer; the staff would come to the Zoning Commission and look at the matters; and the Zoning Commission was going to make a recommendation to the Town Council.

President Smith asked what would be wrong with short-circuiting that and if the Breakers is coming back, why don't they come back to the Town Council instead of going back to the Zoning Commission? Why is it a continuation of the zoning?

Mr. Moore said it would be a zoning issue if the 24 units were transferred at Pine Walk to another location on the property. Mr. Moore pointed out that under the motion just made, which was what the Zoning Report said, was that if the answer comes back with the staff and with the Breakers that there is no other place to put those units and the Town has no other place to put a garbage transfer station, what does the Town do then? He said the Breakers can do what they want after 2012 based on the motion made.

Mr. Moore said the Town Council has not kept anything in reserve in case the answer is "nothing", and if there is nothing to encourage the Breakers to move the 24 units at Pine Walk, the risk is not tying it to some approval. He suggested if the Breakers did not have an answer today for the issue, the Town Council should not lose the one bargaining chip they have until the Breakers can return to the Town Council with an extension to 2025 if the issue is not resolved before hand.

President Pro-Tem Wyett said Mr. Moore had given fair warning that an approval at this meeting without some type of protection could put the Town's trash program in jeopardy should the Breakers decide the lease ends in 2012 and that is the agreement. He said the discussion revolves around changing the deal, and the Town must have something to give the Town comfort.

Councilman McDonald said he thought the Town Council should rely on Attorney Randolph's opinion that the approval should not be tied to that type of condition for approval.

Responding to a suggestion for deferral, Mr. Brindell said he objected to deferring the project for a condition that is unrelated and impacts the project. He said he did not think that was lawful, and the Breakers did strike a deal two years ago on the framework for resolving this issue.

Councilman McDonald said he agreed with Mr. Brindell that keeping the Breakers as an inferior property is not in the best interest of the Town.

Town Manager Doney asked if it would be reasonable to have this portion of the action not acted upon by the Town Council until the first reading of the ordinance which is Monday, February 7th, at 5:01 p.m.

President Smith said there was a motion on the floor, and she was going to call the question.

Councilman McDonald asked President Smith to wait a moment and said if the applicant thought a deferral for that short a time would provide some resolution, he would withdraw his motion.

Mr. Leone reiterated this is a complicated issue, and he did not agree with Mr. Moore's comments.

After further discussion, President Smith said many questions were raised at this meeting and many different opinions were expressed. She suggested deferring the issue to the February 7th meeting would give Mr. Brindell and Mr. Leone an opportunity to discuss the things that were brought up at this meeting.

Councilman McDonald said he withdrew his motion and if the seconder would withdraw, he would move for a deferral to the February 7th meeting. Mr. Shaw seconded the motion.

Councilman Shaw said the Town Council had two meetings prior to the February 7th meeting, and if time were an issue, it could be heard earlier.

President Smith asked if the Town Council would agree to add it to the January 14th meeting?

Attorney Randolph said he did not understand the reason for moving it up, because it would not affect the reading of the ordinance and the P.U.D. would be passed by resolution.

President Pro-Tem Wyett suggested if the Breakers was ready by the January 11th meeting, it could be considered at that meeting.

Attorney Randolph said they could do that, but the resolution would not be presented until the February 7th meeting.

On roll call, the motion carried 5-0 to defer the item to the February 7th meeting.

Attorney Brindell asked if the Breakers could resolve issues prior to the February 7th meeting, could they return to a meeting earlier.

Attorney Randolph said the resolution could be added to the January 11th agenda.

Councilman McDonald suggested putting the item on the January 11th agenda at this meeting. President Smith agreed.

After further discussion, President Smith clarified that if Attorney Brindell resolved issues before the February 7th meeting, the issue could be discussed at the January 11th, 14th, or 18th meetings.

Attorney Randolph said the resolution was always scheduled for the February 7th meeting but the issues discussed at this meeting could be presented and resolved at meetings before the resolution was presented.

Attorney Brindell verified that the issue will be on the January 11th meeting agenda. The Town Council agreed.

After the lunch break, Mr. Brindell addressed the Town Council and said he and Mr. Leone were unable to reach Mr. Kenan; however, Mr. Leone, in his capacity as President and COO, said he would be willing to add three years to the Pine Walk lease agreement taking it to 2015. Mr. Brindell said this was offered in an attempt to resolve the situation today.

After discussion, the Town Council decided to list the issue as the first item under "New Business, Major" on the January 11, 2000, agenda for the Town Council meeting.

Item 3. On a vote of 7-0, the Zoning Commission recommends postponement to the 2000-2001 Zoning Season, as requested by the applicant and recommended by the Town Administration, of the proposal to create a new Educational, Cultural and Recreational District in the Chapter 134, Zoning, and to rezone approximately 20 acres of land to said district classification.

