TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES FROM THE SPECIAL TOWN COUNCIL MEETING MONDAY, JUNE 9, 2003 REGARDING LANDMARKS APPEAL

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order at 9:30 a.m. by Town Council President William J. Brooks. On roll call, the following Elected Officials were found to be in attendance: Mayor Lesly S. Smith; President Brooks; President Pro-Tem Norman P. Goldblum; Councilman Samuel C. McLendon; and Councilman Allen S. Wyett. Councilman Jack McDonald was absent.

Also attending the meeting were: Town Manager Peter B. Elwell; Attorney John C. Randolph; Attorney Tim Hanlon; Director of Planning, Zoning & Building Robert L. Moore; Planning Administrator Timothy M. Frank; and Town Clerk Mary A. Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt, and President Brooks led the pledge of allegiance.

III. APPROVAL OF AGENDA

Councilman Wyett made a motion to approve the agenda. The motion was seconded by Councilman McLendon and carried 4-0 on roll call as Councilman McDonald was absent from the meeting.

IV. PROCEDURES FOR COMMENTS BY THE GENERAL PUBLIC

President Brooks announced Attorney Ron Kolins will present his appeal with any questions by the Mayor, Town Council, or staff allowed during the appeal. Staff's presentation will follow with the public comments being heard after that.

V. APPEAL OF THE LANDMARKS PRESERVATION COMMISSION'S DENIAL ON APRIL 16, 2003, OF A REQUEST TO UNDESIGNATE THE LANDMARKED PROPERTY AT 455 SOUTH COUNTY ROAD

Attorney Tim Hanlon, representing the Landmarks Commission, explained the petition that is before the Mayor and Town Council relates to an undesignation decision heard by the Landmarks Commission and is being appealed. He objected to any new evidence that was not presented at the Landmarks Commission meeting being presented at this meeting. He said the application was for an undesignation, under Section 54-164 of the Code of Ordinances which cites four criteria, any of which can apply for designation, and evidence regarding economic hardship was submitted at the Landmarks Commission meeting. Mr. Hanlon objected to any evidence regarding economic hardship that would be submitted at this meeting, because the applicant did not apply under the section that addresses economic hardship.

Attorney John Randolph, representing the Town, said this meeting was a public hearing and not a court of law, and the ultimate determination as to how the Council wishes to rule regarding the presented information. He pointed out that this is an undesignation hearing as opposed to a hearing relating to demolition, at which time, under that portion of the Code, the Council would specifically hear matters related to financial hardship, as the decision of the Council. He continued that financial hardship is not an issue in an undesignation proceeding.

Mr. Randolph advised the Town Council will have to use their own discretion regarding the submission of new evidence, and the purpose of an appeal is to make a determination as to whether or not any error was made by the lower body on the basis of the information that they had before them at that time. He said most deference should be paid to the information presented to the Landmarks Commission.

Mayor Smith noted that financial information was submitted to the Landmarks Commission and that would not be new information to the Town Council.

Mr. Randolph said one of the questions is what weight should be given to the financial information because that was not one of the considerations regarding undesignation. He continued that information presented to the Landmarks Commission should be considered to the extent that it has weight at this meeting.

Mr. Hanlon responded the Landmarks Commission and staff did object to the entry of the economic evidence at the original hearing.

Attorney Ron Kolins, addressing the two issues that were raised by the two attorneys, responded that the Town Council has always allowed any evidence that a party wanted to present during any appeal process. He continued that although he has different witnesses other than the ones who appeared before the Landmarks Commission, the information and the issues are not significantly different than presented previously.

Mr. Kolins said he would defer his comments regarding the presentation of financial evidence until he reached that portion of his presentation.

President Brooks called for ex parte communications. Councilman McLendon said he met with Attorney Kolins on the site. President Pro-Tem Goldblum said he visited the site and spent time with Mr. Kolins. President Brooks said he met with Mr. Kolins, walked the site, and attended the lengthy Landmarks Commission meeting in April. Councilman Wyett declared no ex parte communications.

