TOWN COUNCIL MINUTES OF MEETING HELD ON JANUARY 4, 1995

I. CALL TO ORDER AND ROLL CALL: President Pro Tem Smith called the Special Meeting of the Town Council on Zoning to order at 9:30 a.m. on January 4, 1995, in the Town Hall Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Pro Tem Smith, Councilwoman Royal, Councilmen Shaw and Goldsmith. Also attending were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Deputy Town Clerk Pollitt, Director of Planning, Zoning and Building Moore, Assistant Building Official Zimmerman, Planning/Projects Coordinator Frank and William Brisson from Adley, Brisson, Engman, Inc., Zoning Consultants.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Mrs. Peters. The Pledge of Allegiance was led by President Pro Tem Smith.

III. PROOF OF PUBLICATION: Mr. Moore advised the advertisement has been published and proof of publication was received on December 22, 1994.

IV. APPROVAL OF AGENDA: Motion was made to approve the agenda as printed by Mr. Shaw and seconded by Mr. Goldsmith. The motion carried unanimously.

V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC: Mrs. Smith stated Mr. Moore will present the findings and recommendations of the Zoning Commission, and the Council will vote on each item individually followed by comments from the general public.

VI. ADMINISTRATIVE PROPOSALS AND/OR RECOMMENDATIONS (ITEMS 1 THROUGH 8) AND RECEIPT OF THE RECOMMENDATIONS AND REPORT OF THE ZONING COMMISSION DATED NOVEMBER 28, 1994.

ITEM ONE: Mr. Moore indicated the Zoning Commission, on a vote of 6-1, recommended approval of a revision to amend Section 5.51, "Minimum Yard, Lot and Bulk Regulations", to read as follows:

Dish antennas. A dish antenna shall be an accessory structure and shall be constructed, erected or placed in compliance with all of the provisions of this ordinance applicable to accessory structures. No dish antenna shall exceed two (2.0) meters in diameter in the R-A and R-B residential zoned districts; no dish antenna shall exceed three (3.0) meters in any other zoning district. Only one such antenna may be erected as an accessory structure on any one residential building lot. Further, an unattached antenna shall not exceed eight (8) feet in height above ground (average grade) in the R-A and R-B residential zoned districts; such antenna shall not exceed twelve (12) feet in height above the ground (average grade) in any other zoning district. No dish antenna shall be located closer than ten (10) feet to any side or rear lot line. No unattached dish antenna shall be erected in a required front yard, required side yard or required rear street yard setback area in any zoning district. No dish antennas exceeding one (1) meter in diameter shall be located on the roofs of or attached to buildings. All dish antennas shall be screened from public view and from public streets and ways. In any zoning district, no form of lettering, advertising or identification shall be allowed on such antenna or its framework (other than the manufacturer's small identification plate). All such antennas shall be neutral in color and, to the extent possible, compatible with the surrounding neighborhood in appearance and character. (Note: One meter in the metric system of measurement equals thirty-nine and thirty-seven one hundredths (39.37) inches, or three and twenty-eight one hundredths (3.28) feet).

Mr. Zimmerman stated this proposal added the provision that allowed dish antennas up to 1.0 meter in diameter to be mounted on roofs. He continued several variances have been granted by the Town Council over the years allowing these dish antennas. He added the other change involved the size of dishes allowed in residential districts being reduced from 3.8 to 3.0 meters, and no permits have been issued for the large dishes. Mr. Zimmerman said that Staff recommends approval of these modifications.

Mr. Goldsmith addressed the issue of screening the dishes. Mr. Zimmerman replied screening will be required as has been the case in the past.

Mr. Zimmerman, responding to questions from Mrs. Royal and Mr. Shaw, replied the dishes conform to setbacks required for accessory structures such as gazebos, etc.

Mr. Goldsmith moved approval of Item One, of the Zoning Commission recommendation that Section 5.51, "Minimum Yard, Lot and Bulk Regulations", Dish Antennas, be amended. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

ITEM TWO: Mr. Moore reported that the Zoning Commission, on a vote of 7-0, approved the proposal, as submitted by the Town Administration, and discussed in the Adley, Brisson, Engman Technical Memorandum, and modified by the Zoning Commission and staff, to amend Section 8.15, "Termination of Nonconforming Uses", by revising paragraph (b) Destruction or Partial Destruction, to read as follows:

(b) Destruction or Partial Destruction. When fifty (50) percent or more of the existing floor area of a non-conforming structure or structure occupied by a nonconforming use is destroyed by fire or other casualty or Act of God or acts of the owner thereof, the use of such structure as a nonconforming use shall immediately be terminated.

In the event that a Town designated landmark which contains a nonconforming use is destroyed by fire or other casualty or Act of God, to the extent of more than fifty (50) percent, as determined by floor area prior to its destruction, such designated landmark may be reconstructed in its original location to its original size and configuration and the nonconforming use may continue.

Mr. Moore recalled that a change in the ordinance was made for the reconstruction of nonconforming structures last year. He continued this change is in furtherance of that change since the previous modification which allowed for the reconstruction of the building had ignored the use of the structure on a landmarked basis.

Motion made by Mr. Shaw to accept Item Number Two to amend Section 8.15, "Termination of Nonconforming Uses". The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

ITEM THREE: Mr. Moore reported that the Zoning Commission recommended approval of the proposal to amend Section 6.54, "Accessory Commercial Uses" in a Hotel to read as follows:

(6.54) ACCESSORY COMMERCIAL USES IN A HOTEL.

Paragraph (a) items (1) through (5) remain the same with the addition of a new paragraph (b):

> The display or sale of merchandise in a hotel in any zoning district on a temporary or permanent basis, unassociated with a conference or exposition being held at said hotel shall be prohibited except in those areas of the hotel having met the requirements of section 6.54(a) above.

Mr. Moore said Jesse Newman had requested the study of the situation where sales vendors such as jewelry merchants, dress designers, etc., would obtain an occupational license and use the public rooms or hotel rooms as retail spaces for conducting business. He continued the Zoning Commission added the words "or permanent basis" in the above paragraph. Mr. Moore stated the staff wanted to address the problem in this manner to prevent the temporary use of the hotels as retail merchants.

Mr. Moore, responding to questions from Mr. Goldsmith, said this change would prevent salespersons from purchasing an occupational license for a full year, operating from a hotel space that could have been vacated by a tenant, and operating for only a short period of time like a week or two. He continued there is currently no regulation that would require them to occupy the space more than the tenant desired to stay there. Mr. Moore added, in some instances, uses identified as "tenant separations" can be utilized within a building and gave the example of Saks Fifth Avenue leasing space to vendors within their complex such as jewelry departments. Mr. Moore stated the Town permits this activity under the occupational license system.