Paul Castro, Zoning Administrator, explained that additional work need to be done on this item and that was the reason for the requested postponement.

A motion was made by Councilman Shaw to approve the recommendation to postpone this item. The motion was seconded by Councilman McLendon and carried 5-0.

Councilman Wyett said that the private Palm Beach Day School is really the public school of the Town of Palm Beach, and if this school cannot grow in proportion to the demands of the increasing number of students that are living on the island, then the island will cease, some time in the future, to be a desirable place for young people to live, because if their children cannot go to school on the island, they will not choose to live here.

Item 4. On a vote of 7-0, the Zoning Commission recommends postponement to the 2000-2001 Zoning Season, as requested by the applicant and recommended by the Town Administration, of the proposal to allow hotels as a Special Exception in the R-C zoning district.

President Pro-Tem Wyett made a motion to approve the postponement to the 2000-2001 Zoning Season. The motion was seconded by Councilman Shaw and carried 5-0.

Item 5. On a vote of 7-0, the Zoning Commission recommends disapproval, as recommended by the Town

Administration, of the proposal to require that accessory structures in the R-AA and R-A districts be set back no less than the principal structure to which they are accessory.

Mr. William Brisson, Town Consultant, addressed the Town Council and stated it was his feeling that the appearance of the accessory structure in relation to the principal structure is not really a zoning issue, but rather should be considered on a case by case basis by the Architectural Commission if it is within their purview. He said disapproval of this item was based on that premise.

President Pro-Tem Wyett made a motion to disapprove the proposal to require that accessory structures in the R-AA and R-A districts be set back no less than the principal structure to which they are accessory. The motion was seconded by Councilman Shaw and carried 5-0.

Item 6. On a vote of 7-0, the Zoning Commission recommends disapproval, as recommended by the Town Administration, of the proposal to provide for a building height plane in all zoning districts and to allow increased building height for houses in the R-B district which are located on lots that meet the size requirements of the R-AA and R-A zoning districts.

Mr. Castro explained this item was a study of a proposal to provide a building height plane provision for all zoning districts, and this would increase the height for houses in the R-B district which are on lots that meet the lot sizes for the R-A and R-AA zoning districts. He said this was recommended by the Zoning Commission for study.

Mr. Brisson explained this was a result of last year's presentation by Frank Chopin, Bob Deziel, and Jeff Smith that requested that the height in the R-B district be allowed to be higher as it would be in the R-A and R-AA zoning districts when large lots are involved. Mr. Brisson pointed out that there were only approximately 120 lots out of the 1,500+ lots in the R-B district that meet all of the requirements of the R-A district or 8%. Only five of the lots meet the requirements of the R-AA district. He said that if the excess height were allowed in the R-B district, that project was not likely to be located next to another large lot, but would be located perhaps to a small home with an R-B setback. He said the primary reason for the disapproval recommendation was that the increased allowable height would only increase the problems that already exist in the R-B district, and one of the major issues is the problem with the Architectural Commission which will still be looking at the similarity/dissimilarity with regard to nearby structures. He said that more than likely, there would be a conflict with what the Zoning Code allows and what the Architectural Commission will find relative to the surrounding area, and this would exacerbate the problem the Town has been working on for more than ten years to overcome.

Mr. Brisson said it has been suggested that perhaps zoning should be looked at more on the lot size as opposed to the zoning districts. He added that on the surface this appears interesting, but this ignores the fact that zoning is typically aimed at maintaining a compatibility among similarly situated properties. He continued that it assumes that within a district for the most part, there is a compatibility, the lots are typically homogenous in size concept. He said to treat lots that are different and relatively few in a different manner regarding different heights causes the problem of compatibility.

Mr. Brisson said if the Town Council would like to consider the changes, alternative recommendations have been provided that could be addressed; although he did not recommend the alternative recommendations.

Councilman McDonald made a motion to approve the disapproval recommendation of the Zoning Commission. The motion was seconded by Councilman McLendon.

President Pro Tem Wyett said he would like to see a more comprehensive study and cited a project that was approved by the Town Council that had large setbacks. He suggested there might be a compromise with an equity situation which would result in a greater variety of architectural detail.

President Smith asked if the Zoning Commission differentiated between lake front lots, ocean lots, and the interior lots when this was studied?

Mr. Brisson responded the Zoning Commission did not differentiate.

Mr. Castro responded one of the concerns of the Commission was that this change might encourage the assimilation of properties that would change the character of the R-B district.

President Smith said she thought the issue of large lake front lots that would not affect the interior lots should be discussed and considered. She said she agreed that the ocean front lots and the lake front lots should be considered for study in the 2000-2001 zoning season.

