

**MINUTES OF SPECIAL TOWN COUNCIL HEARING ON ZONING COMMISSION RECOMMENDATIONS
HELD ON JANUARY 3 AND JANUARY 4, 1996**

I. CALL TO ORDER AND ROLL CALL: President Lesly Smith called the Special Meeting of the Town Council on Zoning to order at 9:30 a.m. on January 3, 1996, in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Smith, President Pro-Tem Jack McDonald, Councilmen Sam McLendon, Leslie Shaw, and Allen Wyett. Also attending were: Town Manager Robert Doney; Town Attorney John Randolph; Town Clerk Mary Pollitt; Director of Planning, Zoning and Building Robert Moore; Zoning Administrator Paul Castro; Planner/Coordinator Timothy Frank; and William Brisson, Consultant, from Adley, Brisson, Engman, Inc.

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

III. PROOF OF PUBLICATION: Mrs. Pollitt advised that proof of publication had been received.

IV. APPROVAL OF AGENDA: The agenda was approved as printed on a motion made by Mr. Shaw and seconded by Mr. Wyett. The motion carried unanimously.

V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC: Mr. Randolph outlined the procedures for the meeting which will be the reading of the item; the Staff will have an opportunity to present the matter, with questions by the Council members; the public will have the opportunity for input; and then the Council would sit in executive session and make the ultimate determination. Mr. Randolph pointed out that several of the items to be considered were quasi-judicial items or items where the Council will be acting as a quasi-judicial body because they deal with specific properties. Other items are considered "legislative", because they do not deal with specific properties but are dealt with on a town-wide basis. Witnesses will be sworn in for the quasi-judicial items, and witnesses will have the right of cross examination. Mr. Randolph said that witnesses who will give testimony for the proceedings could be sworn in as a group.

Town Clerk Pollitt administered the oath to the witnesses.

VI. COMPREHENSIVE PLAN REVIEW: Mr. Moore summarized the schedule of meetings followed by the Zoning Commission, and noted that the potential changes and additions to the Town's Zoning Code are underlined, the deletions are identified by strike-overs, and changes made by the Zoning Commission have been identified in bold type on the Zoning Commission Report..

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

Mr. Moore said the Staff recommended that the property to the south, 3024 South Ocean Boulevard, known as the Beachcomber Motel, should be rezoned from R-D(1) to R-D(2); however the ultimate rezoning of the 3000 South Ocean Boulevard was less clear. Zoning categories R-D(2), C-TS, and C-OPI were studied for this property and presented to the Zoning Commission. The Zoning Commission recommended approval of the request by the property owner to amend the Town's Comprehensive Plan, changing the designation of the property located at 3000 South Ocean Boulevard from Multi-Family High Density to Commercial on the Future Land Use Map and recommended approval of the rezoning of the property at 3000 South Ocean Boulevard from R-D(1) to C-TS.

James Brindell, Attorney with the law firm of Gunster, Yoakley, Valdez-Fauli & Stewart, represented the owner of the property at 3000 South Ocean Boulevard, Mrs. Valerie Aspinwall. Mr. Brindell said that Dr. Richard Ormand would also provide testimony for the applicant. Mr. Brindell summarized the events of last two zoning seasons regarding the property. He mentioned the size, approximately 100 feet by 400 feet, and shape of the property that was used by WPBR Radio Station that was initially started in 1941 and continued for nearly 50 years. On October 12, 1993, the Town Council allowed another commercial use, a restaurant, was acceptable on the property. Mr. Brindell noted that the Town of Palm Beach's Code allows for the substitution of one non-conforming use for another non-conforming use. On September 13, 1994, the Town Council granted site plan approval with twenty-one conditions for a commercial activity, the restaurant. Mr. Brindell said Mrs. Aspinwall was not wed to a restaurant use as the commercial use, but requested a zoning and Comprehensive Plan classification that will make sense to the marketing of the property.

Mr. Brindell summarized the uses of the properties surrounding the property including the City of Lake Worth Pier and adjacent parking lot. Mr. Brindell said that comparable property to 3000 South Ocean Boulevard is designated

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"commercial" in the Comprehensive Plan and is zoned C-TS, Commercial-Town Serving. Mr. Brindell noted that the 2.1 miles from Sloan's Curve contains approximately 3,600 residents and 1.3 miles south of the property to the Town's limits, approximately 2,400 residents reside. Mr. Brindell said that the approximately 6,000 residents need a commercially designated area as indicated in the Town Council minutes from January 23, 1995. He added that this property was reviewed by the Zoning Commission in 1994 and 1995, and the Zoning Commission recommended both times that the Comprehensive Plan designation be changed to commercial and the zoning be changed to C-TS.

Mr. Brindell reported that the property has been marketed as commercial and as residential. No offers were received for residential and one contract was offered for commercial or restaurant use. Mr. Brindell contended that if this property is left with a residential designation which is one of the options mentioned, that would condemn the property to no reasonable economically beneficial use, and to hold it hostage to the benefit of the Beachcomber property immediately to the south. Mr. Brindell said the commercial plan designation is the only logical designation along with a C-TS designation.

Mr. Brindell identified three photographic exhibits that were entered into the record.

Dr. Richard Ormand, Planning Consultant, gave his professional and educational background, including current clients.

Dr. Ormand said he concurred with Mr. Brindell's presentation and conclusion. Dr. Ormand addressed the nature of the property and the surrounding area and pointed out that the adjacent Beachcomber Motel could be operated in a different manner, depending upon the management. Dr. Ormand said his experience in urban economics and market feasibility analyses teaches that this property is highly unlikely to be successfully marketed for residential purposes because of the small nature of the site and the surrounding uses. Additionally, the property does not have waterfront or ocean property and is separated from the water by very public activity, the Lake Worth Pier.

Dr. Ormand said that after reviewing the Comprehensive Plan, the predominant policy in the plan, regarding commercial uses, is that they be town-serving uses--that is they do nothing to contribute to a demand for services and functions that go beyond the town's boundaries; they serve the residents of the Town; and that they not, in any way, invite others into the Town to take advantage of that use. Dr. Ormand, commenting on the land uses to the north that are planned for and zoned for C-TS, said the mirror effect of that, for the properties to the south, should be for the same town-serving use.

Dr. Ormand said that the best plan for future of communities would be the inter-mingling of town-serving and residential uses to allow the local residents use of these services. Dr. Ormand commented on the need for additional town-serving uses in the area south of Sloan's Curve, and the appropriate mixing of residential and commercial uses, with the regulations the Town's zoning code has in place, would be desirable for the area.

Dr. Ormand said, after a thorough review of the Comprehensive Plan, his opinion was that the land use designation should be changed to Commercial and the subsequent zoning to commercial-town Serving. That change would be fully consistent with the Town's Comprehensive Plan and would support its effective implementation. Dr. Ormand pointed out that the Brisson report of December, 1994, recommended that "a re-zoning to C-TS will insure that the intent of the Comprehensive Plan is met. Further I believe that the use can be accommodated within the constraints of C-TS district; therefore, the proposed amendment can be considered consistent with the applicable provisions of the Town's Comprehensive Plan."

(Mrs. Valerie R. Aspinwall, who arrived late to the meeting, was sworn in by the Town Clerk.)

After asking Mrs. Aspinwall to provide a brief history of the property since its purchase in 1972, Mr. Brindell entered into the record the following exhibits: the Zoning Variance Approval Letter dated October 26, 1993; the Site Plan Review Approval Letter dated September 16, 1994; the Lake Worth Zoning Map-excerpt; Town Council Meeting Minutes of the Meeting held on January 23, 1995; Recommendations and Report of the Town's Zoning Commission dated November 28, 1994; the Technical Memorandum - 1994/1995, Zoning Issues by Adley, Brisson, Engman, Inc. Dated December 5, 1994; the Resume of Dr. Richard Gary Ormand who previously testified; Resume of Carol A. Thompson, Planning Consultant and Urban Economist; Affidavit of Carol A. Thompson dated January 2, 1996; Resume of Kimberly M. Anderson, Professional Planner employed by Gunster, Yoakley; Affidavit of Kimberly M. Anderson dated December 29, 1995; Resident and Seasonal Populations, Town of Palm Beach - 1994 to 2006 by Adley, Brisson, Engman, Inc. dated October, 1995; Town of Palm Beach 1995-1996 Zoning Proposal Staff Report; Recommendations and Report of the Town Zoning Commission dated December 6, 1995; Aspinwall data - included population, demographic and distance data and uses of the C-TS zoning area north of the Lake Worth Beach Property; Request for Rezoning Ordinance and Comprehensive Plan Modification for 3000 South Ocean Boulevard, Palm Beach dated September 15, 1994; (a, b, and c) photographs; (a and b) photo boards; Zoning Variance Extension Approval letter dated October 17, 1995; Copies of the Town's Zoning Code Provisions 8.1 and 10.13; Pages I-7, I-8, I-9, and I-10 of the Town's Comprehensive Plan; and Aerial Photograph showing Sloan's Curve south to the South Town Limits.

Mr. Moore reviewed the land use contemplated by the 1975 Comprehensive Plan that projected the redevelopment use of the properties in this area in a residential character. Mr. Moore said that RD-1 zoning allowed 10 units per acre currently and RD-2 allowed for 13 units per acre. Mr. Moore stated that the zoning for 3000 South Ocean and the adjoining Beachcomber property is RD-1 or 10 units per acre. RD-2 allows for an additional use (motel use) under the Zoning

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Ordinance by Special Exception. The Beachcomber is a motel, requiring an occupational license; however, the property could be acquired by another owner and operated in a different manner.

Mr. Moore reported that the Zoning Commission, responding to a zoning request for a parking lot in 1989, determined, as did the Town Council, that a parking lot was not of a town- serving nature. Mr. Moore said the second request was for a full C-TS use, and the 1995 Zoning Commission determined that would be the best controllable use for the property. The property has had low-intensity commercial use for the past fifty plus years.

As directed by the Town Council last year, Mr. Moore said the Staff looked at other alternative uses for the property. The three recommendations or options were: C-TS, the most rigid of the Town's categories as far as restrictiveness and control; C-OPI, the office and professional zoning district; or RD-2, a residential use that would allow 13 units on the property. Mr. Moore said that Staff recommended the rezoning of 3024 South Ocean Boulevard, the Beachcomber Motel, to make the motel a permitted special exception use which would legitimize its current, non-conforming use.

Ex-parti communications were reported by Mr. Wyett with the Citizens Association South of Sloan's Curve who requested information regarding the Staff Report. Mr. McLendon reported a letter was received from Mr. Savage from the Palmbeacher Condominium Association, and he had visited the site seven or eight months ago. Mayor Ilyinsky said he knew the Aspinwalls very well and had appeared on their radio program numerous times. President Smith reported that she was quite familiar with the site and had appeared, with her late husband, Earl E. T. Smith, several times on radio programs. Mrs. Smith said she had no direct contacts with anyone. Mr. McDonald said he had visited the site and appeared on a radio program there. Mr. McDonald added he had attended a few meetings of the Citizens Association South of Sloan's Curve where the subject has been discussed. Mr. Shaw said he had visited the site several years ago and had discussed the subject with Max Schorr who offered information from the residents in the area.

Mr. Randolph said the Mayor and Council members should make any decision based on the testimony and information provided at the meeting, and ex-parti communications should not influence any decision. The Mayor and Council members affirmed a decision would be made based on the information presented at the meeting.

Mr. Moore pointed out that if the C-OPI zoning would be considered by the Council, the area north of the Lake Worth Casino which is zoned C-TS, was noticed and subject for re-zoning. The only non-conforming use there now would be the beauty shop located at 2875 South Ocean Boulevard.

Mr. McDonald asked Mr. Moore if any fiscal analysis impact study was done for any item on the agenda, specifically 3000 South Ocean Boulevard, related to the Harris Act?

Mr. Moore replied that Staff requested Mr. Randolph to review the Study Items and give his opinion item by item as they come up to see if they would be affected by the Bert J. Harris, Jr. Private Property Rights Act.

Mr. Randolph responded he was asked to look at Item 14 to make a determination of the effect any decision would have on the Bert Harris Property Rights Act. Mr. Randolph said he did not have an answer for the specific question, "Whether or not any financial impact study has been made in regard to any of these items?"

Mr. Moore stated that no fiscal analysis was done on the application for 3000 South Ocean Boulevard or any other application other than the Bert Harris Act for Item 14 as referred to Mr. Randolph.

Responding to a question from Mrs. Smith, Robert Wood, Chairman of the Zoning Commission, addressed the Town Council. Mr. Wood said the information presented at the Zoning meeting and the Town Council meeting were essentially the same to this point. Mr. Wood said he thought it was important for Mr. Randolph to comment on whether or not the new property rights act will have some bearing on this decision, and whether or not the factual situation will allow a cause of action to occur under the new property rights act. Mr. Wood said that if a decision is not made at this meeting, it would be helpful to the Zoning Commission if the Town Council could visit the site. He contended that the maps and photographs are often confusing, and a personal visit aids a clear cut decision. Mr. Wood said the Zoning Commission was very cognizant of the feelings and opinions of the neighbors in the area; however, the majority of the Zoning Commission members felt with the change to C-TS zoning, the Town Council could adequately protect the neighbors' interests.

Mr. Randolph said the decisions that are made regarding quasi-judicial issues must be based on information received at this meeting, and the decisions must be based on competent, substantial evidence which is evidence that a reasonable person could interpret as supporting the decision that was made. Competent, substantial evidence does not include the opinions of property owners unless those particular property owners have some particular expertise regarding the issue on which they speak. Mr. Randolph said the decisions must be based upon the expert opinions received at this meeting in conjunction with other relevant evidence.

Mr. Randolph explained the Bert Harris Property Rights Act is effective for any changes made after the adjournment, sine die, of the Legislature which was May 11, 1995. The Bert Harris Property Rights Act states that in the event the Council changes any ordinance subsequent to May 11, 1995, which placed an inordinate burden on the existing rights of a property owner, a cause of action would arise under the Bert Harris Property Rights Act. This act basically gives a new cause of action beyond those causes of action which existed, by law, prior to its adoption. Prior to this act, a cause of action might have occurred with a "taking of the property" so that there was no reasonable, beneficial use of the property. Under the Bert Harris

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Property Rights Act, the loss of all reasonable, benefits for the property do not have to be shown. An inordinate burden placed upon the property owner by an action has to be shown. Mr. Randolph said that an inordinate burden is essentially defined as a burden which permanently provides that the property owner is unable to obtain reasonable investment back expectations for the existing use of the property.

Mr. Randolph said further determination by case law regarding the Act would be necessary to determine if it applies to the property at 3000 South Ocean Boulevard. Mr. Randolph said an argument could be made if the Town Council changed the zoning regarding this property, subsequent to May 11, 1995, that the Bert Harris Property Rights Act could come into effect, and the Town Council could be creating a cause for action by the property owner as a result of that change. Mr. Randolph said the change has to deal with the existing use of the property, and the action must prove, by the Town's action, that an inordinate burden has been placed on the existing use of the property. Mr. Randolph said he would argue that if the Town Council changed the property uses that have been proposed at this meeting, RD-2, C-TS, or C-OPI, that the Council would not have placed an inordinate burden upon the existing use of the property, but in fact the property would have benefited by the action of any of those changes since a more liberal use on the property would be allowed. Mr. Randolph said he had not heard anything at this meeting that would support leaving this property as RD-1.

Mr. Randolph clarified that Mr. Moore had stated three alternatives, RD-2, C-TS, or C-OPI, existed although page 8 of Mr. Brisson's commentary which said the alternatives include leaving the zoning as is. Page 11, Item 2, from the same commentary states that "any one of the three zoning districts discussed above, RD-2, C-TS, or C-OPI, is more appropriate than the RD-1 designation".

Mr. Moore stated he was concurring with the last recommendation and did not suggest it should be left as it is.

Mr. McDonald asked Mr. Brindell what C-TS use this property would qualify for?

Mr. Brindell responded that Mrs. Aspinwall did not intend to market this property herself, but her experience indicated this property may serve as a small office complex, similar to the property north of the Lake Worth Casino; a small restaurant; a small medical complex; or similar commercial use. Mr. Brindell noted that a small amount of Commercial-Town Serving uses presently are located south of Sloan's Curve in an area where the population density is the greatest. Mr. Brindell said that the size of the property limits the amount of any construction on the site that would attract a certain number of patrons.

John Jorgensen, Attorney with the law firm of Scott, Royce, Harris, Bryan, Barra & Jorgensen, addressed the Town Council. Mr. Jorgensen represented the Beachcomber Motel, next door to the subject property and stated the Beachcomber has consistently opposed the commercial rezoning of the subject property. Mr. Jorgensen said the Beachcomber would like to see a "quiet" use of the property, and the former radio station was a quiet neighbor.

Mr. Jorgensen said that if the property were rezoned to C-TS, it would not be compatible with the residential character of the neighborhood and would not be in keeping with the quiet use as currently exercised by the Beachcomber. Mr. Jorgensen conjectured that if a C-TS designation were granted, the business would, most likely, not be town-serving since most of the people visiting the Lake Worth Beach area are not Town residents. An existing buffer, the parking lot, exists between the subject property and the intense use of the Lake Worth Casino. If the Aspinwall property would be rezoned, then the problem Mrs. Aspinwall has would be shifted to the Beachcomber according to Mr. Jorgensen. Mr. Jorgensen concluded the Aspinwalls made the voluntary decision to sell the radio station, and the result was an irregular shaped piece of property. Mr. Jorgensen stated ample evidence, based upon the consultant's report, for the Town Council to consider any one of the three options mentioned. He recommended that the property be rezoned to RD-2, providing Mrs. Aspinwall with some benefit including the future possibility that the Beachcomber and Aspinwall properties could someday be combined. He submitted that zoning the property "commercial" would be a mistake because (1) it is not compatible with the residential areas, (2) would not cause any town-serving, commercial businesses to be located there, (3) would be a windfall for Mrs. Aspinwall, which is not appropriate given the other negative impacts, and (4) the area is not really a town-serving area.

Responding to a question from Mr. Wyett concerning the possible detriment of a commercial venture, as outlined by Mr. Brindell, Mr. Jorgensen responded, given the size of the Aspinwall property, very little buffering could be installed between a high intensity use and the Beachcomber.

Mrs. Smith noted that the Town Council had worked out the twenty-one provisions of the approval for a Ruby Tuesday's Restaurant that was still in effect.