Mr. Moore continued that, within the existing commercially designated locations in hotels, tenants could occupy spaces subject to occupational licensing, for short periods of time.

Mr. Jesse Newman addressed the Town Council and stated the Palm Beach Daily News ran an article in the January 3, 1995, edition reporting that Oscar de la Renta will be making a personal appearance February 4 and 5 at the Chesterfield Hotel to present his couture collection for the House of Balmain. He continued that Mr. de la Renta will have informal showings in a suite for clients with appointments, and this is a perfect example of someone doing business without a license in a hotel suite without a local commercial umbrella.

Mr. Moore said, during the research for this item, he talked to several of the local hotels, and these "room" sales are not a large part of their business. He continued control of the sales of retail items related to expositions or conferences is mainly a function of the hotel.

Mr. Randolph addressed Mr. Goldsmith's question concerning the loss of an individual's right to conduct business if this change were approved by the Council. Mr. Randolph concluded it would not be a loss of an individual's right, but it would be simply regulating the uses within the hotel.

Mr. Moore said the word "permanent" was added to paragraph (b), but the enforcement to ensure that a merchant stayed in a location for extended, undefined periods of time would be difficult.

Mr. Randolph said the reason the word "permanent" was added was to include both temporary and permanent, and he did not have a problem with further defining of the word.

Mrs. Hermine Wiener, 324 Garden Road, addressed the Town Council. Mrs. Wiener said merchants do rent space, not in the Town of Palm Beach, and if merchants are aware of the Town's requirements, they can make arrangements outside of the Town. She added this is not a complicated problem.

Motion made by Mr. Goldsmith to approve Item 3, (6.54) ACCESSORY COMMERCIAL USES IN A HOTEL. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Alexander Beal, 1050 North Ocean Boulevard, addressed the Town Council. Mr. Beal suggested the Staff should notify the hotels of the change in the zoning ordinance.

ITEM FOUR: Mr. Moore said the Zoning Commission recommended approval of amending Section 5.15, "Lot Area", by adding additional language to paragraph (c) as follows: In the event the lot size is 60,000 square feet or more, the proposed structure(s) shall have minimum setback requirements equivalent to the R-AA district.

Mr. David Zimmerman reported this change was recommended because a proposed large residence for the R-B district with a lot size of 75,000+ square feet was presented to the Building Department. He said the new provision would require additional setbacks in this case such as 30 feet side yard setbacks in lieu of the present 15 yard side yard setbacks. Mr. Zimmerman said the Staff considers this a good proposal for those extraordinary large sites.

Mr. Zimmerman replied to Mrs. Smith's question, and said that the Zoning Commission did not address the issue of setbacks for accessory structures in the R-B district for lot sizes in excess of 60,000 square feet. Mr. Zimmerman said an item could be recommended for next year's zoning season to study the issue of accessory structures' locations in the setback areas with proportional increased setbacks related to increasing lot sizes.

Mr. Randolph said a study would have to be done, and he recommended it be considered in another zoning season since the Staff has not received any direction to change setbacks for accessory structures for this year.

Mr. Shaw asked if proportionate increases in setbacks based upon proportionate increases in the lots could be addressed?

Mr. Randolph replied if the Council wished to pursue that suggestion, the Staff would have to research the issue.

Motion made by Mrs. Royal to approve Item 4, to amend Section 5.15, "Lot Area". The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mr. Goldsmith requested the issue of the accessory structures as related to setbacks be a study item for the next zoning season.

ITEM FIVE: Mr. Moore reported that the Zoning Commission recommended approval to amend Section 6.33, "Signs in Commercial Districts", by amending paragraph (h) Temporary Signs to remove the language, "....said permissible time period to occur not more than once a year and for not longer than a period of twenty-one (21) consecutive days...". Mr. Moore explained this item was studied relative to sales signs for retail merchants because the Town operates on a year-round basis where previously the retail merchants operated on a seasonal basis when the ordinance was originally adopted.

Mr. Moore said the Staff recommends the change, but the ordinance will still not allow any temporary sign to be affixed to windows or doors.

Mr. Jesse Newman reported the business community wants to adhere to the word "Sale", the size of the sign is acceptable and the time of the year allocated to the sale between April and October is acceptable. Mr. Newman said this will keep the dignity and the integrity of the business community under the control of the Town Council.

Mrs. Sandra Goldberg, 2000 South Ocean Boulevard, stated she recently attended a meeting of the Worth Avenue Association and noted the group expressed a strong sense of "community" and any change that would help the merchants keep the dignity of Palm Beach and what it stands for is a good idea.

Motion made by Mr. Goldsmith to approve Item 5 to amend Section 6.33, "Signs in Commercial Districts". The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

ITEM SIX: Mr. Moore said the Zoning Commission approved the addition of a new item (I) to Section 6.21, to read as follows:

(I) SHARED PARKING IN COMMERCIAL ZONING DISTRICTS

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

(a) The lessor clearly establishes to the Town Council that the uses will primarily utilize these parking spaces at different times of the day, week, month or year, and that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities.

(b) In the event the lessee's use is nonconforming to the Town's off-street parking requirements and the shared parking is located off-site, such lease of shared parking spaces will not count towards required off-street parking and said use shall remain nonconforming with respect to the Town's off-street parking requirements unless said leasing of shared spaces is approved as a special exception under Section 6.21(I)(2)(c).

(2) When a new use is proposed to occupy existing floor space vacated by another use, and the new use would require a greater number of parking spaces than required by the former use, the new use may request a special permit for the sharing of on-site parking to meet the Town's off-street parking requirements, provided:

(a) A traffic planner or traffic engineer clearly establishes to the Town Council that all uses utilizing the existing parking facilities will primarily utilize these parking spaces at different times of the day, week, month or year; that the sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities; and that the available parking will be adequate to serve the needs of the proposed use.

(b) The applicant provides to the Town, a three party agreement including the Town as one of the parties, guaranteeing the continued availability of the shared parking spaces during the period of operation of the applicant's use. The term of the agreement shall approximate the life of the building or use for which the shared parking spaces fulfill the Town's off-street parking requirement; and, if the shared parking ever ceases to be available, or becomes inadequate due to a change in the uses' respective schedules of operation that results in conflicting or overlapping usage, the proposed use shall be required to obtain a new occupancy permit and provide proof that sufficient parking will be provided, or, be required to immediately reduce the intensity of the use served to the extent that it will be conforming to the Town's off-street parking requirements.

