# TOWN COUNCIL MINUTES OF HEARING ON ZONING COMMISSION RECOMMENDATIONS HELD ON JANUARY 6, 1997

**I. CALL TO ORDER AND ROLL CALL**: President Lesly Smith called the Special Meeting of the Town Council to hear Zoning Commission Recommendations to order at 9:30 a.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 Sam McLendon, Leslie Shaw, and Allen Wyett. Also attending for all or part of the meeting were: Town Manager Robert J. Doney; Scott Hawkins, representing Town Attorney John Randolph; Town Attorney John Randolph; Robert Moore, Director of Planning, Zoning & Building; Zoning Administrator Paul Castro; Timothy M. Frank, Planner/Projects Coordinator; Mary A. Pollitt, Town Clerk; and William Brisson, Consultant from Adley, Brisson, Engman, Inc.

**II. INVOCATION AND PLEDGE OF ALLEGIANCE**: The invocation was given by Mrs. Pollitt, and Mrs. Smith led the Pledge of Allegiance.

**III. PROOF OF PUBLICATION**: Mrs. Pollitt reported that proof of publication was received.

**IV. APPROVAL OF AGENDA:** Mrs. Pollitt said that Orbis International had filed an application for a charitable event to be held on January 8, 1997, at Club Collette. Mrs. Pollitt requested a waiver of the advertising requirement in the ordinance and approval of the application.

Dr. Margaret Picher from Orbis International addressed the Town Council and described the DC-10 Flying Hospital that travels around the world teaching ophthalmology, i.e. cataract surgery, glaucoma, with volunteer opthalmologists. Dr. Picher stated the group was unaware of the Town's requirement for a permit to raise funds.

Responding to questions from Mrs. Smith, Dr. Picher replied that the event was arranged with Club Collette in November and early December. The State Department gave approval on the 6th of December for the group to travel to Cuba. Final arrangements were made after that.

Mrs. Smith noted that the majority of places in the Town that host charitable events are aware of the Town's requirement, and Club Collette should have informed Orbis of the requirement.

Motion was made by Mr. Wyett to approve the application with the condition that a letter be written to Club Collette advising them of the Town's procedure. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

The agenda was approved as written by a motion made by Mr. Wyett and seconded by Mr. McLendon. The motion carried unanimously.

**V. PROCEDURES:** Mrs. Smith said the procedure would be for the staff to speak followed by public comment after each item. All participants were directed to use the microphone.

Mrs. Smith recognized the members of the Zoning Commission who were present in the audience.

**VI. AMENDMENTS TO THE BREAKERS PLANNED UNIT DEVELOPMENT (ITEM 2, 1996-1997 ZONING PROPOSAL STAFF REPORT):** Mr. Moore said the Zoning Commission recommended on a 7-0 vote the approval of a request to modify Resolution 17-90 to extend the time of re-evaluation of the lease period for Pinewalk Transfer Station to the 1997-98 Zoning Season. The date for the evacuation of the Breakers' property would be extended from December 31, 1999, to December 31, 2000, in the event agreement on transfer of development rights is not reached during the 1997-98 Zoning Season. Mr. Moore added the applicant requested to modify Resolution 6-92 to:

a. Extend the period, during which the transfer of development rights in Phase 1A is to be renegotiated, from the 1996-97 Zoning Season to the 1997-98 Zoning season;

b. Extend the period, during which the transfer of development rights in Phase 5 is to be renegotiated, from the 1996-97 Zoning Season to the 1997-98 Zoning Season;

c. Extend the period for the widening of County Road at the Breakers' entrance, widening the entrance road, removal of parking and upgrading of the signal at the entrance, from the 1996-97 Zoning Season

Mr. Moore said the applicant is requesting to modify Resolution #6-92 to reschedule the review of the commencement of various development priorities from the 1996-97 Zoning Season to the 1997-98 Zoning Season.

Mr. Moore reported that Mrs. Royal, Zoning Commission Member, questioned the status of the pump station. Mr. James Brindell, attorney representing the Breakers, responded that the Breakers has contracted with Mock, Roos & Associates, Inc. to prepare construction drawings and obtain permits and bids for the construction work of the pump station (Exhibit "C" in the P.U.D. application). This facility is contemplated in a location in the vicinity of the Flagler Museum, and when complete, will enhance the drainage of the South County Road main entrance to the Hotel and the Hotel golf course. The anticipated completion date is November 1, 1997.

Mr. Moore said that the Breakers asked for a postponement for the other items that need to be negotiated with the Town but are starting with the pump station in 1997.

Mr. Shaw referred to modification number 8 that appeared throughout the document. He stated his concern was with the parking, and an expansion of this size could utilize some method of below ground parking with a platform deck that would allow the usage of the ground level for the open green space requirement. Mr. Shaw said that often the ground is elevated over an underground parking area and used for part of the golf course, etc. He suggested that something could be incorporated in the agreement that would create parking facilities in exchange for above level use.

Kim Anderson, Planner from Gunster Yoakley, addressed the Town Council and said that would be looked at next year. Ms. Anderson said the Breakers has been focusing the last several years on a major hotel renovation that was slated to cost approximately $25,000,000. The renovations are almost complete at a cost of approximately $66,000,000. The Breakers will focus on some of the other issues now that the renovations are nearly completed.

Ms. Anderson said a parking consultant was hired by the Breakers last year and is conducting an in-depth parking analysis for the hotel and the other P.U.D. properties. Drainage problems are being addressed, and a consulting team has been hired. Ms. Anderson said the aforementioned issues would be addressed during next year's zoning hearings.

Jerry Weigan, Vice President, addressed the Town Council. Mr. Weigan said the Breakers can address and study the overall parking situation with experts. Mr. Weigan added that all improvements are internally funded with the family owned corporation, and capital improvements are planned very carefully. During the last seven or eight years, the focus was on the hotel and the resort. Parking requirements need to be studied before a plan can be put together.

Mr. Shaw said that regardless of how much parking the Breakers would put in, the document should include that no additional green space is taken away to meet the parking requirements.

Mr. Moore asked Ms. Anderson to consider or address the particular matters as suggested by Mr. Shaw during next year's zoning hearings.

Mr. Shaw replied that he did not want the Breakers to come back next year and state they were unaware of what the Town wanted after a plan was developed.

Mr. Weigan replied that the Breakers had no intention of damaging the quality of the land or the aesthetics but were interested in improving it. He indicated the Breakers would begin studying all of the aspects and discuss it next year.

Mr. Wyett made a motion to approve the time extensions for the Breakers. The motion was seconded by Mr. McLendon, and the motion carried unanimously.

## VII. 1996-1997 ZONING PROPOSAL STAFF REPORT (ITEMS 3 THROUGH 17) AND RECEIPT OF THE RECOMMENDATIONS AND REPORT OF THE TOWN ZONING COMMISSION, DATED DECEMBER 3, 1996

(Items 3 and 4 were heard after the lunch break between 1:00 p.m. and 2:00 p.m.)

Item 5. Mr. Moore said that on a vote of 5-2 (Mr. Bertles and Mrs. Taca dissenting), the Zoning Commission recommended disapproval of the proposal as submitted by the Town Administration to provide reduced setbacks for gates on cul-de-sacs and dead-end streets as identified in the Zoning Commission Report.

On a vote of 7-0, the Zoning Commission recommended approval of a modified proposal submitted by the Town Administration at the meeting to amend Section (5.36) GARDEN WALLS AND FENCES, subsection (b) to read as follows:

(b) *Gateposts and gates located in front, street side and rear street yard areas.* Gateposts not exceeding three (3) feet in any horizontal dimension may be erected and/or constructed in connection with the erection and/or construction of a wall, fence, or in connection with an existing or proposed hedge; said gateposts and gates shall not exceed a height of two (2) feet above the maximum wall height permitted in this section. In the event gates are to be erected at driveway entrances (new language) gates must be provided with a minimum driveway area in front of, and perpendicular to gates, nine (9) feet wide by eighteen (18) feet deep, as measured from the street pavement.

Mr. Moore said the staff recommended that on the dead end streets and cul-de-sacs that a the setback be nine feet from the pavement, and for properties elsewhere on dead end cul-de-sacs or that were less than twenty-two feet in length, the setbacks may be reduced as provided by special exceptions by the Town Council. For all other properties, the setbacks must be at least eighteen feet from the pavement. Mr. Moore said that language was struck and new language was suggested by the Zoning Commission as stated above.

Mr. Wyett said that a number of special exceptions have been received by the Town Council on dead end or cul-de-sac streets, and most of the time the Town Council has granted them. Mr. Wyett said he had suggested eighteen feet last year because that was the length that was needed so that cars would not stick out into the street; however, there were differences for the cul-de-sac streets. Mr. Wyett suggested the Council could consider going back to fifteen feet--specifically for these two types of areas with the provisions that were struck out relating to the intercoms and gates opening.

Mr. Wyett referred to recently approved gates on LaCosta Way with a setback of nine feet in lieu of the required eighteen. Mr. Wyett said he was dismayed that the gates became solid gates, and the Council should consider that because the effect was that of a "prison" with a solid wall and solid gates. Additionally, the safety factor with solid gates was greater since the incoming vehicle could not be seen.

Mr. Shaw recalled that this item came to the Town Council and was referred to the Zoning Commission because the cul-de-sacs themselves are not high-trafficked areas. Mr. Shaw said he asked Chief Terlizzese if this created a traffic problem on a dead-end street. Chief Terlizzese had replied this did not create a safety problem, because cars that turn around in these situations are traveling at relatively low speeds.

Mr. Shaw said fifteen feet would not make enough of a difference to re-write an ordinance from fifteen to eighteen feet in a cul-de-sac, and that's where the nine feet came from. Mr. Shaw said he did not think the Council should grant routine variances when a reasonable way to approach an issue exists.

Mrs. Smith said she agreed with the Zoning Commission, and a definite safety issue exists. Cars pull up to the gates and cannot reach the box with the button; the driver exists the car to push the button; and leaves the car extending into the street. Mrs. Smith preferred to have the Town Council review these applications one by one. Mrs. Smith said the function of the Town Council was to sit on these matters, and the Zoning Commission is not making recommendations to make things easier for the Town Council or to create less time for Town Council members to be sitting in meetings.

Mr. McLendon said he thought some relief was needed for the ordinance, because the Town Council should not have to consider as many of the applications as have been submitted. Mr. McLendon said he thought that a nine foot distance would have provided a clearance to enable a driver to reach a box. Mr. McLendon said he was reluctant to change the Zoning Commission's recommendations.

Mr. Wyett said that nine feet is not sufficient, but fifteen feet is sufficient so that the driver does not have to exit the vehicle. Responding to a question from Mr. Shaw, Mr. Wyett said twelve feet is marginal.

Robert Deziel, Attorney representing two applications submitted to the staff and Zoning Commission, addressed the Town Council. Mr. Deziel requested the Town Council review the issue and consider making a decision different from the Zoning Commission's recommendation.

Mr. Deziel said residents have gates for security reasons, and the eighteen feet required for gates to be located off the pavement was established for North Lake Way and North Ocean where there are heavy volumes of traffic. Mr. Deziel said the number of cul-de-sacs applications has increased greatly.

Mr. Deziel reported that he and Jeff Smith, Architect, conducted their own survey to determine what distance would be required for cars to pull into the aprons of their driveways and be able to push the buttons on the call boxes. Mr. Deziel defined the radius area for a long base Rolls Royce at eight feet; a medium size Mercedes required seven feet; and both of these figures are less than the proposed nine feet. Mr. Deziel requested that the Town Council consider the people at the end of the cul-de-sacs whose driveways are used as turn around areas and the requirement for these people to have to prove a hardship for a variance request.

Mayor Ilyinsky commented that many of these issues relate to public safety concerns and requested a member of the Police Department be present to address some of these issues. Mrs. Smith confirmed that request.

Robert Wood, Chairman of the Zoning Commission, addressed the Town Council. Mr. Wood reported that the Zoning Commission was involved in a long discussion on this matter, primarily related to the dimensional aspects. Mr. Wood said that the Zoning Commission was concerned mainly with the public safety issue, and that was more important than a private person's property rights regarding achieving some sort of dimensional variance. Mr. Wood added pedestrians were considered to be the safety issue--not the passing traffic--and the Zoning Commission did not want to superimpose their judgement as to what degree of safety may or may not be present concerning the type of cul-de-sac or dead end street or at what time of the day or night. Mr. Wood said that <u>any</u> risk to public safety, particularly to children and pedestrians, is too great to assume.

Additionally, Mr. Wood said the application, as presented, was fundamentally and procedurally flawed because of the attempt to regulate the issue by special exception. He explained that special exception uses are conditional uses which change the use on a property. The property use for single family residences is already established; therefore, the proper procedural methodology is a dimensional variance. Mr. Wood said the reason for using the special exception use is to achieve an "end run" around the hardship provision which normally cannot be attained in these situations. Mr. Wood recommended that this issue continue to be evaluated as a dimensional variance on a case by case basis as recommended by President Smith until the time someone can prove that there is absolutely no risk to public safety.

Robert Deziel responded that everything that Mr. Wood said was correct but not applicable to the issue. Mr. Deziel said he did not know of one dead end street or cul-de-sac in Town that has a sidewalk nor does a safety issue exist. Mr. Deziel said the issue was reviewed by the Zoning Commission with the wrong message or misunderstanding, and the concept was: "Should some relief be given on a zoning distance for a given issue?" Mr. Deziel said an applicant has the discretion to meet the criteria for either a special exception or a variance. The basic difference between the two, related to criteria, is the proving of a hardship. Mr. Deziel offered that the Town Council can always use the issue of public safety to deny a request, and that should not be the basis of this issue.

Police Chief Joseph Terlizzese addressed the Town Council and stated that he was not sure the issue was a public safety problem but rather a convenience for the public or motorists who have a little more room to turn around. Chief Terlizzese said he had not been involved in discussions with the Zoning Commission.

Responding to a question from Mr. McLendon, Mr. Moore explained the proposal is for electronically operated gates which are operated by remote control. The button that is pushed is used by visitors or delivery people.

Mr. Wood stated that the Zoning Commission was not willing to accept any level of risk/responsibility for public safety regardless of the electronic devices that could be installed on the gate posts.

Mr. Shaw said he thought that twelve feet would be a compromise between fifteen and nine feet that accomplishes something. Mr. Shaw said he would rather have the Town Council see fewer variances and stick by the Code because it is reasonable in an area where it meets a need than have something at eighteen feet and have to find a compromise between eighteen feet and what somebody else wants. Mr. Shaw added that he did not see this as a public safety issue, and these areas are not high-traffic areas. Twelve feet from the roadway would place the car approximately three-quarters of a car length in, and the position of the remote has to be such that the person who is operating it must be able to reach it from the car.

Mrs. Smith asked Mr. Shaw to identify where in the language the differential exists between Mr. Deziel's comments concerning the cul-de-sac and the neck of the cul-de-sac? Mrs. Smith recalled the particular residence that brought this matter to the Zoning Commission was a newly constructed residence on LaCosta Way that could have been designed not to need a variance. This residence is located on the neck of the street--not on the cul-de-sac. Mrs. Smith suggested if a compromise is proposed, new language should be added stating that new projects (new construction) and the neck of the cul-de-sac are differentiated from dead end streets where no cul-de-sacs exist and major safety issues exist. Mrs. Smith questioned why this issue was turned into a major issue and with whom a compromise was proposed?

Mr. Deziel explained that the language was intended to address only situations where the driveway was on a cul-de-sac and referred to the radius area directly on a cul-de-sac.

Mr. Shaw made a motion to approve the original proposal (page 30 in the brown book) adding: "within a cul-de-sac with a minimum radius of twenty (20) feet, the gates may be set back twelve (12) feet from the property line". Mr. Shaw added that this provision would be for existing construction and not permissible for new construction.

Mr. Moore said he did not think the provision in the zoning ordinance could be limited to existing construction, and once a provision is created, it is a provision for all. Mr. Moore said the Town Council should not be granting variances to new construction.

Mr. Shaw said this would only be a special exception item if it were old construction.

Mr. Moore said he thought the Town Council could do what Mr. Shaw suggested, but he would not recommend it. It is discriminating in the respect that the ordinance would discriminate against new construction.

