

TOWN OF PALM BEACH

Office of The Town Clerk

SPECIAL TOWN COUNCIL MEETING: 2000-2001 ZONING HEARINGS JANUARY 3, 2001

I. CALL TO ORDER AND ROLL CALL

President Jack McDonald called the meeting to order at 9:30 a.m. On roll call, the following Elected Officials were found to be in attendance: Mayor Lesly Smith, President Jack McDonald, President Pro-Tem Sam McLendon (arrived at 9:33 a.m.), Councilman Bill Brooks, Councilman Norman Goldblum, and Councilman Allen Wyett. Also attending for all or part of the meeting were: Acting Town Manager Thomas G. Bradford; Town Attorney John C. Randolph; Planning, Zoning & Building Director Robert L. Moore; Assistant PZ&B Director Veronica Close; Zoning Administrator Paul Castro; Consultant William Brisson from Adley, Brisson & Engman, and Town Clerk Mary A. Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. President McDonald led the pledge of allegiance.

III. APPROVAL OF AGENDA

Councilman Allen Wyett made a motion to approve the agenda. The motion was seconded by Councilman Brooks and carried 4-0 as President Pro-Tem McLendon had not yet arrived at the meeting.

President McDonald recognized the members of the Zoning Commission who were present at the meeting: Rodney Fink, Harrison Robertson, Martin Klein, Richard Kleid, and Chairman James Bertles.

IV. PROOF OF PUBLICATION

President McDonald confirmed with the Town Clerk that a proof of publication was received.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC

President McDonald said that for each item after the staff report is given and the Town Council comments are heard, comments by the public will be heard. Applicants will have an opportunity to speak before the staff gives its comments.

VI. 2001-2001 ZONING PROPOSAL STAFF REPORT, ITEMS II AND III, 1 THROUGH 17; THE RECOMMENDATIONS AND REPORT OF THE TOWN ZONING COMMISSION, DATED DECEMBER 8, 2000 ON THOSE ITEMS

Planning, Zoning, and Building Director Moore introduced Consultant Bill Brisson from Adley, Brisson, & Engman, and announced that Zoning Administrator Paul Castro would initiate the discussion.

Mr. Castro announced the items in II. are statute based amendments relative to school siting, and Mr. Brisson will be giving the background on those.

Mr. Brisson summarized the three proposed changes as follows:

1. Add to the Future Land Use Element an Objective 13 and its associated policies to address the requirements of Florida Statute 163 to designate land use categories where public schools are an allowable use and to incorporate criteria for their location. The proposed objectives and policies are based on some text that was derived from a draft prepared by the Intergovernmental Plan Amendment Review Committee in Palm Beach County modified, where appropriate, for the Town of Palm Beach;
2. A clarification in the Land Use Element to insure the clarity of the issue that the public and private schools are considered appropriate uses in the private group use category. This change also adds public schools in the private group use category in concert with change number 1;
3. New policies in the Intergovernmental Coordination element to address Florida Statute 163 related to joint planning areas, recognition of campus master plans, and voluntary dispute resolution process. These changes were prepared by I-PARC and were incorporated into this proposal after review and approval by the Florida Department of Community Affairs.

Mr. Brisson reported the Zoning Commission approved the three changes (a,b, and c) with a minor modification as follows:

At the December 6, 2000 Zoning Commission meeting, the Commission's Report was reviewed and approved for transmission to the Town Council for consideration. At that meeting all interested persons were given an additional opportunity to be heard, and after due consideration, the Zoning Commission made the following recommendations on the proposed amendments to Chapter 134,

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

ZONING, of the Code of Ordinances of the Town of Palm Beach which are identified in the "2000-2001 Zoning Proposal Staff Report." The changes and/or additions to the existing Code which were recommended by the Zoning Commission are "underlined", and deletions are identified by "~~strikeout~~". Changes made to the proposals by the Zoning Commission have been identified in "**bold**" type.

Item II.a. On a vote of 5-2 (Ms. Clark Royal and Mr. Sanchez dissenting), the Zoning Commission recommends approval of the entire proposal in the "2000-2001 Zoning Proposal Staff Report" to amend the Future Land Use Element of the Comprehensive Plan relating to public school siting, as recommended by Staff, except for the following amendment recommended by the Zoning Commission.

OBJECTIVE 13 [163.3177(6)(a) F.S.]

To coordinate the location of new and expanded sites for Public Educational Facilities in order to ensure compatibility and consistency with the Town's Comprehensive Plan, in accordance with 235.193, F.S. and to maintain and enhance joint planning processes and procedures for coordination and development of public school facilities concurrent with residential development and other services. The Town of Palm Beach shall support and facilitate coordination of planning with the Palm Beach County School District (hereinafter referred to as the District) for the location and development of public education facilities. The Town of Palm Beach shall coordinate with the School District staff in the siting of school facilities so that their locations are consistent with and, ~~to the degree possible~~, further the Goals, Objectives and Policies of the Town's Comprehensive Plan. The Town of Palm Beach shall identify sufficient available land in the adopted future land use element to accommodate Public Educational Facilities as necessary to serve the current and projected student population. The measurement of this objective will be the degree to which the following policies are implemented.

Item II.b. On a vote of 6-1 (Mr. Sanchez dissenting), the Zoning Commission recommends approval of the entire proposal in the "2000-2001 Zoning Proposal Staff Report" to amend the Future Land Use Element of the Comprehensive Plan, as recommended by Staff, relating to including public and private schools as allowable uses in the Private Group Use Category.

Item II.c. On a vote of 5-2 (Ms. Clark Royal and Mr. Sanchez dissenting), the Zoning Commission recommends approval of the entire proposal in the "2000-2001 Zoning Proposal Staff Report" to amend the Intergovernmental Coordination Element of the Comprehensive Plan, as recommended by Staff.

After a brief discussion by the Town Council and Mr. Brisson, Councilman Brooks made a motion to approve Items II.a, b, and c. as recommended by the Zoning Commission. The motion was seconded by Councilman Wyett and carried 5-0.

III. ZONING STUDY ITEMS

Item 1. On a vote of 7-0, the Zoning Commission recommends approval, as recommended by

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

Staff, of the proposal to amend the Agreement between the Town and The Breakers reflected in Resolution #3-00 pertaining to Modification 7, as submitted by the Applicant and modified by Staff, as follows:

The applicant may relocate up to the 149 dwelling units from Priority Areas 1 (southeast corner of Royal Poinciana Way and Cocoanut Row), 7 (Pasta House area), 8 (Pine Walk Transfer Station area) and 9 (golf course practice range) of the PUD located west of County Road to the portion of the PUD located east of County Road and/or within Priority Area 1. Provided, however, that any **proposed** transfer of units within the PUD **will shall be evaluated by the Town to determine if the relocation is expected to result in a significant change in vehicle trip distribution on the road network from that previously contemplated in which case the units proposed for relocation shall** be required to meet traffic concurrency requirements at the time of application(s) ~~for a PUD amendment to transfer development rights~~. for a PUD amendment(s) to relocate residential units within the PUD. The applicant shall be permitted to apply for ~~transfer of development rights~~ **relocation(s) of residential units** no later than the 2023-2024 Zoning Season. **The exact location and height of said units shall be subject to Town Council approval pursuant to an application(s) to amend the PUD Master Plan.**

Attorney James Brindell said this request as considered by the Zoning Commission is a provision for the potential reallocation of density units that the Town requested the Breakers return with a proposal that was reworked with the Zoning Commission. He said the proposal is acceptable from the Breakers' point of view and requested Town Council approval.

