

TOWN COUNCIL MINUTES OF SPECIAL TOWN COUNCIL MEETING
HELD ON JUNE 3, 1993

CALL TO ORDER AND ROLL CALL: President Weinberg called the Special Town Council Meeting to order at 9:32 AM on June 3, 1993 in the Town Hall Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Weinberg, President Pro Tem Wiener, Councilwomen Douthit, Smith and Royal. Others in attendance were: Mr. Doney, Mr. Randolph, Mr. Dusey, Chief Terlizzese, Chief Elmore, Mr. Wandell, Mr. Frank, Mrs. Peters, Mr. Moore and Mr. Zimmerman.

INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Mrs. Peters. Pledge of Allegiance was recited.

Mr. Weinberg explained this meeting is an extension of the Executive Session which was held on June 1, 1993 and will continue as an Executive Session. He asked all to be brief in their remarks and all inquiries should be directed through him.

APPROVAL OF AGENDA: Motion was made by Mrs. Wiener, seconded by Mrs. Royal to approve the agenda as printed. Motion carried unanimously on roll call.

COMMENTS OF THE MAYOR: None.

SPECIAL EXCEPTION APPLICATION NO. 11-93 - the Mar-a-Lago Club, Inc., 110 S. Ocean Blvd. - To allow applicant to convert existing single family dwelling pursuant to Special Exception Use No. 5 (private social swimming, golf tennis and yacht clubs) of the Town Zoning Ordinance. R-AA-District - As continued from May 13 and June, 1, 1993 Special Town Council Meetings.

Mr. Weinberg called on Attorney Randolph for his comments. Mr. Randolph explained the attorneys and staff have accomplished the amendment of the Declaration of Use Agreement to incorporate some of the items discussed at the June 1, 1993 meeting.

Mr. Randolph advised the applicant's attorney has requested Mr. Steven J. Small, who has prepared the Preservation Easement be granted the opportunity to speak at the beginning of this meeting as he has to leave and requested permission for Mr. Small to give his comments, to which President Weinberg agreed.

Attorney Paul Rampell introduced Mr. Small, who has come from Boston, Mass, and is the undisputed, number one authority in this country on the subject of preservation easements and has written several books on the subject with regards to preservation and taxation.

Mr. Steven J. Small addressed the Council recalling the comments of Mrs. Wiener at the June 1st meeting stating the Preservation Easement is what concerns the Town most. He wishes to make a few comments on the document which has been furnished each member of the Town Council. He believed this Preservation Easement would protect Mar-a-Lago the way that Mrs. Post would have wanted to do so, as it is a very strict, tight document.

He explained the definition of a Preservation Easement is a recorded deed restriction which is authorized in this case by Florida Statutes. He stated this will be a recorded, permanent perpetual deed restriction which protects the enumerated features of the property and is enforceable in perpetuity.

He advised the right to enforce that restriction is given to a qualified organization, and they are not given any development rights or given anything of value, but is given as the right to enforce the terms of that restriction against the current owner and any future owner of that property.

He commented this was not like zoning as zoning can change and has changed and far too many towns and cities across the country that had historic property have not had the properties protected by Preservation Easements, and the historic properties have been destroyed either by the wrecker's ball or the ravages of time.

Mr. Small reported there are certain tax code requirements which must be met for the donor of a Preservation Easement to be allowed an income tax deduction. He stated he cannot say at this point whether or not Mr. Trump would qualify for this deduction.

Mr. Small stated as far as the donee organization is concerned, they have been in touch with the representatives of the National Trust for Historic Preservation, and they have copies of the document and they have made no commitment as yet to accept this Preservation Easement, however, he has received authorization to tell the Mayor and Town Council that they are very excited about the idea of this easement on Mar-a-Lago and very interested in discussing the possibility of the National Trust holding that Preservation Easement.

Mrs. Douthit asked if one easement would encompass the whole property to which Mr. Small responded affirmatively. Mrs. Douthit asked if the interior was included in this to which Mr. Small responded affirmatively noting the interior rooms that have been designated as critical features have been included.

Mayor Ilyinsky asked if there was a natural disaster, such as a hurricane, if the easement is badly damaged, what would happen? Mr. Small recalled he raised that question when he was at Mar-a-Lago and was shown how thick the walls were and everyone thought that could never happen, but if it does, the Easement at Paragraph 8 has a complex scheme dealing with casualty loss, and they start with the owner maintaining insurance for full replacement value of the property, and depending on the severity of the loss, the terms of the easement bring the parties together to negotiate in good faith. He stated the owner could decide to do the restoration or the holder of the easement could decide that restoration and rehabilitation makes sense, in which case, the insurance proceeds would be available for that. He stated another possibility is if the holder of the easement and the landowner do not agree that there should be replacement and in that case, that portion of the easement could be extinguished.

Mrs. Smith noted the Mayor's question was pretty well covered in the document that Mr. Small furnished them as it does cover just about every contingency for a preservation easement to which Mr. Small agreed. Mrs. Smith believed this form was a form that was necessary for a preservation easement on an historic property and asked Mr. Small to read what is covered by the Easement. Mr. Small read from Paragraph 4 on Page 6: "Prohibited Uses. The following acts or uses are expressly forbidden on, over or under the property:

Mar-a-Lago

- (a) Altering, removing or remodeling the exterior of the main entrance gate, perimeter wall, property manager's complex, mansion, cloisters, patio and parrot pool.
- (b) Altering, removing or remodeling the interior of the mansion rooms.
- (c) Altering the main entrance drive.
- (d) Allowing any substantial construction upon the property by structures or vegetation or otherwise of the existing open vistas from the mansion to the east to Ocean Boulevard or the mansion to the west to Lake Worth.
- (e) Altering the topographical flow of land.
- (f) Altering to any significant degree (other than with respect to changes from natural growth) the basic quality of vegetation and tree lines.

He told of certain rights which are involved for the owner of the property, including the right to restore, rehabilitate, maintain and repair any of the critical features, subject to the standards for the standards and guidelines for rehabilitation of historic buildings from the Department of the Interior.

Mrs. Smith referred to the perimeter wall and asked if the traffic flow along this perimeter needed to be accomplished, would the rules of the Town supersede this to establish a gate? Mr. Small responded affirmatively noting that very often when drafting an Easement Agreement, he is asked to put in the phrase "except as otherwise prescribed by Statute or regulations".

Mrs. Douthit commented it is up the Council to preserve the mansion and how do we adjust this possible new use with preservation? Mr. Rampell responded the critical features internally cannot be changed. Mr. Small agreed confirming what Mr. Rampell says and what the easement says is the critical features cannot be changed, whether they are used one day or two days or thirty days, as long as they are rooms and they are not changed. Mrs. Douthit was concerned about wooden floors which some of these rooms have and what would have to be done because of the hotel regulations as wooden floors are not fireproof.

Mr. Small responded the preservation easement puts the burden on the owner to maintain those features the way they are. Mrs. Douthit asked if this could be done against state regulations? Mr. Rampell explained the easement does protect the critical interior features from almost any interference.

Mrs. Peters gave the oath to Mr. Small and to others who will be giving testimony in these proceedings.

Mr. Weinberg called on Attorney Randolph for his comments. Mr. Randolph indicated the Agreement that was before the Council previously has been modified to some extent.

He noted at Page 2, a new Article I has been included relating to representation of ownership. He stated this indicates the applicant is the fee simple title holder of the property and that anyone holding mortgages against the property will consent to the terms and conditions and there are no covenants or reservations of record which will prevent the use of the property as a Club, in accordance with the terms of the agreement; and that there are no others who have an interest in the property and no judgments which will prevent the use of the property consistent with the terms of this agreement.

Page 2, Art.I

Mr. Randolph noted at Article II, a minor statement that the terms relating to the uses shall not be inconsistent with the terms set forth in this agreement.

Article II

Mr. Randolph noted on page 3, in addition to those items listed as prohibited, he has included commercial or quasi-commercial uses. He noted each of these changes have been discussed with the applicant's attorney and the reason they have been included is there is no disagreement with these modifications.

Page 3

Mr. Randolph noted on Page three, the guest suites have been limited to ten in number. He indicated the provision states the use of guest suites should be limited to thirty days for the season commencing November 1 and ending May 1. Mr. Randolph indicated he knows that was not discussed in detail by the Council and was a provision put in by the applicant for discussion. He thought putting aside the length of the term, he proposed the language be modified to "the use of the guest suites shall be modified to a maximum of thirty days by any one individual during the season commencing Nov. 1 and ending May 1."

Mrs. Wiener noted that provision has not been agreed upon. Mrs. Douthit commented on the change from "guest room" to "guest suite" and she thought that implied it would be more than one room, a bath and a closet but would be sitting rooms, etc. She wondered how the rooms can be preserved if they fall under the regulations of the Hotel Commission as they will want wider doors, wheelchair access, fireproof fabric and paint and the wooden floors might have to be replaced. She also thought thirty days was far too much as they were talking more about four days to a week, as it is up to this Council to preserve the mansion and she didn't know how this new use could be adjusted with preservation.