Responding to questions from Mr. Shaw, Mr. Jorgensen replied he could not speculate if or when the two properties may be combined, and the buffering issue for a restaurant is a matter of degree on a small site such as the Aspinwall property.

Mr. Randolph noted, for the record, that argument such as given by Mr. Jorgensen, is not considered competent, substantial evidence when the Town Council is deliberating.

Alexander Beal, former chairman of the Zoning Commission, addressed the Town Council. Mr. Beal said he was the chairman when the Commission voted to recommend to the Town Council that the zoning be changed. He noted that two zoning commissions, appointed by the Town Council, indicated that they felt that the property should be rezoned. Mr. Beal compared this property to the Brazilian Court Hotel property which was grandfathered in a residentially zoned area.

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Mr. Beal said he was a real estate appraiser and consultant and studied zoning problems for over sixty years. In his opinion, the subject property had only two uses that could be deemed profitable--one use is a restaurant that would be properly restricted. The other use could be a retail use specializing in marine items such as scuba gear and items of that nature.

Mr. Beal, quoting the Snyder case, said that popular sentiment is no basis for denial. The decision must be based on competent evidence presented at the hearing. Mr. Beal said the Snyder case stated a man is entitled to use his property as he sees fit unless he commits a nuisance with it. Mr. Beal urged that the Town Council reach a compromise decision on the property.

Mr. Randolph responded that the ingredient of the status quo does not change the holding in Snyder; that being whatever decision the Council makes regarding the zoning of the property, must be supported by competent, substantial evidence.

Mr. McDonald asked Mr. Beal if the property could be profitably used as a radio station? Mr. Beal responded affirmatively.

Mr. McDonald asked Mr. Randolph if the Snyder case was a U. S. Supreme Court Case or a Florida Supreme Court Case? Mr. Randolph replied it was a Florida Supreme Court Case.

Mr. Phillip Krupp, 3100 South Ocean Boulevard, addressed the Town Council. Mr. Krupp said, as a resident, he and other property owners pay a large amount of taxes for the peace and tranquility of South Ocean Boulevard. Mr. Krupp stated he was in the real estate business since 1937 and when commercial zoning is thrust upon residential areas, the property is devalued by 15% to 35% or more. He added if a restaurant is permitted at 3000 South Ocean Boulevard, many Palm Beach property owners would file tax abatements. Mr. Krupp said the residents of the Hamptons at 3100 South Ocean Boulevard and he request the Town Council not approve commercial zoning for the property.

Mr. Max Schorr, 2778 South Ocean Boulevard, read a prepared statement to the Town Council: "I deem it a privilege to appear before you today on behalf of the Citizens' Association South of Sloan's Curve and its membership consisting of more than 3,500 families residing in the Town of Palm Beach from Sloan's Curve to the southern boundary of Palm Beach. My statement today relates to the application of rezoning by the owner of the former radio station at 3000 South Ocean Boulevard. Most of my statement will quote almost verbatim from the recent report made by the Town's zoning expert, Brisson, but I must state, that in some important aspects, we do not agree with his conclusions.

"For the third time an application for rezoning by said property owner has come before the Council. The first time the applicant requested rezoning to C-TS for the purpose of building a commercial parking lot. That would have required an amendment to the Comprehensive Plan to change the designation of the property and the Future Land Use Map to commercial. It was, however, determined that such a parking lot would not qualify as town-serving nor would it be consistent with the intent of the C-TS zoning district. That application was denied.

"The second application was to amend the Future Land Use designation from multi-family, high density residential, to commercial and rezoning the property from RD-1 to C-TS for the intended use as a restaurant occupying some 5,000 square feet of floor area. Incidentally, no general notice to residents in the general area was published of this application, and was merely furnished to those property owners close to the subject property. It is fair to state, that practically none of the people in our area were informed. Consequently, they did not have an opportunity to submit any organized opposition. The Town Council deferred the request, instructing the Town Staff, during the 1995-96 Zoning Season, to study that application in conjunction with the rezoning of the adjoining Beachcomber property contiguous on its south.

"It is important to note that this property is identified on the Town's Future Land Use map, as multi-family, high density residential and is zoned RD-1. The only commercial use of the property was as a site for WPBR Radio Station from 1941 until the radio station was sold several years ago, presumably for a very substantial price. The radio transmitter has been removed and the existing building has been vacant since the station was sold.

"Immediately to the south is the Beachcomber Motel, built in the 1950's, that provides weekly and seasonal transit lodging. It is a nonconforming use under RD-1 district. Immediately to the south of the Beachcomber, is the Palm Beacher, a multi-family residential use, and a short distance south of the Palm Beacher, is the Hamptons, a luxury condominium. The Council must give very serious consideration to the applicable policies set forth in the Town's Comprehensive Plan which include the following objective and policy of the Future Land Use Element.

"Objective Two states: Maintain the character of the Town as a predominantly residential community having only the type and amount of businesses and other support necessary to meet the needs of the Town residents.

"Policy 2.3 states: To prevent critical and dangerous over use of its streets, parking resources, public services, and facilities, and damage to its historic character, and to overall property values of the community, 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 and thereby lower the pattern of density where possible and to minimize tourism inflow.

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“Policy 2.4 states: Continue to enforce the provisions of the Town’s zoning ordinances which are directed toward encouragement of town-serving commercial uses and the discouragement of those uses which are likely to attract patronage on a regional level.

“The key wording and objective relates to maintaining the Town’s character and limiting the commercial development to that necessary to serve the needs of the Town’s residents. A change to a commercial land use designation would alter the predominantly residential character of the Town as a whole and would appreciably alter the character of the immediate area. The Council should resist any changes to the Comprehensive Plan in order to retain the residential character of our area. Please note that the key aspects of Policies 2.3 and 2.4 concern minimizing tourism inflow and enforcement of the zoning ordinance to discourage uses likely to attract patronage on a regional level. Therefore, a rezoning to C-TS will not be consistent with the intent with the foregoing objective and the supporting policies, since this zoning district’s purpose and associated regulations are designed to provide for the needs of the Town persons.

“The property owner’s attorney, in previous presentations, was reported to have stated that a restaurant in this location would be expected to draw from residents and visitors from the south end of Palm Beach, thus reducing trips to northern portions of the Town where most of the restaurants are located. The residents in that area have no need for further restaurants. We have ten restaurants--the Ocean Grand Hotel with two very fine restaurants; the Palm Beach President; at the Ambassador; the Palm Beach Hilton with two restaurants; the Sea Lord; Murray’s; the Hawaiian; and two on the Lake Worth Beach. The area does not need any more restaurants. The Council is very aware of the tremendous numbers of cars that are continuously coming across the bridge - to and from the Lake Worth Casino and Beach. As late as and often later than 11:00 p.m., the area has become a high problem area to the Lake Worth Police. Should we do anything to aggravate these conditions? A strip center would not be good zoning. A common sense alternative that should be given serious consideration by the Council would be to retain the high density, multi-family land use designation on the Future Land Use map and rezone the property from RD-1 to RD-2. The effect of this alternative would be to increase the allowable residential density from 10 to 13 units per acre and more importantly to expand the allowable uses of the property to include hotel use as a special exception. Maximum hotel density would be up to 26 units per acre and reasonable consideration should be given to rezoning the Beachcomber property to RD-2 as stated by the Town’s expert. This would unify the two properties into one zone and be identical to the adjacent zoning which is consistent to the south Town line.

“The Council should further seriously consider that at the time the Comprehensive Plan was adopted, the area south of Sloan’s Curve had little development. There were just a few condominiums and consisted of vast amounts of vacant land. Consistent with the principle laid down on the Comprehensive Plan, residential, condominiums and cooperatives were built over practically all the vacant land that existed. This is what the Comprehensive Plan intended to accomplish, and it has. You should not now create a brand new concept that violates the principle of the Comprehensive Plan that was so effectively carried out in conformity with its policies and principles.

“On behalf of more than 3,500 families who reside in Palm Beach, south of Sloan’s Curve, we urge you to reject any consideration of C-TS zoning for 3000 South Ocean Boulevard, and urge you to re-classify both 3000 South Ocean Boulevard and the Beachcomber as RD-2.”

Mr. Phillip S. Savage, Jr., President of the cooperative apartment, The Palm Beacher, located at 3030 South Ocean Boulevard, addressed the Town Council. Mr. Savage noted that The Palm Beacher had not received notices concerning the rezoning previously but had received notice of this meeting.

Mr. Savage stated The Palm Beacher’s residents are very much opposed to any change in the zoning in the region. Referring to Mr. Schorr’s comments, Mr. Savage concurred with his statements concerning the residential character of the neighborhood. Mr. Savage added a real problem exists with the entrance and exit from this property for any use, and traffic could be a very serious problem. After objecting to the rezoning of the property to C-TS, Mr. Savage stated if the property were rezoned to C-TS, it would be spot zoning.

Mr. Savage requested that his letter, dated December 20, 1995, be made a part of the record.

Mr. Ned Barnes, President of the Palm Beach Civic Association, addressed the Town Council. Mr. Barnes said the Palm Beach Civic Association would like to support the previous statements made by the Citizens’ Association South of Sloan’s Curve. Mr. Barnes said the rezoning to C-TS of the property at 3000 South Ocean Boulevard would be in conflict with the zoning objectives, the policies in the Staff Report, and many of the principles valued in the community. Mr. Barnes added the Town’s character is predominantly a residential community and critical and dangerous over use of the streets should be prevented; to minimize the change or transition of existing low density areas or structures to more intensive use patterns; to minimize tourism inflow; to encourage Town zoning--town-serving commercial uses--and discourage those uses which are likely to attract patronage on a regional level.

Mr. Barnes said the Civic Association does not think any commercial use of this property could be town-serving, but traffic and patrons would be attracted from across the bridge. Mr. Barnes said the area already faces a high crime situation, and commercial use of the property would only intensify that problem.

Mr. Barnes read a resolution of the Executive Committee of the Civic Association:

“Whereas the Zoning Commission is recommending that the Town Council rezone 3000 South Ocean Boulevard from RD-1

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to C-TS;

"Whereas commercial use of 3000 South Ocean Boulevard for a restaurant or another public facility would increase activity, traffic, crime, transients, etc. in the already busy Lake Worth Casino area;

"Whereas the residents in the southern part of Palm Beach want to preserve the residential nature of their community;

"Therefore, be it resolved, the Palm Beach Civic Association supports the Citizens Association South of Sloan's Curve in its objection to rezoning 3000 South Ocean Boulevard to Commercial-Town Serving."

Mr. Bill Walton, Agent for the Darby Corporation, General Manager of the Beachcomber, addressed the Town Council. Mr. Walton stated the value of the Beachcomber property is \$2.5 million with the majority of the amount being the land value. Mr. Walton said the three families who are heirs of the original owners have no interest in purchasing the property at 3000 South Ocean Boulevard.

Mr. Walton said the major concern of the Beachcomber is that the property will be rezoned to a restaurant with a bar or nightclub. Mr. Walton asked that the Beachcomber be included in the planning of any future development of the property.

Mr. Brindell verified through Dr. Ormand's testimony that he had been accepted in the Florida courts as an expert in land planning, urban economics, and was a certified American Institute Planner. Additionally, Dr. Ormand is a licensed real estate broker.

Dr. Ormand, responding to questions raised by some of the previous objectors, said the relationship to adjoining land uses is not deleteriously affected by the presence of commercial and restaurant uses, nor does an automatic deduction occur in some percentage of property values. Dr. Ormand said the effect depends upon how well the project is done; how well it is guided by the local zoning regulations and site plan review procedures.

Dr. Ormand said he has learned over the years that appearances are not necessarily what they seem to be in terms of adjacent land uses. A residential land use next to other land uses is more deleterious with its impact with its invasion of privacy than would be an office building that closes at 5:00 p.m. and not open on weekends. The office building can be architecturally designed so that the relationship between residential and office use is much more compatible than would be a high rise residential use.

Dr. Ormand said the Aspinwall property at one acre is too small for the economies of scale required by modern day hotel or motel operations. Dr. Ormand stated that the property is too small for a time-share operation to be economically viable. Dr. Ormand said the size of the property would also prohibit it from being a regional attractor, and he said the Town's C-TS code would provide adequate protection for the surrounding area. Dr. Ormand agreed with Mr. Brindell that any use of the property would attract the current passers-by rather than encourage new patronage. Dr. Ormand concluded that the Town's zoning code regarding C-TS and C-OPI districts would adequately protect the neighborhood fears of noise and quietude as well as the general health, safety, welfare, and morals of the citizens of the Town.

John Jorgensen asked Dr. Ormand if a variance existed that would allow Mrs. Aspinwall to develop a restaurant on the property? Dr. Ormand replied affirmatively. Mr. Jorgensen asked if that created an economically viable use of the property? Dr. Ormand replied it would seem so. Mr. Jorgensen asked about the increase of traffic if the site were used as a restaurant? Dr. Ormand said that, without specific studies, he could only use past experiences to make a judgement. Dr. Ormand agreed that it was self evident that a large number of non-residents visit the Lake Worth Casino area. Mr. Jorgensen asked if a large number of those visitors would use a restaurant if it were built on the site? Dr. Ormand replied that certainly some of them would and depending upon the nature of the restaurant, activity at night would vary.

Mr. Wyett asked Dr. Ormand if the site would be marketable for thirteen units per acre if it were zoned RD-2?

Dr. Ormand responded because the Lake Worth Casino and Beach is interjected between the Town of Palm Beach to the north of the site, the development demand is limited. He said it would be more appropriate to provide town-serving functions on the site.

Mrs. Michelle Clarke-Royal, member of the Zoning Commission, addressed the Town Council. Mrs. Royal said she did not believe the town-serving portion of the C-TS was possible because many of the people who would use any facility would not live in the Town of Palm Beach. Mrs. Royal reminded the Council that the Town's philosophy, as presented in the Comprehensive Plan, is that the Town must not do anything to encourage regional traffic.

Responding to questions from Mrs. Smith and Mr. Wyett, Mrs. Aspinwall replied the current assessed value of the property is \$775,000, and the property was assessed over \$1 million at one time. Mrs. Aspinwall stated the radio station was not a highly profitable business.

Mr. Roger B. Flannagan, 3030 South Ocean Boulevard, Treasurer and Director of The Palm Beacher, addressed the Town Council. Mr. Flannagan stated that most of the people in the neighborhood objected to any rezoning for business purposes.

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Mr. John Jorgensen asked for clarification if the report prepared by Adley, Brisson, Engman, Inc was considered substantial evidence? Mr. Randolph replied it was and would be entered into the record. Mr. Jorgensen stated the report suggested three choices for the site and had supporting statements for anyone of the three choices.

Mr. Randolph reminded the Town Council they needed to consider the Comprehensive Plan amendment before the zoning is considered.

Mr. William F. Brisson, Consultant from Adley, Brisson, Engman, Inc presented his credentials to the Town Council.

Mr. Brisson said retention of the RD-1 zoning for the site would be inappropriate; however, RD-2 is suitable primarily because it does increase the realm and range of allowable uses on that particular property and would increase the density from ten to thirteen units per acre. The RD-2 designation would allow motels or hotels with up to 26 units per acre and also recognizes some of the limitations of the particular piece of property, primarily its very limited frontage where ingress and egress would be afforded. Mr. Brisson said if the adjoining property were rezoned to RD-2, no adverse effect would be realized from the 3000 South Ocean Boulevard site if it were developed under RD-2 also.

Mr. Wyett asked if the Land Use Plan, as presently constituted, allowed for a reasonable use for the property?

Mr. Brisson replied the existing Land Use designations would not allow for a commercial use for the site, but would allow for an RD-2 designation with hotels and motels allowed by special exception. Mr. Brisson said to allow a free standing, commercial use, the Comprehensive Plan designation would have to be changed to commercial. Mr. Brisson said that a RD-2 designation would meet the planning criteria including compatibility with the adjoining properties and an increase in the development potential of the property over what is now allowed as well as an increase in the variety of uses that would be allowed.

Mr. Shaw said he had a question about the maximum size of a building that could be built on the lot. Mr. Moore said the number of parking places would determine the size of the building, and the maximum size would be approximately 10,000 - 12,000 square feet.

Mrs. Smith stated that if the Council Members decided to change the zoning from RD-1 to RD-2, no change would be required to the Comprehensive Plan. The Comprehensive Plan would require changes only if the zoning were changed to C-TS or C-OPI.

Mr. Randolph clarified that the first issue the Town Council should consider would be the Comprehensive Plan Amendment. He reminded everyone present if anyone had anything to say about the Comprehensive Plan Amendment, that should have that opportunity.

Mrs. Smith stated the agenda item the Council was considering was item VI. Comprehensive Plan Review, A. Small Scale Plan Amendment.

Motion made Mr. Wyett to make no changes in the Comprehensive Plan based on expert testimony that RD-2 as presently constituted provides a reasonable use for the property and a change in the plan is contrary to the intent and wording of the Comprehensive Plan. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

VII. PROPERTY REZONING APPLICATIONS

A. 3000 South Ocean Boulevard, R-D(1) to C-TS, R-D(2) or C-OPI

Mrs. Smith asked if any member of the public would like to speak to the issue.

Mr. James Brindell, Attorney for Mrs. Valerie Aspinwall, requested that all the testimony presented on the Comprehensive Plan Amendment be incorporated into the record as well as the exhibits.

Mr. Randolph replied he had no objections, and clarified that all documents received by the Town regarding the hearing on the Comprehensive Plan should be incorporated as part of the record for this zoning application.

Mr. Shaw said, that since the Council voted not to change the Comprehensive Plan, the only option open was to decide if the zoning should be changed from RD-1 to RD-2.

Motion made by Mr. Shaw to accept the testimony as heard at the meeting for the use of the property and in keeping with the Comprehensive Plan, the Council supported the rezoning from RD-1 to RD-2 of 3000 South Ocean Boulevard property. The motion was seconded by Mr. Wyett.

Mr. Randolph encouraged the maker of the motion to incorporate findings and state the reasons for the rezoning from RD-1 to RD-2.

Mr. Brindell noted that all the testimony and exhibits supporting rezoning to C-TS were entered into opposition to

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the rezoning from RD-1 to RD-2.

Mr. Randolph asked Mr. Brindell if he objected to the rezoning to RD-2 or would the applicant prefer the property remain zoned as RD-1?

Mr. Brindell replied the applicant did not object to the rezoning from RD-1 to RD-2; however, his presentation included all three zoning districts.