Mr. Castro explained this is a request from the Breakers to possibly move dwelling units in the future from the west side of County Road (those development pods along Cocoanut Row) to the east side of the Breakers P.U.D. The request is for modification of the language as specified in the Zoning Report (above) which the staff concurs with that would allow the Breakers to return at any time up to the year 2023 - 2024 Zoning Season to request modification related to moving the units. The issues related to the heights and the number of units at the locations would be determined at the time a P.U.D. amendment was requested.

Councilman Wyett made a motion to approve the recommendation of the Zoning Commission. The motion was seconded by Councilman Goldblum. On roll call, the motion carried 5-0.

- Item 2. On a vote of 7-0, the Zoning Commission recommends disapproval, as recommended by Staff, of the proposal to include landmark hotels as a special exception in the R-C Zoning District. The Zoning Commission also recommends disapproval of the Staff recommendation to modify Section 134-201 to limit application of this variance provision to only landmark hotels or landmark multi-family structures.

Mr. Brisson said, after reviewing the issue landmark hotels as a special exception in the R-C Zoning District, it was not necessary to have a Comprehensive Plan in order to effect this change, but the Council's concern was shared that would provide for the ability to provide for all the conditions and criteria as a special exception. He said it was more appropriate to deal with the expansion of such a hotel within the present context in the Zoning Code.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

Mr. Brisson said this issue was originally intended to deal with the Brazilian Court Hotel in 1991 before the Brazilian Court was identified as a landmark hotel, and that was the reason the wording "unique hotel", "residential- multi family" was used. The Council at that time added additional wording to broaden the meaning of the variance. Mr. Brisson suggested this be modified slightly because the staff finds it very difficult, as a variance, to incorporate "other residential uses" simply that have been compatible with other surrounding uses for the last fifteen years into the potential for a hardship. Mr. Brisson said by eliminating the language relating to a "unique hotel" or "residential use" and simply limiting it to a "landmark hotel" strengthens the possibility of recognizing the potential for a hardship.

Mr. Brisson clarified that his and staff's recommendation was for a minor modification to make a variance and a hardship more recognizable.

Zoning Commission Chairman Bertles said the Commission disapproved the staff's recommendation because they thought it was unfair to other existing hotels within the district. One of the members called it a fundamental fairness issue. He explained that another non landmarked hotel in the same district would be precluded from asking for a variance if this change were made.

Mr. Moore said that was a correct interpretation; however, the intention was to strengthen the landmark aspect because of the governmental control of a landmarked structure and there was not a concern for the non-landmarked hotels.

Mr. Bertles clarified that the landmarked hotels currently have the ability to apply for variances as do the non-landmarked hotels. If a change is made, that will change for the non-landmarked hotels. Mr. Bertles said the reason the issue was before the Zoning Commission and the Town Council was a petition by the Brazilian Court to provide them with more flexibility to adapt to future changes to remain competitive. He continued that the Zoning Commission thought that once the decision was made not to grant the Brazilian Court the ability to apply for a Special Exception which has a different standard of proof and limit them to the variance process, there was no need to modify this variance section.

Anthony Ocepek, 2335 S. Ocean Boulevard, Tres Vidas, asked if this change would have any effect or change related to a precedent established because of the abandonment of the Sea Lord Hotel?

Mr. Moore replied the provision would preclude the Sea Lord Hotel from applying or being accepted for a variance application if it were changed to a landmark status. He said there is nothing at this time that would preclude the Sea Lord from applying for a variance under that section of the ordinance. He said by adding the landmark language, it would strengthen the ability for the Council to review and grant variances with a criteria that may be a more defensible criteria in the event there might be a challenge.

Mayor Smith reminded the Council that many hours were spent on the issue of hardships regarding the variances the Brazilian Court Hotel needed for its remodeling several years ago.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

She said she thought landmarked properties like the Brazilian Court have a burden dealing with their changes to make them economically viable in the present market. She suggested the issue could be looked at again.

Responding to questions regarding the advertising of the dining room at the Brazilian Court, Mr. Moore replied that at one time the Town had an agreement with the Brazilian Court that prohibited them from doing any advertising, and that agreement, on advice of Attorney Randolph and enforcement through the Code Enforcement Board, resulted in the Brazilian Court being treated the same as the Breakers Hotel which does advertise the dining room as long as the advertising is done in conjunction with the hotel.

Mr. Castro pointed out that the staff proposed language was consistent with the language that is contained in Item b of Section 6 of the Variance Criteria which states: "Neither a rezoning to a district which would allow the use or inclusion of the subject use as a permitted or special exception use in the district would act to achieve the preservation of the subject use without opening up the possibility of encouraging of incompatible uses within the immediately surrounding area." He continued that because the language in Item b addressed the preservation of a use that it would be consistent to change the language under Item a to say "Landmarked hotels in residential uses" because those are the types of preservation uses the Town would like to encourage.

Councilman Goldblum made a motion to return the issue to the Zoning Commission to attempt to make it more compatible to Town use. The motion was seconded by Councilman Wyett.

Mr. Moore requested the Council be as specific as possible, because the issue deals with a non-conforming use and the section of non-conformities in the Ordinance speaks to not perpetuating or encourage survival of non-conformities. He said the confusion is that on one hand the Town is attempting to look out for the interests of a landmarked property as in the proposed change while on the other hand, the charge is not to perpetuate or expand the non-conforming uses. He asked for clarification of the motion which he interpreted as having the Zoning Commission examine some of the rules that would be associated with landmarked hotels within the non-conformity existing in their particular districts.

Councilman Goldblum replied that is exactly what should be done—preserve the atmosphere of the Town and keep the existing landmarks viable.

Town Attorney Randolph said he thought the issue presented at this meeting was a different issue than had previously come before the Town Council. He clarified that the issue before the Council was, "Do you want to provide new language to landmark hotels to allow them to expand a non-conforming use by way of a variance?"

He said the Council had two proposals before them – one by the staff that recommended deletion of the general language that allowed someone to apply for a variance which is a unique hotel or residential use that has existed for fifteen years, and the second recommendation by the Zoning Commission that states the Ordinance should be more general

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

and the existing language should be left in the Ordinance. He advised the Council to address those two issues first and then address the issue raised by Councilman Goldblum's motion.

President McDonald requested the Town Council to deal with the two issues as stated by Attorney Randolph either approving the staff's recommendations or to disapprove the staff's recommendations as recommended by the Zoning Commission.

Councilman Wyett said he agreed with Zoning Commission Chairman Bertles to not discriminate against other hotels that are not landmarked.

Councilman Goldblum withdrew his motion that was on the floor, and Councilman Wyett withdrew his second.

President Pro-Tem McLendon made a motion to follow the Zoning Commission's recommendation (disapproval of staff's recommendation). The motion was seconded by Councilman Wyett and carried 5-0.

Councilman Goldblum made a motion to refer to the issue to staff with recommendations to the Zoning Commission as a study item the issue of encouraging and allowing some flexibility of landmarked hotels to survive in today's market. The motion was seconded by Councilman Wyett.

Chairman Bertles said he thought the Zoning Commission could consider ways to be good to the landmarked hotels that have been in existence for a long time.

On roll call, the motion carried 5-0.

Item 3. On a vote of 7-0, the Zoning Commission recommends disapproval, as recommended by Staff, of the proposal to include Beach Area District land in adjacent large estate, estate and low-density residential zoning district lot, yard, and area requirements.

Mr. Brisson explained that this issue relates to the beach area district which is essentially the length of the Town along the Atlantic Ocean and the suggestion included studying the lands that lie on the east side of A1A to include them in the development potential of the adjoining lots of the principal lot.

Mr. Brisson after studying the properties, concluded that the lands separated by the roadway do not lend themselves to one feeling of openness or open space and suggested that the land should not be counted on the east side of A1A toward the requirement for landscaped open space, cubic content, or lot coverage. He recommended upholding staff's recommendation to disapprove the proposal.

