

MINUTES OF TOWN COUNCIL MEETING HELD OCTOBER 8, 1991

Roll
Call

I. CALL TO ORDER AND ROLL CALL: The October 8, 1991 Town Council meeting was called to order at 9:30 AM by President Heeke in the Town Hall Council Chambers. On roll call, the following were found to be in attendance: President Heeke, President Pro Tem Weinberg, Councilwomen Douthit and Wiener and Councilman Ilyinsky. Absent was Mayor Marix. Also attending for all or portions of the meeting were Mr. Doney, Attorney Randolph, Mr. Dusey, Mrs. Peters, Cpt. Croat, Chief Elmore, Mr. Moore, Mr. Zimmerman, Mr. Frank, and Mr. Ugi.

Invo-
cation

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Father Gushee of Bethesda-by-the-Sea Episcopal Church. Pledge of Allegiance was led by President Pro Tem Weinberg.

Pre-
sentation

III. PRESENTATION

A. Town Hall Restoration Project - Presentation to Mayor and Town Council by Mr. John D. Mashek, Jr., President, Preservation Foundation of Palm Beach, Inc., of Certificate for Award Winning Restoration Project from Florida Trust for Historic Preservation. Mr. Mashek of the Preservation Foundation presented President Heeke with an Award Certificate from Florida Trust for Historic Preservation, with regards to the restoration of Town Hall.

Comments
of Mayor

IV. COMMENTS OF THE MAYOR. Mayor Marix was absent. President Heeke advised he has two announcements and if any member of the Council wishes to, they will take these items up under "Any Other Matters".

A. Mr. Heeke advised he has heard from the office of Senator Tom Lewis who advised there will be a public hearing on the issue of the proposed new slip at the Port of Palm Beach and Senator Lewis will advise the date and time of this hearing, when it is definitely set.

B. Mr. Heeke advised earlier this year, he met with officials of the City of West Palm Beach, including Mayor Koons and City Manager Schutta and they discussed the City of West Palm Beach's plan to beautify the west side of the Royal Park Bridge. Mr. Heeke advised the officials of West Palm Beach would like this to be a community effort and to move forward with this project, Mr. Heeke advised when the plan is finally developed, he would like to have Mr. Dusey, Mr. Ugi, coordinate from the Town's perspective and Mr. Elwell coordinate with the various groups in the community, such as the Garden Club, the Palm Beach Civic Association and Citizens Association South of Sloan's Curve and perhaps the Chamber of Commerce and this matter will be brought up later in the meeting under Any Other Matters.

V. APPROVAL OF AGENDA

NOTE: Items listed on the "APPROVED AGENDA" will be approved by one motion of the Town Council, unless the Mayor or an individual Council member requests that certain items be deleted from same and be individually considered.

APPROVED AGENDA

VI. APPROVAL OF MINUTES OF SEPTEMBER 4, 11, and 12, 1991

VII. LICENSES AND PERMITS

Licenses &
Permits

A. Charitable Solicitations

1. American Heart Association, Palm Beach Region; No. 6-92
2. St. Mary's Hospital Foundation, Inc.; No. 9-92
3. The Jewish Guild for the Blind; No. 23-92
4. Good Samaritan Foundation, Inc.; 35-92
5. Cystic Fibrosis Foundation; No. 72-92
6. The Henry Morrison Flagler Museum; No. 74-92
7. The Garden Club of Palm Beach, Inc.; No. 123-92
8. Mental Health Association of Palm Beach County, Inc.; No. 145-92
9. Women's American ORT of Northern Palm Beach County; No. 167-92
10. Juvenile Diabetes Foundation International, Palm Beach Chapter; No. 240-92
11. The Raymond F. Kravis Center for the Performing Arts; No. 245-92
12. Fishin' Kids Stay Clean, Inc.; 326-92

Bev.
Licenses

B. Beverage Licenses

1. Application for a New 4 COPSRX Alcoholic Beverage License from Ottaviano Mario Ratti d/b/a/ La Trattoria at 251 Sunrise Avenue
2. Application for a New 2 COP Alcoholic Beverage License from Gladys Milagro Kennedy d/b/a Int'l Deli-Cafe, Inc. at 277 Royal Poinciana Way

VIII. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR September 1991

Mr. Doney advised the appointment of the Bicentennial Eagle Restoration Committee should be postponed until the next Town Council Meeting.

Mr. Moore advised that Items XII.C.6,7 and 8 should be removed from the agenda and put over to the November Town Council meeting.

Mr. Weinberg made the request that the minutes of the September 4, 1991 Town Council meeting be removed from the "Approved" agenda. Mr. Ilyinsky moved the agenda for this meeting be approved with the removal from that agenda of Items XII, C. 6, 7 and 8 (which will be deferred to the Nov. 12, 1991 Town Council Meeting) and the "Approved Agenda" be approved with the removal of the minutes of the September 4, 1991 meeting. Seconded by Mrs. Douthit

Mr. Weinberg requested the minutes of 9-4-91 be corrected page four fifth paragraph which should state the "same percentage" and Mr. Heeke asked that Mr. Crouse's comments be reviewed with the tape. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

REGULAR AGENDA

Mr. Weinberg requested the minutes of 9-4-91 be corrected page four fifth paragraph which should state the "same percentage" and Mr. Heeke asked that Mr. Crouse's comments be reviewed with the tape. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

REGULAR AGENDA

IX. LICENSES AND PERMITS

Licenses &
Permits

A. Commercial Motion Picture Making Permits

1. Application for a Commercial Motion Picture Making Permit for Movie Entitled "Beyond Suspicion" by Applicant Night Life, Inc.

Movie: "Beyond
Suspicion

Mr. David Picker, Executive Producer of Night Life Productions, Inc. addressed the Council indicating he has with him, Mr. Tom Luce, Production Manager and Location Coordinator, Mary Morgan who will be able to answer the technical questions.

Mr. Picker indicated he is the third generation in his family to be in the motion picture business, and he felt that he brought to this production a long record of both family and experience. He has served as President of three major movie companies and has produced over twenty movies. He was brought up with the industry and with something that doesn't much exist today, and that is "trust". He stated they have adjusted their schedule so they can request a limited time to shoot in this community. He believed that in no way would this film critique the Town of Palm Beach and has no negative elements and portrays this Town as the beautiful city it is.

He advised they have met with the Breaker's and they are willing to have them on the Breaker's property, subject to the Town's approval of the granting of the permit. He felt he had been successful in convincing the Breakers that they do have a positive manner.

Mr. Picker advised the film will be distributed by Samuel Goldwyn Co., with Samuel Goldwyn, Jr. running the company and they enjoy a distinguished reputation. He stated the film will star Jim Belushi, Tony Goldwyn, who is Mr. Samuel Goldwyn's son, and they have signed a famous actress and will announce her name shortly.

Mr. Picker believed all of the forms have been completed properly and within the Town's rules and regulations and he believed they have requested the minimal time they need and he will modify it even more as they wanted to have a moving tracking shot on Coconut Row, and since that is a residential area, they will not shoot in those residential area. He advised the only variance they have requested is the first day they will be doing the moving shots which is nothing more than moving vehicles, flowing with the traffic, with a truck pulling the vehicle which has the camera on it and they will have police escorts. He stated on Sunday they plan to shoot on public land, and this will be with the Council's permission, on Worth Avenue. He stated they will be parking their vehicles off-street and he requested that since is the only day they are shooting, he requested special permission so that they may start at 8 AM and shoot the remainder of the day. He indicated if the police personnel who will be with them feel that the crew is interfering noisewise with the residents, he will adjust that. He didn't believe this would be a the case and he will be there personally.

Mr. Picker noted the following two days he will be on the land owned by the Breaker's and they will park their vehicles there and be totally on the Breaker's property.

Mr. Heeke advised he had requested of the Risk Manager a technical detail, and that would be a Hold Harmless and Indemnification Agreement should have a Corporate Resolution authorizing whomever has signed these papers. Mr. Heeke asked if Night Life, Inc.'s indemnification reached out to anyone else, such as the distributor? Mr. Picker responded he did not know but he did know that Night Life Productions had the resources and the insurance policies in their own name.

Mr. Heeke believed that on the Sunday morning shoot, they were planning to use the Appollo Lot? Mrs. Morgan responded they planned to go there the night before after 8:30 or 9:00 PM and for the equipment that needs to be close to the shooting, she is arranging to have that equipment placed on the parking lot near the Vias. She felt by moving it into the Appollo Lot, the night before and having a police guard there which should handle the situation

Mrs. Douthit asked if the insurance and hold harmless certificate were in order? Mrs. Peters responded there is a memorandum in the back-up from the Risk Manager, Mrs. Martinuzzi, which indicates these papers are in correct order.

Mr. Ilyinsky asked if they had provided for a rain date? Mr. Picker responded the rain date at the Breaker's is the 13th and 14th of November, but he is a firm believer that if it rains, they should shoot in the rain as that makes it very natural.

Mr. Doney reminded the Council specific hours are set forth in the Code, specifically Section 10-423 (4) which prohibits filming between 8 AM and 10 AM and 4 PM and 6 PM. Mr. Heeke recalled this time limit was put in the Ordinance and was geared towards working hours and rush hours, and this filming they are requesting is on a Sunday, which should not present a problem. Mr. Picker advised this was the only variance they were requesting. Attorney Randolph pointed out from a legal standpoint, there is no provision in the Code which would allow for a variance from the terms of the Ordinance. He stated this applies to the public rights-of-way and he doesn't see a provision in the Ordinance which would allow the Council to grant a variance.

Mr. Picker advised on Sunday they will be on private property and he needs approval for Saturday from 8 to 10 AM for the two vehicles driving shot which would be on the street. Mr. Heeke responded the Town Attorney has advised that a variance cannot be granted for that.

Mrs. Wiener stated this was similar to the discussion this Council had on flag poles and they were told there was no way permission for the flag pole could be granted as it was specifically prohibited. She recalled in the end the permission was granted and now the flag pole is there and she wondered if there was anything in the regulations of the Town which would prohibit anyone from asking. Mr. Randolph agreed there was nothing that prohibited anyone from asking for a variance, but when there are laws, there are generally provisions which allows for a variance, if it is intended to be varied. He felt the best way to approach this is to amend the Ordinance or if the Ordinance is interpreted as not really applying to times on Saturday or Sunday, then he

Licenses &
Permits
Movie: "Beyond
Suspicion"
(cont'd)

supposed they could do it but subsequently, they should be prepared to amend the Ordinance, to which the Council agreed.

Mr. Picker asked if he could suggest that they are going to have Palm Beach Police escort with them in whatever they do and if on that particular Saturday morning they are in areas where there is no traffic and the police feel it isn't going to present any problem, would it be possible for them to make a judgment on whether or not they could shoot. Mr. Ilyinsky asked if it would be too inconvenient for them to start at 10 AM. Mr. Picker stated if that is what the Council wishes, they will do it, but they like to get the extra daylight hours. Mr. Heeke believed they needed to follow the advice of the Town Attorney as there doesn't seem to be any effective method in the Ordinance to vary that requirement.

Mrs. Douthit commented that when the Ordinance was being formulated, much time and effort went into it, and it has been carefully written and she agreed with Mr. Heeke. Mr. Ilyinsky agreed also, however, he felt the earlier they finished their filming, the less nuisance it would cost the Town. Mr. Heeke advised Mr. Picker he should schedule the filming for 10 AM as the Ordinance provides and the Council will take a look at this section of the Ordinance as something has been brought to the Council's attention.

Mrs. Wiener felt there was no question that there were some areas in the Ordinance which were too tight and these applications are always looked at on an individual basis, and where there is no area for variance, there is a problem. Mr. Picker stated the irony of this is at 8 AM on a Saturday morning, there would be far less traffic than there would be at 10 AM and if the Council could see fit to let the police make the judgment call. Mr. Heeke responded they needed to look at the Ordinance again, particularly with the weekend hours in mind.

Mr. Picker asked if the Ordinance would be amended before the date they actually shoot? Mr. Heeke responded that was not possible as it takes two readings for an Ordinance adoption.

Mr. Picker stated if there was any way the attorney could see his way clear to grant the variance, they would be appreciative and if not, they would have to abide by the law.

Mrs. Wiener noted the daylight hours would then be 10 to 4 and in November, that is not very much daylight hours and wondered if it was possible to adjust the hour, say like 9 to 3? Mr. Randolph stated there is no provision where they can grant a variance to that particular section under any circumstances.

Mr. Doney recalled with prior applications, the Town Council did approve certain limited hours of filming and wondered if Mr. Picker could advise which hours they would be shooting. Mr. Heeke responded on the Breaker's property they will be shooting but that is private property.

Mr. Doney advised the next item is the limitation to commercial districts and through the Police Department and the Building Department, the commercial areas will be the only areas where this in-town filming can be done. Mr. Heeke believed Mr. Picker had already acquiesced to that.

Mr. Doney advised written permission from the private property owners should be furnished prior to the filming to the Town Clerk, to which Mr. Picker agreed.

Mr. Heeke advised Mr. Picker the spirit of cooperativeness is very much appreciated by the Council and he wished to thank him for that. Mr. Picker responded he too appreciated the Town's cooperation as they are professionals but they do recognize the responsibilities of the Council. He felt when a film company does come to a location, they do carry a responsibility not only for themselves and the location, but for the people that will be following and he has been exposed in his career where he has followed people who have destroyed the reputation of the industry and he will be no part of that.

Mrs. Wiener moved that permission be granted to Night Life, Inc., to film the movie entitled "Beyond Suspicion" under the conditions which have been discussed which include filming on public property from 10 AM to 4 PM on Saturday, November 8, 1991 and there would be no filming in any residential areas and the Police Department personnel will be with them at all times. Mr. Heeke asked if she would add as a condition that the necessary documentation on indemnification be provided to which Mrs. Wiener agreed. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

X. COMMITTEE REPORTS

A. Joint Public Safety/Public Works Committee Meeting Held on October 3, 1991

REPORT OF THE JOINT PUBLIC SAFETY AND PUBLIC WORKS COMMITTEE MEETINGS HELD ON OCTOBER 3, 1991

I. CALL TO ORDER AND ROLL CALL: Meeting called to order by Councilman Ilyinsky. On roll call, the Public Safety Committee Chairman, Paul Ilyinsky and Committee member Bernard A. Heeke were found to be in attendance.

The Public Works Committee Chairman, M. William Weinberg was also in attendance. (Mr. Ilyinsky is the Committee member of the Public Works Committee). Also attending were Councilwoman Douthit, Mr. Doney, Chief Terlizzese, Cpt. Croft, Mr. Dusey, Mr. Bowser, Mr. Ugi and Mrs. Peters.