Mrs. Smith asked Mr. Brindell if he felt he had been given ample opportunity to present his case for changing the zoning from RD-1 to C-TS or C-OPI. Mr. Brindell replied affirmatively.

Mr. Shaw said, supporting his motion, he found from the Staff report and Mr. Brisson's report that the objectives as outlined in the Comprehensive Plan, Objective 2, Policy 2.3 and 2.4, give the feeling that this property needs to be maintained as residential and to maximize the property owner's rights to that property within the residential jurisdiction, increasing from RD-1 to RD-2 is most favorable to the property owner. Mr. Wyett, the seconder of the motion, concurred with Mr. Shaw's addition to the motion. On roll call, the motion carried unanimously.

B. 3024 South Ocean Boulevard, R-D(1) to R-D(2)

Mr. Moore reported the Town restudied the possible rezoning of the Beachcomber property at 3024 South Ocean Boulevard and the legitimization of the existing use was appropriate. Mr. Moore said the staff recommended the property should be rezoned to RD-2 which makes the motel a permitted, special exception use.

Mr. Jorgensen said the Beachcomber owners have no objection to the rezoning, and he requested the Town rezone the property to RD-2.

Mr. Moore, responding to Mr. McLendon's question, said the RD-2 change in zoning for 3024 South Ocean Boulevard would result in an additional 12-13 units per acre for residential use. Mr. Moore said a hotel or motel would be a special exception use under the RD-2 zoning, and 109 units would be permitted for the use after the zoning change.

Mr. Randolph said that the Town's 95-96 Zoning Proposal, Staff Report, including the report by Mr. Brisson, should be accepted as part of the evidence for every item considered at this meeting.

Mrs. Smith asked the Council members if they had any ex-parte communications regarding the matter? All members replied negatively.

Motion made by Mr. Wyett to accept the change in zoning for 3024 South Ocean Boulevard from RD-1 to RD-2 based upon the information supplied by Mr. Brisson, the Town's Staff, and the Town report. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

C. 2880 South Ocean Boulevard, 2875 South Ocean Boulevard, Richard C. Kreusler Memorial Park, C-TS to C-OPI

Mr. Moore said that no action was necessary on this item, because the 3000 South Ocean Boulevard property was not rezoned to C-OPI.

Mr. Randolph suggested a motion from the Council would be in order.

Motion made by Mr. Wyett that Item 7, Section C, be passed over and not be approved in light of the fact there is no need to consider the item. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

**VIII. 1995-1996 ZONING PROPOSAL STAFF REPORT AND/OR RECOMMENDATIONS (ITEMS 2 THROUGH 30)
AND RECEIPT OF THE RECOMMENDATIONS AND REPORT OF THE TOWN ZONING COMMISSION, DATED
DECEMBER 6, 1995**

ITEM 2. Restudy shared parking, including as it pertains to the impact on residential neighborhoods

Mr. Moore reported the Zoning Commission recommended approval of the change as modified by the Zoning Commission to amend Section 6.21, Off Street Parking, by adding a new item (I) to read as follows:

(I) SHARED PARKING IN CT-S, C-WA AND C-OPI COMMERCIAL ZONING DISTRICTS

Although there is no entitlement to shared parking, arrangements for same may be allowed in the CT-S, C-WA and C-OPI commercial zoning districts of the Town subject to the review and approval of a special exception as set forth under Section 6.40 and under the circumstances provided herein.

(1) ON-SITE SHARED PARKING

When a new use is proposed to occupy existing floor space, and the new use would require a greater number of parking spaces than required by the former use, the new use may request 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 at the applicant's expense, 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) If the building Official should determine that professional advice and/or consultation is required to review the applicant's parking findings, then the expense of such professional advice shall be borne by the applicant.
- (c) The applicant provides to the Town at the applicant's expense, a recorded three party agreement including the Town as one of the parties, with enforcement running to the Town guaranteeing the continuing 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.

(2) OFF-SITE SHARED PARKING

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

- (a) The area to be used for off-site shared parking shall be in the C-TS, C-WA, or C-OPI zoning district, and except for shared parking within a parking garage or underground /underbuilding parking area shall be located no closer than 150 (one hundred fifty) feet to any residentially zoned land. Said minimum distance is to be measured on a straight line from nearest point of the property to be used for off-site shared parking to nearest point of the residentially zoned property. In addition, any shared parking dedicated to valet parking, shall not be located more than 500 (five hundred) feet from the use which the shared parking is intended to serve.

Mrs. Smith asked Mr. Randolph if the town Council can consider issues like the valet off-site parking before the issue has been reviewed by the Department of Transportation? Mr. Randolph replied affirmatively. Mr. Randolph said this language could be in place in the Zoning Ordinance when and if the DOT provides answers.

- (b) A traffic planner or traffic engineer clearly establishes to the Town Council at the applicant's expense, that all other establishments using the existing parking spaces will primarily utilize these spaces at different times of the day, week, month, or year, from that of the applicant's use, 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.
- (c) If the Building Official should determine that professional advice and/or consultation is required to review the applicant's parking findings, then the expense of such professional advice shall be borne by the applicant.
- (d) 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 except as provided under subsection (e), following.
- (e) The Town Council may approve, by special exception, off-site shared parking within five hundred (500) feet of the proposed or existing use, and said off-site shared parking may be counted towards the Town's off-street parking requirement provided:

- (1) The applicant meets the requirements of Sec. 6.21(1)(2)(a)-(c) and,
- (2) The applicant provides to the Town, at the applicant's expense, a recorded three party agreement, including the Town as one of the parties, with enforcement running to the Town,

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guaranteeing the continuing 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 for any reason 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.

Mr. Moore referred to a set of colored maps on pages 16 and 17 of the report that indicated the areas considered for shared parking.

Responding to comments from Mr. Wyett, Mr. Brisson replied that should the Town approve shared valet parking, the shared parking as proposed addressed the areas which have the largest existing parking problems.

Mr. Wyett said that if the shared valet parking would apply to only half the restaurants in Palm Beach, perhaps the issue should be left alone since it may discriminate against the other half of restaurants.

Mr. Shaw proposed off-site and on-site issues should be separated to be considered as two separate factors. Mr. Shaw recalled the issue originally was for on-site, shared parking, and valets are not the real issue. The issue is - the lot is there and if people are using it, then the lot has a shared parking use.

Motion made by Mr. Shaw to split the item into two parts: the shared parking requirements for Section One which is on-site shared parking, be separated from Section Two which is off-site shared parking. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Moore said that Mr. Shaw's motion made the assumption that the need for extra parking would not be needed for lunch.

Mrs. Smith said it would not be difficult to change the wording or insert some wording to meet the ordinance.

Mr. Shaw suggested that in Item 4, one of the issues to be addressed is the parking requirements for restaurants based on day and evening uses. Mr. Shaw noted that the differential would not be addressed for two more study items.

Mr. Randolph replied that he was not sure that any distinction should be made regarding the subject of on-site shared parking for lunch time, dinner time, or any thing else.

Mr. Moore said the concept for the shared parking counted on using the parking used by offices or day time businesses for evening restaurant patrons. He cited The Esplanade as an example.

Mr. Randolph responded he understood an office use could "give up" its unused parking to a restaurant that would require more parking.

Mr. Moore said the study item was not proposed with that understanding. Mr. Moore said that, depending on the Town Council's actions at this meeting, his department intended to have restaurants post, inside the building, a sign stating where the excess parking exists.

Motion made by Mr. Shaw to approve, as written, the shared parking regulations and requirements for on-site, Item 1, a. b. and c. The motion was seconded by Mr. McLendon.

Mr. Randolph, Mr. Moore, and Mr. Brisson agreed they were comfortable with the way the item was written.

On roll call, the motion carried unanimously.

Mrs. Smith said the second item to be considered was the Off Site Shared Parking as a separate item.

Mr. Moore referred to the maps in the book. He said his recommendation would be to try to consider this item in conjunction with the eventual valet ordinance, to blend the two of them together, and defer this matter to the 96-97 Zoning Season.

After the Council members discussed the issues of the valet and shared parking ordinance, Mr. Randolph responded that the proposed ordinance is a shared parking ordinance, not a valet ordinance. Mr. Randolph continued that the Town Council gave consideration in previous zoning seasons to a shared parking ordinance without consideration of a valet parking ordinance. Mr. Randolph noted that the Zoning Commission took out the word "valet" from the ordinance to eliminate confusion. Mr. Randolph said he did not think the Council should necessarily delay this item because a valet parking ordinance may not be sustained, but the item should be treated separately and independently from a valet parking ordinance, and a determination should be made as to whether this is an appropriate "shared" parking ordinance. He cited Mr. Wyett's

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concern over the possible bias towards a certain segment of restaurants and that was a viable concern.

Mr. Moore said it was the opinion of the Staff and Mr. Brisson that if the Council approved the shared parking, that any area outside of the map presented in the report book would not be eligible and be in violation of the Town's zoning ordinance.

Mr. Randolph stated the Council can discriminate if the discrimination is done on a reasonable basis, and the reasonable basis is the fact the Council is attempting to protect residential properties with a buffer zone of 150 feet, and the only properties that qualify are the ones within the red zones as shown on the maps. Discrimination is not a bad word as long as there is a reason for it.

Mr. Wyett said the 150 foot rule is an excellent rule, and it should be enforced, because it protects areas from being infringed upon; however, one half of the Town would be accommodated and the other half of the Town would be illegal. He said a competitive advantage would be given to one half of the restaurants. Mr. Wyett recommended the item should be sent back to the Zoning Commission, and an effort made to keep the 150 foot rule and to find parking on an equal basis.

Mr. Moore said the Staff would need time to review this item if the Council decided to defer it. He said another zoning season could be handled before the end of the year, and offered to figure costs and time for the item. Mr. Moore added that 5 or 6 restaurants that he was aware of would be affected.

Motion made by Mr. Wyett to defer the issue for further study keeping in mind the 150 foot protection zone. The motion was seconded by Mr. McLendon.

After the Council members discussed the deferral, Mrs. Smith said she saw no reason for the Council to address this item now that may become moot or changed if the valet parking is passed by the State of Florida, at which time the ordinance would have to be reconsidered to accommodate the valet parking. Mrs. Smith added that any time the Council makes the slightest change in an ordinance, a legal bill is run up with the Town Attorney, and to consider this item at this time is not the way to go. Mrs. Smith said if the Town does not end up with a valet parking ordinance, then the Council would go ahead with the proposal from the Zoning Commission. If the Town has a valet parking ordinance, and the restaurants who are impacted by the proposed off site shared parking may realize the problem and may be able to deal with it ahead of time.

On roll call, the motion carried unanimously.

ITEM 3 Night club licenses with music and dance.

Mr. Moore reported that the Zoning Commission recommended approval of the proposal as substituted by the Town Administration and modified by the Zoning Commission to amend Section 2.10, Definitions by adding the following new definitions for bar/lounge, and night club to read as follows:

(37.4) NIGHT CLUB. A restaurant or other establishment dispensing alcoholic beverages for on-site consumption, whether or not food is served, and in which live music is provided by more than one instrument, or entertainment is provided, or where dancing is conducted to live or recorded music.

(5.3) BAR/LOUNGE. An establishment dispensing alcoholic beverage for on-site consumption.

Amend Section 4.20, B. SCHEDULE OF USE REGULATIONS by adding a new item (18) in the Special Exceptions column of the C-TS District.

(18) Night clubs.

Amend Section 4.20 B. SCHEDULE OF USE REGULATIONS adding a new item (P) to the Special Exceptions column of the C-WA District and changing item (F) to read as follows:

(F) Restaurants, night clubs, lounges/bars.(not changed)

Mr. Adrian Winterfield addressed the Council and stated that the term, "drinking establishment" must be defined or eliminated as the terms, "lounges/bars" have been defined.

Mr. Moore responded that if the item was passed, the term would be "bar".

Mr. Shaw said he did not think a night club was a bar/lounge, and the definition as it reads has some definition problems. He questioned the definitions of "entertainment" and "night club". Mr. Shaw said he thought the definition of a night club was a place that had entertainment where entertainment is defined by a production, a show, or a schedule of an event. He added that a night club has dancing and live or recorded music, and differences between a bar/lounge and night club should be defined.

Mr. Wyett replied that he thought they should be defined by original intent.

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Mr. Shaw said he would like to see more explicit definitions so that, if the Town Council would like to have controls at a later date, to see what the permitted uses would be, then the definitions would have been incorporated.

Mr. Moore clarified that the intent of the Zoning Commission was to have separate definitions for a night club and a bar/lounge. He added that questions will always exist regarding "what is entertainment" and "what is not", and any definition will probably always be questioned at some point in time. Mr. Moore suggested the recommendation of the Zoning Commission should be approved, and if problems arise, those problems will be addressed later.

Mr. Moore offered the following alternative language as suggested by Mr. Shaw: "A restaurant or other establishment dispensing alcoholic beverages for on-site consumption whether or not food is served and in which live music is provided by more than one instrument (except when providing background dinner music) or entertainment is provided or where dancing is conducted to live or recorded music".

Mrs. Smith responded that she would prefer not to know who makes the various recommendations so that if they are accepted or declined by the Town Council, it would not be considered personally.

Motion made by Mr. Wyett to accept Item 3 as presented. The motion was seconded by Mr. McDonald.

After the Council members discussed language pertaining to the word, "restaurant", Mr. Brisson said the only reason restaurant was mentioned was to make it clear that a restaurant could be a night club. He suggested "an establishment" dispensing alcoholic beverages, etc., etc could be substituted.

Mrs. Smith said the word, "restaurant", was confusing. Mrs. Smith asked Mr. Wyett if he would agree to drop the word, "restaurant", in his motion? Mr. Wyett agreed.

Mrs. Smith clarified the language as follows: "An establishment dispensing alcoholic beverages for on-site consumption". Mrs. Smith questioned the fact that alcohol must be consumed on-site. Mr. Moore replied that the State has regulations regarding the various types of licenses they issue, and he preferred leaving "consumed on-site" as stated in the ordinance. Mrs. Smith clarified that "where food is served" and "where live music is provided by more than one instrument" would be retained.

Mr. Brisson stated that the wording was necessary to clarify the intent.

Mr. Adrian Winterfield addressed the Town Council and said reference should be made to the beverage license for the establishment. He suggested, "Licensed by the State to dispense alcoholic beverages", or an explicit reference to the license requirement.

Mr. Randolph replied when the ordinance describes an establishment dispensing alcoholic beverages for on-site consumption, the definition has been made without referring to the licensing under the State. Mr. Randolph clarified that the motion included the new language which has the exception for background dinner music. Mr. Wyett concurred that he included the new language in the motion.

On roll call, the motion carried 4-1 with Mr. McLendon casting a negative vote. Mr. McLendon changed his vote to affirmative (5-0) after clarification of the removal of the 50 foot requirement.

ITEM 4. Staff sponsored Town -serving restaurant study including square footage, number of seats, on-site parking spaces and number of parking spaces per seat, lunch vs. dinner.

Mr. Moore said the Zoning Commission recommended leaving as is the present 2,000 square foot threshold and current off street parking requirements for restaurants in the Town. Mr. Moore referred to the study in the report that was performed by staff members and submitted to Mr. Brisson for the preparation of the report.

Mr. Brisson summarized the background of events leading to the study. Mr. Brisson said after all the data was evaluated, he concluded that a change from 2,000 square feet to 3,000 or 3,500 square feet for restaurants may weaken the Town's position which has already been successfully defended twice in the courts. Mr. Brisson said his recommendation would be to leave the 2,000 square foot limitation and maintain that the individual must come in for a special exception for larger space.

Mr. Shaw said he would like to see this item deferred to next year's zoning season where the issue of the 2,000 square foot cap could be applied to public areas or retail sales areas revenue generating space with some criteria that would list store rooms, kitchens, and utility rooms are not a part of the 2,000 square feet and the public access space is what is being dealt with.

Mr. Robert Wood, Chairman of the Zoning Commission, addressed the Town Council. Mr. Wood said the Zoning Commission considered that if the restaurants were allowed to increase beyond the minimum 2,000 square feet, the ultimate effect will be the increased need for parking, increased traffic congestion, increased utilization of the Town's roads, and will cause more problems than the Town may want to deal with at the present time. Mr. Wood said he thought the Town should

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hold the line at the present time, because a potential West Palm Beach Convention Center is being considered. He continued that the major list of restaurants potential convention delegates would utilize would be in Palm Beach, and the increased traffic flow that larger restaurants would generate should be considered. Mr. Wood cited the areas of traffic, density, and parking as limitations, and for those reasons, the present 2,000 square feet limit should be retained. He said he did not think the Zoning Commission should hear the item next season.

Motion made by Mr. McLendon to approve Item 4, leaving the 2,000 square foot town-serving threshold for restaurants "as is". The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Mrs. Smith said the Council would consider the other part of Item 4 regarding the off-street parking requirements for restaurants.

Mr. Brisson reported that the Zoning Commission recommended that the parking requirements remain as they presently exist in the ordinance. Mr. Brisson said that it was observed that some people who come to Palm Beach to have lunch or breakfast are actually coming to the Town for other purposes and those early hours do not generate the need for parking that is reflected in the present parking requirements. Mr. Brisson handed out an alternative proposal which suggested that the parking requirements be set for eating and drinking places; first for a restaurant; and have two separate periods of parking requirements. The first one would be for the early morning hours from breakfast through early dinner hours (5:00 p.m.) the parking requirement would be reduced to approximately 3/4 of the existing requirement in recognition of the fact, that during this period, many people may otherwise be coming to Town for other than just this purpose. Mr. Brisson said that during the later hours, parking requirements would revert to the existing or approximately one parking space for each three seats. He continued that the additional parking requirement could be satisfied through shared parking when office buildings or other types of businesses may be closed.

Mr. Brisson said the lounges, bars, and night clubs would be left with the existing parking requirements. Mr. Brisson added that if a restaurant is really a night club, parking would be required for the restaurant with the night club requirement on top of that for the lounge area as opposed to the restaurant area with the shared parking fulfilling the requirement. Mr. Brisson added that this alternate proposed language was not available until the morning of this meeting.

