

TOWN COUNCIL MINUTES OF SPECIAL MEETING HELD ON

APRIL 16, 1992

Roll Call

I. CALL TO ORDER AND ROLL CALL: The Special Town Council meeting of April 16, 1992 was called to order by President Heeke at 9:30 AM on April 16, 1992 in the Town Hall Council Chambers. On roll call, the following elected officials were found to be in attendance: Mayor Marix, President Heeke, President Pro Tem Weinberg, Councilman Ilyinsky and Councilwomen Douthit and Wiener. Also attending for all or portions of the meeting were Town Manager Doney, Town Attorney Randolph, Town Clerk Peters, Mr. Zimmerman, Mr. Moore, Mr. Frank. Attending from Adley, Brisson and Engman's firm was William Brisson and from the Clarion Group, Cheryl Inghram and Howard Decker.

Invocation

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by President Heeke. Pledge of Allegiance was led by President Pro Tem Weinberg.

Approval of Agenda

III. APPROVAL OF AGENDA. Motion was made by Mr. Ilyinsky to approve the agenda. Seconded by Mrs. Douthit. On roll call, the motion carried unanimously.

PUD App.
Mar-a-Lago

III. Consideration of PUD APPLICATION FOR MAR-A-LAGO PROPERTY. Mrs. Peters administered the oath to those who would be giving testimony.

President Heeke explained the procedure to be followed will be the applicant making their uninterrupted presentation; staff will present their comments; public comments will be received pro and con; applicant will cross-examine anyone who has spoken; after all information and testimony is received, Council will go into Executive Session and question anyone who has given testimony.

Motion was made to receive into the record the report of Clarion Associates by Mr. Weinberg, seconded by Mrs. Douthit. (Exhibit No. 1) On roll call, the motion carried unanimously.

Motion was made to receive into the record the report entitled Supplementary Information - Special Town Council Meeting March 5, 1991 Mar-a-Lago PUD-4 by Mr. Weinberg, seconded by Mrs. Douthit. (Exhibit No. 2) On roll call, the motion carried unanimously.

Mr. Heeke announced all information received at prior public meetings is also a part of the record.

Attorney Peter Broberg addressed the Council on behalf of the applicant, Donald Trump stating this was a continuation of the Feb. 5, 1992 to discuss the PUD-4 Application, which is a result of the Zoning Commission's review. He noted in reviewing his papers for this meeting, there were many pages of minutes and reports to determine whether or not the PUD-4 application was complete on its face and in compliance with the Town's Ordinances.

Mr. Broberg reminded the Mayor and Council of what has happened prior to this date:

September 20, 1991 - Application submitted. Building Department asked for and received on Nov. 9, 1991, supplemental information.

December 3, 1991 - Zoning Commission meeting. The Building Department informed the Commissioners the application was complete and the record so reflects. Mr. Brisson in their Nov. 22, 1991 reported the application was complete and in compliance with the Town's Ordinances.

December 13, 1991 - Further supplemental information provided as requested by the Zoning Commission.

February 5, 1992 - Town Building Official Moore reports the application is complete.

Attorney Broberg commented that any conversation today otherwise is a waste of time and not productive to the issues at hand. He felt the real issues at hand were the substantive concern that this Council expressed at the 2-5-92 Town Council Meeting.

Attorney Broberg pointed out these issues were:

1. More details about the types of houses.
2. Proposed setbacks.
3. Removing roadway from across the center of the property with a possible Southern Blvd. entrance/exit.
4. Parking area for parties.
5. Assurances that construction would continue if problems arise with the developer, (bond).
6. Construction devastation - i. e., development of all areas at once or in a phased mode.
7. Drainage
8. Public Safety
9. Narrower streets.
10. Fire truck in emergency turn-around.
11. Size of lots containing the building zones.
12. Building heights.
13. Maximum sizes for houses.
14. Zone 8 - Zone 4
15. Homeowner's documents and proposed deed restrictions.