Councilman Brooks made a motion to follow the staff's and Zoning Commission's

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

recommendation to disapprove the proposal. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

- Item 4. On a vote of 7-0, the Zoning Commission recommends disapproval of the Staff recommendation to include lands west of Lake Trail into certain of the lot, yard, and area requirements of adjacent properties east of Lake Trail.

Mr. Brisson explained this item was similar to item 4 with the inclusion of lands west of Lake Trail, all zoned R-B, and his recommendation was to continue with the present zoning which allowed the owners some flexibility with the land. He said the only true practicality was perhaps to consider the inclusion of the westerly lands as part of landscaped open space.

Councilman Wyett made a motion to accept the recommendation of the Zoning Commission to disapprove of the Staff recommendation to include lands west of Lake Trail into certain of the lot, yard, and area requirements of adjacent properties east of Lake Trail. Councilman Goldblum seconded the motion which carried 5-0 on roll call.

- Item 5. On a vote of 7-0, the Zoning Commission recommends disapproval of the Staff recommendation to include land west of S. R. A-1-A south of Sloane's Curve to count in certain of the lot, yard, and area requirements of adjacent properties east of A-1-A.

Mr. Brisson said this was almost the same as Item 4, and he did not believe the westerly land should be incorporated in the landscaping. He said the only benefit to the Town to include it in coverage or density would be the required removal of exotic vegetation if and when the adjacent properties were developed or redeveloped.

Councilman Brooks made a motion to accept the Zoning Commission's recommendation for disapproval of the Staff recommendation to include land west of S.R. A1A south of Sloane's Curve to count in certain of the lot, yard, and area requirements of adjacent properties east of A1A. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

- Item 6. On a vote of 7-0, the Zoning Commission recommends disapproval of the Staff recommendation to amend Section 134-2176, Number of parking spaces required, Schedule, by adding a new subsection (5)a, to recognize the difference in the vehicular traffic generated by the different types of commercial uses.

Mr. Brisson said this study item was proposed because it was thought that certain uses do not generate the actual parking demand that would be found in the Zoning Code. He said there was no information to establish parking requirements for a given use when it differs in its

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

character. Mr. Brisson added that an applicant can seek a waiver of the parking requirements upon proof by the applicant of the actual generation of traffic although the proof is cumbersome and complex.

Councilman Goldblum made a motion to accept the Zoning Commission's recommendation for disapproval of the Staff recommendation to amend Section 134-2176. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

Item 7. On a vote of 7-0, the Zoning Commission recommends disapproval, as recommended by Staff, of the proposal to rezone the South Side of Peruvian Avenue from the C-TS to C-WA zoning district.

Mr. Brisson reported that this issue was considered during the 1998-99 Zoning Season, and it was thought to be inappropriate to rezone any side of Peruvian to the C-WA district. He said nothing has really changed since this issue was last studied.

Councilman Wyett made a motion to accept the Zoning Commission's recommendation to disapprove the proposal to rezone the South Side of Peruvian Avenue. The motion was seconded by Councilman Brooks and carried 5-0 on roll call.

Item 8. On a vote of 7-0, the Zoning Commission recommends approval of the proposal, as submitted by Staff, to amend ARTICLE VI, District Regulations, Division 2 through Division 7, Landscaped open space, Sections 134-793(a)(12), 134-843(a)(12), 134-893(a)(11), 134-948(11)e., 134-1059(11)g., pages CD134:65, C134:72, CD 134-79, CD 134-87 & 88, CD 134:94 & 95 and CD 134:102, and ARTICLE VIII, Division II, Subdivision ii. Lots, Section 134-1576. Corner lots of Chapter 134, Zoning, to read as follows:

b and e. Additionally, not less than...per cent of the required front yard must be landscaped open space in thedistrict. In the R districts, required off-street parking, driveways and drive aisles that are uncovered and provided with an acceptable grass-crete type of surface may be allowed 25 per cent credit for meeting the site's overall landscape open space requirements. In addition, a stabilized sub-surface under grass that allows for the percolation of water may be allowed 50% credit for meeting the site's overall landscape open space requirement provided such surface is demonstrated not to be a frequently used driveway or off-street parking. The grass-crete type surface or stabilized grass area shall be well maintained in a healthy manner.

Mr. Castro said this item has been studied during several zoning seasons, and in the 1999-2000 Zoning Season a proposal was adopted allowing grass-crete to count up to 25% of the landscaped open space for the entire lot. He continued that subsequent to those modifications, Staff found the "Grass-crete" name is a product and therefore the addition of the words "type of" in b and e would allow other types of materials, other than the Grass-crete product, to be used for the landscape open space credit. Additionally, applicants have requested credit for using some types of sub-surface materials that would allow for percolation under a sodded material. Mr. Castro said some of these materials could provide for alternative drive-way parking. He said the Staff recommended a credit of 50% for those types of materials.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

Responding to President McDonald's question regarding the use of the words "may be allowed" giving the Council the discretion to approve the 50% credit, Attorney Randolph responded it would be based on the criteria and would allow the Council the discretion to make that determination.

Councilman Goldblum pointed out this was an issue that would require too much policing and could not be controlled once it was established. He added it was more important for the ground water to percolate and approving this would hinder that process.

Mayor Smith said she opposed this and credits should be eliminated that would impede percolation.

Mr. Moore requested two items be considered for motions in this case: add "type of" and consider the 50% credit as a separate issue.

David Barton, 216 Jamaica Lane, said he was opposed to use of any products that interfered with percolation. He said that presently, residential property owners are receiving credit for areas that do not percolate well and overload the drainage system.

Councilman Wyett made a motion to approve the insertion of the words "type of" in b. and e., Section 134 as noted. The motion was seconded by President Pro-Tem McLendon and carried 5-0.

Councilman Wyett made a second motion to disapprove the Zoning Commission's recommendation. The motion was seconded by Councilman Brooks and carried 3-2 with Councilman Wyett, Councilman Goldblum, and Councilman Brooks casting affirmative votes and President McDonald and President Pro-Tem McLendon casting negative votes.

Councilman Wyett pointed out that an applicant was not precluded from appearing before the Town Council to request installation of these types of products.

Item 9. On a vote of 7-0, the Zoning Commission recommends approval of the proposal, as submitted by Staff, to amend CHAPTER 134 - ZONING, ARTICLE VI - DISTRICT REGULATIONS, Section 134-788, 134- 838, and 134-888 to read as follows:

(4) Charitable events specifically approved by the town ~~council~~ manager.

Mr. Moore explained this was simply a housekeeping item to change the Zoning Ordinance to reflect the previous change to the Charitable Event Ordinance.

Councilman Brooks made a motion to approve the Zoning Commission's approval to amend Chapter 134, Article VI - District Regulations, Section 134-788, 134-838, and 134-888, substituting the word "manger" for "council". The motion was seconded by Councilman Wyett and carried 5-0 on roll call.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

- Item 10. On a vote of 7-0, the Zoning Commission recommends disapproval, as recommended by Staff, of the proposal to differentiate zoning regulations for owner-occupied v. investor-owner properties.

Mr. Castro said this was an item that his department did not approve because the issue of ownership can not be differentiated regarding zoning regulations. He recommended denial.

Attorney Randolph concluded the issue would not be legal if approved.

Councilman Goldblum made a motion to accept the Zoning Commission's recommendation to disapprove the proposal to differentiate zoning regulations for owner-occupied v. investor-owner properties. Councilman Brooks seconded the motion. On roll call, the motion carried 5-0.

- Item 11. On a vote of 7-0, the Zoning Commission recommends approval of the proposal, as recommended by Staff, to amend ARTICLE VI, District Regulations, Division 4, Rear yard, Section 134-893(a)(8) of Chapter 134, Zoning to read as follows:

- (8) *Rear yard.* The minimum rear yard setback is 10 feet for the one story portion and 15 feet for the two story portion.