Mr. Shaw said his motion would stand with a minimum radius of twenty (20) feet--it would be permitted twelve (12) feet. Mr. Shaw changed his motion to read: "twenty-two (22) feet radius--twelve (12) feet back".

The motion was seconded by Mr. McDonald.

Mayor Ilyinsky said he supported the findings of the Zoning Commission although Chief Terlizzese does not altogether agree with the dangers involved, the information provided by the Chief indicated he did not think this was a bad idea.

On roll call, the motion failed 2/3 with Mr. McLendon, Mr. Wyett, and Mrs. Smith casting negative votes.

Mr. Wyett made a motion to accept the recommendations of the Zoning Commission. Mr. McLendon seconded the motion.

Mr. Deziel requested the Town Council consider a provision that said "with a special exception in the areas under discussion that a lesser distance may be allowed." Mr. Deziel said the Town Council would still be reviewing all of the applications as is presently being done; however, the issue is that an application relating to a cul-de-sac or a dead end would be handled as a special exception as opposed to a variance.

Scott Hawkins, Attorney representing the Town Attorney, John Randolph, suggested the applicant be allowed on a case by case basis to request a special exception or variance as the applicant wishes. Mr. Hawkins said he was not comfortable recommending that a general statement be made inviting special exception applications as he understood Mr. Deziel's comments.

Mr. Moore responded that Mr. Deziel was the proponent of this particular item, and it was submitted properly with the appropriate fee. Mr. Moore said the question is: "Does the Town Council want to see this as a special exception or a variance?" As a special exception, the applicant does not have the burden of proving a hardship. Mr. Moore said he believed that this issue could be made a special exception, as it is more difficult for the applicant to meet the burden of hardship. If the applicant has met all of the criteria, the burden shifts to the Town Council to make that decision. Mr. Moore said if the Town Council votes on this, as the motion was made, the effect is to leave it as a variance.

Mr. Shaw requested that the item be deferred to the scheduled meeting of the Zoning Commission later in the month. Mr. Shaw suggested the motion could be withdrawn and deferred until the Zoning Commission could review it again.

Mrs. Smith said there was a motion on the floor.

Mr. Wyett said that in deference to his fellow councilman, he would withdraw the motion.

Mrs. Smith said that the Town Council would be sending an item back to the Zoning Commission that would not be meeting to consider this item again, and the Town Council had their report. Mrs. Smith asked Mr. Moore to comment on what would happen if this item were deferred back to the Zoning Commission. Mrs. Smith reminded everyone that this is not a personal issue.

Mr. McLendon, the seconder of the motion, did not withdraw his second. Mrs. Smith asked if Mr. McLendon would like to make a new motion?

Mr. McLendon made a new motion to approve the recommendations of the Zoning Commission. Mrs. Smith passed the gavel and seconded the motion.

Mr. Moore pointed out that sending this item back to the Zoning Commission would accomplish very little due to the fact that this was discussed twice by the Zoning Commission. Mr. Deziel, the proponent of this item spoke at the Zoning Commission meetings in November and December. The Zoning Commission, both times, said "no" and have recommended in their report their denial. Mr. Moore said that sending it back to the Zoning Commission, in his opinion, would be a waste of time, although it was a 5-2 vote.

Mr. Wyett asked Mr. Moore to comment on the status of this item as a special exception versus a variance.

Mr. Moore replied that it could be a special exception or status quo; however, a variance makes it harder for the applicant to prove the hardship. He explained that the property owner who lives on a cul-de-sac does have a hardship by the nature of the shape of the lot on the cul-de-sac; however, the public safety issues, as expressed by the Zoning Commission, have to be considered also.

A discussion followed concerning recent requests, heard by the Town Council, that related to the placement of gates closer to the pavement.

Mr. Wyett requested that Mr. McLendon, the maker of the motion, add the provision that the gates would be a special exception versus a variance.

Mayor Ilyinsky questioned that the Town Council heard legal advice from Mr. Hawkins stating that was not the way to go.

Mr. Hawkins responded that the point he made was that this should be treated on an application by application basis, and he was not comfortable recommending a blanket statement inviting the treatment of the issue as a special exception.

Mrs. Smith said that was the way she interpreted Mr. Hawkins previous remarks.

Mr. Wyett said that issues could be heard on a case by case basis under either variances or special exceptions.

Mr. Moore added that the issue of the gates is not a special use permit which would be a permitted type use, and either way, there would have to be a full application. The only difference being that with the variance application, the burden of approving that hardship becomes more difficult. The special exception would use the same criteria -- the shape of the lot, etc. -- but the application would go to the Town Council either way and not be approved by staff.

Mr. Adrian Winterfield addressed the Town Council. Mr. Winterfield said, that in no case, can a gate constitute a hardship, and there are hundreds of houses in the Town of Palm Beach that do not have gates. The basis of a variance has language to the effect that a variance shall be granted when no other reasonable use of the property can be made.

On roll call, the motion failed 2-3 with Mr. Wyett, Mr. Shaw, and Mr. McDonald casting negative votes. Mr. McDonald said he did not have a problem with the issue being either a special exception or a hardship, and he thought it should be a special exception because the applicant will not be able to prove a hardship. If an applicant complies with all of the requirements of a special exception, then he should have that special exception granted.

Mrs. Smith asked if Mr. McDonald would make a motion.

Mr. McDonald moved that Item No. 5 be changed to: "that an application for a change to the gates/setback requirements be a special exception as opposed to a variance request." Mr. Wyett seconded the motion.

Mayor Ilyinsky commented that he hoped that all of the Town Council members were absolutely certain that was the way they wanted to go.

On roll call, the motion carried 3-2 with Mr. Shaw and Mrs. Smith casting negative votes.

Mrs. Smith asked Mr. Moore to address the next issue.

Mr. Moore replied that the Zoning Commission recommended that the language be clarified for gate measurements that were on oblique angles to the properties, particularly for circular driveways. Mr. Moore read the following proposed language change:

"gates must be provided with a minimum driveway area in front of, and perpendicular to gates, nine (9) feet wide by eighteen (18) feet deep, as measured from the street pavement."

Mr. Moore requested the Town Council adopt that language too.

Motion made by Mr. McDonald to approve the language change as read by Mr. Moore. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Item 6. Mr. Moore reported that on a vote of 7-0, the Zoning Commission recommended deferral of the proposal to add a new definition for "Dimensional Variance" with the instruction for Town Administration to review all material presented and provide a new definition for Variance.

Motion made by Mr. Wyett to approve the deferral. The motion was seconded by Mr. Shaw.

Mrs. Smith asked for further comment from Mr. Moore and the public.

Mr. Moore added that Mr. Randolph would review, with the Zoning Commission, an additional definition, eliminating the word "dimensional" and adding some additional language under the current definition of variance.

No member of the public addressed the issue.

On roll call, the motion carried unanimously.

Item 7. Mr. Moore said that on a vote of 7-0, the Zoning Commission recommended the approval of the proposal as submitted by the Town Administration to amend Schedule B. SCHEDULE OF USE REGULATIONS , to allow brokerage and trust companies as a permitted use in the C-OPI district. In addition, amend Section 6.21, OFF-STREET PARKING*, SCHEDULE OF OFF-STREET PARKING REQUIREMENTS (5) & (14) to provide brokerage and trust companies with the same off-street parking requirements as office uses. The Zoning Commission also recommended that next zoning season the Town Administration investigate the possibility of providing a separate definition for Brokerage and Trust Companies. They were identified in the following language:

Schedule B. SCHEDULE OF USE REGULATIONS-Cont'd.
*Permitted Uses*

....
3. Brokerage and trust companies
4. Essential services

Special Exception Uses*

...
9. Banks and financial institutions, excluding brokerage and trust companies

OFF-STREET PARKING*, SCHEDULE OF OFF-STREET PARKING REQUIREMENTS
PALM BEACH, FLORIDA

| | | |
|---|---|---|
| (5) | Retail commercial and personal service establishments and banks and financial institutions excluding brokerage and trust companies | One (1) per two hundred (200) square feet of gross leasable area (GLA). |
| (14) | Office, professional and business service establishments, institutions, | One (1) per two hundred fifty (250) square feet of gross leasable area (GLA). |

companies.

Mr. Moore said that the Zoning Commission's recommendation was that the use be returned to the status regarding offices and accompanying parking.

Mr. Wyett asked, if the trend were reversed in the future, what would happen if investment banking was transacted as banks?

Mr. Moore replied, if the trend was reversed, the matter would be referred to the Town Council. The language not to provide any banking services could not be added to the proposed language, because limited banking services are provided.

Mr. Adrian Winterfield addressed the Town Council. Mr. Winterfield said a brokerage company can often generate, as a brokerage company and nothing else, as much or more traffic as a commercial bank. If people stop in, off the street, to see what a specific stock is doing, then the traffic generated can be greater.

Mr. Winterfield said, as far as trust companies were concerned, he would like to see a definition for same. A company may provide both trust and banking services and which is primary? Mr. Winterfield said he found it difficult to justify the removal of these two categories which are not clear without re-working the entire definitions.

Motion made by Mr. McDonald to approve the recommendation of the Zoning Commission. The motion was seconded by Mr. Wyett. On roll call, the motion carried 4-1 with Mr. Shaw casting a negative vote.

Item 8. Mr. Moore said that on a vote of 7-0 the Zoning Commission recommended the approval of the proposal as submitted by the Town Administration to amend Section 5.48 II.A., with the following language:

II. R-B zoning district. In order to encourage meritorious architectural design, variety in the setback of structures, increased open space and landscaped open space, reduced lot coverage; and reduced floor area ration, the Town Council may at its discretion, upon review of an application and public hearing thereon, allow for the increase of the maximum building height in the R-B zoning district of the town provided said special exception meets the standards of Section 6.40 of this Ordinance, and the goals, standards, and guidelines set forth in this section.

A. The Town Council shall find that:

1. The proposed increase in height for a contemplated special exception structure is in the public interest.

2. The structure is compatible with the site, adjacent properties, and the neighborhood after consideration of: ....

Mr. Moore pointed out that number 2, referring to the Architectural Commission, was eliminated and a new number 2 (as above) was assigned to existing language. This was a house-keeping matter when 5.48II.A. was added to the ordinance.

Mr. Shaw made a motion to approve the recommendation of the Zoning Commission. The motion was seconded by Mr. McDonald.

Mr. Adrian Winterfield addressed the Town Council and said he had difficulty following the statement that prior processing of special exceptions and variances by Council "did not work out". In most cases, there is nothing to go to the Architectural Commission unless Council has first granted a special exception or variance. This is a unique type of over-ride which occurs after consideration of the plans. Ordinarily, Council does not consider the plans for a property, and that is surely in the jurisdiction of the Architectural Commission.

On roll call, the motion carried unanimously.

Item 9. Mr. Moore said that on a vote of 7-0, the Zoning Commission recommended the approval of the proposal as submitted by the Town Administration and as modified by the Zoning Commission to amend Section 5.51(b)(1) of the Zoning Ordinance with the following language:

(5.51) MINIMUM YARD, LOT AND BULK REGULATIONS

(a) *Accessory structures in R districts ....*

(1) All enclosed or partially enclosed (enclosed or partially enclosed meaning either all or a portion of the building floor area protected from the weather by permanent construction) accessory buildings hall comply with all open yard requirements contained in this ordinance for the principal structure for the zoning district in which said buildings are located except as otherwise provided in this section.

Mr. McDonald made a motion to approve the recommendation of the Zoning Commission. The motion was seconded by Mr. Shaw.

Mr. Winterfield addressed the Town Council and said this paragraph indicated the futility of doing separate definitions for structure and building. As they currently exist, under the definition of "building" merely states "see structure". A distinction should be made.

Mr. Wyett noted that a lot wider than 149 feet with an accessory building would have to be wider than the existing fifteen feet and could have the accessory building thirty feet into the setback.

Mr. Moore replied that was correct and if an owner had a 60,000 square foot lot in the R-B district, a thirty foot setback for the accessory structure that would be enclosed or partially enclosed--not for swimming pools, but partially enclosed structures.

Mrs. Smith said she understood that everyone knew that the setbacks would apply to all properties.

On roll call, the motion carried unanimously.

Item 10. Mr. Moore reported that on a vote of 7-0, the Zoning Commission recommended approval of the proposal as submitted by the Town Administration and as modified by the Zoning Commission to amend Section 6.15, TENNIS, SHUFFLEBOARD AND RACQUETBALL COURT.

...

In determining the percentage of coverage of a lot by buildings, tennis, shuffleboard and racquet ball courts and similar uses shall not be counted in such computation. Night lighting of racquetball courts and similar uses is hereby prohibited. The Town Council may permit as a Special Exception with Site Plan Review, minimal state of the art night lighting from 4:00 p.m. to 9:00 p.m. for tennis courts, provided that the applicant demonstrate to the Town Council that the light and noise created by the tennis court will be adequately mitigated as it relates to adjacent residential uses and vehicular right-of-way. All tennis courts shall include as an integral part of the construction thereof proper fence or wall enclosures contiguous to said court or courts, said fence or wall enclosures to be at least ten (10) feet in height. All tennis courts and associated lighting shall be sight screened with plantings at least the same height as the tennis court fence enclosures and tennis court lighting, where visible from adjacent properties or the public or private street right-of-way. Racquet ball courts shall be sight screened with plantings, where visible from adjacent properties or public or private street right-of-way.

Mr. McDonald questioned the necessity of a starting time for turning lights on.

Mr. Moore replied that the Zoning Commission modified the Town's proposal that was from 5:00 p.m. to 9:00 p.m. because of the earlier times during the winter months that darkness occurs.

Mr. McDonald said that a resident may want to turn on lights on a dark day earlier than 4:00 p.m.

Mr. Castro replied that the intent was to prevent the use of courts early in the day.

After discussion, Mr. McDonald proposed the hours be from 9:00 a.m. to 9:00 p.m.

Mrs. Smith asked if the prohibition of night lighting for shuffleboard and racquetball courts would be continued?

Mr. Moore replied affirmatively.

Mrs. Smith asked why the Zoning Commission separated the courts?

Mr. Moore replied that shuffleboard courts and racquetball courts were thought to have a noise problem that would be difficult to surmount and mitigate; therefore, those were prohibited.

Mrs. Smith said that shuffleboard was noisier than tennis, and questioned the difference?

Mr. Wood said that the Zoning Commission did not discuss the issue.

Mrs. Smith asked Mr. Moore what discussion he heard?

Mr. Moore replied he would have to check the record.

Mrs. Smith said that although racquetball was noisy, shuffleboard was not noisier than tennis balls.

Mr. Winterfield addressed the Town Council and said that croquet should be taken into consideration and did not know if it had been deliberately eliminated. Mr. Winterfield--referring to the sight screening provision--said that tennis court lights are tall. Mr. McLendon said the new lights are probably twelve feet tall. Mr. Winterfield said that answered his question.

Mrs. Smith agreed with Mr. McDonald that croquet should be included in the lighting.

Mr. McDonald moved approval of item 10 with the inclusion of croquet and shuffleboard and hours to commence from 9:00 a.m. to 9:00 p.m.

Mr. McLendon asked if the Seaview courts and the Beach Club courts had room to install any sight screening landscaping?

Mrs. Smith mentioned that a motion may be premature at this point, and the motion was not seconded.

Mr. McDonald withdrew the motion.

Mrs. Smith asked Mr. Moore if the screening had been discussed by the Zoning Commission.

Mr. Moore replied that the Seaview Park courts already have lights and is a grandfathered use. The Beach Club would have to be studied to see if they could be sight screened. Mr. Moore said there may be courts that will not be able to install lighting because of their locations for sight screening.

Mr. McLendon asked if consideration should be given to the view across the street?

Mr. Moore replied affirmatively, and when the applicant came before the Town Council requesting a special exception, mitigating circumstances could be presented.

Mr. Moore, responding to a question from Mr. Wyett, said that backboards on courts were prohibited.

Mr. Wyett asked if a provision should be added denying the use of lights on a court if the 9:00 p.m. time were violated a number of times?

Mrs. Smith replied that she thought an automatic shut off at 9:00 p.m. should be installed as part of the lighting system for all of the courts at the time a building permit was issued.

Mr. Moore responded that could be accomplished.

Mrs. Smith said that if the lights were on after the 9:00 p.m. automatic shut off, then the police or code enforcement would know the automatic shut off had been tampered with.