(3) Shared parking, proposed to be located off-site within five hundred (500) feet of the proposed use, or in a commercial zoning district different from that in which the proposed use is to be situated, and where such shared parking is intended to count towards meeting off-street parking requirements, may be approved by the town council as a special exception, if the applicant meets the following requirements:

(a) A traffic planner or traffic engineer clearly establishes to the Town Council that all uses utilizing the existing parking facilities will primarily utilize these parking spaces at different times of the day, week, month or year, that sharing of such parking spaces will not result in conflicting or overlapping usage of the parking facilities; and that the available parking will be adequate to serve the needs of the proposed use.

(b) The applicant provides to the Town, a three party agreement including the Town as one of the parties, guaranteeing the continued availability of the shared parking spaces during the period of operation of the applicant's use. The term of the agreement shall approximate the life of the building or use for which the shared parking spaces fulfill the Town's off-street parking requirement; and, that if the shared parking ever ceases to be available, or becomes inadequate due to a change in the uses' respective schedules of operation that results in conflicting or overlapping usage, the proposed use shall be

required to obtain a new occupancy permit and provide proof that sufficient parking will be provided; or, be required to immediately reduce the intensity of the use served to the extent that it will be conforming to the Town's off-street parking requirements.

(c) The applicant meets the requirements of Sec. 6.21 (D)(1) and Sec. 6.21(D)(3), as applicable.

Mr. Moore said that many uses in the Town over the years have not had the required parking spaces. He continued the change is a plan to utilize parking spaces in the off-time hours.

Mr. Brisson stated the Town has had a recognized problem with parking for many years, and although during some time periods an adequate number of parking spaces may exist; however, they may not be available because they are applied to an existing use that may not be in operation at that time.

Mr. Brisson said his recommendation was to allow an existing use to lease space from another use when the primary times of demand are different. Mr. Brisson continued a provision has been made to allow for shared parking outside the existing structure(s) parking within 500 feet or so. He added this condition requires a special exception, and, additionally, a special exception is required when an applicant is counting shared parking toward the Town's requirement for parking.

Mr. Brisson said a time could be determined for the shared parking to be applied, and that time could be from approximately 6:00 p.m. forward. He added that the applicant will have to submit documentation that no conflict will exist regarding parking spaces during the operation times of the two businesses. Mr. Brisson said a reason not to state a definite time period is to allow the applicants to work out the times between them to allow possible shared parking during the daytime hours. He said this change will allow the Town to utilize existing parking spaces more efficiently than they have been in the past, and leave opportunities for fine tuning in the future.

Mrs. Smith asked Mr. Brisson to find the verbiage that requires the applicant to pay for the traffic plan and the traffic engineer so that cost will not be borne by the Town.

Mr. Moore replied that is in another section of the ordinance, and the applicant would pay not only for the initial study but also pay for the review by the Town's expert. Mr. Moore offered to repeat the wording within this segment of the ordinance.

Mr. Shaw said that shared parking had a second phase, and that was to go back and modify the parking requirements for establishments based on the concept of shared parking. Mr. Shaw requested that a discussion occur within the coming year regarding this concept.

Allen Wyett, 1145 North Lake Way, stated this was a good idea; however, a provision should be added stating that no shared parking would be allowed within 200 feet of a residence, and increased use of parking for a facility when it changes hands which would cause additional parking, above and beyond the current use, such as a private club, Mar-A-Lago, or Poinciana Plaza.

Motion made by Mr. Shaw to accept Item 6 to add a new item (I) to Section 6.21. The motion was seconded by Mr. Goldsmith. On roll call, the motion carried unanimously.

ITEM SEVEN: Mr. Moore reported that the Zoning Commission recommended approval of amending Section 6.21(c), "Off Street Parking", by adding a new parking provision as follows:

(15) Group Home and Foster Care Facilities. One(1) space per each four(4) resident occupants or fraction thereof, plus one (1) per each employee in the largest work shift, with a minimum of two parking spaces.

Mr. Moore stated this item was identified during the shared parking study and when the Town added the Group Home and Foster Care Facility to the Zoning Ordinance as a mandate from the State of Florida Department of Community Affairs in the Growth Management Act of 1985, the Town failed to add parking requirements for it.

Mr. Moore reported none of these facilities exist in the Town of Palm Beach.

Motion made by Mr. Goldsmith to approve item 7 to amend Section 6.21(c), "Off-Street Parking", by adding a new parking provision. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

ITEM EIGHT: Mr. Moore reported that the Zoning Commission recommended the approval of the proposal to reformat the Zoning Ordinance for clarity and simplicity of use. The Zoning Commission placed special emphasis on their recommendation to the Town Council that they favored moving forward with the changes in the format as developed by Staff. It was the unanimous feeling of the Zoning Commission that proposed changes in a partially developed format will have a most beneficial effect and improvement on the clarity, understanding and use of this document.

Mr. Moore recalled the need was to make the Zoning Ordinance a more user-friendly document, and this was to be done in two stages. He said that Commissioner Robert Wood provided the Staff with zoning ordinances from other jurisdictions as did Mr. Brisson. He continued that the Staff reviewed these ordinances and has submitted the revised Town ordinance to the Council for approval. Mr. Moore said the Municipal Code Corporation provided the Town with a computer program at minimal expense to convert the existing ordinance to the new format. He said Mr. Frank with assistance from Mr. Brisson developed this new format. He continued that Plan B includes adding a table of contents, an index and remove any conflicts that exist in the ordinance to date. He said this would be presented to the Zoning Commission during the 95-96 season and submitted to the Town Council as Ordinance 1-96.

Mrs. Smith said she would suggest a larger book and consider including a small map of the Town in the back of the book with the various zoning districts identified.

Motion made by Mr. Goldsmith to approve the proposal to reformat the Zoning Ordinance for clarity and simplicity of use. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

ITEM NINE: Mr. Moore reported the Zoning Commission recommended approval of an amendment to the Town's Comprehensive Plan, changing the Future Land Use Designation of the property at 3000 South Ocean Boulevard from Multi-family High Density to Commercial. He stated Item 10 is a companion item to this one, and that one is for a re-zoning application.

Mr. Moore explained 3000 South Ocean Boulevard was the subject of a 1990 re-zoning application, and the property was used as a radio station dating back to the 1940's. He continued the Town reviewed the last application for a specific use as a parking lot; however this plan calls for a change to commercial use which happens to be for a restaurant at this point.

Mr. William Brisson, Adley, Brisson, Engman, Inc., stated this small plan amendment meets with the requirements of the State Act. He continued that he identified the land uses surrounding the property, the future land use designations, and the zoning to allow review of this request in context. Mr. Brisson said any change to the Future Land Use Map and/or text needs to be consistent with the Town's goals, objectives and policies that are in the Comprehensive Plan. Mr. Brisson reviewed the Comprehensive Plan and one objective and a couple of policies that relate to this type of a change. He continued that the objective and policies deal with the same topic--maintaining the existing residential character of the community and the surrounding areas and the aspect of minimizing or maintaining a relatively low level of commercial uses necessary to serve the local Town residents.