Responding to Mrs. Smith's query, Mr. Wood said neither he nor the Zoning Commission were aware of Mr. Brisson's alternate suggestions or modifications. Mr. Wood said before the Town Council would make a determination on anything of this nature, the public should have had the opportunity to review the material. Mr. Wood commented that he and a number of Zoning Commission members often wonder why certain items are presented to the Zoning Commission when no recognizable problems to be solved are evident. Mr. Wood did not recall that any restaurants appeared before the Zoning Commission complaining that they needed their parking requirements for lunch reduced as opposed to the parking requirement for dinner. Mr. Wood mentioned that he had reviewed many different zoning ordinances, and he had never seen any separation of parking for lunch and dinner. Mr. Wood said that shared parking ordinances usually take care of those situations, if they are enacted. Mr. Wood concluded the proposal he heard was very complicated, and he suggested the ordinance be left as it is.

Mr. Wyett asked Mr. Brisson what restaurants were studied that would justify the length of the existing hearing and the confusion about something the Zoning Commission does not believe should be addressed?

Mr. Brisson replied he could not identify the particular restaurants.

Mr. Wyett said he felt the Council was wasting their time on this.

Mrs. Smith said she was not entirely clear on why a proposal or decision made by the Zoning Commission is being second guessed on questions that were not asked by the Town Council. Mrs. Smith added that obviously some micro management was going on that she was not aware of, and she did not understand the purpose behind it.

Mr. Moore responded that the purpose of preparing additional documents for the Town Council review in the event the Council wished to go beyond or into other areas was done without reference to any specific Council person who had asked that additional depth be gone into and have available for discussion at this meeting.

Mrs. Smith said the Zoning Commission is the body appointed by the Town Council that makes the recommendations, and questioned why this language was not interjected into the discussions or brought up at the December 6, 1995, meeting. Mrs. Smith asked Mr. Moore if the Town staff thought the recommendations of the Zoning Commission were inadequate?

Mr. Moore responded certainly not, and the Council received the report from the Zoning Commission. Mr. Moore said each Council member had the right to discuss the matters with the Staff and the consultant. He said that some of the discussion that occurred, subsequent to receiving the report, prompted some alternative language to be used for the purpose of discussion only. Mr. Moore said the report of the Zoning Commission stands "as is", and if additional language is not acceptable or if any matter needs additional discussion, then the whole matter can be returned to the Zoning Commission for review of any particular item.

Mrs. Smith said she was uncomfortable with the fact that the Zoning Commission had not seen this language prior

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to this meeting. Mrs. Smith said the additional language should have been made public or given to the Council for review prior to the meeting, but the fact that it was written out, dictated, and handed to the Council by Mr. Brisson implies that Mr. Moore thought it was a good idea. Mrs. Smith said if the language was developed as the discussion was taking place at this meeting, she would not be as uncomfortable with it as Mr. Brisson distributing the material at this time. Mrs. Smith said if the Council members determine the matter needs additional discussion, then the matter should go back to the Zoning Commission for study. Mrs. Smith said the restaurants who are affected are possibly not aware of the changes suggested, and they might wish to speak to it. Mrs. Smith stated public notice should be given on this.

Motion made by Mr. McLendon to fully accept the recommendation on the item, to leave the existing off-street parking requirements as is. The motion was seconded by Mr. Wyett.

Mr. Shaw said he met with Mr. Moore and Mr. Brisson to review the Zoning Commission report. He said the reason for bringing forth the idea was that he did not think the Town should have ordinances that are consistently needing variances, special exceptions, and finding alternative solutions. Mr. Shaw said the Town needs to have a set of rules and regulations that can be complied with and are fair all-around. Mr. Shaw continued that as the shared parking issue develops and a use or double use of a parking lot is allowed, that at the same point, the Town should not be holding, in this case a restaurant, to the same standards for daytime use as evening where other communities have followed suit with this. Mr. Shaw said a restaurant has to provide one space for every three seats, but if shared parking is used, the load could be lightened with what is available in the Town, and the Town is providing more space for the daytime without impacting the night time by splitting it, because the Town has plenty of public lot space at night.

Mr. Shaw said he thought that night clubs should have a 2 to 5 ratio, basically increasing it, because fewer people come to a night club as couples or even two couples than come to a restaurant.

Mr. Wyett asked Mr. Shaw if he had specific examples of existing restaurants who would be benefited by the change?

Mr. Shaw responded, no, however, every restaurant would benefit by the change, because they would not have to provide that level of parking.

Mr. Wyett said that was not true, because if the restaurant operated after 5:00 p.m., it would have to be provided, and the baby could not be split in half.

Mr. Shaw cited the example of the Appollo lot.

Mr. Wyett questioned if the Council were creating a problem that does not now exist?

Mr. Shaw responded a problem was not being created because the Town may be able to forego variance requirements of "where do you have your excess parking" when parking may be available after 5:00 p.m.

Mrs. Smith stated the Town cannot base an ordinance on a parking lot. Mrs. Smith said the restaurants should have had an opportunity to review this. Mrs. Smith said that the Zoning Commission did not include Mr. Shaw's suggestions into their recommendations. Mrs. Smith stated the Council and the Staff should work with the Zoning Commission rather than have it appear that there are two sides to the issue.

Mrs. Smith called the question. On roll call, the motion carried 3/1 with Mr. Shaw casting a negative vote. Mr. McDonald was out of the room when the vote was taken.

ITEM 5. Require all lot, yard and bulk regulations in the R-AA, R-A, and R-B district be determined by the actual size or linear dimension rather than the district.

Mr. Moore reported that the Zoning Commission recommended the approval of the proposal as submitted by the Town Administration to:

1. Amend Section 4.20A, SCHEDULE OF LOT, YARD AND BULK REGULATIONS by adding new footnotes (28) and (29) applicable to the R-A and R-B Districts, to read as follows:

- (28) For lots of 60,000 or more square feet in area, the more stringent of the requirements of the R-AA and R-A Districts relating to minimum front, side and rear yards, maximum lot coverage and minimum landscaped open space, shall apply.
- (29) For lots of 20,000 to 59,999 square feet in area, the more stringent of the requirements of the R-A and R-B Districts relating to minimum front, side and rear yards, maximum lot coverage, and minimum landscaped open space, shall apply, and for lots of 60,000 or more square feet in area, the more stringent of the requirements of the R-AA and R-B Districts relating to minimum front, side and rear yards, maximum lot coverage, and minimum landscaped open space, shall apply.

Mr. Moore said this was a result of a request to study large lots in the lesser zoning districts to make sure that the type

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of set backs and minimum requirements existed as related to the size of the properties that were in the R-B and R-A zoning districts

Mr. Moore, responding to a question from Mr. McLendon, said the number of lots involved would depend upon the number of lots acquired to put together for a home, and some larger parcels exist in smaller zoned districts. Mr. Moore said the purpose of this is to ensure that minimum side yards and minimum fronts that are required for smaller lots do not apply to the larger lots where it would be preferable to have greater set backs for proposed construction.

Mr. McLendon said he would not like to see the Town in a position where the property owner would not have the ability to subdivide his lot in the future by meeting the requirements of this change.

Mr. Moore responded that he thought no penalty would apply to 98% of the situations, but R-A requirements for setbacks and for cubic content and floor area ratio would apply in an R-B zone where the existing lot size was 25,000 square feet.

Mr. Robert Deziel, Attorney representing Mr. and Mrs. Quentin Wall, property owners of a piece of property between Everglade and Seminole and fronting on North Ocean Boulevard, addressed the Town Council. Mr. Deziel distributed a handout to the Town Council, and stated he wanted to address a potential deficiency in the proposal as passed by the Zoning Commission.

Mr. Deziel cited the example of a 25,000 square foot property that would have to abide by some of the restrictions of the R-A zoning district that should have the privileges of the R-A zoning district. Mr. Deziel mentioned the height in the R-B zoning district for a two story structure is 22 feet, and the height in the R-A zoning district is 25 feet, and the height in the R-AA is 30 feet. Mr. Deziel continued that the front yard set back for a 25,000 square foot lot would be severely restricted by this new provision in that the R-A zoning district has the building height plane test and the R-B district does not. Under the R-B zoning district, that two story structure could be set back 30 feet; however, under the R-A zoning district, the requirement would be one foot back for every two feet in height. Mr. Deziel said a 22 or 25 foot high beam would require a 50 foot set back. Mr. Deziel said his client was not too concerned about the setback but would like to have the height privilege that would go along with the restrictions his client would have to comply with on the front and side yard setbacks.

Mr. Deziel said he did not have a specific recommendation, but if the provision is passed, he requested the Town Council consider some of the elements that were not considered by the Zoning Commission and those were the privileges that could be passed on to the property owners. Mr. Deziel cited the example of the newly developed Phipps Subdivision and stated those homes should be set back more than thirty feet, considering the size of the lots; however, that was in the past.

Mrs. Smith asked Mr. Wood if Mr. Deziel's concerns were heard during the Zoning hearings? Mr. Wood responded that for items 28 and 29, the idea was that the most stringent of the requirements for the setbacks, coverage, open spaces, etc. Mr. Wood said he did not see that the minimum restriction for height was included, and he believed the Zoning Commission agreed to modify the height and yard setback for the R-B zone. Mr. Wood said he was not sure that the recommendation would require someone with a 60,000 square foot lot in an R-B district to be restricted to the height in the R-B district. Mr. Wood continued that if someone is meeting every other requirement for R-A setbacks, they should have the same height that R-A has; however, he did not remember that this issue was specifically addressed and commented on at the Zoning hearing.

Mr. Randolph said this was not discussed at the Zoning Commission, and even if the Town Council thinks that Mr. Deziel's suggestion is a good one, the suggestion could not be considered under the ordinance, as advertised, because property owners within the particular zoning district would not have put on notice that the Town might be liberalizing the zoning ordinance, as it relates to height. Mr. Randolph said that if the property owners had known that would be considered, they might be here to object to it. Mr. Randolph said the issue should be readvertised, if consideration would be given to liberalizing the zone to give the benefits as well as the restrictions.

Motion made by Mr. Wyett to defer the item until the next time the Zoning Commission meets, either at its regular session next year or at an additional session this year, should it occur, but not specifically call it for this particular purpose. The motion was seconded by Mr. McLendon.

Mr. Adrian Winterfield addressed the Town Council and stated that this does not belong in the Zoning Ordinances. He said there are few cases, and they should be decided on an "ad hoc" basis by the Architectural Review Commission which has plenty of authority to do what is proposed here on a specific basis as each case may be different.

Mrs. Smith called the question. On roll call, the motion carried unanimously.

ITEM 6. Include in all single-family districts, not just the R-A and R-AA, a requirement for building and height ratios.

Mr. Moore stated the Zoning Commission recommended against the problem of reinstating the building height plane for the front yard setback in the R-B zoning district.

Motion made by Mr. Wyett to accept the recommendation of the Zoning Commission against reinstating the building height plane in the R-B zoning district. The motion was seconded by Mr. McLendon. On roll call, the motion carried

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unanimously.

ITEM 7. Add a height ratio to side yard setbacks in the R-B District. If possible, tie this ratio to the adjacent lot (house) so that the most restrictive would apply.

Mr. Moore stated the Zoning Commission unanimously voted to not recommend instituting a building height ratio as a method of determining side yard setbacks in the R-B zoning district.

Motion made by Mr. Wyett to accept the Zoning Commission's recommendation to reject instituting a minimum side setback computation based on the height of the structure. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

ITEM 8. Regulate the location and property size for new clubs as Special Exceptions in all zoning districts.

Mr. Moore reported that on a 6-1 vote, the Zoning Commission recommended approval of the proposal submitted by the Town Administration and modified by the Zoning Commission to:

Amend Section 4.20B. SCHEDULE OF USE REGULATIONS, relating to private social, swimming, golf, tennis and yacht clubs in the Special Exception Uses column as set forth in item 5 in the R-AA, R-A, and R-B districts; to read as follows:

Private social, swimming, golf, tennis and yacht clubs in existence prior to January 1, 1996.

Mr. Moore said that on a vote of 6-1, the Zoning Commission recommended:

Delete item 4 in the Special Exception Uses column of Section 4.20 B. SCHEDULE OF USE REGULATIONS relating to private social, swimming, golf, tennis and yacht clubs in each of the following zoning districts: R-C, R-D(1) and R-D(2).

Mr. Brisson said that this item, as modified by the Zoning Commission, ultimately allows only those private social, swimming, golf, tennis and yacht clubs that are in existence prior to January 1, 1996 in those particular residential districts.

Motion made by Mr. Wyett to move approval. The motion died for lack of a second.

Mrs. Smith asked Mr. Moore or Mr. Randolph about the formation of tennis clubs in the future between a few tennis playing couples who would want to play on an existing tennis court. Mrs. Smith asked if it would be fair to keep these people out the loop?

Mr. Moore responded that the philosophy of the Town's Zoning Ordinance to this point in time, has always looked at the accessory uses such as swimming pools as accessory uses to a principal use which would be single family residences, and any group use has been looked at as a group use either provided by the Town, such as Seaview Park, or as an alternative, in a private club. Mr. Moore stated there has never been a provision in the ordinance that would directly relate to the use of tennis courts or swimming pools by other than single family residences that would have them on the property. Mr. Moore recalled the Town has provided for beach houses as recreational uses, and a unity of title is currently required to tie the beach house property to the property to which it is located, is generally across the street. Mr. Moore said that some existing beach houses have no unity of title and are grandfathered in. The ordinance was modified in 1986 or 1987 to allow for a distance of 1,500 feet to allow a beach house to be tied to the main residence. Mr. Moore said the philosophy has never been put forward that a private, social, recreational use, such as a tennis court or swimming pool, could be a part of a block area. Mr. Moore said the intent of this amendment is not to preclude that from happening, but, in fact, it does preclude it from happening.

Mrs. Smith said this issue was being addressed because of the Mar-a-Lago Club which led to discussions concerning Club Collette and dining clubs in residential areas on a much smaller scale. Mrs. Smith stated if someone wanted to turn his or her residence into a small dinner club, this ordinance would prohibit them from doing that.

Mr. Adrian Winterfield addressed the Town Council and stated he submitted a memorandum in November. He said he thought this was an over compensation for what did or did not happen with Mar-a-Lago. Mr. Winterfield said there was no reason to take such drastic action because Council always maintains control through the special exception process. He suggested the survey presented is fallacious in that it fails to consider the fact many of the members are not town residents, that there are many classes of membership, and that there are waiting lists. Mr. Winterfield said the presumed purpose in presenting the survey was to convince Council that there was no further need for clubs, perhaps that is true for large scale clubs; but there is no logical reason to prevent the smaller scale clubs.

Mrs. Smith asked Mr. Moore why Club Collette and the Poinciana Club were not on the club list presented to the Town Council?

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Mr. Moore responded that those clubs are in the commercially zoned districts, and the Everglades Club is both residential and commercial.

Mr. Wood said he disagreed with what Mr. Winterfield said. Mr. Wood said there are many zoning ordinances which prohibit the Council from making certain decisions on certain items, and it is correct for a zoning ordinance to prevent the Town Council from having carte blanche authority to decide everything on a variance or special exception. Mr. Wood continued that to specifically dis-allow new, private clubs in these residential areas is appropriate for a zoning ordinance. Mr. Wood said this ordinance would not prevent new private clubs from being established if there is a need, because they can be established in other areas rather than the three mentioned in the ordinance.

Mr. Shaw suggested that private associations, such as block or residents, should be excluded from the ordinance, and a residents' association should have the right to free assembly within their area.

Mr. Wyett replied that would change the character and nature of Palm Beach if allowed, and this zoning regulation would protect the Town.

Motion made by Mr. Wyett to approve the recommendation of the Zoning Commission to disallow private social, swimming, golf, tennis and yacht clubs in R-AA, R-A, and R-B districts that were not in existence prior to January 1, 1996. The motion was seconded by Mr. McDonald.

Mr. Shaw said the purpose of zoning is to outline what can and cannot be done, and he did not like to see something adopted with the intent of returning in five or so years to amend it. Mr. Shaw cited the example of the Park Avenue residents who bought a piece of property and turned it into a public park. Mr. Randolph replied that this ordinance would not preclude a group of residents from doing anything like that.

Mr. Moore noted that all of the existing neighborhood groups are grandfathered in.

Mr. Shaw said he would not like to see it limited to preclude local associations from creating. Mr. Shaw noted that, under the zoning ordinance, these groups could not come to the Town Council for approval. Mr. Randolph replied that was true.

On roll call, the motion carried 4-1 with Mr. Shaw casting a negative vote.

ITEM 9 Establish more definitive procedures for town-serving requirements for all town-serving properties

Mr. Moore stated the Zoning Commission unanimously recommended the approval of the proposal as submitted by the Town Administration and modified by the Zoning Commission:

1. Amend Section 6.40(1) to read as follows:

That the proposed use will not attract the principal portion of its customers/clients from off-island locations. The applicant shall submit evidence satisfactory to the town council that not less than fifty (50) percent of the customers of the proposed use will be "town persons". Evidence submitted in support of this contention shall include credible data or information suitable for review by the Town to determine its credibility and the appropriateness of the applicant's conclusions. The submittal should include a description of the types of information used and the methodology employed to arrive at the conclusion. Information used may include, but shall not be limited to, lists of customer/client addresses or certification thereof by a CPA or registered professional, market studies prepared by independent professional firms, or data from similar operations under control of the applicant.

Mr. Wyett asked Mr. Moore if there were any provision in the language for challenge to the presentation of town-serving information? Mr. Wyett referred to previous incidences that he had challenged the authenticity of the information, but there was no mechanism for challenge.

Mr. Randolph responded that would be challenged by an individual's vote. Mr. Randolph said the language was asking for information to indeed prove they were town-serving, and if a Council Member did not believe that the provided information proved that it was town-serving, the member would simply not vote in favor of the item.

Mr. Wyett asked Mr. Randolph what a court would require for proof under the regulation?

Mr. Randolph replied it would be based upon the competent evidence before the Town Council, and if the court determined, that despite the member's feeling, that competent, substantial evidence existed before the Council, then the applicant would prevail.

Mr. Wyett asked what "other registered professions" were?

Mr. Moore replied that was language the Zoning Commission added, and he remembered it referred to attorneys,

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architects, engineers, who would make that presentation. Mr. Moore said he did not think that accountants who were not CPA's were registered in any other fashion he was aware of.

Mr. Wyett said he did not understand how an architect could verify anyone was town-serving since it was a matter of tallying of numbers, and it was a very hard thing to prove or disprove especially for a restaurant.