Mr. Rampell called on Mr. Small who confirmed the fact that the critical features internally cannot be changed and he was not sure it made a difference whether they were used one day or thirty days. Mrs. Douthit asked about the wooden floors which could be considered a fire hazard by the Division of Hotels. Mr. Small responded the Preservation Easement puts the burden on the owner to maintain those features. Mrs. Douthit asked if this would be against the State Regulations? Mr. Small responded if the Town or the State or the Federal government said they must do such and such to bring the building into compliance, that would take precedent. Mrs. Douthit believed if that

Mar-a-Lago

should happen, the preservation would be gone. Mr. Small responded the sovereignty of the United States does take preference over this easement, but the easement will protect the critical interior features from almost any interference. Mrs. Douthit did not believe the guest suites were on the list, to which Mr. Rampell responded they certainly are on the list, noting that "suite" is a more accurate term and they would not be under the jurisdiction of a hotel regulatory authority and the comparison is nothing but inflammatory.

Mrs. Smith recalled Mrs. Volk as Chairman of the Landmarks Commission addressed the Council in a previous meeting and she mentioned that when the new Beach Club was built, they requested club rooms to sleep in and were turned down. Mr. Moore responded they pulled the file on this and the minutes do not address the request for sleeping rooms. He noted in 1970, an apartment for the manager was approved on premises with a kitchenette and an office.

Mrs. Wiener believed the length of time has not been determined and she would suggest there be no more than three seven day stays during the Season. Mrs. Douthit believed it should be less than a week. Mr. Weinberg asked if there could be a consensus on this from the Council.

Mr. Rampell addressed the Council noting they are moving towards a 21 day period and their request is for 30 days, and actually they believe they are entitled to 90 consecutive days, as after that time, it is no longer transient occupancy.

Mr. Moore believed Mr. Rampell is not entitled to the ninety days, as that is an issue of residential occupancy, however, if the Council wishes to allow this, they should negotiate and come to some figure less than the 90 days.

Mrs. Royal advised she spoke with Michael Brown at the Colony Hotel, who states the average length of stay in that hotel is more like seven to ten days. She also talked with Mr. Wickey at the Breakers who states the average stay is two weeks at Christmas time.

Mrs. Wiener believed that the stay at the Club would be a different situation than a stay at hotels in the area. She thought club members who do not live in Palm Beach would want to come and not necessarily spend two weeks, and she thought some kind of control was necessary. She felt perhaps 21 days would be more appropriate but she didn't believe she would move beyond that. She views this as an accommodation for club members and she didn't believe letting someone stay one month is really what that is all about. Mr. Rampell felt that was reasonable and agreed.

Mrs. Douthit stated she did not agree and thought one week should be the maximum, as this is an accessory use, and one week or three one week stays, with the time broken should be sufficient.

Mrs. Smith stated she would like to see it a shorter time as it really cannot be compared to a hotel, but she still had a problem with the guest room because of the zoning. She would prefer to see it a shorter time.

Mr. Rampell asked if three non-consecutive seven day periods be acceptable? Mrs. Smith stated she didn't believe her opinion mattered as she is only one person on the Council. Mr. Rampell commented he thought her opinion was very important. Mrs. Smith indicated she didn't believe the discussion on this was quite over as yet.

Mrs. Wiener felt a week was sufficient. Mr. Rampell responded he wanted to be reasonable. Mr. Weinberg asked if this was going to be for 21 days with a break between the seven days. Mrs. Wiener agreed, believing that the norm would probably be stays from Thursday through Monday and this could occur several times during the year, but if they wanted to stay longer than the seven days, they would have to go to a hotel. Mr. Rampell stated he was willing to accept three consecutive seven day periods.

Mrs. Royal believed this was going to be difficult to regulate and she thought this should be done through the Board of Directors of the Club. Mrs. Douthit did not agree, believing they should just make their registration books available and it would simply be a matter of the Town looking at the registration. She indicated she was not in favor of the guest rooms but if it was going to happen, there should be some method of control.

Mrs. Smith asked Attorney Randolph if the registration books of a private club were open to the public? Mr. Randolph did not believe they were open to the public and suggested they make it a condition if that is the way they were going to monitor this.

Mrs. Douthit believed she would be outvoted on the use of the guest rooms, however, she would like to see limited use of the rooms, and that is why she would agree to the limitation of seven days with a break for a time up to 21 days annually, and the registration books be available for monitoring.

Mrs. Wiener understood the concerns and agreed with them, but she thought perhaps as other people have to submit a statement every year that they are Town-serving, which is not something that would normally be required to do in this case, but perhaps annually, the Town could have a look at the registration books of the Club.

Mr. Moore responded Town-serving is indeed a very definite part of this particular application and they will have to submit annually a statement that 50% or more of their members are Town persons. Mrs. Wiener believed this could be added to their annual reporting on the Town-serving and in that way, this seven day rule will be under control.

Mr. Rampell responded he does not know the number of members who will be Town-persons, but they will prove each year that fifty per cent of the membership will be qualified for the Town-serving requirement and they will report as other organizations in the Town report this. He thought there might be an issue of privacy as to whether or not their guests would like to have their names reviewed in a guest registry. Mr. Rampell believed there was adequate enforcement in place in this Agreement already. Mr. Weinberg believed there was adequate consensus that there could be three seven day stays by a member in a guest room during a one year period.

Attorney Ron Kolins requested permission to make a statement on this point. Mr. Weinberg explained the Council was in executive session. Mrs. Wiener agreed noting that procedural matters are decided on this side of the table. Mr. Kolins indicated he wished to ask what the procedures were at this point? Mr. Weinberg explained this was a continuation of the executive session. Mr.

Kolins recalled the rules were set down at the beginning of this proceeding that on an item by item basis, the public would be allowed to address the Council, and he didn't want to be disruptive but wished to know how the Council would like him or anyone else from the public who wished to comment on the items that are being discussed, when they would have an opportunity to comment. Mr. Weinberg explained that a tentative consensus was reached by the Council, and they went into executive session and he did not believe it was necessary to rehash these items again at this point and they seemed to have a vote on it. Mr. Kolins advised he was concerned that they had a vote before they heard the public, however, he would like an opportunity to speak on a few things and asked the Council how and when he can do it.

Mar-a-Lago

Mrs. Smith recalled at the last meeting, they discussed the matter and the members of the public had their opportunity to discuss, and asked if that method would be continued today? Mr. Weinberg stated they will do it that way, unless there is an interim vote which says it is a fait accompli, and then they would go onto the next item.

Mayor Ilyinsky believed they should answer the question of Mr. Kolins. Mr. Weinberg believed he already has answered the question. Attorney Randolph advised the Council can set up their procedures but he believed that all Mr. Kolins was asking is whether or not he will have an opportunity to speak as each item is addressed or whether he needs to go back to those items at the conclusion of the meeting. He agreed that at some point Mr. Kolins or any member of the public had the right to speak to those items. Mr. Weinberg commented the public, including Mr. Kolins will be able to speak on each of the items they are concerned with today. Mrs. Wiener asked if based on that that they could sit here for the next twenty years, and she was sorry but she was not going to sit here and be stonewalled and delayed and carried on by the same comments from the same people over and over again in an attempt to make people feel they are being fair, as she thought they had been fair as they have heard the comments and she thought to continually bring up the same things over and over was insulting to the members of this Council. She felt if there was something new to be heard, she would be more than happy to hear it.

Mrs. Douthit commented she does not know what any member of the public may want to bring up which possibly could be new and/or an unthought of suggestion. Mrs. Wiener reiterated that if someone has something "new" or "different" or a question, she would be happy to hear that, but she will not hear the same rehashing over and over, as it doesn't do anything but delay everyone's time and what will be, will be. Mrs. Douthit felt they wasted more time in discussing this and should have simply heard the comments of Mr. Kolins. Mrs. Wiener reminded all that Mr. Kolins was not a member of the Town Council. Mrs. Smith believed that at this point the discussion has gotten rather heated and she didn't feel the questions from the public should run the risk of being a rehash, but it is very possible they may have forgotten something that was said before and possibly may repeat a statement that was made at an earlier time, and suggested they quietly go back to the issue and ask Mr. Kolin for his comment and if it is a repetition, we can ask him to not continue the discussion. Mrs. Wiener stated she was upset because she considers this stonewalling and when she sees that, she knows it and a decision has to be made on this Council and she would like to see it done now and not be discussing this for the next twenty years. Mr. Weinberg stated he wishes to move on to the next subject, as once a decision is made, he didn't think they needed to go back and ask if anyone wanted to augment it or negate it. Mrs. Smith asked if they could hear the comments of Mr. Kolins to which Mr. Weinberg agreed.