Mr. Brisson said that this particular change from high density residential to commercial in the land use plan is consistent with various goals, objectives and policies listed in the Comprehensive Plan. He added this change to a commercial land use designation does not alter the predominantly residential character of the community. Mr. Brisson said this request involves one acre, and the surrounding immediate area would not be altered. He stated the property, for the most part, is surrounded by either commercial or quasi-commercial types of uses. Mr. Brisson continued that to the north, is the Lake Worth Casino and properties which are a combination of recreation and commercial; immediately to the south is the Beachcomber which is shown in the Comprehensive Plan as a high density residential area and zoned residential in the RD-1 district but essentially is used as a motel or a commercial use and can retain the present use for many years to come as a nonconforming use to the zoning.

Mr. Brisson added that similar situations exist to the north and the northeast where a commercial land use designation is bordered by a higher density residential land use designation. He reiterated the surrounding areas are either recreational, commercial or high density residential, and the area to the west across A1A is a grand-fathered time share use; although it currently is being used as an apartment complex, it has the ability to maintain itself as a time share use which is much closer to a commercial use than residential.

Mr. Brisson said he did not believe the character of the neighborhood would be altered by this change, and it does not violate the Comprehensive Plan's approach towards looking at the commercial and serving primarily residential uses. He added, if the change is approved, the property would be rezoned to C-TS since it is the only commercial zoning district that would fit within the commercial land use designation in this area. He continued that zoning designation is geared toward the types of commercial activities that would address primarily residents of the Town. Mr. Brisson said a restaurant at this location would not tend to attract the majority of its patrons from off the island.

Mr. Brisson recalled when the land use change was denied in either 1990 or 1991, that request was specifically for a parking lot that would have served people coming from the Lake Worth Casino and beach area, and that was not a town serving use. He said the projected restaurant use would fit within the C-TS district and it could be anticipated to be a town serving use. Mr. Brisson reiterated the change was consistent with the Town's Comprehensive Plan, and no impediment would be in place for the rezoning issue.

Mrs. Smith said that for a rezoning application, with only four members sitting on the Council, it must be a unanimous vote.

Mr. Randolph concurred with Mrs. Smith's statement, noting that the Mayor cannot vote since an application would need a 4/5 vote.

Mrs. Smith asked that the applicant be informed of this if this has not already been done.

Paul Prosperi, Attorney for the applicant, replied he did understand that four votes were needed, and there are only four possible votes.

Mrs. Royal asked Mr. Randolph to explain why Mr. Goldsmith did not have a conflict of interest regarding this project and explain why he may continue to vote on this issue? Mrs. Royal added the Council members received a letter advising them Mr. Goldsmith should not vote on this issue.

Mr. Goldsmith responded he would explain. He stated H. Loy Anderson, the applicant, is President of Palm Beach National Bank, and Mr. Goldsmith is on the board of Palm Beach National Bank and owns stock in the bank. Mr. Goldsmith said he had no knowledge of Mr. Anderson's participation in this matter nor has it been discussed between them. Mr. Goldsmith stated he is exercising his judgement relating to a zoning matter in which he has absolutely no financial interest nor any personal interest of any kind. Mr. Goldsmith added many of his friends and acquaintances appear before the Council, and he strongly resents any implication that he cannot exercise his judgement as an independent person on a matter in which he has no personal interest at all. He sees no conflict, feels no conflict and believes he has none.

Mr. Randolph spoke regarding the letter received by the Council members pertaining to Mr. Goldsmith and stated, on the face of the letter, he saw no existing conflict. He said he investigated further to determine if Palm Beach National Bank had a financial interest in this property, and he was advised in no uncertain terms that the bank has no interest in that property.

Mrs. Royal referred to the Adley Brisson report, objective 2 of the Comprehensive Plan, Maintaining the character of the Town as predominantly a residential community having only the type and amount of businesses necessary. Mrs. Royal asked Mr. Brisson if he considered this statement and if there were adequate restaurants already located in the south end of Palm Beach?

Mr. Brisson responded he was aware of the statement, and he considered the majority of the restaurants were located in the north end of Palm Beach although the majority of the Town's residents live in the south end.

Mr. Moore responded that approximately one-third of the Town's population lives south of Sloan's Curve.

Mrs. Royal questioned policy 2.3 which stated tourism influx should be minimized where possible. Mrs. Royal said the very nature of the site may be increasing the influx.

Mr. Brisson responded that minimizing does not mean to have no increases. He said he understood the proposed restaurant would primarily be oriented to the local residents as presented by the applicant. Mr. Brisson added the major attraction in the area is the Lake Worth Casino, and the restaurant may feed off that.

Mrs. Royal noted that policy 2.4 discouraged "those usages which are likely to attract patronage on a regional level". She stated the location may be a primary factor that would attract patronage on a regional level.

Mr. Brisson replied the 2.4 statement was identical to the 2.3 statement, and the same reasoning would apply.

Mrs. Smith asked Mr. Brisson if the plans for the City of Lake Worth were discussed at the Zoning meeting relative to the demolition of the Casino and the new buildings including restaurants that are being planned for the site?

Mr. Brisson replied the planner from Lake Worth and others indicated that plans do exist; however, the plans are not firm. He expects that the plans would intensify the use of the property as opposed to a reduction in the intensity of the property.

Mrs. Smith requested Mr. Brisson display the site plan showing the areas surrounding this site and show the property owned by the Town including the beach front.

Mr. Brisson identified the former radio station property and the surrounding commercial and recreational areas.

Mrs. Smith asked if the Zoning Commission discussed the possible implications of the development of the Steinhart property on the west side of A1A?

Mr. Brisson replied the property was discussed, and ultimately some Lake Worth development could take place in that area.

Mr. Moore noted that the Town of Palm Beach owns a 12 foot strip of property between the high water mark and the old right-of-way along the beach to provide a contiguous link for the southernmost part of the Town.

Mr. Shaw stated he was surprised this issue was being addressed since the applicant applied for a variance to use the property as a restaurant, and the variance was granted. He continued that at this point to rezone it so the restaurant use would be allowed seemed to be after the fact. He added he was concerned that if the zoning were changed for the property, the approved variance would be thrown out since the applicant would have full use of the property as town-serving. He continued the variance was granted with certain conditions including limitation of hours and concerns for residents to the south.