Mrs. Smith asked Mr. Randolph why the language could not be made stronger, and instead of saying, "information used may include", say "shall include a list of customer/clients and certification thereof by a CPA." Mrs. Smith agreed that the language was not strong enough as stated. Mrs. Smith said that any professional may be employed by an establishment and is asked to say it is town-serving will say that the establishment is town-serving.

Mr. Randolph responded he believed the language could be changed to "shall include" and that would make it stronger. Mr. Randolph said he did not think the Council can require a list AND certification by a CPA because there are certain instances where lists of customers may be confidential information, and that is the reason an alternative to use a CPA is available.

Mr. Randolph, responding to Mr. Moore's statement as to what other registered professional meant, the limited context that "registered professional" is used, it does not refer to architects, engineers, or others because in the sentence, lists of customers, client addresses or certification by a CPA or other registered professionals. In other words, it is not talking about an architect or engineer testifying to some other phase of the project. This is limited to the list of customers. Mr. Randolph said it could be made stronger by requiring that it be by a CPA. If the applicant chooses not to provide a customer list, the alternative is to have a CPA verify that the list is correct.

Mrs. Smith asked Mr. Randolph what the guarantee was that the CPA is telling the truth?

Mr. Shaw responded their licenses would be the guarantees.

Responding to Mrs. Smith's concerns regarding the veracity of the CPA information, Mr. Wyett suggested the applicant would have to use an independent CPA -- not selected by the applicant. Mrs. Smith suggesting the CPA should be selected by the Town.

Mr. Shaw said that if a CPA is willing to sign a document that is no different from signing an IRS form or a bank statement, and a CPA will not jeopardize his or her reputation to verify that something is town-serving. Mr. Shaw said the concern should be if it would be an audited list to be sure the 500 people who live off the island were not left off. Mr. Shaw said if this is so difficult that the Town has to move in and do its own audit to determine if it is viable, it is obvious that it is something than cannot be done. Mr. Shaw said the Town should receive either a client list with names and addresses or a certification by a CPA that the list represents 100% of their clientele, and that it represents that 50% of the list is town-serving.

Mrs. Smith asked how many of the CPA's has the Town challenged? Mr. Moore replied, "None." Mrs. Smith said the Town is accepting the CPAs at their words, and the purpose of this is to protect the residents of the Town that newly formed establishments are town-serving. Mrs. Smith said the matter was put on the zoning study items because several instances have been questioned in the past year.

Mr. Shaw said he did not think it was fair of the Town Council to create a standard that is going to say that a certified public accountant or a member of the Florida Bar is going to intentionally perjure themselves simply to satisfy a client's being able to prove a 50% ratio. Mr. Shaw said this was being taken beyond a reasonable doubt.

Mr. Wyett recommended the word "independent" be inserted before CPA.

Mr. Moore said the Town has 35 banks that will not release a customer list to the Town, and if independent certified public accountants would have to investigate their records, someone will have to pay the cost for doing that on a yearly basis for the occupational license renewal. Mr. Moore suggested an audit tactic could be used, and the Administration could pick at random to audit 5% of the ones that come back.

Mr. Randolph said the Town cannot do that because once the information has been received that was intended to be private, it is a matter of public record, and that information would have to be made public pursuant to public record request. Mr. Randolph said the word "shall" could be used in place of "may"; however, under the proposal, the Town will be requiring an addition of market studies prepared by independent professional firms or data from similar operations under the control of the applicant. Mr. Randolph said this intended to not only require a list to be provided, but to provide what the Town Council determined to be creditable evidence to show a market study prepared by an independent professional firm or data from similar operations.

Mr. McLendon said he understood the intent was to give an option of three or four different things used by the professional to certify.

Mr. Adrian Winterfield addressed the Town Council and stated he had covered the topic on page two of his memorandum. Mr. Winterfield said it was extremely difficult to check the accuracy of where customers actually live, and

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the whole concept, as successful as it may have seemed to have been, is not destined ultimately to succeed. Mr. Winterfield recalled that when a limitation was applied to charitable solicitations on the amount that could be devoted to costs, everyone remained within the proper figure. However, when the Supreme Court said you cannot do that, now the figures are in the 40 - 50% range. Mr. Winterfield said that the way the ordinance is written refers only to customers. He did not know what was intended since a customer may enter a store once, twice, or many times, and transactions may be looked at in different manners--the client, customer, the number of transactions, and the dollar volume. He said if 2 of the 3 were attributed to town persons, perhaps it would make more sense.

Mr. Wyett said he did not think the Council was questioning the banks in Town, although they are subject to the same rules and regulations, but the focus was on a very few operations that have a problem proving they were town-serving.

Mr. Shaw reaffirmed the wordage of the ordinance, and the paragraph to be amended to read: "information used shall include but not limited to lists of customers/client addresses or certification thereof by a CPA, market studies prepared by independent professional firms, or data of similar operations under the control of the applicant". Mrs. Smith said her understanding of the wordage was the same as Mr. Shaw's.

Motion made by Mr. Wyett to approve the recommendation of the Zoning Commission. Mr. Wyett amended his motion to include the aforementioned changes as listed by Mr. Shaw. The motion was seconded by Mr. Shaw.

Mr. Randolph suggested the following changes: (starting at the last sentence) "The submittal shall include a description of the types of information used and the methodology employed to arrive at the conclusion. Information used shall include, but shall not be limited to, lists of customers/client addresses or certification thereof by an independent CPA approved by the Town or market studies prepared by independent professional firms or data from similar operations under the control of the applicant."

Mr. Wyett, the maker of the motion, and Mr. Shaw, the seconder, approved the modifications as presented by Mr. Randolph. On roll call, the motion carried unanimously.

IX. ANY OTHER ITEMS

There were none.

X. ADJOURNMENT

The meeting was adjourned at 5:15 p.m. to be reconvened on January 4, 1996, at 9:30 a.m.

MINUTES OF THE MEETING HELD ON JANUARY 4, 1996

ATTENDANCE AND ROLL CALL: President Lesly Smith reconvened the Special Town Council meeting on Zoning at 9:30 a.m. on January 4, 1996. The following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Smith, President Pro-Tem McDonald, Councilmen Shaw, McLendon, and Wyett. Others attending the meeting were: Town Manager Doney, Town Attorney Randolph, Director of Planning, Zoning & Building Moore, Zoning Administrator Castro, Zoning Consultant Brisson, and Town Clerk Pollitt.

ITEM 10 Study split level residential regulations (additions creating three stories).

Mr. Moore reported that the Zoning Commission voted 6-1 to recommend approval of the proposal as submitted by the Town Administration to amend footnote #27 of Section 4.20 A. SCHEDULE OF LOT, YARD, AND BULK REGULATIONS to read as follows:

- (27) Single-family and two-family multi-level or split level structures, may be constructed in "R" districts provided that in no portion of the structure is more than two(2) habitable floors in vertical alignment, and provided that the structure meets all applicable lot, yard and bulk regulations for two-story structures in the district.

Mr. Moore explained this change allowed for second stories over first stories in areas where the topography of the land changes, and any two stories could be above each other, but not a third story even partially above one or two other stories.

Mr. Brisson explained the existing regulations and the proposed regulations as shown on page 47 of the Zoning Report.

Mrs. Smith said she was opposed to allowing more stories as illustrated in Mr. Brisson's drawing. Mrs. Smith asked

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Mr. Moore why this was listed as a study item?

Mr. Moore replied the Town Council had considered zoning variance requests for third stories, and in order to address this, two stories on top of each other were studied.

Mrs. Smith said although the Council had approved at least one variance, it was done under protest from neighbors. Mrs. Smith noted that these houses are very large and loom over the neighbors; the side profile of these buildings are enormous. Mrs. Smith recalled the Council may have approved it, but the vote was not unanimous, and people spoke against it.

Mrs. Smith said this has occurred in many instances where people are buying small houses, making them larger by doing the split level approach, and it is not compatible with some of the neighborhoods. Mrs. Smith stated she would rather have applicants come to the Town Council for variances. Mrs. Smith recalled the Council did not ask the Staff to eliminate the variances, but the Council asked the Zoning Commission to look at this for the size.

Mr. Moore said the proposal covered all zoning districts.

Mr. Shaw questioned that a height plane should be imposed across a building as the topography of the land increased and put a hardship on the owner, although the owner has a right to come to the Council for a variance. Mr. Shaw said the Council could establish guidelines so that it is not an issue of granting variances that are offered in one condition that may not be applicable.

Mrs. Smith said she thought the forum would be eliminated for the neighbors and the residents to object to a house that is not in keeping with the neighborhood. Mrs. Smith stated she would like to see the issue left as a variance to allow the Council to make decisions on an individual basis.

Responding to comments from Mr. Wyett regarding garages located in basement areas, Mr. Moore said that no requirement states that it must be a garage in that area. He continued that the garage could be constructed as an independent structure or attached in some other way to some other portion of the building.

Mr. Wyett said most of the properties in Town are flat; however, the problem exists mainly on North and South Ocean Boulevard and two or so streets where there are some hills.

Mrs. Smith, citing the example given by Mr. Moore on South Ocean Boulevard, said if the variance had not been presented to the Council, the house would have been much larger. Mrs. Smith stated the house is very large although the Council re-worked the entire project and approved a smaller size than originally presented. Mrs. Smith added that the approval was not unanimous.

Mr. Moore mentioned that the courts, in a case similar to this on Lagomar Road, the Bernard Case, said when the Town considered variances, the Town has to consider if there is a reasonable use on the property. Mr. Moore said if the Council's desire is to permit this type of construction, that would be the way to do it and not have the potential of litigation by someone who felt injured by the particular structure. Mr. Moore said that if the Council did not wish to do that, he advised that under the court case, granting a variance is difficult and have it withstand any legal challenge.

Mr. Wyett asked if this change in the ordinance would create as many problems as it solves?

Mr. Moore replied he was not sure that it would create problems and speculated that a different type of variance request could come before the Council; however, a hardship would be more difficult to come up with.

Mrs. Smith stated she did not think it was the intention of the Council to avoid hearing variances when the Council asked that it be looked into.

Mr. McDonald asked Mr. Randolph to comment on the Bernard case as mentioned by Mr. Moore. Mr. Randolph replied the case deserves attention. The Bernard case involved a situation where someone wanted to expand a bedroom on the second floor. Mr. Randolph recalled that it did not involve a staggered floor arrangement, but was a simple two story house where the owner wanted to extend the bedroom. The neighbor objected and the court stated that a person is not entitled to a variance on his property where there is an otherwise reasonable use on the property. The court agreed with the neighbor, and that argument is used in many cases. The Town potentially faces that argument every time there is a challenge to a variance.

Motion made by Mr. McLendon to approve the Zoning Commission's recommendation to amend footnote #27 of Section 4.20. The Motion was seconded by Mr. Wyett. On roll call, the motion carried 3/2 with Mr. McDonald and Mrs. Smith voting negatively.

ITEM 11. Study a provision to encourage underground parking for multi-family developments.

Mr. Moore reported that the Zoning Commission unanimously recommended approval of a proposal submitted by

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the Town Administration and modified by the Zoning Commission to:

Amend Section 6.21, OFF-STREET PARKING, subsection (H), Utilization of Structures (1) to read as follows:

- (1) The structure shall conform to all lot, yard and bulk requirements of the district in which it is located except as follows:

In the R-C, R-D(1) and R-D(2) Districts, when two-family, townhouse or multi-family development includes all required off-street parking, other than required guest spaces, in parking located underground or wholly under the building, the first eight (8) feet of such under story parking shall not count towards allowable building height and maximum allowable building coverage may be increased by five (5) percent.

- (B) On a vote of 7-0, the Zoning Commission recommended the Town Administration investigate additional methods to provide incentives for underground parking in residential and commercial zoning districts.

Mr. Moore said that the Council had directed the Staff to study and come forward with some suggestions on how to increase the attractiveness to a developer to produce underground or under building parking. Mr. Moore said the Staff suggested giving 8 feet in height as well as a 5% increase on the allowable lot coverage to offer trade-offs to get everything underground. Mr. Moore noted that the Zoning Commission did insert the words, "other than required guest spaces".

Mr. Shaw said if eight feet is added to a residence, the result will be a looming structure. Mr. Shaw suggested the amendment be modified to use the FEMA level (7.5 feet) as a point of measurement, and they must be underground to FEMA's level and then start going up. He said the advantage of that would be if a property would be at 10 feet, they would be able to put 2.5 feet of the 8 feet underground by excavating so that the bulk height of 8 feet that is being added would now be reduced. Mr. Shaw added that it may be difficult to get all the parking underground in exchange for the 5% increase, and he proposed a ratio for every two spaces underground they would get a 1% increase.

Mr. McDonald requested clarification of the 7.5 feet and asked if FEMA's requirement was 7.0 feet, not 7.5 feet?

Mr. Moore responded the extra half foot has always been the Town's position that it should be at least 6 inches above, and it is the only area a variance could be considered under the FEMA rules and regulations. He added the requirement is 8 feet on the south 1,000 feet of Everglades Island, and one other section of Town requires 10 feet along the ocean front.

Mr. Moore, responding to Mr. Shaw's comments, said the Town is obligated to use FEMA's figures. In a building that is going to be a multi-family building, the consideration of putting the property underground versus the benefit of getting some additional height and additional lot coverage, there has to be a comparison done by the developer to determine if that would be advantageous. He said the Town's goal is to offer some incentive, and splitting it at this point, may not be usable or feasible, because the developer may say that it is not feasible. Mr. Moore said the Council may or may not want to consider taking the two family townhouses out, because it is rather superfluous. Mr. Moore recommended staying with the existing language to see if it is an acceptable feature for someone who will be developing a building such as the five story one on Brazilian Avenue. He suggested, if it is tried, feedback could be provided to the Town Council in the future, but the offering of the incentive is worthy of giving it a try.

Mr. Wyett said he thought it was a good idea to encourage developers to use underground parking to alleviate the congestion on the streets that is presently being created by inadequate parking.

Mr. Shaw said, after hearing the discussion, he would like to not recommend the use of a sliding scale, and that this is an all or nothing question. Mr. Shaw said the FEMA level should be used as the guideline.

After discussing the two-family house issue, Mr. Moore said he would like to recommend that the two-family houses be taken out of the particular category, and the attempt was to achieve a bonus for multi-family to get the parking all underground rather than two-family houses.

Mr. Wyett said he thought two-family houses should be required to have two garages each.

Mr. Moore said if the issue of one car versus two cars was to be considered, it would have to go back to the Zoning Commission, because it was not advertised.

Mrs. Smith asked Mr. Moore to explain the difference between a two-family house and a townhouse.

Mr. Moore responded that a distinction between the style of development which have different regulations for townhouses and duplexes, and the Building Code requires different fire separation, plumbing, electrical, and mechanical separations when a two-family duplex or a townhouse is built. He added that a townhouse is a more rigid form of construction and is encouraged in the R-C district but four units are required for a townhouse. Multi-family is 3 units. Mr. Moore said it would do no harm to use the 7.5 foot FEMA number for the starting point of the 8 feet.

Motion made by Mr. Wyett to approve the recommendation of the Zoning Commission with the elimination of two family houses and 7.5 feet would be used as the starting point of measurement. The motion was seconded by Mr. Shaw. On

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roll call, the motion carried unanimously.

ITEM 12. Proposed Revision to Section 2.10, page 2008.1 of the Ordinance.

Mr. Moore reported that the Zoning Commission unanimously recommended that the issue of adding a new definition for dimensional variance be deferred to the 1996-97 Zoning Season. Mr. Moore said a great deal of discussion took place regarding use variance versus dimensional variance, and the Council cannot give a use variance which is in the definition of "variance" currently. He said the extended discussion required working out some of the language with the Zoning Commission Chairman and bringing it back next year for further consideration.

Motion was made by Mr. Wyett and seconded by Mr. McLendon to defer the item to the 1996-97 Zoning Season. On roll call, the motion carried 4-0. Mr. McDonald was out of the room when the vote was called.

ITEM 13. Proposed Revision to Section 6.21 on page 2054 of the Zoning Ordinance.

Mr. Moore reported the Zoning Commission recommended approval of the proposal as submitted by Town Administration to:

Amend Section 6.21, Schedule of Off-street Parking Requirements, by amending paragraph (2) to read as follows:

(2) Multi-family dwellings (3 units or more)

<u># of units</u>	<u>Required parking spaces</u>
3	10
4	12
5	13
6 or more units	2 per dwelling unit plus 1 per 5 units or portion thereof

Mr. Moore reported it would be advantageous for Staff to spell out the parking requirements taking into consideration the guest parking as well as service vehicles that may come to the complex below 6 units.

Mr. Shaw asked if consideration should be given to "the bedroom factor"? He explained that a one bedroom unit versus a three bedroom unit has the potential for having more cars.

Mr. Moore responded he would strongly suggest to not use a bedroom as a criteria as different ways exist to mask the identity of bedrooms. He added that when a structure is built, it is not possible to determine the number of people who would live in the house over the years.

Mrs. Smith recalled that many large one bedroom houses exist in Palm Beach, because that is what the owner wanted.

Mr. Wyett said he found the number of required spaces inadequate considering the number of domestic helpers and service companies required for the care and maintenance of the units.

Mrs. Smith asked if three spaces were allowed for four units why would not three spaces for five units for a total of fifteen spaces be required?

Mr. Moore replied that the assumption was made that the more units there are, the service people and guests would be arriving at intervals that would not demand a full number of spaces.

Mr. Wyett responded that most residents do not stagger the domestic help and on many days, many of the service vehicles would be on the street. He added that additional family members increase the activity at holiday time.

Mr. Shaw suggested there should be three spaces per dwelling unit for five plus units, plus one space per five units.

Mr. Moore said the problem with doing that is the ordinance currently requires two parking spaces per resident, and this change would inflict a more severe requirement on an apartment than a single family residence. Mr. Moore suggested if the changes were great, the changes would have to be advertised.

Mrs. Smith suggested the number five should be changed to fifteen spaces in lieu of thirteen spaces as proposed.

Mr. Randolph responded that would not be a problem, because the ordinance would be advertised one more time.

Mr. Shaw said he did not think the spaces for domestic help and service personnel should be grouped together.

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Mr. Randolph responded that he thought the Council was taking an entirely different approach to the matter than any approach considered by the Zoning Commission this year. Mr. Randolph said if the discussed changes were made, then the Zoning Commission should study it and pass what is presented at this meeting. He added that the Zoning Commission has not had the opportunity to look at the issue to consider whether or not it is appropriate for these units to have three spaces per unit as opposed to the residences that are required to have two spaces per unit.