President Smith called the question approving the disapproval of the Zoning Commission of the proposal to provide for a building height plane in all zoning districts and to allow increased building height for houses in the R-B district which are located on lots that meet the size requirements of the R-AA and R-A districts. **On roll call the motion carried 4-1 with President Smith casting a negative vote.**

President Pro-Tem Wyett made a motion to have the Town's consultant study the lake front and ocean front lots in the R-B district during the 2000-2001 Zoning Season in conjunction with the R-B district study. The motion was seconded by Councilman Shaw. The motion carried 5-0.

Councilman Shaw said he thought the study should include some relationship between property line and street line. The study should include the swales and the sidewalks as to how the mass impacts the streets, and where there are streets that have a considerable distance from property line to street, that some relief be considered for one story additions or one story buildings which would be able to come into what is now considered the front yard setback.

Item 7. On a vote of 7-0, the Zoning Commission recommends approval of the proposal as submitted by the Town Administration, and amended by the Zoning Commission, to amend Sec.34-2176, Number of parking spaces required – Schedule, to read as follows:

(3) Churches and other places of worship

One per ~~seven~~ **four** permanent seats in the main auditorium.

Mr. Castro explained that the Zoning Commission determined the appropriate number of four permanent seats per one parking space should be the requirement. Mr. Brisson concurred with the change by the Zoning Commission over the staff's initial recommendation.

Councilman Shaw made a motion to approve the recommendation of the Zoning Commission with four permanent seats required for churches and other places of worship for one parking space. The motion was seconded by Councilman McLendon.

Mr. Wyett suggested that the word "total" be substituted for "permanent". President Smith suggested that the word "permanent" be eliminated. The maker and seconder of the motion accepted that change.

Mr. Brisson commented the capacity of the room is based on so many seats, and there is a standard seating capacity for rooms.

Councilman Shaw pointed out the capacity of the room as established by the Fire Marshal may require more parking spaces (one per seven square feet) than the seating capacity set by the zoning requirements.

Mr. Castro said a house of worship has to provide a seating plan and abide by that seating plan that is approved by the Town Council.

President Smith said the Council was "nit-picking" something to a degree that was becoming unworkable, and the elimination of the word "permanent" is acceptable with the staff understanding the intention of the change. The staff would handle any exceptions to extra seating if the situation ever occurred.

Councilman Shaw asked Mr. Castro if he had an application showing a main room with a seating plan and that room connected to an adjoining room by a movable partition, would there be a requirement for the second room to show a seating plan?

Mr. Castro replied he would require that.

Councilman Shaw questioned by taking out the word "permanent" that the applicant would have to have permanent parking spaces for the temporary seats?

Mr. Castro replied that was correct.

Councilman Shaw said he was not sure that was what the Council intended to do as it put a tremendous hardship on someone for temporary seating that would be used infrequently.

Mr. Castro explained the parking requirement was intended to work to address the peak use of any use.

Councilman Shaw said he would withdraw his motion if the word "permanent" is not part of the motion, and it would put an undue hardship on any facility that wants to expand in the Town for temporary meeting rooms.

President Smith replied waivers could be granted depending on the circumstances.

Martin Klein, Chairman of the Zoning Commission, addressed the Town Council and said the section dealing with auditoriums states "one for each five seats" and the word "permanent" does not appear, and perhaps the deletion of the word "permanent" would solve the problem.

Councilman Shaw said he would yield to (Mr. Klein's) wisdom. He clarified his motion would state "one per four seats" taking out the word "permanent".

On roll call, the motion carried 5-0.

Item 8. On a vote of 7-0, the Zoning Commission recommends approval of the proposal as sub- mitted by the Town Administration, and amended by the Zoning Commission to amend Sec.134-1756, ACCESSORY

USES, Supplemental and incidental principal use; location, to read as follows:

For Commercial, Multi-family, Townhouse and Two-family uses under this chapter, an accessory use shall be clearly supplementary and incidental and shall not be separated from the principal use of the lot and shall be located on the same lot as the principal use to which it is subordinate or located on an ~~contiguous~~ abutting lot when a unity of title, acceptable to the Town, is provided under the same ownership.

For Single-family uses under this chapter, an accessory use shall be clearly supplementary and incidental and shall not be separated from the principal use of the lot and shall be located on the same lot as the principal use to which it is subordinate or located on a contiguous lot when a unity of title, acceptable to the Town, is provided under the same ownership. For the purpose of this section contiguous shall mean directly across a street or public way or abutting the lot on which the principal structure is located, ~~and~~ **where** the accessory use is subordinate to **the principal use.** If the lot on which the accessory use is located does not abut the property on which the principal use is located, said lot shall not be used in the calculation of lot, yard and area regulations.

Mr. Castro explained Item 8 was to allow accessory uses on properties that are across the street from the principal structure, and currently the Code would not allow an accessory structure even by unity of title. He said this proposal would allow incidental accessory uses across the street on larger estates by unity of title. Mr. Castro pointed out the Zoning Commission modified the staff recommendation as noted in the Zoning Report.