He believed that perhaps one concern will spawn another, with the responses and they are here today to discuss those concerns. He stated they are not here to speak of procedural matters, technical roadblocks as some parties have risen to focus the Council on extraneous issues which are not pertinent to what really needs to be discussed. He stated they do not need to talk about things that are unrelated to the substantive nature of the application as the procedural nature have been discussed and ruled upon.

Mr. Broberg indicated he didn't wish to discuss the topic of whether or not the application is complete, nor do they wish to discuss whether the Preservation Plan is required. He agreed much adieu has been raised about whether the Preservation Plan is required and to make his position absolutely clear, he will reiterate there is no legal basis in the Town's Ordinance for a Preservation Plan, as that is not mentioned in the Town's Ordinances, nor does it mention a definition of a Preservation Plan and it does not discuss what actually goes into the Preservation Plan. He stated the ordinance is silent as to the Preservation Plan. He stated the Town's Ordinances do require the applicant submit provisions of the preservation of historically significant structures and/or premises as part of the PUD-4 application. He stated these provisions were presented throughout the applicant's submissions, initially and supplementally. He cited an example would be the Blakely Report on landscaping inventory. He stated another one is the Declaration of Restrictions, Covenants and Easements; the Homeowners' Association, the view, road, drainage, beach access easements, the maintenance requirements, the site plan, the building configurations to the topography - all have been provided in accordance with the Code.

FUD App.
Mar-a-Lago
(cont'd)

He indicated to the Mayor and Council, if the Town wanted a Preservation Plan, it should have been a requirement of the Ordinance. He advised Mar-a-Lago has been a landmark since 1979 and been on the Historic Register for a longer period than that. He stated the Town's PUD-4 Ordinance has been in existence for nearly as long and there have not been any amendments to it to exclude the development of Mar-a-Lago nor has there been any amendments to the PUD-4 to require a Preservation Plan when dealing with historic properties. He advised the PUD-4 Ordinance doesn't mention landmarks and refers to historic structures.

Attorney Broberg recalled Casa Apava is a similarly situated piece of land, sixteen acres with a landmarked house sitting in the middle and this property was recently subdivided. He asked if they required a Preservation Plan for Casa Apava and stated the answer is "no". He advised the applicant has a fundamental right to know the rules of the game before the game is played as they can't change the rules of the game as the game is being played and he believed that is what was happening here.

Mr. Broberg knew the Council was aware there was a document entitled "Preservation Plan" even though they feel there is no legal basis for the creation of such a document, however, they did provide it in a spirit of cooperation and a sincere desire to keep the project moving along so they could get to a position to discuss the substantive concerns of this whole project.

Mr. Broberg stated their attempt to discuss the concerns with the Preservation Foundation failed. He advised the Plan was a difficult one to prepare, namely because there were no guidelines, as there was nothing available showing what was to be done and what should be in this Plan. He stated even if a Plan was standard and commonplace, he suspected that the first submission would be criticized.

Mr. Broberg referred to the critique drafted by the Clarion Group, labeling it vitriolic and pedantic, stating he was amazed at their arrogance. He felt there was complete disregard for any mutual respect and goodwill that the parties had come to and that this Council required them to work together, but their arrogance is beyond belief in trying to get something resolved.

Mr. Broberg reminded all they are not here to discuss the completeness of their application, nor the completeness of the Preservation Plan, but to discuss the Council's substantive concerns made known at the last meeting. He did not believe the Clarion's submission raised any new substantive issues and whether the term "Critical Features" was in the contents was hogwash. He felt once all of the substantive concerns are fully discussed today, it is the Council's duty to make the determination as to whether the applicant can go forward or not go forward with the PUD application and in making such a determination, it is incumbent upon the Council to grant a tentative approval for the PUD-4 application. He did not believe that this tentative approval was tantamount to a final approval as it should be subject to specified conditions not included with the Plan as submitted, and these conditions can be future submissions of documents; additional public hearings and no-ones' hands are tied except for the applicant. He stated his client has spent a lot of money and is still in one place. He asked the Council to tell the applicant what they wanted to be done and they will see if it is practical to be done.