Mr. Winterfield suggested that each case can be considered independently and Council should have the latitude to grant the time lights can be turned on depending upon the wishes and consideration of the neighbors.

Mr. McDonald made a motion to adopt item number 10 to include croquet and shuffleboard courts; the commencement time be changed from the recommended 4:00 p.m. to 9:00 a.m.; and an automatic timer should turn the lights off at 9:00 p.m. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Item 11. Mr. Moore reported that on a vote of 7-0, the Zoning Commission recommended disapproval of the proposal as submitted by the Town Administration to amend Section 6.21(F), *Utilization of yards.*, to require single family homes to provide the two required off-street parking spaces in a garage.

Mr. Moore said that currently one off-street parking space is required, and the Zoning Commission thought that a requirement for two spaces was too stringent.

Mrs. Smith questioned if the two spaces could be required for new construction, and this question came up with the new construction of two family townhouses. Mrs. Smith asked if the Zoning Commission had discussion on the new construction requirement?

Mr. Moore replied that the Zoning Commission discussed the issue and pointed out that to provide an additional two hundred feet, 10' x 20', would take away from the air conditioned space within the main structure as far as floor area ratio was concerned; therefore, it was too much of a penalty to pay to provide the extra off-street parking.

Mr. McDonald questioned if it was better to request a lot coverage variance?

Mr. Moore replied that on new construction that would be a variance request.

Mr. McDonald said he supported the two parking space requirement and liked keeping the cars off of the street. Mr. McDonald speculated that it might be better to require the two parking spaces and have applicants request variances for lot coverage.

Mr. Moore clarified that the cars have to be off of the street presently, and the minimum requirement is one space in a garage. Additional vehicles may be parked in the driveway.

Mrs. Smith recalled that this question came up last year with the new townhouses on Brazilian Avenue where one of the cars had to be parked on the driveway facing the street with no way to sight screen the driveway.

Mr. Wyett said the two car requirement would be a vast improvement for the beautification of the streets.

Mr. Wood said that when the Zoning Commission discussed this item, it was determined that all new construction would require sight screening of the second automobile. Mr. Wood asked Mr. Moore if that was correct?

Mr. Moore responded that was true for single family residences but not townhouses.

Mr. Wood said the practicality of the situation was discussed by the Zoning Commission, and even if a two car garage was required, the ordinance could not require that people keep the two cars in the garage.

Mrs. Smith responded that was true, but the Council's concern was with the multi-family situation where the one car was in the garage and the other car was always in the driveway.

Mr. Wood suggested that this may be a "Harris Act" problem of inordinately affecting the value of these properties.

Mr. Moore said that historically the Town Council has frowned upon variances with new construction, and giving an exemption of 200 square feet would be adding additional bulk to the house which is addressed with floor area ratio and cubic content. Mr. Moore suggested this item could be returned to the Zoning Commission in an attempt to resolve the situation.

Mr. Moore said that Town Attorney Randolph did review all of these items, as requested by Mr. Wood, for potential Harris Act problems, and this item was one that Mr. Randolph passed on.

Mr. Scott Hawkins said he was concerned about an inordinate burden being placed that would trigger a Harris claim and recommended that the issue be carefully scrutinized under the Harris Act before action was taken. Mr. Hawkins said he saw a potential distinction, under Harris, between new construction versus old construction, but the issue should be studied further before action was taken.

Mr. McDonald said his understanding of the Harris Act, especially in relation to new construction, was that requiring two parking spaces would not diminish the value of the property. Mr. McDonald realized that it reduced the air conditioned space allowance.

Mr. McDonald suggested deferring the issue and made a motion to defer item 11. The motion was seconded by Mr. Shaw.

Mr. Winterfield addressed the Town Council and said the item under consideration related only to single family homes and only to new construction. Mr. Winterfield said if a claim was made, a rule that every new lot is entitled to "x" coverage, and the placement of **one** garage reduces the amount of buildable space. Realistically, anyone who is wise enough to purchase an undeveloped lot in the Town of Palm Beach will probably want to build a two garage space.

Mr. McLendon asked what requirement exists for side entry garages?

Mr. Moore replied that is a very strong request by the Architectural Commission that the designer design a residence with a side entrance garage, or sight screen the off-set driveways.

Mr. McDonald, the maker of the motion, suggested the item be deferred until later in the day to hear Mr. Randolph's original recommendation. Mr. Shaw accepted the amendment to the earlier motion.

Mr. Wyett asked if the Council would be considering multi-families in addition to single families? Mr. Wyett said the requirement for two garages may discourage developers to build additional units.

On roll call, the motion carried unanimously.

Item 12. Mr. Moore reported that on a vote of 7-0, the Zoning Commission recommended approval of the proposal as submitted by the Town Administration and modified by the Zoning Commission to amend Section 6.33 Signs in Commercial Districts, (a) *Size of Sign, © Location, and (d) Height of Signs,* with the following language:

6.33 SIGNS IN COMMERCIAL DISTRICTS. One building identification sign may be provided on the front of each wall of a building which fronts onto a street provided the building identification sign is installed flat against such wall and does not exceed twenty (20) square feet in area. Additionally, business signs which are installed flat against the street front or street side wall of a building are permitted for each licensed business in a building in accordance with the following regulations:

(a) *Size of sign.* The gross surface area of all business signs on a building shall not exceed the following schedule*:

| Building Street Frontage per ground floor individual business space | Maximum Gross Surface Area for all individual business signs |
|---|---|
| Less than 18 feet | 10 square feet |
| 18 feet and over | 20 square feet |

*Note--This permitted gross surface sign area per individual business may be in the form of one sign, or composed of a group of smaller signs which may advertise any licensed individual business within the building provided their aggregate area does not exceed that area contained in the schedule The gross surface area of any sign on a building shall not, however, exceed twenty (20) square feet.

(b)...

(c ) *Location.* Any individual business within a building shall be allowed signs in merchandise display area windows on the first floor, however, such window display signs shall count towards the allowable total sign area for individual businesses in a building, as calculated under (a) above.

(d) *Height of signs.* No building identification sign shall be higher than the building on which it is attached, nor shall any sign be located over or upon the roof of any building.

No individual business sign on a one story building shall be located higher than the building on which it is attached, nor shall any sign be located over or upon the roof of any building.

No individual business sign on a multi-story building shall be located higher than the first floor elevation of the building or fifteen (15) feet, whichever is lower.

Mr. Moore said this section of the ordinance has given the Building Department some trouble with the higher story tenants wanting identification signs, and this is an effort with the staff and the Zoning Commission to clarify the location, number, placement, and aggregate square footage of the signs.
Mr. Wyett asked if signage on buildings would be increased or decreased?

Mr. Moore responded that the result may be more signs but not total square footage that would exceed the twenty square feet that would be permitted for tenant space. The people on the upper floors may have signage on the lower floors but not totaling more than what could previously be put there.

Mr. Wyett clarified that a corner building could have signage on both streets.

Mr. Shaw questioned the placement of signage on an inside wall that was visible through a display window.

Mr. Moore replied that situation would be a judgement call, and a code enforcement officer would act accordingly. Mr. Moore said that a sign on an easel fifteen feet from the window would probably be okay but three feet from the display window may be a judgement call.

Motion made by Mr. Shaw to approve item 12 as presented. The motion was seconded by Mr. McLendon. On roll call, the motion was approved 4-0. (Mr. McDonald was out of the room.)

Item 13. Mr. Castro said that on a vote of 7-0, the Zoning Commission recommended disapproval of the proposal as submitted by the Town Administration to amend Section 6.61, STANDS, SEATED DINING AREAS AND OPEN COUNTERS FOR FEEDING, DRINKING AND THE LIKE, by allowing outdoor seating for a restaurant without the requirement of first being able to provide the seating within the indoor restaurant space.

Mr. Castro said this was a proposal by a Town resident, and the Town Council directed staff to investigate this issue. Staff thought that allowing additional seating would exacerbate an existing parking problem in the Town, and that was the reason the staff recommended disapproval.

Motion made by Mr. Wyett to uphold the recommendation (the Zoning Commission's disapproval) of the Zoning Commission. The motion was seconded by Mr. McLendon.

Mr. Winterfield addressed the Town Council and asked if he was correct in assuming that this does not apply to those operations who do not have tables inside--counters which sell food for consumption at tables outside because the word "restaurants" is used and those are not considered restaurants by definition.

Mr. Moore replied if the establishments are not restaurants, this provision would not apply.

Mr. Winterfield noted that animals "feed" and people "eat" (as noted in the above heading).

On roll call, the motion carried unanimously.

Item 14. Mr. Castro reported that on a vote of 7-0, the Zoning Commission recommended disapproval of the proposal as submitted by the Town Administration to amend Section 5.17, 8.15, 8.22, 8.23 and 8.24 of the Zoning Ordinance to allow the redevelopment of nonconforming residential
building on the same building footprint and cubic content (regardless of the setback) provided that the redevelopment would be a reduction in density.

Mr. Castro said that this item was deferred from last year and would allow the redevelopment of a nonconforming, multi-family residential building if it were removed or demolished on the same building footprint with the conditions as stated.

Mr. Castro said that staff recommended disapproval of the proposal because it does not meet the overall intent of the zoning ordinance; however, an alternative recommendation would be to allow redevelopment of a nonconforming structure provided that the maximum density would be that was allowed in the zoning ordinance and conditions one and two as noted in the opening paragraph were met.

Mr. McDonald asked Mr. Wood to explain the unanimous disapproval of the Zoning Commission.

Mr. Wood replied that the Zoning Commission thought that staff's recommendation was correct, and the proposal violated the overall intent of the ordinance. The intent of the nonconforming statute provision is to eliminate nonconforming uses. It also allows a continuing encroachment of the rights of the neighboring property. Mr. Wood added that as far as a reduction in density, if someone is required to meet all of the future setbacks, a reduction in density would occur regardless, and the Zoning Commission believed in upholding the current zoning ordinance as it exists.

Mr. Shaw said that he believed that the idea to uphold the Town's Comprehensive Plan is met by the revision, and the two other issues are to upgrade a facility that in its own right may not be able to be upgraded if this is not adopted. The adjacent neighbors have no detrimental impact if the building that existed is still there and simply rebuilt as a new structure.

Mr. Shaw said this proposal was withdrawn last year, because there was a concern that a house would be demolished that the applicant did not like just to rebuild it on the same footprint. Mr. Shaw said the zoning should allow some leeway or some flexibility which would allow someone to take a piece of property with high density and not create any additional physical impact because it has the same cubic content and the same footprint.

Mr. Moore said the problem is with the zoning.

Mr. William Brisson addressed the Town Council and said this issue has been addressed before. The Comprehensive Plan has a statement that is pretty much required by the State that states that any development or redevelopment in the Town must conform with the Town's Comprehensive Plan. That means even if the density is reduced in a multi-family structure to some density less than existing but still nonconforming, it still cannot be done. Mr. Brisson said his opinion was that the Town could not approve any density--any new building or reconstruction--that exceeds that which is allowed under the Comprehensive Plan. Mr. Brisson gave the example of six units per acre in the moderate density which is also the R-C district. If the number of units that would be rebuilt exceeds that which would be allowable at six units per acre, that would not be consistent with the Comprehensive Plan. As long as the density is reduced to some limit that would be allowed by the Comprehensive Plan, then there would be no problem. This would work if language were included such that the density reduction must result in conformity with the Comprehensive Plan.

Mr. Moore referred to the example that was before the Town Council last year where the only allowable use was a single family dwelling, and the attorney representing the applicant indicated there was no market for a single family residence; therefore, the Town was in effect taking the use of the land away from the property owner. Mr. Moore added that a new single family residence is currently being constructed on that property, and the attorney's marketing analysis was not correct.

Mr. Moore said he reluctantly agreed with Mr. Brisson, and the result was defacto zoning to the next highest zoning district. Mr. Moore said he thought the proposal was a good solution to existing conditions but had to agree that disapproval was the best decision.

Mr. Shaw questioned the alternate recommendation?

Mrs. Smith asked Mr. Moore if the alternative recommendation came from the Zoning Commission?

Mr. Moore replied negatively. The recommendation came from the staff.

Mr. McLendon made a motion to approve the Zoning Commission's actions. The motion was seconded by Mr. Wyett.

Mr. Shaw said he thought the Town Council should go with the modified recommendation which was to allow properties to be rebuilt that meet zoning requirements.

Mr. McLendon said the Zoning Commission had not considered the alternate proposal.

Mrs. Smith asked Mr. Moore and Mr. Wood to clarify that the Zoning Commission had studied the entire report that was submitted to them with alternative proposals. Mrs. Smith said she understood the Commission had the entire report and had reviewed it.

Mr. Moore responded that Mrs. Smith was correct, and the Zoning Commission recommended denial of the package--all the alternatives.

On roll call, the motion carried 3-2 to accept the Zoning Commission's recommendation of denial with Mr. Shaw and Mr. McDonald casting negative votes.

Item 15. Mr. Castro said that on a vote of 7-0, the Zoning Commission recommended approval of the proposal as submitted by the Town Administration and modified by the Zoning Commission to amend Section 5.47(a)(1) & (2) of the Zoning Ordinance by changing the following language:

(1) *For properties within the Beach Area District adjacent to properties in the R-B District:*
No structure or beach building more than one (1) story but not to exceed eight (8) feet in height ( as measured from the natural grade or crown or the road, whichever is less, to the underside of the roof plus four (4) feet in height to the highest point of the roof, nor with maximum dimensions no greater than ten (10) feet by twenty (20) feet but occupying not more than twenty (20) percent of the width of the lot shall be constructed on the privately owned property lying east of Ocean Boulevard;...

(2) *For properties within the Beach Area District adjacent to properties in the districts other than R-B:* No structure or beach building more than one (1) story (but not to exceed sixteen (16) feet in height to the highest point of the roof, nor with maximum dimensions no greater than twenty (20) feet by twenty-five (25) feet shall be constructed on the privately owned property lying east of Ocean Boulevard;...

Mr. Castro said this was a clarification of language in the ordinance concerning the length or width. Mr. Castro reported that the Zoning Commission questioned the distinction between width and depth or length and width when a maximum dimension for the beach area cabanas in any residential district could be stated. The Zoning Commission suggested leaving the language somewhat flexible to allow an applicant to place a cabana within a beach area property and still meet the required setbacks.

Mrs. Smith asked why the Zoning Commission differentiated between R-A and R-B zones since all of the areas under discussion were on the ocean side?

Mr. Castro responded that the way the Zoning Code is constructed, specific regulations exist for beach area districts that are adjacent to the R-B district as well as specific regulations for the other districts. The basic difference is that the beach area district adjacent to the R-B district has less height than in other districts.

Mrs. Smith said she understood that; however, people will be looking at the same view from the ocean and why not make the heights the same in R-A and R-B. Mrs. Smith said she was not a big proponent of beach houses but did not see the reason for making the R-B height lower.

Mr. Castro replied the reason was the relationship of the heights of the cabanas and the residences in the R-B district.

Mr. Moore said the heights were established some time ago.

Mr. Wood added that during the Zoning Commission hearing, the height differential was not discussed. The Commission was primarily concerned with the length and width differentials. Mr. Wood said he thought it was appropriate to have lower beach house heights in the R-B district because the zoning ordinance requires smaller structure in that district. Mr. Wood said he thought it was correct to leave it as it is, and an applicant can apply for a dimensional variance.

Mr. Moore remembered these heights were in effect many years ago, and the Zoning Commission did not look at the differential in heights this year because there was no proposed change in the heights. The proposal was to determine the clarification of the "width" and "length".

Mr. Wyett said he did not see any reason to have two different heights.

Mr. Shaw noted that a balance exists between large homes in the R-A or R-AA districts with beach houses that are higher. The homes in the R-B districts have lower beach houses.

Mr. Moore offered to survey the beach houses for heights. He said the problem has not been the heights, but the lengths and widths.

Mr. Wyett suggested one height of thirteen or fourteen feet may be a solution for all districts.

Mr. Moore replied that would have to be studied and could be added as a study item for next zoning season, but that was not a proposal for this year.

Mr. McLendon said he did not have a problem with a difference of four feet--twelve to sixteen feet.

Mr. Shaw asked why not change it to twelve feet to the top of the roof and not worry where the tie beam is and leave that up to the architect?