President Pro-Tem Wyett recalled this addressed an incident that occurred in the past regarding the Nelson Peltz property on North County Road. President Pro-Tem Wyett suggested a study for the next zoning season of the property along the Lake Trail bike path counting as part of the allowable square footage of the property owner's lot.

Mr. Moore said he would add that to the list if so authorized.

Councilman Shaw moved approval of the recommendation by the Zoning Commission to approve the proposal to amend Section 123-1756, ACCESSORY USES, Supplemental and incidental principal use. The motion was seconded by Councilman McLendon and carried 5-0.

Item 9. On a vote of 7-0, the Zoning Commission recommends approval of the proposal as submitted by the Town Administration to amend Sec.134-1728, Air conditioning equipment, and 134-1729, Generators and swimming pool equipment, to read as follows:

Sec. 134-1728. Air conditioning equipment

Air conditioning equipment in excess of two (2) units or in excess of four (4) feet in height, measured above the natural grade, or occupying more than twenty-five (25) feet in area shall be considered an accessory structure and shall be constructed or erected or placed in compliance with all the provisions of the ordinance applicable thereto. In no instance shall more than one air conditioning condenser unit be placed within each required street yard. Such air conditioning condenser shall be located no closer than two feet from the building and shall not extend more than five feet from the building, and such condenser shall be completely screened with a wall or hedge. In addition cooling towers and air handlers are prohibited in the required front setback, street side yard setback or street rear yard setback. The exception is that any lot that fronts on two or more streets shall be allowed to place two units in one street side or street rear yard setback provided that said units are setback a minimum of twenty feet from the property line and are screened from view by a five foot high wall or hedge.

Sec. 134-1729. Generators and swimming pool equipment.

~~In no instance shall any g~~Generators, swimming pool filters, pumps and heaters shall not be placed in the required front setback, street side yard setback or street rear yard setback. The exception is that any lot that fronts on two or more streets shall be allowed to place two pieces of pool equipment in one street side or street rear yard setback provided that said equipment is setback a minimum of twenty feet from the property line and is screened from view by a five foot high wall or hedge.

Mr. Castro explained this item was a housekeeping item from the previous Zoning Season, and this proposed revision is to allow, in certain unique situations where a lot fronts on more than one street, more than one air conditioning unit in a street side yard.
President Smith asked if the Zoning Commission discussed enclosing the units for the noise problems?

Mr. Castro replied there was a requirement to provide a wall or a hedge; although, the noise issue was discussed during the previous Zoning Season. He said the technology of the units is such, with the distance the units would be from the road, the Zoning Commission did not think this would be an isssue.

Councilman Shaw questioned the wording: "in addition cooling towers and air handlers are prohibited", and what was the definition of a packaged unit?

Mr. Castro replied he did not think a packaged unit should be in the front yard.

Councilman Shaw said a packaged unit is the same size as a condenser and makes no more noise than a condenser. He said the size, noise, and screening have been defined and questioned making the separation for packaged units.

President Smith suggested adding packaged units to the provision.

Councilman Shaw suggested the change should be "condenser unit/packaged unit".

Councilman Shaw questioned the reasoning for not allowing a swimming pool filter in a front yard when a condenser would be allowed since the noise levels were similar.

Mr. Castro replied the Town did not allow any pool equipment in the street setbacks, and this change was to allow two pieces of equipment; however, if the Council directed, more could be allowed.

Councilman Shaw said Mr. Castro answered the question.

Councilman Shaw made a motion to approve the recommendation of the Zoning Commission of the proposal to amend Section 134-1728, Air conditioning equipment, and 134-1729, Generators and swimming pool equipment, with the addition of "packaged unit" as discussed. The motion was seconded by President Pro-Tem Wyett and carried 5-0 on roll call.

Item 10. On a vote of 7-0, the Zoning Commission recommends approval of the proposal as submitted by the Town Administration, and amended by the Zoning Commission, to amend Division 5, Garden Walls and Fences, Sec.134-1666, Sec. 134-1667, Sec. 134-669, Sec. 134-1670, and Sec. 134-1671 to read as follows:

DIVISION 5. ~~GARDEN~~ WALLS AND FENCES*

Sec. 134-1666. Location generally; compliance.

Except as otherwise provided herein, ~~garden~~ walls or fences may be located or constructed within the required yard areas and shall conform to the following regulations except where special requirements are set forth for specific screening purposes elsewhere in this ordinance:

Sec. 134-1667. Front, street side or street rear yards.