Mr. Shaw suggested the zoning could be changed to C-P rather than C-TS. He thought this may benefit the residents of the area depending upon their needs. Mr. Shaw questioned the goal of the zoning change.

Mr. Moore responded this request was at the behest of the applicant, and the granted variance was approved conditionally, changing one nonconforming use to another nonconforming use. Mr. Moore added the Council's site plan review for the restaurant was part of that approval. He continued that the conditions that were part of the approval will stay with the approval for a period of one year regardless of the outcome of the comp plan and zoning requests. Mr. Moore said if the applicant does not decide to go ahead with the project using those conditions and with the approval of the rezoning to commercial, the size of the building would trigger a special exception since the size is in excess of 2,000 square feet. He stated the net effect of approval of the rezoning would be tighter control over the property.

Paul Prosperi, Attorney representing the applicant, identified the proposed property on a site plan noting that the Town owns a lift station along A1A at the front of the property. Mr. Prosperi noted that the existing uses surrounding the property generate noise, traffic and nuisance which is a source of complaint for the neighbors not adjacent to the Casino and further away from the Casino than the subject property. Mr. Prosperi continued dozens of police incidents occur each week on the Lake Worth property and a recent traffic count indicated a high of 20,000 cars in March of 1994 at that intersection.

Mr. Prosperi said the City of Lake Worth is currently studying the use of the Casino property, and a developer is currently devising plans for a condominium and a commercial exploitation of the site. He continued that a Lake Worth City planner at the November Zoning Commission meeting indicated that a two story parking structure is a serious possibility for this site which would double the existing parking.

Mr. Prosperi said the subject property is zoned RD (2); however, its 100 foot width forces any development on the property to be immediately adjacent to the Lake Worth Casino property without any buffer. He continued that this renders the subject property unusable for residential purposes given the existing, physical conditions of the site.

Mr. Prosperi stated the neighbors to the south operate an apartment motel, and he presented a brochure to the Council that refers to the Beachcomber Apartment as a motel and a resort. He added daily rates and check out times were indicated on the brochure as well as charges for a third person in a room. He contended that this property is used commercially and could be sold, leased

or operated by Holiday Inn, Days Inn, Ramada Inn or any other national chain immediately without any requirement for any approval from the Town or the Council.

Mr. Prosperi said the subject property should be zoned as a transition from the existing intense commercial and uncontrolled use by the Town of Palm Beach on the north side to the commercialized-residential apartment/hotel on its south. He continued the lowest intensity commercial use in the Town of Palm Beach is C-TS (commercial - town serving) and the purpose of this district contemplates restrictions to enhance the commercial town serving general character of the district and its compatibility to its residential surroundings.

Mr. Prosperi stated that the current and prospective uses of this property, as a radio station and as a restaurant, are permitted or special exception uses in the C-TS district. He continued that this property has been in continuous commercial use since 1941. He contended that the proposed change in zoning will only recognize its historic and continuing use, and this property is considerably impacted by its proximity to the Lake Worth property which is not part of the Town of Palm Beach.

Mr. Prosperi noted that the existing zoning is inconsistent with the zoning on the north side of the Casino property. He continued that for 502 feet on the north side of the Casino property, the Town has put in place C-TS zoning, and the subject property would serve as a 100 foot C-TS buffer on the south side of the Casino property if this change were approved. Mr. Prosperi asked that the Town treat the south side of the Casino fairly regarding the zoning issue and apply the same zoning precepts and reasonable use standards to the subject property.

Mr. Prosperi said that the Town-owned and operated sanitary lift station on the corner of this site reduces the subject property's access to AlA to 67 feet. He added this also creates a hardship and a nuisance, and makes residential use of the property difficult. Mr. Prosperi requested rezoning of the property that would recognize its historic and continued commercial use; allow some economic use of the property; provide transition from the intense commercial and public use of the adjacent Lake Worth Casino property to the north and to the apartment/hotel to the south and be consistent with the zoning for the north side of the Casino property which is zoned C-TS.

Mr. Prosperi, responding to Mr. Shaw's earlier question,
said the applicant has been threatened indirectly by the City of Lake Worth with law suits at the point the applicant sought a building permit for modifications to the building. He continued the owners of the radio station, the Aspinwalls, have been denied any reasonable, economic use of this property.

Mr. Moore responded Mr. Prosperi indicated the property was zoned RD-(2), and it is zoned RD-(1).

Ray Royce, Attorney for the Beachcomber owners, reported that the Beachcomber property is being used as a resort property, and that property has been owned by the family for over forty years. He said the buildings are 50 to 60 years old and the property represents the nostalgic Palm Beach as it was many years ago. Mr. Royce continued the place is secluded, quiet, and maintains good relations with its neighbors to the south. Mr. Royce maintained this property will be ruined with a restaurant so close to it.

Mr. Royce addressed the issue of the Steinhart property which was incorrectly located previously in the meeting. He said if the permits for commercial development of that property are secured, after 20 to 30 years of attempts, the development would occur across from the Casino; however, he stated this was a false issue.

Mr. Royce recalled that at the last meeting, he was informed that the use of the property was decided and the only question was the site plan conditions. Mr. Royce reported that his clients were alarmed that all the conditions agreed to previously, under various circumstances could be rescinded and leave his clients with no protections that took so long to work out. Mr. Royce said his clients were not happy with the use before but were reluctantly drawn into the site plan review in an attempt to salvage something.

Mr. Royce said, suddenly, someone discovered there were loose ends to the approval, and this is an attempt to legitimize the approval. He added the cart was before the horse, and this is an attempt to have the Council validate what was already approved.

Mr. Royce offered to review the land use plan. He said he was amazed that people could read these objectives and policies and come to conclusions that members of the staff indicated previously. Mr. Royce said the land use plan is the bible on land use and tells the Town what the policy should be. He added this sets the stage, provides direction and is important.

Mr. Royce noted that objective 2 in the land use plan stated: "..maintain the character of the Town as a predominantly residential community having only the type and amount of business and other support service necessary to meet the needs of the Town's residents". Mr. Royce stated no showing has been made that the restaurant was necessary.

Mr. Royce added policy 2.3 stated: "..to prevent critical and dangerous over use of the street, parking resources, public services and facilities and damage to its historic character and the overall property values of the community..". Mr. Royce questioned the property value as it related to the Beachcomber when guests, commercial or residential, are attempting to sleep within 20 feet of the restaurant parking lot. He continued: "The Town will take all technical and administrative measures legally available to minimize the change or transition of existing low density areas or structures to more intensive use patterns". Mr. Royce said the Town policy stated all actions will be taken not to permit the increased activity and to lower and minimize tourist influx.