Mr. Castro said this proposal provides some flexibility, and the fifteen feet setback requirement for a two story portion would provide the neighbors with some privacy.

After a brief discussion, **Councilman Goldblum made a motion to accept the Zoning Commission's recommendation to approve the proposal to amend Article VI, District Regulations, Division 4, Rear Yard Section 134-893(a)(8) of Chapter 134, Zoning, to have the rear yard setback at ten feet for the one story portion and fifteen feet for the two story portion of a house. The motion was seconded by Councilman Wyett and carried 5-0 on roll call.**

- Item 12. On a vote of 7-0, the Zoning Commission recommends approval of the proposal, as recommended by Staff, to amend ARTICLE I, IN GENERAL, Section 134-2, ARTICLE VII, OVERLAY DISTRICTS, Division 3, HEIGHT, and Section 134-1608, of Chapter 134, Zoning. Sections 134-2, Definitions and rules of construction. (b) *Definitions*, and Section 134-1608. Basements, Multilevel and split level structures., to modify the language in the definition of basement and story, and to exempt certain size basements in the R-B zoning district from counting as a story and to add a subsection (8) to Sec.134-893(a), all to read as follows:

Sec. 134-2. Definitions and rules of construction

(b) *Definitions.* ...

Basement means ~~a story~~ floor area situated under a building, such ~~story~~ floor area having exterior perimeter walls and having a floor level two or more feet below the level of the con-

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

tiguous exterior ground outside of the building and having one-half or more of its floor-to-ceiling height below the average level of the all of the exterior ground of the lot comprising the subject building development site. A basement shall be clearly designed and adapted to and used solely for the purposes of automobile parking and/or machinery and essential building utility services not involving habitable floors. The minimum door opening in said basement walls shall be limited to those essential to permit one (1) automobile entry access driveway and one (1) automobile exit driveway for each separated under building parking area, plus pedestrian lobby entries and required fire exit ways.

Rear Height Plane means a height limit of a building in the R-B district as measured by the maximum overall height permitted on the abutting lot to the rear. When a lot abuts more than one lot to the rear, an average maximum overall height will be used to establish the rear height plane

Story means that portion of a building included between the surface of any floor and the surface of the next floor above it or, if there is no floor above it, the space between such floor and the next ceiling above it. Accessible open patios, observation decks and/or similar areas located above the first story shall be considered a story for the purpose of this definition..

The Town Council dealt with these issues in three separate motions.

Section 134-2. Definitions and rules of construction

Mr. Castro explained the intent of this change was to allow basements in the R-B district under several different conditions. To accommodate the proposal and to strengthen and make the language consistent in the Code as it relates to the definitions of basements and the provisions for basements, several modifications need to be made. He said the proposed change would allow basements in the R-B Zoning district provided the basement did not exceed 600 square feet and would not be allowed to be above plus four feet zero datum on the subject lot which is consistent with the definition of basement. The basement could be used only for automobile storage, machinery, parking, and utility services and could not involve habitable space. One small bathroom would be allowed within the basement area. The intent is to provide some flexibility but not so much as to be abused.

After a lengthy discussion regarding basements, **Councilman Wyett made a motion to approve the recommendation of the Zoning Commission to make the aforementioned changes. The motion was seconded by Councilman Brooks.**

After the motion was made, ARCOM Chairman John Schuler stated his commission needed a clear clarification of the basement issue, delineating the definition of a basement, that would allow the commission to make accurate decisions.

On roll call, the motion failed 2/3 with Councilman Wyett and President Pro-Tem McLendon casting affirmative votes and Councilman Goldblum, Councilman Brooks, and President McDonald casting negative votes.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

After the motion failed, Councilman Wyett made a motion to return sections: 134-2; 134-893; 134-1608; and 134-1609 to the Zoning Commission for restudy to improve the Zoning Commission's recommendation to achieve the reduction of mass and drainage protection of adjoining houses. Councilman Brooks seconded the motion. On roll call, the motion carried 5-0.

Sec. 134-893. Lot, yard and area requirements-Generally.

(a) *Schedule of regulations...*

(8) *Rear height plane setback. 25 feet.*

Attach the rear height plane language and rendering as a code attachment

See the motion for Section 134-2 (Sent back to Zoning Commission).

Sec. 134-1608. Basements.

(a) In all zoning districts except the R-B zoning district, a basement story as defined in Sec. 134-2 shall not be considered a story with regards to height regulations contained in this chapter if the story does not exceed plus eight four feet above zero datum for the subject lot, and if clearly designed and adapted to and used solely for the purpose of automobile parking and/or machinery and essential building utility services not involving habitable space.

~~(b) In computing the height of a building, the height of a basement and/or sub-basement shall not be included if used for the purpose mentioned in the definition of a basement or sub-basement, as defined in section 134-2, as the case may be of automobile parking and/or machinery and essential building utility services not involving habitable space. Roofs of buildings used as habitable space shall be considered as a story of a building.~~

(b) In the R-B zoning district, a basement as defined in Sec. 134-2 shall not be considered a story with regards to height regulations contained in this chapter if said basement and two habitable floors above said basement are designed to appear like two stories from the outside, and said combination does not exceed the maximum height and overall height requirements; said basement floor area does not exceed 600 square feet nor the ceiling exceed plus four feet above zero datum for the subject lot; and, if clearly designed and adapted to and used solely for the purpose of automobile parking and/or machinery and essential building utility services not involving habitable space.

See motion for Section 134-2 (Sent back to Zoning Commission).

Sec. 134-1609. Multilevel and split level structures.

Where single-family and two-family multilevel or split level structures may be constructed in R districts, no portion of the structure may have more that two habitable floors stories in vertical alignment. A basement is allowed under two habitable floors provided it meets the requirements in Section 134-1608(b), and the structure must meet all applicable lot, yard and

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

bulk regulations for two-story structures in the district.

See motion for Section 134-2 (Sent back to Zoning Commission).

Councilman Goldblum made a motion to have the Zoning Commission study the sub-basement levels that are allowed in Town so they are above flood level related to car storage and mechanical equipment. The motion was seconded by Councilman Wyett.

Councilman Brooks requested Mr. Moore to research the environmental issues related to sub-basements on barrier islands and to check out any environmental reports on that issue.

On roll call, the motion carried 5-0.

- Item 13. On a vote of 7-0, the Zoning Commission recommends approval of the proposal, as submitted by Staff, to amend CHAPTER 134 ARTICLE VII, OVERLAY DISTRICTS, Division 3, HEIGHT, Section 134-1609, Multilevel and split level structures., to read as follows:

Sec. 134-1609. Multilevel and split level structures.

Where single-family and two-family multilevel or split level structures may be constructed in R districts, no portion of the structure may have more than two habitable floors in vertical alignment. A basement is allowed under two habitable floors provided it meets the requirements in Section 134-1608(b), and the structure must meet all applicable lot, yard and bulk regulations for two-story structures in the district.

President McDonald requested this item be deferred back to the Zoning Commission based on the actions from Item 12.

Councilman Wyett moved deferral of Item 13 back to the Staff and then to the Zoning Commission for the 2001-2002 Zoning Season. The motion was seconded by President Pro-Tem McLendon and carried 5-0 on roll call.

- Item 14. On a vote of 7-0, the Zoning Commission recommends approval of the proposal, as recommended by Staff, to amend CHAPTER 134 - ZONING, ARTICLE I, IN GENERAL, Section 134-2, to read as follows:

Building, height of (applicable only in the R-B districts) means the vertical distance from the top of the floor slab (excluding garage) to the bottom of the top chord of the roof framing member where it intersects the plane of the outside face of the exterior wall for pitched roofs (excluding dormer windows in non-habitable space). For flat roofs the measurement is to the point where the ceiling meets the exterior wall. To raise the floor more than the typical 18 inches above the highest street elevation pursuant to sections 134-797, 134-847, 134-898, 134-953, 134-1009 and 134-1064, the building height shall be measured from a point 18 inches above the street.