(a) All ~~garden~~ walls and/or fences located in ~~the~~ a front, street side or street rear setback area shall not exceed six feet in height. The height of a wall or fence located in ~~the~~ a front, street side or street rear set back area, fronting on a street, shall be measured on the street side of the wall or fence from the top of the wall or fence and shall not exceed six feet in height above the the crown of the street at a point directly opposite such points of measurement. (See following illustration.) If the wall or fence in ~~the~~ a front, street side or street rear setback area is not fronting on a street, said wall or fence shall be measured from the lowest grade on either side of the property line adjacent to said wall or fence. The natural grade along the side property line within the front setback area may not be artificially changed to raise the height of said wall.

(b) Walls and fences in a required front yard, street side yard, or rear street yard more than four feet in height shall be setback three feet from the street property line and have landscaping on the street side of the wall or fence consisting of a continuous hedge at least three feet in height at the time of planting.

...

Sec. 134-1669. Side and rear yards.

All ~~garden~~ walls and/or fences located within ten feet of the side or rear property line shall not exceed seven feet in height except walls and/or fences located in a required street side yard setback of a corner lot and the required rear street yard setback for a through lot where they shall conform to the provisions of section 134-1667. The height of a wall or fence located in a side or rear yard shall be measured from the lowest grade on either side of the side or rear property line adjacent to said wall or fence to the top of the wall or fence and shall not exceed seven feet in height. This section prohibits an artificial change in the natural grade in any way to raise the height of said wall. (See the following illustration.)

Sec. 134-1670 Retaining walls.

(a) Retaining walls which front on a street and which are located in the street front, street side or street rear setback shall not exceed a maximum height of six feet as measured from the lowest grade on either side of the retaining wall to the top of said wall at any location in that setback. In addition, if a retaining wall is within ten feet of a wall and/or fence in the same front, street side or street rear yard setback, said retaining wall and wall and/or fence shall not exceed a total combined height of nine feet as measured from the lowest grade adjacent to said retaining wall to the top of said wall and/or fence at that same location in that setback. However, in no instance shall a retaining wall, wall, fence or combination thereof exceed, or be contrary to, the maximum and minimum requirements in Section 134-1667.

(b) If a retaining wall in the front setback area is not fronting on a street, said retaining wall shall not exceed a maximum height of six feet as measured from the lowest grade on either side of the retaining wall to the top of said retaining wall at any location in that setback. In addition, if a retaining wall is within ten feet of a wall and/or fence in the same front setback not fronting a street, said retaining wall and wall and/or fence shall not exceed a total combined height of nine feet as measured from the lowest grade adjacent to the retaining wall to the top of the wall or fence at that same location in that setback. In addition, if said retaining wall, and wall and/or fence within the front setback area are within ten feet of each other and their combined height exceeds six feet, said retaining wall shall have a minimum four foot high hedge located on the inside portion of the retaining wall. In no instance shall a retaining wall, wall, fence, or combination thereof exceed, or be contrary to, the maximum and minimum requirements in Section 134-1667.

(c) A retaining wall within ten feet of the side or rear property line shall not exceed a maximum height of seven feet from the lowest grade on either side of the retaining wall to the top of said retaining wall. In addition, if a retaining wall, and wall and/or fence is within ten feet of the side or rear property line, they shall not exceed a total combined height of ten feet as measured from the lowest grade adjacent to the retaining wall to the top of the wall or fence at that same location. However, in no instance shall a retaining wall and/or wall or fence exceed, or be contrary, to the maximum and minimum requirements in Section 134-1667.

Sec. 134-1670~~0~~1. Restrictions.

In addition to the other requirements in this division, a ~~garden~~ wall or fence shall conform with section 134-1637 and shall in no case be located closer than 2 ½ feet of the rear lot line or be located within the street right-of-way or streetward of the front lot line as provided for in section 134-1636.

Mr. Castro handed out a sheet showing three different illustrations of garden walls and fences and retaining walls. He said the staff experienced some problems with retaining walls because there was no specific language that regulated those. He explained that a new section, 134-1670, Retaining Walls, is the proposed change. The new regulations are intended to allow retaining walls in combination with another wall provided that in the rear or side setbacks, the total combination of both does not exceed ten feet; however, if the wall and retaining wall are facing an adjoining property, they cannot exceed what the requirements in the Code are of seven feet. Mr. Castro said a retaining wall and wall combination would be allowed in the front yard provided both of those in combination do not exceed a height of nine feet provided a hedge is planted in front of the wall.

Councilman Shaw made a motion to approve the recommendation of the Zoning Commission to amend Division 5, Garden Walls and Fences, Sec. 134-1666, Sec. 134-1667, Sec. 134-669, Sec. 134-1670, and Sec. 134-1671. The motion was seconded by Councilman McLendon and carried 4-0 on roll call. President Smith was out of the room.

Item 11. On a vote of 5-2 (Messrs. Sanchez and Bertles dissenting), the Zoning Commission recommends disapproval, as recommended by the Town Administration, of the proposal to amend Sec. 134-1757 to reduce the setbacks for swimming pools.