Mrs. Smith said the Zoning Commission looked at this item on the basis of multi-family dwellings, so the issue of single family residences did not come into the picture. Mrs. Smith said the Zoning Commission was not asked to look at parking requirements for the entire Town. They were asked to look at multi-family which is what they did. Mrs. Smith said the Council was discussing multi-family that are in a more congested area of the Town in most instances and they were attempting to find what would be, they felt, the required parking spaces for multi-family dwellings. Mrs. Smith stated she did not think single family residences had to be discussed at this meeting.

Mr. Randolph replied, that from a legal standpoint, it is meritorious to give consideration to the single family residence issue and no thought was given to that by anyone when they looked at this because it was not looked at as a three for one type thing, it was just looked at as what the Staff thought was appropriate for it. Mr. Randolph said that if it were approached in the manner the Council is attempting to look at it now, it may have been an issue which the Zoning Commission wanted to consider as a matter of fairness and as a matter of legality, and no thought had been given to that, either by Staff or by the Zoning Commission, to this date. Mr. Randolph said if the Town Council would like to go ahead and re-advertise the more restrictive requirements, that can be done.

Mrs. Smith said the purpose behind the zoning is to specify the parking spaces in this particular case, and people who would be interested in buying in a three unit building would like to know that each unit has three parking spaces. Mrs. Smith said, as far as the congestion in the Town, if the units that are built have three parking spaces each, that is a good requirement. Mrs. Smith that if, legally, people want to challenge that, and they do not want to build multi-family units because the Town has made the parking too restrictive, that is their problem. Mrs. Smith said the Town Council is attempting to make provisions for the residents of this town and avoid the congestion by saying three parking spaces are required.

Mr. Shaw clarified that multi-family dwelling included RD(2) districts. Mr. Moore responded that was correct. Mr. Shaw said he thought the Council was dwelling on smaller, multi-family units and realistically when a 30 or 50 unit development is considered, the ratio may be off. Mr. Shaw said the answer may be to go three for one up to ten units or ten or more, and that eliminated the townhouse environment.

Mr. Moore replied that very few places are left in the Town to develop 50 unit buildings, and the area of concern was on the multi-family, four or five units, which are the prime type of re-development that is expected primarily in the R-C zoning district and somewhat in the RD(2) districts after the approved changes. Mr. Moore said the concept of trying to provide for off-street parking for service vehicles for people who would be domestic employees was the purpose of putting in the numbers. Mr. Moore said the numbers could be modified; however, he pointed out that if the numbers were modified and made a straight one for three, then six units would be required for a duplex, and that is an increase over the four parking spaces presently required for a duplex. Mr. Moore said this was not discussed with the Zoning Commission, and there is a purpose for requiring more for multi-family units than would be required for single family units. He said that reason is the fact that parking would be centrally located without the ability to necessarily park in front of one's property or on extra property that is in the single family residence areas. The logic for doing it would include parking for the domestic help, service vehicles, and guests.

Mr. Wood said that due to the inter-relationship of the single family, duplex, and multi-family parking requirements, all three items should be considered together. Mr. Wood said that as a result of that, since the Zoning Commission did not consider that this year, this item should be deferred and studied in one package.

Motion made by Mr. McLendon to defer the item to the Zoning Commission to be studied during the 1996-97 season. The motion dies for lack of a second.

Mr. Shaw said he thought construction would occur during the next year, and he was seriously concerned that it will too late if this is deferred. Motion made by Mr. Shaw to approve modification to the parking requirements, multi-family dwelling - 3 units or more, to be from 3 to 9 units, 3 spaces per unit; 10 or more units will be 2 per dwelling unit plus 1 for 5 units or portions thereof.

Mrs. Smith said this has not been advertised, and this change would not be possible.

Mr. Moore replied the Staff would recommend that the Town Council pass the Zoning Commission's recommendations, 3 for 10, 4 for 12, 5 for 15, 6 or more would be 2 dwelling units per unit plus 1 for 5 units, portion thereof, and ask the Staff to take it back to the Zoning Commission to look at the relationship between the single family requirement and the duplex as well as the other issue.

Mr. McLendon said fewer total parking spaces would be required for 6 units as opposed to 5 units.

Mr. Moore responded the issue is extra spaces; the basis is 1 unit for 2 parking spaces plus the extra parking for visitors. After Mr. McLendon explained the parking space requirement as proposed, Mr. Moore agreed with Mr. McLendon

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and suggested staying with the 13 space requirement.

Mr. Shaw suggested changing the unit threshold to 6 or 8 units, but questioned if the item would have to be re-advertised.

Mr. Randolph replied that would be a major subject that has not been discussed by anyone including the Staff, Zoning Commission, or advertised to the Public.

Mrs. Smith said the intention was to put in some required parking spaces for this season that are not in effect.

Mr. McLendon said he would like to see the recommendation enacted and address in again when it needs to be changed.

Responding to Mrs. Smith's question concerning his motion, Mr. Shaw replied his motion did not go anywhere. Mr. Shaw made a motion to approve the recommendation of the Zoning Commission with the exception that the five units be modified to fourteen spaces in lieu of thirteen. The motion was seconded by Mr. Wyett.

Mr. Randolph said he had no problem with that.

Mr. Adrian Winterfield addressed the Town Council and said the Council was creating a number of nonconformities. Mr. Winterfield questioned if attention was given to the possibility of requiring loading zones, in effect, the Town would be contributing from the street parking. Mr. Winterfield said, as the Council indicated, that the burden is greatest upon the smallest number, and he was unable to follow the reasoning of economies of scale. Mr. Winterfield continued that if, in reality, each of the five units required separate tradesmen, then the result would be as many, and the only difference might be, and not necessarily, in guests.

On roll call, the motion carried unanimously.

Mr. Wyett noted, as Mr. Shaw suggested, that the item be returned to the Zoning Commission for complete review.

(President Smith passed the gavel to President Pro-Tem McDonald and left the meeting.)

ITEM 14. Proposed Revision to Section 4.20, Schedule A. On page 2013 of the Zoning Ordinance.

Mr. Moore reported that on a vote of 7-0, the Zoning Commission recommended approval of the proposal submitted by Town Administration and modified by the Zoning Commission to:

Amend Section 4.20 A., Schedule of Lot, Yard and Bulk Regulations by increasing the existing minimum lot width, and side yard setback requirements for one-family and two-family development in the R-C zoning district as follows:

Minimum Lot Width Requirements.

	Existing	Proposed
One-family	75'	100'
Two-family	75'	125'

Minimum Side Yard Setbacks:

	Existing	Proposed
One-family	10.0'	One-story 12.5'
		Two-story 12.5'
Two-family	12.5'	One-story 12.5'
		Two-story 15.0'

Mr. Moore said the item was requested to be studied because of the increasing number of applications for two-family and sometimes one-family in the R-C zoning district. Mr. Moore said the minimum requirements in R-B zoning districts for single-family were suggested to be imposed in the R-C district and the requirements for a two-family should be increased regarding lot width and side yard setbacks because the effect to the neighbors on the side yard and the ability to construct a two unit complex that would provide for parking that would be either on the side or rear of the structure.

Mr. Wyett said he thought it was a good idea, but asked Mr. Wood, on the one-family, second story, why the Zoning Commission suggested the same proposed requirement as the one-story?

Mr. Wood responded the reason the changes regarding one-family houses were proposed was to encourage the

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development of single-family houses in the R-C district, because that would result in lower density. Mr. Wood continued that this was suggested by the architect on the Zoning Commission, Eugene Lawrence, who felt that this would make it easier, less expensive, and facilitate the development of single-family as opposed to two-family houses. Mr. Wood said the differentials as stated would not unduly be adverse to any of the other residents, and that was the reason the suggested changes were made only for single-family houses.

Mr. McLendon said the increase in minimum lot width between existing and proposed for two-family is severe, from 75' to 125'. Mr. McLendon questioned how many properties would be adversely affected.

Mr. Moore asked Mr. Randolph to comment on this change as it may or may not be affected by the Bert Harris Property Rights Law.

Mr. Randolph replied that this was one of the issues which perhaps could involve the Bert Harris Property Rights Act, because the burden will have been increased on a two-family property by changing the minimum lot width requirement from 75' to 125'. Therefore, someone who had the ability to build a two-family dwelling on a 75' lot will no longer have that ability, so two things must be taken into consideration when looking at the Act:

When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief which may include compensation for the actual loss to the fair market value of the real property caused by the action of the government. A determination has to be made what an "inordinate burden" is, and that will not be known until the courts decide; however, the definition states "an inordinate burden means that an action of a governmental entity has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable investment back expectation for the existing use of the real property or a vested right to a specific use of the property."

Mr. Randolph added that a real issue exists for this item and one that the Council needs to take into account when imposing these kinds of restrictions.

Mr. Shaw asked what the width of lots were generally in the R-C district?

Mr. Moore responded the lots vary from and were platted many years ago from 25 to 50 feet. Mr. Moore said portions of the 25 foot or 50 foot lots were put together at different times during the original development of the properties. Mr. Moore noted that the size of the lot is dependent upon the number of parcels that can be amassed by someone who is redeveloping, and the intent was to ask a developer to amass even more for the two units so they could provide for more side yard relief and for the ability to build garages that would be entered on the sides and/or rear.

Mr. Shaw observed that to take a two-family and change it from 75' to 125' means a developer would have to amass three units since there are no existing 25' lots. Mr. Shaw said the potential of taking a 50' unit, adding the adjoining unit, the result would be 100', and the probabilities are not there to enable the developer to add the odd 25'. Mr. Shaw proposed the 125' for a two-family be reduced to the 100' to make it more feasible to comply with the zoning changes. Mr. Shaw noted that Mr. Wood mentioned the intention of the change was to encourage the building of one-family homes, and if that were the case, perhaps the side yard setback should be left at 10' in the R-C, giving them the opportunity to create the largest home they would desire on the lot.

Mr. Moore responded that the 100' has some logic; however, the side yard setback does not address the ability for the architects to have designed the building to pull back from the neighbors' properties.

Mr. Wood recalled the effect the Zoning Commission was attempting to create was the development of single family housing. Mr. Wood said he noticed that it would be very difficult for two-family housing to continue to exist, and the Zoning Commission did not ask Mr. Randolph if the new Property Rights Act would apply. Mr. Wood continued that if the Zoning Commission had checked with Mr. Randolph, the two-family would not have been increased to 125', and this may well impact the ability of someone who owns some of those lots to develop properties. Mr. Wood suggested changing the proposed footage back to 75' and rework this item at another time, because Mr. Randolph's advice should be followed.

Mr. Adrian Winterfield addressed the Council and said he had difficulty looking at the Schedule of Lot, Yard, and Bulk Regulations, comprehending how it is possible to recommend a greater, minimum, lot size for two-family than it is for multi-family, but if the recommendations of Mr. Wood were followed, that matter would become moot. Mr. Winterfield said that one of the problems, dating back several years, is the increase of the minimum lot size for two-family is now 13,333 square feet in lieu of 10,000 square feet, and it was his understanding that in most cases, particularly in the Comprehensive Plan, the two-family residence is considered with the single-family residence at least for statistical purposes, although it is in effect two houses on a single family lot with a common wall.

Mr. Robert Deziel, Attorney, addressed the Town Council and said, as a practical matter, he had represented everyone who had built all the townhouses in Town over the last 5-7 years. Mr. Deziel stated no duplexes exist on 75' lots, and it is precluded because of the dimension that is required. All the duplexes are on either 100' or 125' lots. Mr. Deziel said he did not think anything would be achieved by changing the minimum to 100', and it should either be left at 75' or go to 125', since the 100' does not provide the room for side facing garages.

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Mr. Deziel said that many property owners who own 100' lots with over 133' of depth who think they have a buildable duplex lot are not aware of this discussion. Mr. Deziel suggested the side yard setbacks could be increased; however, he thought single-family homes should have lesser side yard setbacks.

Mr. Wyett agreed that the 125' width should be decreased to 100'; however, he suggested the side yard setbacks should be increased from 12.5' to 15' for the two-family residences.

Mr. McDonald said Mr. Wyett's suggestion may have merit; however, he suggested Mr. Wood's recommendation should be followed and refer this item back to the Zoning Commission. Mr. McDonald said he would also like to see what kind of litigation is going to occur under the Harris Act, and this item is rife for litigation.

Motion made by Mr. McLendon to approve Mr. Wood's recommendation to defer the item back to the Zoning Commission. Mr. McDonald passed the gavel and seconded the motion.

Mr. Shaw said the Council can always come back and address something, and not withstanding the Harris Act, that if there is a problem, it can still be addressed by a variance and it could be modified later. Mr. Shaw suggested looking at the reduction of the two-family from 125' to 100', and that would minimize the problem. Mr. Shaw said that by maintaining the side yard setback for a one-family, one story at 10', to reduce density as stated in the Comprehensive Plan, that would not jeopardize the Town in the courts. Mr. Shaw asked that the motion be withdrawn and reconsidered.

Mr. McLendon replied that the changes the Town Council talked about making to what was recommended were severe enough that the Council probably does not have the right to do that.

Mr. Shaw said that under the one-family, no changes would be made on the lot width, and under the two-family, 75' would be changed to 100' which reflects the existing sizes of lots in the area. Mr. Shaw continued that the side yard setbacks for the single-family, one story, would be left at 10', and the two-family side yard setbacks would be left at what it was for a single story. Mr. Shaw said the changes would apply only to the two-family or two story home, and the integrity of the neighborhood would be maintained in single-family option. Mr. Shaw said the Comprehensive Plan would not be hurt, and the Council would probably consider variances.

Mr. McDonald asked Mr. McLendon if he wished to withdraw his motion. Mr. McLendon declined to withdraw the motion.

On roll call, the motion carried 3-2 with Mr. Shaw and Mr. Wyett voting negatively. Mayor Ilyinsky voted in place of President Smith who was absent from the meeting.

Mr. McDonald stated the item will be deferred back to the Zoning Commission.

ITEM 15. Proposed Revision to Section 5.11 on page 2036.1 of the Zoning Ordinance.

Mr. Moore reported that the Zoning Commission unanimously recommended approval of the proposal of the Town Administration to:

Amend Section 5.11, Existing building lots, to permit single-family development or redevelopment on nonconforming lots as a Special Exception with Site Plan Review for unrecorded lots and as Site Plan Review for platted lots, thus eliminating the need for a variance. The lots must meet all other lot, yard, and bulk regulation in the R district in which they are located. The changes necessary to accommodate this proposal would be as follows:

(5.11) EXISTING BUILDING LOTS. A single-family structure may be constructed on any existing nonconforming lot at the time of adoption of this ordinance in the R-AA, R-A, and R-B zoning districts if said lot is less than the minimum area or dimension required for building lots in the R district in which it is located, provided, however, that a Special Exception with Site Plan Review shall be required for an unplatted lot and Site Plan Review shall be required for a platted lot. In addition, all new construction must comply with all other provisions of the schedule of lot, yard, and bulk requirements of this ordinance, and provided further, that the owner of said lot does not own any adjacent vacant land which could create a conforming lot if said vacant land were combined with the lot deficient in area.

Mr. Moore stated the purpose of this item was to remove a nonconforming lot, before construction, from the variance category and put it into the special exception category. Mr. Moore said a site plan review would be required for platted lot only, and the platted lot was accepted, at one time by the Town, as a buildable lot by accepting the subdivision.

Mr. McLendon said he was sympathetic to properties that have been rezoned to nonconformity and non-use.

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

Mr. Robert Deziel, Attorney, asked the Council if line 4 on page 10 of the proposal should be changed to "and/or"?

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Mr. Moore said it should be changed to and/or.

Mr. Deziel commented on the requirements for platted and non-platted lots and stated he did not think it should make any difference if the lot was platted or not platted, if it does not meet all the zoning criteria. Mr. Deziel said he was personally in favor of a special exception in either scenario.

Mr. Moore said he disagreed with Mr. Deziel, and the effort is an attempt to remove the platted lots from a variance procedure.

Mr. Randolph, responding to a question from Mr. McDonald, said a shade of difference exists between the rights of owners of platted versus unplatted lots. Mr. Randolph said the Staff intended to realize a distinction between the platted and unplatted lots. Mr. Randolph said he did not know if the courts would recognize a legal distinction.

Mr. Adrian Winterfield addressed the Council and said he had difficulty with the distinction and the statement that the fact a lot had been platted means that the Town, at one time, approved construction thereon. Mr. Winterfield said a statement was made to the effect that certain subdivisions are platted in 25 foot increments, and, obviously, the Town did not contemplate that a single 25 foot lot would be buildable. Mr. Winterfield questioned the omission of the multi-family districts, and the text refers to any "R" district. He said that was replaced by the Town's B, A, and AA. He requested an explanation and questioned the interpretation of the current language and what changes would be made by enacting the proposed language?

Mr. Wyett said he did not see much difference between a platted and unplatted lot, and they should be treated alike.

Mayor Ilyinsky asked Mr. Moore what philosophy was behind separating the platted from the unplatted lot?

Mr. Moore responded the platted lot is done by way of subdivision such as the Phipps Estate which was previously unplatted property. Mr. Moore said the Town negotiated with the owners and the future developers of the property and came to an agreement on the size, shape, streets, etc. Mr. Moore said this same process occurred during the early stages of the Town--after the year 1911--and an agreement was reached. Mr. Moore said the recognition of the platted lot was that the Town, at one time, did acknowledge that these were lots that would be buildable. Mr. Moore did not know if the 25 foot lots would have been buildable because he did not have the records to research that. He added that Lake Worth and West Palm Beach have homes built on 25 foot lots. Mr. Moore said that was the theory that subdivisions were platted lots, and the Town still has some unplatted land.

On roll call, the motion carried 4-0. Mrs. Smith was absent for the vote.

Mr. Wyett clarified that the motion would include the change to line 4, page 10, "and/or", and keep the differential between platted and unplatted.

ITEM 16. Proposed Revision to Sections 5.17, 8.15, 8.22, 8.23, 8.24, Pages 2037, 2098 and 2100 of the Zoning Ordinance.

Mr. Moore reported that the Zoning Commission, on a vote of 7-0, recommended disapproval of the proposal by Town Administration to:

Amend Sections 5.17, 8.15, 8.22, 8.23 and 8.24 of the zoning ordinance to allow the redevelopment of nonconforming residential buildings on the same building footprint and cubic content (regardless of the setback) provided that the redevelopment would be a reduction in density.

