

TOWN COUNCIL MINUTES OF JANUARY 3, 1990

I. CALL TO ORDER AND ROLL CALL. A Special Town Council meeting was called to order at 9:30 AM on January 3, 1990 by President Douthit in the Town Hall Council Chambers. President Douthit explained the meeting is to hear the recommendations and report of the Zoning Commission.

Roll Call

On roll call, the following elected officials were found to be in attendance: Mayor Marix, President Douthit, President Pro Tem Heeke, Councilwoman Wiener, Councilmen Ilyinsky and Weinberg. Also in attendance for all or a portion of the meeting were Town Attorney Randolph, Town Manager Doney, Town Clerk Peters, Building Official Moore, Deputy Building Official Zimmerman, Planner Frank and Mr. Brisson from Adley Associates. Also attending was the Chairman of the Zoning Commission, Robert M. Grace.

II. INVOCATION AND PLEDGE OF ALLEGIANCE. Invocation was given by Mrs. Peters. Pledge of Allegiance was led by Mr. Doney.

Invocation

III. PROOF OF PUBLICATION. Mr. Moore indicated the proof of publication has been received on this public hearing.

Proof of Publication

IV. APPROVAL OF AGENDA. Mr. Ilyinsky moved the Agenda be accepted as printed. Seconded by Mr. Heeke. On roll call, the motion carried unanimously.

Approval of Agenda

V. PROCEDURES FOR COMMENTS BY GENERAL PUBLIC. Mr. Moore suggested the Administrative proposals and/or recommendations be read and the Zoning Commission's report be reported on and after discussion and questions by the Town Council, public comment will be called for and then the recommendations can be acted upon by the Council.

Procedures for comments by general public

ADMINISTRATIVE PROPOSAL NO. 1 - Mr. Moore explained this is to amend Section 5.22 - "Permitted exceptions to Height Regulations" by adding new paragraph (c) as follows:

Admin.Proposal No. 1 to Amend Sect. 5.22

When any building is constructed on a tract of land extending from Lake Worth to any north south street for the purposes of identifying height, in the event there is a sub-basement, a basement shall be considered a story. This provision does not allow any increase in building or story heights as measured from the public street.

Mr. Moore reported the Zoning Commission modified the recommendation to read:

When any building is constructed on a tract of land extending from Lake Worth to any north south street, for the purposes of identifying height, in the event there is a sub-basement, and a basement, the basement shall be considered a story. This provision does not allow any increase in building or story heights as measured from the public street.

On motion of Mrs. Wiener, seconded by Mr. Heeke, the proposal as recommended by the Zoning Commission was approved. On roll call, the motion carried unanimously.

ADMINISTRATION RECOMMENDATION NO. 2 - Mr. Moore indicated this is an amendment to Section 5.36 "Garden Walls and Fences" to read:

Admin.Rec. No. 2 - Amend Sect. 5.36

Front yard. All garden walls and/or fences located between the front building line and the street right-of-way line shall not exceed six (6) feet in height. The height of a wall or fence located in the required front yard shall be measured on the street side of the wall or fence from the top of the wall or fence and shall not exceed six (6) feet in height above the grade of the crown of the street at a point directly opposite such points of measurement (See Attachment Five for illustration, attached at end of ordinance).

Walls and fences more than four (4) feet in height shall be landscaped on the street side with a continuous hedge at least three (3) feet high.

Mr. Moore explained the Zoning Commission did not approve this recommendation. Mrs. Wiener indicated Mr. Grace at the Zoning Commission hearing made the comment that there are more and more sophisticated security systems becoming available and in the event there is a problem, the resident always has the opportunity to apply for a variance and she then made a motion to approve the Zoning Commission's recommendation to not approve Item No. 2 on Garden Walls and Fences. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ITEM 3 - ADMINISTRATIVE PROPOSAL NO. 3. Mr. Moore explained this is an amendment to Section 4.20, the Schedule of Use Regulations for R-AA, R-A, and R-B Zoning Districts by modifying Number 7 in the Special Exception column relating to Supplemental and Required off-street parking to allow Supplemental Parking only in a manner consistent with the zoning of the District in which it is located. He indicated the Zoning Commission recommends approval of this proposal as written. Mr. Heeke moved the Zoning Commission recommendation for approval of Item 3 be accepted. Seconded by Mr. Ilyinsky. Mr. Winterfield asked if he understood it correctly and does it refer to the use of a District as there are Special Exception uses which are not characteristic of the general residential use, such as Club use and wondered what effect this recommendation would have on the Club use? Mr. Moore responded it would be a Council determination when a Special Exception is requested by a Club for supplemental parking. On roll call, the motion carried unanimously.

Admin.Pro. No.3 -Amend Sect. 4.20

ITEM 4 - ADMINISTRATIVE PROPOSAL NO. 4. Mr. Moore reported this is an amendment to Section 4.20, Schedule of Use Regulations for C-WA Districts by eliminating Item F (Restaurants, Night Clubs, Lounges/Bars) from the Special Exception column and in the Permitted Use column after Item 28, create a new heading entitled "No limitation on gross leasable area (GLA)" and add Item No. 1 thereunder, Restaurants, Night Clubs, Lounges/Bars.

Admin.Pro. No. 4-Amend Sect. 4.20

Admin.Pro.
No.4-Amend
Sect.4.20

Mr. Moore indicated the Zoning Commission recommended this item be disapproved in the C-WA and C-TS Zoning Districts. Mr. Brisson explained his office has done a study on this and their recommendation is that restaurants, bars and lounges are different in the way they attract clientele and traffic generation and their need for parking than other service type activities. He felt there has been a loss of restaurants in these areas, particularly on Worth Avenue and he thought that loss was detrimental to the overall character of Worth Avenue. He stated if all the restaurants would be gone from Worth Avenue, there would be no place for the patrons to sit down between their shopping. He felt this was something that people look for in a shopping area, a place to rest, relax or have a bite to eat. He felt stylish restaurants were appropriate for Worth Avenue and the existing regulations tend to make it more difficult to have a restaurant there as they do require a Special Exception and it is his recommendation, if the Council feels it is important to encourage restaurants back to Worth Avenue to a small degree, they should be a Permitted Use; and secondly, because of the nature of the way restaurants attract business, particularly on Worth Avenue, as most of the people who come to the restaurants on Worth Avenue are already in the Town for some purpose or if they are attracted from outside of the Town, they would be there at a time which would not be the normal peak traffic hours. It is their recommendation to either eliminate the square footage limitation or increase it to 5000 square feet. He believed because of recent events, they may wish to defer this at this time, but he did believe it is something that should be addressed in the future.

Mayor Marix asked why he thought the people who eat lunch in the restaurants on Worth Avenue are already there as she knew of a number of people who would go to Worth Avenue to have lunch and then would go walking around. She recalled there were several larger restaurants on Worth Avenue which were not able to quite make it and had to close.

Mr. Brisson indicated he didn't mean to imply they needed to be large restaurants, but if the Council wishes to encourage restaurants on Worth Avenue, the only way to do it is make it easier. He did not believe the majority of people would not be attracted to Worth Avenue simply for the restaurant, however he has no statistics to back that up. Mayor Marix wondered if that should be considered when there are more statistics available.

Mrs. Douthit felt it should stay as a Special Exception Use as she didn't like the idea of it being a Permitted Use, and she felt there should be further research and this should be deferred and studied some more and brought back in the next Zoning season.

Mr. Heeke agreed and he didn't believe the need for a Special Exception prohibits restaurants. He noted they are dealing with a small geographic area to begin with and he felt the square footage usage needs to be watched very carefully. Mrs. Wiener also felt the figure should be left alone at this time, however, she believed they were all saying they would like to see restaurants and she didn't have any particular problem as having it as a Permitted Use, as they would have to be able to meet the requirements. Mr. Ilyinsky felt the square footage should stay at the 2000 feet and he would like to keep it as a Special Exception. Mr. Heeke moved the Zoning Commission's recommendation as to Item 4 be approved (for disapproval) and the matter be rescheduled for the 1990-91 Zoning Commission review. Seconded by Mr. Weinberg.

Mr. Grace clarified the feelings of the Zoning Commission as a whole about the 2000 square foot limitation, which is an important concept and in their opinion, the Town should establish a track record of adhering to that concept for more than a period of a year or so and should not fool around with that concept for a number of years. He wished to speak personally on a matter of personal disagreement between himself and Mr. Brisson as he felt it was economics and not zoning that governs whether or not there are restaurants on Worth Avenue. He did not feel the Town really wanted a place where people can sit down between their shopping as it is recreational shopping and he did not believe that needed to be encouraged here, as the Town residents have better places to relax and enjoy their meals. He knew there was going to be a new hotel, such as the Chesterfield, and he didn't agree with the concept that the government needs to stimulate the placement of restaurants, as economics will do it in due course. He thought if the people in the Town wish more restaurants, they can speak through their civic associations or their personal contacts with the Mayor and Council and he hasn't heard that comment from the people as to whether more restaurants were wanted.

Mrs. Wiener asked Mr. Grace if the two large restaurants that were on Worth Avenue were a problem? Mr. Grace stated they were not. Mrs. Wiener believed people enjoyed them and she would like to bring them back. Mr. Grace thought if and when there is a turn-a-round in the economic situation, they will hear about it and if the time comes, they will be able to act to recapture this, but he didn't believe the government needed to stimulate restaurants. Mrs. Wiener agreed they should not be stimulating the economy, but if someone came with a request for a restaurant that was found to be attractive but they wanted it to be 4000 square feet, the Council would be in a very strange situation and she has a feeling for the former places and wished to get back to some of those things and she didn't think they should stand in the way of getting back to those things that were good. Mr. Grace felt the 2000 square foot limitation was a fragile thing and in order to go to 4000, there should be a great deal of proof of resident demand, and it may be there, but he doesn't believe that has been established. He knows there are a guidelines as to how it is proven something is Town-serving and he felt resident interest would have to be proven.

Mayor Marix recalled when the restaurants were established, they were quite small and when the need was there, they were able to enlarge themselves. Mr. Grace felt that slow growth would have established a better track record for granting a Special Exception to go over the 2000 square feet than it would by amending the Ordinance.

Mr. Winterfield addressed the Council recalling Mr. Brisson made the comment "on the heels of recent events on Worth Avenue" and he believed it would be appropriate to identify specifically what has been referred to. Mr. Heeke called for the question and on roll call, the motion carried.

Admin.Pro.
No.5-Amend
Sect. 4.20

ADMINISTRATIVE PROPOSAL NO. 5 - Mr. Moore explained this is an amendment to Section, 4.20, Schedule of Use Regulations for C-WA Zoning District, by increasing allowable lot coverage for two story buildings from 35 to 50 per cent. Mr. Moore reported the Zoning Commission recommended disapproval of this item and also to allow three story buildings as a Special Exception and the recommendations of Adley & Associates be reviewed to clarify their recommendations and to incorporate the provisions for the multi-purpose use of structures up to three stories which would employ true Mizner Mediterranean architecture. He stated the resulting findings are recommended for consideration by them during the 1990-1991 Zoning hearings.