Attorney Kolins explained he was not going to repeat himself, as what he was going to say is brief and new and wished to talk to this particular Article, if he may.

Mr. Kolins stated he has three points to make on Article II:

Article II

- (1) the applicant represented to you there would be not be a beach pool and that should be included. Mr. Weinberg recalled the applicant's attorney agreed to that. Mrs. Smith noted croquet courts also are not listed, and it is her understanding if it is not listed, it will not be there.
- (2) the seven day restriction on guest rooms. Mr. Kolins urged the Council to make it clear, so it will be easier to enforce. He thought if this is to be non-consecutive, that would suggest that someone could come for seven days, leave for a few days and come back and stay another seven days, and this should be for all year round, and he wishes to help the Council to do what they appear to want to do.
- (3) the sentence which states: "the operations of the Club shall not result in a nuisance to any of the neighboring properties" and he wished to discuss this at some point but for the moment, he wishes to call this to the Council's attention and ask them to read it carefully as it is a broad brush statement of dramatic implications, since those who do oppose the Club oppose it because of the terrible nuisances that it could impose, and he thought the particular language which is self-serving and general and so subjective does require an analysis and he would like to participate in that discussion.

Attorney Frank Chopin pointed out that by following the Agreement and considering this question, it does jump over a pre-condition and that is that the Council must find this an accessory use, and it may well be that before discussing this, they want to address that item. Mrs. Wiener recalled they have discussed this ad infinitum. Mr. Chopin responded he merely wants to represent the public on this to which Mrs. Wiener responded she thought that was the duty of those who were sitting on the other side of the table and she felt he was misinformed.

Town Manager Doney advised the Mayor and Council the staff needed direction and when they wanted to have Town staff comments, they should call for them and also for the comments of the consultants. Mr. Weinberg responded after Mr. Randolph has finished the discussion on the current agreement, they would be calling on Mr. Brisson and the Town staff for their comments and discuss the consistency or lack of consistency on this Agreement.

Attorney Randolph continued indicating at Article III, he suggested the language, "no portion of the land or structures thereon shall be condominized" to which the applicant has agreed. Mrs. Douthit thought they needed to have additional language to ensure the Club would not be "co-opized" and perhaps there should be a householder association of some kind. Mr. Randolph indicated that language could be included. Mrs. Smith asked if the Unity of Title would allow the ownership of the Club to be changed? Mr. Randolph responded it could be changed, as the Agreement inures to the heirs, successors and assigns of each of the parties. He stated the concern is the use of the land and the Club, if for some reason they wished to turn it into another Club or for

Mar-a-Lago

some reason they wanted to have some organization operate it for the use approved, they could do so. Mrs. Smith asked if they would have to come back to the Town Council to do so? Mr. Randolph responded they would not have to come back to the Council.

Mrs. Douthit felt that had serious implications, and asked if Mr. Trump would pass away, his heirs would be his minor children. Mr. Randolph agreed, noting they would be bound by the terms of this Agreement. Mr. Moore reported under the Special Exception procedure, in the event that the name of the license holders is changed, that Special Exception must come back to the Council for its review, and one of the prime purposes of that provision is to ensure that the new owner understands the requirement of Town-serving. Mr. Randolph explained they are concerned with Use rather than the ownership issues.

Mr. Randolph pointed out the applicant does agree to be bound by the terms of the Zoning Code, which requires that if a new Club would come into existence, they would be required to come back and have the Special Exception renewed.

Mr. Moore explained if there is a new owner, they would be required to come to the Town Council.

Article IV

Mr. Randolph noted Article IV has no change other than to include a provision relating to a concern by the staff, which was to include a sentence which states: "the owner shall install an integrated fire protection system. Mr. Moore addressed the Council advised the Council it would require the agreement state: "The owner shall install an approved fire protection system.", to which Fire-Rescue Chief Elmore spoke, asking for a language change to "fire sprinkler system" as a fire protection system is not specific as it may be smoke detectors or guards or heat protectors, which do not really protect the building but merely identify whether there is smoke and he was interested in a fire sprinkler system to protect the property and the people who would be on the property.

Mrs. Douthit was in sympathy with the Chief's feelings but in an effort to preserve the structure, she believed there would be vast damage to the building in order to install the sprinkler system. Chief Elmore responded with a sprinkler system, there may be more damage to a single room or a particular area if there is a fire. He recalled there have been unfortunate situations with sprinkler systems, but there is no greater property saving device or a life saving device. Mrs. Douthit agreed but the frescoes may dissolve and other things could happen with the tapestries, etc. Chief Elmore recalled the problem with traffic has been alleviated and he requested a fire hydrant on the property which has been taken care of in the Agreement, and through all the meetings the particular language he requested, has been in the Agreement but now is missing, and it now states "fire protection system" and that is ambiguous.

Mrs. Smith advised a fire sprinkler system was incorporated into the Seagull Cottage and it is part of the preservation package and it has turned out very well without destroying the integrity of the building.

Mr. Rampell explained they do want to have a State of the Art system to protect Mar-a-Lago and wished to mention there are systems which are better than the water sprinkler systems, as there now are chemical releases available which suffocate fires and they are better and he wished to leave this to the Town Council's discretion as they will install the system that is approved by the Town. He stated if the Town Council thinks sprinklers with water are better, they will do that. He wished to be able to persuade the Fire-Rescue Department that these new devices which release a chemical which takes away the oxygen which is necessary for the fire to burn faster. Chief Elmore stated he is interested in a system which will not only detect but extinguish a fire and if there is a better technology that the fire sprinkler system, he would be in agreement. Mrs. Smith noted it will be left up to the Fire Chief as to what is the best system.

Mr. Moore noted this may be already covered as there is a provision in the beginning of this Article that all Town building codes etc. must be followed. Chief Elmore stated his concern is that when they look at a Building Code or a Fire Safety Code, they won't find Mar-a-Lago in there and what they are going to do is debate the use, the occupancy and it's open for discretion and he would like to eliminate that. He recalled from the very beginning they have requested a sprinkler system and he wanted everyone to know what they wanted and that is an extinguishing system whether it be sprinklers or something better.

A short break was taken. Meeting reconvened by the President.

Article V

Mr. Randolph went to Article V., noting there were no changes in this article. He noted Article VI was modified so as to incorporate the Exhibit C, which picked up the terms of the letter received from Attorney Burden on behalf of her client, Estate of Lillian Loomis, and also includes a provision that a bond shall be posted in the amount of 135% of the cost of the improvements to be installed, which relates specifically to the wall and the landscaping.

Mrs. Douthit noted that originally the applicant had agreed to plant the north side of the wall and she doesn't see that provision in this agreement. Mr. Randolph responded he thought that was part of the discussion at the last meeting. Attorney Burden commented the language in the Agreement is acceptable but had two points to make:

- (1) On the north planting and maintenance of it, she wished to clarify that this was something that did not come from her client or their landscape architect, but from the applicant's architect, Mr. Blakely.
- (2) On the Exhibit C, it does reference the removal of the Australian Pine hedge, and there is also located there a chain link fence and post which should be removed and asked that that provision be added.

Mr. Randolph agreed. Mrs. Smith asked what provisions were to be made for the accumulation of the trash outside of the kitchen area, and how the garbage trucks will access the property on the south end to pick up the garbage. Mr. Rampell responded this will be picked up at the south end. Mrs. Smith noted that no-one in the neighborhood will be disturbed by the noise which goes on in the early morning with the pick-up of the garbage. Mr. Rampell responded it is part of the application and it will be a private collector and it will be done from the south side of the property.

Mr. Randolph referred to Article 7 which talks about 50% of the membership would consist of individuals who would be residents in the Town. He suggested perhaps the statement relating to an annual audit should be included in this article.

Mar-a-Lago

He advised the next section deals with the number of members which was not finally decided, and the applicant has filled in the 500 member figure for discussion purposes today. He noted that this does include the provision that in the event the trip generation limitation set forth in Article 8 is reached, the membership at that time shall be frozen until measures are taken to reduce the daily number of trips.

Mrs. Smith asked this Article to be read, recalling there was no consensus on this at the last meeting.

Mrs. Douthit recalled the Town's traffic consultant recommended the membership to be set at 492, which was a compromised figure. Mr. Moore recalled it went from 611 to 339, after Mr. Weidner reviewed his figures, the 492 figure was recommended. He pointed out that Mr. Tokich is here today from Frederic R. Harris as Mr. Weidner had to go to Washington, D.C.

Mr. Weinberg called for discussion on the 492 figure. Mrs. Wiener recalled she suggested the figure be set at 475.

Mr. Randolph read the provision in the Agreement:

"Article VII: Club Membership Limitations.