Mr. Royce said this restaurant will essentially provide a service to people who are not Town residents, and in addition to that, it may become a late night watering hole. He said Mr. Shaw was correct when he indicated another less drastic use should be found for this property.

Mr. Royce addressed the subject of the buffer zone possibility for this property. He suggested the commercial area to the north of the Lake Worth Casino property contained no late night restaurants but a complex of offices, banks and beauty shops whose employees go home at night and do not make an inordinate amount of noise. Mr. Royce said Howard Johnson's has been in the

area since the 1950's, and it has not expanded during the years. He added the fact that Howard Johnson's exists does not justify the approval of the restaurant.

Mr. Royce quoted policy 2.4 of the Comp Plan: "Continue to enforce the provision of the Town's zoning ordinance which is directed toward the encouragement of town serving commercial uses and the discouragement of those uses which are likely to attract patronage on a regional level". Mr. Royce said the property could have a C-TS label put on it; however, the common sense facts are that by accommodating a Ruby Tuesday restaurant, the Town may not be following the dictates of the comp plan. Mr. Royce stated this approval would encourage a use which is likely to attract patronage on a regional level. Mr. Royce requested the Council not violate the principles of the Comprehensive Plan. Mr. Royce agreed with Mr. Prosperi that the property was a difficult piece to work with; however, a radio station had been on the property since 1941. He continued Mr. and Mrs. Aspinwall bought and operated the property as a radio station for many years, but the Town does not have the obligation to ensure an economic benefit for the use of a piece of property. He said the buyers knew what the property was when the bought it and assumed that risk.

Mr. Royce said if the request is approved, the Town has moved the problem 100 feet further south, and rather than being a buffer zone, a situation is set up to move the commercialization south. Mr. Royce continued he did not believe Lake Worth knew what the City was planning for the Casino property, and this proposed restaurant wants to access its parking lot through the Casino access road which may not exist if the property is redeveloped. Mr. Royce said the Council would be setting a very dangerous precedent if this is approved. He suggested the Town has invented other zoning districts such as the Royal Poinciana Plaza category and the Worth Avenue category to fit sensitive areas. Mr. Royce pointed out that the Town should attempt to coordinate efforts with the City of Lake Worth giving due consideration to a less intensive use. Mr. Royce asked that the Council slow up and take a longer look at this situation and not grant approval for a restaurant.

Mrs. Smith told Mr. Royce she was the one who asked about the Steinhart property for her own information, but she wanted to know the plans for all the surrounding property and not as a beginning for a domino theory.

Mr. Royce replied great emphasis was placed upon the Steinhart property issue at the meeting of the Zoning Commission.

Mr. Allen Wyett, 1145 North Lake Way, addressed the Town Council and stated this was more than an issue of zoning. Mr. Wyett challenged the consultants and attorneys concerning the issue of the property change being town serving. Mr. Wyett stated he lived on South Ocean Boulevard for 17 years, and the idea of the restaurant is offensive. Mr. Wyett continued the Town does not need an attraction to keep the visitors who frequent the Lake Work Casino area in Palm Beach. He continued this is an issue of protection for the quality of life in Palm Beach and the protection of property for the residents who live south of Sloan's Curve. He stated a chain type restaurant will attract the wrong element to Palm Beach, and Mr. Prosperi described existing noise, traffic and police problems in the Lake Worth area. Mr. Wyett questioned the feasibility of the Town's Police Department handling incidents in the area and reducing police coverage in other areas.

Mr. Wyett added that bad money drives out good money and bad business drives out good business. He said if the zoning issue is allowed, the motel next door could suffer, and thus affect the property next to it. Mr. Wyett said the residents want to raise values in this Town, not lower them, and 13 dining areas exist south of Sloan's Curve plus the easy access of Lake Worth across the bridge.

Mr. Wyett said that Mr. Goldsmith may not be legally bound to exclude himself, but as a matter of ethics, he should exclude himself from voting on this issue based on his relationship with H. Loy Anderson.

Mr. Wyett requested the Council not approve the request for Ruby Tuesday's.

Mayor Ilyinsky replied he did want to give the impression to anyone that every young person who lives across the bridge is a crook or a doper, because that is absolutely not true. He continued the Town cannot send messages out telling anyone who crosses the bridges that he or she is not welcome, then we are living in the wrong town. He added, of course, the Town wants protection but to suggest that young people living in the County cannot come to Palm Beach and enjoy a dinner is not the message he wants sent.

Mrs. Smith stated this was not a political forum but a zoning meeting.

Mrs. Sandra Goldberg, 2000 South Ocean Boulevard, addressed the Town Council and stated, as a resident living in the south end, that the south end is quiet and peaceful, and the residents are proud of the low crime rate. She continued that other areas in the County including Lake Worth and West Palm Beach can boast of the low crime rate in Florida. She said that this area in question is a cruising area resulting in sometimes dangerous driving and unacceptable behavior. She added the citizens south of Sloan's Curve are concerned about the addition of a restaurant to the area attracting additional traffic.

Mrs. Goldberg stated she wished to express her strong view, as a citizen and as a delegate to the Citizens' Association South of Sloan's Curve, that she would not like to see the conversion of a residential area to a commercial area.

Shirl Hennessey, owner of the Beachcomber Motel, addressed the Town Council and said her parents, Esther and Charlie Koons, have been in Palm Beach since 1940. She said her parents bought the motel in 1956 after the death of one of their daughters to enable the remaining family including the grandchildren to have a place in Palm Beach to be together. She continued the motel, at one time did have a restaurant, but this was closed because too many outside people were attracted and this interfered with the guests. Ms. Hennessey stated problems do exist with transient people trespassing on the property from the beach area. She requested the Council consider the motel guests and their needs before granting this approval.

Mr. Lawrence Manino, the husband of one of the owners of the Beachcomber Motel, said the family could have easily sold their property over the years, realized a large profit and left Palm Beach. He continued this is not the family's intention, and very little profit is taken from the motel. He said most of the profit is reinvested into the motel, local people are employed, and the

guests have requested the family not to sell the motel. He said a restaurant would be a negative impact on the motel.

Mr. Julian Morris, 208 Angler Avenue, stated he found two areas in the proceedings troubling. He said one area concerned the conflict of interest question, although the issue was addressed in this particular instance, perception is the problem.

Mr. Morris said the second area of concern is the residents' concern and caring for the Town itself. Mr. Morris said he was familiar with the establishment and to say that this restaurant was very much out of character was to understate the case.

Mr. Randolph stated the application, as he understood it, does not deal with the particular use such as a restaurant but a change in use.