Mr. Broberg recalled in reviewing this application, he wished to remind the Mayor and Council of the purpose of Planned Unit Development and he read those provisions from the Code of Ordinances. He noted it also states to obtain approval when the PUD-4 is a Special Exception, which this one is in the R-AA Zoning District, they have to comply with the Special Exception section of the Code and went over the requirements as outlined in Section 6.40.

Mr. Broberg noted another section stated that the development will not result in substantial economic, noise, glare or odor impacts on adjoining properties and he did not know how the economics could be affected, but the noise, glare and concern about construction. He advised there has been construction going on for months at the corner of Woodbridge and South Ocean Blvd. He advised they have a curb cut onto Ocean Blvd.

He advised there has been adequate ingress/egress provided and this will be discussed later by the engineer. He stated with regards to signs and exterior lighting, he didn't think there would be any signs and the exterior lighting will be controlled.

He noted on utility services - that has been provided and the impact study has been provided in conjunction with the Site Plan. He advised refuse and service areas have been shown on the plan and will not affect any motor or pedestrian safety.

He stated another provision is that adequate landscaping and screening will be provided and that will be done.

He noted the requirements of the Site Plan as set out in 9.60, the bulk of those have been discussed and set forth by Mr. Lawrence in the application and have been supplemented, and he will go through it once again. He stated the statement of ownership and control of the subject property is a known factor. He stated they know the detail and general use of the property and the general location. He advised copies of the Site Plan have been provided, showing the boundaries, locations, access and traffic flow, off-street parking, screens, buffers, refuse, etc. He advised the tabulation of areas and acreage have been provided. He commented on the common facilities which will be the easements as stated in the Declaration of Restrictions, Covenants and Easements,

which are the view easement, the private road easement, the access to the beach and the other minimal easements for maintenance and utilities.

He indicated the storm drainage and sewer plan will be discussed later by their expert. He advised the elevations have been provided. He wished them to know that everything was before them.

Mr. Broberg reminded the Mayor and Council they are charged in granting the tentative approval to make findings of fact and there are seven of them:

1. In what respects the Plan is or is not consistent with the purpose of the PUD? He advised this is to encourage development of design and preserve historical structures by allowing low density structures and housing to which they have complied.
2. To what extent does the Plan depart from the Zoning and Subdivision regulations set out in the Lot, Yard and Bulk Regulations for R-AA Zoning. He advised the lot sizes have been reduced as well as some of the sideyards, front setbacks to provide for the road and the allowance for buffers between the residential communities to the north. He stated the lot coverage has been handled by creating zones and it may exceed the R-AA requirements in the zone but not in the entire lot and it will be below the required in the lots.
3. Purpose and location of the amount of Common Open Space and the reliability of proposals for maintenance for the Common Open Space - they have gone to great expense to delineate the view easement to the east, to the west and that is their whole plan as there is more than 200' view to the west and it is set out in the Declaration of Easements, Covenants and Restrictions as to how it will be maintained and who will maintain it and what will happen if it is not maintained.
4. Physical design of the Plan and the manner in which the design does or does not make adequate provision of public services, provide for control of vehicular traffic - he advised they have provided a road and it is adequate to serve emergency and trash vehicles and is a benefit to the proposal as it lessens the impervious areas on the property.
5. The relations of the proposed Plan to the neighborhood. He stated Mr. Brisson advises the Plan did not violate any portion of the Comprehensive Plan as it allows for limited growth in this area of Town. He advised the property is 16.7 acres and there are many more houses to the north on 16.7 acres.
6. Historical and architectural significance of the structure and adequacy of provisions for its preservation. Mr. Broberg stated this is a requirement throughout the PUD Ordinance for applications and they have provided for this throughout. He stated that doesn't mean a Preservation Plan is anywhere in the Ordinance as it does not refer to a Preservation Plan but previously he has pointed out they have provided it, for the adequacy for its preservation, "its" being the architectural significant structure.