Mr. Moore replied an aesthetic problem is created , and that a roof pitch determines where the tie beam would be, and a Building Code problem exists too.

Mr. Shaw said the choice belongs to the applicant and the architect.

Mr. Randolph reminded the Town Council that none of the issues mentioned relating to the heights were before them at this time, and the heights could be looked at at a subsequent time rather than change it this year.

Motion made by Mr. Wyett to approve the recommendations of the Zoning Commission on item 15 with a change in wording as suggested by Mr. Randolph as follows:

(1) *For properties within the Beach Area District adjacent to properties* ............ (1)story but not to exceed eight (8) feet in height (as measured from the natural grade or crown of the road,................ (eliminate "nor") with maximum.......

The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Item 16. On a vote of 7-0, the Zoning Commission recommended approval of the proposal as submitted by the Town Administration Section 9.40 of the Zoning Ordinance to clarify fees for all zoning applications and change current development processing fees. The proposed changes in the language are as follows:

| | | Existing | Proposed |
|---|---|---|---|
| (1) | Fee for request for a PUD application | $1,000 | $1,500 (Changed to $2,500) |
| (2) | Fee for application for a special exception use, or a modification or expansion thereof | 450 | 700 |
| | Multi-family dwelling and commercial uses | 550 | 800 |
| | Plus, for each additional special exception request | Not Specified | 200 |
| (3) | Added requests for zoning variances contained within a special exception or site plan review request | 150 | 200 |
| | Plus, for each additional variance request | 100 | 150 |
| (4) | Fee for zoning variance requests involving uses or structures | 375 | 500 |
| | Multi-family dwellings and commercial uses | 550 | 700 |
| (5) | Fee for zoning variance requests involving signs, awning fences, gateposts and similar incidental accessory items | 250 | 300 |
| (6) | Additional fee for each added item of a multiple point variance request within one zoning request application | 100 | 200 |
| (7) | Fee for filing of an application for site plan review pursuant to Section 9.60 of this ordinance to those instances that involve no other type of zoning application concurrent therewith and which involve new building construction or involve new building additions exceeding two thousand (2,000) square feet of total floor area | 425 | 600 |
| | Multifamily dwelling or commercial use | 700 | 1,000 |
| (8) | Fee for all other site plan review applications | 225 | 400 |
| (9) | Fee for comprehensive plan amendment Text | 0 | 1,300 |
| | Future land use map | 1,000 | 1,500 |
| (10) | Zoning change | 1,000 | 1,500 |
| (11) | Submittal of Zoning text amendments | 40 | 40 |
| (12) | Zoning text amendments (if studied) minimum plus all cost associated with the consultant and legal fees for analysis, study and report on any study item determined by the Building Official to be large scale. | 40 | 40 |

Mr. Castro explained no changes in the fees have occurred in the past three years, and a survey was done for the fees in other municipalities in Palm Beach County to bring the costs in line with those municipalities.

Mr. Shaw brought up the question of a deferral fee--as is charged by Palm Beach County.

Mr. Moore ascertained that the Palm Beach County deferral fee was for everything--not just the Architectural Commission.

Mr. Castro said that staff further identified other types of existing applications and did not contemplate adding additional fees for deferrals over one or two times. Zoning text amendments, zoning changes, and future land use map changes were looked at.

Mayor Ilyinsky said he did not think the Town needed to charge a fee for deferrals.

Mr. Moore said that all work and any work associated with the application is covered under the basic fee; however, if the Council wished, a deferral fee could be added. Mr. Moore added that the advertisement for the changes mentioned "fees"--

not specific fees.

Mr. McLendon questioned why the fees for special exceptions were higher than for variances?

Mr. Castro replied that, normally, the amount of research and data analysis for a special exception is higher because more criteria have to be met. The variance requires the applicant to meet six criteria, and a special exception use might have a negative impact on the surrounding area and requires more work.

Mr. Castro referred to surveys from other municipalities which had higher fees for special exceptions.
Mr. Wyett commented that the Breaker's P.U.D. application sounded more complicated than the proposed $1,500.

Mr. Castro responded that he had not processed a P.U.D. application in the Town of Palm Beach; however, the existing $1,000 was in effect for some time. Staff thought the fee should be increased.

Mr. Moore said the thinking was not to move the fees astronomically high at one time and try to relate somewhat to the other surveyed communities; however, if the Town Council wishes to raise the fee higher than $1,500, the staff would not have a problem. Mr. Moore said that Palm Beach County charges $1,900 plus $20 per acre and $3,000 for West Palm Beach.

Mr. Wyett asked if $1,500 was an adequate fee for zoning changes?
Mr. Moore replied that $1,500 was adequate.

Mr. Wyett suggested the P.U.D. fee be increased to $2,000 or $2,500.

After discussion, Mr. McDonald said the fee should be increased to $2,500. Mayor Ilyinsky concurred.

Mr. McDonald referred to item (7) on page 14 of the report, site plan review, which (in his recent experience) involved minimal work for the $425 fee or the proposed $600. Mr. McDonald suggested that these could be handled at a staff level and come to the Town Council since they are nearly always granted. Mr. McDonald asked if the fees were based on the necessity of Town Council action or being handled by staff alone?

Mr. Castro replied the fees were based strictly on staff time related to the issues. Mr. Castro said that Mr. McDonald's recent experience suggested that situations like Mr. McDonald's could be included under item (8) on page 14 with a current fee of $225 and a proposed fee of $400.

Mr. Moore responded that all site plan reviews are taken as a whole, and although Mr. McDonald's may have seemed to be an easy one, others are more difficult. Additionally, attempts are made to recover Mr. Randolph's costs as well.

Mr. Moore added that he would prefer that the Town Council see site plan reviews, because all other matters are presented to the Town Council.

Motion made by Mr. McDonald to approve the recommendations of the Zoning Commission with two changes: $2,500 for P.U.D. application and the site plan approval on a lot that originally met all of the conditions when originally platted be moved to the other category, All Other Site Plan Approvals. The motion was seconded by Mr. Shaw.

Mr. Winterfield said that the assumption was that the Building Department is a profit center. Referring to items 11 and 12, Mr. Winterfield said he had submitted a number of items several years ago, and the Building Department had forwarded those items to the Zoning Consultant. Mr. Winterfield remembered that $5,000 was the fee for considering recommendations that were primarily if not exclusively relative to definitions. If one is to require a fee for submitting a recommendation for consideration of a zoning ordinance amendment, a fee could be charged for addressing the Town Council. In principle, the Town Council invites public participation. It is one thing if someone stands to directly benefit or appears as an attorney whose clients may benefit, but the way the proposal is written, the $40 is payable twice--once when presented and once when studied. Mr. Winterfield objected to both. If the Council decides the issue is worthy of consideration, then the Town should absorb the cost. If it is not worthy of consideration, then it does not go on the agenda. This is not something for the Building Official to decide. The Building Official can make recommendations to Council.

Mr. Winterfield asked if there were a present provision that specifies if there are expenses occurred for outside counsel, then the applicant will bear them? For one to include the possibility of consultant fees in establishing the basic fees, it is unfair to most of the applicants.

Mr. Winterfield said that the Comprehensive Amendment Plan Text and Future Land Use Map would reflect changes in zoning, and this issue should be looked at more closely to insure there is not a pyramiding of expenses.

Mr. McDonald restated the motion: The motion was to approve with two changes: $2,500 for a P.U.D. application and moving site plan reviews of lots that were originally met all zoning requirements at the time they were platted that had De minimus side or front dimensions would now be moved to the other category of site plan approval which is the fee of $225 that goes to $400.

On roll call, the motion carried unanimously.

Item 17. Mr. Castro reported that on a vote of 5-2, the Zoning Commission recommended approval of the proposal as submitted by the Town Administration to amend Sections (9.62)(a) REVIEW BY BUILDING OFFICIAL and (10.41) (b) HEARING PROCEDURE, by changing the following language:

9.62 REVIEW BY BUILDING OFFICIAL
(a) A copy of such application for site plan review shall be mailed to owners of the property and the property immediate adjacent thereto and across the street therefrom, and to all owners of all other property owners within two hundred (200) feet from any part of the subject property at their respective addresses as shown on the County Property Appraiser's tax records, together with a notice from the Building Official advising the time of the hearing on such application before the Town Council. Such list of property owners, together with a notification map, shall be provided by the applicant along with addressed and properly stamped envelopes and shall be certified by the applicant as being true and accurate.

10.41 HEARING PROCEDURE. Applications for special exceptions and variances shall be accompanied by proper exhibits which shall be timely filed at least thirty (30) days prior to the Town Council meeting and shall include a certified property owner notification list with stamped, addressed envelopes to each affected property owner. In addition, applications shall include plans, documents and other materials to adequately depict and support the request. At a minimum, all applications for special exception and variance shall include....

(a)....

(b) Thereupon a copy of such application shall be mailed to the owners of the property and the property immediate adjacent thereto and across the street therefrom and to all property owners within two hundred (200) feet from any part of the subject property at the address shown on the County Property Appraiser's tax records, together with a notice from the Building Official advising the time of the hearing on such application before the Town Council. In cases where a comprehensive plan amendment or zoning change increases the allowable density or intensity, the notification distance shall increase to one thousand (1,000) feet. Such list of property owners, together with a notification map, shall be provided by the applicant along with addressed and property stamped envelopes and shall be certified by the applicant as being true and accurate.

Mr. Castro explained that this item was deferred from the last Zoning Season. The staff looked at increasing the distance for noticing property owners where there is a change in land use, intensity, or density. Staff was instructed to go back and look at the specific language and to also look at the Zoning Commission's recommendation from last year related to property owners' notices. Based on staff's review of the ordinance, the proposed language is submitted to the Town Council for consideration.

Mr. Castro said the language clarifies that an application must be submitted to the staff at least thirty days prior to the Town Council meeting, and previously the language stated the application must be submitted in a timely manner. Additionally, the language under 9.62(a) provides that all property owners within 200 feet--not just the boards of directors in the case of condominiums or cooperative units--all owners within a condominium must be notified of variances, special exceptions, P.U.D.'s, or any application that requires noticing.

Mr. Castro continued that under 10.41(b) Hearing Procedures, the language reflects that change too. Mr. Castro cited the proposed changes, "in cases where a Comprehensive Plan Amendment or Zoning change increases the allowable density or intensity, the notification distance shall increase to 1,000 feet. Such list of property owners together with a notification map shall be provided by the applicant along with address and properly stamped envelopes and shall be certified by the applicant as being true and accurate." This requires the applicant to go to the County--to the Property Appraisers Office--and obtain a list of all property owners and a map from that office and notarize that this list is true and accurrate, based upon his review of that list. Staff would also double check that list. Most of the municipalities in the County and the County operate in that manner currently.

Mr. McDonald clarified that the recommendation changed the notification distance from 200 feet to 1,000 feet.

Mr. Castro replied that it applied to zoning changes andComprehensive Plan amendments to change the land use that increased the density or intensity of use. If the density were decreased, then the notification would be 200 feet.

Mr. McDonald asked if Mr. Castro anticipated an increase in expenses?

Mr. Castro replied that a substantial amount of time would be involved in identifying the property owners and preparing the envelopes. The main amount of time would be spent to ascertain the list supplied by the County is correct, and the applicant would have to double check the County's work and submit a notarized statement that the documents were accurrate.

Mrs. Smith said this is the work that the Town staff currently performs.

Mayor Ilyinsky questioned the need for a change since the notification process has worked for so many years.

Mr. Castro replied that notification errors were made in the past and the Town had to pick up the cost of notification. The Zoning Commission thought that each and every condominium owner had to be notified and that would be a significant increase in the amount of work that staff had to do.

Mr. Moore explained that the Town staff had done this notification for many years when just the boards of directors from condominiums had to be notified but now the need was to notify every condominium property owner.

Mr. Wyett reminded the Town Council that the reason for this change was the application for 3000 South Ocean Boulevard last year where some of the property owners in the area claimed they were not notified.

Mr. Robert Deziel agreed with Mayor Ilyinsky concerning the notification procedure. Mr. Deziel said the Town provides a nice service not only to the land use lawyers who practice in Palm Beach but to the homeowners who are the applicants that appear before the Town Council. This system has worked for a very long time. Mr. Deziel said he checked with some condominium owners who said they basically receive their information from their managers, and they understand what is going on. Mr. Deziel said he cannot remember too many occasions where the Town made mistakes concerning the notification requirements. The Town does an excellent job, and a change would prohibit an applicant or property owner from pursuing his or her own variance request or special exception. Mr. Deziel requested that the Town increase the charge for notification but continue to do the notification.

Mr. Wood said the Zoning Commission considered three issues with this item. The first issue was if the Town should continue to provide the notification service. In most municipalities, the applicants who are seeking special consideration for an action should be the ones to pay for and provide the proper notification. Palm Beach should follow the generally accepted procedure used in other towns, and the applicant should bear the burden of these activities.

Mr. Wood said the second question was if condominium owners should receive individual notification. This is an issue of due process, and under the Zoning Ordinance, due process that every fee simple property owner whose property is affected be given notification. The same method of notification is required for a property owner regardless if they own a single family home or a condominium. The Zoning Commission discussed this at some length, and some of the Zoning Commission members had opportunities to discuss this issue with neighbors in condominiums.

The third issue was the distance requirement. A number of people objected to the requirement for the 1,000 feet notification; however the Zoning Commission recommended the 1,000 feet requirement because of the problem at 3000 South Ocean Boulevard. Mr. Wood said the extra cost involved for an applicant seeking something as important as a zoning change and a Comprehensive Plan amendment should be borne by an applicant.

Mr. Shaw said the issue of the 1,000 feet is very limited because it is strictly notification where it is a Comprehensive Plan Amendment or a zoning change which increases density or intensity. Mr. Shaw suggested deleting the applicant's burden of notification on the 200 foot and deleting the last paragraph in 9.62 and that the property owner bear the expense of notification within the 200 feet. Mr. Shaw said the Town could absorb that. Mr. Shaw suggested leaving paragraph (b) of 10.41 as it is but delete the clause from 9.62.

Mr. Moore replied that if geographic lines were drawn say north of Wells Road and the Building Department could continue to take care of with the current staff; however, when any project involves the notification within the 1,000 feet, additional help would be needed. If the change is made, more help would be needed.

Mr. McDonald said he was convinced that the Town should do the notification, because then it would be done properly; however, the cost should be passed on to the applicant.

Mr. McLendon questioned the notification of co-op owners and lessees. Mr. McDonald said the co-ops receive individual tax bills and have a folio number, it would not be any different from a condominium association. The ownership would be tracked like a single family dwelling.

Mr. Wyett said that the Council should heed Mr. Moore's advice, and the burden should be on the applicant.

Mr. McDonald replied that he had a problem with the applicant doing the notification. He compared it to the legal system where the attorneys are not allowed to serve the subpoenas. Mr. McDonald asked Mr. Moore if a temporary person could be hired when the need arose and the costs passed on to the applicant?

Mr. Moore replied this was every month, with a thirty day window, and the department did not know what type of applications were coming up. Mr. Moore said he did not know how to manage that type of problem. He suggested that the wording could be adjusted to allow the department to continue to do the same thing that is done currently within the 200 feet; the zoning changes or Comprehensive Plan amendments within a 1,000 feet, the applicant could pay for. If a condominium were located within the 200 foot radius, the Building Department could require the applicant to conduct the research and provide the information. Mr. Moore said that the Building Department can barely keep up with their work load now.

Mr. McDonald suggested the applicant could obtain the list of condominium owners from the Building Department and that would be much simpler than going to the County office. Mr. McDonald said the lists from the County are often not up to date.

Mr. Castro mentioned that the staff has only two weeks to gather the property owner information and verify other information after the application is turned in. When other municipalities take in applications, that work has been done, and it is much easier for them to meet that thirty day window without all of the research. An applicant may have more time to pull this information together.

Mr. Castro said that approximately 140 applications for special exceptions, variances, and site plan reviews were presented to the Town Council last year.

Mr. Shaw said he was for the Town dealing with the notification on the first section, 9.62, and for the applicant dealing with 10.41.

Mr. Moore objected to that because even in 9.62, there will be condominium work that has to be done, and anything involving the association should be borne by the applicant.