Mr. Brisson felt these steps offered were preliminary and would proceed some design standards and he thought it was better the Town develop design standards on what they are trying to achieve on Worth Avenue and incorporate these types of actions within them. He stated there is no pressing need for them to do that now.

Mr. Heeke moved the Town Council's approval of the Zoning's Commission's recommendation that Item 5 be recommended for the 1990-91 Zoning Hearings. Seconded by Mrs. Wiener.

On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 6 - Mr. Moore stated this is to Amend Section 6.21 "Off Street Parking" by amending Section 6.21 (d) (1) (b) to read as follows: "The proposed location is in a contiguous commercial zoning district." Mr. Moore stated the Zoning Commission did not recommend this proposal. Mr. Grace explained this was discussed more along the lines of practically speaking as there is no parking on Worth Avenue and no-one has it nor provides their own specific parking places and the shops on Worth Avenue use a multi-purpose parking area. He tried to look at what the practical difference would be if this was enacted and found that providing this would allow expansion of square footage on Worth Avenue without actually providing any more parking. He believed the method used is to take spaces in a parking lot and when one comes in to get approval for expanding the number of square feet, it is said these spaces in the parking lot are "my" parking when actually they are not as none is designated on that particular lot and the Zoning Commission decided they did not want to make it any easier to expand square footage on Worth Avenue without providing actual parking designated for only that particular square footage.

Admin.Pro.
No. 6- Amend
Sect. 6.21

Mrs. Wiener wondered if a shop is town-serving and they wish to expand and wondered if the Council would be serving their own best interest by denying them because of lack of parking? Mr. Grace pointed out that would have to be a Town Council decision.

Mr. Ilyinsky moved the Town Council uphold the Zoning Commission's recommendation for disapproval of Item No. 6. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 7 - Mr. Moore indicated this was to amend Section 5.30 "Yard Regulations" by adding new paragraph (e) as follows:

Admin.Pro.
No. 7-Amend
Sect. 5.30

In the C-TS and C-WA Districts, Arcades (Covered Walkway) not to exceed one story in height, may be construction over public sidewalk areas provided Arcade does not extend nearer than eighteen (18) at least nine (9) feet of vertical clearance above sidewalk is maintained.

Mr. Moore reported the Zoning Commission did not approve this proposal and further recommended that this item be included with the review to be conducted as a result of the Commission's recommendations pertaining to Item 5, and that any provision allowing arcades incorporate a requirement that they be compatible with "true Mizner-style Mediterranean architecture."

Mr. Heeke moved the Zoning Commission's recommendation to disapprove Item No. 7 be approved and the item be added to the recommended list for the Zoning Hearings to be held in 1990-91.

After calling for public comment and hearing none, the roll call was taken and the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 8 - Mr. Moore stated this is an amendment to Section 4.20, "Schedule of Use Regulations" for R-A and R-AA Districts, by allowing flexible building setback and height limits which are regulated by "Cone of Vision" criteria.

Admin.Pro.
No. 8-Amend
Sect. 4.20

Mr. Moore reported the Zoning Commission has recommended approval of this proposal. He indicated this is a new concept and he would attempt to explain "Cone of Vision". He commented that in an effort to deal with the problems they have in new and re-development within residential districts, they have attempted through their planners and experimentation with existing homes to develop a means of offering an alternative to the mass of a structure, as they appear without altering significantly the absolutes of the Ordinance, which would be the height, and the setbacks. He stated this will give the architect another means to design but yet will take into consideration the major concerns of new construction being massive. He noted this was not a cure-all but is a step in the direction towards reducing the mass.

Mr. Moore noted the Zoning Commission had some recommendations and they were:

A. Establish a "cone of vision" (measured 50 degrees on either side of a line perpendicular to the front property line centered on the midpoint of that part of the principal structure closest to the front property line) for determining the front yard setback for principal uses in the R-AA, R-A and R-B zoning Districts. Providing, however, that the minimum front yard setback shall not be less than the existing required minimum.

B. Require a minimum front yard setback of two feet for each one foot of building height for principal structures in the R-AA and R-A zoning Districts. Providing however, that the minimum front yard setback shall not be less than the existing required minimum.

C. Require a minimum front yard setback of 1.5 feet for each one foot of building height for principal structures in the R-B Zoning District. Providing however, that the minimum front yard setback shall not be less than the existing required minimum.

Mr. Brisson explained the concept prevents a building from achieving the maximum height with the minimum setback and the maximum coverage and the maximum building size. He stated as the lots get bigger, this concept works best. Mrs. Wiener noted if the house is forced to set back further in the front, there would be problems in the future if they would like, for instance, to install a pool in the rear yard and could not provide the setbacks needed. Mr. Brisson explained the 25' setback would still be a minimum in the front, but they could angle the building and make it look massive and the building would have to be pushed back or made a little less and the building can be designed to be within the angle of vision. Mrs. Wiener asked what would happen to a person who wants to put up a home and they wanted to build a maximum square footage house? Mr. Brisson responded they could get the square footage but it would have to be an L shaped or some other variation to get the same footage. Mr. Moore

explained the intent of the proposal is to allow the architect to retain his creativity in designing a house for a particular owner and he may design a structure within the perimeters and instead of giving the concrete absolutes of the minimums, and letting them as they are currently being built, it is another means of addressing the neighbor's complaints which are the persons affected by the larger structures being built to the absolute minimums. He stated there are two choices, one to reduce the absolute minimums, such as the sideyard and front yard requirements and to decrease the allowable height; or provide an alternative to allow the architect to retain some ability to design the house within certain perimeters. He noted the largest objection that he has had from the architectural community is that they do not allow the freedom of design. He felt the cone of vision would allow that freedom to design within certain perimeters.

Mayor Marix indicated she was in favor of this concept and especially after watching the massive houses being built. She felt the problem was compounded by building up a lot and the neighbors look like they are living in a hole. Mrs. Douthit viewed this as granting greater freedom to the owners and the architects,

Mrs. Wiener asked if any consideration had been given for building a partial second story? Mr. Brisson indicated there is as long as it didn't break the angle. He stated if the design allows, the second story could be in the back of the building, if it is convenient and practical. Mr. Moore stated the concept tends to decrease the box effect on the second story.

Mr. Ilyinsky moved to accept the Zoning Commission's Recommendation for approval of Item No. 8. Seconded by Mr. Weinberg. Mr. Heeke indicated he was in favor of this also.

Mr. Winterfield believed that the property owner will have fewer rights and this was not a question of flexibility, but an imposition of greater restraint and an addition of flexibility to meet those restraints. He believed this was not going to be a Special Exception but would be left to the discretion of the Building Department to which Mr. Moore did not agree noting the Zoning Ordinance will have the language in it, with diagrams, and he would ask the definitions and diagrams would be a part of the Ordinance. He stated the architect would have to design within the Code of Vision and would be able to build substantially the same house they are now able to build. He stated this is a method of addressing the property owner's concerns which have been registered with the Building Department through the Civic Associations and at the Architectural Commission of mass brought on by the requirements of the Federal Flood Insurance and the requirements that are now in the Zoning Ordinance which were less flexible.

Mr. Heeke believed the motion should be amended to include the definitions and diagrams, to which the maker and the seconder agreed. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 9. Mr. Moore explained this is to Amend Section 5.22, "Permitted Exceptions to Height Regulations" by adding new paragraph (c) as follows: "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. The area of such tower shall not exceed one (1) per cent of the gross floor area of the dwelling. It is the intention of this section to allow towers as an architectural feature and not to allow habitable space in upper area of the tower."

Mr. Moore stated the Zoning Commission recommended approval of this item with some modified language:

"In the R-AA and R-A Zoning Districts, an observation tower 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. The area of such tower shall not exceed one (1%) per cent of the gross floor area of the dwelling. It is the intention of this section to allow a tower as an architectural feature only. Habitable space shall not be permitted in the upper area of the tower."

Mayor Marix asked if the tower could have access to it or would it be only an architectural feature as she thought if it had access to it, one could observe from it. Mr. Moore stated it is designed to be an observation tower so there would be access, however there is quite a setback. Attorney Randolph suggested a change to the language in the last sentence to: "Habitable space shall not be permitted in the area of the tower extending above the second story."

Mr. Heeke moved for approval of the recommendation of the Zoning Commission as to Item 8, with the amendment to the last sentence changed to read: "in the area of the tower extending above the second story." Mrs. Wiener seconded the motion.

On roll call, the motion carried with two negative votes being cast by Mr. Ilyinsky and Mr. Weinberg. (3-2).

ADMINISTRATIVE PROPOSAL NO. 10. Mr. Moore explained this item is to amend Section 4.20, "Schedule of Lot, Yard and Bulk Regulations" by changing existing front setbacks in R-AA, R-A and R-B Districts to the average setback of nearby dwellings within 500 feet on the same side of the street.

Mr. Moore explained this item was recommended for disapproval by the Zoning Commission and is now moot due to the approval of Item No. 8. Mr. Heeke moved to approve the recommendation of the Zoning Commission who disapproved Item No. 10. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Fifteen minute break was taken.

Meeting called back to order by President Douthit.

ADMINISTRATIVE PROPOSAL NO. 11 - Mr. Moore explained this is a revision to Section 10.41 "Hearing Procedure" by amending Paragraph (e) as follows:

"Postponement requests for deferred action on any application received more than seven (7) days prior to scheduled hearing date shall be granted for one month only (or the next succeeding regular Town Council Meeting, if that should occur

Admin.Pro.
No. 9-Amend
Section 5.22

Admin.Pro.
No.10-Amend
Section 4.20

Admin.Pro.
No.11-Revise
Sect.10.41

on a different date.) Any deferred action request received seven (7) days or less from the scheduled hearing date is subject to consideration by Town Council at the scheduled meeting and a deferral may be granted to the next regular meeting except that Town Council may grant a longer or additional postponement for good cause shown. In no case shall a deferral exceed six months."

Mr. Moore explained the Zoning Commission recommended approval. Mrs. Wiener moved for approval of Zoning Commission recommendation on Item No. 11. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 12 - Mr. Moore commented this is to amend Section 10.41 "Hearing Procedure by amending Paragraph F to read:

"An application request seeking substantially the same relief cannot be accepted for consideration after it has been denied by the Town Council until after twelve (12) months has elapsed from the said date of denial."

Mr. Moore explained the change is from six months to twelve months and the Zoning Commission has recommended approval. Mr. Heeke moved for approval of the Zoning Commission's recommendation for Item No. 12. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 13 - Mr. Moore stated this is to amend Section 5.47, "Beach Area" by revising paragraph (b) as follows:

Number of beach house buildings and setback. Not more than one (1) beach house structure shall be erected on property under single ownership and not more than one beach house structure shall be erected for each one hundred (100) feet of lot frontage on the Ocean Blvd. said beach house structure to be set back not less than ten (10) feet from the north property line and to be set back not less than (10) feet from the south property line and to be set back not less than ten (10) feet from the west property line of said one hundred (100) foot wide lot; and provided however that the foregoing restrictions shall not be deemed to apply to jetties or groins or other structures for the protection of the beaches; and provided further that no such beach house structure or lot shall ever be used for any purpose other than private bathing purposes incidental to the ownership thereof, said use to be an accessory use to the residential building located directly across the street therefrom or within a radius of one thousand five hundred (1,500) feet and with Unity of Title thereof; or such use to be an accessory use for an association of property owners on the adjacent east-west streets and provided further that such beach house structure has been approved as a Special Exception use in conformance with SAection 6.40 of this Ordinance."