Mr. Moore said it was Mr. Brisson's feeling that the Town should not be permitting this due to conflict with the Comprehensive Plan.

Mr. Brisson said that in his review of the item, while the reduction in density may be admirable in the reconstruction of a nonconforming structure, unless that density were allowed by the Comprehensive Plan, and in some instances, there are structures throughout the Town, where the existing density that was approved many years exceeds that which is not allowed by the Comprehensive Plan. Mr. Brisson continued, that according to the Comprehensive Plan, the redevelopment of a new use, even the tearing down of one building and building another, which is not in conformance with the Comprehensive Plan is not allowed. Mr. Brisson said unless the new building density meets the threshold allowed by the Comprehensive Plan, it would be in violation of the Comprehensive Plan. Mr. Brisson stated that could be corrected by adding another limitation to the amendment that in the event the things that are set forth are allowed that the resulting density must meet the requirements of the Comprehensive Plan.

Mr. Brisson said he did have a problem with the continuation of nonconformities and the promotion of continuing nonconformities by allowing their destruction and rebuilding in essentially the same situation which was found to be wanting at some subsequent time when the ordinance was changed. He added that his serious problem with the Comprehensive Plan could be overcome by the change in the density wording.

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Mayor Ilyinsky asked Mr. Brisson if he and Paul Castro essentially agreed on the issue? Mr. Brisson replied affirmatively.

Mr. Shaw said the idea behind the change was that numerous properties are nonconforming and in very poor condition where the owner would like to do something with them, but because of the existing zoning, they cannot do anything under the existing zoning ordinance. Mr. Shaw continued that if the owner could take that structure and replace it with a brand new structure, on the same footprint and the same cubic content, the neighborhood has not been injured. He added if the density is reduced and a new structure is built, there is no visible impact on the community.

Mr. Wyett said testimony had been given that a single-family house would not be economical.

Mr. McDonald said the discussion was about no other existing single family homes in the neighborhood, and people would not buy a single-family home there.

Mr. Castro said that Staff looked at the proposal and, although the Staff did not want to see the continuance of nonconformities or the perpetuation of nonconforming structures, the Staff did want to see feasible redevelopment in the areas, and by limiting the number of units to one in lieu of the previous four, the amount of on-street parking and the congestion would be reduced but the ability to redevelop on the same lot with the same building footprint would be allowed.

Mr. Robert Deziel, Attorney, suggested a consultant could be hired who was familiar with a municipality similar to Palm Beach, who had experience dealing with old architecture and making the transition from those structures so they could be modernized.

Mr. Adrian Winterfield, addressed the Town Council and said if the reduction is at a level that complies with the Comprehensive Plan, why is it necessary to specify 50%?

Motion made by Mr. Shaw to approve the provision on the basis it would meet the density requirements of the Comprehensive Plan; to allow the redevelopment of a nonconforming multi-family and single-family residential unit to remove by demolition, item 3: to modify multi-family redevelopment shall conform with the Town's Comprehensive Plan in density. The motion was seconded by Mr. McLendon.

Mr. Deziel said if this amendment is approved, it will be an architectural, visual nightmare, and the problem is much larger than doing something this year. Mr. Deziel said the problem is appearance and totally gives away the charm of the Town.

Mr. Moore said this is another issue regarding the rights of a property owner. Mr. Moore stated this will an on-going issue, especially in the R-C district, and the Council is looking at the zoning aspects, not the architectural appearance. Mr. Moore favored a change although further study should be encouraged.

Mr. Randolph replied that a lot can happen during the time the item would be passed and restudied.

Mr. Shaw asked if additional wording where "structural rehabilitation is not feasible as determined by an independent engineer" could be added and would it protect the random demolition of a home?

Mr. Moore responded that without the benefit of determining who will make the determination and what will the threshold and criteria of the decision, he would not make a snap decision.

Mr. Shaw withdrew his motion, and Mr. McLendon withdrew his second of the motion.

Mr. Wyett made a motion to disapprove and defer the item. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

ITEM 17. Proposed Revision to Section 5.22, page 2040.1 of the Zoning Ordinance.

Mr. Moore reported that the Zoning Commission unanimously recommended approval of the proposal as submitted by Town Administration to:

Amend Section 5.22(d), Permitted Exceptions to Height Regulations, by adding the following language to paragraph d to allow towers as an architectural feature in the R-B zoning district:

In the R-AA and R-A zoning districts, observation towers may be constructed as an integral part of a single-family dwelling. The height of such tower may exceed the allowable building height limit and overall building height limit of the dwelling by ten (10) feet. In the R-B zoning districts, towers as architectural features may also be constructed as an integral part of a single-family dwelling provided that they do not exceed the allowable overall height by five (5) feet; are set back an additional five (5) feet on the rear, side, and street side and street rear yards; and, such tower has no usable floor area. The area of such tower shall not exceed 1% of the total gross floor area of the dwelling. It

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is the intention of this section to allow towers as an architectural feature and not to allow habitable space in upper areas of tower.

Motion made by Mr. Wyett to approve the change. Motion seconded by Mr. Shaw.

Mr. Deziel addressed the Council and stated the tower, with the allowable dimensions, would be about the size of a chimney, 6' x 8'.

Mr. Wyett withdrew his motion, and Mr. Shaw withdrew his second.

Mr. Shaw suggested these towers could be constructed to hide compressors of satellite dishes.

Motion made by Mr. Shaw to approve the Zoning Commission's recommendation to approve the amendments to Section 5.22(d). The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

ITEM 18. Proposed Revision to Section 5.22, page 2038 of Zoning Ordinance.

Mr. Moore reported that the Zoning Commission unanimously recommended approval of the proposal as submitted by Town Administration and modified by the Zoning Commission to:

Amend Section 5.22(a), PERMITTED EXCEPTIONS TO HEIGHT REGULATIONS, by adding the following language to paragraph (a) to specifically exclude certain uses from being allowed additional height in the single-family zoning districts.

(a) In the R-AA, R-A and R-B zoning districts, skylights and solar panels not exceeding three (3) feet above the roof and air conditioning equipment not exceeding four (4) feet above the roof, radio and television antenna for reception purposes only, flag poles and chimneys may be erected not exceeding 40 per cent above the building height limit for the district in which it is located. Provided, however, that such structures located upon the roof shall not cover in the aggregate a roof area greater than ten (10) per cent of the ground floor area of such building or structure. Those essential items that must be permitted on the roof shall be sight screened from view to the maximum extent possible.

In all other zoning districts, structures for the housing of elevators, stairways, tanks, skylights not exceeding ten (10) per cent in total area of the roof area of which they are placed, skylights not more than four (4) feet in height above the roof and ventilating fans, air conditioning equipment, solar panels not exceeding three (3) feet....

Mr. Moore stated the purpose of this item was because a creative architect created stair towers and elevators to be applied for zoning exceptions in the R-B zoning district; therefore, this item was modified to separate the zoning district from the multi-family districts.

Motion made by Mr. Shaw to approve item 18. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. Moore pointed out that on page 11 of the report, a typo was made in the second paragraph, and the second paragraph should read:

"In all other zoning districts, structures for the housing of elevators, stairways, tanks skylights not exceeding ten (10) per cent in total area of the roof area of which they are placed, skylights not exceeding four (4) feet in height above the roof and ventilating fans, air conditioning equipment, solar panels not exceeding three (3) feet...."

Mr. McDonald asked the Town Council if that would be acceptable to add to the motion. All members agreed to the change.

ITEM 19. Proposed Revision to Section 5.31 and 5.32, pages 2020.1 and 2040.2 of the Zoning Ordinance.

Mr. Moore reported that the Zoning Commission recommended approval of the proposal as submitted by the Town Administration to amend Sections 5.31(a) and 5.32(b) to read as follows:

(5.31) R-AA, R-A and R-B.

(a) Chimneys, cornices, eaves, bay windows and balconies may extend twenty-four (24) inches from the main and/or accessory building into the yard area. Chimneys and bay windows shall not exceed ten (10) feet in the horizontal measured parallel to the building wall and the total lineal dimension for such projection shall not exceed twenty-five (25) per cent of the total dimension along the building wall from which such chimney and/or bay window may project.

(5.32) R-C, R-D(1) and R-D(2)

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(a) Cornices, roof eave overhangs, architectural features, not including balconies or habitable floors, and chimneys may extend forty-eight (48) inches from the main and/or accessory building into any yard areas.

Mr. Moore said this was a correction to the ordinance that omitted accessory buildings the right to project from the main structure. Mr. Moore said the language for the roof overhangs, specifically, was not addressed in the ordinance, and this change states that accessory structures may not go to the property line with roof overhangs and must meet the same conditions as the principal structure.

Motion made by Mr. Wyett to approve item 19. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

ITEM 20. Proposed Revision to Section 10.41(b), page 2113 of the Zoning Ordinance.

Mr. Moore reported that the Zoning Commission, by a 4-3 vote, recommended deferring consideration of changing the notification distance for public hearings on rezonings and Comprehensive Plan changes. Mr. Moore said the notification distance change to 1,000 feet was directed at cases where a comprehensive plan amendment or zoning change increased the allowable density or intensity. The Zoning Commission requested Mr. Moore's department study an increase to 300 or 400 feet in lieu of the existing 200 feet. Additionally, the Zoning Commission requested registered mail notification be studied. Currently, certification of mailings is used, and Mr. Moore recommended the matter be deferred to allow time for studying those suggestions and all other aspects of property notification.

Motion made by Mr. Wyett to defer item 20. The motion was seconded by Mr. McLendon.

Mr. Wood addressed the Town Council and stated the Zoning Commission was concerned with the current notification procedure used for condominiums. Mr. Wood said currently only the Board of Directors is notified, and every condominium owner has a property deed and is a separate owner of record. Mr. Wood suggested that every person who owns a condominium in Town should receive separate notification at his or her address. Mr. Wood added that notification should not be left to a board of directors who may or may not notify all of the residents in a building. Mr. Wood suggested that every property owner, whether it is a condominium or co-operative owner, should have individual notification, and this is a key element that needs improvement over the present procedure.

Mr. McDonald asked Mr. Wyett if he would like to incorporate Mr. Wood's suggestion into his motion?

Mr. Wyett replied he would add that suggestion to his motion. Mr. Shaw questioned the deferral of the item and suggested it should be approved with the 1,000 feet notification. Mr. Moore pointed out that this part of the item had not been advertised, and his department needed time to study the costs of the suggestions.

Mr. Randolph recalled the Zoning Commission deferred the item mainly to allow Staff sufficient time to study the implications of the change in notifying residents. Mr. Randolph advised that the Town Council could decide, as a matter of procedure during the year, that the Staff should provide greater notice than is currently given, and the zoning ordinance would not have to be amended in order to do that.

On roll call, the motion carried unanimously.

ITEM 21. Proposed Town Council Policy to Provide Two Public Hearings for the Zoning Commission during each Session of the Zoning Season.

Mr. Moore reported the Zoning Commission recommended approval of the proposal as submitted by the Town Administration, to allow two public hearings for the Zoning Commission each session it meets.

Mr. Wyett said two public hearings would allow the general public additional time to review any zoning matter. Motion made by Mr. Wyett to approve the Zoning Commission's recommendation to schedule two public hearings for the Zoning Commission each session it meets. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

ITEM 22. Proposed Revision to all Sections of the Zoning Ordinance that provide the wording "Special Exception Uses".

Mr. Moore reported that the Zoning Commission recommended disapproval of the proposal submitted by the Town Administration that replaces the term "Special Exception Use" with "Special Use". Mr. Moore stated that the term "Special Exception" to the lay person indicated that someone received an exception to the rule, and provides the perceived appearance that is the definition. Mr. Moore reported several other words were considered that appear in other municipalities' zoning ordinances, and the alternative language was "Special Use"; however, upon discussion with the Town Attorney and the Zoning Commission, the matter was recommended for disapproval by the Zoning Commission.

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Mr. McLendon said it was his suggestion to make the change due to the perception detected in the public.

Mr. Wyett said he had to concur with the recommendation to disapprove. Motion made by Mr. Wyett to approve the Zoning Commission's recommendation to disapprove. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

(Mrs. Smith returned to the meeting.)

ITEM 23. Proposed Revision to Section 6.12, page 2048 of the Zoning Ordinance.

Mr. Moore reported that the Zoning Commission recommended approval of the proposal submitted by the Town Administration to amend Section 6.12 to read as follows:

Section 6.12 SWIMMING POOLS. Swimming pools, not to be enclosed by a structure other than fences as required or permitted by the Town Code, may be constructed within all yard areas, except the required front yard as prescribed by this ordinance; provided, however, that no part of the pool structure may protrude more than six (6) inches above the finished ground level and that the pool walls shall be at least the (10) feet from the side and rear lot lines and fifteen (15) feet from the street side and street rear lot lines. Swimming pools in the required street side and street rear yards shall be screened by either a continuous hedge six (6) feet in height at the time of planting or a solid wall six (6) feet in height. In the percentage of coverage of a lot by buildings, swimming pools shall not be counted in such computation.

Mr. Moore explained that the proposal would allow for swimming pools to be put into the street side and rear yards to a setback of fifteen (15) feet where currently twenty-five (25) feet would be required for one story and thirty (30) for two story residences.

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

Robert Deziel, Attorney, addressed the Town Council and questioned if a hedge and a wall should both be required for the purpose of shielding, from public view, the activities, toys, and objects that accumulate in a swimming pool area. Mr. Deziel cited two existing residences on Southland with pools in the front yards. The public can see through the hedges that sometimes die back from cold or other reasons, and the view is aesthetically unattractive. Mr. Deziel added a requirement for both a hedge and a wall would provide noise insulation for neighbors.

Mr. Moore responded that would be a good point of clarification, and only the street side yard on a corner lot and the street rear yard, and not the front yard would be affected. Mr. Moore stated he had no objections to a requirement for both a wall and hedging.

Mrs. Smith agreed with the suggestion and said the hedge can disappear. Mrs. Smith noted that on previous applications, landscaping can be removed and has not been considered adequate. Mrs. Smith suggested a wall be required.

Mrs. Smith asked Mr. Wyett if he would accept an amendment to the motion that included a wall in place of "either/or"? Mr. Wyett agreed and stated he preferred a hedge and a wall.

Mr. Wyett restated his motion: "I move approval of the subject providing that the change is made to both a continuous six (6) foot hedge and a solid six (6) foot wall....the hedge is on the exterior of the six (6) foot wall." Mr. McLendon agreed.

On roll call, the motion carried unanimously.

ITEM 24. Proposed Revision to Section 5.36, page 2040.5 of the Zoning Ordinance.

Mr. Moore reported that the Zoning Commission recommended approval of the proposal as submitted by the Town Administration to amend Section 5.36 to read as follows:

(5.36) GARDEN WALLS AND FENCES...

(b) *Gateposts and gates located in front, street side, and rear street yard area.* Gateposts not exceeding three (3) feet in any horizontal dimension may be erected and/or constructed in connection with the erection and/or construction of a wall, fence, or in connection with an existing or proposed hedge; said gateposts and gates shall not exceed a height of two (2) feet above the maximum wall height permitted in this section. In the event gates are to be erected at driveway entrances, gates must be setback at least eighteen (18) feet from the pavement. Mr. Moore noted that the Zoning Commission recommended the eighteen feet as a change.

Mr. Shaw said the road itself should be considered, and the purpose of setting the gates back is to allow the cars to move out of the traffic or driving lanes. Mr. Shaw said consideration should be given to the reality that on many streets,

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parking lanes exists which would allow a credit of approximately nine (9) feet to the requirement. Mr. Shaw said he realized that a driving lane or a parking place could be added or removed from a street that would be the credit he suggested. Mr. Shaw noted that most of the side streets in the Town range between thirty and fifty feet in width on a plat map. Mr. Shaw said it would make more sense to use the greater of the two, using the center line of the street as a reference point, and the gate would have to be (as an example) thirty feet from the center line or 15, or 18 feet back, whichever would be the greater. Mr. Shaw explained that if a fifty foot side street existed, the center line would be at twenty-five feet, and the gates could be closer to the pavement or the driving lane without, in any way, interfering in the street by moving the cars off the street. Mr. Shaw said the formula is the only question, and maybe the figure should be thirty-five feet from the center line or eighteen feet. Mr. Shaw would like to see some credit reference given to the width of the street. Mr. Shaw suggested the matter could be deferred to rethink the formula.

Mr. McLendon asked Mr. Dusey what the relationship was between the edge of the pavement and the property line? Mr. McLendon noted that variation exists through out the Town and nothing prevents a change in the pavement line; therefore, the fifteen or eighteen feet requirement today may not be applicable in the future.

Mr. Wyett commented that Mr. Shaw's solution may be too complicated. Mr. Wyett added that North Lake Way is a very long street, and the result could be more than the suggested eighteen feet. Mr. Wyett said the goal was to have the cars completely off the road and cited his own residence with the gates set fifteen feet back from the road that do not allow cars to be completely off the road.

Mr. Wyett moved that the Council accept the recommendation of the Zoning Commission to have the gates set back at least eighteen (18) feet from the pavement. The motion was seconded by Mr. McLendon.

Mrs. Smith said she was initially opposed to the eighteen feet until the public safety issue was addressed. Mrs. Smith noted that many variances were presented to the Town Council at fifteen feet, and by increasing the number to eighteen feet, the number of variances coming to the Town Council will probably be doubled. Mrs. Smith continued that because of the public safety issue and the narrow streets, she concurred with the eighteen feet, and the measurement of the road would complicate the issue and put an inordinate burden on the Building Department for the determination of the placement of the gates. Mrs. Smith noted that many of the streets in Town vary greatly in size.

On roll call, the motion carried unanimously.

ITEM 25. Proposed Revision to 4.20, Schedule b, Schedule of Use Regulations in the C-WA zoning district, page 2031 of the Zoning Ordinance.

Mr. Moore reported that the Zoning Commission recommended approval of the proposal by the Town Administration to amend Section 4.20, Schedule b. to read as follows:

L(1) One dwelling unit located on the second floor per fifty (50) feet of frontage;

L(2) Dwelling units located on the third floor provided; the second floor is also devoted to residential use as set forth in L(1); and, provided that the combined density of residential uses on the second and third floors do not exceed two (2) dwelling units per sixty (60) feet of frontage on Worth Avenue; and provided that special allowance is based upon the "Worth Avenue Design Guidelines", and review and approval by the Architectural Commission;

L(3) The "Worth Avenue Design Guidelines" are hereby incorporated and adopted as part of this Zoning Ordinance as if fully set forth herein.