Mr. Kolins, citing a section in the transcript from the Landmarks meeting, said the objection to the introduction of the financial information was waived by Director of Planning, Zoning and Building Robert Moore.

Attorney Hanlon responded Mr. Moore did say he withdrew his objection and later repeated the objection. Mr. Hanlon said Mr. Moore was attempting to say the objection stood and he acknowledged the evidence was going to be presented based on the staff attorney's recommendation.

Mr. Kolins requested incorporation of the entire record of the April 16th Landmarks hearing into the record for this case.

Mr. Kolins said he represented the 455 N. County Inc. Corporation, and the corporation was initially comprised of three individuals who purchased the property at issue: Harcourt Sylvester, William Elias, and a third gentleman. He explained the interests of the corporation were recently realigned with Ms. Jayne Malfitano as the court appointed attorney in fact for Mr. Sylvester, her father, who has the largest and controlling share of stock.

Mr. Kolins stated his disagreement was with the Landmarks Commission's determination which was limited to the architecture and the designation criteria set forth in the Code and had nothing to do with financial issues. He continued the appeal will not dwell on the architectural issues. After displaying comments made by Town Consultant Jane Day at the Landmarks meeting, Mr. Kolins said that the owner of the property when it was landmarked, Mr. Munn, objected strongly to the landmarking designation and filed a law suit against the Town. He noted that Ms. Day declared the property still met Criteria A and Criteria D of the landmarking code.

Mr. Kolins said Addison Mizner was the architect of the house, but according to Planning Administrator, Tim Frank, the Mizner design was only one of the reasons for the landmark designation. Mr. Kolins continued that the reasons for landmarking were no longer viable based on the transcripts he presented quoting Ms. Day and Mr. Frank. Mr. Kolins quoted from a letter written by Mr. Munn's grandson, Architect Anthony Baker, stating the Mizner design of this house was not his best design and was plain. He continued that Mr. Baker said the family did not want the house to be landmarked and it was not appropriate to do so; additionally, the additions and changes made to the house changed the building sufficiently so it is not an integrity of Mizner.

Mr. Kolins stated many changes were made to the house at 455 N. County Road, and it no longer is a landmark worthy structure. He requested the Town Council reach a different conclusion from the Landmarks Commission on a different ground, extreme financial hardship.

Mr. Kolins asked the Town Council to consider demolition based on extreme financial hardship, putting substance over form, and not require the applicant to return with an appeal under a different part of the ordinance. He continued although the financial evidence was presented to the Landmarks Commission, it was not part of Landmarks' conclusion although members were sympathetic to Mr. Sylvester's financial problems.

Mr. Kolins explained that Mr. Sylvester formed a partnership with Mr. Elias and another gentleman for the purpose of acquiring the property at 455 N. County Road; renovate the building, and sell it. He continued the property was decayed, in terrible shape, and all of the funds for the renovation were to be provided by Mr. Sylvester with the work to be done by Mr. Elias. He said First Union (Wachovia Bank) lent money to the enterprise based on the collateral of Mr. Sylvester's personal assets.

Mr. Kolins reported the 455 property was purchased for $14 million, and $5 million was spent on renovations or interest with the result presently being a shell of a building that is far from finished. He added that the bank will not lend additional monies on this property because no more collateral exists. He said that Mr. Sylvester experienced an on-going deterioration of his capacities to the point where Ms. Malfitano is the court appointed attorney responsible for his affairs. He said two things have happened since Ms. Malfitano hired Mr. Kolins' law firm:

1. Successful litigation has realigned the corporation;

2. Proceedings started to undesignate the property because no more money is available for investment in the property.

Mr. Kolins said the property has not been sold in its present condition although it was listed with a Palm Beach real estate firm. He continued the choice is to undesignate the property resulting in demolition of the structure to allow the sale of a vacant lot. He added past due taxes of $300,000 are due on the property, and the monthly carrying costs are at least $55,000.