Mr. Moore explained the Zoning Commission recommends approval. Mr. Weinbergf moved for approval of the Zoning Commission's recommendation with regards to Administrative Proposal No. 13. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 14. Mr. Moore explained this is an amendable to Section 5.50 "Accessory Buildings and/or Structures" by amending (f) to read:

DISH ANTENNAS. A dish antenna shall be an accessory structure and shall be constructed, erected or placed in compliance with all of the provisions of this Ordinance applicable to accessory structures. No dish antenna shall exceed two (2.0) meters in diameter in the R-A and R-B residential zoned districts; no dish antenna shall exceed three and eight-tenths (3.8) meters in diameter in the RCA residential zoned district; and no dish antenna shall exceed five (5.0) meters in diameter in any other zoning district. Only one such antenna may be erected as an accessory structure on any building lot. Further, an unattached antenna shall not exceed eight (8) feet in height above group (average grade) in the R-A and R-B residential zoned district; such antenna shall not exceed fourteen (14) feet in height above ground (above grade) in the RCA residential zoned district; and such antenna shall not exceed eighteen (18) feet in height above ground (average grade) in any other zoning district. No dish antenna shall be located closer than ten (10) feet to any side or rear lot line. No unattached dish antenna shall be erected in a required front yard, required street side yard or required rear street yard setback area in any zoning district. No dish antenna shall be located on the roofs of or attached to buildings. All dish antennas shall be screened from public views and from public streets and ways. In any zoning district, no form of lettering, advertising or identification shall be allowed on such antenna or its framework (other than the manufacturer's small identification plate). All such antennas shall be neutral in color and, to the extent possible, compatible with the surrounding neighborhood in appearance and character. (Note: One meter in the metric system of measurement equals thirty-nine and thirty-seven one hundreths (39.37) inches, or three and twenty-eight one hundreths (3.28) feet).

Admin.Pro.
No. 12-Amend
Sect.10.41

Admin.Pro.
No. 13-Amend
Sect. 5.47

Admin.Pro.
No. 14-
Amend Sect.
5.50

Mr. Moore reported the Zoning Commission recommended approval. Mrs. Wiener moved that the Town Council accept the proposal of the Zoning Commission to approve Administrative Proposal No. 14. Seconded by Mr. Heeke. On roll call, the motion carried unanimously.

Admin.Pro.
No.15-Amend
Sect.4.20

ADMINISTRATIVE PROPOSAL NO. 15 - Mr. Moore stated this is a proposed amendment to Section 4.20, "Schedule of Lot, Yard and Bulk Regulations" by reducing lot coverage percentage in R-D (1) and R-D (2) Districts for Townhouse development from 40% to 35%. Mr. Moore explained this is a housekeeping matter and the Zoning Commission recommends approval. Mr. Heeke moved the approval of the Zoning Commission recommendation on Item 15. Seconded by Mrs. Wiener.

Mr. Winterfield addressed the Council asking if the term Townhomes was defined in the Zoning Ordinance? Mr. Moore indicated it was Townhouse.

On roll call, the motion carried unanimously for approval.

Admin.Pro.
No.16-Amend
Sect. 6.32

ADMINISTRATIVE PROPOSAL NO. 16 - Mr. Moore advised this proposal is to amend Section 6.32 "Signs in Residential Districts" by revising Subsection 6.32 (d) (2) (d) to read:

Any such sign shall be removed by the developer within fifteen (15) days of the completion or abandonment of the project.

Mr. Moore advised this recommendation was approved by the Zoning Commission. Motion was made by Mr. Heeke to approve the Zoning Commission recommendation on Item No. 16. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Admin.Pro.
No. 17-
Amend Sect.
4.20

ADMINISTRATIVE PROPOSAL NO. 17 - Mr. Moore advised this is a proposal to amend Section 4.20 "Schedule of Use Regulations, by revising Item #4 under "Accessory Uses" In R-AA, R-A, R-B and R-C districts and revise Item #5 under Accessory Uses in RD(1) and R-D(2) districts to read as follows:

Other Accessory Uses, including charitable events, customarily incident to Permitted or Approval
Special Exception Uses, not involving the conduct of business. (Remainder of paragraph remains unchanged).

Mr. Moore reported the Zoning Commission recommended approval of the proposal with a modification to read as follows:

Other Accessory Uses, including charitable events (limited to one per calendar year per property), customarily incidental to Permitted or Approved
Special Exception Uses, not involving the conduct of business. (Remainder or paragraph remains unchanged).

Mrs. Wiener thought it was pretty well the norm that people who live in larger estates do use their homes for large party purposes more often than someone living in a small home or apartment, and probably also hold charitable events, and she felt treating every home the same way in this manner and she believed a formula of some type needed to be put in place and it shouldn't be limited to one per home for each year was the way to prevent it. She felt if a person has several charities and wants to help them, and has the facilities to do so, she didn't agree that they should be limited as he could have a large party there every night of the week if he wanted to.

Mr. Moore stated staff has debated this and found one problem in that it would be difficult to tell someone who lived in the R-AA District that they could have unlimited parties for charitable proposes and then tell someone who lives in the R-B Zoning District or in an apartment that they could have only one, so it was thought to be equitable to recommend to the Zoning Commission that one event per property be considered. He felt to police this would be difficult, so they felt the best way to handle this was an across the board restriction.

Mayor Marix asked if a Condominium would only be able to use its common room once a year for a charitable event? Mr. Moore stated that is how he views this, however, Mr. Randolph felt that was not the case. Mr. Heeke thought they should divorce the enforcement aspect and they should ask themselves if they want this type of activity in the residential homes and once that question is answered, they should move on with some limitations. He felt this should be looked at again say within eighteen months to see if this is functional. Mayor Marix suggested it be brought back to the next Zoning Season.

Mr. Winterfield addressed the Council noting the language refers to zoning districts and not residences, therefore, this would apply to clubs and museums in those Districts and he suggested the best way to handle this would be as a Special Exception and the property owner should in conjunction with the charity come before the Council each time which will then give neighbors an opportunity to object. He indicated at that time criteria for parking and police protection could be instituted. He wondered if it would be appropriate to address the blatant commercial use of clubs in the residential districts, as clubs are used for promotional purposes by certain commercial enterprises and an example of a company that is in the auction and real estate business and used a property it had listed for sale to display items which it was going to auction. He felt this created a dangerous problem with regards to traffic.

Mrs. Wiener thought the situation they find themselves in as to whether or not there is a problem with policing the situation and he felt it was really the will of the people as the reason this has come about is because some people do it without asking for a permit. She felt if someone has given their home for a charitable event twice in one year, they wouldn't go beyond that and she saw nothing terrible about using their home for a charitable event, if they have filed with the Town to get the proper permit. Mr. Weinberg agreed.

Mr. Randolph explained this is not tightening up the Ordinance but making it more permissive. Mayor Marix believed that it will be a great deal less expensive for people to use their homes for fund raisers than going to a hotel or club, but some people do get some remuneration for letting their homes to be used for a charity and that will get worse if it isn't controlled in some way. Mr. Heeke believed there were people who will violate our Ordinance and there are some who will not and he believed there would be some who would not be abiding by this particular ordinance.

Mr. Winterfield felt they should deal with each different category so there is no contradiction, suggesting it be a Special Exception.

Mr. Heeke knew they would be concerned about traffic, the timing, and disruption in the neighborhood so he didn't disagree with the suggestion that it be a Special Exception. Mrs. Wiener pointed out if they had a private party, that would have the same impact and they would not even have to have a permit.

Mrs. Wiener indicated she would like to see two events being allowed with a time limit and she moved that the Council approve the Zoning Commission's recommendations, except that the limit be changed to two events per calendar year and that this be revisited in the 1991-1992 Zoning Season. Seconded by Mr. Weinberg.

Mr. Randolph asked if the motion meant it will stay in effect or that it will sunset in 1992 and would have to be re-enacted? Mrs. Wiener felt it should be re-enacted.

Mr. Grace addressed the Council stating the charities will always be here and the desire to raise funds will always remain there and publicity by those people who wish to have their homes used for charitable purposes will always be there. He felt the Council should consider the peace and quiet of single family homes in the Town and speaking personally, he felt it was a mistake to go with two charitable events per year. He believed two in the multi-family would be acceptable, but in the single family areas, he thought it would be a mistake. Mr. Heeke agreed and stated he was in favor of holding one event and has no problem with the sunset clause. Mr. Moore stated this would sunset on April 30, 1992.

On roll call, the motion failed to carry with Mr. Ilyinsky, Mrs. Douthit and Mr. Heeke voting against the motion.

A motion was then made by Mrs. Wiener who moved that the Zoning Commission's recommendation Item No. 17 be approved as recommended to us by them, which is having one charitable event in a residence per year and the provision be sunsetted on April 30, 1992. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously for approval.

Mr. Moore asked for clarification on multi-family charitable events wondering how many events could be held in a condominium? Mrs. Wiener indicated this would be one for each homeowner. Mayor Marix asked if this included the common room, giving an example if a condominium had ten units and each one had a party - that would be ten parties and then they wished to hold a charitable event in their public room, could they do so? Mr. Randolph indicated they could not as they have reached their limit by holding the event in their apartment. He commented on the fact that the common room is connected to the ownership of the unit. Mr. Moore believed it should be seen how this does work through the sunset process and if there are complaints, we could put limits on it. Mr. Heeke noted that most condominium associations do have rules and regulations and he believed this should be reflected in the minutes as part of the legislative history.

ADMINISTRATIVE PROPOSAL NO. 18. - Mrs. Wiener noted this item is on film making and had reached the Council on a very circuitous route, recalling the Town attorney had originally indicated it was unconstitutional to ban it, and asked if he had changed his mind? Mr. Randolph responded that comment appeared in the newspaper and he did not say he had changed his mind. He has written an opinion on this matter and that was consistent with the previous opinion he had in that this is a sensitive area to strictly prohibit. He believed if the memorandum is read closely it will be noted there are statements which differentiate between First Amendment rights and Commercial rights and the final line states it is an area where the Court may state that this is an area which is better subject to regulation than strict prohibition. He thought it was on the basis of the memo that this was not necessarily First Amendment rights and it may not be precluded from prohibition. He raised another question with regard to this as to whether the regulation of movie making is a proper subject of the Zoning Ordinance, as normally when one deals with zoning it deals with the use of the dwelling and structures on properties and what happens within those structures. He believed this attempts to regulate the public streets.

Mr. Heeke indicated he would like to institute an out and out ban, but he doesn't wish to be in a position for inviting unnecessary litigation when there is reason for doubt and we could find ourselves in a worse position.