Building height of (applicable to all districts except the R-B districts) means the vertical distance from the grade established by the town for the crown of the public or private street or road at its highest

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

elevation abutting the lot to the bottom of the top chord of the roof framing member where it intersects the plane of the outside face of the exterior wall for pitched roofs (excluding dormer windows in non-habitable space). For flat roofs the measurement is to the point where the ceiling meets the exterior wall. To raise the floor more than the typical 18 inches above the highest street elevation pursuant to sections 134-797, 134-847, 134-898, 134-953, 134-1009 and 134-1064, the building height shall be measured from a point 18 inches above the street.

Mr. Castro explained this item allowed for different types of architecture that would permit operable dormer windows that would be applicable for some types of architecture.

Councilman Wyett made a motion to approve the recommendation of the Zoning Commission to amend Chapter 134 - Zoning, Article 1, in general Section 134-2 to add the phrase "excluding dormer windows in non-habitable space" in two paragraphs. The motion was seconded by President Pro-Tem McLendon and carried 5-0 on roll call.

- Item 15. On a vote of 7-0, the Zoning Commission recommends disapproval, as recommended by Staff, of the proposal to allow arbors, pergolas and trellises in the front yard. Further, the Zoning Commission recommends that this item be restudied during the 2001-2002 Zoning Season but that arbors, pergolas and trellises each be studied individually.

Mr. Castro said this item was studied in the previous zoning season and deferred to this zoning season. He said the Staff believed then and still believes to allow arbors, pergolas, or trellises in the front yard, although esthetically pleasing in some cases, could not be consistently regulated. He concurred with the Zoning Commission's recommendation.

Responding to questions from Mayor Smith, Zoning Commission Chairman Bertles replied the Commission did not like the proposed language or the Staff's recommendation and the Staff was asked to find a way that would allow them to be placed in the setbacks, not just the front yard setback. He said he did not think the Town Council would want to rely on the variance procedure to approve these items.

Councilman Wyett made a motion to approve the Zoning Commission's recommendation. The motion was seconded by Councilman Brooks and carried 5-0 on roll call.

- Item 16. On a vote of 7-0, the Zoning Commission recommends approval of the proposal, as recommended by Staff, to amend CHAPTER 134 - ZONING, ARTICLE VI, DISTRICT REGULATIONS, Section 134-1165 Special exception to height regulation; special exception structures., (b) Two-story and three-story construction (3) by deleting the sunset provision of the coverage provisions within the Worth Avenue Design Guidelines. The proposed deletion is as follows:

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

(b) Two-story and three-story construction. The following shall be applicable to two-story and three-story construction in the C-WA district:

(1) First story coverage not more than 35 percent and second story coverage not more than 35 percent. Additional coverage and other special allowances may be granted if the structures-is built in accordance with the Worth Avenue Design Guidelines in conformance with Section 134-233.

(2) A third story and other special allowances may be granted if the structures is built in accordance with the Worth Avenue Design Guidelines in conformance with Section 134-233.

~~(3) Subsections (b)(1) and (2) of this section shall expire upon the third anniversary of their adoption, unless the town council specifically authorizes their continuation.~~

Mr. Castro explained this is the second time in six years that the lot coverage provisions have had to be readopted. If they expired, the Worth Avenue District would have no lot provisions. He said the intent of the language change is to remove the sunset provision which would automatically allow these specific regulations to expire after three years and allow the regulations to stand as they are.

President Pro-Tem McLendon made a motion to approve the recommendation of the Zoning Commission to delete the language. The motion was seconded by Councilman Brooks and carried 5-0 on roll call.

Item 17.

On a vote of 7-0, the Zoning Commission recommends approval of the proposal, as recommended by Staff, to amend CHAPTER 134 - ZONING ARTICLE IX OFF-STREET PARKING AND LOADING Section 134-2176 as follows:

(3) Houses of Worship One per ~~three~~ four permanent seats in the main auditorium

Mr. Castro explained this was a housekeeping item. The Town Council approved the change in permanent seats to one per four, unfortunately when the Ordinance was codified it was done by Staff's recommendation and it was being changed to reflect last year's direction by the Town Council.

Councilman Goldblum made a motion to approve the recommendation of the Zoning Commission and Staff. The motion was seconded by President Pro-Tem McLendon and carried 5-0 on roll call.

On a vote of 7-0, the Zoning Commission further recommends that the Town Council direct staff to study a provision that would reduce front yard setback requirement and increase the rear yard setback during the 2001-2002 Zoning Season.

Mr. Moore explained this was a recommendation by the Zoning Commission that requested the Staff study a reduction in the front yard setback requirement, and that issue will be included in the list of Study Items presented to the Town Council in May 2001 for the Town Council's approval or disapproval.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

Zoning Chairman Bertles said this issue was raised by Zoning Commission member Peter Broberg.

Zoning Commission Alternate Member Broberg said this was brought up at the meeting to address the issue of increasing the size of the backyard that could be enjoyed by homeowners.

President McDonald concurred that this item will be submitted with the Zoning Study Items at the May meeting.

VII. 2000-2001 ZONING PROPOSAL STAFF REPORT, ITEM 1, PROPOSED TOWN OF PALM BEACH PROTOTYPE DESIGN GUIDELINES FOR THE FOUR STREETS IN THE R-B ZONING DISTRICT BY DUNCAN ASSOCIATES AND URBAN DESIGN STUDIO

Item I. On a vote of 7-0, the Zoning Commission recommends approval of the basic intent of the R-B Prototype Design Guidelines excluding the specific design guidelines and associated incentives. **The Commission recommended that the Town Council direct Staff to (1) further study whether overlays, zoning sub-districts, or a combination of both concepts, should be used to redefine the R-B District, (2) analyze all of the streets to determine the location of such overlay areas or zoning sub-districts, and (3) recommend how the proposed regulations in the prototype study would work based on those defined overlay areas or zoning sub-districts.**

Mr. Moore recalled that the Zoning Commission had heard the presentation by both Urban Design and Duncan & Associates firm as well, who were here today to give a brief overview of that same presentation in conjunction with the report of the Zoning Commission.

Mr. Marty Hodgkins, Senior Associate with the firm of Duncan & Associates, reported that on behalf of Duncan & Associates and Urban Design Studios, he would present the recommendations made for proposed changes to the R-B Zoning District regulations, especially relating to the issue of monster homes within the Town of Palm Beach. He noted that the terms "bulk," "mass," and "scale" would be used for the purpose of this discussion. The town mass related to the volume of the structure in terms of how the Town of Palm Beach regulated construction, referred to cubic content ration (CCR); the term "bulk" related to the shape of the building; scare related to the architectural detail, human scale, and visual relationship to adjacent buildings. He explained that the protection of property rights, and property values was also considered. The study had focused on four principal streets within the Town of Palm Beach – Jamaica Lane, Mediterranean Road, North Ocean Blvd. between Queens Lane and Onondaga Avenue, and Seaspray Avenue. These streets had been selected because they each represented a distinct development pattern.

Mr. Hodgkins reported that the conclusions of the study had found that the Town of Palm Beach had a sophisticated approach to zoning regulations; the use of the cubic content ratio was unique; there was a very large degree of interest in retaining neighborhood character; change was inevitable; the R-B Zoning district was not representative of the pattern that

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

existed in various areas of the Town that had been developed over the past years. He explained that a series of proposed changes to the zoning district were intended to reflect zoning recommendations that addressed the issue of compatibility between the old structures and new construction. He noted that the study was a very technical zoning study, and was not a design study; zoning studies were usually much more technical and could be very difficult to fully explain and visualize; he also noted that it would take a long time for the true impact of zoning changes to be shown, and was not something that would occur overnight.