Article VII

At least fifty per cent of the members of the Club shall consist of individuals who maintain residences in the Town of Palm Beach, or have places of employment in the Town of Palm Beach. The membership in the Club shall be limited to 500 members, provided, however, such number may be adjusted in the reasonable discretion of the Town. In the event the trip generation limitation set forth in Article VIII is reached, membership at that time shall be frozen until measures are taken to reduce daily trips. The Club shall not discriminate against any prospective member on the basis of race, color, religion, gender, national origin, handicap, age or marital status. All Club facilities, such as dining, tennis, and golf shall require advanced reservations. The residents of Woodbridge Road shall have guest privileges at the Club without having to pay membership initiation fees, provided however, they shall not be permitted to park on the land while exercising their guest privileges. Members of the Bath and Tennis Club shall not have such privileges."

Mrs. Smith thought the sentence on the Bath and Tennis Club should be eliminated. Mr. Randolph stated he could take it out but then the applicant should be directed to modify the application so as to exclude that provision.

Mr. Moore recalled the residents of Woodbridge should have guest privileges and he believed it was discussed that those would run with the land and asked if they would like that language to be included to which the Council agreed. Mr. Randolph agreed that it is included and this is going to be a recorded document which will be binding and will run with the land. Attorney Ciklin for the applicant agreed to this provision.

Mr. Weinberg asked Mr. Rampell if he was agreeable to the number on the membership recommended by the Town's traffic expert, A. Jeffrey Weidner, of Frederick R. Harris, Inc., which was recommended at 492 members.

Mr. Rampell recalled three out of four traffic experts have testified that the correlation between memberships and automobile trips is very weak. He requested that the 492 figure be rounded off to 500. Mrs. Douthit asked if it could be rounded off at 475? Mr. Rampell did not agree. Mrs. Wiener suggested 490. Mr. Rampell did not agree, noting this was a point of tremendous importance to Mr. Trump and it was not an unreasonable request. He explained he originally thought they would be entitled to 1007 members, so 500 would sound a lot better. Mrs. Smith recalled this was 500 people and not memberships to which Mr. Rampell agreed.

Philip Tokich of Frederic R. Harris, Inc. addressed the Council indicating they have spoken with the applicant and the difference between the 492 recommended and the 500 requested is very small. He stated there is a correlation between membership and trip making although they do not have a good understanding of what that is at this point in time. He stated the test they will be held to is the 313 trips and if those memberships take them over the 313 trips, they would have to reduce their trip making.

Mr. Doney reported he had a question which relates to the controlling factor of 313 daily trips, as he thought it would be of benefit to the staff, as they had a different understanding of the definition and enforcement and asked for the traffic engineer to explain and define the average daily trips and what that means.

Mr. Tokich explained the concept of the average annual daily traffic is one that is used in traffic engineer literature and refers to a traffic number representative to traffic throughout the year, recognizing that in peak season traffic is heavier and other times during the off peak it is lighter, so the 313 number is an annual average.

Mrs. Wiener asked if the trip is one way or is it a round trip? Mr. Tokich explained they would be counted as they enter and as they leave, which would be two trips. Mrs. Douthit thought the devices installed to record the daily trips should be allowed to be read at any time by Town personnel or the Club personnel.

Mrs. Smith asked if the Club was open only six months a year and this reading is done on an average basis, would the averaging cover the entire year or just the time the Club would be open? Mr. Tokich responded that was the concept of an annual average. Mrs. Douthit thought if that was the case, they were dealing with fictional figures, as they are not getting a true average. Mr. Rampell responded this has been left up to the Town's traffic expert to impose the traffic condition and the language in the article comes from the Town's traffic expert, who is believed to be the most independent.

Mar-a-Lago

Mrs. Wiener asked if they have decided what months the Club would be open? Mr. Rampell responded nothing is definite but the Club may be open during the summer months. Mr. Weinberg asked to get back to the number of members, noting they wish to have 500 members. Mrs. Wiener stated her recommendation would be 475 as that is what she really would like to see. Mr. Rampell recalled the Beach Club to which Mr. Moore referred to at a previous meeting had an initial cap of 500, so there is a precedent and he wished them to know that 500 members is extremely important to his client. Mrs. Smith thought it appears there may be only 313 trips on a given day, but when it is averaged out, it may not be and this is her problem with the averaging. Mr. Rampell thought there already was a consensus on the averaging and the traffic methodology. Mrs. Smith recalled it was mentioned that the membership figure was not important since the 313 trips would be the control. Mr. Rampell agreed and stated that is why he doesn't think there's that much difference between 492 and the 500. Mrs. Douthit stated she has no problem with the 313 trips but has a problem with the averaging.

Attorney Ciklin commented on the averaging, noting the averaging is what is typically used in traffic and there is no other way to do it because from a practical standpoint, at a special event, if they would have 390 people at an event, there would be 800 trips on that particular day, and on a Wednesday during the off-season, there could be 50 trips and most of those would be employees. He felt the only real way to do it is to average and from his experience and the traffic experts will agree, that is the way it is always done and that is the way the County's traffic performance standard works and he doesn't know if there is a lot of leeway out of the law, which is the Countywide Traffic Performance Standards. Mrs. Douthit knew that is the way the County did it but on this particular road, they just might have to have some experience on it and it may have to be adjusted.

Mr. Moore clarified that there are two laws which have to be complied with and one is the County's and the other is our own concurrency, which is outlined in the Comprehensive Plan. He stated the Town's method of compliance is more rigid as peak season and peak hours are used. He stated the more rigid of the two is the County's as the Town's would allow for more trips.

Mr. Doney asked how this would be done on an annual average basis to which Mr. Ciklin responded what they are going to be doing is they have agreed with the Council's request to monitor 365 days per year and those will be available to the Town at any time they so choose to read them and they will pay for the Town's consultant to read them. He understood the method to arrive at the average annual, they would take the numbers from the first and third quarters which they believe are representative, however, there is no reason why they can't read more numbers and they will always be available as they agreed previously. Mr. Doney asked if there would be 24 hour counts available to which Mr. Ciklin responded affirmatively. Mr. Doney asked what the enforcement mechanism is in reporting and the enforcement action? Mr. Ciklin responded they would supply the results of the monitoring to both the Town and to the Palm Beach County Traffic Division who would analyze them and they would pay for the interpretation and if there is a problem, the Town would inform them.

Article VII

Adrian Winterfield asked about Article VII, as the applicant has indicated the critical number is individuals and not memberships, and he wondered if there should be a mechanism in reporting the number of individuals as one family membership could cover six or seven people. He noted there were different categories of membership and guests who may not be members would generate as much traffic.

Attorney Frank Chopin addressed the Council, pointing out that unless they specifically addressed the question of membership, either by requiring an amendment to the application itself, as the early language in the agreement states that unless they do something different than what is in the application, the application will control. He believed Mr. Rampell was talking about 500 individuals.

Mrs. Wiener noted she was not understanding him at all as she believed that it is common that club membership is held by a person but it is normally a family membership. Mr. Chopin agreed that is the way the application reads, but he thought the point is this was supposed to be a mechanism for controlling the amount of traffic generated by the Club. He stated they are talking about traffic and what was indicated in the agreement was originally 611 members and now it has been revised to 500 memberships and based on the application, the number is being increased as that is the way it is written. Mrs. Douthit did not believe it does either as she thought it was a matter of semantics whether they are speaking of individual membership or a family membership. She pointed out it usually is one person who holds the certificate and they do have family members who go with them and she has never understood it to be anything different. Mrs. Smith noted that Mr. Rampell has just stipulated that it would be 500 people, not memberships, so they can put into it 500 memberships and if the Club ended up having nothing but couples, they would be talking about 250 memberships, as they are talking about people. Mr. Chopin recalled he did concede that point and that is what he is talking about, and he is not debating the number. Mrs. Smith asked for clarification from Mr. Rampell.

Mr. Rampell responded this is a big distinction without any difference, and a big non-issue, whether they use the word "members" because it is consistent with the application and with all other clubs in this Town. He has read the other club's documents and they do use the word just the way the other clubs do. He felt it was absurd to think that by limiting the word to individual versus member that only a husband will use it and not his wife and not his children or grandchildren. He stated it was a distinction without a difference.

Mrs. Smith felt there was some confusion as to how many people there would be as they are talking about limiting the members - individuals or whatever they want to call it and tying it in with 313 trips, so everyone can get an idea of how many people will be using the Club as members.

Mr. Rampell believed the term used in other Club documents is "members" and this is what is used. He stated when they are trying to determine how many parking spaces the Club must have, it turns out it is 4 parking spaces per member. He stated "member" is in the Code and in their application and that is what they want to use. Mrs. Douthit commented in her mind one membership would represent averaging out at three people, so when they speak in terms of 500 members, they are averaging out 1500 people. Mr. Rampell stated the real problem is to define what a membership is so it would apply to all of the Clubs. He stated they are using the word "members" because that is what is used in the Code, the application and other Clubs' documents and they only want to be treated the same.