David Scaff, First National-Wachovia Bank President and Trustee of the Harcourt Sylvester Trust which is for the benefit of Mr. Sylvester, said he has served in his capacity with the Trust for seven years. He said during the Landmark hearings, some misunderstanding was apparent regarding the financial structure of the corporation as it related to the property and Mr. Sylvester. He explained the bank made a loan for $14 million to purchase the property with the pledged security for the loan coming from the personal trust, and Mr. Sylvester loaning the $14 million to the corporation to purchase the property with a note and mortgage against the property. Mr. Scaff said the misunderstanding was the statement that only $5 or $6 million in recorded liens were against the property, and although that statement was true, Mr. Sylvester presently owes the bank close to $20 million with the result being that 100% of Mr. Sylvester's personal assets, through the trust and others, is pledged to the bank for outstanding loans.

Mr. Scaff said that Mr. Sylvester's health has reached the point where he needs expensive health care.

Mr. Goldblum questioned the amount of money Mr. Sylvester has pledged to the 860 South Ocean project?

Mr. Scaff replied the ownership is the same for the two pieces of property, and 860 S. Ocean has not been sold either.

Responding to additional questions from Mr. Goldblum, Mr. Scaff said the situation at 860 S. Ocean is similar to the 455 property, with approximately $17 million owed to the bank for the 860 S. Ocean property. He noted the property is listed for $22 million, but no offers have been received on either property.

Mr. Goldblum said consideration should be given to include both of the properties as assets.

Mr. Kolins said he understood that the first $17 million earned on 860 S. Ocean Blvd. goes to the bank with additional carrying charges and taxes due.

Mr. Scaff said the two properties are cross-collaterized with a total of $33 million owed to the bank on the two properties.

Attorney Hanlon asked Mr. Scaff to explain the mortgage note situation as it related to Mr. Sylvester.

Mr. Scaff responded Mr. Sylvester has a recorded mortgage on 455 N. County Road of $5.5 million to $6 million, and a similar protection lien exists on 860 S. Ocean Blvd.

Mr. Hanlon verified that the lender has a total mortgage on 455 of approximately $5.5 million. He questioned if the ownership of corporation has changed since the settlement of the law suit?

Mr. Kolins responded his understanding of the mortgage situation was that Mr. Sylvester had trust assets, collateral, of $18 or $19 million dollars for 455 N. County Road, and the $5 million mortgage is between Mr. Sylvester and the Corporation.

Mr. Scaff added that he was not aware of any situation where $20 million was invested in a property in the condition of 455 N. County Road where no personal assets or bank debt are available to correct the conditions.

Mr. Wyett clarified that Mr. Sylvester's value in the property is what it would be worth to a third party. He said the request is to bail out Mr. Sylvester's situation by allowing demolition of the structure resulting in a greater value for the empty lot.

Mr. Kolins denied the request was a bail out, and if the corporation had the money, they would finish the house, and the property has not been sold although it has been on the market for a long time. He said the reality is if the family does not have the money to put into the house to finish it or close it up, then the property will sit there or the Town can put money into the house, put a lien on the house, foreclose on the lien, try to sell it, and recover the Town's money.

Mr. Wyett said the property could be sold, and the only question is, 'How much could the property be sold for?' with or without the structure.

Jayne Malfitano testified that the 860 S. Ocean Blvd. property is on the market for $22.9 million, down from $25 million, and 455 N. County Road is on the market for $22 million or $100,000 per foot, based on the 'dirt' price.

Mr. Kolins said the landmarking status appeals to a lesser amount of potential buyers than does a vacant lot.

Mr. Goldblum asked for clarification on Mr. Sylvester's assets: were the assets combined with both properties or are the assets separate for each property?