II. APPROVAL OF AGENDA: Agenda was approved as printed.

III. NORTH COUNTY ROAD FROM WELLS ROAD TO COUNTRY CLUB ROAD

A. CONSIDERATION OF REGULATORY SIGNAGE AND RELATED ISSUES.

After discussion and receiving comments from Mr. Warren Woodward, Councilwoman Douthit, Dr. Steen Lilja, Dr. Bart Moore, Peter Broberg, staff and Committee Members, it is the RECOMMENDATION OF THE JOINT COMMITTEES AS A "TEST PROGRAM" THAT FROM WELLS ROAD TO MIRAFLORES ON NORTH COUNTY ROAD AN EDGE LINE (SOLID WHITE LINE) BE INSTALLED AND THIS LINE BE PLACED SIX FEET FROM THE OUTER PAVEMENT EDGE OF BOTH THE NORTH AND SOUTH SIDES OF THE ROAD; SECONDLY, THE NO-PASSING SIGNS BE REMOVED AND THERE BE "NO PARKING" SIGNS IN THIS AREA WITH MR. DUSEY INVESTIGATING WHETHER OR NOT THE POSTING OF SIGNS CAN BE PRECLUDED BY PAINTING "NO PARKING" ON THE ROADWAY.

Committee
Reports

Public Safety/
Public Works
Comm.

Roll Call

Appr. of Agenda

Wells Road

B. CONSIDERATION OF PROPOSED LANDSCAPE BEAUTIFICATION PROJECT ON MEDIAN ISLANDS NORTH OF WELLS ROAD.

Wells Rd.
Landscaping

After discussion and receiving the comments of Dr. Moore, Committee members, and staff, it is the RECOMMENDATION OF THE JOINT COMMITTEES THAT THE LOW PLANT MATERIAL (AS OUTLINED IN MR. UGI'S MEMORANDUM TO MR. DUSEY DATED JULY 30, 1991) BE APPROVED FOR LANDSCAPING ON THE MEDIAN ISLANDS NORTH OF WELLS ROAD CONTINGENT UPON NECESSARY DONATIONS BEING OBTAINED TO FUND THIS PROJECT. The Garden Club will be approached for possible assistance on this proposed project. The Palm Beach Civic Association's Beautification Committee was requested to work with the Garden Club and the Town's staff on this project.

IV. ANY OTHER MATTERS: None

V. ADJOURNMENT: Meeting adjourned at 9:32 AM.

Adjournment

PUBLIC SAFETY COMMITTEE

PUBLIC WORKS COMMITTEE

signed by Chairman of Public Safety Committee Paul R. Ilyinsky and Committee Member Bernard A. Heeke and by Chairman of Public Works Committee M. William Weinberg and Committee Member Paul R. Ilyinsky.

Mr. Ilyinsky read the recommendation that from Wells Road to Miraflores on North County Road, there be an "edge" line which would be a solid white line be painted six feet from the outer pavement edge of both the north and south sides of the road; secondly, the No-Passing signs be removed and there be "No Parking" signs erected with Mr. Dusey investigating whether or not the posting of signs can be precluded by painting "No Parking" in small, dignified letters on the roadway.

Wells Rd.
"edge" line

Mr. Weinberg read the second recommendation which was to install low planting material which would be approved with landscaping on the median islands north of Wells Road, contingent upon necessary donations being obtained to fund the project. He advised the Garden Club with be approached for possible assistance on this proposed project and the Civic Association's Beautification Committee was requested to work with the Garden Club and the Town's staff on this project. He recalled the Committees' position was this should be considered, provided there would be funding be the various organizations.

Wells Road
landscaping

Motion was made by Mrs. Douthit to accept the Joint Report of the Public Works and Public Safety Committees of their meeting on October 3, 1991 into the record. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Mr. Heeke believed Council action was required on the recommendation of the Public Safety Committee with regard to the recommendation as read by Mr. Ilyinsky and that is the recommendation for trying an experiment of the striping on the right hand side of each of the lanes on North County Road between Miraflores and Wells Road. Mr. Heeke asked Mr. Dusey if he has made a determination that "No Parking" can be painted on the roadway or if we would have to revert to installing signs. Mr. Dusey responded signs would have to be installed as the painting of the roadway is not permissible. Mr. Ilyinsky asked how many signs they were talking about? Mr. Dusey responded they would have to be installed on both sides of the roadway and every 300' feet. Mr. Ilyinsky requested that as they put up as few signs as possible.

Striping lanes
on No. County
Rd.

Mr. Heeke advised the concern was that motorists did pass on the right, particularly where there is a slight curve and side street traffic coming onto the road, which creates a hazard. He indicated the Committees don't like to make these recommendations for changes, but this will be on an experimental basis. He recalled there was a good bit of discussion contrary to removing any of the pavement.

Mrs. Douthit felt they were forced to do something and she believed they should do the minimal amount to help alleviate the hazard and she felt the white strip and as few signs as possible was the answer and she moved the recommendation be adopted. Seconded by Mrs. Wiener.

Mr. Warren Woodward addressed the Council stating his opposition to the recommendation. He viewed this as a "lie technique" explaining that is a lie being repeated over and over again so that it eventually becomes being viewed as a truth. He referred to the Shiny Sheet headlines on this subject, exhibiting copies of the newspaper. He felt the only problem that exists was in the imagination of the Public Safety Committee members, who he felt have been misled by the Chief of Police.

He pointed out a simple examination of the accident reports occurring in this stretch would demonstrate the fact that there is no problem. He had secured copies of the accident reports for a thirty-two month period from Jan. 1989 through August, 1991 and they cover the area of roadway from Wells to Country Club, but since the Committee is considering the stretch "under the trees", he will confine his findings to that section of road. He was informed at the Committee meeting, by the Police Chief that the accident reports he had purchased were incomplete although he had checked the day before with the Records Custodian and was told that he had all of the accident reports for that area. He had a telephone call from Cpt. Croft of the Palm Beach Police Department the day after the Committee meeting and Cpt. Croft assured him that his records were indeed, complete and after all this, he can assume that his records are complete and the Chief is wrong.

Mr. Woodward recalled that Chief Terlizze stated at the Committee meeting he was reacting to public complaints concerning that stretch of road and he asked Cpt. Croft to see the complaints and was told there was one complaint on file. Mr. Woodward then stated he phoned Mr. Heeke who advised he had no complaints, but the Police Dept. did, and he in turn told Mr. Heeke the Police had but one complaint. Mr. Heeke suggested that probably the Town Manger's office had other complaints but Mr. Woodward advised when he phoned that office and talked to Cindy, the Town Manager's secretary, he was told they had no complaints as when they receive verbal complaints, they urge the person complaining to put it in writing.

Mr. Woodward recalled Cpt. Croft brought up in their phone conversation that regardless of what may be in the accident reports, the section of roadway under the trees is an engineering nightmare which doesn't meet Federal or State guidelines and the lanes are sub-standard width. He

Striping lanes
on No. County
Rd. (cont'd)

believed the roadway was probably built before there were any Federal or State guidelines, and he doesn't care, as this is not a Federal or State road, and it does work just fine as will be borne out in the accident reports.

He believed it was a mystery as to why pulling out of the side streets under the trees has become such a burning issue as the singular complaint on file with the Police Department does not concern itself with this imaginary issue. He reported there were no accidents which involved exiting the streets in this area. He recalled Mr. Heeke asserted at the Committee meeting that it was difficult to pull out from those side streets to which he did not concur. He felt if there was a visibility problem, it could be easily corrected by moving the offending walls or shrubs and/or by installing a parabolic mirror which is already found at Casa Bendita.

He asked all of the Council members to read the reports, and they will see this whole thing is much ado about nothing, as in 32 months, there were six accidents under the trees. He recalled two were hit and runs to light poles, one a truck hit a tree and three involved passing. He recalled at the Committee meeting, he suggested to the Chief that he think up ways of saving monies rather than spend it to which Chief Terlizze responded he did not equate cost with people's lives, limbs and safety and the only problem with that is none of the accidents were blood-dripping, bone-crashing accidents but were basically fender benders.

Mr. Woodward considered this one of the most beautiful streets in the Town and the proposed recommendations would make it look awful. He stated he was amazed at the Committee meeting when twice he offered his copies of the accident reports for review by the members and they simply were not interested. He heard at the meeting Mr. Heeke stating that he will accept the recommendations of the "paid professionals" and Mr. Woodward felt in this case the "paid professionals" were wrong and he felt if the Council acted without evidence, without complaints and without any proof is government by whim, fantasy and conjecture. He suggested they read the reports before they act and ruin this roadway.

Cpt. Croft addressed the Council reminding them this issue has been ongoing for over a year as the Police Department has done a traffic analysis, using their trained accident investigators and analysts. He advised they compiled this information regarding the accidents in that area and put it on paper and submitted it with their ideas for alternatives or changes to be made to the roadway. He believed that a year later they were close to a solution, but they were still not there. He believed the roadway was not engineered in a fashion which meets State or Federal guidelines as other roads in the Town do, but this is one stretch that has been allowed to exist over the years. He stated it has been repaved and repaved and each time it has gotten a little bit wider and the fact is that the travelling public gets confused when they drive this road as some people assume it is a two-lane road and some assume it is a four-lane road and unless there are clear designators on the pavement, this confusion will continue and accidents will happen. He knew there were other sections of roadway in Palm Beach which have higher accident rates, especially in the business districts where the intersection accidents are quite high. He believed there were other residential areas which had higher accident rates than the questioned area, however, he firmly believed this particular roadway is too wide and it is too wide in that it is thought by the motoring public as four lanes and then they surmise they are allowed to pass either on the right or the left, or anyway they see fit and they continue to see violations occurring in that stretch of roadway. He wishes to assist the motoring public and try to prevent even a few accidents a year or maybe one fatality every ten years. He stated the Police Department has no self-interest and have not dreamed up their reports as they were analyzed to a much greater detail than what is available on the accident reports.

Mrs. Wiener recalled the first time this was discussed and when it was voted on, it was a geographical vote as those who lived in the north end voted against the plan and those who did not contend with this every day voted for the plan. She wondered how this plan would allow for the slow moving rubbernecker, who do exist and who the motoring public cannot pass. Mrs. Douthit stated also a worry are the bicyclists and the construction vehicles and she has never heard of narrowing a road. Mrs. Wiener agreed noting most of the time the request is for widening roads, and she was concerned with the fact they would be giving a lot of tickets for doing something that seems to be a reasonable thing to do. Cpt. Croft was not sure that if their enforcement actions would increase as a result of the striping, but he hoped that they would be less and that there would be less hazardous situations. He understood what they were saying and if he lived in the north end and traversed this road every day, and if the pavement was sufficiently wide, he may want to pass. He knows there are slow moving vehicles and the problem is there are slow moving vehicles on every street throughout the Town.

Mrs. Douthit believed there may also be noise pollution as people would be blowing their horns. Mrs. Wiener viewed this as a test and it may be found that they get nowhere with it. Mr. Heeke noted they were talking about a relatively short strip of roadway and this is a test.

Mr. Heeke called for the roll call on the motion on the floor and on roll call, the motion carried unanimously to approve the recommendation on an experimental basis.

XI. NEW BUSINESS

A. Resolutions

1. Resolution No. 52-91 - Readoption of the Dune Ordinance Guidelines

Attorney Randolph read Resolution No. 52-91 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING AND RE-ADOPTING THE TOWN'S GUIDELINES FOR ROUTINE DUNE MAINTENANCE.

Mrs. Douthit moved for passage of Resolution NO. 52-91. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

2. Resolution No. 53-91 - Opposition to Proposed Rule by DNR Regarding Sea Turtle Protection

Attorney Randolph read the Resolution No. 53-91:

Res. 52-91

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, REQUESTING THE GOVERNOR AND THE CABINET TO REJECT PROPOSED DNR RULE 16B-41.006 OR TO POSTPONE THE ADOPTION OF THE PROPOSED DNR RULE 16B-41.006 UNTIL A COMPREHENSIVE STUDY OF THE CONSEQUENCES AND IMPACT OF THE PROPOSED RULE CAN BE COMPLETED.

Res. 52-91
(cont'd)

Mrs. Douthit moved Resolution No. 53-91 be adopted. Seconded by Mrs. Wiener. Mr. Heeke asked if there could be an amendment to it as at the Mid-town beach, there are no sandy beaches and even at low tide, the beach is covered. Mr. Doney advised this could be addressed in the transmittal letter. Mr. Randolph agreed that was the way this should be handled. Mr. Heeke withdrew his request to amend the Resolution. On roll call, the motion carried unanimously. Mr. Heeke suggested the letter should also recount some of DNR's past activities.

B. Appointments

Appointments:

1. Bicentennial Eagle Restoration Committee created by Resolution No. 50-91 - Consideration of Appointment of Committee Members

Bicentennial
Eagle Restor-
ation Comm.

Mr. Doney advised he has not been able to be in touch with all of the proposed members and asked this matter be deferred until the November Town Council Meeting.

XII. DEVELOPMENT REVIEWS

- A. Major Matters Previously Considered by the Architectural Commission at Their Meeting of September 25, 1991.

Major Matters-
Architectural
Commission

Mrs. Wiener moved the report on the major matters considered by the Architectural Commission at their meeting of Sept. 25, 1991 be approved. Seconded by Mrs. Douthit. On roll call, the motion carried.

The Major Matters were:

- B3-91(A) Facade Renovation - Tiffany's, 259 Worth Ave. Approved.
- B73-90 - Landscape Plan of David J. Mahoney, 1296 S. Ocean Blvd. - Deferred.
- B55-91 - Remodeling of home of Mr. & Mrs. Peter Stanley, 1332 N. Ocean Blvd. Deferred.
- B57-91 - New Townhouses for Barbara Tuck, 235 Chilian Ave. Deferred.
- B60-91 - Drive-through Teller for Citibank, 400 Royal Palm Way. Approved.
- B112-90 - Boathouse for Stephen Levin, 446 N. Lake Way. Deferred.
- B11-91 - Modification for Euro-Homes, Inc., 252 Atlantic Avenue - Approved the revision.
- B54-91 - Demolition of residence at 240 El Vedado Road. Wyatt Consulting Group, Inc. - Approved conditionally.
- B61-91 - Demolition and site renovation for Parc Regent Condominium Association at 305 Park Avenue. Approved conditionally.
- B62-91 - New residence for Agi Rosos and Jacques Hava, 101 El Bravo Way. Approved conditionally.
- B63-91 - Additions to residence of Mr. & Mrs. Robert Wood, 116 Gulfstream Rd. - Approved.
- B64-91 - Renovation of residence of Donna Ward, 8 Lagomar Rd. Approved conditionally.
- B65-91 - Addition to residence of C. Claude Mimun, 1144 N. Ocean Blvd. Approved conditionally.
- B66-91 - Carport for J. Harvey, 225 Barton Ave. - Approved.
- B67-91 - Carport for Josephine Defina Stetson - Approved conditionally.
- B68-91 - Garage Addition for Steven Rosenberg, 288 Queens Lane. Approved.