Attorney Broberg wished to address the sixteen concerns which they are aware of at this time and asked the Mayor and Council to follow along in the handout he provided them and he will discuss several of them and refer the rest to the experts who are here today.

7. Assurances that the building construction will continue if a problem arises with the developer. Attorney Broberg advised the Ordinance does ask for a bond which is 135% of the project and the developer is quite willing to provide the bond to assure the project will be finished.

Homeowners Association - He advised these documents are in the submission made in September entitled Declaration of Restrictions, Covenants, Easements and Conditions for the Mansion at Mar-a-Lago. He stated that does set out the easements and sets forth the Homeowner's Association which is to take care of easements and restrictions and provides for an Architectural Review Board designed to try to take some of the layers of government back off, they have added one back on where an independent architect would be on the Board, and historic preservationists, together with home owners who will serve as Directors and they will sit on the Board and receive applications for new construction and renovations and they would make the determination as to whether it is feasible and this would be before it came before the Town's Landmarks Preservation Commission and then to the Council. He advised there are deed restrictions in this document and can be set forth on any deeds transferred.

Mr. Eugene Lawrence, the Architect, addressed the Council noting there was a request for more details about the types of houses and they have submitted a series of guidelines that would be the controlling factors that would shape the houses. He stated it is difficult to give the specifics as they have not made specific designs of the houses at this time but are asking for location and the envelop constraints established for the houses. He advised there would be design review by the Architectural Review Commission for the Homeowner's Association and the Landmarks Preservation Commission. He advised there are two basic areas of the types of things that should be incorporated in the houses and they are:

1. Architectural elements;
2. Materials

Mr. Lawrence did not feel the houses should be mini-Mar-a-Lagos, but should be compatible with the same architectural vernacular and fit within the individual site as each site will have its own owner and the constraints that will shape it. He exhibited photographs of colonnades, columns, wrought iron, grand stairways, various arches, balconies and stone sills and surrounds, cloisters, bridges, carved wood outlookers which are the roof beams that stick out at the top, and stucco in varying textures, stone balustrades, coquina, clay tile, cast stone, cast coquina, brick paving, clay barrel tile with a color mix, glazed ceramic tile and carved out lookers.

Proposed setbacks. Mr. Lawrence recalled the zone definition itself is the setback and this concept is different from the subdivision concept. He advised the zones were devised so the location could accept a building, so there would be no setback but the building would be set within the lot or zone and it would be an academic definition for tax purposes.

Evaluate the consideration of establishing another entrance from Southern Boulevard. Mr. Robert Pitchford, Civil Engineer, recalled the question was brought to them as to whether or not there could be an access off of Southern Blvd., which was in the Plan before the Council several years ago and there was a permit issued by the Department of Transportation. He advised Joseph Pollack of Kinley Horn has investigated this with DOT who stated there was no prohibition for them to grant a permit, particularly with four lots being offered and he showed the alignment of that access which gives a concept of how they would enter off of Southern Blvd. into the property. He reported the interior east/west roadway would be eliminated and there would be two accesses, one off of Southern Blvd. and one off Ocean Blvd. He advised the only thing he noted was in times of peak traffic and with the bridge up, there may be some difficulties on Southern Blvd. to access emergency vehicles because of the backup of traffic which would block the entrance, so there could be a concern for the public safety and welfare to provide the access to the Southern Blvd. side, should this be approved. He showed the location of the previous plat which showed the only access was off of Southern Blvd.

PUD App.
Mar-a-Lago
(cont'd)

Mr. Lawrence addressed the Council advising to have the two accesses, does not carry through the idea of the enclave which he felt was important that there be a relationship of the structures clustered around Mar-a-Lago and another consideration would be the health and safety consideration of having a roadway accessible for emergency vehicles. He believed there would also have to be a gate installed which will be camera controlled. He stated for those reasons they chose the center access and feels it would be the better way to go, but have provided the alternate for the Council's consideration because the Council requested same.