Mr. Moore concurred with Mr. Randolph's assessment of the application. Mr. Moore said he thought there was a great misconception by some of the opponents of this issue, and this application was for a land use change and a rezoning to a Commercial-Town Serving has absolutely nothing to do with a restaurant which has been before the Town Council for a conversion of an existing building, existing commercial use, that was approved earlier. He reiterated that this application has nothing to do with the earlier approval for the restaurant.

Mrs. Smith replied all the Council members were aware of the difference, but she wanted to be sure the public was aware that the restaurant, Ruby Tuesday, was not under discussion at this meeting.

Joe Garr, President of the Board of Directors at the Palm Beacher, 3024 South Ocean Boulevard, stated he had spoken with all of the residents of the building, and they were very concerned about what was going to happen to the area if and when the restaurant is built at 3000 South Ocean Boulevard. He continued that many of them indicated they would like to sell their units before the restaurant is started. Mr. Garr said most of the residents are retired people who planned to remain at the Palm Beacher for the rest of their lives, and they are opposed to a restaurant.

Roger Flannagan, a board member of the Palm Beacher, 3024 South Ocean Boulevard, said he first rented at the Beachcomber in 1965 and for the next twenty-one years returned to the Beachcomber because he liked the motel very much. He said the Beachcomber is a credit to the community, and he decided to buy an apartment next door in the Palm Beacher because he liked the area. Mr. Flannagan thought there would be a conflict with the Palm Beach and Lake Worth police officers attempting to control the same general area. Mr. Flannagan objected to the restaurant, and stated he did not want to see the Palm Beacher harmed in any way.

Mr. Royce, responding to Mr. Moore's comments, said the applicants either have Ruby Tuesday's as a tenant or not; however, if the restaurant is a viable tenant, then the approval with the conditions, which were not totally amenable to the Beachcomber, still apply. He continued if the requested zoning change is approved, the applicant has a wide variety of uses to choose from; although the 5,000 square foot size of the existing building, which is in excess of the 2,000 square feet allowed, dictates the process would have to be repeated for other uses. Mr. Royce suggested that other uses such as banks, beauty salons, etc. should be considered for this piece of property providing a buffer that would not have the late hour noise or the odors of a restaurant. Mr. Royce said another zoning district, other than C-TS, would provide a win-win situation for the Town.

Mr. Goldsmith said, since he received comments regarding his involvement in this application, he wished to state he was not on the Town Council at the time the vote was taken on the issue of the restaurant. He added if anyone runs and is elected to the Council and that person disqualifies himself or herself in the Town of Palm Beach because he or she knows the applicant for any application, half the time the Town Council would not have a sufficient number of voting members to vote on an issue.

Mr. Prosperi asked Mr. Randolph if the owner of the property wished to lease the property to Ruby Tuesday and have them operate a restaurant on the site, would the Council have to take further action? Mr. Randolph replied no zoning change would be necessary, under the previous approval, for that to happen.

Mr. Prosperi asked Mr. Randolph if the owner wished to operate a bank, an office or a beauty salon, could that be done under the current zoning? Mr. Randolph replied it could not.

Mr. Prosperi pointed out that the applicant is attempting to achieve some protection and some basic, fundamental, constitutional and property rights for the owners of this piece of property. After explaining the situation concerning the approved restaurant use and the suggested alternate uses during the discussion, Mr. Prosperi said the applicant is attempting to make the zoning consistent to allow the fair use of the property which has been vacant for years. He continued that the City of Lake Worth does not have definite plans for the Casino site at this time, but all of their proposed plans as of this date would increase the traffic in the area and attract individuals from many areas. Mr. Prosperi stated the subject property is not the cause of the problems people have complained about, but his applicant is a victim of the problems.

Mr. Prosperi said if Mr. Royce referred to the language in the Comprehensive Plan to discourage the use of property for a restaurant, then that same language should be applied to the Beachcomber whose guests are from many parts of the country.

Mr. Royce responded that Mr. Prosperi through his careful choice of questions led the Council to believe that his applicant is requesting a lessor use for the property than already claimed or obtained. He continued that Mr. Prosperi indicated the applicant has been threatened with a law suit by the City of Lake Worth, and this may have indicated Mr. Prosperi did not have his legal case in order since they may need the appropriate land use and the appropriate zoning classification in case an argument is made that the old nonconformity of the radio station had been abandoned. He continued certain factual circumstances may have precluded the transfer of the nonconformity. Mr. Royce requested the Town Council help the Beachcomber by allowing a category for the property that is restrictive and does not create the problems that a restaurant or any other restaurant would present to the Beachcomber. Mr. Royce requested the Town Council to create a special zoning category that restricts the uses of the site rather than opening up the site with a C-TS designation.

Mrs. Smith asked Mr. Royce's opinion concerning the Zoning Commission's study of this item as it affected the various categories for the rezoning of the property?

Mr. Royce replied he did not recall much discussion concerning this matter nor was the issue delved into.

Mr. Moore explained the Zoning Commission deliberated over the next item, Item 10, the rezoning of the property and Item 9 currently under discussion is the proposed change to the Comprehensive Plan. Mr. Moore stated the Staff and Mr. Brisson recommended the C-TS zoning district for the subject property to be comparable to the property north of the Lake Worth Casino district which was done in 1980.

Mr. Royce responded standards, times and perceptions have changed in the last fourteen years.

Alexander Beal, Chairman of the Zoning Commission, stated the opponents of this issue forgot that a restaurant has been approved for the site, and the Zoning Commission considered the C-TS zoning was in line with the property to the north.

Mr. Randolph, responding to Mrs. Smith's question, said that the Town Council has the opportunity to determine if further studies should be done. He continued this is a specific application that is specific in scope, and the Council should focus solely on the application. He added that the Council could determine if the C-TS designation is an appropriate use for the property or that other uses are appropriate.

Mr. Randolph advised if the Town Council thinks that another use for the property is more appropriate, and the applicant has the choice to appear before the Council to consider another use. He said the Council's discussions at this meeting should be related to consider the appropriateness of this use. He continued if the use is not appropriate, the Council would simply deny the application, and if the C-TS use is appropriate, the application should be granted. Mr. Randolph said there is not an in-between position for this particular application.

Mr. Moore, responding to Mrs. Royal's question concerning the permissible size of a new building on the site, said a building between approximately 10,000 and 12,000 square feet could be constructed on the property if the required parking for a particular use could be provided. He added construction of a second story would need a special exception.

Mrs. Smith requested the Staff provide specific information regarding the permissible sizes of buildings on the site.

Mr. Zimmerman added the question was difficult to answer in a short time as many factors have to be considered such as parking spaces depending on the size of the building and green space.

Mr. Moore said the Staff would need a copy of the survey before different options could be addressed. Mr. Moore added that the Zoning Commission did not consider these options.