B. Appeals

1. Appeal of the Decision of the Landmarks Preservation Commission Regarding Certificate of Appropriateness No. 15-91 - Donald J. Trump, Mar-a-lago, 1100 South Ocean Boulevard

Mar-a-Lago
Appeal of
Cert. of
Appropriateness
No. 15-91

Attorney Peter Broberg addressed the Council on behalf of Mr. Trump. He indicated he would like to discuss the issue of fundamental unfairness in the Landmarks Preservation Commission's denial of the applicant's Certificate of Appropriateness application, and the failure of the Landmarks Commission to consider the application on its merits, and their requirement for a Preservation Plan; the change in the rules of the game after the game has begun; and the fundamental unfairness of the smear campaign by opposing groups.

Mr. P. Broberg gave a history noting the applicant was in full compliance of Section 20-2 of the Subdivision Ordinance, and submitted an application for preliminary approval of a Subdivision, but the Landmarks Preservation Commission deemed it not to be complete since it was felt that a subdivision application should be submitted to them so they could rule upon it when issuing or not issuing their Certificate of Appropriateness. His client conceded and went to great expense in the preparation of a Subdivision Plan in full compliance with the Subdivision Ordinance and it was submitted. He recalled the Landmarks Preservation Commission, on three separate occasions, asked for more and more information with which the applicant complied.

He stated on the fourth meeting, the applicant was turned down completely and during this period of time that the applicant was sent out to provide more and more information, other interested groups were also providing information, as there was a model prepared called "Mar-a-lego" built out of Legos and depicted as representing exactly what the applicant could build on his property. He made the request to view this exhibit in a letter dated 7-12-91 to Mr. Moore, a letter to the Chairwoman of the Commission Jane Volk on 7-17-91, a letter from Mr. Moore to Mrs. Earl on 7-19-91 requesting that this model be produced but it never was.

He stated it was so deceptive that it was never produced. He stated a video was presented using a state of the art computer imagery and it was depicted and represented to showing exactly what would be placed in the Subdivision at Mar-a-Lago and was grossly out of proportion in its representation of the houses on the Lakefront.

He stated a publication was sent out to everybody called "The Red Alert" by Preservation Foundation and it stated Donald Trump was desecrating Mar-a-Lago, which he felt incited the public against the project. He stated there was a long list of experts with a long list of credentials that appeared in person and will appear today, who submitted letters of opposition to this project and one of them, the National Park Service has said that the Subdivision is not proper, which he viewed as hypocrisy at its best as they used to own it and returned it to the Post Foundation because it was too expensive to run. He reported there has been a continuous barrage of telephone calls trying to sway public opinion and he believed all of this was fundamentally unfair.

He stated the applicant fully complied with the Subdivision Ordinances of the Town of Palm Beach, and also submitted an application for a Certificate of Appropriateness in conformity with the standards, rules and regulations of the Town. He believed the proper procedures for filing for a COA was followed by the applicant, however, even though his client complied with the COA application procedure, he was asked to bring back more and more information and the applicant continued to comply. He reported when the request for a Preservation Plan was raised, the applicant objected and although they see some benefit in a Preservation Development Plan, it should not be the bearing that turns the wheel. He believed nowhere in the Town's Ordinances, especially 16-40, the COA procedure now in effect; 16-41, Criteria for Certificate of Appropriateness; 16-42, the Commission Powers - is there any mention of a Preservation Plan and there is no authority for a Preservation Plan, especially after the game has begun.

Mr. P. Broberg believed that every applicant, as a matter of law, has the right to know what the rules of the game are, when applying for governmental approval before the game begins and are entitled to see it in writing so they can play by those rules and the rules cannot be changed in mid-stream.

He felt everyone should be treated equal in front of the Landmarks Commission. He recalled Mr. Chopin stated that at a Landmarks meeting stating: "First of all, anyone who comes before the Commission ought to be treated the same, and that includes Mr. Trump." Mr. P. Broberg advised he agreed with that and the Preservation Foundation also agrees in their August/September, 1991 Bulletin which states: "The issue is simply whether this particular subdivision plan meets the criteria of the Town's Ordinances and the responsibility set forth in the Growth Management Plan. All Palm Beachers live under these regulations and recognize the structure of rules and ordinances preserve the value and beauty of the Town. This particular Subdivision Plan according to the best objective opinions assembled does not meet the standards of the Town's rules and ordinances." Mr. Broberg noted they were talking about the Growth Management Plan exhibiting the Adley Brisson report on the Review of the Mansions of Mar-a-Lago noting there is a section entitled "Concurrency Requirements", to which they comply; under "Traffic Compatibility and Aesthetic Considerations" to which they comply. He stated they have complied with all the rules and regulations, but now they want to change the rules, and he felt that was not fair.

Attorney P. Broberg commented it is very expensive to send the applicant out to prepare a Preservation Plan when he doesn't know if at the end of the tunnel, a subdivision may be possible. He stated the Clarion Report, for which the Town has expended over thirty thousand dollars to obtain, stated some form of subdivision is possible. He reported Mrs. Divall, who is a member of the Landmarks Preservation Commission, states: "...because at the heart of it, I do believe development can take place on this property." Mr. Broberg pointed out the Landmark Preservation Commission refused to give the applicant that direction that development can take place on the property, which he considered fundamentally unfair to force the applicant to have a Preservation Plan before there is an assurance that a Subdivision can take place. He believed without such a direction, the applicant could go forward with the expense of the Preservation Plan and still may end up with nothing. He stated his client has spent a lot of money already. He asked what a Preservation Plan actually was as it is not in the Code. Mr. P. Broberg recalled Mr. Chopin stating he knows that "...it is a Plan which understands and researches properly the history of this property, not just the building, but the whole of the property - understands its current status which develops a Plan for its development and a Plan for ensuring that its future will be preserved in the context of that development - that's what a Preservation Plan is."

Mr. P. Broberg felt if they took that definition, the property has already properly been researched historically, as there is a HABS report which was done in 1969-72, (Historic American Buildings Survey); there is a Nomination Report to place the site on the National Register of Historic Places; there is the Town's Landmarks Designation Report; and now a Clarion Report. He felt they needed to talk about what they were going to do in the future as he has tried to secure Table of Contents on what a Preservation Plan should contain and he has not able to secure one. He believed to preserve and plan this property's future is an opportunity this Council cannot let go by and it should be a development plan which should not be done in advance, but would be a culmination of everybody's work. He believed it would show what could be done at the end and not at the beginning, but before any building would take place. He felt it should be an interaction with the Town's experts with his experts and he could see no problem with the Sunshine Law there as the Town's Code states they are entitled to meet with the Town staff. He recalled the applicant asked the Landmarks Preservation Commission to issue the Certificate of Appropriateness on the Subdivision of Mar-a-Lago and they denied the COA, but the denial was not made on the merits of the application as is required by the Code, but because the applicant did not have a Preservation Plan.

Mr. P. Broberg recalled Town Attorney Randolph cautioned the Landmarks Preservation Commission that if they denied without having made a statement as to what they see is the future of this property, the applicant goes away with nothing. He commented that Mr. Randolph stated they had to take into account the report that Clarion has come up with and in that report, they indicated there are many good things in the application and if they would look at it in that manner, it should make some sense to not necessarily throw out everything that has been done so far, but to give further consideration to what may be done; and he thought Mr. Decker had indicated certainly that they must make - if they do decide to deny - it very clear what their position is with regards to the possibility of a subdivision of the property.

Mr. P. Broberg indicated to the Council that the Landmarks Preservation Commission didn't do any of those things. He recalled Ms. Metzger made the motion that the Certificate of Appropriateness be denied and the motion carried and there was no further direction or explanation of the denial. He recalled the Landmarks Preservation Commission did adopt the Clarion Report as a foundation document, with an oral amendment that the property could also be used in a single family fashion and also could be used for institutional purposes. He believed that changed the whole thing. He advised the Landmarks Preservation Commission didn't state or imply the denial was based on the Clarion Report's recommendations, but even if they did, they changed the recommendations by

amendment. He recalled that Mrs. Volk moved to deny the application before they were through with their presentation, and long before the Clarion Report was adopted. He reiterated the denial because there was no Preservation Plan is fundamentally unfair and the merits of the application have to be considered.

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Mr. P. Broberg recalled the Town's Attorney and Mr. Decker noted that a great deal of progress had resulted from the work done by the experts and it would be a shame to discard this work. He recalled the Clarion Report did acknowledge the applicant's plan was acceptable in the following areas:

- (1) constructing houses under the maximum allowed on that size lot.
- (2) the view corridors preserving in tact the main house.
- (3) placing the main house on a large lot.
- (4) houses down the north and south sides.

Mr. Broberg advised the Code provides in Section 16-46 that the Town Council has the jurisdiction on the appeal and he urged them to do one of three things:

- (1) overturn the Landmarks Preservation Commission's denial of the Certificate of Appropriateness and issue the Certificate of Appropriateness outright; with conditions if they so wish.
- (2) overturn the Landmarks Preservation Commission's decision and retain jurisdiction of the appeal; and do what is deemed necessary to consider the application on its merits; and when satisfied, issue the Certificate of Appropriateness.
- (3) overturn the Landmarks Preservation Commission's denial of the Certificate of Appropriateness and acknowledge affirmatively that there can be sub-division of Mar-a-Lago; and based on that acknowledge ment participate through the experts or in a public forum in the development of an acceptable Plan for the preservation of that property.

He read from an article that was in the Palm Beach Post on September 3, 1991 on the Editorial Page "...to them his Subdivision Plan scene is almost sacroleganic - not a decision by a private property owner to make a change, and so Mr. Trump's opponents have used preservation as a tool for zoning and that is not the intent of preservation. Mr. Trump doesn't want to tear down Mar-a-Lago - he wants to build smaller estates on his grounds. After his plan was submitted to the Landmarks Commission and criticized strongly, the Town paid for a consultant to examine it. The Commission not only rejected Mr. Trump's plan but refused to endorse even the idea of subdivision. Presumably, the Town Council won't be so obstinate as to reject subdivision entirely and invite a law suit. The pockets of many Palm Beachers may be deep, but that is no justification for litigation on behalf of people who are living in the 1920's."

Mr. Broberg asked the Town Council to move on - and do what is fundamentally fair and not what is fundamentally unfair.

Mr. Heeke called on the Town Attorney for his comments. Town Attorney Randolph explained his comments are to advise the Council the alternatives which are before them with regards to the appeal. He stated the appeal is properly taken pursuant to the Landmarks Preservation Ordinance under Section 16-46 and it indicates the Council shall consider the appeal and make a decision within thirty days, unless an extension is consented to by the applicant. He advised the appeal was filed timely and a consent was given to postponing the thirty days until today. He stated the alternatives are:

- (1) The Town Council can sustain the decision of the Landmarks Commission to deny the application. In that event, the application for Certificate of Appropriateness which was pending is no longer pending and the matter is final, which would not preclude the applicant from moving forward with another application.
- (2) Town Council could overturn the decision of the Landmarks Commission and remand it back to the Commission with directions to continue consideration of the application on its merits.
- (3) Town Council could overturn the decision of the Landmarks Commission to deny and grant the application or retain jurisdiction and consider the matter themselves.

He advised if the Town Council should consider the third alternative, they would have to consider what has gone before them at the Landmarks Commission hearings and upon reviewing that, make a determination as to what to do. He thought once they do that, they would be able to choose of the alternatives suggested.

Mr. Heeke called for comments from the Council members and Mr. Weinberg commented he wondered if there could be other alternatives and he read notes he had made during the night: "I have been attending Council meetings in this chamber for the past 16 years, rarely missing a meeting. For the past five years, I've been serving as a member of the Town Council. I never sit here without always asking myself the same question - 'What is best for the entire community?' To paraphrase Gilbert & Sullivan - a Councilman's lot is not an easy one. I am not an expert on real estate or preservation, but with all due regard for my colleagues at the Council, nor do I feel they are so experienced - your presence here today represents great community interest because we are all concerned and want to do the right thing. The Council has augmented our expert building staff with experts of national experience and reputation. They have studied the situation scrupulously and advise that the Estate can be subdivided so long as it has an acceptable Preservation Plan. The attorneys ask that the Subdivision Plan be approved now and in time a mutually accepted Preservation Plan will be presented. I have the highest regard for Peter Broberg and Gene Lawrence, but I must say to them, this should not be a 'Trust Me Plan' it should be a 'Show Me Plan'. I believe at this moment that they may be entitled to some Subdivision approval, but only after a Preservation Plan is mutually agreed upon. Reasonable people must sit down together and work this out without undue delay. Many years ago I served in Detroit as Secretary to the

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President's Committee on Fair Employment Practices and I was also privileged to serve as a member of the War Manpower Commission. When we had some serious unresolved problems, we instructed both sides to sit together behind locked doors until the solution was agreed upon. After a specific period of time, if no solution was forthcoming, we put the case up for mediation. Maybe that is what we may have to do here. Or, if it can be done, with Sunshine Law approval or modification, we could possibly have representatives of the three groups - the Trump people - the Landmark Commission people and Council people working together in a so-called Limited Workshop, and I feel a just solution would soon be found. The time to act is now. Thank you."

Mr. Weinberg asked if this could be worked out legally as reasonable people can talk and work out problems without calling each other names. Mr. Heeke agreed that the process is trying to find a solution.