Mrs. Smith said the Town Council should remember that the Council is constantly receiving complaints about delays in the Building Department, and last year the Council moved to add another person full time in the Building Department to go through the process of applications, permits, and special exceptions. The Building Department tried to confine it to new construction and revisions. Mrs. Smith said the Council must be realistic that this would require an additional person and not a part time person.

Mrs. Smith said that she thought that the lawyers had sufficient staff to track down the lists and to notify property owners. The Town cannot be run on the basis that there may be an application filed and that the Town needs a person to process this. Mrs. Smith said if the Building Department did not hire an extra person, the Council would hear nothing but complaints about delays in the department.

Mr. McDonald said he did not want to do anything to slow down the Building Department and he would change his position. Mr. McDonald asked Mr. Castro how many of the 140 applications from last year would fall under this requirement?

Mr. Castro replied he did not know how many of the applicants would fall under this situation.

Mr. McDonald asked Mr. Castro if a condominium association sought an item that would fall under this, then would all of the condominium owners have to be notified?

Mr. Castro replied that was correct.

Mr. McDonald asked would it be correct if it were their board that was requesting the change?

Mr. Castro replied that was correct.

Mr. McLendon asked why the notification was not correct if the manager of the condominium was provided with a notice and that copies of that notice were distributed to every owner by the manager?

Mr. McDonald replied that Mr. Castro was referring to a certificate of mailing that the condominium and co-operative statute allows the associations to do when notifying of their annual meeting.

Mr. Moore said that same certificate of mailing is provided to all people within 200 feet currently, and the board of directors of a condominium is notified in lieu of notifying every unit owner in that building. This proposal would require that every unit owner in the building be individually notified.

Mr. Wyett said that often these notices are sent during the summer months as was done with 3000 South Ocean, and almost every resident south of Sloan's Curve will say they knew nothing about the radio station rezoning situation including the presidents of the buildings and the Citizen's Association. This provision was intended to do away with surprises, and it is inadequate to notify just the manager of a building or a board that is not present during that time of the year.

Mr. McDonald added that approximately 65% of the people in the southend are gone during the summer months, and although mail will probably not get to them in time any way, that does not change the responsibility to do it.

Motion made by Mr. Wyett to approve the recommendations of the Zoning Commission. Mr. McLendon seconded the motion. On roll call, the motion carried unanimously.

Item 18. Mrs. Smith said item 18 concerning Telecommunications was being deferred and will be presented at a later date.

Motion made by Mr. Shaw to defer item 18 to the meeting of February 3, 1997. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

After the lunch break, the Town Council reconvened at 2:15 p.m.

Item 3. Mr. Moore reported that on a vote of 7-0, the Zoning Commission recommended approval of the proposal as submitted by the Town Administration, and modified by the Zoning Commission to amend the Zoning Ordinance to include the following provisions for supplemental off-site shared parking, as a special exception, under a new item (I) of Section 6.21 as follows:

(2) SUPPLEMENTAL OFF-SITE SHARED PARKING

A conforming use may lease to another existing conforming use the former's required or supplemental parking spaces for use by patrons or employees of the latter provided:

(a) The area to be used for off-site shared parking shall be in the C-TS, C-WA or C-OPI zoning district; and, except for shared parking within a parking garage or underground/underbuilding parking area, any area used for off-site shared parking shall be accessible only to and used by valet parking attendants and shall have controlled access in the form of gates or other barriers acceptable to the Town that can be accessed and used only by valet parking attendants

(b) Off-site shared parking shall be located no more than five-hundred (500) feet from the use the off-site shared parking is intended to serve.

(c) The applicant shall provide evidence which shall prove to the satisfaction of the Town Council that the off-site shared parking use shall not increase noise, light or traffic impacts upon neighboring residential areas.

(d) A traffic planner or traffic engineer establishes to the satisfaction of the Town Council, at the applicant's expense, that all other establishments using the existing parking spaces will primarily utilize these spaces at different times of the day, week, month or year from that of the applicant's use, and that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities.

(e) If the Building Official should determine that professional advice and/or consultation is required to review the applicant's parking findings, then the expense of such professional advice shall be borne by the applicant pursuant to Section 10.40 of the Zoning Ordinance.

(f) Off-site shared parking shall only be supplemental and such parking shall not be used to meet required parking for new construction, or expansion or additions to existing floor area.

(g) The Town may from time to time impose such additional conditions that it deems necessary to minimize noise, light, and traffic impacts upon neighboring residential areas.

Mrs. Smith asked the members of the Town Council if they preferred to go through the items, a through g, one by one? The Town Council members agreed to review each item individually.

(a) Mr. Wyett stated he had a problem with (a) using the word "valet" and asked Mr. Moore to address that use. Mr. Wyett said that certain streets in the Town are not allowed to have valet parking on them because of D.O.T. requirements.

Mr. Randolph said he thought that was a different issue, because the ordinance is talking about valet parking on parking lots and has nothing to do with public streets.

Mr. Wyett questioned how a car could be moved from the front of a restaurant to a valet parking area without using a valet parking attendant?

Mr. Moore agreed with Mr. Randolph's statement that this was a different issue than the ordinance that was submitted to the State that dealt with designated valet loading and unloading zones.

Mrs. Smith asked what difference it would make to eliminate the word "valet" and substitute "parking attendants"?

Mr. Randolph replied that would be all right.

Mrs. Smith questioned the controlled access in the form of gates and other barriers in the evening without the gates being open at all times when the valets are traveling back and forth? How would other vehicles be precluded from using the lots?

Mr. Moore replied that was the idea of the gates and suggested the parking attendants have a control device to operate the gates.

Mrs. Smith affirmed that all of the parking lots that were anticipated by the Building Department for off-site shared parking would have to install gates or barriers.

Mr. Moore replied they would if they were to qualify for the shared parking special exception.

Mrs. Smith asked Mr. Wood if the various parking lots had input at the Zoning Commission meetings.

Mr. Wood responded there was not.

Mrs. Smith said she did not think the gates would be closed during the evening hours when the valet parkers were running back and forth.

Mr. McDonald asked if a remote control could fix the gate in a stationary position?

Mr. Moore replied he was sure that was achievable and that would have to be in the wiring of the interrupter that was installed in the first place.

Mrs. Smith said she understood it could be wired.

Mr. Wyett asked Mr. Moore if he could identify any lots in Town that would gain a practical advantage of having a barrier up?

Mrs. Smith asked Mr. Moore how many lots he knew in Town that are currently open that would be covered by the new ordinance and would have to put in gates where anticipated on-site shared parking would be?

Mr. Moore answered that most of them would have to install a gate, and he did not have an exact count.

Mr. Wyett questioned what the loss would be for not having a gate and imposing this requirement?

Mr. Moore said, presumably, the financial arrangement between the business using the lot and the person owning the lot would be such that they would to maintain their own control of their vehicles using the lot that they are paying for rather than allowing the general public to move in and out of the lot at will.

Mr. Wyett suggested letting the participants decide for themselves and have an ordinance requiring them to do so.

Mr. Moore said it was a control.

Mr. Castro said the Zoning Commission's recommendation for a controlled parking area was to insure that no one else was using the lot--other than the attendant parkers themselves to control the noise related to people leaving establishments late in the evening. Also, if there were problems, the Town would have someone to go to for correction of the problems, and the Zoning Commission thought that this approach would work, and it was their recommendation to place this in the ordinance.

Mr. Shaw said that as soon as a controlled environment is created, the nuisance is eliminated; there are controls; the source of any noise connected with automobiles can be identified; and if space is rented out, there must be a way to follow up on that.

Mr. Randolph said he was not sure that under the Town's Zoning Code, it was not illegal to park in someone else's lot, and these people are not parking in someone else's lot to meet the requirements for parking. If an empty lot exists across the street from an establishment, and people are parking in it, there may be no formal arrangement, and they may be trespassing, but unless the owner of the lot where people are parking is going to do something about it, then Mr. Randolph said he was not sure that the Town could do anything about it under the present zoning code.

Mr. Randolph said if this is adopted which allows people to enter into leases and arrangements, what is to prevent what happens now from happening in the future? This ordinance does not require that leases be entered into. What would keep people from continuing to have informal arrangements without entering into formal arrangements and just say they would turn their backs and say the people were trespassing on their property. If this is passed, will it change that situation?

Mr. Moore said this would change the current laissez faire method that is being used now. The question is whether or not it is illegal under the zoning ordinance? It would be illegal under the zoning ordinance for a contractual arrangement to lease parking that does not have the Town's approval.

Mr. Randolph responded that he understood that, but it did not answer his question. The question is--What happens if there is no contractual arrangement and people just decide to use a vacant parking lot that happens to be across the street? Are you going to do anything about that under the zoning code?

Mr. Moore replied negatively.

Mr. Randolph asked what is accomplished by this?

Mr. Shaw said status quo exists today, and what is being proposed is to create a controlled environment where elected. If a property owner does not wish to enter into any agreements and does not wish to offer their property for parking, that is their prerogative. Mr. Shaw said property owners may find this a better solution to rent out their properties and to do this, certain commitments that they have to make. There is no down side, only the up side, and the up side is that a lot that may be uncontrolled and have no supervision, now has supervision and controls and limited access. If the Town Council takes no action, the Town has what it has, but if the Town goes forward, it has what it has, but also the probability that lots are being used openly will no longer be open and they will be controlled, and the Town will not have cars going randomly around Town.

Mr. Wyett, referring to the Island National Bank lot that is used by several restaurants in the area, said that the access to that lot is hidden, and a barrier would simply slow down the valets. Mr. Wyett said not much is accomplished by the use of barriers and if lot owners want to put in barriers, let them put up barriers, voluntarily.

Mr. Doney said this would create an opportunity to create some enforcement by the Police and Code Enforcement that can regulate complaints, received in the field, from noise and other types of problems that exist in the late night hours.

Mr. Randolph said if an applicant has requested a special exception and entered into a financial arrangement as set forth here; otherwise, the police department has no authority for an informal arrangement as is going on now.

Mr. Doney said that part (b) of the issue is the valet parking or unloading zones on the streets, and this is intertwined. More effective on-street parking, loading and unloading areas by the Police Department would make the restaurant owners' needing arrangements for off-street parking to effectively operate their businesses so they are not negatively impacting abutting residential neighborhoods.

Chief Terlizzese said the congestion problem is a serious consideration year round and is centered around the restaurant and night club areas. Chief Terlizzese said a tremendous number of patrons are coming in from other communities to use the night life facilities. This is relatively new in the last two years, and prior to this, the choices of locations for dining were limited to a few places. Now, the number is more like twenty-five. Tremendous problems of noise, traffic volume, and the general din are caused by these establishments for the adjacent property owners. Chief Terlizzese pointed out that often a particular person or incident is not responsible for the noise levels but just the amount of people in the area.

Chief Terlizzese said that anything the Town can do in an attempt to control what is happening and put some order into this problem would probably be beneficial. The off-street parking situation is vital and very necessary that the Town provide adequate, off-street, shared parking so that successful businesses can conduct their activities. Some controls need to added to the parking areas in an attempt to hold down the noise levels for the people who live nearby.

Mrs. Smith asked the Police Chief what controls were currently in effect for the west parking lot at Publix?

Chief Terlizzese responded that the lot is open to the public twenty-four hours per day, and unless a crime is committed or a probable or reasonable cause that someone is doing something that is against the law, the police have very little in the way of control.

Mrs. Smith said that the Publix lot is the one that creates the most controversy, and if the Publix Market chain elects not to enter into the off-site shared parking procedure, the situation will not be any different than it is presently.

Chief Terlizzese agreed with that statement. Chief Terlizzese added that E. R. Bradley's is not the only problem in the Publix area. The Sunrise Hotel has several operations that cause problems.

Mrs. Smith said she was not referring to any specific establishments, but the Publix lot has people parking from many locations including Royal Poinciana Way and Royal Poinciana Plaza. Mrs. Smith said there was a lot of action in the area, and the problem will not be solved until Publix elects to close the parking lot after hours. Mrs. Smith asked Mr. Moore if Publix accepted the condition to close the lot as part of the approval for their remodeling request by the Town Council?

Mr. Moore replied negatively.

Mr. Wyett said he understood that some negotiations were underway between the Building Department and Publix concerning the method of chaining the driveway and leaving a north/south access road in front of the building. The parking area would be chained off.

Mr. Moore responded that Publix was still studying the situation and have not decided if they will accept the condition.

Mr. Winterfield said he had a number of questions: If an establishment has waiver for the number of parking spaces needed, is it conforming or nonconforming? The term "residential area" is used--what does that mean? Does that mean any residence or does it mean "residential district"? The word "district" has a precise meaning in the Code, but "area" does not. At present, unless a property owner takes action prohibiting the use of a parking lot during the hours which it is not being used by the owner, then the public is free to utilize the lot and that is a technical trespass. But as long as it is tolerated, it is not a trespass. Since most of the problem derives from the public lots whether it is from Bradley's or one of the other establishments, Mr. Winterfield suggested tackling the problem by suggesting regulations for other portions--other lots in Town--where these problems do not exist. If the owners do not have objections to lots being used, the current provision (under consideration at this time) is not going to change the situation.

Mr. Shaw said he thought it should stay as it is. There should be gates and a controlled access situation if it is going to be an agreement for shared parking. The language that is in the recommendation is fine.

Mrs. Smith clarified that the word "valet" should be excluded in case that would trigger an illegal thought process.

Mr. Shaw made a motion to approve the recommendation of the Zoning Commission with the exclusion of the word "valet" in (a). The motion was seconded by Mr. Wyett.

Mr. Wyett clarified the meaning of the words "controlled access" and asked if that could be a physical barrier or a person standing there?

Mr. Shaw replied it could mean gates, patrol persons, or a barrier.

Chief Terlizzese added that a patrol person would be a control and that was acceptable. Currently, several lots have gates, and they work very well--few complaints are received.

In response to Mrs. Smith's concerns regarding the definition of barriers, Mr. Randolph said it was his understanding the question was if an automatic gate or an attendant could be used to raise and lower a chain. Mr. Randolph said either of those met the intention of the ordinance; however, a person standing at a 30 foot space in a parking lot is not a barrier. Mr. Randolph said the language in the recommendation is fine.

Responding to questions from Mr. McLendon, Mr. Randolph said this ordinance change will allow persons to lease their lots to others if they are willing to meet the stated conditions. The change in the ordinance will not do anything for the situation that exists today where people do not choose to enter into a lease arrangement.

Chief Terlizzese said that Mr. Randolph made a very good point--if an owner has no objections to people parking in a lot, then no trespass exists.

Mrs. Smith added that if owners of lots elect not to enter into agreements where money passes hands, the Town has no control over situations where lot owners do not care if their lots are used by patrons of other establishments. This ordinance will not put controls on those situations.

Chief Terlizzese said the Police Department's ability is lessened to go on to private property and act as an intercessor if their are problems.

Mr. Moore said the Police Department will be issued a list of special exceptions that have been granted so they would be able to ascertain if certain properties had agreements.

On roll call the motion was approved unanimously.

Item (b.) Off site shared parking shall be located no more than five-hundred (500) feet from the use the off-site parking is intended to serve.

Mr. Wyett said he was aware of a situation in Town with Bradley's and Royal Poinciana Plaza. Would this amendment preclude them from doing that with the 500 foot restriction?

Mr. Moore replied he did not think Bradley's would be precluded, because he did not think they were more than 500 feet away.

Mr. Randolph added they would if the distance was 500 feet or more.

Mr. Moore agreed, but added a variance could be applied for if the distance were greater than 500 feet.

Mrs. Smith asked Mr. Moore how the 500 foot figure was derived?

Mr. Moore responded that the current ordinance allows for parking within 500 feet in a commercial district.

Mrs. Smith asked if there were any businesses further than 500 feet from the Apollo lot that may want to use that lot?

Mr. Moore cited one in the Esplanade that had applied for a variance.

Mrs. Smith asked if the Town parking lot across the street would be used for off-site shared parking?

Mr. Moore replied that the Town's current policy is not to lease parking.

Mrs. Smith agreed.

Mr. Doney added that the Town had not contemplated such action at this time unless directed to do so by the Town Council.

Motion made by Mr. McDonald to approve the recommendation of the Zoning Commission. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Item (c) The applicant shall provide evidence which shall prove to the satisfaction of the Town Council that the off-site shared parking use shall not increase noise, light or traffic impacts upon neighboring residential areas.