Mr. Moore explained the language proposed is:

"No person shall use any portion of any building or accessory building or any land in this District for the purpose of film making or movie producing and such uses are hereby declared to be in violation of the provisions of this Ordinance."

He reported the Zoning Commission recommends approval of the proposal submitted and modified it by adding under Accessory Uses in the C-TS District a new item #5, in C-WA District, new Item E; in C-OPI District, new item \$4; in C-PC District new Item F; in C-B District new item #4 and in PUD District, new item #2, to read as follows:

Admin.Pro.
No. 18 -
film making

No person shall use any portion of any building or accessory building or any land in this District for the purpose of film-making or movie producing for commercial entertainment and such uses are hereby declared to be a violation of the provisions of this Ordinance.

Tony Grogan addressed the Council speaking for himself indicating he has been making documentary films for several years and has been in the Television commercial business and is a past president of the Florida Motion Picture & Television Association and past chairman of the Film Liaison Advisory Council and suggested the issues raised by the attorney are valid and an outright ban would not serve the purpose of public safety. He viewed the issue as clogging up the streets and if a television commercial is filmed in this Town, there could be a crew as large as a movie production. He suggested that film making is an art form and it should not be banned, as the issue is a matter of degree, how much space - how much public space and traffic is tied up with the artist who is painting his picture or the film maker running the camera. He indicated Mr. Kay, an Arts and Entertainment Attorney will be at the second hearing and has been researching the issues of constitutionality of the ban in residential areas. He felt it was better to not outright ban filming and continue regulating it and deal with it on a case by case basis.

Mr. Winterfield addressed the Council requesting the first thing they should be doing is to make a determination as to whether or not this is in the best interest of the Town and he felt that was their first obligation.

Mr. Grace addressed the Council indicating this item was sent to the Zoning Commission for study by the Town Council and this refers only to private property in certain districts and it was intended by the members of the Zoning Commission that they were concerned about private property. He was under the impression from listening to the Council that the Zoning Commission felt it was their jurisdiction to ban filming on public rights-of-way and they did not consider doing that. He indicated the opinion of Mr. Randolph was studied and the action the Zoning Commission took was done taking that opinion into consideration. He recalled in 1970 when the Zoning Ordinance was formulated on limiting the stories one could build, the Council at that time was not afraid of attorneys and he hoped they would not be afraid of them now.

Mr. Buddy Galen addressed the Council in support of filming, explaining he has lived in several communities in California, all of which had tried to ban filming, but it just didn't work and believed it could be done here with regulations.

Mr. Randolph believed Mr. Grace was stating that even passing this was an attempt by the Zoning Commission to ban it and that is up to the Council, perhaps by way of a different Ordinance, simply stating that within commercial zoning districts, there would not be movie production allowed within the lands or structures within those districts. He indicated this is dealt with at this point in time by designating the uses allowed in commercial districts and anything not permitted would be prohibited.

Mr. Heeke felt they needed to be cautious and go with regulations which he views as reasonable and enforceable and he moved that the Zoning Commission's Recommendation No. 18 be rejected. Seconded by Mrs. Wiener who stated she believed the present regulations have worked well both for the residents and the industry and she could see no going in flying in the face of something that seems to have worked without a great deal of problems.

Mr. Winterfield addressed the Council on the question of possible litigation stating he submitted the regulation is more likely to spawn an attack than total prohibition would as they are only allowed to film seven days and it is on a first-come first serve basis and he viewed this as an unreasonable position. He believed if there were a total ban, there would be no basis for challenge.

On roll call, the motion carried with one vote cast against the motion by Mr. Ilyinsky. (4-1).

Lunch break was taken.

Meeting called back to order by President Douthit.

Admin.Pro. No. 19 - amend Sect. 4.20

ADMINISTRATIVE PROPOSAL NO. 19 - Mr. Moore explained this item is to amend Section 4.20 "Schedule of Use Regulations" by adding Group Homes and Foster Care facilities licensed by the Florida Department of Health and Rehabilitative Services, housing up to six (6) persons, as Special Exception Uses in the residential districts. Mr. Moore indicated this item is before them as a result of legislation that was passed by the State of Florida and it requires that Foster Care and Group Homes are permitted and the Zoning Commission recommends approval of the proposal and the definitions which are:

Foster Care Facility. A facility, licensed or funded by the Florida Department of Health and Rehabilitative Services, housing foster residents and providing a family living environment for the residents, including such supervision and care as may be necessary to meet the physical, emotional and social needs of the residents and serving either children or adult foster residents.

Group Homes. A facility, licensed or funded by the Florida Department of Health and Rehabilitation Services, providing a living environment for unrelated residents who operate as the functional equivalent of a family, including such supervision and care as may be necessary to meet the physical, emotional and social needs of the residents.

Mr. Heeke noted this is mandated by the State and he moved for approval of Recommendation 19 of the Zoning Commission which was to approve. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously. Mr. Moore stated there is two additional parts on this recommendation to add the terms to Section 4.20 and Section 6.20 and on motion of Mr. Heeke, seconded by Mrs. Wiener, these items were approved. On roll call the motion carried unanimously.

Mr. Moore explained this would be to add to the Schedule of Use Regulations, Section 4.20 - "Group home with up to six occupants" and Foster care facility with up to six occupants" to the list of Special Exception Uses in the R-AA, R-A and R-B Zoning Districts; and add "Group Home and Foster Care Facility" to the list of Special Exception uses in the R-C, R-D(1) and R-D(2) Zoning Districts; and add in Section 6.40, Special Exception Uses, and Item (P) to read:

(P) With reference to "Group Homes" and "Foster Care Facilities", locations in proximity to the Town Center and commercial areas are preferred because of the greater availability of goods and services, both public and private.

Mr. Heeke moved that Items B and C of Item 19 as recommended by the Zoning Commission be approved. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 20. Mr. Moore explained this item proposed is to amend Section 4.20, "Schedule of Lot, Yard and Bulk Regulations" by reducing allowable building height of two story single family dwellings in R-B District from 25' to 22' and the Zoning Commission recommended disapproval to which the staff concurs. Mrs. Wiener moved the adoption of the Zoning Commission's recommendation regarding Item 20 to disapprove. Seconded by Mr. Heeke. On roll call, the motion carried.

Admin.Pro.
No. 20 -
amend Sect.
4.20

ADMINISTRATIVE PROPOSAL NO. 21. Mr. Moore explained this is to amend Section 4.20 "Schedule of Lot, Yard and Bulk Regulations" by limiting the size of the second floor of a single family dwelling to not more than 50% of area of first floor in R-B District. Mr. Moore indicated the Zoning Commission recommended disapproval of this item to which the staff concurs. On motion of Mr. Heeke, the Zoning Commission's recommendation on Item No. 21 was approved. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Admin.Pro.
No. 21 -
amend Sect.
4.20

ADMINISTRATIVE PROPOSAL NO. 22. Mr. Moore explained this item is to amend Section 5.17 "Existing Family Dwelling Development" to read as follows:

Admin.Pro.
No. 22-Amend
Sect. 5.17

EXISTING SINGLE FAMILY DWELLING DEVELOPMENT: A single family dwelling structure existing in an "R" District at the time of adoption of this Ordinance which does not comply with the lot, yard and bulk regulations for building lots in the "R" District in which it is located may be permitted building additions on the first story provided said building additions shall not increase the extent of the particular zoning nonconformity (ies); further, a second story addition may be added to a nonconforming one or two story dwelling provided said building addition meets front, side and rear setbacks requirements for two story dwellings and provided said building addition or portion thereof shall not increase the total floor area of such structure to more floor area than could be constructed if such structure were an entirely new structure. It is the intent of this section to provide a partial exemption to the prohibition of existing building enlargements contained in the provisions of Sections 8.20 and 8.21 of this Ordinance.

Mr. Moore advised the Zoning Commission recommended this item be approved and this would allow second story construction which meets all of the zoning regulations to be permitted without the necessity of it coming before Council as a variance. Mr. Heeke thought it was a good idea and he moved that the Zoning Commission's recommendation on Item No. 22 be approved. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 23. Mr. Moore explained this item is to amend Section 5.22, "Permitted Exceptions to Height Regulations" which reads as follows:

Admin.Pro.
No. 23-Amend
Sect. 5.22

Structures for the housing of elevators, stairways and tanks, not exceeding ten (10) per cent in total area of the roof area on 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 in height above the roof or similar equipment to operate and maintain the building, radio and television antenna for reception purposes only, church steeples, flagpoles and chimneys may be erected no more than forty (40) per cent above the footage height limits for the district within which it is located as prescribed by this Chapter (Ordinance); provided, however, that such structures located upon the roof area shall not cover in the aggregate a roof area greater than fifteen (15) per cent of the ground floor area of such building or structure. Those essential items of equipment which must be permitted on the roofs of buildings shall be sight screened from view insofar as possible.

Mr. Moore explained the Zoning Commission recommends approval of this recommendation. Mrs. Wiener moved the Zoning Commission's recommendation be accepted in regards to Item 23. Seconded by Mr. Heeke. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 24. Mr. Moore explained this is a proposal to amend Section 5.36 "Garden Walls and Fences" by revising Paragraph (b) to read:

Admin.Pro.
No. 24-amend
Sect. 5.36

Gateposts and Gates located in front, street side and rear street yard areas. Gateposts not exceeding three (3) feet in any horizontal dimension may be erected and/or constructed in connection with the erection and/or construction of a wall, fence, or in connection with an existing or proposed hedge, said gateposts and gates shall not exceed a height of two (2) feet above maximum wall

Admin.Pro.
No. 35-
Amend Sect.
6.30

height permitted in this section. In the event gates are to be erected at driveway entrances, gates must be set back at least fifteen (15) feet from the pavement. Mr. Moore explained the Zoning Commission has recommended this proposal and staff concurs. On motion of Mr. Heeke, a motion was made that the Zoning Commission recommendation on Item 24 be approved. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 35. Mr. Moore explained this proposal is to amend Section 6.30 "Signs" by revising Sub-section 6.31 "General Regulations" by amending Paragraph (g) to read as follows:

No sign shall be painted or installed on any awning. In residential districts, no lettering, illustrations, murals, logos or characters visible from public or private streets shall be painted on or attached to any structure except as otherwise provided in Section 6.32 (Signs in Residential Districts.)

Mr. Moore reported the Zoning Commission on a vote of 5-2 recommended approval of this proposal with the deletion of the word "murals". Attorney Randolph explained the deletion of the word "murals" has no effect in his opinion. Mayor Marix believed they could have various shades of different colors with this wording. Mr. Moore explained some of the discussion was related to the murals at Publix or the Society of Four Arts and those murals are under the jurisdiction of the Architectural Commission and would be reviewed by them, so he did not believe there would be a problem here with deleting the work "murals".

Mr. Moore indicated the staff hopes they could deal with this by permitting the holiday signs that have been placed in the past at the Martino home, to continue to be placed. He feels they have committed to Mrs. Martino for the holiday messages placed in the past and on the 4th of July but extraneous messages or use of the wall for graffiti or champion of causes that would be somewhat like a billboard would be prohibited. He likened this to the flying of the flags at the Breakers which were grandfathered.