Mrs. Jane Volk, Chairperson of the Landmarks Preservation Commission asked to be heard as she stated they have all stated what the Landmarks Commission didn't do and she would like to report on what they did do. "The application to subdivide Mar-a-Lago by Mr. Trump came before the Landmarks Commission for the first time at their May meeting. It had been filed in February but the Town staff found that the application was incomplete and it took two month for the required deficiencies to be corrected. The large attendance at this meeting of Town residents and experts from local and national organizations left no question as to the importance of the issue at hand. You have in your files the many letters and memoranda we received that day and at the following meetings. These letters have been made a part of the record and we hope that you have had the opportunity to read them. Mar-a-Lago is one of only 1,994 National Historic Landmarks in the United States. Landmarks such as this are acknowledged as our Nation's most important historic and cultural resource. Properties that reflect the course of our history - Mar-a-Lago exemplifies the style of architecture and a way of life that Palm Beach the place it is. It was designated by the Secretary of Interior as a National Historic Site in January 1969 and as a National Historic Landmark in December, 1980. It was locally designated at the same time. It is important to remember that in this case, the Landmark Designation encompasses the entire property which includes the main house, all of the outbuildings, as well as the surrounding site and grounds. The boundaries of the local designation are the boundaries of the National Historic Designation. It was so designated when Mr. Trump purchased it in 1985. Before we could make a decision, and to ensure that Mr. Trump's rights were fully protected, we made a careful review of all the plans and documents submitted and made sure that they were available for public pursual and comment in July. We could have considered this application at our July meeting, but Mr. Broberg requested a deferment to the August meeting. All things considered, we move swiftly to give a decision. It has taken a year in other subdivision hearings. During the review of the enormous amount of material received, it became apparent to the Town staff, that they needed expert assistance in evaluating the application. Thus, at their request, the Town Council authorized the hiring of outside independent experts to assist. The Clarion Associates were retained and they filed their report on August 5, 1991. After several weeks and careful study of the plans and documents submitted, and the testimony of expert witnesses, the Commission unanimously voted to deny a Certificate of Appropriateness for the Subdivision Plan submitted by Mr. Trump, deciding that the Subdivision Plan, as submitted, was unacceptable. That the Subdivision negatively impacted the critical features of the historic landmark and that it did not meet the preservation goals for the site and house. The Plan did not recognize the importance of the landscape setting, and the interrelationship and unity of architecture and site. It was stated very clearly at that time, that we would look at another plan, if it were presented. The Clarion report, which was adopted at the August meeting, reviews in detail the failures of the plan, including too many building sites; too much mass and bulk to proposed structures, too many infrastructures; obliteration of important vistas and views; loss of eighty to ninety per cent of vegetation and trees, roadway too wide; drainage and fill problems; new houses too close to main house; house on lakefront incompatible with preservation. The Commission, in adopting the Clarion Report, recognized that nothing precluded Mar-a-Lago from being used as a single family home, for institutional purposes; or from being subdivided. In short, we decided nothing other than that subdivision proposal submitted, was substantially deficient. We were and remain willing to consider any and all proposal relating to Mar-a-Lago. We earnestly recommend that our denial of this Subdivision Plan be upheld. Recognizing the possibility of subdivision in the future, we hope that any subdivision would be considered within the framework of a properly documented proposal of the kind which Mr. Bell, Mr. Trump's consultant, offered to provide for the property. The Clarion Report has very clear guidelines for such a Plan. A Subdivision Plan should carefully consider the placement of any new buildings in relation to the topography, view and vegetation with careful scrutiny of roads and traffic need. It also should present important character defining features from being radically changed, obscured or destroyed altogether. We are charged by the Florida State Comprehensive Plan and by the Comprehensive Plan of the Town of Palm Beach, to preserve and safeguard our historic resources. This Estate, Mar-a-Lago is our most important one, and we have done our best to discharge our duties to you, the Town and its people."

Mr. Heeke requested Mr. Randolph to reiterate the options available. Mr. Randolph reiterated:

- (1) Sustain the decision of the Landmarks Commission to deny the application.
- (2) Overturn the decision of the Landmarks Commission and remand it back to the Commission with direction to continue consideration of the application on its merits, giving whatever direction deemed fit.
- (3) Overturn the decision of the Landmarks Commission to deny and Town Council may grant the approval of the Certificate of Appropriateness or retain jurisdiction to give consideration itself to either granting or denying a Certificate of Appropriateness.

President Heeke asked if any member of the Council wished to explore any of these possibilities? Mrs. Douthit believed it was clear from the Clarion Report that the property could be subdivided but Landmarks turned down the plan presented as improper, however, they didn't tell Mr. Trump he could not come back with another plan and actually, Mr. Trump's expert, Mr. Bell stated he could put together a Preservation Plan and she would like to see them pursue that and uphold Landmarks' decision but encourage them to look at this again and come back with a more plausible subdivision plan which could be approved.

President Heeke stated the Landmarks Preservation Commission did accept the Clarion Report and in that report, they stated Mar-a-Lago could remain a single family residence or be used for

institutional purposes or have an appropriate subdivision plan. He understood the decision of Landmarks was the particular plan was not satisfactory, and that they would not entertain either a modification or subsequent plan for subdivision.

Mrs. Douthit reminded the Council that in years past, institutional use of the property has been discussed and on grounds of the zoning, and traffic, it was thought it would not be possible and she would like them to consider either it be used for a single family or be subdivided but the institutional bit be tossed out. Mr. Heeke believed it could be discussed if it were appropriate. Mrs. Wiener believed that the traffic studies would make it impossible to have an institutional situation there and she agreed with Mrs. Douthit on that point.

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Mr. Heeke stated he was trying to relate what the Clarion Report had said, and this was not his opinion. Mrs. Wiener viewed this as an error on their part.

Mr. Heeke thought Mr. Weinberg's comments seemed to be headed in a positive direction. Mr. Weinberg believed that people should speak with people and agreed with the statement that the Landmarks Preservation Commission has negated this Plan but left the door open for them to come back. He wondered if it was possible for the Council to consider a Conceptual Plan at this point in time? Mr. Heeke stated he would be reluctant to do that at this point. He knew the Landmarks Commission had put a lot of time on this and have a rapport, he would hope, with Mr. Bell and the other experts and what he is hearing from the Landmarks Commission's report is they will work with other plans or a modification of this plan and he thought the efforts and expertise and work they have done should not be eliminated at this point. He felt they should still be calling on the Landmarks Commission to proceed with all due diligence to come up with something that they could present to the Council.

Mrs. Douthit thought that whatever is presented to the Council has to be approved by the Landmarks Preservation Commission and it isn't up to them to write the recipe for approval as that should come from the applicant.

Mrs. Wiener stated her concern was they are at a crossroads and in addition to what has already been spent, there will be a lot more coming down the line. She felt they had to be honest and if the feeling is there should be no subdivision at Mar-a-Lago, they ought to say that or they should be honest and say there can be a subdivision at Mar-a-Lago, but this particular plan is not one which is in order. Mrs. Wiener felt if they stated this particular plan is not in order, there has been a lot of work done by the applicant and the Landmarks Commission already, and her problem was she felt there should have been a deferral which would have saved all the work and hours which Landmarks has put into this instead of starting over. She thought they could say openly now we will not accept any subdivision of Mar-a-Lago as she believed they had to be very open and not pussyfooting about on this subject and not play with people's time and money.

Mr. Ron Collins asked if he could make a point of order and Mr. Heeke explained at this time the Council is discussing the matter, but he would listen to his point of order. Mr. Collins advised he represents a resident in this matter but wished to suggest as a matter of order is while they are discussing this and he was not comfortable about interrupting their discussion, the point is they are having the discussion before they have heard the full appeal and have only heard one side of this issue.

Mr. Heeke stated he was not willing at this point to state yes, no or indifferent whether there will or will not be a subdivision as he wishes to hear what Landmarks has to say when the applicant brings a particular plan back which presumably includes subdivision. Mrs. Wiener felt any member of the Council should be able to speak the truth as they see it and what their feelings are in regard to it and that is what she was doing. She stated she has reviewed all the meetings of the Commission and it is not a brand new item and what is being heard today, they are not expecting to hear "new" material and are simply rehearing what has gone on over the past six months on this subject.

Mrs. Douthit felt they were not in any position to say yes or no. Mrs. Wiener agreed stating she also thought the Council should not be designing their plan.

Attorney Randolph advised on the point of order, it would be appropriate to hear other arguments which relate to the appeal before the Council. He understood that they were at a point where they wanted to get some feeling of the Council to know how broadly this would be discussed today. He stated if they are going to take this from Landmarks and discuss it anew, then they should hear any and all comments which might come before them. He felt on the other hand if they sustain the appeal or overturn the decision of Landmarks, they probably ought to hear arguments relating to the appeal that is before them. Mrs. Wiener stated she was not making a motion but merely making some comments. Mr. Randolph stated he was not addressing her comments but the the comments made from the floor relative to the appeal.

Mr. Chopin addressed the Council noting there was just ten minutes before the lunch break and he didn't wish to begin his main presentation, but he wished to make one point. He stated his name was Frank Chopin and he was a Trustee of the Preservation Foundation. He thought it was interesting to hear Mr. Broberg state this appeal was about fairness or fundamental unfairness explaining there is a lot of fairness fundamental to this whole process. He recalled Nat Appleman wrote an article for the Shiny Sheet and set out fairness which so many have strived for in this process. He stated there was one thing that was very personal and that was the statement on Mar-a-Lago, which Mr. Broberg states he wrote Mr. Moore asking for a view of it, as well as Mrs. Volk. He recalled on Sept. 14, 1991, and he read from the transcript "I'd like to say to Mr. Broberg that he would have an hour and forty-five minutes at lunch time to be able to gather whatever evidence it is that he has, where he has asked us to produce the model." Mr. Chopin stated had he been asked to produce the model, he would have been delighted to do so. He stated the point is it wasn't the fact that Mr. Broberg told the Council that they wouldn't produce Mar-a-Lago and didn't tell them he hadn't asked for it, and after specifically telling him that he would produce it, if he asked for it, but he still didn't ask him for it. He felt there was another element of unfairness involved and that was he didn't tell them what the proposed houses on the eight lots were going to look like. Mr. Chopin stated the model was built to demonstrate that they didn't have a clue of what the houses were going to look like and what they did, was to take their footprints and put structures which met the requirement of the Town's Zoning Ordinance on that footprint and said it might look like the model, but he felt what they were doing was asking the Landmarks Commission to approve a subdivision plan without telling them what it was going to look like and were asking them to approve a Certificate of Appropriateness without them

knowing any of the things they were required to judge. He advised the applicant has filed a PUD-4 application which also doesn't comply with the Ordinance because under a PUD-4 application, they have to state what the buildings are going to look like and he believed if he read it right, the houses were going to be put in the Tunnel, as the legal description described the tunnel.

Lunch break was taken.

Meeting was reconvened by President Heeke at 1:30 PM.

Attorney Frank Chopin again addressed the Council pointing out there were some areas that needed to be covered, and he wished to start with the basics as this is an appeal from the denial by the Landmarks Preservation Commission of the Certificate of Appropriateness application. He stated it was the denial of the application, and it didn't address philosophical questions of the subdivision but addressed the application. He commented that it is an appeal from a Landmark prospectus and goes to the question of whether the application should be denied in the context of the Landmarks Ordinance. He told them that because at a later date if they wished to proceed on a PUD or on a Subdivision application, the Council was going to hear the question of whether it meets the requirement of the law for subdividing. He has heard Mr. Broberg state that the subdivision does comply with all of the requirements of the law and he didn't agree with that. He didn't believe this was the forum that that issue should be addressed as there is another forum to address that issue. He stated this forum is to review the denial by the Landmarks Preservation Commission of the application for the Certificate of Appropriateness. He asked what the grounds of the appeal were and feels if he can interpolate what he has heard today and read in the correspondence, that the grounds for appeal is the merits of the application itself was never considered. He felt somehow woven with that concept is what the Landmarks Preservation Commission really did is base their decision ostensibly on the fact that no Preservation Plan was submitted and that is why it was denied. He stated the second grounds of appeal appears to be because the Landmarks Preservation Commission wouldn't approve a plan that hadn't been submitted but would be submitted sometime in the future but they wanted to get the approval first.

Mr. Chopin referred to the merits of the application and the concept for a need for a Preservation Plan. He thought he knew what Mr. Trump's position was on a Preservation Plan until he read a copy of Attorney Mrachek's letter of October 3rd. He pointed out the attorney states that the Commission rejected the application for the simple reason that the applicant did not produce and provide to the Commission a Preservation Plan and that requirement is not found in the Code. He also heard Mr. Broberg state the same thing today.

Mr. Chopin referred to the transcript of the August 16, 1991 Landmarks Preservation Commission meeting, when Mr. Broberg stated "I'd like to give you a little background as to how we got where we are with Mr. Bell. Henry Dudley, Mrs. Post's lifelong attorney and executor and trustee of the Foundation introduced me to a man named George Herzog and he is a former director of the National Park Service.....and Mr. Herzog made a comment early on and made it more than once that to do a project such as this, a Preservation Plan is required and I asked him if he could direct us to someone who might assist us in creating such a Plan and he without hesitation, introduced, mentioned that we should contact John Bell, which I did and we sent the subdivision plans and as much background and materials as we had to Mr. Bell, who is an architect in New York with Byer, Blender and Bell, and upon reviewing the materials and coming to Mar-a-Lago and spending some time there, he agreed to assist us." Thereafter, he introduced Mr. Bell at a Landmarks Preservation Commission meeting and said: "I'd like to come back later, if I may, and speak a little bit about what I think are the specific tasks of the Preservation Plan....I don't want anybody to feel that a Preservation Plan is a particularly unique document. It's just a mechanism. A very, very important mechanism for first of all understanding everything that everyone needs to understand about the history of the subject."

Mr. Chopin then referred to Page 9 of the transcript of the meeting of August 16, 1991, the remarks of Eugene Lawrence: "We have met with John and developed a great respect for him in a short period of time and we are about to embark on preparing a Preservation Plan." Mr. Chopin believed it showed that at that meeting Mr. Trump and his representatives were intent on putting together a Preservation Plan, but today it is not clear. He felt they needed to focus on what a Preservation Plan actually is as Mr. Broberg stated earlier today he didn't know what it was, and there was no requirement in the Town Ordinance to produce a Preservation Plan.

Mr. Chopin read the portion of the Code with regards to 16-41 on the criteria necessary for the granting of the Certificate of Appropriateness. He knows that Mr. Broberg was wondering what this has to do with the Preservation Plan, and he stated in the context here, a Preservation Plan is a mechanism pursuant to which the applicant gives the information to the Landmarks Preservation Commission that it needs to judge whether the application meets the criteria of the Ordinance and is not esoteric, or mysterious and doesn't have to be in any particular format but is the information required in order to properly analyze the application.

Mr. Chopin displayed an application for Certificate of Appropriateness and attached to it is submission requirements for the application, which he read. He pointed out Section 16-40 does allow the Landmarks Preservation Commission to set its own procedures, and that is what has been done and then read the application from Attorney Broberg specifically paragraph nine which listed the submittals. He stated after that additional information was submitted but Mr. Chopin told the Council nothing was ever submitted that allowed the Landmarks Preservation Commission to make an informed judgment about the height, or volume or proportions or material or textures or mass, color, space, landscaping, street facade, architectural details of the development of Mar-a-Lago, and as a consequence when the application was reviewed by the Landmarks Commission, they really didn't have any choice but to deny and neither does the Town Council since they also do not have the information they need, and that is the responsibility of the applicant.

Mr. Chopin pointed out Mr. Trump has never denied that he had not submitted that information but what he says instead is the rules have changed, but Mr. Chopin did not agree with that as the rules have been there in the same form for many years and they are not ad hoc rules and are not applied willy-nilly or specifically applied to Mr. Trump. He believed the rules apply to everybody and the only difference is that everyone else complies with them and Mr. Trump didn't and that is his failure to do that.