Mr. Lawrence commented on the parking area for parties request and they have designated certain areas. He stated they would have a stabilized base of the grass covering which would be firm enough to allow a car to be parked on it for a limited period of time. He stated another alternative would be to use grass blocks. He believed they could accommodate 40 to 50 cars.

He stated they have covered Item 5 by stating they would furnish a bond.

He recalled the concern expressed that there might be problems if all of the houses were built at the same time and they can't predict how many houses would be built at a given time, however, they have laid out guidelines to protect the vegetation and provide for security and these would be procedures and controls during the periods of construction, so if everyone built at the same time, there would be no difference than if it were done one at a time, except for the traffic, as the guidelines for parking and fencing would be the same for each site.

Mr. Pitchford addressed Items 7 and 8, the drainage and the roadway. He advised under the drainage there have been some questions on on-site retention. He has had discussion on the process of going with the exfiltration trench design, which would reduce the concerns about ponded water, so he suggested that the exfiltration design be employed on the project which will handle both retention above and below grade.

Mr. Pitchford addressed the narrow streets stating the drive is 18' in width and the Town's standards are 24'. He advised the 18' was to reduce the impact visually and was discussed previously and he believed the 18' was manageable and they could stabilize the edge of the pavement for people to pull off the road and would allow the passage of vehicles. He stated in this particular situation, he believed it would reduce the impact of the street from an aesthetic standpoint and will work with the Town staff to resolve this matter.

Mr. Pitchford addressed the question of the north/south connector road and whether that would cause any impounding of water further up the slope, and in his discussions with the Clarion people and others, they have decided to move that road from where it was originally up the gradient and depress it so that the views from the top of the hill or Mar-a-Lago could not visually see the road. He advised his responsibility would be to ensure there would be no damming of water and any waters coming down from the sloping area would be collected in a storm drainage system and water would not back up behind it.

Mr. Pitchford advised that all sites can be accessed by fire trucks or emergency vehicles, but there was a question as to after the fire, how they would get out, however, he knows it is common to the Town to have dead end streets where these vehicles would back out, however, he will work with the appropriate personnel to identify areas which could be identified for back-up areas which would require stabilization to ensure the vehicles can exit properly.

Mr. Lawrence addressed the size of the lots in the building zones stating square footage tabulations have been filed but they did not tabulate the individual lots. He stated the definition of the lots is merely for distributing taxes and maintenance costs.

Mr. Lawrence stated Item 11 was to provide a definition of building heights and the Plan itself indicates what portions of each individual zone can be one story or two stories or a combination of one and two stories. He believed the two story height should be as defined in the Town Code. He will discuss the most western and eastern house, which are both one story structures and the Code does provide for additional heights for roofs. He stated the maximum sizes of the houses is explained on the drawing for each individual site. He stated this is not a FAR as since the zone has been established that would not be a relevant way to deal with it. He recalled discussion about these homes being six to eight thousand feet which was not gross space as the way the Code is written, an area is anything that is covered, so this would include garages, loggias, etc. He believed it would be six or seven thousand feet of air conditioned space and probably 12,000 feet of gross space.

Mr. Lawrence addressed Item 13, which is Zone 8, recalling there was concern expressed for this zone, which are the easternmost houses. He exhibited photographs from inside the property looking eastward and they hope to open a window in the planting screen to the north and east which would give that site an ocean view, but it will be screened from the road and the main house. He believed they would be able to mitigate the presence of that house as it will be one story with the planting screen already existing and with supplementary planting that is necessary.

Mr. Lawrence talked about Zone 4, which was the western most house on the property recalling the concern was the topography was low and the house would appear to be sticking too much into the air in that location. He exhibited a photograph which showed a hedge located there which will remain. He stated there is a citrus grove located there also which will provide screening. He noted there are photographs from the front and back of the house recently built which has the same

topography and it is his belief that they can, with grading and planting, accommodate the elevations in that particular location.