Mar-a-Lago

Mr. Chopin suggested the Town Council ask their traffic engineer if whether having 500 members would produce the same traffic as having 1500 people, and if it is going to generate the same traffic, then they wouldn't have to be concerned with it. He also commented that if Mr. Rampell read the other Club's documents, he would have found there are other limitations imposed on the Clubs which relate to parking and the like. He thought the Traffic Engineer should reflect on what he means about what a member is in terms of what effect it has on generating traffic. He thought that they could change the language and instead of saying average annual traffic counts to define that by reference to the number of months the Club is open, which will produce a better result.

Mrs. Royal thought the County requires the traffic be measured in the first and third quarters, so she is not sure that could be changed. Mrs. Smith thought that could be changed to which Mr. Chopin agreed.

Mr. Pollack, Traffic Engineer, advised the Council that on the trip generation issue related to Club membership, the way that the numbers have been calculated have all taken into account and have to some extent been based on the traffic counts at the Bath and Tennis Club. He stated the Bath and Tennis Club has a specific membership number and the rules of membership for the proposed Mar-a-Lago Club are consistent with that, so he thought that has already been taken into account satisfactorily and properly, with the resulting 313 traffic trips per day.

Attorney Kolins felt this was a very important issue and asked to make a few comments. He heard Mr. Rampell state that there are certain things about the Mar-a-Lago Club which are consistent with the other Clubs in Town such as the definition of membership and he agreed with Mr. Rampell on that, but there is a difference for the Council to consider as to why the rules of the game can, should and must be different for this proposed Club than for the others and that reason is this is the first one that is subject to traffic requirements, County and Town concurrency requirements. He stated there were no such rules when the other Clubs they came into being.

Mr. Kolins was surprised when Mr. Rampell stated his request for 500 memberships with 500 shareholders was mere coincidence. He always assumed that whatever number were the shareholders would represent the number of the regular members of the Club as opposed to seasonal or other kinds of members, as why would someone buy a share in the Club if they were not going to be a member. He stated if that is not true, he would suggest the Council find out what is the difference between a member and a shareholder and how that all works.

Mr. Kolins heard Mr. Rampell's representatives and from the Town's traffic consultant and they stated that all they have to worry about is the 313 traffic trip number. He wished to make a point and asked them to suppose instead of a private club, there was a request before Council by Mr. Trump to build Yankee Stadium on his property and it would have 70,000 seats and the Yankees were going to play ball there, but don't worry, they are not going over the 313 trips and they won't sell any more tickets than what is allowed and he knew that was absurd because it just couldn't work. He asked them to look at what this Club is going to do and they needed to look at the use on one hand, as compared to the traffic limitations on the other hand to see if it makes any sense. He knows his example was extreme but he was trying to make a point and suggested that perhaps Mr. Chopin's suggestion was not all that bad as if they are going to average traffic trips, they need to understand what averaging is all about, as they could have 20,000 trips a day on a given day and not be in violation of any traffic requirement, so long as the average over 365 days was less than 313 trips. He knew on days of Special Events the traffic count will be well over 313 and they will not be in violation. He thought the question is how will they average as if they are going to do it, they must know how many months a year the Club is going to be open and it is not known as yet, as the first year they may be open 12 months but the second year, they may only be open six or eight months. He thought they should think about what Mr. Chopin says and that is to average during the months of operation as there is nothing about the Traffic Concurrency requirements for the County which would preclude them from doing that. He stated the County's system is to see whether or not they are meeting the County's requirements, but it doesn't say the Town can't have other conditions of its own which are stricter than that.

Mr. Kolins felt it was also very important that they say the first and third quarters should be averaged, and if they are closed the third quarter, which is the summer months, so they would have you average January, February and March on the one hand and then it would be zero on the other hand and if that is done the Town would be giving them a license to have many, more trips a day than has been contemplated, and all he is trying to do is to make sure the Council does understand that.

Attorney Joel Koeppe, representing the property owner at 1089 South Ocean Blvd. addressed the Council stating he thought this was a lot of gibberish as the traffic standards have been imposed by the County and he thought they were making a mountain out of a mole hill. He knew there would be traffic as there always is traffic at all clubs, but it is at odd hours and doesn't interfere with peak travel. He thought a 500 member limitation does fall within reason and is controlled by the traffic trips, so he didn't think the membership issue was one that needed to be discussed further.

Mrs. Douthit asked if they could add that they would abide by the County limitations and they would look at the averaging and asked if it would be agreeable to the applicant to average it over the number of days the Club is in operation. Mr. Rampell did not agree, noting they are following County law on the averaging and the Town law and that is what they are required to do, and to ask them to go further would be an unreasonable request.

Mrs. Douthit thought it should be done just for the information to which Mr. Rampell did not agree.

Mrs. Wiener believed they were rehashing things that were settled previously, and it is obvious the explicit plan of those who are opposed is to go around in circles and she is opposed to this as she indicated she would be willing to listen to anything that was new and different and that just is not the case. She stated the applicant and the traffic experts are trying to put us in line with what must be done and she doesn't intend to sit here and not move ahead.

Mr. Weinberg stated they are talking about number of members. Mrs. Wiener stated she would go along with the 500 members. Mrs. Royal stated she was agreeable to the 500 membership. Mrs. Smith stated they are splitting hairs between the 492 and the 500 and doesn't wish to bog this down.

Mar-a-Lago

Mr. Allen Wyatt addressed the Council, indicating he didn't think the total number was important but what was important is to protect the members they accept into the Club and since by definition of the contract, one-half of these members will be residents of the Town, it is the Council's responsibility to protect those members. He wondered what the procedure would be to reduce the membership if the traffic trips are exceeded, would they tell the last 100 members to be accepted into the Club to resign? He suggested they should give the Club more members than the 500 as long as they can stay under the 313 trips and limit the first year's membership to 400 so they have an opportunity to see whether or not they exceed the daily trips; and let them continue to increase their membership to a point where it will stay under the 313 daily traffic trips. He didn't believe this Club should be restricted to 500 members when the Bath and Tennis Club has 740 members. Mr. Weinberg stated it was their decision as to how many members they would have which would not exceed the daily trips and asked Mr. Randolph to continue.

Article VIII

Mr. Randolph advised they are on Article VIII and it was modified to incorporate the discussion that traffic be counted on a daily basis and the figures being available to the Town, upon request and the results of the monitoring shall be averaged to determine the average annual daily trips of the Club; the Club will reimburse the Town for a reasonable expense being incurred by the Town's traffic consultants in reviewing the monitoring results. Mr. Rampell stated the changes were acceptable to him.

Mr. Randolph noted there were minor changes in the ingress and egress as the distinction was made to provide the stacking lanes which would be inside the gate; and he added a provision that the gate on Southern Boulevard would be complete prior to the commencement of the Club operations and the receipt of the Occupational License. for Club Use and the request by the staff that the Cart Path be widened to 18'.

Mrs. Douthit recalled there was discussion about the possibility of a southbound turn-off lane and although it might be tight because of the wall, and she didn't know what permits were necessary from the DOT, but hoped to hear from Chief Terlizzese on this and the permits be secured.

Chief Terlizzese reported to the Mayor and Council that any changes done on this State Road would require permits from the Department of Transportation. He personally felt the southbound right turn only turning lane is quite necessary which is in disagreement with the traffic experts. He thought there was sufficient space there for this lane and he didn't believe the wall would be endangered. He wanted to talk about the valet parking as the Agreement does state Off Duty police officers should be used for traffic supervision at all special events and he agrees with that, however, he didn't think it was necessary to have the traffic control at lunch and dinner times, and only if there is a special event on a holiday where a large crowd is anticipated.

Mrs. Douthit asked if they could put in the Town of Palm Beach police are the off-duty police officers which should be used to which the Chief agreed.

Mrs. Smith asked if the Chief had any idea of how much space would be needed for the right turn lane going south? Chief Terlizzese responded the average size is approximately 12' per lane. Mrs. Smith asked if they would have a problem if the Chief felt it was vital for the traffic flow to have this right turn lane and perhaps even eliminating the wall? Mr. Rampell stated with all due respect to the Police Chief, this right turn lane will not work and asked Mr. Pollack to elaborate. Mr. Pollack stated the Chief is correct about the permits needed from the DOT, which implies that they would have to comply with their standards as far as lane widths, etc. He stated this would require additional right of way and the wall between the main entrance and the service gate is approximately 12' from the right of way line and it may be physically possible to construct a lane there without having to remove the wall but the offsets which the Department of Transportation would require would not comply with their safety standards. He stated the landscaping and other materials would have to be removed, so he thought the practical side of having this turn lane would require the DOT to revise their standards, which he didn't think they would be willing to do at this particular location.

Mrs. Smith stated she asked the question because this is a major concern of the traffic tie-up in that area and anything that can be done to alleviate the traffic problem should be discussed at this time. Mr. Rampell responded that is why they have met all of the requirements that the traffic expert has laid down. Mrs. Douthit stated she would be more inclined to go along with the opinion of the Chief as he is more familiar with the Town's roads than anyone else in this room. She stated all she is asking is they talk to the Department of Transportation and see if this turning lane is a possibility. She isn't saying they should use it right now but just make the possibility available if the need is proven. Mr. Rampell stated they will use their best efforts to look into this and explore it as they don't want to create a traffic problem either for the Town or the Club membership, but as the law stands right now, they can't do it. Mrs. Douthit knew greenery would be lost but thought safety was more important.