Mr. Chopin referred to Mr. Mrachek's letter which states the applicant was turned down on the merits of his appeal, because he did not have a Preservation Plan. Mr. Chopin did not agree with that statement as he believed the staff considered the merits of the application and to their

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credit, they came to the Council requesting permission to hire experts which was done. This report from the experts was submitted on August 5th and instead of the experts stating that Mr. Trump didn't tell what he was going to do, they took everything that was submitted and gave him the benefit of the doubt. He gave guidelines that were not binding, and they took them as binding; they talked to him and listened to them and took his oral presentation and tried to evaluate it and then on the basis of everything they heard, they said Mar-a-Lago is a historic property; outlined the general historic features of the property; and evaluated the plan itself and the context of that. He pointed out on page 26 of their report they state: "The Plan that has been presented has a substantial and negative impact on the critical features of the historic resources." He believed they stated that because of many reasons - too many lots; would destroy the views and vistas; insufficient constraints on the buildings which could be built on each of those lots; inadequate planning for accessory features; topography problems; infrastructure was deficient; landscaping with 80 to 90 per cent of the existing vegetation was going to be destroyed and as a consequence they came back and said in their report this plan should be denied. He stated this Plan was the one submitted to the Landmarks Preservation Commission and nobody denied that. He recalled Mr. Lawrence read the Clarion Report stating: "We have been through it in detail - we have had a chance to study it and go through it and we believe that very firmly its goals that have been set out can be achieved with a positive, cooperative effort." Mr. Chopin stated Mr. Lawrence didn't dispute it, neither did Mr. Broberg - nobody offered any information to dispute any of the conclusions that had been in that report and that was what went to the Landmarks Preservation Commission, who adopted that report and on the basis of that, they denied the application and he viewed it as not unclear as to why they acted on it the way they did, and it wasn't because there was no Preservation Plan submitted, but that the Plan that was submitted was simply deficient.

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Mr. Chopin recalled Mr. Broberg stated on page 12 of the transcript: "I think the Clarion Report clearly said that some form of Subdivision was possible - we'd like the Town and the Landmarks Commission to give us an approval for some form of Subdivision, subject to coming forth with a Preservation Plan that is acceptable." He viewed that as approving it first, and "trust me" and not "show me". He stated they didn't know what it looked like, neither did the Landmarks Preservation Commission and he didn't know what it looks like but they are saying it should be approved anyway and then they will submit the details of what it will look like. He felt if this was done, it would not give the people who are involved in this decision an opportunity to give their point of view.

Mr. Chopin pointed out he didn't know how Mrs. Volk could have done anything more to give Mr. Trump the opportunity to have his day in court and to be criticized as she was this morning, was completely out of hand. He recalled she also encouraged them to come back to the Commission and they will listen to anything. He stated another point is cooperation is important and it can be worked out through cooperation and he read from the transcript of the hearing, page 20, the statement of John Bell which stated they will work with the applicant and so will all of the organizations which have made themselves heard in connection with this matter in the hopes of putting together a plan which would ultimately be successful. He felt the fact was when they are looking for creditability, and good faith, and people who have been trying to be fair through the process since last February, it is important to recognize there was a solemn pledge of cooperation from the people who have addressed this issue in detail. He stated they are not opposed to anything but that plan which is deficient because the applicant didn't do what he was supposed to do.

Mr. Heeke advised that after all have spoken, Mr. Broberg will have an opportunity to make his comments.

Mary Ratliffe of the Palm Beach Civic Association read a statement: "The Palm Beach Civic Association feels strongly that the Town Council should stand four square behind its Landmarks Commission and its rejection of the Trump proposal to subdivide Mar-a-Lago. Not only on the strong merit of its position but also in order to add strength and creditability to its own appointed Commission representatives. Supported by the Town Council, the Landmarks Commission becomes a greater force in an area of critical importance to Palm Beach. Disavowed, it loses future effectiveness, stature and possible commitment by its members. The Civic Association has followed a deep interest and concern in the Town's processing of the Trump proposal to subdivide Mar-a-Lago. Because of our continuing interest in strong and effective local government, the Civic Association, in this instance, notes with satisfaction the action of the Town in retaining qualified experts to advise its staff and the Landmarks Commission, particularly the Civic Association commends the Landmarks Commission, which in our judgment has performed in exemplary fashion under difficult circumstances, exactly as its' mission prescribed. It has carefully examined the issues, heard extensive evidence from experts and concerned citizens and after deliberation rejected the Trump proposal, not out of hand, but as being incomplete. Specifically absent in the current proposal is a sensitive plan which fully addresses the integrity of this historic site. The Clarion Report gives specific guidance by assessing the negative impact resulting from the proposed Subdivision Plan. Attention needs to be given to the density and location of single family dwellings, to the preservation of the landscaping, and to maintaining the view corridor from both inside and out. The proposed infrastructure and its end result needs close scrutiny. Ownership of open space and Unity of Title need to be clearly defined and we would like to have a clear understanding of the long-term usage of the oceanfront property. The Civic Association also has a continuing interest in the Town's fiscal position and budget stability. It therefore is skeptical of the financial benefits to the Town claimed by Trump proposal advocates - offsetting increased property tax revenue, resulting from increased density is the increased annual direct expense of providing police, fire, and road maintenance. Rarely do increased property tax revenues resulting from additions to the tax rolls offset increased public expense as is well evidenced by the current fiscal disarray in Palm Beach County. In conclusion, we support the Landmarks Commission's decision to deny Mr. Trump's current request. Should new plans be submitted, we encourage the Landmarks Commission to maintain its resolve to adhere to its' mission statement, taking into account sensitive and sensible use of this historic site. Thank you."

Attorney Betsy Burden, addressed the Council, representing a next door neighbor of Mar-a-Lago, Mrs. Lillian Loomis, 126 Woodbridge Avenue, whose property would be directly affected by this subdivision and has been participating in the proceedings and have made their remarks known to the Commission and she would limit her comments to the Subdivision Plan on appeal. She stated they actually represent the guardian of Mrs. Loomis, and as a representative have a clear duty to protect that estate and on the basis of this Subdivision Plan, they have obtained a court order authorizing them to continue to oppose the Subdivision Plan. She stated several concerns - the increased traffic; the effect on her property value; the lack of buffering between her property and the Mar-a-Lago, as her client's back yard directly abuts Mar-a-Lago.

Attorney Burden introduced landscape architect, Mr. Lee, to make a presentation. Attorney Mrachek objected stating he did not believe it was appropriate to introduce new evidence on an appeal process. Mrs. Burden advised this was not new evidence, but to expound on some issues raised at the Landmarks Commission meeting and she would expound on the issues contained in the transcript, such as the lack of buffering, the road will be within 2' of the Loomis property and she simply wanted to illustrate this today and have Mr. Lee identify those issues. Mr. Heeke asked if Mr. Lee appeared before the Landmark Commission hearings to which Ms. Burden responded he did not, but just identified the issues for them. Attorney Randolph agreed on appeal, they should be confined to what went before the Landmarks Commission and he didn't recall Mr. Lee being before the Landmarks Commission. Ms. Burden stated the comments would be on the issues raised, nothing further. Mr. Randolph explained the Council is not here today to determine whether or not there should or should not be a subdivision and he was not sure how the presentation relates to the appeal and he did not believe the Council would make a decision as to whether or not there would be a subdivision but whether or not the Landmarks Commission acted appropriately in denying the application that was before it and anything presented should be confined to that to the greatest extent possible.

Attorney Burden believed she could do that and asked the Council to sustain the Landmarks Commission's consideration of this particular plan, and she would confine her presentation to that plan. Mr. Heeke asked Ms. Burden to make the presentation without Mr. Lee's comments. Attorney Burden stated Mr. Lee has identified the inherent problems one of which is there is a proposed roadway within two feet of Mrs. Loomis' property line, and there is no buffer to keep the noise, the dust, the fumes away from her property. She encouraged to uphold the Landmarks' decision and has submitted several cases of subdivision which were denied solely due to the historic factors that were involved, and the cases are clear that the impact on the historic properties would be grounds for denying a subdivision. She also submitted a letter from the State noting the impact on the property could cause Mar-a-Lago removed from the National Register. She felt there was substantial evidence in the record to uphold the decision of the Landmarks Preservation Commission.

Mr. Chopin introduced John Coustanis, the Dean of Vanderbilt University Law School, and a nationally recognized expert on preservation issues and he did address the Landmarks Commission. Dean Coustanis addressed the Council, indicating he was speaking not as a Dean of the law school, but as someone who has been involved in preservation issues for over twenty five years. He has been involved as a developer, as representing developers, and has written extensively on the kinds of concerns which Mr. Weinberg talked about, and that is the concern about trying to accommodate legitimate interest or developers in dealing with their properties on one hand, and the interest of communities in preserving properties on the other hand.

He stated he is uncomfortable about what he wanted to talk about and that is the question of lawsuits, since from the outset there have been a number of suggestions that the Town would find itself subject to massive financial liabilities if this was not approved. He wished to approach that question from two sides - one is does the Council have the obligation to reverse the Landmarks Commission such that if the Council fails to do so, the Town will face massive financial liability.

He stated another side to that question which is does the Council have the duty to sustain the Landmark Commission so that the failure of the Council to do so would subject the community to a lawsuit from the other side? He believed there had to be a balance between the legitimate sets of interest and concerns - one relating to property, investment, investment expectations on the one hand; and the other relates to the values reflected in the Landmarks' ordinance and in state law. He was concerned if there was not a continued recognition of the need to balance these concerns, they might find themselves having difficulty both under the Ordinance and under State Law. He recalled the comments of the Town Attorney on the alternatives which were offered to the Council. He wished to impress upon them the enormity and gravity of any decision of the Council to reverse the Landmarks Commission, given the record they have before them. He asked what obligations they had to reverse the actions of the Landmarks Preservation Commission as if they failed to reverse the Commission today, what liability would the Town be subject to? He indicated he has reviewed the record to make a determination as to what would be the objections to their action. He had a few comments to make which were touched upon by Mr. Chopin, but there is an objection to the Commission requesting the Preservation Plan. He stated he believed that Mr. Broberg and Mr. Mrachek should get together in terms of what it is they are arguing, because the Broberg letter states even though the applicant concurred with the Clarion Report which called for a Preservation Plan. He thought all through the record there is consistent and really initiation of a Preservation Plan by the applicant. He stated a second point as to why the applicant agreed there ought to be a Preservation Plan, and the fact of the matter is the Clarion Report was a disaster for the applicant as it clearly stated the project that was put before the Landmarks Commission was clearly incompatible with the historic values of the site; and also suggested that in principle, subdivision might be appropriate.

He stated the response of the applicant was to say "fine" - approve the Subdivision, and they will give a Subdivision Plan which addressed the problems present in the Clarion Report, but the initiative for the concept of the Preservation Plan was with them. He thought the basic problem that centers on the Preservation Plan has been the continued insistence of the applicant that he has met all of the rules and regulations of the Town of Palm Beach as they bear upon the question of going ahead with the project and what that really means is that he is met all of the requirements of zoning and subdivision law. He felt there really had not been a serious consideration of the state requirements relative to the recognition of historic values. He stated this is co-equal in importance, in zoning and subdivision and a lot of the problem is the failure of the applicant to recognize that.

Dean Coustanis indicated a second area that may be raised going to Mr. Mrachek's letter is the conceptual approval, that is, approval of the subdivision should have been granted by the Commission and then wait for the Preservation Plan. He stated this has been addressed by Mr. Chopin.

Dean Coustanis stated a third possible contention is that the decision of the Landmarks Commission to deny the Certificate of Appropriateness was unreasonable and was arbitrary and capricious. He pointed out the courts are very reluctant to reverse substantive determinations of administrative and legislative bodies. He thought they would be more reluctant in this case when the Clarion associates, who were not retained by the Landmarks Commission but by the Town and who came in with a report that for all intents and purposes, sets forth the basic incompatibility of the project before the Commission and the historic values and which the Council, as the reviewing body of the Commission, are required to meet so he didn't think it was highly likely that any court

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would stay it was an extraordinarily unreasonable decision of the Landmarks Commission or of the Council if the action was sustained to conclude that there was incompatibility between the proposal that was made and the historic values in question.

He felt they needed to talk about the hidden question which is the economic issue, although he doesn't really want to talk about it since it is premature, but there has been continued suggestions, even in the Clarion Report as to economic hardship, and the property rights would be taken if this property was not permitted to be developed. Dean Coustanis stated he heard that today that there is some kind of a property right in the speculative use of this landmark site, such that if this body in reviewing the action of the Landmarks Commission fails to allow that speculative use that there will be a taking of property rights. He stated he was uncomfortable with this as there has been no presentation by the applicant on this point and yet that question is one is a hidden issue that may in fact be very important. He commented that any claim of a "taking" which is failure to approve the project will result in the unconstitutional taking of property rights, which will then require the Town to either buy the property or to pay the option value of the property during the period of regulation, is premature and he says that because there is every opportunity under the Landmarks Ordinance, in Section 16-48, for the applicant, should he choose, to make an economic hardship claim, to establish that there is in fact a "taking" by bringing before the Council data that would establish a discrepancy between his investment interests in that property and what he is now not able to do by virtue of the decision the Council he hoped would reach to sustain the Landmarks Commission. He stated what is striking is, the party who is in the unique position of all of the economic information that could sustain and substantiate the claim of hardship is the applicant himself and at no time to his knowledge, has the applicant chosen to come forward with any information or data on that point at all. He has read it in the paper that the Town will face massive liability, but the record is without data on it that bears upon that question.

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Dean Coustanis stated the claim of the "taking" is also premature because the action of the Landmarks Commission was not an unconditional denial of any entitlement to utilize the site. He remarked that the action of the Commission was limited specifically to the invalidity or unacceptability of the proposal that was made, commencing in February and moving forward. He recalled the Commission did not say "we do not visualize the possibility that development in some form or another might be appropriate" but indeed said quite the opposite by adopting the Clarion Report and amended it with respect with the possible continuation of a single family use and the question raised this morning about the possibility of institutional uses. He felt it was not the job of the Commission to give a financial guaranty to an applicant that assures the applicant of not only a reasonable return, but a highly speculative return. He believed there was no preclusion of potential use of this site, but even if the question of peremptory, that is to say there is no record basis for a takings claim in these proceedings, and they work through what little knowledge they have about this site, he has a strong feeling that any taking in this case would be totally specious and he says that because there are clear precedents under Florida Constitutional Law and the U. S. Constitutional Law with respect to what is the obligation of a local government, relative to the economic expectancies of developers. He stated there is one thing absolutely clear - there is no obligation of a community to guarantee to a landowner the highest speculative use of a site. He believed there was an obligation to expect reasonable investment backed expectations and to allow what the courts call "reasonable beneficial use of the site" which is determined by notice - was there knowledge at the time that a particular property was acquired that it was zoned or landmarked in a certain way. He stated a second question would be to the price that was paid for the property. He stated in this situation there was notice that the property was landmarked by the applicant who stated that in a book he published and he also stated it was his intention to utilize that site in a single family status. He recalled that Mr. Trump also challenged the real estate appraisal of the site, arguing successfully that the highest and best use of Mar-a-Lago was as a single family site, which is the use for which it is presently used. He felt it was interesting since it is a matter of record for that proceeding and out all of the other possible uses, it was found that the highest and best use was to use it for what it was presently being used. He thought it was quite clear that the price that was paid for the site was the price based upon its status as use for single family and not for speculative subdivision purposes.