Mr. Scaff responded the assets were originally separate but are presently combined. He continued that the bank has approximately $16 million in 860 S. Ocean Blvd., but because neither property is sold and ongoing interest costs, taxes, etc., additional monies have been loaned to the properties.

Mr. Kolins added the properties were cross-collaterized to make sure that if one property were sold, no partner could receive any profit, because the profit would have to go against the other loan.

Mr. Scaff said the dilemma is that all of Mr. Sylvester's assets that are available for paying for his personal care are tied up in these projects. He added this appeal is an attempt to enlarge the market for buyers.

Mr. Kolins commented that $100,000/month is required to continue to carry these properties.

Bill Elias, Builder, said he and Mr. Sylvester had several successful business partnerships that were successful before the current venture. He explained they were surprised at the level of deterioration at 455 N. County—no foundation and the structural tie-beams were virtually non-existent. He added that approximately $2.5 million was spent to date on the renovation.

Mr. Elias said Ms. Malfitano did not want to go ahead with the project and was concerned only with Mr. Sylvester's health. He said the cost to dry-in the house, not finish the inside, would be approximately $925,000 plus the work that was done prior to 18 months ago has also deteriorated because the structure has been open to the elements.

Mr. Elias reported he talked to many potential buyers but none chose to make an offer on the property.

Responding to questions from Councilman McLendon, Mr. Elias replied the cost to demolish the structure would be under $50,000.

Attorney Hanlon asked Mr. Elias if the property would increase in value if the structure were demolished and the landmark designation removed with the property becoming sub dividable?

Mr. Elias replied the asking price is based on a perceived value per front foot, 218 feet, or $21,800,000 although this price per foot has not been successfully used recently. He said if the property were demolished, more people would be interested, and, logically, the property would be worth more money without a decaying house.

Mr. Wyett said the answer was to market the property, if the Town Council upholds the Landmark decision to deny dedesignation, for whatever amount an investor would pay.

Mr. Goldblum clarified Mr. Sylvester would not receive any money from the sale of this house as long as 860 S. Ocean remains unsold.

Mr. Hanlon pointed out that on page 83 of the transcript, Mr. Moore clarified that his objection stood to the economic hardship, and the staff attorney's opinion was to allow the evidence despite that it may or may not be relevant.

Ms. Jane Day, Landmark Consultant, said she wanted to defend the decision the Landmarks Commission made. She referred to the three criteria the property met when it was landmarked and the reason the Landmark Commission was correct when they voted not to dedesignate the property.

Criteria A The Broad Culture History of the Town of Palm Beach

The property at 455 N. County Road meets that criteria, not only because of its association with Charles Munn, but because it represented one of the first three residential houses that Architect Addison Mizner designed in 1919. It was the beginning of the large, Mediterranean Revival Style mansions that have been associated with the Town of Palm Beach. Mr. Munn was an important personality in the Town from a cultural and societal position and the house is still associated with the Munn family who lived there from 1919 to Mr. Munn's death in 1981 and Mrs. Munn lived there until Mr. Elias bought the property after her death. This was one of the first ten landmarks presented for landmarking in 1979.

Criteria C The Architecture

Ms. Day presented pictures of the house as it originally existed and later after Mrs. Munn's death. The 1950's loggia addition was removed by Mr. Elias. The form, the volume, the scale, and the footprint of the house still exist, and could be brought back to its 1919 original plan.

Criteria D The Property's Association with Addison Mizner

Ms. Day referred to Mr. Frank's testimony that perhaps the Mizner association was not enough to landmark a property with an association with a famous architect. Bob Grace in 1980 designated the Everglade Club in Palm Beach under one criteria, Criteria D, that it was associated with Addison Mizner.

Ms. Day said it was her contention that this house still met Criteria A, C, and D. She continued that the Landmarks Commission was correct in denying the application to dedesignate the property at 455 N. County Road.