Mr. Heeke disagreed that one property owner should be given this authorization. He believed any painting of murals on walls, whether they be freestanding or walls of a building are not acceptable in this Town and he will vote for this but did not believe that any one individual had the right to display holiday messages.

Attorney Randolph felt the temporary event is something that cannot be grandfathered in and he disagreed with Mr. Moore on that point. He believed structures which are in existence when the Zoning Ordinance is passed are something which can be grandfathered in, however, he did not believe that just because the holiday signs happened in the past doesn't mean it is grandfathered. He thought what was being asked was if this could be adopted and there would be an agreement that those things which have occurred in the past shall be allowed to be continued, so from a technical, legal standpoint, that would not be grandfathered.

Mr. Heeke noted this would be an agreement and not be an amendment to the Zoning Code. Mr. Randolph explained this would be an agreement to allow a violation of the Code. Mayor Marix wondered if such an agreement could be made? Mr. Randolph responded negatively, stating it would have to be a variance, with a hardship shown.

Mr. Heeke indicated he would have no problem voting for the proposal. Mr. Moore believed they could get a variance and could argue the hardship was that they were permitted to do so in the past and have letters from the Town stating they were permitted, so each case could be heard on its individual merits. Mr. Heeke felt rather than have the matters go before Code Enforcement, there should be an absolute fine on a daily basis, once the sign is there, they should be notified and give them a certain amount of time within which to move the sign and then a fine applies, rather than waiting for the 30 days notice before the Code Enforcement Board. He believed there were a number of walls around Town which could make the same request.

Mrs. Douthit agreed, noting there was a concern for that particular wall as there is a turn and it could be a dangerous situation. Mrs. Wiener reminded all that everyone should be treated in an even-handed manner. Mr. Heeke moved for the approval of the recommendation of the Zoning Commission with regards to Item 25, with the word "mural" removed as recommended. Seconded by Mrs. Wiener.

On roll call, the motion carried unanimously.

Mr. Moore asked if the suggestion by Mr. Heeke on the fine was something that was doable under this Ordinance? Mr. Randolph responded they would have to change the Ordinance.

Admin.Pro.
No. 26 -
Amend Sect.
6.15

ADMINISTRATIVE PROPOSAL NO. 26. Mr. Moore explained this item is to amend Section 6.15 "Tennis Courts, Shuffleboard Courts" to read as follows:

TENNIS, SHUFFLEBOARD AND RACQUET BALL COURTS.
Tennis courts or shuffleboard courts and similar accessory uses, not to be enclosed by a structure, may be constructed within yard areas except the required street rear yard as prescribed by this Ordinance; provided, however, that any walls or fences shall conform with Sections 5.50 and 5.51 of this Ordinance and further provided that the construction of any facility involving the use of a ball backboard or structure in any district of the Town and the construction of any tennis court, shuffleboard court or similar uses upon any structure in the Town shall be subject to an application for Special Exception. Racquet Ball Courts shall be considered unenclosed accessory structures and may be constructed provided Court complies with all open yard requirements for the principal structure to which it is accessory and said Racquet Ball Court shall be subject to an application for Special Exception. 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 outdoor tennis, shuffleboard and Racquet Ball Courts and similar uses is hereby prohibited. All tennis courts shall include as an integral part of the construction thereof proper fence or wall enclosures contiguous to said court or courts, said fence or wall enclosures to be at least ten (10) feet in height. All tennis courts shall be sight screened with plantings at least the same height as the tennis court fence enclosures, where visible from adjacent properties or the public or private street right-of-way. Racquet Ball courts

shall be sight screened with plantings, where visible from adjacent properties or the public or private street right-of-way.

Mr. Moore explained the Zoning Commission recommended approval.

Mrs. Wiener moved the recommendation of the Zoning Commission be accepted on Item 26 of their report. Seconded by Mr. Heeke. On roll call, the motion carried unanimously for approval.

ADMINISTRATIVE PROPOSAL NO. 27. Mr. Moore explained this is to amend Section 4.20, Schedule of Use Regulations, by including a new zoning District entitled "Conservation District" with allowable uses and regulations. Mr. Moore explained this is as a result of the Comprehensive Plan, the definition is being added and later on the proposal to rezone the spoil islands and the section north of the Blossom Estate which is the area known as the Audubon Society property and the Zoning Commission and Staff recommend approval.

Admin.Pro.
No. 27 - amend
Sect. 4.20

Mrs. Wiener moved the acceptance of Item No. 27 of the Zoning Commission's Report. Seconded by Mr. Heeke. Mr. Moore indicated this does include all of the spoil islands in the lake and they will be redoing the map to identify additional islands. Mayor Marix indicated there are boats being launched from this area and she will be photographing this area within the next few days. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 28. Mr. Moore explained this proposal is to amend Section 10.41 "Hearing Procedure" by revising paragraph A to read:

Admin.Pro.
No. 28-Amend
Sect. 10.41

The Building Official shall examine all applications requesting rezoning, special exception uses, dimensional variances or other matters requiring a public hearing to determine if they meet the requirements of this ordinance, and that the action or approval requested is properly allowable by the Town Council under the provisions of this Ordinance, and if so, prepare a report setting forth his recommendations.

If the Building Official determines the application fails to meet the provisions of this Ordinance, he shall schedule a pre-application conference and request modifications as may be required to bring the application within the provisions of the Ordinance. If the Building Official is thereafter still not satisfied that any revised application will meet the requirements of the Ordinance, he may refuse to accept the application for public hearing, and the applicant may appeal to the Town Council for a reversal of the Building Official's decision, which shall be ruled upon by the Town Council prior to hearing the substantive issues contained within the application itself.

Mr. Moore reported the Zoning Commission modified the recommendation to read:

The Building Official shall examine all applications requesting rezoning, special exception uses, dimensional variances or other matters requiring a public hearing to determine if they meet the requirements of this Ordinance, and that the action or approval requested is properly allowable by the Town Council under the provisions of this Ordinance and if so prepare a report setting forth his recommendations.

If the Building Official determines the application fails to meet the provisions of this Ordinance, he shall schedule a pre-application conference and request modifications as may be required to bring the application within the provisions of the Ordinance.

Mr. Moore recommended an additional change where it states in the second paragraph "shall schedule" he felt it would be more appropriate to state "may schedule" as on each application, there is no necessity for a pre-application conference and this was prompted by requests that went beyond the Zoning Ordinance provisions. He felt this language puts into the Ordinance what is now done.

Mrs. Wiener wondered if this is done now, they still get strange things before them and she wanted to ensure that the Council was not being cut out of the process by the Administration, as if someone wants to come to the Council and ask for something, no matter how outrageous, they should be allowed to do so. Mr. Heeke pointed out they could still appeal the Building Official's decision. Mr. Moore agreed that any administration official's decision is appealable to the Mayor and Town Council. Mrs. Wiener asked if the Building Official explained to the applicant they have the right to appeal to which he responded affirmatively. Mr. Heeke asked if Mr. Grace had any problem with the substitution of "may" for "shall", to which Mr. Grace responded he did not.

Mr. Heeke moved for approval of the Zoning Commission's recommendation with respect to Item No. 28, with the exception that the word "may" be substituted for "shall" in the second line of the second paragraph. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously for approval.

ADMINISTRATIVE PROPOSAL NO. 29. Mr. Moore explained this is to amend Section 2.10 by revising Definition 41, Special Exception, to read as follows:

Admin.Pro.
No.29-Amend
Sect. 2.10

Special Exception Uses are allowable as conditional uses permitted in a zone or zones only under the specific conditions specified in Sect. 6.40, 9.60 and pursuant to the procedures in Article 10 of this Ordinance, but which cannot be located in a zone as matter of right, and which may be revoked in the event any of the required conditions to approval and operation are violated.

Mr. Moore noted the Zoning Commission does recommend approval, but modified the proposal to read:

Special Exception Uses are allowable as conditional uses authorized in a zone or zones only under the specific conditions specified in Sec. 6.40 and Section 9.60 and pursuant to the procedures in Article 10 of this Ordinance, but which use cannot be located in a zone as a matter of right, and which may be revoked in the event any of the required conditions to approval and operation are violated.

Mrs. Wiener moved for adoption of the Zoning Commission's recommendation on Item No. 29. Seconded by Mr. Heeke. On roll call, the motion carried unanimously.

Admin.Pro.
No. 30 -
Amend Sect.2.10

ADMINISTRATIVE PROPOSAL NO. 30. Mr. Moore explained this recommendation is to amend Section 2.10 Definitions by revising Definition No. 38, "Nonconforming Use" to read as follows:

A nonconforming use shall be a permitted or accessory use of land, buildings or structures for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the land or buildings are located; and also refers to the activated scope there of that constitutes the use made of or in the property.

Mr. Moore indicated the Zoning Commission did not approve to which the staff agreed. He stated some of these items were submitted by Mr. Robert Wood to the Administration. Mr. Moore felt the language now in use does provide the Town with the ability it needs. Mr. Heeke moved the acceptance of the recommendation of the Zoning Commission as to Item 30, to disapprove. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Admin.Pro.
No. 31
Amend Sect.6.40

ADMINISTRATIVE PROPOSAL NO. 31. Mr. Moore indicated this is to amend Section 6.40 by adding a new paragraph (p) to read as follows:

That the proposed use will not place an increased burden on municipal police services due to increased traffic, or on fire protection services due to the existence of, or increased potential for, fire/safety code violations.

Mr. Moore indicated the Zoning Commission recommended approval of this proposal. He indicated staff has further evaluated this proposal and the Zoning Commission's action and believes if this is applied to any Special Exception application, it could be argued that a mere increase in seating, of four seats for instance in a restaurant would increase the traffic and the fire protection and potential for life safety violations and he felt the Police and Fire Department do have the ability to comment on the applications for Special Exception and that should be all that is necessary and staff now believes this additional verbiage need not be added.

Mr. Grace believed these were findings that had to be made by the Town Council and the Council is given the freedom to make whatever finding they wish and if it states they have to make a finding which will not increase the burden, that is simply made and he didn't see any problem with the language proposed taking away their right to grant the Special Exception, as these are things the Council is to look at and make a finding and he believed the recommendation of the Zoning Commission should be approved. Attorney Randolph believed the only trouble with it is that any finding has to supported in the record by competent, substantial evidence. He believed the proposed wording does not give an opportunity for there to be competent, substantial evidence to support that and he foresees a situation if someone was opposing the application filing a petition, after Council has approved, saying there was no competent, substantial evidence which showed this did not place an increased burden on police services. He stated this as the problem he had from a legal standpoint because of the way it is worded. He believed the Council should have the opportunity to consider the increase and if it is not too great an increase, it could be allowed, but the problem is the fact the definition does not have what too great an increase would be and that is perhaps something that needs to be worked with.