Mr. Coustanis felt that even with all of that, we have to deal with the question of balancing reasonable economic expectations and the rights of the private property owner on the one hand against the question reflected in the Town's Ordinances and the State Statutes relative to the public interest in the preservation of historic properties. He felt that every landmark case was unique and one of his problems with the Clarion Report was that they never clearly evaluated the economic situation of this property as it is not known if there is a buyer for that site, or what was paid for the site, whether the interest now relates to what was paid for the site, that subdivision of the site wouldn't in fact create serious difficulties relative to the future of marketability of Mar-a-Lago, as it may create intense pressures to condominize that site - there is no data in the record on those points, and these points are absolutely critical to any kind of economic examination and any kind of argument which goes to the "taking" issue.

Dean Coustanis then addressed a different question - does the Town Council have a duty to sustain the Landmark Preservation Commission's determination as he thought it was important to understand that Florida is a very unique state as it has a most stringent set of regulations at the State level which bear upon local land use decision making can be. He stated Florida has a requirement that there be a State Plan and one of the elements in that Plan be Historic Preservation Goals and all regional and local Comprehensive Plans must be consistent with the State Plan; allows Local Government Plans to contain an Historic Preservation Element (which the Town's Comprehensive Plan clearly does contain). Mr. Coustanis commented there is a requirement that all local Ordinances must be consistent with the Comprehensive Plan and these Ordinances include Zoning, Planned Unit Development and Sub-Division Ordinances among others, and this is an important point as historic preservation is not some little frivolity which ones needs not pay attention to, but is treated co-equally with other Land Use values and mechanisms by State Law.

Mr. Coustanis commented that Florida Statutes require that all local land use decisions must be compatible with the Comprehensive Plan and these decisions include Zoning decisions, Planned Unit Development decisions, Subdivisions decisions and actions concerning Certificates of Appropriateness. He told the Council the question before them as to whether or not to reverse the decision of the Landmarks Preservation Commission is whether or not their decision is compatible, given the record, with the Historic Preservation component of the Comprehensive Plan and State requirements which bear upon this. He went back to the question of balance, he felt on the one hand they had an Ordinance and all of the State requirements they have talked about and on the

other hand, they have a proposal before them which is the proposal of the Landmarks Preservation Commission which was determined not only by the Commission but by the consultants that were hired by the Town and it was determined to be blatantly incompatible with fundamental historic values and the question wasn't even close and for the Town Council to reverse the decision of the Landmarks Commission in essence is for them to say that the Commission's judgment in the face of the Statutes and Ordinances and the determination made by the expert hired by the Town was arbitrary and capricious would be for the Town Council to say that to allow that plan to go forward is compatible with the Comprehensive Plan and the various obligations of consistency that the State of Florida imposes upon its local government.

He stated he doesn't like to talk about lawsuits and even in his writings and his views have consistently sought a middle ground for some way in which developers and the need for change can be accommodated with the important community values as they bear upon historic preservation. He didn't think that was a close case at all as he sees no evidence of economic hardship, the plan in the balance between their proper and legitimate concerns of private property rights, economic development for change, - and he deemed it quite appropriate for the Council to consider those values - and the concerns associated with the character of the community and the local and state laws, he doesn't think it is a close case and threats of lawsuits and financial liability, etc., given this record and the data developed to this point are red herrings.

Mrs. Wiener asked Dean Coustanis about a point which she didn't believe he addressed and that was whether he had investigated the background of what has happened to this property over the past ten years and how that relates to the overall problem? Dean Coustanis stated he has and he could envisage that the most appropriate response to this situation could be some sort of development and asked if she was referring to the Cerf Ross application? Mrs. Wiener believed that based on that, there are a number of other considerations. Dean Coustanis knew there was a lot of concern about the question that the Town had approved in concept the Cerf Ross proposal and in essence, it estopped or required or obligated the Council to approve this application before them. He recalled an earlier visit in Palm Beach there was a lot of concern about that question. He stated since he has become involved on behalf of the Preservation Foundation, and he does teach in his classes Florida Land Use Law, he did investigate this and the doctrine requires that they be the same parties and the same issue presented and if there is any difference or change between the first decision and the second, the doctrine is inapplicable. He was content that there were a number of substantial changes between Cerf Ross and this one and the most important one being the question of the adoption in 1985 of the Statutory Framework which was described. He thought what may have been a discretionary decision on the Part of the Town pre-1985, relative to the historic values, would no longer be discretionary in that sense. He noted there are a set of positive duties established by State Law on local governments relative to the protection of Preservation values. It also seems to be the case that this present proposal is a different proposal that the one submitted by Mr. Ross in very significant ways. He felt the differences both in law and in fact between 1985 and today would not provide a basis for the Town on being liable on the grounds that it was in some sense estopped from not approving the Subdivision proposal on the basis of its prior actions.

Attorney Ron Collins addressed the Council representing Mrs. Aileen Massey who lives directly across the street from Mar-a-Lago and would be the one that would be most affected by any change in Mar-a-Lago. He told them he has been impressed by what has been said on this matter today and he will try not to repeat but wanted to simplify this as sometimes in zeal to express our feelings, they may get into more things than need to be gotten into.

He stated notwithstanding anything that was said by Mr. Broberg, the concurrency in the zoning issues which relate to anything that might conceivably otherwise be approved to be done to the Mar-a-Lago property have not been presented and are not before the Council and will be debated should that point ever be reached, but as of this moment, the only thing that is before the Council is the issues that are relative to a Certificate of Appropriateness. He doesn't waive his right in the future if necessary to argue concurrency issues. He stated the Landmarks Preservation Commission made a decision about the application put before them and he thought in the end, the Council had to act on it and what they have to act on is whether or not the Council thinks that Commission exceeded its authority - acted arbitrarily or capriciously - acted beyond its discretion - and in short, failed to live up to its legal obligations in reaching the conclusion of denial that it did. He stated the Council has to make a determination as to whether or not the Landmarks Preservation Commission did its job or didn't do its job and whatever feelings the Council may have about the development of Mar-a-Lago at all, and if it is to be developed whether it should be institutional or subdivided or whether it is to be developed pursuant to this or that Plan, - that is not the question today - the question is will the Council uphold or undermine the decision of the Landmarks Preservation Commission? He thought he heard the applicant's representations state the reason why they should undermine that decision is because that body acted unfairly and he told the Council that contention is utter nonsense. He believed that officials have the obligation to be fair to the public and so there is a question that if that body said to Mr. Trump and his representatives, "Yes, we approve a plan and you come back and show what it is later" - that would have been grossly unfair to the public interest which is the Council's first consideration. He suggested there was far more than fairness and for the applicant to say there was fundamental unfairness is scraping the bottom of a very empty barrel.

Attorney Collins heard it suggested that somehow all of the parties should get together and work something out and with all due respect, he urged them not to do that as it is not the Town Council's job to do the applicant's job for them, as the Council are not planners, nor experts, and they don't have the time to do that; and secondly, the Council should not be paying someone else to do their job for them. He stated while the Landmarks Preservation Commission denied the application, they did state they would look at another Plan and if it is a good Plan, he knew they would issue the Certificate of Appropriateness and then it will come before the Town Council. He suggested of the alternatives stated by Mr. Randolph, only one is viable, and that is to deny the appeal.

Mr. Adrian Winterfield addressed the Council stating his concern over the appropriateness of the Certificate of Appropriateness as it was not drafted with Subdivision in mind. He advised the word "Subdivision" does not appear in the Landmark Preservation Ordinance. He believed that what is under consideration when a Subdivision application is received is far more than the construction of a single building and that language in that particular Ordinance was drafted with that in mind. He believed there was another device available to the applicant, and he has filed for a PUD-4, although that has not been mentioned as an option. He suggested it is within the authority of Council to direct that the Certificate of Appropriateness device be abandoned in favor of the PUD-4 and subsequent hearings be within the framework of the PUD-4, with the issues arising

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from that being dealt with if that course is followed. He believed the PUD-4 device was designed for development and the Certificate of Appropriateness device was not.

He recalled mention of the institutional use was heard today and he submitted that it was premature to state that cannot be considered because of the traffic problems, and pointed out certain institutional uses might create far less traffic than the number of houses which have been requested, particularly during the two or three year period it would take to construct those houses. He did not believe the conservation of the views could be had when heavy trucks are crossing to service the houses on the property. He recalled the applicant's attorney in his presentation used the words "hypocrisy" or "hypocrite", and it is known that the applicant owns casinos and he views what is being done here is rolling of the dice or playing the roulette wheel with the hope of a substantial speculative profit.

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Mr. Heeke asked if the applicant had any comment on the remarks that have been made? Attorney Louis Mrachek addressed the Council, indicating he has been working with Mr. Broberg on this matter. He recalled the comment was made earlier that strange and unusual things happen at these meetings and he believed that was the case today. He noted that one of the Preservation Foundation's representatives have come before this body stating that this forum is not the forum to see that the law is complied with and another representative from the Preservation Foundation has come before this body talking about threatening lawsuits, and by whom they were threatened, he does not know and advising the Council it is not highly likely that the Town will lose, but in the end he did state it was not a close call. He doesn't know why the Preservation Foundation wants to goad people into filing lawsuits, as certainly the applicant does not want to do that and has never made a threat to do that and he believed the applicant had maintained a veneer of civility. He felt what should be discussed today is the appeal and when people talk about appeal, they typically look at the record and the Council has the record in front of them, part of which is the minutes of the meeting. He stated they have taken the position and it is not a brilliant legal position but it is a matter of fundamental fairness that the rules that were imposed on this applicant by the Commission were not the rules that were written. He believed the Commission requires the applicant to produce and has denied his applicant because he did not produce - a Preservation Plan. He referred to page 29 of the transcript where one member stated they wanted to see a Preservation Plan and couldn't make a decision that day because they didn't know if a Preservation Plan could be worked out on a site that size. He commented on that very same page, another member of the commission remarked that the Preservation Plan in its own right generates the rules for the development plan which they need to respond to and they were not inclined to accept the application with the elements proposed, but somewhat modified, perhaps without any reference to any Preservation Plan.

Mr. Mrachek then referred to page 30 where another member of the Commission stated they would have to come back with a substantially new plan and application. He noted another member of the Commission responds "a preservation plan." He stated on Page 33, a member of the Commission refers to the Clarion Report stating it is clear in identifying possibilities which exist, provided they are within a Preservation Plan framework and presuming that it is acceptable as being suitable. He referred to Page 35, although the example are legion in this transcript, another commissioner stated he would be delighted if the applicant would come back with a Preservation Plan as he thought one is needed first, and then the Subdivision.

Mr. Mrachek asked what the answer was to the inescapable fact that this Commission required, as a precondition to ruling on this application, a Preservation Plan. He heard that in Section 16-40 there was a requirement for a Preservation Plan, which he viewed as pure hokum and he believed the Preservation Plan was not a requirement for a Certificate of Appropriateness and it never has been and the term has never been used before in any types of these proceedings and it is a document that no-one in the profession can clearly agree on the Table of Contents. He believed if the Council wished to impose that on the applicant, it clearly has the power to do so. He believed what happened here and is clear in the minutes and that is when ordinary, decent people like Pete Broberg and Gene Lawrence meet well financed New York law firms and people that are determined to avoid the process and not address the issues on the merits. He felt that what happened here is that Mr. Lawrence and Mr. Broberg stated they would do this for them, even though it was not required, but they wanted to work this project out in the best way possible. He stated they will go about the business of preparing the Preservation Plan and will work with the Town on it but they would like the application granted on its merits. He believed Mr. Lawrence and Mr. Broberg agreed to do the Plan but they wanted a ruling on the application that was before the Commission and he doesn't believe there was more that could have been done.

He recalled there was some mention made of the Cerf Ross Subdivision approval and he didn't believe that was an approval in concept but one in fact. He believed that Subdivision was ready to go and could have been built.

Mr. Mrachek pointed out there are two groups of people in front of this Council today, one is the group which want this thing to go away at all costs and they want the applicant to draft the Preservation Plan and bring it back and see if it complies with the Clarion Report which the Commission accepted with amendments, they went to defer, defer, defer and goad them into litigation. He stated the second group of people want to work this thing out and want to move forward hand-in-hand to preserve Mar-a-Lago in a proper, appropriate way. Mr. Mrachek recalled Mr. Randolph has listed the alternatives but Mr. Mrachek suggested the Council retain jurisdiction over this matter and return it to the Commission with the instruction that they rule on the merits and work with the applicant on the merits if it is necessary in coming to that ruling and a short time frame be put on it, perhaps three months, and they will come back and report to them where they are and what their points of differences are. He stated one of the points of difference should not be to go back to the drawing board and prepare a Preservation Plan, because that is not required in the Ordinance and the applicant was turned down because he didn't have that and it is not fair to require him to produce a Preservation Plan at this time.

Mr. Gene Lawrence addressed the Council noting that Dean Coustanis referred to a major piece here and that is they have put together a Plan which was in accordance with the Subdivision Ordinance and was set up to overlay the regular ordinance with regards to height, setbacks, etc. He advised they supplemented these with more guidelines and now the consultants come along and state perhaps the engineering requirements are not in line with preservation goals, so perhaps the streets don't have to be thirty feet, but could be twenty feet and they further stated that we shouldn't listen to zoning but should develop another criteria that will supersede the established criteria in Town. He advised they are six months into the project and the answers don't line up because the questions have been changed. He did not mind what the criteria is, and it may even be

better criteria, but if he had submitted the plan which would have been inundated with variances, that would have caused a cool reception. He asked if they could be given some rules to work with as they have been through the issues which have been identified. He felt the vegetation matter could be dealt with, as well as the infrastructure but they need to set up specific rules they can work with. He stated they want to work it out but have had a hard time getting the ground rules to work it out.

Mr. Heeke called on the Town Attorney to reiterate the possible actions that the Council may take on the appeal.

Mr. Randolph responded:

1. You may sustain the decision of the Landmarks Commission to deny the application.
2. You may overturn the decision of the Landmarks Commission and remand it back to the Commission with directions to continue consideration of the application on its merits.
3. You can overturn the decision of Landmarks to deny and the Council itself give consideration to either grant or deny the application, or to retain jurisdiction yourself and hear this matter yourself.

Mrs. Wiener asked the attorney if it is a possibility to sustain the Landmarks Commission but give them certain direction to which the attorney responded what is before them is the denial of the application. Mrs. Wiener thought they were all trying to avoid getting into the problem any deeper and what they wanted to do was to attempt to solve the problem and go in an appropriate direction for all involved. She asked again if it was not possible to sustain the Landmarks' decision and then to have just general comments?

Mr. Randolph felt that wasn't any different than one of the options he offered them, and they could sustain but the only way it will move forward if the denial was sustained, would be for the applicant to file another application. He pointed out it could not move forward if the denial were sustained and they simply advised Landmarks that they would like them to continue to entertain this matter and continue to negotiate. Mr. Weinberg asked why this was not possible? Mr. Randolph explained because they have denied the application that is before them and if Council sustained the denial of the application, the only way it will go back before Landmarks is if there is another application before them.