Mr. Castro explained that staff recommended disapproval of the change which would change the setbacks from 10 feet to 7.5 feet because staff thought ten feet was sufficient room to provide a deck around the swimming pool.

Mr. Moore said the issue was controversial when it came before the Zoning Commission, and Mr. Bertles, Secretary of the Zoning Commission, thought that the flexibility to allow for no setbacks should be allowed for the property owner to allow them to increase the usage of the back yard.

President Smith asked what the discussion was regarding the fountains when they could be within the setback but if they are in the setback, they could not be connected to the pool?

Mr. Castro replied the fountains could be connected to the pool, but the issue related to that was that the fountains could not be more than two feet deep, and fountains are allowed in walls that are on the property line. He said Jacuzzis are not allowed, nor are fountains that turn into Jacuzzis, closer than ten feet to the property line.

President Pro-Tem Wyett moved approval of the disapproval of the recommendation made by the Zoning Commission. Councilman Shaw seconded the motion, and on roll call, the motion carried 5-0.

Item 12. On a vote of 6-1 (Mr. Sanchez dissenting), the Zoning Commission recommends approval of the proposal, as modified by the Zoning Commission, to amend ARTICLE VI, District Regulations, Division 2 through Division 7, Side yards & Rear yards, Secs.134-793 (a)(8) & (9), 134-843 (a)(8) & (9), 134-893(a)(7) & (8), 134-948(6) & (7), 134-1004(6) & (7), 134-1059(6) & (7), and Article VIII, Division II, Subdivision ii. Lots, Sec. 134-1576. Corner lots, as follows:

To allow open air pergolas, arbors and trellises attached to the house to have the same setback as an unattached accessory structure (10 feet).

Mr. Castro explained this proposal was to amend all of the side and rear yard setbacks in the residential districts to allow open air pergolas, arbors and trellises attached to the house to have the same setback as an unattached accessory structure (10 feet). He said this could be accomplished by adopting specific language in each of the side and rear yard setback provisions, and staff thought the open accessory structures were already allowed to be ten feet from the side and rear property lines. There was an additional request to allow them in the front set back or to be within twenty feet from the street side or street rear yard, and a possible solution would be to allow pergolas that are attached to the house that are one story to have a ten foot set back in lieu of a 12.5 or 15 ft. set back.

President Pro-Tem Wyett said approval of this item could result in some very crowded situations that may be better left to the Town Council as presented one by one. He noted conditions vary for each project, and each project should be considered separately.

President Smith said she agreed with President Pro-Tem Wyett that this could be dealt with on a one on one basis and cited several incidents that came before the Town Council where some were approved and some were not.

Councilman McDonald said in an effort to decrease the number of items that come before the Town Council, perhaps this issue should be considered.

Councilman Shaw made a motion to approve the disapproval of item 12–approving not to do it. The motion was seconded by Councilman McLendon and carried 4-1 with Councilman McDonald casting a negative vote.

Item 13. On a vote of 7-0, the Zoning Commission recommends <u>approval</u> of the proposal as submitted by the Town Administration, and modified by the Zoning Commission, to amend Section 134-1207, Permitted Uses in the C-OPI zoning district, by adding the following language:

Sec. 134-1207. Permitted uses.

The permitted uses in the C-OPI office, professional and institutional district are as follows:

(1) Office, and professional services and business services.

(2) Dining rooms and drinking places when not more than 15 percent of the gross floor area of the structure; nor exterior or external advertising to be permitted.

(3) Brokerage and trust companies.

(4) ~~Essential Services.~~ <u>Yacht Brokerage with no</u> **~~display of~~** <u>merchandise</u> **<u>physically</u>** <u>on</u> **<u>the</u>** <u>premises.</u>

<u>(5)</u> <u>Essential services.</u>

Mr. Castro explained this item would add another use in the C-OPI district; specifically a yacht brokerage on Royal Palm Way as long as this would be an office type use with no merchandise physically on the premises. He said yachts could be shown with the buyers meeting at the offices to negotiate the sale of yachts, and only pictures of yachts would be available in the offices.

Councilman McDonald made a motion to approve the recommendation of the Zoning Commission to amend Section 134-1207, Permitted Uses in the C-OPI zoning district. The motion was seconded by President Pro-Tem Wyett and carried 5-0.

Item 14. On a vote of 7-0, the Zoning Commission recommends <u>approval</u> of the proposal as submitted by the Town Administration to amend ARTICLE VI, District Regulations, Division 2 through Division 4, Accessory Structures in the R-AA, R-A and R-B zoning districts, Sections134-791(5), 134-841 (5) and 134-891(5), to read as follows:

Sec. 134-791, 841 & 891. Accessory structures.