Mr. Heeke moved the recommendation of the Zoning Commission on Item 31 be rejected and this matter be reconsidered in the 1990/91 Zoning Hearings. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Admin.Pro.
No. 32 - Amend
Sect. 8.11

ADMINISTRATIVE PROPOSAL NO 32. Mr. Moore stated this amends Section 8.11, Extension or Expansion of Nonconforming Uses by adding the following language:

No nonconforming use shall be extended to displace a conforming use.
No nonconforming use conducted inside a structure shall be extended to any land area outside or to any location above or below said structure. No nonconforming parking use shall be intensified, enlarged or expanded.

Mr. Moore indicated the Zoning Commission recommended disapproval of this item, as they felt the language that existed was sufficient and staff agrees with this recommendation.

Mrs. Douthit passed the gavel to Mr. Heeke who chaired the meeting until she returned. Mrs. Wiener moved the Zoning Commission's recommendation to disapprove Item No. 32 be approved. Seconded by Mr. Ilyinsky. On roll call, the motion carried. (Mrs. Douthit was out of the room).

Admin Pro. No.
33 - Amend
Section 6.21

ADMINISTRATIVE PROPOSAL NO. 33. Mr. Moore explained this is to amend Section 6.21 "Off Street Parking" by adding the following paragraph to Subsection 6.21 (d) (2):

In the R-C residential district, Supplemental Parking shall be allowed only for the use of the residents occupying and residing in the residential structures thereon, and for employees, guest and patrons of tee nonresidential Special Exception Uses allowed herein. Supplemental parking involving the conduct of business or any commercial or quasi-commercial use or purpose shall not be allowed.

Mr. Moore reported the Zoning Commission recommended the disapproval of this recommendation to which the staff agrees. Mrs. Wiener moved that the Council accept Item 33 as proposed by the Zoning Commission, to disapprove. Seconded by Mr. Ilyinsky. On roll call, the motion carried. (Mrs. Douthit was out of the room).

Admin Pro.
No. 34 - amend
Sect. 2.10

ADMINISTRATIVE PROPOSAL NO. 34. Mr. Moore explained this is to amend Section 2.10 "Definitions" by adding a new definition (53.1) Use Variance, as follows:

USE VARIANCE. A modification from the requirements of the Schedule of Use regulations and requirements, which would permit the establishment or expansion of a permitted use, accessory use, special exception use or nonconforming use. Use variances are not allowed under the provisions of this Ordinance, and shall not be granted.

Mr. Moore explained the Zoning Commission recommends that the Town Administration study regulation of the rebuilding or expansion of a nonconforming use, as well as the addition of a definition for "Use Variance". The Commission further recommends deferring consideration of these matters until the 1990-91 Hearings.

Mrs. Wiener moved the recommendation of the Zoning Commission be accepted as to Item 34 A, which is to defer. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously. (Mrs. Douthit out of the room).

Mrs. Douthit returned to the meeting and resumed the chairing of the meeting.

Mr. Moore explained Item B under Item 34, the Zoning Commission recommends amending the last paragraph of Subsection (f) of Section 10.13, Variances, to read:

The Town Council may prescribe a reasonable time limit within which the action for which the variances required shall be begun or completed or both. Under no circumstances except as permitted above, shall the Town Council grant a variance to permit a use, or the extension of a use, not generally or by Special Exception permitted in the Zoning District involved or any use expressly or by implication prohibited by the terms of this Ordinance in the Zoning District. No nonconforming use of neighboring lands, structures or buildings in the same zoning district and no permitted use of land, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance.

Mr. Heeke moved the approval of the Zoning Commission recommendation on paragraph B of Item 34. Mr. Moore felt this item should be studied along with Item A for the 1990-91 Season as the Council and the Zoning Commission will have to make some decisions as to whether or not they want some of the nonconforming uses now existing, such as the Brazilian Court, for instance, and whether or not they should retain the right to allow modifications to that building. He indicated if this amendment was passed, as written, they would be precluded from hearing that type of request in the future and he thought there was a strong reason to consider certain nonconforming uses which may want to continue on in the Town and there may be some language brought to them for the discussion of all nonconforming uses and whether they should be permitted to survive or encouraged to not survive. He indicated they would like to study this issue and have this back next year, as they would like time to consider it.

Attorney Randolph explained currently the Ordinance prohibits the Council from allowing a use within a district which is not otherwise allowed and the only question is whether or not they can extend a nonconforming use by way of variance. He believed the Ordinance allows that and this is an attempt to prohibit it and it is a policy question as to whether Council wants to have a flat prohibition against allowing the extension of a nonconforming use. He believed that any nonconforming hotel, within a residential district would preclude the Council from granting a variance to allow the extension of it in any form.

Mrs. Douthit believed this was an item worthy of further research. Mr. Heeke believed this should be an item for study next year and it should be put earlier on the agenda as it is complex. Mr. Heeke moved that Paragraph B of Item 34 of the Zoning Commission's recommendations be deferred and submitted to the Zoning Hearings for 1990/91. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 35. Mr. Moore indicated this is to amend Section 2.10, Definitions by revising Definition No. 53 Variance to read as follows:

DIMENSIONAL VARIANCE. A departure from the dimension or numerical requirements of this Ordinance pertaining to land, buildings or structures pursuant to the provision of Article 10 of this Ordinance.

Mr. Moore explained the Zoning Commission recommends that consideration of this item be deferred to the 1990-91 Zoning Hearings. Mr. Heeke so moved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 36. Mr. Moore explained this item is to Amend Section 10.13 Variances by revising first paragraph to read as follows:

(a) Authorized variances. The Town Council shall hear upon appeal all requests for dimensional variances, and shall have the authority to grant only dimensional variances, subject to the procedures of Article 10.14 of this Ordinance.

(B) Purpose and Intent. A dimensional variance is a departure from the dimensional or numerical requirements of the Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not as the result of the actions of the applicant, a literal enforcement of the Chapter would result in unnecessary and undue hardship. A dimensional variance is authorized only for height, width, location, area and size of structure or size of lots, yards, open spaces, setbacks, frontage or landscape requirements.

Mr. Moore indicated the Zoning Commission recommends this also be put over until the 1990-91 Zoning Hearings. Mr. Ilyinsky so moved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

ADMINISTRATIVE PROPOSAL NO. 37. Mr. Moore explained this item is to amend Section 6.21 Off Street Parking by adding a new section (d) (4) as follows:

The Town Council shall not permit, pursuant to 6.21 (d) (1) (2) and (3) herein, supplemental or required commercial off-street parking facilities, if such parking results in the addition to or expansion of a nonconforming parking use, or the intensification or enlargement in scope or activity of any nonconforming use to be served by said parking.

Admin. Pro.
No. 35 - Amend
Sect. 2.10

Admin. Pro.
No. 36 - Amend
Sect. 10.13

Admin. Pro.
No. 37 - Amend
Sect. 6.21

Mr. Moore noted the Zoning Commission recommends disapproval of the proposal to amend this section, however, they wished to relate to the Council that, while recommending disapproval of this item, the Commission is not indicating that it favors the authorization of supplemental parking in such circumstances; but, rather, that it feels that the Council should retain the right to consider and approve or disapprove such an application on its merits.

Mrs. Wiener moved that the Council accept the recommendation of the Zoning Commission as to Item No. 37. Seconded by Weinberg. On roll call, the motion carried unanimously.

President Douthit agreed to deviate from the agenda and moved Item 38 to the end of the agenda.

Admin.Pro.
No. 39 -
Amend Sect.2.10

ADMINISTRATIVE PROPOSAL NO. 39. Mr. Moore explained this is to amend Section 2.10 Definitions by adding a new definition "Manufactured Housing" as follows:

A structure, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width, or panels, and which is built on a frame and designed to be used as a dwelling with a permanent foundation and connected to all required utilities, and may include plumbing, heating, air conditioning, and electrical systems contained therein fabricated after June 15, 1976, each section shall bear a U. S. Department of Housing and Urban Development label certifying that it is built in compliance with the Federal Manufactured Home Construction and Safety Standards.

Manufactured housing must comply with all Town building codes, hurricane wind velocity codes and U. S. Department of Housing and Urban Development Body and Frame Construction Requirements as applied to hurricane resistive design standards; and, shall be subject to the review of the Architectural Commission or Landmarks Commission as provided in the Town's Code of Ordinance.

Mr. Moore explained this definition is required by the Comprehensive Plan to add to the Zoning Ordinance in dealing with the requirements for affordable housing and the Zoning Commission recommended approval. Mr. Heeke moved the Zoning Commission's recommendation on Item 39 be approved. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Admin.Pro.
No. 40 -
Amend Sect.2.10

ADMINISTRATIVE PROPOSAL NO. 40. Mr. Moore explained this is to amend Section 2.10 "Definitions" by adding a new definition "Group Home". He explained the proposed wording was:

Any building or buildings, section of a building or distinct part of a building, residence, private home or other place, whether operated for profit or not, which is licensed and/or monitored by the State of Florida Department of Health and Rehabilitative Services (HRS) to provide a family living environment including supervision and care necessary to meet the physical, emotional and social life needs of four (4) or more assigned residents not related to the owner or administrator by blood or marriage. A facility offering such services for fewer than four (4) persons shall be within the meaning of this definition if it formally or informally advertises or so solicits the public for residents or referrals and holds itself out to the public to be an establishment which regularly provides such services. Group Home facilities shall have not more than six (6) persons per living unit and not less than the minimum square footage required by HRS.

Mr. Moore explained this was not approved by the Zoning Commission since this wording was added under Item 19. Mr. Heeke moved the Zoning Commission's recommendation to disapprove Item 40 be approved by the Town Council. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Admin.Pro.
No. 41 -
Rezoning of
certain
properties

ADMINISTRATIVE PROPOSAL NO. 41. Mr. Moore explained this is to rezone certain properties now Zoned R-A, Estate Residential to the newly created Conservation District. He indicated these are the lands identified in the Town's Comprehensive Plan as Conservation Areas and generally described as the islands lying in the Intercoastal Waterway lying south and including the Southern Blvd. Causeway and the parcel of land described as: "the south 300' of the north 649' of Government Lot 1 lying west of South Ocean Boulevard owned by the Audubon Society of the Everglades, Inc. He stated this is in the Comprehensive Plan as they have been asked to identify Conservation Areas and this is proposed for rezoning and the Zoning Commission recommends approval and so does the staff. Mr. Ilyinsky moved approval of the Zoning Commission recommendation with regards to Item 41. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Five minute break was taken.

Meeting called back to order by the President.

Admin.Pro.
No. 38 -
Flagler System

ADMINISTRATIVE PROPOSAL NO. 38. Mr. Moore explained this is a proposal by the Flagler System (Breaker's Hotel) Planned Unit Development (PUD) Agreement, last amended in 1981. He indicated the Mayor and Council have copies of the original proposal on which there was an error in computations and an amended revised memorandum from the Breakers also has been provided and additionally, there was a letter received from Gunster, Yoakley, Mr. Jim Brindell representing the Flagler System, regarding the hearing at the Zoning Commission which was received on January 2, 1990, however, he felt the Zoning Commission's recommendations should first be gone through regarding this proposal.