Mr. Moore said the recommendation was to omit the expiration date of April 30, 1996, for L(1), L(2), and L(3). Mr. Moore reported that no development had occurred that would have used these, and hopefully some development would occur before these were omitted from the Zoning Ordinance. Mr. Moore added the intent of these provisions was to encourage residential usage above the first floor retail spaces.

Mrs. Smith recalled the "Worth Avenue Design Guidelines" came into being when there was a question of retail space on the second floor which would have eliminated residential use, and it was the idea of the Architectural Commission that guidelines be written to encourage residential use.

Motion was made by Mr. Wyett to approve the recommendation of the Zoning Commission to approve to amend Section 4.20, Schedule b. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

ITEM 26. Proposed Revision to Section 6.15, page 2049 and 2050 of the Zoning Ordinance.

Mr. Moore reported the Zoning Commission recommended approval of the proposal by the Town Administration to amend Section 6.15 to read as follows:

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(6.15) TENNIS, SHUFFLEBOARD AND RACQUET BALL COURT.

In determining the percentage of coverage of a lot by buildings, tennis, shuffleboard and racquet ball courts, and similar uses shall not be counted in such computation. Night lighting of shuffleboard, racquet ball courts, and similar uses is hereby prohibited. In addition, night lighting for outdoor tennis courts shall be prohibited on lots of under 30,000 square feet in area. The Town Council may permit as a Special Exception with Site Plan Review, minimal, state of the art night lighting from 5:00 p.m. to 9:00 p.m. for tennis courts on lots of 30,000 square feet or more in area. The applicant shall demonstrate to the Town Council through the Special Exception with Site Plan Review that the light and noise created by the tennis court will be adequately mitigated, as it relates to adjacent residential structure and vehicular right-of-way. All tennis courts shall include as an integral part of the construction thereof proper fence or wall enclosures contiguous to said court or courts, said fence or wall enclosures to be at least (10) feet in height. All tennis courts shall be sight screened with plantings at least the same height as the tennis court fence enclosures, where visible from adjacent properties or public right-of-way. Racquet ball courts shall be sight screened with plantings, where visible from adjacent properties or public or private street right-of-way.

Mayor Ilyinsky asked if this change would include clubs? Mr. Moore responded affirmatively and the change included the Town tennis courts.

Mrs. Smith asked why the change applied only to tennis courts, and why were shuffleboard courts not included? Mrs. Smith said that shuffleboard is not noisy and neither are croquet courts.

Mr. Moore responded shuffleboard was omitted because of the noise of the pucks during the game, and croquet courts were not discussed by the Zoning Commission.

Mrs. Smith said that croquet and shuffleboard courts could be included.

Mr. McDonald reported that his initial recommendation included only tennis courts and may have been the reason croquet and shuffleboard courts were not included.

Mr. Moore said he was aware of three raquet ball courts in Town.

Mrs. Smith said that many Town residents have putting greens or croquet courts that could be lighted and questioned if those would be considered similar uses under this section? Mr. Moore replied affirmatively and noted that those would be excluded unless the Town Council included them in the provision.

Mrs. Smith stated all those things should be addressed.

Mr. McLendon suggested changing the language to include everything except racquet ball courts.

Mrs. Smith asked if everything should be listed that would be allowed?

Mr. Moore responded that would not be necessary, and those uses would be considered as similar uses and if racquet ball courts were precluded, and the lighting of tennis courts, shuffle board courts, and similar uses were permitted, then the lighting of croquet courts would be allowed as well.

Mrs. Smith replied that if they were listed, there could be no doubt as to what the Town Council intended, and they should either be specified or not specified.

Mr. Randolph said he thought the Town Council could make these amendments since they would be more liberal than originally intended. Mr. Randolph pointed out that the Town Council may cause a loop hole in the ordinance by excluding tennis courts from the first sentence where "night lighting of tennis courts is prohibited". Mr. Randolph suggested the first sentence could read, "Night lighting of outdoor tennis courts, shuffleboard, racquet ball courts, and similar uses is hereby prohibited" and then provide an exception (night lighting for tennis courts may be allowed..and list the other uses, tennis courts, shuffle board courts, croquet courts, and similar uses maybe allowed on lots greater than 30,000 square feet).

Mrs. Smith questioned the source of the figure, 30,000 square feet? Mr. Moore replied that the various sizes of properties were reviewed in all of the zoning districts, and the Staff found that 30,000 square feet would be approximately the minimum size for a residence with enough room to build a 120' x 60' tennis court and have reasonable yard space to create separation between properties.

Mr. McLendon said he assumed a croquet court would be as large as a tennis court, if not larger. Mr. Wyett noted that the Beach Club had a croquet court. Mr. Moore added that the Breakers had one too.

Mrs. Smith noted that the Breakers croquet court was larger than the tennis court. Mrs. Smith said that some lots, smaller than 30,000 square feet, may be able to have a tennis court that would not impact the neighbors. Mrs. Smith said that the determining factor would be the location of the tennis court on the property, and if night lighting of tennis courts were to be allowed, discrimination may exist against some property owners.

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Mr. Moore, responding to Mr. Wyett's question concerning a small, one-bedroom house on a 20,000 square foot lot with a tennis court, said that situation would not be the norm and cited the example of Mr. Peltz who asked what size of house he would have to build to have a tennis court on the west side of North County Road. Mr. Moore said his response was the house would have to be a minimum of 5,000 square feet, and, because of the neighborhood, Mr. Peltz built a 15,000 square foot house.

Mr. McDonald stated he was not sure that 30,000 square feet lot minimum was large enough, and perhaps the size should be greater.

Mrs. Smith replied maybe the requirement should not be there at all. Mr. Wyett's example was feasible and why prohibit someone from doing that?

Mr. Moore said he did not object to removing the size limitation; however, the Staff would want this ordinance to be applicable to any zoning district for single-family use or club use. Mr. Moore said the issue was the special exception and the courts could be in use only during the times mentioned, and the noise and light could be mitigated to the Town Council's satisfaction.

Mr. Randolph said the Council should keep in mind that a special exception, if the criteria is met by having an expert appear at a Town Council meeting who stated no objectionable noises will be generated as a result of the building of the court, and the Town does not have an expert to rebutt that, the Special Exception would have to be granted by the Town Council. Mr. Randolph added the Town Council may not have the control that is anticipated since the opinions of neighbors are not competent, substantial evidence.

Mr. Shaw suggested that the lot should not be considered, but the setbacks should be considered.

Mayor Ilyinsky said that if courts are lighted in Palm Beach, the residents will revolt. Mayor Ilyinsky said the necessity for someone to play tennis at night is his or her choice, but a public court should be used or another court that is acceptably lighted. Mayor Ilyinsky said that if the approximately 70 existing tennis courts in Town were lighted, it would make a wonderful approach for the airport but would be a disaster for the neighborhoods.

Mr. McDonald replied that the Town Council has to deal with Seaview Park, and one of the courts was lighted when the prohibition was in effect. Mr. McDonald said he believed a special exception could not be granted when the issue is prohibited.

Mr. Randolph stated the question arose regarding the issue of the government's right to grant to itself uses which are otherwise prohibited in residential areas of the Town. Mr. Randolph recalled that the law, as he reviewed it at the time, said that the government could; however, the Town Council made a determination that it was not going to treat itself differently than it treats its residents. Mr. Randolph said if Seaview Park is the specific area of concern, consideration could be given to that area and not given to the entire Town.

Mr. Moore responded that some lighted tennis courts exist in the Town and no complaints are received regarding them. Mr. Moore noted the courts are at the Breakers and the Everglades Club.

Mayor Ilyinsky said those locations would not disturb anyone, and the Everglades courts are completely surrounded by walls and landscaping. Mayor Ilyinsky added that if a court were built on a lot in the north end of Town, problems would occur.

Mr. Moore recalled the ban on tennis court lighting came into existence in 1983, and the ban was introduced because of the affect it could have on neighbors.

Mr. Wyett asked Mr. Wood if the Zoning Commission could produce a more restrictive proposal that would address some of the concerns expressed at this meeting if this item were returned to the Zoning Commission? Mr. Wood replied that the Zoning Commission expressed the idea that since the Town is becoming a more year-round place to live rather than seasonal, some residents work in the daytime and would like to return home in the evening to play tennis on their tennis courts in the summertime. Mr. Wood said the Commission's feeling was that if these tennis courts were located in such a way and in relationship to other residences, and if they could be properly screened, then perhaps these people should have the right, at this point, to see if they could be correctly used rather than have a blanket discrimination. Mr. Wood said that he and Zoning Commission member, Dean Vegosen, were concerned about the 30,000 square feet lot requirement as being too small. Mr. Wood continued that the trouble with the size, even with a larger lot, was that a tennis court could end up next to someone's residence on another lot, and the size of a lot might well not result in the mitagation of noise, sound, and light. Mr. Wood added that in summertime, daylight stays until approximately 9:00 p.m., and the provision, 5:00 p.m. to 9:00 p.m. would apply only during the winter hours. The Zoning Commission felt they would go along with the Town's proposal with the understanding that if difficulties were encountered during the year, changes could be made.

Mr. McDonald asked if the Zoning Commission considered any setback requirements as stated by Mr. Shaw?

Mr. Wood replied the Zoning Commission did not discuss that issue; however, he did not think an additional five to ten foot setback would make much difference, since the lights are up in the air, and sound was a major consideration. Mr.

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Wood said a larger setback, such as fifty feet, may discriminate against someone who does not have neighbors.

Mr. McDonald responded that the ordinance could discriminate as long as a basis existed for doing so.

Mr. Moore said that approach would be a de facto elimination from the R-B zoning district. Mr. Moore stated the Staff's recommendation was for all zoning districts, and if the R-B zoning district were eliminated, the residents would not have the same opportunity to prove they could mitigate the noise and lights on their courts that residents in the R-A and R-AA districts could prove.

Mr. McDonald questioned why the exclusion of the R-B district would be a problem?

Mrs. Smith responded that would be a problem, and this entire issue had not be studied.

Mr. Wood commented that he did not recall the Zoning Commission was told that this change would apply to hotels, clubs, and Seaview Park. Mr. Wood assumed that this only applied to the residential zones.

Mrs. Smith recalled the question of lighting the Seaview Park tennis courts initiated the placement of this issue on the study list. Mrs. Smith stated she had many concerns that were raised at this meeting that were not answered by any of the suggestions.

Mr. Wyett cited the example of the Ocean Grand tennis courts that are under the windows of the Ambassador, and the Ambassador would have to produce an expert who could prove the tennis courts should not be there. Mr. Wyett noted that the tennis courts are 20 to 30 feet away from the Ambassador. Mr. Wyett added that Mar-a-Lago's courts would probably not bother anyone with the exception of one resident.

Mrs. Smith pointed out that the tennis courts at the Palm Beach Country Club and Beach Club are next to the houses on Country Club Road.

Mr. Wood said the Zoning Commission members thought that if the Town Council allowed certain tennis courts to be lighted by special exception, the Town Council will have extra work, litigation would be likely, and the Commission could not determine how to handle the possibility of someone using his or her tennis court in the proper situation.

Mrs. Smith responded she would not discriminate against residents in the R-B district by restricting the ordinance so the residents could not ever have tennis court lighting.

Mayor Ilyinsky asked Mr. Moore the number of tennis courts existing in Palm Beach, excluding clubs, hotels and Seaview Park, on private property that are lighted at night?

Mr. Moore replied that a few existed and suggested that each tennis court should be considered on an individual basis.

Mr. Wood suggested the Staff review ordinances in other municipalities similar to Palm Beach, i.e. Carmel, Charleston, Savannah, Annapolis, or towns of that character with similar age and historical background. Mr. Wood said the Town could learn from others' experimentations before moving forward, and the Zoning Commission should review this item further.

Mrs. Smith asked for a motion that would include Mr. Wood's suggestions.

Mr. McLendon made a motion to approve referring item 26 back to the Zoning Commission to include Mr. Wood's suggestions. The motion was seconded by Mr. Wyett.

Mr. McDonald noted that the Zoning Commission supported the recommendation as shown by the 7-0 vote on the item, and the members considered the fact that many younger residents like to play tennis after arriving home after work.

Mrs. Smith responded that, regardless of the 7-0 vote, Mr. Wood was given so much additional input from the Town Council, and he made another recommendation. Mrs. Smith reviewed that the Town Council was concerned about the 30,000 square foot limit and the incorporation of the other suggestions.

Mr. Randolph replied that the Town Council could make the decision, based upon discussions at this meeting, to defer the item, and that is entirely proper. Mr. Randolph added that the deferral back to the Zoning Commission should not be based upon Mr. Wood's suggestion.

Mr. McLendon said his reason for deferral was to have all of the suggestions at this meeting studied before the issue was enacted before those suggestions were reviewed.

Mr. McDonald said croquet courts could be added without deferring the item to the Zoning Commission.

Mrs. Smith asked for further discussion. There was none.

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On roll call, the motion to defer the item to the Zoning Commission passed 3-2 with Mr. McDonald and Mr. Shaw casting negative votes.

ITEM 27. Proposed Revision to Section 2.10, Definitions, page 1998 of the Zoning Ordinance.

Mr. Moore reported the Zoning Commission recommended approval of the proposal by the Town Administration and modified by the Zoning Commission to amend (13.1) in Section 2.10 to read as follows:

(13.1) HOUSE OF WORSHIP. A structure or structures owned and/or utilized by a religious organization for worship, religious training or education. A house of worship, for the purposes of this ordinance, may include, in addition to the principal structure, accessory structure(s) and/or dwelling units for religious organization personnel located within an accessory structure(s) which is utilized primarily for religious training or educational purposes.

Motion made by Mr. Wyett to approve the recommendation of the Zoning Commission, as amended by the Zoning Commission, to amend (13.1) in Section 2.10 of the Zoning Code. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

ITEM 28. Proposed Revision to Section 2.10, Definitions, page 1998.1 of the Zoning Ordinance.

Mr. Moore reported the Zoning Commission unanimously recommended approval of the proposal by the Town Administration to amend (13.4) in Section 2.10 to read as follows:

(13.4) DINING ROOM. Any building or part thereof, or any room or part thereof in which food is dispensed or served for profit or gratis to a restricted and limited clientele consisting of tenants and residents of the same premises and their bona fide guests, and private club members and their bona fide guests.

Mr. Wyett requested that Mr. Moore explain the intent of the amendment.

Mr. Moore replied that the private clubs have dining rooms and not restaurants and the definition of dining room did not include the inclusion of private clubs.

Mr. Randolph asked Mr. Moore if the language affected the issuance of occupational licenses for dining rooms?

Mr. Moore replied that dining rooms and restaurants require separate occupational licenses.

Motion made by Mr. Wyett to approve the recommendation of the Zoning Commission to amend (13.4) Section 2.10 of the Zoning Code. The motion was seconded by Mr. McDonald. On roll call, the motion carried unanimously.

ITEM 29. Proposed Revision to Section 5.50, page 2044 of the Zoning Ordinance.

Mr. Moore reported that the Zoning Commission recommended approval of the proposal by the Town Administration and modified by the Zoning Commission to amend Section 5.50 to read as follows:

Statue and/or sculpture. Any statue and/or sculpture exceeding six (6) feet in height shall be an accessory structure and shall be constructed, erected or placed in compliance with all of the provisions of this ordinance applicable thereto. No statue and/or sculpture shall exceed twelve (12) feet in height. Further, when such statue and/or sculpture exceeds six (6) feet in height, the construction, erection or placement thereof shall require prior review and approval by the Landmark Commission if is proposed to be located on landmarked property, otherwise by the Architectural Commission if visible from the street. No statue and/or sculpture shall be constructed, erected or placed which will be in violation of Section 5.14 and Section 5.16 of this ordinance.

Mrs. Smith asked Mr. Moore if most of the landmarked properties in Town were landmarked houses or is the entire property, house and ground, landmarked?

Mr. Moore replied he did not have an exact figure, but he estimated 85% of the landmarked properties, completely, and 15% would involve either a facade or building or dimension of land around the house but would not include the entire property.

Mrs. Smith questioned the location of large statues presently located in Poinciana Plaza that were erected and obviously exceed the Code?

Mr. Moore replied that Poinciana Plaza requested permission to place some art outside on a temporary basis for public purposes. Mr. Moore said the statues should not be over 12 feet. Mr. House visited the Plaza several times, and Mr. Moore believed they complied with the suggested change.

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Mrs. Smith replied the statues were not over 12 feet; however, this amendment has not been passed. Mrs. Smith said the statues should not be over 6 feet.

Mr. Moore replied Mrs. Smith was correct.

Mr. Shaw added that he thought the statues were for sale and not just for viewing.

Mr. Moore responded the statues should not be for sale, and he will investigate further.

Mr. Wyett asked Mr. Moore if a non-functioning fountain would be considered a statue?

Mr. Moore responded he would have to research the question and could not give an answer.

Motion made by Mr. Shaw to approve the recommendation of the Zoning Commission to amend Section 5.50 of the Zoning Code as amended by the Zoning Commission. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

ITEM 30. Proposed Revision to the Entire Zoning Ordinance.

Mr. Moore reported the Zoning Commission recommended deferral of the consideration of the newly formatted Zoning Ordinance until the December 6, 1995, Zoning Commission meeting. At the December 6 meeting, the Zoning Commission reviewed the new index in addition to the new table of contents. Mr. Moore said his department is waiting for tabs to be returned from the printers and those will be provided to the Town Council before the next 5:01 meeting.

Motion made by Mr. Wyett to approve that recommendation. Motion seconded by Mr. Shaw. On roll call, the motion carried unanimously.

IX. ANY OTHER MATTERS

Mr. Moore referred to page 16 of the Zoning Report where the Zoning Commission authorized the Chairman and Secretary to sign the report. Additionally, the Zoning Commission recommend that consideration of a change in the definition for, "CLUB, PRIVATE," be deferred to the 1996-1997 zoning season so that staff can further investigate appropriate language for this definition.

Mr. Moore stated the next Town Council meeting, regarding zoning, is on January 22, 1996, at 5:01 p.m. for the first reading of the zoning ordinance. The next meeting is on February 5, 1996, at 5:01 p.m. for the second reading of the zoning ordinance.

X. ADJOURNMENT

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

Mary A. Pollitt
Town Clerk