Mrs. Smith asked Mr. Moore how this would be accomplished and what is the definition of "satisfaction"?

Mr. Moore replied that was subjective to everyone of the Council members.

Mr. McDonald made a motion to approve the recommendation of the Zoning Commission with the change of "neighboring residential areas" to "neighboring residential districts". The motion was seconded by Mr. Wyett.

Mrs. Smith said she would like to hear some concrete facts of how the Building Department would expect to have presented to them that would be passed on to the Town Council--that it "shall not increase noise, light or traffic impacts upon neighboring residential districts."

Mr. Moore responded he could not provide specifics.

Mrs. Smith said she did not understand the point of the language.

Mr. Randolph clarified the point of the language was to give the Council discretion in this particular instance as to whether or not it would grant the special exception. The burden is on the applicant to show that they have met all of the criteria of ordinance, and if three Council members do not agree that the request will not increase noise, light or traffic impacts, the request will be denied.

Mrs. Smith asked if this was already covered by Special Exception 6.40?

Mr. Randolph replied negatively.

Mrs. Smith asked if the procedure "that it is not a determent to the neighbors" is covered by a special exception already?

Mr. Moore said that was part of the special exception uses but the burden would be to establish with the traffic planner as well.

Mrs. Smith said she was attempting to define how an applicant can do this and actually come up with the specifics that can be submitted to the Council wherein three or four neighbors would not have to come in and say, "It's noisy, and I'm not having it." Mrs. Smith suggested combining (c) with (d) where the applicant would provide evidence to the Town Council that would be satisfactory.

Mr. McDonald said he thought it was analogous to hardship and is a subjective test. Each Council person will deal with his or her subjective test each time it comes before the Council, and it will hard to quantify or qualify.

Mr. Moore suggested the applicants could take existing readings for noise, light, etc. without the extra use of the lot and then conduct a study of how many vehicles and what kind of increase that would cause for noise, etc. The burden will be on the applicant to prove to the Town Council that this would not be injurious, and it gives broad powers for the Council to make determinations.

Mrs. Smith suggested combining (c) and (d).

Mr. Randolph replied that (c) and (d) are entirely different things.

Mrs. Smith said that both of them apply to the satisfaction of the Town Council, and it is not easy to satisfy the entire Town Council, and in all fairness to the applicant, they should be given some guidelines.

Mr. Randolph offered some alternative language that does not do exactly what was intended by putting in the word "satisfaction". It was intended that the word be subjective so as to demonstrate to applicants that the authority would rest with the Town Council, and if the Town Council was not satisfied that this arrangement did not increase noise, light, or traffic impacts, it would not be granted. An alternative to satisfaction was that the applicant shall provide evidence which shall demonstrate through competent substantial evidence that the off-site shared parking use shall not increase noise, light, or traffic. That would provide a standard.

Mr. McLendon said it was an impossibility to use something that is not currently used that would not cause some additional noise or some light. It was a question of how much?

Mr. Moore said the reality of the situation is that many of these lots are currently used. Therefore, when they take the test, if the Town has received very few or no complaints from the area, then the current level of use is not objectionable to the neighbors.

Mr. Wyett mentioned that nothing in the ordinance provided for review of situations. Permission could be granted for shared parking and carried out satisfactorily for some time or not at all. A provision should be added for yearly review like the town-serving requirement.

Mr. Moore suggested revising the words in (g) in place of "time to time" use "on an annual basis" or something to that effect. Item (g) is designed to address Mr. Wyett's concern.

Mrs. Smith said she thought a yearly review would be difficult.

Mr. Castro said that under the special exception provision, if someone is not meeting the test in which the special exception was granted, the Town Council can require the applicant to return to the Town Council at any point.

Mr. Randolph agreed but added that procedure is a difficult burden and a review would be preferable.

Mr. McDonald suggested that a year is too long the first time around and the time should be shorter. A condition could be required for a three months, six months, or whatever period and if the applicant has demonstrated that no nuisances were created during that time period, the approval would be lost.

Mrs. Smith asked Mr. McDonald if that was part of his motion?

Mr. McDonald said that was incorporated in his motion to approve item (c). The seconder of the motion, Mr. Wyett, discussed the changes after Mr. McDonald clarified that he added the Town would exercise its discretion to use a shorter time period to determine if it is working or not Mr. McDonald said he did not think it should be incorporated into the motion but left to the discretion of the Council at the time the application is considered.

Mr. Randolph stated that the comment does not belong in (c). Mr. McDonald agreed and thought the comment would be included in (g).

Mrs. Smith clarified that Mr. McDonald withdrew the proposed amendment and the motion stood as originally made.

On roll call, the motion carried unanimously. (Area was changed to District)

Item (d) A traffic planner or traffic engineer establishes to the satisfaction of the Town Council, at the applicant's expense, that all other establishments using the existing parking spaces will primarily utilize these spaces at different times of the day, week, month or year from that of the applicant's use, and that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities.

Mr. Moore stated the traffic planner would certify the normal flow of traffic pursuant to the business that exists in the lot or area controlled by the applicant for shared parking.

Motion made by Mr. McLendon to approve item (d). The motion was seconded by Mr. McDonald.
Mrs. Smith asked if the Zoning Commission had any idea what time these lots should cease being used?

Mr. Wood said that was not discussed by the Zoning Commission, because the provision as it currently exists would place the burden upon the traffic engineer to document that to the Council. In addition, each specific location would probably have different, narrowly overlapping requirements.

Mr. Wyett brought up the example of an office employee who worked until 10:00 p.m. and his assigned parking place would have become part of a shared parking arrangement prior to that time.

Mr. McDonald replied that is a function of an agreement between the owner of the property and the lessee.

No member of the public had any comment.

On roll call, the motion carried unanimously.

Item (e). If the Building Official should determine that professional advice and/or consultation is required to review the applicant's parking findings, then the expense of such professional advice shall be borne by the applicant pursuant to Section 10.40 of the Zoning Ordinance.

Mr. Moore explained that although this language exists in the ordinance, the Zoning Commission and the staff agreed that the language should be repeated at this point in the ordinance so there is no misunderstanding or question about that when the application is submitted.

Motion made by Mr. McDonald to approve item (e). The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Item (f). Off-site shared parking shall only be supplemental and such parking shall not be used to meet required parking for new construction, or expansion or additions to existing floor area.

Mr. Moore stated that this language is important so that there is no misunderstanding that expansion can occur by use of shared parking. This is an absolute must.

Motion made by Mr. McDonald to approve item (f). The motion was seconded by Mr. Wyett.
(This motion was withdrawn later.)

Mrs. Smith asked Mr. Moore how this could be enforced in the case of restaurants that come in for a small expansion--for 10 or 12 seats--and their main crowd is at night, and they are going to use the parking lot across the street?

Mr. Moore replied this language is intended to prevent that from happening. It is intended to prevent the use of this type of arrangement to meet required parking.

Mr. McLendon said he would have liked to see if parking could be had off existing streets so it would make it more available to the general public instead of the valets or parking attendants.

Mrs. Smith said, that except for (a), there is no provision in any of the other items that keep a member of the public who is visiting a restaurant from driving into a lot that is not gated and used by the restaurant and parking there.

Mr. Moore responded that would be a function between the restaurant operator and the person leasing the lot to them to police who was going in and out of there.

Mrs. Smith stated the Town Council is not obligating everyone who visits a restaurant to use a valet parker, and the patron has a right to park in a gated lot leased by the restaurant or his parking service.

Mr. Shaw replied the ordinance states "for use by parking attendants".

Mrs. Smith said that was stated in (a).

Mr. Randolph replied that was in everything. (a) controls everything. Mr. Randolph said, that under this ordinance, the patron would be illegal if he parked in this lot, but if the restaurant gave permission for the patron to park in a lot owned by the restaurant without a valet, that would be legal. However, if the patron wanted to use a shared parking arrangement on another lot that is not owned by the restaurant owner, the patron would have to use the valet pursuant to paragraph (a) of this ordinance.

Mrs. Smith clarified that the Town Council would be confining all of these restaurants that want to have off-site shared parking to valets. Mr. Randolph responded affirmatively.

Mrs. Smith asked Mr. Wood if it was the intent of the Zoning Commission that all of these lots be controlled by valets?

Mr. Wood responded that was correct.

Mr. Wyett said during the discussion of valet parking a year ago when valet parking was legalized, valet parkers could not park cars on the public way. That was specifically looked at on main streets such as Worth Avenue where people want to use the parking places for window shopping at night and could find the street filled with valet parkers. Mr. Wyett said this item contains nothing concerning that situation.

Mr. Wyett asked Mr. Moore who would lease the property--the restaurant or the valet concession?

Mr. Moore responded the restaurant would lease the property.

Mr. Randolph said the ordinance was abandoned that addressed the issue of parking on Worth Avenue, and this ordinance has nothing to do with that.

Mr. Wyett said he knew the ordinance was abandoned; however, could something be added under this provision that required restaurants using off-street parking not to have valets park cars on the street?

Mr. Randolph suggested that could be made a condition of the special exception arrangement, but an enforcement problem would be created. Everything additional that is added to the ordinance will dissuade people from wanting to enter into any kind of special exception arrangement.

Motion was made by Mr. McDonald to approve item (f). The motion was seconded by Mr. McLendon. On roll call, the motion carried 4-0 with Mr. Shaw absent from the room when the vote was taken.

Item (g). The Town may, from time to time, impose such additional conditions that it deems necessary to minimize noise, light, and traffic impacts upon neighboring residential areas.

Mrs. Smith suggested removing "from time to time" and "such" and have it read "The Town may impose additional...."

Mr. Moore said he had no problems with that change in language

Mr. Randolph agreed but he did not think this item was intended to do that. The purpose of this in the first instance was to allow the Town to come back at a subsequent time and impose additional conditions if it were found necessary. If the Town experimented for a year and found that additional conditions were needed, that was the purpose of the language "from time to time".

Mrs. Smith said the language should be stronger, because the language is vague as it is presently written.

Mr. Wyett agreed with Mrs. Smith's statements. Mr. Wyett asked if the Town Council should have the right to rescind the permission if it finds that the conditions are intolerable for the area?

Mr. Randolph replied that is basically the same as being allowed to review within a year. As long as the applicant knows up front that the special exception can be revoked; however, contractual arrangements are being entered into. Mr. Randolph suggested there should be an opportunity to review, and once the Council has gone through the ordinance and imposed any of the other conditions that the Council wishes, the opportunity to come back after a year and tell the applicant the Council changed its mind is burdensome on the property owner. Mr. Randolph said the Council has the right to make that determination in the first instance when all the experts are heard to determine if it is going to be a detrement. If complaints are received from property owners and then the Council takes the approval away because a year later the Council has determined that it is a determent would create problems for the Town. Mr. Randolph suggested the Council should have a review period whereby this approval at the initial instance is good for a one year period of time--at which time the Town Council may conduct a subsequent review and renew the special exception if it meets all of the conditions. Mr. Randolph suggested that be item (h).

Mr. Wood recalled a long discussion on this matter. Mr. Bertles made the suggestion at the Zoning Commision meeting to use the phrase, "from time to time". Mr. Wood said the Zoning Commission anticipated that the Council as a condition would probably say that this right is granted for a period of "x" months subject to a review and report from the Building Inspections office evaluating if all of the conditions were met. If the conditions were not met, the Town would have the right to revoke or modify the approval. Mr. Wood agreed with Mr. Randolph on the intent of the language, and this report should be subject to a formal report and review process probably prepared by the Building staff that would give clear and convincing notice to the applicant that this would occur. Their due process rights would be served. They would not be achieving any irrevocable property right that could be attacked under the Harris Act and would provide a clear method for controlling this shared parking which in actuality will be on somewhat of a trial basis. Mr. Wood said the alternate wording that Mr. Randolph suggested is important to include.

Mrs. Smith said that forewarned is forearmed, and if the applicants of the business realize there is a problem, the approval can be revoked.

Mrs. Smith asked if a restaurant that previously was required to have valet parking only on the weekends entered into a shared parking agreement, would they be required to have valet parking seven days a week?

Mr. Randolph replied that was correct if they used this arrangement. They could not have patrons parking on the leased lot without valet parking.

Mr. Randolph provided the new language for item (h): Approval shall initially be limited to a period of six (6) months or later period as determined by the Council where upon a subsequent review shall be made at a public hearing of the Town Council at which the initial approval may be renewed, modified, or revoked.

Motion made by Mr. McLendon to approve item (h) as read by Mr. Randolph. The motion was seconded by Mr. Shaw.

Mr. Winterfield asked if there will be an occupational license issued in connection with the shared parking?

Mr. Moore replied an occupational license is required for a parking lot, and he would take a look at that and make a determination. He did not have the answer at the moment.

Mr. Winterfield said whatever the initial period is, in the event that there are complaints, there should be a provision for a hearing because if the operation is being conducted in such a manner that it causes a nuisance, the people who suffer should not have to wait six months. Upon notice, there should be a hearing so that it can be considered sooner.

Mrs. Smith asked Mr. Wood to comment on the new language for item (h) as read by Mr. Randolph.

Mr. Wood said the wording sounded fine to him; however, it is hard to comment until it is in writing. Mr. Wood added that Mr. Winterfield's concern could be addressed at any time under the nuisance law.

Mrs. Smith asked Mr. Randolph if he had given additional thought to the specificity of the requirements to satisfy the Town Council?

Mr. Randolph replied he had not other than as noted previously that the satisfaction of the Town Council is rather arbitrary, and one might question if people would apply for this if they had to meet that standard of proving something to the satisfaction of the Town Council. Mr. Randolph added the only alternative would be take out the word "satisfaction" and say the applicant "shall provide evidence which shall demonstrate through competent...." It was an alternative that was offered before that it would be proven through competent, substantial evidence as opposed to the satisfaction of the Town Council.

Mrs. Smith said she did not believe that the Council decided to adopt the phrasing but stayed with the word "satisfaction" which is a little more vague.

Mrs Smith asked Mr. Randolph to clarify the language for item (g).

Mr. Randolph read: " The Town may impose such additional conditions that it deems necessary to minimize noise, light, and traffic impacts upon neighboring residential districts."

Motion made by Mr. McLendon to approve item (g) with the language changes. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Smith said a motion to approve item (h) had been made by Mr. McLendon and seconded by Mr. Shaw.

Mrs. Gail Coniglio from E. R. Bradley's said the premise to have more parking in the Town is wonderful; however, she wondered if the Town was shooting itself in one foot and raising the other foot to shoot it again. Mrs. Coniglio found the ordinance extremely subjective and could not imagine why anyone would enter into such an agreement. It has become so difficult--is there an application fee?; what is the length of time this process takes? Mrs. Coniglio said that each applicant would have to hire a traffic engineer to provide evidence of noise, and a decibel reading on the street with a car going by raises the decibel reading above the allowable level. That becomes subjective to the Council. Mrs. Coniglio requested the Town Council consider this ordinance very carefully, and added the ordinance in premise is a wonderful idea but is extremely difficult to carry forward. Mrs. Coniglio said she was going to hold off on an application and watch to see if others rush toward this process.

Mrs. Smith asked Mr. Wood if the ideas and thoughts expressed by Mrs. Coniglio were discussed at the Zoning hearings?

Mr. Wood replied they were, and the first concern was if the ordinance was passed, would everyone be obliged to follow it. Mr. Randolph and Mr. Moore advised that was not the case. The ordinance is experimental in nature, and only time will tell if it is successful. Mr. Wood said it was better to try it rather than not have it.

Mayor Ilyinsky commented that many establishments have been able to handle the amount of cars effectively. The Mayor questioned if this ordinance would help the 264 Restaurant?

Mrs. Smith replied negatively.

Mayor Ilyinsky said he agreed with Mrs. Coniglio's comments; however, Mr. Wood's recommendation to give it a chance was also a good idea.

Mrs. Smith asked Mr. Moore how long the process would take if a lot owner wanted to have an agreement with a restaurant owner?

Mr. Moore responded the process would probably take 60 - 90 days before it would be before the Town Council and depended on how quickly the professionals, traffic engineer and traffic planner, will provide information.

Mrs. Smith conjectured that the results will not be visible for a year or until the next season. The opportunity still exists for public input at the next zoning hearing and the Town Council meeting concerning this issue, February 3 and 17.