Mr. Moore reported the Zoning Commission recommended approval of the proposal as submitted by the Flagler System and modified by the Commission to consider amendments to the Flagler System (Breaker's Hotel) Planned Unit Development (PUD) Agreement, last amended in 1981, as follows:

A. The following items, as set forth in the revised Summary of PUD Amendments for the Breaker's Hotel (see attachment) submitted to the Town and dated Nov., 1989 are recommended for approval:

1. Addition of a Coffee Shop (Item 1 on Page 3)
2. Addition of Tennis Court Lighting (Item 4 on Page 4).

B. The following items, as set forth in the revised "Summary of PUD Amendment for the Breaker's Hotel" (see attachment), submitted to the Town and dated Nov., 1989 are recommended for approval, subject to the conditions contained after the list of recommended items set forth under section C of this recommendation:

1. Retail Space Alteration (Item 2 on Page 3).
2. Addition of a new Tennis Facility (Item 3 on Page 4).
3. Postponement of Parking and road improvements as set forth in Items 1 through 4 on Page 2.

C. The conditions recommended by the Zoning Commission are as follows:

1. Extension, to at least the year 2020, of the period during which the Golf Course will be maintained as green space.
2. Extension of the Town's lease of the Pinewalk Transfer Station to at least the year 1998.
3. A requirement that the Town and Flagler Systems renegotiate, prior to the 1991-92 Zoning Hearings, the development rights pertaining to the following:
 - A. Phase 1 - involving the lands at the southeast corner of Royal Poinciana Way and Coconut Row.
 - B. Phase 8 - involving the lands at the west end of Pinewalk off Coconut Row.

Mr. Moore stated these are the recommendations of the Zoning Commission, but the Flagler System in their letter of Dec. 28th apparently has agreed after their Board meeting which was subsequent to the Zoning Commission hearings where the conditions and discussions were discussed by their Board. Mr. Brindell lays out in the letter of the 28th of Dec., that everyone was apparently agreed upon, except the item involving the Pinewalk Transfer station, which is Item 3 of the letter which states the Town had requested an eight year lease on the current waste transfer facility site and they thought five years was agreeable to the Flagler Systems' Board of Directors and were unsure about eight years but after their meeting, would prefer to a two year extension of said lease and then negotiate a longer agreement over the next two years and such an arrangement would be directly related to the Transfer of Development Rights (TDR's).

Mr. Moore indicated staff recommends approval of the Zoning Commission's recommendations to the Council. He stated on the Pine Walk Transfer Station, staff was asking for a longer lease on the Pine Walk facility than that was proposed by the Flagler System, however, since the Flagler System is not compelled to begin construction on any of their phases until 1998, under the terms and conditions of the PUD, the staff believed 1998 would be a desirable date for the lease on the Pine Walk facility to expire.

Attorney Brindell from the law firm of Gunster, Yoakley, & Stewart who represent the Flagler System addressed the Council. He indicated with him was Mr. Wickey, President of the Flagler System and General Manager of the Hotel; Mr. Criser, a member of the Board of Directors of the Flagler System; Kim Anderson a planner in his firm, and Jim Zook who has a traffic consultant. He gave a short background on the requests they were making which are extremely important to the Flagler System and the Breaker's with respect to substantial efforts they were making to bring the hotel back to the stature they ought to have and which he was sure the Town expects and what their guests expect from a five star hotel, as it has slipped from that status. He indicated the Flagler System realize there are a number of things they must do to bring them back into the five star status and the improvements proposed are part of a twenty to twenty-five million dollar improvement program being undertaken over the next three years.

Mr. Brindell stated there is no coffee shop in the Hotel and they wish to install one as that is what guests would expect in a hotel of this caliber. He stated the retail area is pretty old and the sizing is not what is required today as much is oversized, and there are not enough little units to compete with other resorts of this type for their guests they would like to provide this kind of experience. He stated the tennis facility proposed is also necessary since the present building is not adequate. They would also like to add lighting for the five westernmost courts with directed down-type of lighting and some typical specifications have been submitted and they will work out the details of the lighting to the satisfaction of the Building and Zoning Department. He felt this too was something that guests expect in a five star hotel. He noted there was nothing very close to these courts therefore, it should not be a disturbance in the community.

He noted there was relief asked for certain parking and road conditions as originally, there were eleven phases in the PUD and the tenth phase was deleted in 1981 and this major revision which they are now operating under was approved. He stated when the traffic analysis was done and the package developed, it was predicated on some phasing of the development, such as Phase 1A was apartments at the northwest corner of the project, which have not been constructed. He recalled the second phase was lanai suites, 80 hotel rooms and some 30 to 40 cabanas which were located south of the current beach club and the third phase was North Breaker's Row, which was approved for 78 dwelling units and 40 were actually constructed. He stated the next phase was the hotel itself and the way traffic analyses are done is they accumulate in everything which was located in the front of the hotel. He pointed out what has occurred and in Mr. Green's letter, he suggests the improvement should be done at this time, such as the closing of the Pine Walk and adding parking there and cutting the driveway through from the main entrance to the Pine Walk area, which will go through a croquet court which will eventually be moved a little bit westward. He noted the parking is being taken off of the entrance way and creating right and left turn lanes at the entrance by widening County Road at the entrance area.

Mr. Brindell stated there was a fallacy there as the way the analysis works and it is taken into what has not been developed as yet. He stated the trips generated were in excess before the improvements have been made. He believed there had to be some basis to work from for analytical purposes, and there is an excess with respect to the trips generated relative to the improvements which are required, i.e., the development that has occurred and what they are proposing will not trigger under the PUD approval, improvements that they are asking relief from.

Mr. Brindell stated the Zoning Commission laid down some conditions and their letter was sent indicating they would extend the Golf Course open space agreement for thirty years commencing with this year, 1990. He stated in the 1981 approval, there was a provision that said they would have an open space agreement to protect the golf course for thirty years, or as long as the property was zoned PUD. He stated they do anticipate the PUD zoning would be there as long as they are and they can't imagine it not being there, so they anticipate it being there longer than 30 years, but that is a backstop and the Board has no problem with the thirty year figure starting from this year.

Mr. Brindell noted the second item was brought up at the Zoning Commission when it was suggested

Admin.Pro.
No. 38-
Flagler System
(cont'd)

Admin. Pro.
No. 38 -
Flagler System
(cont'd)

they enter into a two year discussion with the Town about the ultimate fate of development at the north-west corner, Coconut Row and Royal Poinciana. He knows Mr. Moore would like to see no development there at that corner and the units be transferred to somewhere else on the property and likewise, when the time of 99 years was requested for the transfer facility, Mr. Moore did not realize there was development approval for that area. He stated when the condition came up at the Zoning Commission's meeting that they negotiate with the Town about the Coconut Row development and the Transfer Facility site, and the development there as obviously what the staff would like was to transfer the development rights from that transfer site to somewhere else on the property and if that were to occur, they could obviously enter into a somewhat different arrangement with regard to the transfer facility. He stated when the Board looked at that, their conclusion was if they were going to enter into the negotiation process and come back to the Council in the Zoning season of 1991-1992, they will have discussed the ultimate disposition of that property and therefore, the fate of the transfer facility would be more logical at that juncture to go with the two year lease and come back with the package that made some sense relative to the negotiation they are going to undertake, and that is what he proposes and requested the Council to accept that provision.

Mr. Brindell stated the other item was they have agreed to negotiate over the next two years on those issues and other relevant issues which might come up.

He recalled all of the phases which have not been undertaken must be undertaken by 1998, so the Flagler System knows it is under impending pressure to come to grips with the ultimate development, however he wanted to return to the current focus of all these efforts which is to get the hotel back up to the stature where it ought to be and the Board has committed a lot of money and resources to make that happen. He requested the Council to approve the items he has requested so the work can start along with the other things talked about in the back-up material.

Mr. Heeke felt the Board's feeling about the green space is that it is virtually perpetual as long as the PUD is in effect. Mr. Brindell responded the actual approval is for a period of thirty years commencing March 18, 1981 or so long as the property is zoned for PUD, whichever is greater. Mr. Heeke pointed out he would like a stipulation that their interpretation is strictly a fall-back position and it is a position that they would not advocate any other stance on that agreement. Mr. Brindell pointed out that is what the Ordinance states right now and the only reason he is hesitating is because he doesn't know what will be discussed in the context of the renegotiation with regards to the transfer development rights as it is conceivable that in the process of that, they may want to come back with a recommendation there be some readjustments made to some of the layouts, so that there might be some encroachment of those areas now in order to meet some other things that should be done. He didn't mean to hedge on that but for the moment, he agreed with Mr. Heeke's statement but he wanted the Council to know that in two years, while they were negotiating, he doesn't know what the outcome of that negotiation will be. Mr. Heeke thought that was what the discussions were today as they don't know what is going to happen and that is why there are such things as innovations to contracts and he felt this wouldn't prohibit them from entering into a longer term agreement and as they get into the negotiations could be modified, as frequently this is done in good faith negotiations. Mr. Brindell felt they were currently bound by the thirty years or as long as the PUD is in place and that is the law which applies to their project and unless Council changes that, that would be the condition.

Mr. Heeke did not believe they needed to enter into an agreement to extend it to 2020 if that was the case. Mr. Brindell felt they did as the thirty years commenced on March 18, 1981 and they wish to restart the clock as there is a separate agreement on the open space and the golf course and there is in addition a Town Ordinance which reiterates that and then adds the PUD language. Mr. Heeke stated his problem is the manner in which this was expressed in the 12-28-89 letter as it doesn't throw in the other provision as long as the PUD is in effect. Mr. Brindell acknowledged that was what they were bound by at this time.

Mr. Heeke stated he was inclined toward an eight year lease on the transfer facility with the understanding that as they enter over the negotiations over the next two years, that may be modified and that was his position.

Mr. Moore reported in the discussion of the retail space where they are exceeding by 2700 square feet their original agreement, there was discussion on the limitation of the 2000 square feet and he recalled Mr. Wickey stating that no more than 1000 square feet would be necessary and asked for a clarification. Mr. Heeke recalled they were presenting a series of boutiques and smaller stores. Mr. Brindell recalled Mr. Wickey was saying he didn't anticipate any were likely to be larger than that, but if someone comes and wants eleven or twelve hundred, they would not be refused. Mr. Moore had no problem with that but wanted a clarification on the fact they would not exceed 2000. Mr. Brindell stated they would certainly agree to that.

Mr. Heeke indicated he had no problem with the 2700 as long as there was no more than 2000 in any one shop. Mr. Brindell agreed. Mrs. Wiener had no problem with the retail space, nor the tennis court, but she had a problem with getting into the Breakers and the traffic backing up on South County Road as now happens and wondered if there was any way they could start handling that problem at this point in time? Mr. Brindell felt what would happen as though that improvement and drainage improvements are all part and parcel of what will come out of the negotiation over the next two years, as if they can come to some accord in relocating some density it may change where they need certain improvements for traffic and drainage, etc., and he thought that was the appropriate period in which to resolve this issue rather than trying to resolve it individually when they are negotiating making major changes in the program. Mrs. Wiener asked if as they went through the negotiations, the Flagler System decides they really don't want to move forward with construction at this point in time, then the Town is stuck with the traffic problem. Mr. Brindell felt this would be raised in the discussion and will be addressed.