Mrs. Smith said the Council is looking at Items 9 and 10 together for discussion purposes.

Mr. Shaw stated he agrees with Mr. Prosperi in principal that a restaurant has been granted by this Council; however, the use of the land is the question and asked if another restaurant could be substituted for the approved Ruby Tuesday?

Mr. Randolph replied that if another restaurant could meet those conditions, it could be on the site, and the approval is good for one year.

Mr. Shaw suggested the zoning designation might be changed to C-PC which would have more daytime than evening use, and if that would satisfy the tenants and the owner and appease the neighborhood, then this would be a solution to the problem.

Mr. Moore responded that a restaurant is a special exception in the C-PC district, and 2,000 square feet is the permitted building size in that district; however, the existing building is in excess of 5,000 square feet.

Mr. Prosperi offered to amend the application from C-TS to C-PC if that designation is more acceptable to the Town Council.

Mrs. Smith announced that the Council would take a ten minute break and would reconvene to take action on this matter.

After the break, Mrs. Smith said without the specific information that was requested from the Staff concerning the allowable size of new structures on the site, the Council does not have sufficient information to reach a decision on this matter at this meeting.

Motion made by Mr. Shaw to defer Items 9, an amendment to the Town's Comprehensive Plan, changing the Future Land Use Designation of the property at 3000 South Ocean Boulevard from Multi-family High Density to Commercial to the January 23, 1995, 5:01 p.m. meeting to allow Staff time to prepare three different plans as requested by the Town Council and to defer Item 10, a change of the Zoning Category of the property at 3000 South Ocean Boulevard from R-D(1) to C-TS to the January 23, 1995, 5:01 p.m. meeting.

Mr. Randolph, replying to Mr. Shaw's inquiry concerning the applicant's possible presentation of plans for alternate uses of the property, said the information provided by the Staff is important to the Council.

Mr. Moore said the Staff would have to provide several different maximum scenarios with the understanding that one story buildings are all that are permitted; second stories would require a special exception, and plans for three different uses would have to be provided to have a complete picture.

Mr. Goldsmith said the Town cannot do spot zoning, and the Town cannot take away someone's property rights since the issue can be appealed to a higher court and the Town's decision upset.

Mr. Randolph replied the suggestion for this particular application could be postponed for final action to the currently scheduled 5:01 p.m. hearings until further information from Staff could be provided. He continued that suggestion does not include alternative zoning uses and partial answers, and he did not think the application could be amended orally, because it is a specific zoning category that is being considered. Mr. Randolph said another application would have to be submitted and another advertisement in order for the issue to be considered.

Mr. Randolph stated the original purpose for establishing the C-PC category was to accommodate a particular area in the Town which had a particular character. He continued a determination would have to be made to see if this piece of property had a similar character in addition to considering the character of the properties surrounding the subject property. Mr. Randolph said the Staff was comfortable recommending C-TS because other C-TS zoning existed around this property.

Mr. Goldsmith asked Mr. Zimmerman if the Town has the best control under the C-TS zoning on this piece of property?

Mr. Zimmerman replied that the C-TS district has a number of controls attached to it; especially if the use is in excess of 2,000 square feet where a special exception comes into play.

Mrs. Royal noted that the special exception gives the Town the control--not the zoning category the property falls under.

The motion was seconded by Mr. Goldsmith.

Mrs. Royal questioned Mr. Moore if the property rights of the applicant are currently being denied and could they go ahead with plans for the restaurant?

Mr. Moore replied the applicant currently has the right to proceed without out any further approvals to go ahead with the restaurant project until September, 1995.

On roll call, the motion carried unanimously

ITEM 10: This item was included in the deferral for Item 9 to the January 23, 1995, 5:01 p.m. Town Council meeting.

ITEM 11: Mr. Moore reported that the Zoning Commission recommended approval of the proposal to amend the Landmarks Preservation Ordinance, Section 16-46, Appeals and Review, by adding the following wording:

> In addition to appeals, the town council shall consider all requests for demolition of landmark structures, or portions thereof, that have been reviewed and granted a certificate of appropriateness under section 16-37 by the landmarks preservation commission at the next regularly scheduled town council meeting, subsequent to the meeting of the landmarks preservation commission. The disposition of such matters by town council shall be final.

Mr. Moore said this language involves the review by the Town Council of actions regarding any demolition by certificates of appropriateness--the same review policy taken by the Architectural Commission on demolitions.

Mr. Randolph said the reason for this proposal is because the Landmarks Ordinance is a land use regulation which may be determined to be a zoning item; therefore, the Zoning Commission has considered it and sent it to the Council for determination.

Mr. Goldsmith asked if an applicant had the right to appeal a decision made by the Town Council concerning any denial?

Mr. Randolph replied an appeal can be made to the Circuit Court.

Motion made by Mr. Goldsmith to approve item 11, to amend the Landmarks Preservation Ordinance, Section 16-46, Appeals and Review. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

X. ANY OTHER ITEMS

Mr. Moore recommended that the Staff conduct a study regarding restaurants in the Town to consider three factors:

1. size--the gross square footage--the amount of space devoted to seating

2. the amount of space used for the back of the house operations, i.e. storage, kitchen

3. the number of parking spaces that are physically on site

Mr. Moore said the study would be submitted to Mr. Brisson for his input and presented to the Zoning Commission and Town Council next year. He said the purpose of this study results from the number of review requests to the Town Council that prompted the need for this study. Mr. Moore said the Staff would like to determine what the average size of a restaurant is in Palm Beach, the number of square feet involved and the number of parking spaces that are existing. Mr. Moore added the differential between the lunch and dinner crowds would be tabulated.

Mr. Randolph stated that much of the information that was considered at this meeting has been determined to be legislative. He continued the application for 3000 South Ocean Boulevard rezoning, because it related to a specific property, has been determined by the courts to be a quasi-judicial matter as opposed to a legislative matter. Mr. Randolph cautioned the members of the Council not to allow themselves to be approached or discuss that matter prior to consideration at the January 23, 1995, 5:01 p.m. hearing.

Mrs. Smith requested that Mr. Randolph prepare the Ordinance 1-95 for the first reading on January 23, 1995, at 5:01 p.m. Mr. Randolph replied items 9 and 10 will be carried forward and advertised, although no determination has been made concerning them.

Mrs. Smith said the first reading will be January 23, 1995, at 5:01 p.m. and the second reading will be February 6, 1995, at 5:01 p.m.

Mr. Moore said the Staff will prepare two ordinances--one ordinance with an approval and one ordinance with a disapproval.

XI. ADJOURNMENT

There being no further business, the meeting was adjourned at 1:15 p.m.

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Mary A. Pollitt
Deputy Town Clerk