Mr. Hodgkins reported that the first recommendation made was:

The R-B Zoning District should be retained. This was a reasonable zoning district, and served as a basis to make change on a more individual basis. The R-B Zoning District had a number of common policies applicable to a large percentage of the Town, that probably should be retained; any changes should be more of a technical nature.

If the R-B Zoning District was retained, it was recommended that the Town adopt the use of overlay zoning districts within the R-B Zoning District (a zoning district that is overlaying on the existing zoning district and addresses individual issues/problems that may exist within a larger zoning district). It would also allow the Town and staff to experiment with various techniques.

Another specific recommendation for the entire R-B Zoning District was to change the flood elevation from 7.6" to 7'1", which may allow for existing structures to be renovated, rather than demolished and replaced.

A general recommendation would be to allow structures that were in the R-B Zoning District to in-fill or enclose certain types of empty spaces that may occur, without regard to the cubic content ratio.

It was also recommended that certain dimensional changes take place within the R-B Zoning District, that would be applicable to certain streets. The minimum lot size requirement be reduced from 10,000 sq. ft. minimum currently to 8,500 sq. ft. for Mediterranean Road, 6,000 sq. ft. for Seaspray Avenue. It was also recommended that a minimum lot width of 100' be reduced to 75' for Mediterranean Road; 50' for Seaspray Avenue.

Some recommendations were made which would affect the mass, volume, cubic content ratio of certain structures, such as including free space in an atrium, which would allow single story buildings to be built higher in order to give higher ceilings in certain parts of the house.

The sliding scale nature of the cubic content ratio would be retained, however, some changes were recommended, which would be discussed later in the meeting.

A limit to the size of the second floor on certain streets was recommended, as one means of reducing the perceived bulk or mass of a structure.

In return for some proposed reductions in the cubic content ration, an incentive program was

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

being proposed, which would be based on a specific series of design recommendations that will be covered later in the meeting. The specific design guidelines would effect garages, garage doors, entry features, such as doors, windows, and also require articulation front elevation to give some human scale and interest to a building.

Recommendations effecting the bulk of dwellings in the R-B Zoning District were to allow an increase of lot coverage to 40% throughout the entire R-B Zoning District, reduce the current side yard setbacks at 12 ½' for Jamaica Lane and Mediterranean Road, to increase the current second floor setback from 10' to 20' for dwellings located on Mediterranean Road, and to provide a mandatory rear height plane for dwellings located on North Ocean Blvd. There was a recommendation to require a side yard setback for second floors throughout the district, which would make the second floor less bulk and mass; reductions in the porte cochere setbacks for both Mediterranean Road and Seaspray Avenue.

Mr. John Kylene, Urban Design Studios, addressed the Town Council, presenting a matrix summarizing all of the techniques that were being recommended for use in the R-B Zoning District. The matrix was broken down into four parts: mass and volume of buildings; bulk and shape of buildings; dimensional requirements; scale issues.

Mr. Kylene explained that the existing sliding scale cubic content ratio would be retained with modifications that were more responsive to specific streets. A second floor cubic content reduction was being recommended, based proportionately to what was proposed on the first floor in relation to what percentage could be built on the second floor.

Mr. Kylene explained that the design guidelines were very generic, targeted to address specific issues dealing with scale of buildings. He presented examples and recommendations of design guidelines for garage doors, front entry features, windows, front elevation articulation, lot coverage, side yard setbacks, rear yard setbacks, rear height planes, maximum building separations, front second floor setbacks, second floor side setbacks, porte cocheres, lot width, and transitional elements that were hoped to be achieved.

Mr. Hank Skokowski addressed the Town Council, summarizing the presentation, explaining that tremendous documentation had been made of existing conditions; recommendations had been made, although it was recognized that there was more than one right way to go, based upon the analysis and information made available. There were certainly some strategies in terms of how to go about managing the changes that would occur. The action being recommended was to consider the incorporation or adoption of overlay districts – simply recognizing that even though there was a large area zoned R-B, not all of the areas designated as R-B were the same, and the overlay process would allow recognition of these single family residential areas, however, the overlay process would recognize that a street, neighborhood, or series of streets was different from another, and zoning regulations could be modified by establishing an overlay.

Mr. Skokowski commented on the recommendations that had come to the Town Council from the Zoning Commission:

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

1. They suggested that there be further study or discussion of the idea of an overlay district versus separate sub-districts. He suggested that it would be easier and more consistent with the current structure of Town Code to adopt the overlay process. If the properties were re-zoned, it would require careful analysis of the entire Code to ensure that there would not be new created problems or inconsistencies.
2. Analyze all the streets and identify which streets might fit which prototype, and look at how the prototype could apply.
3. The Zoning Commission had prefaced their recommendations with the statement that they recommend approval of the basic intent of the prototypical study, excluding the specific design guidelines and the associated incentives. Mr. Skokowski explained that the design guidelines, could be adopted into a program where they would be used as guidelines or incorporated into the Architectural Commission's criteria.
4. Mr. Skokowski commented that if the Town Council wished to disregard the recommendation regarding the incentive process, reduce the cubic content ratio on Mediterranean, but allow it to go back to the higher level, given compliance with some of the design guidelines. If the incentives were not used, he suggested that the reduced number be used, although not for Seaspray or Ocean Blvd.

Councilman Brooks commented that "one size didn't fit all," and that change would come and it was a question of how it was managed. He questioned the legality of the overlays.

Mr. Skokowski responded affirmatively, however, he suggested that legal counsel respond to the question.

Attorney Randolph responded that overlay districts were an accepted zoning tool, and one that would be accepted by the courts, however, that was not to say that someone may attempt to bring a Burt Harris challenge when they felt that their property was inordinately burdened by these regulations.

President Pro-Tem McLendon questioned what use the percentages of a sliding scale could have regarding cubic content ratios.

Mr. Hodgkins replied that with regard to the cubic content ratio there had been no change made to the use of the sliding scale; that was an effective tool in addressing the different existing lot sizes. In some instances, there had been recommendations for percentage increases in cubic content ratio in return for good characteristics of design or appearance that help improve the compatibility of a structure.

Councilman Wyett asked if an overlay plan would prohibit adding second stories on one story home streets?

Mr. Hodgkins replied that there was no recommendation that there be a one story limit on any street. Techniques were being recommended that were hoped to transition between single and

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

two-story buildings that help reduce the second floor; the recommendations would not limit a structure to single story.

Mr. Skokowski commented that the recommendations were meant to encourage someone to build on the ground floor, which was the least offensive; management techniques were being recommended to retain certain proportion when second floors were used.

Councilman Wyett expressed concern with regulations of building, maintaining that it would eventually reduce property values.

Mr Skokowski replied that they had tried to allow as much freedom and flexibility as possible. The recommendations were simply structured so as to say that if you were going to do it, we would like you to do it in a certain way, which lends compatibility to the neighborhood and tries to preserve and protect the existing character.

Mr. John Schuler, Chairman of the Architectural Commission, commented that the Architectural Commission had submitted a letter to the Zoning Commission, making reference to various aspects of the recommendations. He noted that he agreed with Councilman Wyett that architecture could not be legislated, and that the Architectural Commission had done an incredible job of analyzing different designs as they related to a particular neighborhood. He commented that it was important that mandates for types of windows or doors not be created, as the beauty of Palm Beach was the fact that there were so many types of different types of architecture in the community. He stated that he concurred with the Zoning Commission recommendation to the Town Council that staff be directed to further study where the overlay zoning districts should be used to redefine the R-B District. He commented that the sliding scale had worked effectively, and there had been no problems with it.