Gene Pandula, Chairman of the Landmarks Commission, said Ms. Day did a perfect synopsis of the Landmarks Commission. He said, referring to the architectural considerations by Architect Ralph Johnson who did the undesignation report, the Town did not follow the Secretary of Interior Standards in allowing work to be done and not keeping a tighter reign on renovations to the interior of the house. Mr. Pandula said it was important to state that the Secretary of Interior Standards do not apply to these types of projects unless a tax abatement is requested, and the interiors of projects do not come under the jurisdiction of the Landmarks Commission unless tax abatement is requested which was not the case subsequent to the Commission's critique of the project when it was withdrawn.

Mr. Pandula said the interpretations and review of the project were consistent with the operation of the Commission in the past. He said the financial hardship issue was uncomfortable, and although the sympathies as expressed by Commission members were there, they should not be confused with the Commission's decision to let this project go by the roadside. He continued that it might be useful to define the term extreme 'economic hardship'. He pointed out the financial information submitted to the Landmarks Commission showed a purchase price of $14 million, a land appraisal report showing a value of $18 million for the land with the building discounted, and the price of the land at this meeting was presented at $22 million. He said the figures show a potential profit on the site today, not a loss.

Mr. Pandula said the question is: An unfortunate business circumstance? Or a bad business decision? Or a combination of events that adds up to extreme economic hardship? Mr. Pandula questioned if it is appropriate for speculative ventures to mine the historic assets of the community? He added the losers are the residents of Palm Beach, and this could be precedent setting.

Mr. Moore pointed out it was Mr. Kolins' burden to prove the Landmarks Commission erred in its decision when it decided this property should not be dedesignated. Mr. Moore said he believed the staff had presented materials to prove the dedesignation should not take place at this meeting.

Comments from the Public:

Judy Wells Hoffman, Member of the Landmarks Commission, said the Town Council and the Landmarks Commission were dragged into a speculative venture by developers which resulted in an extreme hardship case. Mrs. Wells questioned if it were fair and legal to have the financial settlement sealed and why was it sealed if they are using financial hardship as a basis for the dedesignation?

Attorney Randolph replied he did not know why the settlement was sealed, but the Town could not do anything regarding the sealed settlement. He continued the Town has to consider the presented information and make a determination based on that information.

Chris Kellogg said he lived at 455 N. County Road until the Town changed the number. Mr. Kellogg said his family sold the property with a restricted deed that contained a covenant that it was landmarked. He recalled his grandfather and his brother worried about the new landmarked status, and they worried about government regulations and restrictions. He said that is why they filed the lawsuit, because they did not want restrictions on the property.

Mr. Kellogg said he found it hard to understand the dire financial situation with assets from two properties totaling $40 million with collateral of $30 million.

Wendy Victor, 208 Via Tortuga, said she was speaking as a private citizen as most of her comments made at the Landmarks meeting were part of the record. She commented that 455 N. County was built as a companion piece to 473 N. County, and those are the only two early Mizner designs left standing as the third one, the Stotesbury House, from that early period was demolished.

Mrs. Victor presented photographs showing 473 N. County as it exists, and said if 455 N. County is demolished and a new structure is built to the max, the property at 473 will be ruined.

Mrs. Victor, referring to the publication, Economic Impacts of Historical Preservation in Florida, authorized by the State of Florida, said historic preservation does help to maintain property values. She quoted: 'no instance was found where historic designation depressed property values.'

Mrs. Victor said landmarking exists for the benefit of the Town and if the Town does not preserve what is here, less and less will be available for preservation in the future.

Mayor Smith added that the owner of 473 N. County commented the condition of the house next door was a 'nightmare', and some action has to be taken to close the house.

Guy Rabbideau, Attorney for Amada Herrin, owner of 473 N. County, said Ms. Herrin has an incredible eyesore next door to her. He added Ms. Herrin does not wish to take a position on landmarking but something has to be done about the condition of the house next door.