Mrs. Wiener suggested they move forward with the other lane as it may be that they may not have to put in the south bound turn lane. Chief Terlizzese said to put in a lane would alleviate accidents and traffic tie-ups and where these lanes are already in place, they work very nicely. Mrs. Smith asked Mr. Rampell if he had any objection to the south turning lane? Mr. Rampell stated they promised to put in their best efforts for this south bound right turn lane, if it is possible and necessary. Mrs. Smith asked if he would make it a part of the initial application to the DOT as they have to apply for the north bound left turn lane and then not do it? Mr. Rampell responded negatively stating he felt it would slow down the process.

Mr. Randolph stated he made a note that in the event traffic problems result under the present plan, based upon the opinion of the Chief of Police, the Club will use its best efforts to install a south bound right turn lane to which the Council agreed.

Mrs. Smith recalled there was some discussion that the dining room seating would be limited and asked if that would be 55 or 75 seats? Mr. Rampell responded it would be 75 seats for lunch and dinner, as imposed by the Town's traffic expert. Mrs. Douthit pointed out that is different from what was discussed at the first meeting. Mr. Moore reported they did commit to drop to 55 if they needed to in order meet the 313 traffic trips per day. Mrs. Smith asked Mr. Moore what the fire capacity would be according to the Code? Mr. Moore responded there would be a fire capacity which will be more rigid than the Building Code and which ever one prevails would determine the number of seats in the dining room.

Attorney Kolins addressed the Council noting earlier there was a discussion on how to average the number of trips, they heard the applicant's representative tell them that the County is the law they must follow. He noted the dining area shall be limited to 75 seats and he has no problem with that but he thought it created a significant problem if they don't go beyond that to limit the number of meals served to 55 from outside the Club. He stated the County in their May 12th letter stated on this point "the existing traffic volumes on Ocean Blvd. and on Southern Blvd. are constraints on the amount of new traffic the Club at Mar-a-Lago can generate in accordance with the County's traffic performance standards", which would not be met if the conditions placed on the Club are different than the assumptions made in the Kimley Horn study, which assumes that only 55 people, other than overnight guests will be served dinner on a typical night. He stated for traffic purposes, the County is saying there can be only 55 persons, and that is not 55 seats as they could have a seating at 6 and 8 and 10 and it should be 55 seats total for the night from outside of the Club.

Mar-a-Lago

Mr. Ciklin recalled Mr. Weidner disagreed with Mr. Kolins at the last meeting and Mr. Weidner drafted the condition they are reading and he is the Town's consultant and they think he is correct.

Mrs. Douthit asked Mr. Ciklin if they were planning on several sittings for the dinner guests to which Mr. Ciklin responded negatively.

Mrs. Smith asked when it comes to the Special Events, who will be making the determination as to which Club will be having the Special Event? Mr. Ciklin envisioned they would go to the Bath and Tennis Club stating they would be having a Special Event and tell them what they are and it would be incumbent upon them to arrange the scheduling around the Bath and Tennis events as the purpose of this is not have the Bath and Tennis special event traffic arriving at the same time the Mar-a-Lago people would be arriving.

Mrs. Smith asked for the definition of a Special event? Mr. Ciklin stated it would be a special activity such as a Valentine Party, or a Christmas Party. Mrs. Smith asked if they were anticipating having dinner every evening. Mr. Ciklin did not think necessarily they would.

Mr. Tokich stated he wished to raise a point on the Special Events as the intent is the peak traffic generation of two events should not coincide and the language in the agreement states they should commence at least one hour apart, and perhaps they needed to revise that language slightly so it says that the peak traffic generation of the two clubs at their special events would not coincide. Mr. Ciklin stated that was quite acceptable.

Mr. Moore stated at the top of page 7, he would like to see included that the Clubs should hold the Town harmless on these special events, to which the Council agreed when the Clubs apply for their Special Permits.

Page 7

Mr. Randolph understood the intent is if the Town in order to accommodate the Club is being required to join in the application, that it is being suggested the Club hold the Town harmless from any claims which may arise as a result of the improvements and he thought it was a reasonable request but in normal instances, the municipality would have some liability.

Mrs. Smith asked what would happen if the Town required the property owner to put in the turn lane? Mr. Randolph did not recall a hold harmless agreement being required for an improvement. Mr. Moore recalled there was an incident at Sloan's Curve, at 3200 South Ocean Blvd. where the Town was held harmless. Mr. Randolph stood corrected. Mrs. Smith asked how this came about? Mr. Moore responded the Risk Manager felt there was an obligation as the co-applicant to the State for the use of that area. Mr. Randolph felt if it was something that the Town has asked for and imposed on other applicants and it was a reasonable request, they could make it a condition. Mr. Moore recalled the State required the Town to be the applicant in order for them to consider the request for a permit, and in this case, the Town would be the joint applicant.

Lunch break was taken.

Meeting reconvened by President Weinberg at 1:40 PM.

Mr. Moore indicated he met with Mr. Rampell during the lunch break and the applicant is willing to hold the Town harmless for the design and the construction of that area.

Mrs. Douthit asked if the design and construction would cover the Town if there was a problem six months down the line? Mr. Randolph responded it is the design and construction of the additional turn lane and he thought that was fair.

Mr. Moore stated the same language would have to be incorporated for the additional gate. Mrs. Smith asked if it could be for ingress and egress at this gate as the help will be using that gate so it would not be able to be one way. Mr. Ciklin stated it would give them flexibility so rather than say an exit only gate, it should state a gate west of the existing gate.

Mr. Randolph referred to Article IX, which relates to liability and the abandonment of club use. He recalled there was a concern expressed by Council as to whether the Town would have any liability on the part of Club members, in the event the Club disbanded and reverted the ownership to the owner and to the use as a single family residence. He advised it has been modified slightly to indicate at the last paragraph that the three paragraphs shall be set forth in the articles of the Club and said provisions of the article shall not be amended without the consent of the Town. He advised there were other minor modifications but the substance of that paragraph is the same as it was when it was last presented to the Council.

Article IX

Mrs. Douthit asked who would this revert to in the event this would have to be dissolved. Mr. Randolph responded it would revert to Mr. Trump, his heirs, successors or assigns.

Mr. Kolins thought the Council needed to understand that the reversion to owner includes not only Mr. Trump's heirs but his assigns or successors so it could be anybody. He pointed out that they should be aware of the section where it talks about the return of the land, and that means all of the improvements on it and they may wish to look at that. Mr. Randolph responded they needed to be certain as they have used the words "land and property" in different context throughout that the attorneys in drafting this should be certain of the meaning. He stated the intent is for the land and all of the improvements on the property to revert to single family use and he will clarify the agreement to make certain of that.

Mrs. Douthit recalled there was a statement earlier in the agreement that stated no portion of the land would be condominized, co-oped and wondered if they should add "sub-divided". Mr. Randolph stated that was the intent of the Unity of Title.

Mrs. Smith asked if there was another word that could be used instead of "land and property" which would make it clearer? Mr. Ciklin responded it is a defined term and it does include everything that is there and they couldn't sell the building absent the land because of the Unity of Title and it would all have to be sold together.

Mr. Kolins noted the second full paragraph on this article talks about a second fiduciary account of ten per cent of the gross revenues from the guest suites would be set aside for maintenance and he has no problem with it but wanted to point out this represents an infinitesimal small part of the monies required to maintain and operate Mar-a-Lago and perhaps someone might interpret it as that is what they wanted to be provided for when indeed it is merely one small part of what is to go to the maintenance and that perhaps should be made clear. Mrs. Douthit recalled it was discussed at the last meeting but at the original meeting, she recalled it was agreed upon that the initiation fees would also be put in that fund and that was clearly agreed upon. Mrs. Wiener did not agree. Mr. Weinberg thought that was never agreed upon. Mrs. Smith disagreed noting in the transcript of that meeting, it was agreed upon but was later changed. Mrs. Smith recalled this was accepted by Mr. Rampell.

Mr. Ciklin recalled this was discussed at a previous meeting and it went back and forth and after that, they talked to their client and thought about the purpose of having 10% of the initiation fee deposited in a maintenance account and came to the conclusion that this was really a show of good faith and a token as it would take more than ten per cent of the guest fees to maintain and no-one should forget that Mr. Trump has maintained Mar-a-Lago better than anyone else. He stated that was why they felt 10% was a show of good faith on the guest rooms but they were not going to do more than that.

Mrs. Douthit felt this was a total change from the original meeting as it is in the original transcript that that was agreed upon.