Mr. David Barton commented that the purpose of the study had been to stop monster homes and preserve the character of the neighborhood, and that the study had not accomplished either one. He stated that, for that reason, the study totally failed, because it had come through the zoning mode, rather than the planning mode. He submitted an article he had written for the Palm Beach Daily News in response to the study; the major problem in Palm Beach was flooding, and drainage was inadequate in the Town, although he was told by the consultants that they could not get into that. He stated that flooding conditions needed to be accommodated. He noted that he lived next door to a house that was approved, and had all of the worst elements imaginable. He proposed that there be a moratorium on all new building until the Town could find a way to get the drainage under control. He noted that a proposal had been made to reduce elevations in the study. He questioned how The Breakers could pump excess water in the Lake Worth Lagoon. He referred to the sheet he had left with each council person, asking if the limits of Town growth were known, and questioning the adequacy of the drainage system. He questioned the existence of a Local Planning Agency, required by the Comprehensive Plan, and noted that he had never heard anyone discuss it. He noted that 18 people on his street had protested a block busting building, which had created havoc in every possible way. He urged that some intervention take place to stop monster homes and to preserve neighborhoods, and that a moratorium be declared.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

Councilman Wyett asked if Mr. Barton was proposing a Town-wide moratorium, or a moratorium related to those streets that were below the FEMA level?

Mr. Barton responded that he was proposing a building moratorium in the flood zone. He explained that every new house that was built on the high ground was pumping water onto the street, which flooded the lower areas. He referred to the Comprehensive Plan where it stated that the developer was required to have the same post run off amount as in the pre-development run off.

Mr. Moore commented that retention areas were required, which was also a requirement of the South Florida Water Management District (SFWMD) – the first inch of water had to be retained, and Town Engineer James Bowser checked every plan to ensure that the retention requirements were met.

President Pro-Tem McLendon commented that much of what Mr. Barton said was appropriate, and that one of the problems was that the retention requirements was obviously inadequate, and that the drainage needed extensive attention.

Councilman Goldblum commented that the Public Works Department had been requested to contact SFWMD to determine what The Breakers would do to pump water during large storms.

Councilman Wyett asked Mr. Barton if he believed a two-story home, allowing more open space and more absorption was preferable to a one-story home?

Mr. Barton agreed, particularly if in a flood zone, however, he maintained that today all of the new houses were being given permits, with no gutters, no rain spouts, no tie in to the storm drainage system, which was totally unacceptable.

Councilman Wyett asked Mr. Moore if there was a reason why mandatory gutters were not mandated on new construction?

Mr. Moore replied that there was no reason that gutters had not been mandated for new construction; they were usually an accessory, however, as indicated earlier, the first inch of rainfall on the property must be retained. If the property was vacant, that retention had to be designed prior to a new home being built; if it was a replacement house, for instance, if there was 2,500 sq. ft. of lot coverage and the new lot coverage was 3,000 sq. ft., they would still have to design for the 2,500 sq. ft. of retention prior to getting a permit from the Public Works Department. He stated that there was no requirement to have gutters on house; it was purely an optional thing; to run gutters directly into a drainage system into the storm water system would be a problem if the storm system failed.

Councilman Goldblum commented that there were three things that happened whenever a big storm occurred: there was a full moon, extra high tide and the pumps could not pump against the pressure of Lake Worth Lagoon. He suggested that the problem would take more study.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

Mr. Barton summarized the steps that he was proposing:

A moratorium on all new building permits until an adequate drainage system was in place to stabilize the Town.

Tighten adherence to existing open spaces.

Virtually eliminate variances and exceptions that increase flooding potential.

Revise the building codes to better handle run off.

Create a proactive planning district specific long range plan, including a revised, more restricted zoning code.

Prepare a strategy for takings that might occur vis-a-vis the Burt Harris law.

A massive education program for the residents and real estate industry concerning over building in the Town.

Mrs. Wendy Victor, 208 Via Tortuga, encouraged the Town Council to take some action today. As Chairperson of the Zoning Committee of the Civic Association she noted that she had talked to so many residents that were frustrated, and that some kind of action must be taken. She stated that she believe the work done by Urban Design had merit; they had identified communities, one of the concerns was the increase of lot coverage to 40%. She pointed out that she would like to see the term "monster houses" go out of the vocabulary, and supported looking for a real design for urban development; she maintained that many people would love a beautiful small house on a nice lot, and not everyone wanted a big house. She encouraged a process of organic growth, as opposed to tearing down and starting over.

Mr. Harrison Robertson, 134 Seagate Road, member of the Zoning Commission, stated that he supported Mr. Barton in urging the Town Council to go forward with a true long range plan for the Town of Palm Beach. He maintained that presently all that the Town had was a land use plan, which was not a long range plan, and under State law, each town was mandated to have a long range plan, a planning agency to accomplish that and carry it forward. He stated that the Town Council had made itself the planning agency, which he believed was a mistake, and that a separate commission or agency should be appointed to develop and carry forward a long range plan for the Town. He stated that he agreed that there should be a moratorium on any further construction permits in the Town of Palm Beach until the drainage problem was resolved.

President McDonald commented that he agreed that a separate long range planning commission was needed, and had requested that the Town Council approve that in years previously, but it had not been felt that it was an idea whose time had come.

Dr. Sten Lilja commented that the north end contained non-pretentious homes, to a large extent, and to have large houses being squeezed in was not right. He maintained that there

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

were differences in a home on North Ocean Blvd, and the inside of the north end, with a ratio of 10/1 in cost. He stated that although he did not live in inside of the north end, he believed the inside of the north end was the heart of Palm Beach, and that he had once recommended that the cubic content ratio be 3.5, and had offered that a sliding scale could compensate for the upper end, and to help the homes that were smaller than the 10,000 sq. ft. minimum. At that time he noted that he had complimented Mr. Shaw for coming up with the sliding scale idea, and had provided a rough sketch as an idea of what could be done; unfortunately, a compromise had been made and the Zoning Commission had settled on a cubic content ratio of 3.8, and the Town Council had settled on 4.0. He maintained that not only was the size lost, but the sliding scale was kept attached to the wrong based figures. He recommended that a lower cubic content ratio be considered, as Palm Beach was precious and needed to be preserved.

Mayor Smith asked Mrs. Victor if she had been referring to a building moratorium when she cited the many people that had spoken to her in regard to the Town Council taking action today? In addition, she asked if the building moratorium had been discussed and endorsed by the Zoning Committee of the Civic Association?

Mrs. Victor replied that people had not asked for a building moratorium; some of the tools that had come out of the street scape meetings, as well as the meeting with the Town Commissions, and the meeting with builders and developers.

Mayor Smith replied that the Town Council needed specifics, and that many times people would say that the Zoning Commission was, in effect, the Planning Commission of the Town of Palm Beach; the moratorium done 30 years ago had been done on the basis that the sewers were not adequate to the building that was taking place. She explained that had been in place for approximately 18 months, to the chagrin of the builders/developers/real estate agents. Nevertheless, it did attempt to solve part of the problem. She asked Mrs. Victor for specifics that she would like to see the Town Council adopt today.

Mrs. Victor replied that one would be that development be done in the light of creating neighborhood friendly streets – people have said that as they walk along their streets, the impression of the street scape should have a human scale – that there be a rhythm to the planting, to the houses that maintains the character. She stated that the width of the buildings would need to be studied, and the amount of penetration of the front facade must also be considered.

Councilman Wyett commented that Mrs. Victor had given concepts, not proposals, and concepts could not be legislated – specific ideas were needed. He stated that he did not want to crowd out and inhibit architectural endeavors that could create good streetscapes, and that some specific guidelines were needed.