Polly Earl, Executive Director of the Preservation Foundation, said she was speaking on behalf of the Foundation and its Executive Committee which supported the decision of the Landmarks Commission regarding this question. She recalled that the issue of lawsuits being filed by the early designees was not germane to the situation as landmarking was not clearly understood at the beginning.

Mrs. Earl commented on the validity of Consultant Jane Day's remarks regarding the issue of designating early Mizner homes as they are very important to the Town. She continued the Landmarks Commission is amenable to changes to the homes allowing restoration to update the services to meet today's lifestyles, and the renovators of 455 N. County appeared before Landmarks and had permission to change the interiors and to provide a modern situation that would be appealing to buyers.

Mrs. Earl said Landmarks Chairman Pandula's comments were very eloquent, and it was important to uphold the decision of the Landmarks Commission.

Responding to questions from Mr. McLendon regarding the square footage addition to the property, Mr. Elias replied the new element added a garage that was non-existent before.

Mayor Smith asked if Mr. Elias was still connected to the project?

Mr. Elias replied the Elias Building Management Company is not connected with the project; however, he has an interest in the property.

Mr. Kolins, referring to Mrs. Earl's statements, said the Town Council can reach a conclusion without overturning the Landmarks Commission, and everyone did 'bite off more than they could chew'. He said if 455 N. County could be sold, his client could not receive any money because of the cross-collateralization. He continued that a section of the Town's Code refers to extreme financial hardship, and a scenario of facts has to rise to the level allowing that as a basis of delandmarking. He concluded costs for the project go up daily, and no money is available to go forward. He urged the Town Council to consider the alternatives to this situation and reverse the Landmarks Commission decision.

Mr. Brooks said a lot of assets exist including dividing the 455 lot and the possible sale of 860 S. Ocean Blvd. He continued that the question is if a profit can be made, or it is possible the projects will produce a loss.

Mr. Brooks said, in his judgment, it was beyond the purview of the Town Council to rectify or to bring any type of relief to a decision that was a bad or speculative business decision. He added the Town Council would not be punitive if the Council votes not to take away the designation, and the Council, to the best of its ability, should represent the interests of the Town.

Attorney Randolph explained that if further comments were made in the form of questions, they would be appropriate, but if the comments were related to the Council's deliberations, then the recommendation is the case be concluded with comments (by Mr. Randolph) before the Council deliberates.

Mr. Wyett asked Mr. Kolins why the Town has only one alternative—to take over the property, renovate it and sell it?

Mr. Kolins responded to the best of his knowledge the Code states, in a case like this, to proceed with a designation of demolition by neglect, and if the process is completed, the Town can remedy the situation by placing a lien on the property and moving toward foreclosure.

Mr. Randolph added the project would go before the Landmarks Commission to make a determination as to whether or not demolition by neglect would be declared, and the obligation would be upon the property owner to correct the situation. He continued if the situation is not corrected, then the Town would have the opportunity to do so and lien the property. He added another approach would be if the property remains in a deteriorating condition, the Town could condemn the property resulting in actions from that point. He concluded if the problems were not corrected by the property owner, some actions on the part of the Town would be necessary.

Mr. Wyett clarified the issue could be heard by the Code Enforcement Board, but Mr. Randolph explained the issue would end up with the same foreclosure conclusion.

Mr. Goldblum asked what the total dollar amount was that Mr. Sylvester owed to the bank?

Mr. Scaff replied the amount was $34 million.

Mr. Goldblum noted that the two properties were for sale for approximately $40 million plus taxes and other charges due. He questioned if Mr. Sylvester would derive any proceeds at all from the two properties if they were sold.

Mr. Kolins replied $1 million a year was required to cover the carrying charges to care for the property.

Mr. Wyett added if the liabilities were $34 million, and the bank held securities were $19 million, $15 million was still outstanding against the debt. He said the two properties together were worth a lot more than $15 million.