Mr. Ilyinsky noted he has listened to all the arguments, both pro and con and he would like to make clear and that is to himself at least, Mar-a-Lago is a very special place and to even suggest it resembles or appears to resemble other landmarks in the United States is ridiculous. He knows the place very well and he respects as much as anyone in this room the rights of the individual and he thought that was one of the reasons why they were sitting here. He stated he didn't believe there was a way to make a motion on this subject that would make everyone happy and he moved that they grant the appeal thereby reversing the decision of the Landmarks Commission's decision to deny the application, remanding the matter back to the Landmarks Commission with direction that the Commission continue its hearings and deliberations given due consideration to the guidelines set forth on the Clarion report and other relevant matters and in an attempt to ultimately resolve this matter on its merits within a reasonable time and with the best results for the Town of Palm Beach.

Mr. Heeke asked Mr. Randolph if the plan could be approved and remand this back to the Landmarks Commission to which Mr. Randolph responded that was one of the options that were given to them that they would reverse the decision to deny and remand it back with directions.

Mr. Heeke asked Mr. Ilyinsky to repeat his motion which he did. Mrs. Douthit asked if this was actually asking Landmarks to write the recipe to which Mrs. Wiener did not agree, as well as Mr. Heeke. Mr. Ilyinsky stated what he sees his motion do is to give the applicant a light at the end of the tunnel, but before he does that he has to jump through some hoops, such as coming up with a reasonable Preservation Plan but not be unnecessarily unreasonably held up in that plan by any Commission or this Council. Mr. Heeke stated he was uncomfortable with that. Mrs. Wiener understood what he was trying to do and asked the Town Attorney if he understood it? Mr. Randolph stated he did. Mrs. Douthit felt it implied to her that whatever the applicant comes up with, they would have to approve to which Mr. Ilyinsky disagreed. Mr. Weinberg felt reasonable people should be able to work out things together.

Mrs. Wiener seconded the motion with the comments that she believed that one of the things that's obvious to her is that when something in a Plan is totally unacceptable such as being two feet away from someone's door, it's obvious that they can't do that. She felt there are other things which need to be corrected but she thought there was a difference and the Council does it all the time by asking people to change things to make it more acceptable. Mr. Ilyinsky stated it was not his intention that they accept in any way the plan that was being presented, to which Mrs. Wiener agreed. Mr. Weinberg asked how they would define the definite period of time? Mrs. Douthit stated that was one of her major concerns. Mr. Ilyinsky felt that should be left up to the Commission. Mrs. Douthit stated she found this very hazardous at the moment. Mr. Heeke stated his problem is that he was not sure he would be happy voting to do anything other than to sustain what the Landmarks Commission decided about this plan and that was it was not acceptable. Mr. Heeke stated this does create a further problem that was pointed out by the Town Attorney and that is how do we encourage the applicant to continue the process with either a modification of this plan or a new plan before Landmarks which is what he felt should be done, so he had a conceptual problem in saying the Landmarks Commission did wrong in rejecting this plan. Mrs. Wiener stated she didn't believe that Landmarks did wrong, but believed they needed to move ahead and in a reasonable way which is why she seconded the motion. She stated obviously if there are not major improvements in the Plan, nothing will come of it, but if indeed there are proper improvements and the neighbors are safeguarded, there can be accommodation.

Mr. Heeke stated the problem is approving the plan to which Mr. Ilyinsky and Mrs. Wiener responded they are not approving a plan. Mr. Weinberg noted they are denying the appeal. Mr. Heeke asked the Town Attorney if this could be interpreted as approving the Plan? Mr. Randolph responded if they stated on the record that it is not the intent of the motion to approve the plan that is before the Commission and that this is not an intent to either indicate that any plan should be approved or denied, but it simply is an attempt to have the matter continued to move forward before the Landmarks Commission, then it should be clear.

Mar-a-Lago
Appeal of
Cert. of
Appropriateness
No. 15-91
(cont'd)

Since several people in the audience wanted to speak, Mr. Heeke indicated he wished to reserve this time for Council discussion only as there are several people who wish to make comments.

Mrs. Douthit felt the motion left all sorts of loopholes and she didn't like it, as she sees a difference in translation and it leads to bedlam and confusion. Mr. Ilyinsky withdrew his motion as he felt it wasn't saying what he intended to have it say. Mrs. Wiener did not agree indicating she would simply restate the motion with the addendum as given to them by the Town Attorney. Mr. Weinberg asked the motion be restated again which Mr. Ilyinsky did. Mrs. Wiener noted that the Town Attorney has made the statement that this in no way gives a stamp of approval to the current plan but merely sends it back to the Landmarks Commission to move forward. Mrs. Douthit felt the motion puts all the responsibility on Landmarks and we are asking them to move forward and she didn't see that anything is being asked of the applicant.

Mr. Randolph stated he thought that the reference to the Clarion report in the motion gave guidance to Landmarks that future deliberations and consideration should take into consideration the guidelines of the report and that both the Commission and the applicant should move forward as that both the Commission and the applicant should move forward and attempt to resolve this, with input from each along those guidelines and along any other relevant matters as stated in this motion that might be applicable. He thought the intent is as he heard it from the Council that the application in its present form was certainly not acceptable but rather than close the door and have them file another application the Council is saying that the applicant be allowed to move forward under this application process and perhaps come forth with some new materials, some new evidence or anything which he might in reading the Clarion Report be guided by, to move forward. Mrs. Wiener felt this was what it was all about. Mr. Weinberg seconded the motion.

Mar-a-Lago
Appeal of
Cert. of
Appropriateness
No. 15-91
(cont'd)

Attorney Randolph advised the Council that this needed to be clarified, as the applicant has stated he doesn't think it was appropriate for the Council to ask for a Preservation Plan and whether or that type of application and he wondered if Landmarks had the right to ask for a Preservation Plan before this matter proceeds any further. He didn't know if these sorts of things needed to be worked out beforehand. Mrs. Wiener felt it was a matter of negotiation as obviously the Plan which was turned down by the Landmarks Commission was not a proper plan for a variety of reasons. Mrs. Douthit asked if she didn't want to have a Preservation Plan? Mrs. Wiener thought that needed to be worked out. Mr. Heeke felt the denial by the Landmarks Commission should be sustained, but the door should be left open for an amendment to the Plan or the submission of another Plan. Mr. Heeke stated he had a lot of trouble with the sustaining of the existing Plan. Mr. Weinberg wondered why they simply could not deny it in one motion. Mr. Weinberg believed they should just state that a good job has been done by the Landmarks Preservation Commission and reasonable people just sit down and try and work it out as it is a community problem and that should be the first motion; and then a second motion should be made to remand it back to the Preservation Commission. Mr. Randolph believed they could try that as that is an option which he had not thought of. Mrs. Wiener stated that is the option which she was talking about earlier in the meeting and she thought she heard the Town Attorney tell her it was not possible. Mr. Randolph agreed that that is what he told her, but he sees the Council struggling with a way to resolve this and if they thought it can be resolved by sustaining the decision of the Landmarks Preservation Commission and then giving direction that Landmarks continue with some sort of a modified application, they could do so. He advised the Council that if the applicant chooses to not go forward with an application, he doesn't have to take the Council's advice. Mrs. Wiener stated that would be the applicant's problem to which Mr. Weinberg agreed.

Mrs. Wiener withdrew the motion made previously and made another motion to sustain the Landmarks Commission's decision in turning down the particular plan. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Mrs. Wiener made a motion that this entire project be returned to the Landmarks Commission and that the applicant move forward in attempting to bring forth an acceptable plan and that the two groups work together cooperatively and that hopefully within a reasonable period of time, a solution can be found. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Mr. Heeke noted the motion does require cooperation on everyone's part.

A short break was taken.

Mr. Heeke called the meeting back to order.

Mr. Heeke called on Mr. Moore who had a question. Mr. Moore advised the Council on the last action that was taken, he wished to clarify the two motions for the staff direction as the motion to sustain the Landmarks Preservation Commission to deny the application from a technical point of view that would put an end to the Certificate of Appropriateness Application No. 15-91 and would require the applicant to refile thirty days prior to the next Landmarks Commission meeting. He stated it was not his understanding from the discussions of the Council that that was the actual intent. He asked for clarification if it was the intent of the Council that the applicant may go forward without applying for a new Certificate of Appropriateness. Mr. Heeke stated that was his intent, to which Mrs. Wiener agreed it was her intent also. Motion was made by Mr. Weinberg that the applicant would be allowed to proceed under the existing application. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

C. Variances, Special Exceptions and Site Plan Reviews

Old Business

1. Variance No. 38-91 - Donald J. Trump, Mar-a-Lago, 1100 South Ocean Boulevard; to consider expansion of nonconformities as per Section 8.23 of the Town Zoning Ordinance and allow the existing property manager's cottage to front a new street at a setback of 18' in lieu of 35' as required, and allow the garage to the property manager's cottage to setback 8' when 35' is required, and allow the garage, staff and service quarters to the main structure to be setback 12' from the means of ingress and egress when 35' is required. R-AA District. Deferred from September meeting.

Var. 38-91
Mar-a-Lago
deferred

Motion was made by Mr. Weinberg that this matter be deferred until the November 12, 1991 Town Council Meeting. Seconded by Mrs. Wiener. On roll call, the motion carried unanimously.

Var. 52-91

2. Variance No. 52-91 - Ralph MacDonald, 300 El Brillo Way; to allow construction of a tennis court providing a rear yard setback of 6' in lieu of 10' required and providing 1' side yard setback in lieu of 10' required; and the matter of historical trees on the property. R-A District. Deferred from September meeting.

Mrs. Peters read a letter from a member of the Garden Club, Mrs. Angelica Ilyinsky which stated the Garden Club did not wish to hold up this application, however, will not have a meeting until after the Town Council Meeting and requested the Town Council to allow the construction of the tennis court if there are no other problems. She advised the Executive Board will meet later this week and will vote on this and she saw no problems with the exchanging of historical trees on the property.

Mr. Jeffery Smith, Architect for Mr. McDonald, addressed the Council advising they have made a request that the Strangler Fig on the property be traded for the Banyan Tree along El Brillo. He reported the horticulturalist for the Town, Mr. Haehle has visited the site and looked at other trees and he was particularly interested also in a pigeon plum in the front yard.

Mr. Smith indicated there is another issue on the setbacks and he requested a 31' side setback in lieu of 10' and a 37' in the front in lieu of 5. Mr. Moore indicated the staff has no objection to the wall; the Town Manager will be handling the Historic Tree question; and the Town Engineer requests the run-off for the tennis court be kept on the lot.

Mr. Ilyinsky moved Variance No. 52-91 be granted with the swapping of the Historic Trees. Mr. Doney asked to make some comments before the vote is taken. Mr. Dusey addressed the Council indicating he asked Mr. Haehle to look at the site and search for specimen quality and several were found but not among those were the ones offered by the applicant, the Ficus Altissima. He also found a Pigeon Plum which he thought was specimen quality and a Traveller's Palm which happened to be in the tennis court area and would have to be moved if it were designated.

Mr. Dusey stated the loss of the Ficus Aurea now designated is not a terrible thing as there are others of this type in Town of similar value and quality. He recommended if they wish a one-for-one swap, he would like to see it be the Pigeon Plum and the Ficus Aurea be de-designated. He stated if they are looking for a two-to-one, the Traveller's Palm would have to be moved.

Mr. Ugi addressed the Council indicating he agreed the Pigeon Palm would be a good swap, however, they don't have a Traveller's Palm on their designation list presently and it is a large, quality tree and if they could move it, that should be done.

Mr. Haehle, the horticulturist, stated the Traveller's Palm should be relatively easy to move.

Mrs. Douthit recapped what has been done and that is the Ficus comes down, and the Pigeon Plum be designated and if they want, they could designate the Traveller's Palm, but it must be moved.

Mr. Ilyinsky restated his motion that the Variance No. 52-91 be approved with the provision that the Ficus tree, presently designated as a Specimen Tree be de-designated, and the tree that should be designated on the property will be the Pigeon Plum. Seconded by Mrs. Wiener. President Heeke asked Mr. Smith if he would request the applicant to seriously consider voluntarily moving the Traveller's Palm to which Mr. Smith agreed. On roll call, the motion carried unanimously.

New Business

3. Variance No. 56-91 - Heinz Gundlach, 150 Algoma Road; to place a pool on north end of property running East and West providing a front yard setback of 11.0' in lieu of 35.0' as required. R-A District.

Mr. Heeke indicated he will not be voting on this application as he has a conflict. Mr. Weinberg assumed the chairing of the meeting. Mr. Gundlach addressed the Council requesting the variance. He stated the reason the pool will not fit without the variance is because of overhead power lines and a huge Banyan tree or it would have to be made so small, it wouldn't be worthwhile and in the front of the house, there is ample room. He advised there are other front yard pools in the area and would definitely add additional landscaping to shield the pool from view. Mrs. Douthit asked about the hardship and Mr. Gundlach stated that he considered it a hardship to not be able to have a pool. Mrs. Douthit asked if the lot was unevenly shaped as the hardship must run with the land. Mr. Gundlach explained the lot is a product of a subdivision from another house and there is not that much land. He believed a hardship could be that there is no other place on the property where the pool could be placed as in the rear, there are overhead wires and to the east of the house, there is now a driveway. He advised the lot to the east runs at a 90 degree angle and it has severe setback restrictions.

Mr. Weinberg asked Mr. Moore what his comments were on this application? Mr. Moore believed the applicant had answered the questions as to why he cannot place the pool in the rear yard. He knew this is an irregularly shaped lot, however, the shape doesn't appear to influence the placement of the pool, especially if it were placed in the rear of the property, although the tree might have to be removed. Mr. Gundlach explained this was a very old ficus tree and he really didn't want to move it. Mr. Moore advised the variance request is a substantial request as 35' is required and they are asking for the setback to be at 11'. Mrs. Douthit wondered if the road being a private road, rather than a public road made any difference? Mr. Moore responded it would not as this is a requirement of the Town Zoning Ordinance. He stated if the Town Council grants this request, he would suggest a condition be placed on it that this be completely sight-screened from the street. Mr. Gundlach advised if they put the pool in the rear, the setback from the house would be ten feet and then ten feet from the power lines, would make the pool be very narrow.

Attorney Charles Thickman representing Hollis Baker, an immediate neighbor addressed the Council, indicating Mr. Baker did not receive notification of this variance, but heard about it from a neighbor, however, Mr. Baker objected to the petition, as he felt the property was too small to accommodate a pool in the front yard and the variance requested is considerable as once the plantings are planted, it would be only eight or nine feet from the road. Mr. Weinberg asked if they would object if this was sight screened. Mr. Thickman stated they would, as once the hedge is installed, there will be even less space and it would be closer to the road.