Mrs. Victor replied that the Zoning Committee had discussed the problem, and noted that many communities had gone to the parallel zoning code, and there was data available on it. She explained that it was a code that would not un-do what was working, but identified a handful of qualities that were desirable. She suggested that Urban Design's proposal could

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

be used as a springboard to bring in a consultant who was adept at interpreting the suggestions for the neighborhoods in Palm Beach, and that would give a mechanism to enhance, without having to re-study and reconfigure the whole thing.

Councilman Wyett agreed with the earlier statement of Mrs. Victor that the term "monster houses" should be dropped, noting that the sliding scale had only been in effect since last May, and it had reduced the size of houses. He stated that it was a good tool and easy to understand. He stated that one of the problems in zoning was that it was hard to understand.

Mrs. Victor stated that one of the specific tools that had come out of the study was that neighborhoods were very important, particularly on the interior streets, however, there were areas where stand alone houses were very appropriate, and they do not relate in the same way to the neighborhoods, nor impact their neighbors in the way the interior streets did.

Councilman Wyett disagreed, noting that the houses on the beach side were impacting the one or two houses behind them, which were interior homes. He pointed out that the houses on the lake faced the interior, and if their size was not regulated it would make the street a lopsided street.

Mayor Smith asked Mrs. Victor whether the discussions about the different types of zoning had taken place before or after the Zoning Commission had met and made their recommendations?

Mrs. Victor replied that it had been before the Zoning Commission had met, and the discussion items had not been recommended to the Town Council.

Mayor Smith commented that the "monster mansions" had been discussed when she had held the meeting with the Mayors and Managers with 14 communities represented, and they had all agreed, with the exception of one community, that they tried many, many, many times to draw ordinances covering this and could not get consensus in their community, and Boca Raton Mayor Hanson said she took no exception to them being referred to as "Boca Houses," because it had raised their tax base substantially, and she was very grateful. Everyone had said that it was a wonderful idea, but nobody had come up with a list of specifics.

Mrs. Victor replied that it had been done neighborhood by neighborhood, and the Ordinance was called the TND (Traditional Neighborhood Zoning) Ordinance.

Councilman Goldblum commented that several months ago he had asked if anyone coming to the Town Council for a variance give a panoramic view of the houses on either side of the property.

Mr. Moore responded that the Building Department had requested that applicants bring in pictures of homes surrounding the properties in question. He noted that the concept discussed by Mrs. Victor was the type of concept that the consultant and Zoning Commission were recommending – looking at the characteristics and streets in the R-B District, using overlay zoning requirements identifying a way of handling the issue.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

Mr. Gene Pandula, Chairman of the Landmarks Preservation Commission, addressed the Town Council, commented that he had observed that people were talking about maintaining the quality of neighborhoods and streets, and since his tenure on the Landmarks Commission there had been two streets brought for designation as districts. In both cases the people on both streets came out in mass to object; obviously there was a point somewhere landmarking and the regulation in place today. He pointed out that when a street was brought forward for landmarking, it had clearly definable characteristics that met criteria, and suggested that idea be further explored when discussing the preservation of neighborhoods/streets. He stated that he had been involved with the building of the house next to Mr. Barton, where it had clearly been an issue of size; nothing could overcome the objections to size. He submitted that the house was worse now than when it had been started; the finished product was no more appropriate than the original one, even though it had mathematically been brought down in size. He suggested that great care be taken in such situations, and urged caution in adopting the multitude of numerical setback requirements from a mathematical point of view.

Mr. James Bertles, Secretary of the Zoning Commission, commented that the Zoning Commission had agreed that it did not sit to try and develop the interests of developers or real estate agents. The Zoning Commission was trying to do what was in the best interest of residents of the Town of Palm Beach, and had decided that it would be better to move slowly and correctly, rather than take an improper action. He suggested that the Urban Design project was a valuable tool, however much too detailed and complicated; the most important part of the report was that some type of overlay or sub-district zoning must be established in the R-B District. He explained that the Zoning Commission had requested that staff, rather than consultants, study the overlay/sub-district issue; staff had agreed that they could do it, but would need the summer and could not come back with a recommendation until the fall. He noted that the Zoning Commission had been convinced that the sliding scale would not address the problem. He stated that the Zoning Commission had not adopted any of the specific recommendations of the consultants, because it was thought that each separate overlay district must be individually considered, as some of the changes in the CCR or overall lot coverage might apply to one overlay district and not to another. He explained that did not mean that the recommendations of the consultant were rejected; the Zoning Commission wanted to have the staff recommendations before specific changes to ordinances within certain overlay districts were made; therefore, the Zoning Commission had not considered that specific recommendations could be recommended to the Town Council.

Mr. Bertles stated that the Zoning Commission agreed with Mr. Barton; that the Town did not do a good enough job on long term planning. The Zoning Commission endorsed and applauded the Town Council for a much more restrictive view on its part in granting variance requests, which would help development in the future.

Mayor Smith asked if the Zoning Commission had other meetings scheduled before the season ended?

Mr. Bertles replied that there would be a meeting in April.

Mayor Smith suggested that it may be possible for the Zoning Commission to schedule another

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

meeting to address the process of a moratorium or over-building, and discussing long range planning, if the Town Council so directed.

Councilman Wyett stated that the Architectural Commission had done an outstanding job of reducing the allowable building; he stated that the sliding scale was actually working, and had taken the proper development of a lot into account. To say that it was not working because the houses built in the previous three years complied with it was not the right conclusion.

Mr. Bertles replied that he had not intended to imply that the Architectural Commission had not done a good job, however, if a house on the north end was built and fell within the limits of the sliding scale and was a monster house, then the sliding scale was not working.

President McDonald stated that the Zoning Commission had recommended the following:

That the Town Council direct staff to:

1. Further study whether overlay zoning, sub-districts, or a combination of both concepts should be used to redefine the R-B District.
2. Analyze all the streets to determine the location of such overlay areas or zoning sub-districts.
3. Recommend how the proposed regulations and a prototype study would work, based on those defined overlay areas or zoning sub-districts.

Councilman Wyett suggested that the "Sea" streets not be studied, but streets where change was expected should be studied first.

Mrs. Polly Earl, speaking as a resident of Seaspray Avenue, commented that the best time to catch some of the changes proposed to homes was right at the start. She suggested that a study include the "Sea" streets.

Councilman Goldblum commented that the drainage issue should be further studied, and then a determination made as to whether there should be a moratorium or not.

Councilman Brooks moved approval of the recommendations of the Zoning Commission to have staff further study whether overlay zoning, sub-districts, or a combination of both concepts should be used to redefine the R-B-District; analyze all the streets to determine the location of such overlay areas or zoning sub-districts; recommend how the proposed regulations and a prototype study would work, based on those defined overlay areas or zoning sub-districts. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

President McDonald commended the Zoning Commission for its work, as well as Urban Design and Duncan Associates for their report.

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING HELD ON 1/03/2001

Mayor Smith suggested that the Town Council consider discussing at the next Town Council meeting, asking the Zoning Commission to sit as a Long Range Planning Commission sometime in the next three months before the Zoning Commission ends.

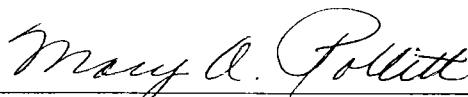
Councilman Brooks moved approval of authorizing staff to prepare Ordinance 1-2001 for first reading at the Special Town Council Meeting on February 5, 2001 at 5:01 p.m. meeting, with a second reading on February 19, 2001, at 5:01 p.m. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

V. ANY OTHER ITEMS

There were none.

VI. ADJOURNMENT

The meeting was adjourned at 3:50 p.m.



Mary A. Pollitt, Town Clerk