Mr. Weinberg understood now it was ten per cent of the guest room fees and that alone. Mr. Randolph indicated he will get together with the applicant and make sure that the land and property are what revert and not the Club.

Mr. Randolph referred to Article X, which is reimbursement for Special Studies and monitoring which was inserted at the request of the Council and staff.

Mr. Randolph commented on Article XI, Remedies for Violation, has been amended to include the language that the Town may initiate action and revoke the Club's Occupational License pursuant to applicable provisions of the Town's Code.

Mrs. Smith asked if other procedures were discussed besides the Code Enforcement Board. Mr. Randolph recalled they did and it was based upon the comment by Mr. Moore that perhaps they wanted to give consideration to revoke the Occupational License in the event of a breach and the applicant's representative stated they would be willing to go along with any procedure that exists in the Town now.

Mr. Randolph noted Article XII states the provisions of this Agreement will run with the land and this document will be recorded in the public records of Palm Beach County.

Mr. Randolph noted Article XIII states this is the entire agreement of the parties and the section refers to miscellaneous which is boiler plate language relating to the contract. He noted there is a consent and joinder of the mortgagee attached.

Mr. Weinberg noted they were now in Executive Session and the Council will have an opportunity to question staff and he asked them to limit their remarks to five minutes. Mrs. Douthit thought staff should have as much time as they needed as they might not have the opportunity to relay all the information within the five minute period.

Chief Terlizzese stated his concern with the inspection process, as far as inspecting the guest list for membership and the 50% of the members being Town residents. He thought there may be some constitutional problems there. He noted from the outset the 313 traffic trips and averaging is also a concern as if they take the 313 average trips, they are talking about 100,000 trips per year and if this was condensed to several weeks during the season, there is a situation here which is over capacity during the season and that is a concern.

He referred to Special Events, as he thought they should reconsider having unlimited Special events at hotels in the community already are a significant problem, even after 6 PM and on weekends.

Chief Terlizzese referred to the traffic engineering items which have been discussed around the facility with regards to gates and turn lanes, etc., he has no problem with that.

Mrs. Smith asked if the Chief has had a chance to be with the applicant or their representatives and talked about a schedule which will work? Chief Terlizzese stated he doesn't have a problem with the seating arrangements inside, but his concern is the people who will be attracted to the neighborhood as there will be publicity, notoriety, interest, etc., as there have been a couple of events this year where hundreds of people have gathered outside the facility and he anticipates if there are high visibility and high profile events held there on a regular basis, there could be some problems.

Mrs. Smith suggested he get together with the applicant or his representatives that such events not be advertised and something be worked out before the final agreement is signed. Chief Terlizzese stated he has already met with them and has been assured this will be a high class, dignified operation.

Mrs. Wiener knew some of the Clubs do frown upon pictures being used in the papers, and thought in order to alleviate some of the concerns the Chief has, if they knew they couldn't publish or would not be permitted to be on the premises if they were the press to take pictures, that might be helpful. Mrs. Douthit agreed with this idea that photographers be allowed only for

private parties at the Club. Mr. Rampell stated they would be in agreement as long as this is a custom in the other Clubs in the Town.

Mar-a-Lago

Mr. Doney referred to Page 4, Article IV on utilities, recalling the sanitary sewage pump station needed to be upgraded, subject to the approval of Mr. Dusey. Mr. Ciklin responded they took the language provided by the Town Engineer and put it verbatim in the Agreement.

Article IV

Mr. Doney referred to Article VIII, Traffic and Special Events and he believed there should be a definition on the annual averaging, so there is no misunderstanding; and also at the end of the year when this is averaged out, how this information will be reviewed and enforcement by Mr. Moore.

Article VIII

Mr. Moore responded stated they would be depending on their traffic expert, Frederic R. Harris, to guide them on this, however, the submission of the information to the County is required in order to show they have not exceeded the average daily trips of 313. He understood the Town would also be provided with this information which will be given to Mr. Tokich of Frederic R. Harris, to be analyzed to be sure they are in compliance with this section. He believed if it was found that they are not in compliance they would, in consultation with Mr. Randolph, advise the Club they are not in compliance and start remedial action, such as injunctive proceedings, come before the Town Council for revocation of occupational license, and any other method that would be available

Mr. Doney suggested language be added to the Agreement about the reporting requirements to the Town, in order that enforcement can be done, as he understood that once the Certificate of Occupancy is issued for the Club, no enforcement action could be taken by the Town during that first year until this one year has lapsed.

Mr. Ciklin responded the monitoring will take place 365 days per year and the County requires reporting on the first and third quarters. He agreed that the first year the Club is open, the monitoring results will be furnished the first quarter and then the third quarter, and in addition there will be monitoring results available at any time.

Mr. Doney believed there would have to be a year's average as a threshold to base any measurement against it, so enforcement action, if any, would have to be one year after the operation began. Mr. Ciklin believed the first year averaging would be done nine months after the Club opened and not a year after. He felt the best monitoring and the best enforcement provision will be the Club itself as they will not put themselves in a position to sell a membership that they can't live up to. He stated if it was close to the 313 trips or if it is more trips than they have ever anticipated, they will freeze memberships. He believed after the nine month period, the Town has all the remedies, Code Enforcement, etc., to enforce this and the applicant has the opportunity at that time and what will happen is they will take measures to reduce traffic, by shuttling more employees; reduce the seating and level of activities; or have limousine service to pick up members.

Mr. Doney stated he does have concerns about the after-the-fact actions as there are understandings and expectations which are not clearly spelled out in the Agreement. Mrs. Wiener commented she understood Mr. Doney's concern and also understands where the Club is coming from, but should they find themselves in a position where the Club has not undertaken to do the things that Mr. Ciklin has spoken about, she would be prepared to throw the book at them.

Mr. Doney believed that annual daily traffic monitoring needs to be in the Agreement as that methodology needs to be not left up to interpretation at a later date.

Mrs. Smith understood from the discussion this morning the average daily trips will apply and during the Seasonal months, January, February and March, they will be taking an average and it is possible it would be over the 313 trips, however the averaging is done on an annual basis and that is the County's standard. She believed they may have a quarter when the daily trips will exceed the 313 figure.

Mrs. Douthit wondered if the Club was closed six months out of a year, the traffic is averaged and therefore, the 313 trips are maintained, but then the next year when it is averaged out over a year period, the trips could be increased and asked if that was an accurate picture to which the Council agreed.

Mr. Doney indicated his last concern was what official would be signing the agreement pursuant to the Town's Code and he believed the official should be specified.

Mr. Weinberg called for further comments from the staff and there were none. Mr. Weinberg called for final comments from the public.

Attorney Ron Kolins addressed the Council noting there was some acrimony between the Council and some of those who have made comments. He knew in his own inarticulate way, he has tried to bring points to the Council's attention as he believed (on behalf of his client) those points show the application does not and cannot meet all of the legal Town Ordinance requirements that it must meet in Chapter 6.40 and 9.63 of the Code, as some of the comments of the Police Chief and the Town Manager bear that out. He asked that as they deliberate, he would be remiss if he didn't make this point - and that is please ask the question, taking the entire record together on all of the issues, are all of the Council members fully satisfied that all of the criteria have been met and if they truly believe that the applicant has met them, he is entitled, however, if they believe he has not met anyone of them, such as:

- (a) consistency with the Comprehensive Plan,
- (b) diminution of the property values in the neighborhood

they must vote against it and he asked them to consider it in that light.

Attorney Joel Koepfel addressed the Council thanking them for the time it has taken to deliberate this matter, as it is a difficult issue. He asked them to try not to lose the perspective of what hopefully will be accomplished, with the key being preservation. He believed they had an opportunity which has never been considered before and he would hate to see this estate go the way of El Mirasol and some of the others which are no longer in existence and would bring back memories of the Golden Era. He commented he has viewed mansion conversions as have his

Mar-a-Lago

clients and observed first hand on how they are run and it is a magnificent way to preserve the mansions and an attribute to their community. He believed Mar-a-Lago being the same type of situation and asked the Council to not make it so restrictive that it would fail, such as the number of guest rooms that would be allowed and the time they would be allowed to use the rooms.

Attorney Paul Rampell addressed the Mayor and Council thanking them for this full hearing of their application on behalf of their client. He summarized by stating it has been six months since he has prepared the draft of the Club proposal, after receiving input from hundreds of people in this community, such as preservationists, architects, and neighbors. He stated the application has been revised and the formal application was filed. He believed the staff had given them an extensive review and provided their questions and comments to which they have responded to with sincerity and intensity.

Mr. Rampell noted there have been many redrafts of the Declaration of Use Agreement which have been scrutinized by the Town Attorney and it was his belief that he, Mr. Ciklin and Mr. Randolph have worked in a spirit of cooperation to refine a valid, binding, complete and constructive Declaration. He hoped they would act now in a spirit of harmony, reconciliation and peace as by approving the Club application, Mar-a-Lago will be preserved as an architectural landmark but will establish it as a sociological landmark for diverse residents and their guests can share it. He felt future historians will recognize this accomplishment in preservation and in bridging gaps among various groups in this community and he requested the Special Exception application be approved.