(5) ~~Nothing contained in this section shall prohibit the construction of a~~<u>An</u> enclosed accessory building containing bedrooms with bath facilities to be used in connection with and as a part of the main residence~~;~~ <u>is permitted provided said</u> ~~to be~~ construct~~ed~~<u>ion is</u> within the building lines as provided in this chapter. Such enclosed accessory building shall be used only for occupancy of nonpaying <u>visiting</u> guests of the owners of the main residence or bona fide members of the family, or ~~servants~~ <u>household staff,</u> and no kitchen or cooking facilities shall be constructed or used therein<u>.</u> ~~except~~ <u>A second guest house and more than one kitchen on a property may be permitted</u> by approval of a special exception and submission of a written agreement with the town stating that such accessory structure will be used only by <u>bona fide</u> family members, <u>visiting guests</u> and household staff.

Mr. Castro explained this item was a proposal to allow more than one guest house on large estates, and currently only one guest house is allowed by the Code. He said the staff recommended that if the property is large enough, the property owner should have the flexibility to have more than one guest house on the property provided they enter into the standard kitchen agreement with the Town. Mr. Castro said the property would have to meet all of the lot, yard, and area requirements to allow the placement of such guest houses so they would meet the set backs, landscape open space, and lot coverage requirements.

After discussion, President Pro-tem Wyett made a motion to deny the recommendation of the Zoning Commission to amend Sections 134-791(5), 134-841(5), and 134-891(5). The motion was seconded by

Councilman Shaw and on roll call, carried 5-0.

Item 15. On a vote of 6-1 (Mr. Sanchez dissenting), the Zoning Commission recommends disapproval, as recommended by the Town Administration, of the proposal to amend Sections134-793 (a)(12), 134-843 (a)(12), 134-893(a)(11), 134-948(11), 134-1004(11)e., 134-1059(11)g., *Landscaped open space.* to allow a 25% credit for driveways that are provided with a gravel or broken coquina stone surface.

Mr. Castro explained this item was a proposal to amend the landscaped open space portion for all properties in the Town to allow gravel or broken coquina surfaces to count as some type of credit for landscaped open spaces. He said the staff recommended disapproval, because it was not consistent with the intent of landscaped open space although consideration of grass-crete, as adopted, is a flexible consideration that was viable to give credit for innovation.

Mr. Moore said the state-of-the art is advancing for products like grass-crete although some of it is not pervious. He suggested the Town Council may direct the staff to consider this item further–during next year's Zoning Season–and determine if the 25% credit is sufficient for some of these products.

Councilman Shaw made a motion to approve the disapproval by the Zoning Commission to amend the Landscaped open space sections. The motion was seconded by President Pro-Tem Wyett and carried 5-0 on roll call. The Town Council directed the issue of appropriate materials should be studied during the 2000-01 Zoning Season.

Item 16. On a vote of 6-1 (Mr. Sanchez dissenting), the Zoning Commission recommends approval of the proposal, as modified by the Zoning Commission, to amend ARTICLE VI, District Regulations, Division 8 through Division 12, Architectural tower features., Sections134-1119, 134-1169, 134-1218, 134-1267, 134-1313 to read as follows:

Sec. 134:....Architectural tower features.

In the Commercial zoning districts, a maximum of two towers as architectural features may be constructed as integral parts of the building provided that no tower(s) exceeds the allowable overall height by more than five feet; such tower(s) is set back an additional five feet **from adjacent residential property** ~~**on the front, rear, side, and street side and street rear yards**~~; and, such tower(s) has no habitable floor area. The area of such tower(s) shall in combination not exceed 2% of the gross floor area of the building. This section does not apply to entry facades or parapets.

Mr. Castro explained this was an issue discussed at the 1998-98 Zoning hearings and was intended to provide flexibility to commercial properties similar to the R-B district which had changes several years ago allowing towers for architectural flexibility and creativeness. He said this proposal allows more than one tower on a commercial building provided that it does not exceed more than 2% of the gross floor area of the building.

Mr. Castro said the second part of Item 16 related to providing credit for landmarked commercial buildings for tenant improvements on the interior of a building. He said the intent was not to tie the hands of someone who was trying to improve the use of a building and require additional parking or apply for a parking variance.

On a vote of 7-0, the Zoning Commission recommends approval of the proposal as submitted by the Town Administration to amend Article IX. OFF-STREET PARKING AND LOADING*, Section 134-2175. Number of parking spaces required- Generally to read as follows:

Sec. 134-175. Number of parking spaces required-Generally.

...

(e) For the purpose of this section, a landmarked commercially zoned building is exempt from providing additional required off-street parking if increased occupancy or use is created by interior building improvements which create more gross leasable area. However, all other provisions of subsections (a) through (d) apply.

President Pro-Tem Wyett asked what would happen if the interior uses would add more employees or people who used the building and where would they park?