Mr. Moore replied this matter is not scheduled to go back to the Zoning Commission for their meeting on January 28. The ordinance will be advertised by title and as long as the advertising encompasses the changes, changes are permitted to the ordinance.

Mr. Shaw questioned if (h) were added and (g) is included, is (d) really necessary from the traffic planners' and engineers' points of view? The majority of people are using lots in a passive or unofficial manner. Not much is going to change--it is strictly a question of control and how the lot is used. The idea is to make something viable that is beneficial to all parties, and if the options listed in (h) to address it, cancel it, or modify it in a reasonable period of time, the traffic study as such may not be a necessity.

Mr. Moore replied the traffic study will not only deal with the noise but will deal with the flow of the traffic and how the parking attendants will move from the area of the restaurant to and from the lots. The Police Department would have comments concerning their route of travel, and (d) is highly important.

Mrs. Smith added the parking attendants will be moving through residential areas to get to the parking lots. Mrs. Smith said she wanted more specific information.

Mrs. Smith asked Council members for any additional input.

The motion to approve (h) with the additional conditions was voted on. On roll call, the motion carried 4-0 with Mr. Wyett being out of the room when the vote was called.

Mrs. Smith asked Mr. Moore why the maps distributed to the Council were not correct? Pan's Garden was not included as part of the open space.

Mr. Moore said that map was the old Sanborn map and that had not been updated since 1985.

Mrs. Smith said it would be easier for the Council if they had accurate maps, so they would not have to guess what they were looking at. Mrs. Smith suggested whiting out the buildings that had been demolished.

Item 4. Mr. Moore said that on a vote of 7-0, the Zoning Commission recommended approval of the proposal as submitted by the Town Administration, with a modification by the Zoning Commission to exclude an R-A provision recommended by Staff. The proposed regulation would only pertain to the R-B zoning district based on actual lot size and dimensions. The proposed language is as follows and is more clearly shown on the table that follows the proposed text:

Mr. Moore said that Mr. Brisson distributed an additional revised table.

(28) Lots in the R-B District:

When the width of a lot in the R-B District is equal or greater than the minimum required for a lot in the R-A District, development of said lot shall be subject to the minimum side yard setback and angle of vision provisions of the R-A District.

When the width of the lot is equal to or greater than the minimum required for a lot in the R-AA District, development of said lot shall be subject to the angle of vision provisions of the R-AA District, and lots of 150 feet or more in width shall have side yard setbacks of 20 feet plus 2 feet for each additional 10 feet in width in excess of 150 feet up to a maximum side yard setback of 30 feet.

When the depth of a lot in the R-B District is equal to or greater than the minimum required for a lot in the R-A District, development of said lot shall be subject to the minimum front and rear yard setbacks and building height plane provisions of the R-A District.

When the depth of the lot is equal to or greater than the minimum required for a lot in the R-AA District, development of said lot shall be subject to the minimum front and rear yard setbacks and building height plane provisions of the R-AA District.

When the area of a lot in the R-B District is equal to or greater than the minimum required for a lot in the R-A District, development of said lot shall be subject to the maximum coverage and minimum open space provisions of the R-A District except that maximum allowable lot coverage for single story development on lots of 20,000 square feet or more, shall be 30%.

When the area of a lot is equal to or greater than the minimum required for a lot in the R-AA District, development of said lot shall be subject to the maximum coverage and minimum open space provisions of the R-AA District except that maximum allowable lot coverage for single story development on lots of 20,000 square feet or more, shall be 30%.

Mr. Brisson pointed out the differences in his handouts and the tables on page 6 of the Zoning Report. Mr. Brisson said the new proposal is to apply the conditions only when the lot is 20,000 square feet or more in area. Mr. Brisson pointed out that a lot that could be developed in the R-A District could also be developed in the R-B District, and no hardships should be encountered.

Mr. Wyett said he was concerned with a couple of areas: a lot that is 149 feet wide can have a wider house built on it than a lot that is 150 feet wide.

Mr. Wyett said he thought that could be corrected with a more gradual increase and pointed out the inconsistencies in the allowable building. Mr. Wyett liked the sliding scale approach but suggested the break of 5 feet at the 150 foot mark was extreme and caused hardship at this one particular point.

Mr. Brisson replied he thought the 145 - 149 break could be left and have a 150 - 154 foot break after that and split it at 17.5 feet. That would keep the scale.

Mr. Wyett said the Architectural Commission encourages "L" shaped houses with the side entry garages forward of the main house. If the house is required to be 60 feet back on the property, does the garage that is extended in front of the house have to be 60 feet back?

Mr. Brisson recalled the garage would have to be 60 feet back.

Mr. Wyett said that imposes an extreme hardship.

Mr. Castro explained the increased setback was intended to ensure the building height plane. A one story garage in the front of the house can be closer than the 60 foot setback if it falls within the building height plane.

Mr. McDonald asked Mr. Randolph if this had any Harris Act implications? Mr. McDonald said he thought this might have because the ordinance is taking away something that the lot has today--it is being diminished and probably diminishing the value, because the lot coverage would be reduced.

Mr. Moore said the lot coverage for one story residences would be reduced from 35% to 30%, and the lot coverage for two story residences would be reduced from 30% to 25% on lots that would be 20,000 square feet or more.

Mr. Randolph said he stated in his letter that he thought the effect of the Harris Act would be minimal in this case. Based upon Mr. Brisson's study, it appears there would be no practical effect of the Act on this study item. Mr. Randolph added he thought the Burt Harris Property Rights Act would apply because someone's rights are being affected; however, since the rulings of the courts are not known at this time, he did not think an inordinate burden would be placed upon the property owner.

Mr. Brisson said that while the coverage did decrease, the amount of square footage that the person can have on the lot remains the same--they can have just as big a house--it just cannot be in the same format. The volume or the square footage (FAR) has not been reduced for any piece of property that is affected by this ordinance. The style may be changed.

Mr. McDonald stated he thought these issues would fall under the Harris Property Act.

Mr. Randolph said the flexibility exists for the property owner to have the square footage.

Mr. McDonald stated it was a change in what is allowed presently.

Mr. Randolph replied Mr. McDonald was right; however, he thought the Harris Act applied but the effect would be minimal.

Mr. Brisson, responding to a question from Mrs. Smith, said the maximum of 9,000 square feet would be allowed for a house on a 20,000 square foot lot and that could be placed in either a one story or two story house.

Mr. Moore explained that this change was an effort to deal with larger lots in a neighborhood that has predominantly smaller houses.

Mr. Randolph, replying to a question from Mr. Shaw relating to the Harris Property Act, said a property owner would have to file within a year and would have to give 6 months notice to the Town of the claim for a total of 18 months. If someone were to file a claim after February and prevail, that would give notice to others they would prevail too; however, the likelihood of that happening is pretty small.

Mr. Randolph said, in some instances, some people run scared of the Harris Property Act without reason. The Harris Act, once the 18 months is over, is done, and if someone files under the Harris Act, the Town would have the right at that time to take one of six courses of action as part of the settlement. One of the courses of action that could be taken was to back off.

Mr. Winterfield said he believed this was another instance of Council becoming involved with matters that are within the jurisdiction of the Architectural Review Commission. The purchaser of the larger lot must come to the Town Council with at least the footprint before finalizing plans or before submitting plans to the Architectural Commission. Mr. Winterfield respectively submitted that there was plenty of authority within the Commission and by establishing these very strict standards, the Council does not leave an escape hatch open. The availability of a variance will be difficult -- what is the hardship?

Mr. Winterfield asked what is the minimum lot size required in the R-AA district? It is possible for someone in the R-AA district to build on a 40,000 square foot lot provided the average is 60,000. Mr. Winterfield suggested the amount should be indicated at 40,000 or 60,000.

Mr. Wyett said he had not heard any discussion on Mr. Brisson's suggestion that the increments be changed for the 150 foot lots.

Mr. Moore said the staff agreed with Mr. Wyett and Mr. Brisson's suggestions. Mr. Moore said the wording would change in the second paragraph under (28) "and lots of 150 feet..."

Mr. McLendon suggested the change be a percentage such as 10% of the additional width.

Mr. Moore responded it was easier if the design professionals can use a chart. A chart could also be used for plan review without doing the calculations.

Mr. Wyett suggested using a 2 foot increment and put the 5 foot increment higher up--say at the 180 or 190 foot point.

Mr. Brisson replied he tried to tie all of the numbers to the zoning districts. He suggested that the 150 - 154 foot bracket be made 17.5 feet setback.

Mr. Wyett clarified that the setback to the one story garage was the required one story setback.

Motion made by Mr. Wyett to approve item 4 with the suggested changes. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Item 11. On a vote of 7-9, the Zoning Commission recommended disapproval of the proposal as submitted by the Town Administration to amend Section 6.21(F), *Utilization of yards.*, to require single family homes to provide the two required off-street parking spaces in a garage.

Mr. Randolph said the Burt Harris Property Rights Act would not apply to this item. He agreed that in forcing the issue, the amount of space that a property owner could have in a livable area may be decreased. Maybe it was incorrect to say the Burt Harris Property Rights Act would not apply, but Mr. Randolph's answer was similar to his previous answer--that it would be minimal and the Council should not fear the implication of the Harris Property Rights Act.

Mr. Castro said the ordinance does not require that all of the parking for multi-family dwellings be located within the structure itself. This issue came up last year when the staff and the Council were considering incentives for the developer to increase the height of the structure if the parking could be located entirely within a garage structure underneath the ground. At that time, the Town Council directed staff to look at providing the required parking for single family and two family dwellings within the garage itself. The reason was that if garages were required in multi-family houses, then the same requirement should apply in single and two family dwellings.

Mrs. Smith questioned if the disapproval recommendation from the Zoning Commission applied to multi-family structures as well to provide two required off-street parking spaces in a garage?

Mr. Moore responded that single family and duplex townhouses are currently required to provide one off-street parking space in a garage--the same for the two family and the townhouses. Mrs. Smith asked if the Zoning Commission discussed the cars that park in front of the townhouses? Mrs. Smith said she had a problem with that. Other Council members agreed with her.

Mr. Castro replied that last year's discussion centered around the incentive to allow the developer to build higher as long as all of the parking within a closed area that not be seen from the street. That was as far as the staff and the Council went last year in approving the ordinance that provided the incentive that the first 8 feet of the height of the building would not be counted toward the maximum allowed height.

Mrs. Smith said that the multi-family structures are the ones where the front loading garages face directly on the street and are not sight screened. Additional cars are parked in the driveways of these residences. Perhaps the Town Council did not sufficiently explain the situation to the staff and Zoning Commission, and the main concern of the Council was for the multi-family homes. Mrs. Smith said she was not concerned about the height, but the cars parked on the driveways directly on the streets.

Mr. Wyett said the incentive for developers to provide underground or partially underground parking was a good idea, but it was not economically practical, and those lots now have conventional townhouses being constructed on them. Mr. Wyett said Mrs. Smith was correct, and he thought that two car garages should be required for every residential property in the Town.

Mrs. Smith said the issue of the required two car garage for multi-family units could be addressed during the next zoning season.

Mr. Moore reported that the Zoning Commission did discuss the issue for single family homes, and they thought it was punitive for the single family homes. Mr. Moore added that if the requirement for duplexes would be adopted that would render a great number of structures, that are nonconforming in other ways, nonconforming if two cars are required to be inside. Mr. Moore offered to take the issue back to the Zoning Commission and do research on the number of structures that would be affected.

Mrs. Smith said she was not concerned with single family homes but with the new construction in the neighborhoods around Town Hall that have one car garages with driveways directly on the street. Neighbors complain about these situations with cars in front of every one of them. Mrs. Smith added that she would be pleased to have the Zoning Commission review this item next year.

Mr. Shaw stated the revision in the first paragraph deals with supplemental parking not regular parking for single family and two family developments, and the change that was made was that in order to have supplemental parking, the property owner had to have two required garage spaces.

Mr. Moore replied that was correct.

Mr. Shaw said that by approving this item, in order for a single or two family home to have supplemental parking, they have to have two car garages.

Mr. Castro said that was correct.

Mr. Shaw continued that if the Council approves the disapproval (by the Zoning Commission) then the Council loses the requirement of having two garage spaces on these homes, so therefore the Council should approve this. The problem is the second part where the Council has backed down from the two car requirement and made it a one car requirement in the multi-family. Mr. Shaw suggested approving the top and disapproving the second.

Mr. Castro responded that was correct, and none of the language related to the multi-family or townhouse requirements for parking; however, the staff did look at the single and two family residences in all of the zoning districts as it related to providing the required parking entirely in the garages. The multi-family, three family or more, or the townhouses, four units or more, were not addressed for the required parking to be located in a garage facility.

Mr. Castro said that the two family residences would have required parking for two cars, each unit, within a two car garage.

Mr. Moore confirmed that if the Town Council overturned the recommendation of the Zoning Commission and approved item 11, two family houses or duplexes would be required to have two car garages for every unit.

Mr. Wood recalled the discussion applied only to single family houses. Mr. Wood questioned the requirement for two car garages for single family houses if the second car is required to be sight screened. The answer was that since sight screening is required, then this amendment was not necessary for single family houses. Mr. Wood reported that Mr. Lawrence stated at the Zoning Commission meeting that the assessed value of a house is determined in different percentages of square footages depending upon whether it is a garage or whether or not it is air conditioned. The result would be a lower value for the house, and the Zoning Commission thought that it would be confiscatory to require a single family owner to have two cars when the second car could be sight screened. The Harris Act may or may not apply. Mr. Wood said he was not even thinking about townhouses and perhaps next year would be a good time to look at that issue.

Mr. Moore agreed that it could be looked at next year or the provision could be passed that deals with duplexes rather than townhouses and leaving the single family units until next year to consider on their own merit. The Zoning Commission strongly objected to the single family requirement this year.

Mr. Shaw said if supplemental parking is not included, none of this applies. The only reason to have this apply is if the property owner wants three cars with the third car in the yard.

Mr. Wyett said his concern was to have cars out of open spaces into enclosed spaces. Mr. Wyett suggested doing the duplexes this year and the single family homes next year.

Mr. Castro explained that the present zoning ordinance requires that at least one of the parking spaces, based on the present language, be located within the garage. The attempt was to change the language to say the property owner could have supplemental parking; however, the two required parking spaces have to be located in the garage. The supplemental parking is not required to be in a garage itself.

Mrs. Smith suggested the language should be clarified since Mr. Shaw arrived at a different meaning than was intended by the Building Department.

Mr. Shaw thought the language should be clarified if the word "supplemental" does not mean more than what is required. Supplemental parking means more than the required parking.

Mr. Randolph said he understood the intent as described by Mr. Moore and Mr. Castro regardless if supplemental parking was included, and that it was required that the two cars be in a garage. Mr. Randolph clarified that the supplemental was additional to the two cars.

Mrs. Smith said this was the time to clarify language if there are going to be misunderstandings.

Mr. Randolph read: "to require single family homes to provide the two required off-street parking spaces in a garage."

Mr. Castro said the existing language in the Code was modified to say that at least two or both of the required parking spaces--that is the language that was modified to reflect that change. (Page 39 of Section 11 in the brown book)

Mr. Moore said, after reviewing the language, that it is saying that one car is permitted with sight screening and the other car could be in a one car garage. The supplemental parking requirement that it has to be sight screened has been around for a long time.

Mr. Moore said that two spaces are required for a single family dwelling and duplex with only one being required inside. If the second space should be inside, the Town Council should give that direction.

Motion made by Mr. Wyett to include the requirement for the two spaces to be inside the building and appropriate language be drafted for the single family residences and duplexes. Any supplemental parking for any property would have to be sight screened as required by the present ordinance. The motion was seconded by Mr. McDonald.

Mr. Moore said the immediate effect would be for new construction, but a problem could occur with a major remodeling that had only a one car garage that was over 50% of the appraised value. Then it would become a nonconforming structure and would need a variance to not add the second required garage.

Mr. Wyett said that would come under a hardship.

On roll call, the motion carried unanimously.

## VIII. UPDATE OF THE TOWN'S COMPREHENSIVE PLAN (ITEM 1, 1996-1997 ZONING PROPOSAL STAFF REPORT)

Mr. Moore reported that two elements of the Comprehensive Plan, the Transportation Element and the Preservation Element, will be presented at the January 28, 1997, meeting of the Zoning Commission and at the February 3, 1997, Town Council meeting on zoning.