Var. 56-91

Mr. Ilyinsky advised he lives on this street and this man is a neighbor and he always gets nervous when he hears comments that an immediate neighbor did not receive the proper notification, and he wondered if this should be deferred until the neighbors have the opportunity to comment. Mrs. Wiener wondered if there was any way they could reduce the variance request so there would not be as much of a variance request? Mrs. Douthit suggested the applicant confer with the Building Department so there could be less of a variance requested.

Var. 56-91
deferred

Mrs. Wiener moved this matter be deferred with regards to Variance No. 56-91. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously to defer.

4. Variance No. 57-91 - Robert W. & Martha A. Gottfried, 748 Hi Mount Road; to permit the conversion of use of three rooms in the basement of house from utility space to habitable space to be occupied by domestic staff employees. R-B District.

Var. 57-91

Attorney Gus Broberg addressed the Council for the applicants, Mr. & Mrs. Gottfried, who own the house at 748 Hi-Mount Road, which is a large one story house. He indicated they wished to convert the use of three small utility rooms in the basement of their house to a living use for domestic help. Mrs. Douthit recalled this has been before the Council before and each of these rooms have an adjoining bath. Mr. G. Broberg advised the main floor of the house has three bedrooms and there are no provisions for live-in domestic help. He stated the rooms have been used only for utility space since the house was built in 1983. He stated two of the rooms are 12 x 12 and one is 17 by 12 and when the 5 x 8 bathrooms, the total space they are talking about is 612 square feet. He indicated these rooms are completely contained within the house and there will be no construction work necessary in order to affect this change of use.

Mr. G. Broberg stated the cost of building a second story to accommodate the three domestic rooms would be prohibitive and although that is not a true hardship, the design of the house will remain the same and the architectural design will not be adversely affected and he respectfully requested the variance to use the three small rooms for the domestic help.

Mr. Heeke believed the topography of the house would be a factor of the hardship to which Mr. G. Broberg agreed. Mrs. Douthit asked about the lot coverage and other zoning requirements. Mr. Moore reported the original home was built as a one story home with basement, which was permitted at that time. He stated at a subsequent time, he requested the use of the area in the basement to be converted into habitable space and because of the contract he had entered into with the Town to build a one story house at the time, the Town Council did not approve the request and a lawsuit was filed but the Town was successful in defending its actions. He recalled subsequently, Mr. Gottfried returned to the Council being representing by a different attorney to seek a variance and he too was turned down. He recalled recently he was back on a different section of the Ordinance for a variance a few years ago and again was turned down. He believed the application was being handled differently now as a section of the Ordinance is being used which has a quirk in it and 5.17 is designed to give relief to single family residences, but it does control the height and the setbacks of a second story addition and it was pointed out that it did not restrict the Floor Area Ratio and in fact, a second story could be added, and this subject has been put on the list of study items for the upcoming Zoning Season.

Mr. Moore stated it is the staff's position that even though this is an unusual situation and a hardship not identified in the norm, he suggested if this is granted, that an agreement be sought from the applicant that any rights they may have to build a second story be abandoned by way of a deed restriction and this be a trade of 600' below grade with a potential of 3000' above grade. Mr. G. Broberg advised his clients would be perfectly agreeable to enter into this type of agreement which the Town Attorney would prepare. Mr. Heeke stated he didn't have a problem with this request, based on the quirk in Section 5.16 and this is an unusually shaped lot and topography.

Mrs. Wiener moved that Variance No. 57-91 be granted with the condition that there will be a recordable agreement executed that a second story would never be added to this residence. Mr. Randolph advised this agreement would be prepared by the applicant's attorney subject to review by the Town Attorney. Seconded by Mr. Weinberg.

Mrs. Douthit asked if this would apply to future owners also? Mr. Heeke stated this would be for this applicant and if a new owner wanted to build a second story, he would have to have this restriction removed.

On roll call, the motion carried unanimously.

Councilwoman Wiener left the meeting at 4:30, due to illness.

5. Special Exception No. 11-91 - Mr. & Mrs. Gerard Haryman, property located east of and across the street from 230 South Ocean Boulevard; to allow construction of a 10' x 20' beach house pursuant to Section 5.47 of the Town Zoning Ordinance, including jacuzzi and patio area. Beach Area District.

Spec. Excep.
11-91

Mr. Richard Wensing, Architect, addressed the Council on behalf of Mr. & Mrs. Gerard Haryman requested the Special Exception noting the house is located in the Beach Area District and it would be constructed west of the Coastal Construction Line and would be in the style of the main house and his clients are agreeable to executing a Unity of Title. He stated it is a large lot and they would occupy approximately two per cent of the lot and they would meet the Town's Zoning requirements with regards to setbacks, etc. Mr. Moore reported the Public Works Department requests that the sanitary sewer service be tied into the main home service to which Mr. Wensing agreed. Mr. Moore stated they also request drainage remain on the site to which Mr. Wensing agreed.

Mrs. Peters advised a letter has been received from Gertrude McCartney, 136 Seaview Avenue who was against the construction of a beach house.

Mrs. Douthit moved the Special Exception 11-91 be approved subject to the procurement of a Unity of Title on the grounds that it would require no variances and there is no problem with the Coastal Construction Line. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Spec. Excep.
12-91

6. Special Exception No. 12-91 With Variance - Hals Realty Associates Limited Partnership, 401 South County Road; to allow applicant to expand existing use from 6,500 sq.ft. to 8,500 sq.ft. and to permit off-street parking within 500'. To allow construction of a partial second story per Section 5.48 and to request a variance from Section 8.21 allowing expansion to a nonconforming structure (deficient setbacks). C-TS District. Letter Request by Mr. Broberg for Deferral to November 12, 1991 Meeting.

This matter was deferred to the November 12, 1991 Town Council Meeting earlier in the meeting.

Spec. Excep.
13-91

7. Special Exception No. 13-91 With Variance - Power-Love Associates, 256 Worth Avenue; to allow applicant to change the use from retail to restaurant and to allow applicant to occupy 7,000 sq.ft. in lieu of 2,000 maximum allowed. Additionally, allow off-street parking within 500' but with a variance because parking is in a different zoning district. C-WA District. Letter Request by Mr. Broberg for Deferral to November 12, 1991 Meeting.

This matter was deferred to the November 12, 1991 Town Council Meeting earlier in the meeting.

Spec. Excep.
14-91

8. Special Exception No. 14-91 With Variance - Via Mizner Associates Limited Partnership, 42 Via Mizner; to permit the applicant to change the use of space which is 2,000 sq. ft. on the second floor from an office to a private club; and a Variance to allow five (5) off-street parking spaces instead of the required twenty-five spaces. C-WA District. Letter Request by Mr. Broberg for Deferral to November 12, 1991 Meeting.

This matter was deferred to the November 12, 1991 Town Council meeting earlier in the meeting.

Waiver
Modification

9. Waiver Modification - Peter Stanley, 1332 North Ocean Boulevard; modification to previously approved story height waiver to allow portion of existing lower roof to be removed and replaced at a height equal to remaining roof. R-B District.

The architect for the applicant addressed the Council indicating a land surveyor has surveyed the heights of the house and one of the requirements with the Town is they have to reduce the size of the structure and since it is a concrete structure, the engineer advised the structural stability of the house would be lost if the pieces of the house were removed which would be necessary to bring this into compliance. He advised the request is the new roof which will be put on the house will not go any higher than the existing south roof.

Mr. Heeke noted this plan has been on file in the Building Department and has been reviewed by all of the Council.

Mr. Moore advised that essentially what they saw last month is what they are viewing now, but the difference being is there is a point established on North Ocean Boulevard as a point of height in reference and they cannot exceed that figure. He advised they found out they couldn't build the house at the two different levels and still maintain the structural stability of the house. He believed there was a difference of 1.5' between the southern portion of the house and the northeast portion of the house and in reality it is 15" according to the survey. He advised in order to maintain the structural stability and the aesthetic correctness of the house, they need to be permitted to have the northeast wing equal the height of the south portion of the building which means that the northeast portion of the house will be 15" taller than the south portion.

Mr. Heeke stated the reason this is back before Council is because of the moratorium waiver. Mr. Moore stated that was correct and also because one roof is fifteen inches lower than the other.

Mr. Ilyinsky moved the waiver for the Stanley residence be granted. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

XIII. COMMUNICATIONS FROM CITIZENS - None.

XIV. ANY OTHER MATTERS

Expenditure for
Clarion Group
re: MAR-A-LAGO
Pud-4 App.

A. AUTHORIZATION OF EXPENDITURE OF FUNDS FOR CLARION GROUP WITH REGARDS TO MAR-A-LAGO PUD-4 APPLICATION. Mr. Moore advised he has received a communication from the Clarion Group with an estimate of the costs involved in reviewing the PUD-4 as it relates to the site of Mar-a-Lago and he requests authorization from the Town Council, (in the event they need to have the work performed) for the expenditure of an amount not to exceed \$25,490. Mrs. Douthit stated she hoped they would not have to expend these monies, but would move that in the event there is a possibility they may have to expend an amount up to \$25,490, the monies be authorized to be spent and the monies come from the Undesignated General Fund Balance. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously. Mr. Moore advised there is a potential to recover some or all of these monies from the applicant in negotiation.

Removal of
Asbestos from
Central Fire
Station

B. REMOVAL OF ASBESTOS FROM CENTRAL FIRE STATION. Mr. Dusey advised during the initial stages of construction, asbestos has been found which needs to be removed and the figure should not exceed \$25,000 for removal of the asbestos in the Central Fire Station and the funding would come from the Capital Improvement Fund undesignated monies. Mrs. Douthit so moved. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

Beautification
of Royal Park
Bridge

C. BEAUTIFICATION OF WEST END OF ROYAL PARK BRIDGE WITH THE CITY OF WEST PALM BEACH. Mr. Heeke advised the Mayor of West Palm Beach, Jeff Koons, advised they had plans to beautify the west end of Royal Park Bridge in West Palm Beach and there has been coordination with the Town, the City of West Palm Beach and the Florida Department of Transportation on this matter. Mr. Heeke stated it was felt that total community involvement would be important as it would benefit all concerned and the Mayor of West Palm Beach asked him whether there would be any inclination for the Town to participate and at this point, he believes they are able to formulate something and it is his recommendation that the Town Council become involved. Mrs. Douthit asked if he had a dollar figure as yet? Mr. Heeke responded that would have to be determined later as he felt something ought to be contributed, however, they may have some donations. He felt from a spirit of community

participation and joint effort, he believed the Town should have some part in it and they could look to other organizations for the providing of trees, etc. His recommendation was that Al Dusey and Joe Ugi and our staff head up the technical aspects that would be needed and Peter Elwell be the coordinator with the Civic Association, the Garden Club and the Citizens South of Sloan's Curve to cooperate in this project with the City of West Palm Beach. Mr. Doney advised there are two triangular shaped islands at the west end of the bridge and Mr. Dusey has advised the City of West Palm Beach is still refining the details and the group is intending to meet again in three weeks and the specifics of that meeting will be reported. Motion made by Mrs. Douthit that Mr. Dusey, Mr. Ugi and Mr. Elwell be the people to represent the Town on this project. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Beautification
of Royal Park
Bridge

D. FLORIDA LEAGUE OF CITIES LEGISLATIVE CONFERENCE. Mr. Doney advised this meeting will be held on Nov. 7 and 8 in Tallahassee and Mrs. Wiener had indicated to him she will probably attend. Mr. Heeke suggested Mrs. Wiener be made the Voting Delegate and the alternates would be Mrs. Douthit and the Mayor if they find they can attend. Mr. Doney requested authorization to utilize Ron LaFace on an as-needed basis, depending on the issues that arise from the upcoming legislative session. Mrs. Douthit so moved. Seconded by Mr. Ilyinsky. On roll call, the motion carried unanimously.

Florida League
of Cities

E. SUPER-FUND CLEAN-UP SITE IN HOLLYWOOD PROTECTING THE TOWN'S INTERESTS AS A "POTENTIALLY RESPONSIBLE PARTY". Mr. Heeke advised he had information there was a possibility the Town of Palm Beach would be named in one of these super-fund clean up sites and when he got into it, it was found the Town of Palm Beach's name was on the list, but it really should have been Palm Beach County. He talked to Attorney Jurgens and asked him to write a letter to the attorney who put the Town's name on the list and advise of his displeasure with the Town's name being included and now having to establish that we shouldn't be. He believed there was a possibility that we may have used this person's services, but at this point it hasn't shown up. He advised if it does show up, it may occur prior to the next Council meeting and we may have a chance to participate in a common defense and authorization is needed for funding and for participating in this defense, if the Town's name is on the list. Mr. Doney advised the estimated pro-rata share would be \$22,133, which is broken down into clean-up and the legal fee. He advised another issue is being researched and this issue does go back to 1976 or 1977 and with the Town Attorney's office, a determination will be made as conclusively as they can that hopefully this may be a mistaken identity and we may have no responsibility, however, the precautionary measure is requested as if action needs to be taken before the next Council meeting, there be this conditional authorization for the Town Manager to execute an agreement and expend up to \$22,133, if a determination is made by the Town Attorney's Office that the Town as defined in the Super-Fund laws, is a potentially responsible party.

Super-Fund
Clean-up

Motion was made by Mrs. Douthit to authorize, pursuant to the memorandum of October 7, 1991, the Town Manager to sign an agreement and expend \$22,133 from the undesignated General Fund balance, for the Town to join a PRP Group, if it is found to be necessary. Seconded by Mr. Weinberg. On roll call, the motion carried unanimously.

XV. ADJOURNMENT Meeting adjourned at 4:50 PM.

Adjournment

Grace T. Peters,
Town Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME HIEKE BERNARD A		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE TOWN COUNCIL OF PALM BEACH	
MAILING ADDRESS 124 SEABREEZE AVE		THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: CITY COUNTY OTHER LOCAL AGENCY	
CITY Palm Beach	COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION: PALM BEACH	
DATE ON WHICH VOTE OCCURRED OCT 8, 1991		MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes. The requirements of this law are mandatory; although the use of this particular form is not required by law, you are encouraged to use it in making the disclosure required by law.

Your responsibilities under the law when faced with a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

A person holding elective county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

In either case, you should disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

A person holding appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his special private gain. Each local officer also is prohibited from knowingly voting on a measure which inures to the special gain of a principal (other than a government agency) by whom he is retained.

A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You should complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form should be provided immediately to the other members of the agency.
- The form should be read publicly at the meeting prior to consideration of the matter in which you have a conflict of interest.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You should disclose orally the nature of your conflict in the measure before participating.
- You should complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, BERNARD A. HECKE, hereby disclose that on October 8, 1991:

(a) A measure came or will come before my agency which (check one)

☐ inured to my special private gain; or

☒ inured to the special gain of H. Gundlach, by whom I am retained.

(b) The measure before my agency and the nature of my interest in the measure is as follows:

My Law Firm represents Mr. Heiner Gundlach.

10/8/91
Date Filed

Bernard A. Hecke
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317 (1985), A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$5,000.