Mr. Brindell pointed out when the PUD was approved and the conditions were set that they are now operating under, these improvements were predicated on certain rate assumptions and the reason they are talking about this today is for that reason, however, it is important to remember the basis on which those improvements were developed. Mrs. Wiener felt if things did not move forward, situations do change and requirements change and problems may go away or will not go away. She did not believe the traffic situation in 1981 was nearly as bad as it is today. Mr. Brindell agreed but stated he was not in a position today to tell the Council they agree the traffic is increased solely because of the Breaker's Hotel or because of other activity on or off the island. He felt before the Hotel agrees to any other improvements or these improvements and before there was some basis that the problems were attributable to the hotel, and based on the original analysis, they are proposing under the current request, which do not generate the need for these improvements because of the hotel. He stated there may be a need for these improvements but he has no material to tell the Council that what has happened between 1981 and now put more traffic out there as the Hotel occupancy has not increased. Mrs. Wiener felt they were having more events than they were in 1981.

Mr. Thomas Wickey addressed the Council noting the records of the hotel for the last twelve years show they have not increased occupancy and have been running 67% occupancy since 1979. Mrs. Wiener commented that very well may be, but there are a lot more balls and other social events now than there used to be and there definitely is more traffic. Mr. Brindell indicated they would agree to put this on the agenda and discuss it with staff along with the TDR. Mayor Marix asked about the lack of drainage which creates huge lakes on County Road and wondered if they would be taken care of by the Breaker's or is that the Town's problem. Mr. Moore stated some of the amendments in 1981 did not pin this problem on anyone directly, however, this is an area which is open for discussion also. Mayor Marix felt this was very important.

Admin.Pro.
No. 38 -
Flagler System
(cont'd)

Mayor Marix noticed the tennis court lighting should not have a great impact since it is not close to any residences, however, she wanted to know if they were allowed to have lighting at night in this area, would that set a precedent? Mr. Moore responded because this is a PUD and specifically being negotiated, it would not cause a precedent problem.

Mr. Heeke asked if there was a limitation on the hours of operation on the tennis court to which Mr. Moore responded there has not been any set as yet. Mr. Heeke felt this should be a consideration for negotiation. Mr. Brindell explained there are no residences as this will be located along Royal Poinciana Way and he could not see it causing any noise problem.

Mayor Marix recalled there used to be more effective screening around the tennis courts which is no longer the case, as now one can see a high chain link fence and the parking lot. She asked if there could be additional landscaping added. Mr. Brindell indicated there have been several accidents there. Mayor Marix suggested they sight screen it around the parking and the fence can also be planted out at its own level as that doesn't have to be planted out right at the road. Mr. Brindell stated they will look into providing landscape screening which does not present a safety problem.

Mrs. Wiener indicated she was still concerned about the traffic problem. Mr. Brindell felt a lot of the traffic is not just caused by the Breaker's and he did feel they should be obliged to fund the answer to the traffic problems which are not related to them at the hotel. Mrs. Douthit commented in the past the Town and the Breaker's have worked out these things together and she asked if there wasn't some way these items could be negotiated as they want eight years on the Transfer facility and perhaps that could be handled sooner. Mr. Brindell responded they do agree to the eight years on the transfer facility with the provision that they will go into negotiations over the next two years and if the outcome of these negotiations concludes the eight years is no longer warranted, or if it has to be extended, the lease can be adjusted according to the outcome of those negotiations.

Mr. Moore asked if there could be a time limit set for the use of the tennis courts. Mrs. Wiener felt it should be 10 PM.

Mr. Heeke asked Mr. Randolph about the fact that the eight year lease would be granted with the proviso that during the period of negotiation, that period could be adjusted in either direction, shorter or longer. Mr. Brindell asked if after negotiations, there should be no changes made and everyone is happy with that arrangement, they would be faced with the 1998 date which is when all the phases have to be started, one of which is on the transfer facility site. Mayor Marix felt if they give us eight years with the provision that if it is needed, we would be provided with that facility somewhere else on the Breaker's property. Mr. Brindell was not sure there was another area on the Breaker's property which would be acceptable.

Attorney Randolph believed the only question here was the subject of reasonable negotiations as they are not guaranteed an eight year lease as he would rather not have it put into a lease form and the Town get the 8 year lease but the PUD be approved subject to that matter being renegotiated, to which Mr. Brindell agreed.

Mr. Heeke stated the only problem he sees with that is that they have the same ownership now as they will eight years from now.

Mrs. Wiener did not want to see Item 3 as an open ended item and that was the postponement of parking and the road improvements indicating she would like to see a time limit put on the road improvements. Mr. Brindell believed there should be a condition that this is an item which should be brought back to the Council in 1991-92 season along with the transfer development right issue, and the period of time on the transfer facility site. Mrs. Wiener hoped that this would be with some kind of an agreement. Mr. Brindell agreed. Mr. Moore indicated he would also like to have included in that list the drainage problem. Mr. Brindell agreed.

Mr. Moore stated they will prepare a list and hoped Mr. Brindell would do the same and then a Resolution will be prepared to amend the PUD which will be acted on at the January 22 and February 5, 1990 Town Council public hearings at 5:01 PM.

Mr. Milton Green addressed the Council requested some consideration be given to the Breaker's doing the work necessary to prevent the traffic jams and the dangerous conditions which now exist at the entrances to the Breaker's property and they should be asked to work on this problem and have it completed by Nov. 1, 1991. He felt the Council was putting everything in a basket for future discussion and negotiation. Mr. Moore explained they are committed to make the improvements to the property but they have until 1998 to initiate those improvements to the property but then until 1998 to initiate those improvements and they do not have to make adjustments to the entrances until the improvements are made and what the Town is seeking in the negotiations, is for them to make those improvements on a more rapid basis, so this will be negotiated between now and the 1991-92 Zoning hearings. Mr. Greene believed that under the agreement of 1981, they were obliged to do this. Mr. Moore did not agree. Mr. Greene believed the Town Council should require them to make the corrections on N. County Road and at their entrances to improve the traffic problem. He felt the Council should request them to perform the work on the entrance by a time certain.

Mrs. Douthit noted these items are being negotiated within the next year and she suggested these items be kept in mind, as this will come up again. Mr. Moore stated what is at stake is the degree of performance and how much needs to be done, especially if there are development rights which should be relocated. Mrs. Douthit felt it all had to be in conjunction with the Comprehensive Plan. Mr. Greene felt the condition should be considered by the Town Council that the Breaker's should correct the terrible problem which now exists.

Mr. Moore stated the Zoning Commission's Reprot, as amended today, should be approved, which would be the time limit on the lighting of the tennis courts being until 10 PM in the evening; and the drainage issue and the traffic issue as enumerated in the Breaker's proposal, Items 1 through 5 of Item No. 2, be included in the negotiating progress involving the transfer of development rights from the Poinciana

Plaza area as well as the Pine Walk area and the lease is recommended for eight years.

Mr. Brindell understood that all phases must be undertaken by 1998, as the agreement reads now, and the fact is only one of the phases has been undertaken and that was North Breaker's Row and that was half of what was originally approved.

Mr. Heeke moved the approval of the recommendations of the Zoning Commission with regards to the Breaker's PUD, as modified today, which modifications include: (1) a 10 PM time limit on the tennis courts; (2) the drainage and traffic problems will be included in items one through five of Item No. 2 of the proposal for negotiation within the next two years; (3) the 2000 square foot maximum limitation apply as to single commercial retail space in the hotel; and (4) the lease on the Pine Walk transfer facility be for a period of eight years. Seconded by Mr. Ilyinsky.

On roll call, the motion carried unanimously for approval.

Five minute break was taken.

Meeting called back to order by President Douthit.

Mr. Moore explained the Zoning Commission also recommended the following for study to be undertaken in preparation for the 1990-91 Zoning Hearings:

1. The Town Administration should study existing development in the R-AA and R-A Zoning Districts to determine the prevailing percentage that is devoted to landscaped open space.
2. The Town Administration should study the appropriateness of increasing the minimum landscaped open space requirements in the R-AA in R-A zoning Districts by five per cent.
3. The Town Administration should study whether or not perforated dish antennas work as well as solid dish antennas towards the end of modifying existing regulations accordingly.
4. The Commission authorized the Chairman and Secretary to sign and transmit the Zoning Commission recommendations to the Town Council.

Motion was made by Mr. Ilyinsky to approve the additional recommendations made by the Zoning Commission. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Robert M. Grace asked the Council to listen to his comments on a matter not related to zoning and he would be glad to be heard at the next Council meeting if that is what the Council wishes. Mr. Heeke requested the comments to be heard today.

Mr. Grace indicated his comments are on the operation of Florida Power & Light Co. during the recent cold spell at Christmas time. He reported he and his two neighbors were without electricity for fifty four hours. He tried to call FP&L and got nothing but a busy signal so he set his alarm for 2 AM and made the call at that time and had music played to him for an additional twenty-five minutes. He knows there are devices to be answered by a machine and it is all done automatically and he believed the customers of FP&L deserved to have that same modern technology applied to them when they wished to call up and tell FP&L they had no electricity.

Mr. Grace explained when the repair crew finally arrived he asked the foreman what went wrong and he exhibited a piece of equipment which had been in use for ten or fifteen years and had salt build up on it and it burned out. He asked the foreman if the FP&L had any replacement program for this type of equipment and was told they did not and simply wait until the equipment burns out and then replace them as they feel the customer pays less that way. Mr. Grace stated he didn't agree with that type of economics as he lost the use of his home for two and one half days, which is worth quite a bit to him and additionally he lost everything in his freezer. He thought FP&L should have a regular maintenance program for things such as this which sit on a pole and reaffected by salt. He would not be adverse to paying more than other customers, since the salt has to be combatted and he would not be against having it cost him something to fight the salt and he suggested a regular replacement program for things such as this that are affected by salt.

Mr. Grace explained the electricity then began to run again and then after an hour, it went off again and he had to go through the same procedure of trying to reach FP&L by phone and a repair crew arrived again and the foreman informed him the previous repair crew left the old transformer there which was put up thirty years ago and was inadequate to handle the demands of his home and the two neighbors. He stated a new transformer was needed and he would be back within an hour, but it took him a whole day. He didn't believe that mattered but what does matter is bringing the electrical service in this Town up to date and he felt this should be the basis of discussions with FP&L. Mr. Heeke felt the Town Manager should be directed to write a letter to Mr. Ted Moffatt, Chairman of the Board at FP&L pointing out the difficulty our residents have had in reaching them in an emergency situation and ask also for a Policy Statement as to maintenance and replacement of salt effected equipment and perhaps refer to the franchise agreement.

There being no further business, the meeting was adjourned at 4:45 PM.

Grace T. Peters, Town Clerk.

Recommended
Zoning matters
for study

Mr. Grace -
Comments on
Operation of
Florida Power
& Light

Adjournment