Mr. Moore responded the change was proposed for a landmarked building that could not be demolished, and this was an attempt to provide relief. He added parking spaces would be grandfathered in.

After discussion, President Smith said she did not see this as a problem, and this was an incentive to people not to demolish.

Councilman McDonald made a motion to approve the recommendation of the Zoning Commission. The motion was seconded by Councilman Shaw and carried 5-0 on roll call.

Item 17. On a vote of 7-0, the Zoning Commission recommends disapproval, as recommended by the Town Administration, of the proposal to Amend Sections 134-893(7),134-948(6)a., 134-1004(6)a., and 134-

1059(6)a., *side yard.*, to reduce the side yard setback requirement for single-family homes on narrow lots in the R-B, R-C, R-D(1) and R-D(2) zoning districts to accommodate side loaded garages on the back of the house.

Further, the Zoning Commission recommends, as recommended by the Town Administration, that this proposal be given consideration by the Consultant during his study of the prototype neighborhood design guideline concept for the R-B zoning district.

Mr. Castro explained this item was a proposal to create an incentive for side loaded, rear located garages on properties. He said the staff recommendations required some conditions, and the staff was uncomfortable with the recommendations because they might create a burden on one property owner on one side as opposed to a property owner on the other side. He concluded it was a good concept but the actuality was it may not be appropriate in the R-C district where the lots are very narrow; however, it could be an item to be studied in the R-B district by the consultant who is doing the study of the four streets as it relates to encouraging the side loaded garages in the rear for aesthetical purposes, and the R-C, R-D(1), and R-D(2) districts should be left as is.

After discussion, President Pro-Tem Wyett made a motion to approve the disapproval of the Zoning Commission (a denial) with the proposal to be considered by the Consultant during his study of the prototype neighborhood design guideline concept for the R-B zoning district. The motion was seconded by Councilman Shaw and carried 5-0 on roll call.

VII. ANY OTHER ITEMS

Attorney Randolph addressed the issue of a federal law suit by beach front property owners downdrift from the Inlet and the Town Council's authorization to proceed with the hiring of Mr. Stouck in the event Attorney Randolph did not find any other attorneys who were interested. Mr. Randolph said Mr. Stouck provided a memorandum of what he would incorporate within his memo for up to $35,000 which is part of the backup for the Tuesday, January 11th meeting.

Mr. Randolph reported he had heard from Gray, Harris, and Robinson, the firm that handled the Applegate case, and they indicated they would be interested. Mr. Randolph said they could be available after 3:00 p.m. on Tuesday, January 11th, or at the January 14th meeting. Mr. Stouck indicated it would be convenient for him to be present on January 11th and January 14th is less convenient.

Mr. Randolph asked for guidance from the Town Council.

President Smith said that item 7 on the January 11th agenda is "Potential Litigation Against Federal Government" but it can be deferred to the January 14th meeting.

Councilman McDonald said Mr. Stouck made his presentation to the Council and provided a memorandum which can be reviewed, and he did not see any reason the Council needed to see Mr. Stouck again. Councilman McDonald said the Council should see the other attorneys, because they had not talked to them before.

Councilman McDonald said he would like to hear from Gray, Harris, and Robinson on January 11th.

President Smith suggested setting a time certain for Item 7 at 3:30 p.m. on January 11th to hear from the attorneys. She said Mr. Stouck did not need to come again unless he just wished to be here.

President Smith said the Town Council discussed at the December Town Council meeting sending the Mayor and Mr. Dusey to Tallahassee for discussion regarding the ECL. She said the Town Council did not do this by way of a motion, and the meeting could not be set up without a motion.

Councilman Shaw said he spoke to Representative Sharon Merchant and she would like to be copied on the entire process, and she would like to assist the Town regarding this determination. He said he would work with Mr. Dusey regarding the information to send to Ms. Merchant, and she requested a memorandum be sent to the Governor alerting him that a packet will be sent to him through Sharon.

Councilman Shaw made a motion to authorize the Mayor and Mr. Dusey to go to Tallahassee to meet with the governor to discuss the ECL. The motion was seconded by President Pro-Tem Wyett and carried 5-0 on roll call.

President Smith clarified the motions will start things moving, and a report will be given at either the January 11th or the January 14th meeting.

Councilman McDonald made a motion to authorize Mr. Dusey to provide whatever documentation that would support the Town's claim for erasing the Erosion Control Line to Representative Merchant and others as discussed at this meeting. Councilman Shaw seconded the motion, and on roll call, the motion carried 5-0.

Mr. Moore reminded everyone that the first reading of the zoning ordinance would take place on February 7, 2000, at 5:01 p.m.

There were no other matters.

VIII. ADJOURNMENT

The meeting was adjourned at 2:30 p.m.

Mary A. Pollitt, Town Clerk