Mrs. Smith asked Mr. Randolph if he would direct them as to what should be done and would they have an opportunity to look at the final draft of the agreement before they vote on it? Mr. Randolph felt that was up to the Council as one of the options is to incorporate in the Agreement those things that have been discussed today and if they are ready to move forward with approval, they could do so. He advised another option was to have the items included and look at them at a future meeting. Mr. Weinberg believed they could give conceptual approval. Mrs. Smith believed they already have done the conditional approval. Mr. Randolph explained the third option would be to approve it, subject to all of the conditions discussed and have the document brought back to the Council and make it subject to final approval by staff and the Council.

He stated if the Council does not feel it meets the criteria, they could deny the application. He commented they could approve, subject to conditions and a finding that it met the criteria set forth for Special Exceptions in Section 6.40 and the criteria for Site Plan Review in Section 9.63 has been met.

Mrs. Wiener thought to go through what they went through previously again would not be appropriate and she felt a vote should be taken predicated on all of the items which have been discussed today being put together by the Town Attorney, as this is something that is normally done and Council usually does not look at the final papers.

Mrs. Douthit believed this was a very serious matter and it was incumbent on Council to see the final agreement, and she would not vote for it until she sees the final document. Mr. Weinberg believed it could be approved subject to the conditions discussed. Mrs. Smith asked if the final document could be distributed to them and they could read it on their own and it be voted on first thing at a Council meeting?

Mrs. Wiener brought up the subject of the artificial reef, noting that was approved and the staff worked out the details of the contract and Council didn't get into any of the finalizing of that document.

Mr. Doney commented this could be an item on the agenda for the June Town Council meeting.

Mr. Randolph advised the Mayor and Council if they approve the Agreement, subject to all of the conditions, that would be final approval, and the only thing that will remain is to polish up the Agreement in accordance with the direction given today, so the Council won't be looking at the Agreement again and discussing it and making changes.

Mrs. Smith hoped that she would have the opportunity to read the final agreement, as conditional approval has already been granted. Mr. Randolph explained that would be entirely up to the Council.

Mr. Weinberg agreed there was conditional approval but there are further modifications today and these need to be set forth in the Agreement and then they can move forward.

Mrs. Wiener asked Mr. Randolph what would be the appropriate motion to indicate approval based on all the conditions that we have agreed to with the addendums.

Mayor Ilyinsky felt that if there was any disagreements on anything it would be settled through the two attorneys and if they can't agree, the matter will come back to the Council.

Mr. Randolph responded the appropriate motion would be to move that the Special Exception 11-93 with Site Plan Review be approved subject to all of the conditions incorporated in the Declaration of Use Agreement, and all of the additional conditions as discussed at today's meeting and as clarified. He believed that with such conditions in place, the Special Exception would not be adverse to the public interest; that it meets the conditions set forth in Section 6.40 of the Zoning Code; and on the finding that the Site Plan meets the conditions set forth in Section 9.63 of the Town's Code of Ordinances relating to Site Plan Review.

Mr. Randolph reiterated the language should be that it is approved subject to all of the conditions incorporated in the Declaration of Use Agreement, and all conditions discussed and agreed to today, with the clarifications also discussed today as far as the Agreement is concerned.

Mrs. Wiener indicated she wanted to preface her motion with the statement that her reasoning is after all of the discussions they have had back and forth and after the coming together of the meeting of the minds to a great degree, but first and foremost, she has spoken to one of the leading preservationists in Town and there is no question that the preservation of this edifice and the grounds around it, cannot be as well done in any other way. Mrs. Wiener stated if they are serious about preservation and really mean to keep this Mar-a-Lago as it was in the past and as it is today, she thought this was the only route they could go and she moved that Special Exception

11-93, with Site Plan Review, be approved subject to all of the conditions incorporated in the Declaration of Use Agreement as clarified today, and such further conditions incorporated today, on the basis that with such conditions in place, the Special Exception would not be adverse to the public interest; that it meets the conditions of Section 6.40 of the Zoning Code and on the finding that the Site Plan meets the conditions set forth in 9.63 of the Town Code of Ordinances relating to same.

Mar-a-Lago

Mrs. Royal asked if she could make a statement before she seconded the motion to which President Weinberg agreed. Mrs. Royal recalled in the course of discussion on Mar-a-Lago, a lot of people came to her and told her what "they" wanted done and now she would like to say what she wanted done. She would like to see it remain a private residence just the way it is today, but she wasn't elected to get what she wants, and her recollection in the swearing in ceremony was to uphold the constitution of the United States, the laws of the State of Florida and the Charter of the Town of Palm Beach and by permitting this Special Exception, she will be doing just that, and seconded the motion.

Mr. Randolph understood the formal letter application that was filed with the representations contained therein will be abided by and will be taken care of immediately. Mr. Rampell responded it will be done simultaneously with the execution of the Declaration of Use Agreement.

Mr. Moore asked if the final documents could be reviewed by all Department Heads involved before execution to which Mrs. Wiener responded that should go without saying.

Mrs. Smith asked if the members of Council could also examine the document before it is finally signed. Mrs. Wiener believed it was a public record and anyone could examine it.

Mr. Doney advised on an issue of this complexity, he would be requiring all of the Departments Heads involved and the consultants to be signing off in writing of all of the conditions, prior to execution and that needs to be determined whether it is the Town Manager, the President of the Council, or the Mayor is authorized to execute the Agreement.

Mrs. Smith asked when does this Agreement go into effect? Mr. Randolph responded this is considered approved as of today, subject to the final details being put into the Agreement and incorporating the conditions agreed upon today. He advised the Agreement would not come back to the Mayor and Town Council for review or approval, as that will be handled by the staff.

Mr. Randolph stated he would like to make it a part of the record the irrevocable power of attorney with regard to the easement.

Mr. Weinberg stated he would like to make a comment before he calls for the vote. He personally is not interested in personalities or who should buy or sell real estate, but his concern has been and always will be the interest of this community whose major concern is preservation. He believed the preservation plan as presented is the greatest gift one could give to this community under the circumstances. He believed this was the best way to go for the Town at this time.

On roll call, the motion carried 4-1, with Mrs. Douthit voting against the motion. Mrs. Smith commented she has a problem in that she hasn't read the final document which will be prepared, however, she did believe with the preservation easements put into effect, which could easily be done tomorrow by the present owner, this may be the best way for the preservation of the property. She hopes she will be able to view the final document before it is signed. Attorney Randolph stated that she could but the Town Council is not going to have the agreement brought back and looked at by the Town Council at a Town Council meeting and he didn't want there to be any misinterpretation on that. Mrs. Smith understood the Agreement has been conditionally approved and she voted affirmatively.

Mrs. Douthit explained she voted against the motion as she still had a few hang-ups on it, with 99% of the items being splendid, and she does not disagree with Club use, and she is glad to see Mar-a-Lago being preserved. She still sees other unsolved problems, such as traffic and the averaging which could lead to major future difficulties.

Mayor Ilyinsky asked to make a statement, indicating that Palm Beach has long regarded Mar-a-Lago as a local, national historic structure, with enormous and personal pride and will now enter a new phase of completed assurances that its historic nature will remain undisturbed. He congratulated all of the Town Council for reaching a judgment on this extraordinary complex issue and he was proud of Mrs. Douthit to have the courage of her convictions.

He stated a new Club will be established within these historic walls and the buildings will be maintained with strict criteria necessary to preserve and protect this national treasure. He believed the Agreement reached would fulfill the ultimate test that it not only what pleases that matters, but what is fair and equitable to all.

Mr. Doney asked authorization should be granted for the execution of this Agreement and who should sign it. Mr. Randolph responded the President of the Council can sign or the Mayor or the Town Manager. Mrs. Wiener thought they should simply work it out between the three of them. Mrs. Douthit suggested the three of them sign it as it is such a matter of great importance and she so moved. Seconded by Mrs. Royal.

Mr. Randolph asked Mr. Doney if he had a specific reason for wanting a motion as to who should sign the agreement? Mr. Doney stated he would not get into it but whatever was preferred by the Town Council would be fine with him.

Mr. Doney asked if there was going to be any discussion on the disposition of the litigation. Mrs. Wiener recalled that was part of the formal application. Mr. Randolph asked Mr. Rampell to make a statement on this matter. Mr. Rampell responded they have agreed on the paperwork to settle the litigation. Mr. Randolph recalled the comment made to him was "immediately upon execution of the Declaration of Use Agreement, the suit would be dismissed with prejudice," to which Mr. Rampell agreed.

VI. ANY OTHER MATTERS: None.

VII. ADJOURNMENT. Meeting adjourned at 2:45 PM

Adjournment

Grace T. Peters, Town Clerk