Mrs. Smith ascertained that any changes at this meeting would be presented at the February 3rd meeting.

The Mayor said he would be leaving the meeting at 5:30 p.m.

Mr. Moore said the Evaluation and Appraisal Report was gone through last year, and that was two years late in being done because the State Legislature had postponed it for two years. Last year's EAR report was incorporated into the new Comprehensive Plan due in 1997. The original Comprehensive Plan adopted in 1989 was reviewed and the 1997 Comprehensive Plan was presented to the Zoning Commission with changes in the Recreation Element. Additionally, the Transportation Element is in the process of being reworked and will be presented to the Zoning Commission on January 28th. The changes in the language for that element reference the Town's dispute with the City of West Palm Beach.

Mr. Moore reported that the Department of Community Affairs wants the Town to place measurable goals and objectives in the Comprehensive Plan regarding the new Preservation Element which is in the Comprehensive Plan this year rather than in the Recreation Element as it was in 1989. Mr. Frank has been working with Mr. Brisson and Frederic R. Harris.

Mr. Brisson said that he would hi-lite the significant changes in the each of the elements.

Mr. Brisson said the first element was the Future Land Use Element and few changes have been made to that element. The Future Land Use Map was changed to reflect the change in Mar-a-Lago from residential to private group use. Palm Beach Academy was changed because it has closed and changed to residential use. A scribner's error was changed on Murray's Palm Beach Diner to reflect the commercial land use designation. The Recreation Element policy changes will be incorporated in the Future Land Use Element.

Mr. Brisson said Mr. McLendon pointed out an error in two tables that have a titling error on one column which will be changed. The word "total" will be changed to "acres" at the top of the tables.

Mr. McLendon asked if the Executive Summary will be changed after the other changes are made?

Mr. Brisson said it was intended to stay as it is currently written.

Mr. McLendon referred to page I-3 and said he had a problem with saying the Town is at a crucial junction in its planning history. Mr. McLendon said with a projected 1% growth in the next ten years, he had trouble gearing up to something being "crucial".

Mr. Brisson responded that wording was in the 1989 plan, and it really hasn't changed because the Town is in a situation where it is no longer growing but redeveloping. The redevelopment has been a significant aspect that the Town has been working on, and all of the zoning work usually deals with the redevelopment aspects of the community. It is just as critical as it was in 1989. There are pressures to change the Town in the sense of redevelopment, and that was the reason the language was kept since 1989.

Mr. McLendon said he would not have chosen to do that. Referring to I-5, the discussion of the future development of large estates, the suggested proposal, not a recommendation, of shared estates sounds like it would be a precedent for multi-family, and he would be opposed to that unless forced. Mr. McLendon said on I-6, the projected growth in 10 years is only 1%--that is minuscule--only 3% of the land is undeveloped.

Mr. McLendon continued that on page I-11 the wording states "a modest rate of growth", and Mr. McLendon took exception to the word "modest". The growth is insignificant. Referring to page I-13, the statement is made that the Floridan Aquifer is not being used in Palm Beach County and that is not true any longer. It is being used in Jupiter for two reverse osmosis plants, and the County system has a reverse osmosis plant south of Palm Beach. The statement is made that there are recharge areas to the Sufficial Aquifer, and those are not identified. Mr. McLendon wanted to know the locations of those. Mr. Moore said he would check with the Town Engineer for the locations.

Mr. McLendon said that on page I-14, he would rather see the word "feasible" rather than "possible" in the middle of the page under development of Coastal. The line starts out policy reduce densities wherever possible.

Mr. McLendon pointed out that the correction has not been made in several places to change 10 acres per 1,000 to 6 acres per 1,000.

Mr. McLendon questioned if any of the Breakers' property was included in the Town's credits?

Mr. Wyett, referring to I-29, 2.2 (d), said he thought all references to private country clubs were being eliminated.

Mr. Frank explained that was what Mr. Brisson referred to earlier in the meeting when he said revisions have been made to the Recreation Element and he has not made the revisions to the Future Land Use Element. He is aware there are numerous changes like that.

Mrs. Smith asked Mr. Brisson where the language from the ADL letter would be changed in the Comprehensive Plan.

Mr. Brisson replied that language will be in the Recreation Element.

Mr. Brisson said that item 2.2 (d) as mentioned by Mr. Wyett will not be changed and that does not relate to recreation but is a land use category. Mr. Brisson added the land use on the map for 3000 South Ocean Boulevard did not have to be changed as it was already residential.

Mr. McLendon asked where the Breakers' acreage fit into the recreational program?

Mr. Brisson replied that will be in the Recreation Element but was not incorporated because it is actually commercial use.

Mr. Moore pointed out that none of the clubs are being included for any of the recreational uses.

Mr. Brisson asked if the Town Council wanted all of Mr. McLendon's suggested changes included in the Comprehensive Plan?

The Council members agreed. Mr. McDonald suggested the word "important" could be used in place of "crucial" on I-3. Mrs. Smith said she liked the word "crucial" with the impending development of the downtown area in West Palm Beach that may impact greatly the Town of Palm Beach. Mrs. Smith noted that the Town's facilities are strained with more people visiting the Town over the Christmas season than ever before. She questioned the number of 20,000 people in the Town--it seemed more like the 40,000 with the hotels filled. Mrs. Smith suggested leaving the word "crucial" because the Town does not have the ability to widen roads along the ocean and the services will be strained.

Mr. McLendon responded that he liked to use the word "crucial" at times when it was necessary. Mr. McLendon agreed with Mrs. Smith that the water negotiations with West Palm Beach were crucial. Mrs. Smith said "important" was fine and that was the change.

Mr. Brisson referred to I-5 and asked if the reference to innovative approaches with the potential of conversion of large estate scale structures was changed?

Mr. Moore said the wording was derived from PUD IV which was the PUD to allow for conversion of historic properties to multi-family, and that has been taken out of the ordinance. It would be correct to take that language out now.
Mr. Brisson noted that "modest" growth would be changed to minuscule or insignificant growth on I-8 and I-11. "Possible" would be changed to "feasible" on I-14. "Limited Use" would be substituted for "no use" on the Floridan Aquifer recharge.

Mr. Brisson continued with the Housing Element, and said there were no significant changes from what was adopted in 1989. The only change was the population estimates because the University of Florida grossly overstated the resident population in 1989, and it changed the population estimates for the future.

Mr. Brisson said the Breakers' 250 multi-family units that are possible are not included in the vacant land estimate of 35 units and that was mentioned later in the same paragraph.

Mrs. Smith asked why manufactured housing was discussed under III-10?

Mr. Frank responded that the State of Florida requires that there be a mobile home allowance by every community. The Town took exception to that in 1989 and insisted that be called manufactured housing. The Town stated that the manufactured housing, if any is allowed in Town, and it is allowed in the Comprehensive Plan and must pass either the Architectural Commission or the Landmark Preservation Commission review and also all of the hurricane standards that the Town has as a barrier island must be met. The Town has two existing houses that are manufactured housing.

Mr. Brisson said that the Infrastructure Element has a series of sub elements: sanitary sewer - no significant changes.

Mr. McDonald questioned if the regional waste water treatment plant expansion is included on page IV-2? Mr. Brisson replied he did not know. Mr. Moore said he would check and include that if it is not included.

Mr. Brisson reported the level of service for the vegetative trash has been dropped in the Solid Waste Section. There was no requirement for retaining that, and Mr. Brisson suggested taking it out. A new section addressing recycling was added to meet the new requirements for 9J-5. A hazardous waste management section was added either in this section or the Conservation Element Section--also required by 9J-5 which is the State's guiding rule for the preparation of Comprehensive Plans.

Mr. Brisson continued that no significant changes in drainage were made. Policy 7.3 was updated to more clearly address the water quality issues and has to do with the Town's NPDES (National Pollution Discharge Elimination System) permitting and the state of that permitting.

Responding to Mr. Shaw's question concerning houses in back of the Sealord, Mr. Moore said there were two houses in back in the Tres Vidas P.U.D.

Mr. Shaw said that in Section 4.6, it stated under "recycling", second paragraph, that there were no residential houses south of 2300 Ocean Boulevard.

Mr. Moore said those houses were listed in the Tres Vidas P.U.D. Mr. Brisson said he would change it to 2300 South Ocean Boulevard.

Mr. Brisson reported that in the Potable Water Section the most significant change was the modification of the level of service for potable water in the Town to reflect what the experience has been since 1989 and to ensure that the Town can actually meet the level of service that is required. Some success was achieved in the level of use of potable water, but it was not sufficient to keep the same level of service that was originally proposed in 1989. The level of service has been changed to reflect the reality of the present situation.

Mrs. Smith asked Mr. Brisson why the water conservation policy on page IV-23 was not updated to show the Town of Palm Beach has conducted educational programs for the last three years--Policy 11-3?

Mr. Brisson said he did not want to change any policies in the Town to reflect something the Town has done. These are things that the Town was supposed to have done. If the Town has done them, then that policy has been met, and it was identified in the Evaluation Appraisal Report. If the new policy is not truly measurable, if a change is made, the State will determine if it is measurable. The Town would then have to develop a new measurable policy.

Mrs. Smith noted that the 1989 Plan referred to a Water Conservation Workshop with the City of West Palm Beach and the South Florida Water Management District in 1990 and this is 1997. Mr. Moore confirmed that was done in 1990.

Mrs. Smith said the same thing applied to the Xeriscape on IX-4 which stated the policy shall be adopted. That was adopted and is part of the ordinance.

Mr. Brisson explained that many policies have not been changed from the 1989 Plan that have been completed. Otherwise, the Town would have to come up with new policies that meets the State's requirements, and new ideas for things to do would have to be developed.

Mrs. Smith asked if the Plan states anywhere that the Town has instituted mandatory watering requirements?

Mr. Brisson said it might have been mentioned in the text and would not have been mentioned in the policies; although it was identified in the E.A.R. if it were done by the time the report was made.

Mr. Moore noted that needed to be added, because it was not in effect at the time the E.A.R. was prepared.

Mr. McLendon noted that on page IV-10 (next to the last paragraph), five crossings of the lake are mentioned for water transmission mains. Four are identified and the fifth one is located at Orange Grove Road if Mr. Brisson wanted to add that.

Mr. Brisson reported that the Coastal Management and Conservation Element had no changes unless something needs to be added here relative to the Hazardous Waste Management activities or in the previous element.

Mr. Brisson said the Preservation Plan will incorporate many of the items that are already included in this particular element, but they will also be left in the Coastal Management Element because the statements in this element can remain, although an additional plan element was added to it.

Mr. Brisson mentioned that the Recreation Element was redone and revisited after the hearings for Mar-a-Lago. Mr. Brisson said the staff does not agree that there is anything improper in including the private recreation facilities in meeting the Town's recreation standards that were used in 1989 or that the Town's Plan in 1989 was engaging in any form of discrimination whatsoever. This change has eliminated the potential of the appearance that the Town might be condoning discrimination. The major changes in the Recreation Element are:

VI-8 Policies 2.1 and 3.1: new policies--objectives reflect the language required by 9J-5
VI-9 Policy 2.1 is the implementing policy for objective 2 and has been changed significantly from what was included originally and the continued existence of the private sector recreational providers who do not employ membership or usage policies that discriminate on the basis of race, religion, sex, color, or marital status. A suggestion was made to add the word "employment".

Mr. Randolph interjected and stated: "Do not employ membership, employment, or usage policies."

Mr. Wyett referred to the last statement: "Civic clubs and associations, although very active in their own right, rely upon the private clubs for their meeting areas." Mr. Wyett said that was not true to the best of his knowledge.

Mr. McLendon and Mr. Shaw agreed with that statement.

Mr. Brisson said he would strike that last sentence.

Mrs. Smith asked Mr. Moore if a list of the Town owned properties that are protected by the greenspace amendment are listed anywhere in the Plan?

Mr. Moore said they were not listed in that category, and the municipal docks are listed. Not all of the pocket parks are listed because some of them are very small.

Mr. Brisson said, as a result of the Zoning Commission meeting, the Palm Beach Preservation Foundation's Earl E. T. Smith Park and Pan's Garden were counted as 50% in the listing that lumps the 50% factor for the semi-public types or the private group uses.

Mrs. Smith suggested a list of the properties should be included somewhere in the Plan.

Mr. Moore said his department would obtain a list from Mr. Dusey or Mr. Bowser.

Mr. Brisson referred to page VI-9, Policy 3.1. This policy was changed to reflect the standard of 6 acres per 1,000 population and a description of how this calculation was made was added. The Zoning Commission recommended that the Lake Worth Casino be excluded. The staff had originally recommended that the Lake Worth Casino be included although, geographically, it fell within the Town boundaries although it is not within the political boundaries. The Town has adequate acreage to meet the recreation needs, and if the Council would like to exclude it to make it easier if someone would object that it is not in the Town, that can be done.

After discussion, Mr. McDonald made a motion to leave the Lake Worth Casino in the Plan. The motion was seconded by Mr. Wyett. On roll call, the motion carried 4-1 with Mr. McLendon casting a negative vote.

Mr. Brisson said all of the other changes relate to actual inventory in the supporting documentation which supports all of the policies and the tables that are included.

Mr. Shaw suggested that a line be added to the text stating that within the proximity of the Town other numerous recreational and cultural facilities are available. Mr. Brisson said that could be added to the text.

Mr. Shaw noted that on VI-11, "Clubs" should be taken out for meeting places for associations.

Mr. Brisson stated that no significant changes were made in the Intergovernmental Coordination Element; however, when the Traffic Element is completed, references to this element will be added.

Mr. Moore added that the changes to this element will be presented at the February 3, 1997, Town Council meeting to support the Town's position against the City of West Palm Beach concerning traffic.

Mr. Wyett noted that on page VIII-11 the 10 acres per 1,000 population has to be changed to 6 acres per 1,000 population.

Mr. Brisson reported that Section VIII, the Capital Improvements Element, had no significant changes relative to policies but the data was updated to reflect the current financial and capital improvement situations for the Town. The changes will be presented at the February 3 meeting.

Mrs. Smith asked if the Town had made a formal request to the County for the Lake Worth Management Committee in 1990?

Mr. Frank responded that did happen, and the committee was not formed. Mr. Frank said it was included in Policy 2.2 on page VII-9.

Mr. Frank said the Historical Preservation Element is actually complete, but measurable goals and objectives in accordance with DCA need to be added. The element needs reformatting and will be presented at the February 3 meeting.

Mrs. Smith asked if a Landmarks Newsletter was ever started?

Mr. Frank replied that was not started.

Mr. Moore agreed with Mrs. Smith that any reference to a Landmarks Newsletter should be removed.

Mr. Brisson reported that the Monitoring, Updating and Evaluation Procedures have been changed to reflect the procedures that the Town has been using in its updating of the Evaluation Appraisal Report and the Comprehensive Plan Adoption Process. These are the only changes to reflect the newest changes that were actually implemented.

Mr. Brisson said that the rest of documentation is the Supporting Documents that is all of the data, the findings and analyses that were used to prepare the actual Summary Plan Document which were the sections discussed at this meeting. The Supporting Documents are not adopted by the Town Council, but they provide the support for the various conclusions reached in the Plan Document.

Mr. Moore added that all of the changes by the Zoning Commission and the Town Council will be reflected in the support documentation as well.

Mrs. Smith asked if any changes were made to the Plan after the State passed mangrove legislation?

Mr. Moore responded that the Town did not make any changes, and the Town still controls the mangroves.

Mr. Wood said the Council considered everything that was heard by the Zoning Commission. Mr. Wood complimented Mr. Castro on the preparation of the materials the Zoning Commission received.

Mr. Winterfield said he did not understand the manner in which the Breakers was rejected. The Breakers is a semi-public facility. They are open, without restriction, to a class of people who are guests at the Breakers. They are open with the provision that people pay. There is no reason, in his opinion, to exclude them. This is a big hunk and extremely important.

Mrs. Smith noted the Breakers was part of the greenspace.

## IX. ANY OTHER ITEMS

Mrs. Smith asked if there were any other items. There were none.

## X. ADJOURNMENT

The meeting was adjourned at 6:30 p.m. to the next Special Town Council Meeting on Zoning to be held on February 3, 1997, at 5:01 p.m.

Mary A. Pollitt
Town Clerk