Mr. Kolins responded if $34 million was owed on the two properties with a carry of $1 million per year, then Mr. Goldblum's point was accurate.

Mayor Smith asked Mr. Randolph how long the process would take if the Town foreclosed on the property?

Mr. Randolph responded the case would be before the Code Enforcement Board for 3 to 4 months, and in the event an order were entered, the order would have to be recorded for a period of 90 days, prior to the Town foreclosing, so the total time would be 7 months with 6 to 12 months additional for the foreclosure action with the Town's foreclosure being behind the bank's action.

Mayor Smith asked what the condition of the house would be by the time the foreclosure action was completed?

Mr. Randolph replied unless the Town or the property owner undertook corrective actions, the structure would continue to deteriorate.

Mr. Goldblum mentioned the present condition of the house with the hurricane season underway that may cause further damages to the structure.

Mr. Randolph responded if the Building Department made a determination that the house should be closed up, those repairs could be made with the Town paying for the work and lien the property.

Mr. Hanlon summarized that this hearing was an appeal regarding the April Landmarks Commission finding that some of the 4 designation criteria still apply to the property. He continued that Mr. Kolins stated he was not asking for the Council to overrule Landmarks but, in fact, that is the purpose of the application. He said the Town Council is sitting in an appellate capacity only to determine whether the Landmarks Commission decision was improperly made, and the record is complete as to the evidence presented at that meeting. He added the information relative to the economic hardship issue is irrelevant to the application that was filed by the applicant, and he urged the Town council to ignore that information and confirm the Landmarks decision was properly made based on the competent evidence presented at the hearing.

Mr. Randolph advised that the Town Council could consider the manner in which the application is treated in two ways. He said the attorney for the staff indicated the matter of economic hardship is not before the Town Council, and the determination should be made based on whether or not the property should be dedesignated based upon those criteria set forth in the ordinance.

Mr. Randolph noted that Mr. Kolins requested form not be put over substance, and that the Council give consideration to the matter of economic hardship although the Landmarks Commission has not given consideration to hardship. He said if the Council chose, because of the fact that evidence was put before the Landmarks Commission relating to economic hardship and because that information was presented to the Council, the decision could be based on the economic hardship issue.

Mr. Randolph explained he was suggesting the two alternatives, because if the Council sustains or rejects the Landmarks' decision simply on the basis of the application for dedesignation, nothing will preclude the applicant from subsequently filing an application for demolition based upon economic hardship. He continued if the Council does not wish to re-hear the application on that basis, the alternative at this meeting would be for the Council to either sustain on overrule the Landmarks Commission, but a determination should be made in the findings as to both of those particular elements that they were supported regarding the criteria or not, and the decision was supported on the basis whether or not it was an economic hardship.

Councilman Wyett made a motion to uphold the Landmark decision to deny de-designation of the subject property, and no economic hardship was found that should be taken into account.

Mr. Wyett said sufficient assets exist between the two properties that when they are finally sold, a break-even situation will occur or a loss.

Councilman Wyett restated the motion: "I move to uphold the Landmark decision not to de-designate and I find no economic hardship that this Council should take into account."

President Pro-Tem Goldblum seconded the motion.

Attorney Randolph said he understood the motion as sustaining the determination of Landmarks for the reason that the applicant has not proven the criteria for designation no longer exists, number one, and number two, the applicant has not presented sufficient information to carry the burden to show that there is extreme economic hardship.

Mr. Wyett and Mr. Goldblum said they agreed with Mr. Randolph's explanation.

On roll call, the motion carried 3-1 with Councilman Wyett, President Pro-Tem Goldblum, and President Brooks casting affirmative votes. Councilman McLendon cast a negative vote, and Councilman McDonald was absent from the meeting.

VI. ANY OTHER ITEMS

There were no other items.

VII. ADJOURNMENT

The meeting was adjourned at 11:55 a.m.

William J. Brooks, President

Mary A. Pollitt, Town Clerk