Mr. Heeke called on the staff for their comments. Mr. Moore indicated they have in attendance today Mr. Thomas McCarthy, Professional Engineer from Mook, Roos, who has evaluated the drainage concerns; Mr. Timothy Frank, the Town's Planner; Cheryl Inghram, Planner with the Clarion Group; Howard Decker, Architect and Historic Preservation expert assisting the Clarion Group; William Brisson of Adley, Brisson, Ingman, a planner and expert on the Town's Comprehensive Plan.

Mr. Moore reported the staff has reviewed the submittal and has had it evaluated.

Mr. Thomas McCarthy addressed the Council, indicating he was a Consulting Engineer, and has reviewed the Preservation Plan, particularly the infrastructure items. He advised for the conceptual level of the Plan, he was fairly satisfied with all but two elements, as he didn't believe there was enough information about the storm drainage, however it was clarified by Mr. Pitchford today, so he is pleased with the storm drainage at the conceptual level.

He advised the other item has to do with the waste water force main, noting the Plan calls for the existing waste water pumping station to be abandoned and a new pumping station to be constructed. He knew the main now there is not operating at the proper level as there are a number of ejector type stations which use this force main. He was concerned that a modern pumping station could cause some problems and he suggested the applicant make a commitment to address the peculiarities of that force main.

Mr. Moore suggested the comments be heard from Mr. Decker on the preservation of the historic resource on the property. Mr. Howard Decker addressed the Council, indicating they have had the opportunity to know the basic outline of the proposed development of Mar-a-Lago and has visited the site and has produced a report for the Landmarks Preservation Commission. He recalled they were here in November, 1991 to meet in a working session with representatives of the applicant in an attempt to further define, review and understand the requirements of provisions to care adequately for the resources and to meet together to create a document which addresses those provisions.

Mr. Decker recalled he was asked to review the Preservation Plan and they have submitted a report on that which documents their findings. He thought they had a productive and cooperative working session with the representatives of the applicant in November, and Mr. Lawrence, Mr. Broberg, Mr. Pitchford, Mr. Bell were all a part of that contact. He walked the site extensively and had a full day of discussions as to how to provide for the preservation of the historic resource which Mar-a-Lago represents. He stated they talked about what requirements might be outlined in a Table of Contents, what issues might be addressed and agreed together at that time that these matters would be addressed in a detailed plan with specificity. He stated they feel very strongly that the comprehensive preservation of the Mar-a-Lago historic resource does require a great deal of detail and specificity is required at the offset and the requirements be set forth before any development could proceed. He stated this is a methodology which is well known and has been applied in similar instances. He advised the Plan presented did not offer the specificity and detail which was their expectation as a result of the November meeting. He felt also the level of specificity does not in general and specifically provide for the preservation of Mar-a-Lago. He stated in his report on Page 2, "the purpose of the document is to address provisions for the preservation of the Mar-a-Lago historic resource." He advised the Preservation Plan is the document which cares for the preservation of the historic resource.

He advised his response in general has been schooled by their expectation for a greater level of specificity and believed very strongly that that level of detail does need to exist before any aspect of the development can go forward.

Mr. Heeke asked them to expound on the report they submitted as the public has not had an opportunity to view it.

Mr. Decker stated their report was structured as a response to the Preservation Plan for Mar-a-Lago. He stated the introduction acknowledges the cooperation received from the applicant's representatives, and acknowledges the extent of the working sessions to investigate the provisions for the preservation of Mar-a-Lago. Mr. Decker indicated they then went into their concerns about the extent to which the document does not specifically provide for the preservation of the historic resources and that would be both site and grounds, main house and accessory structures.

Mr. Decker made reference to the FUD Ordinance as a way of enforcing to what extent the provisions are required. He stated in the November working session, sketches were made of the proposed Table of Contents and they attempt to describe what they feel are the principal characteristics of a Plan which provides for preservation. He noted that preservation methodology typically begins with extensive research into the character of the historic resource and that research having been completed, identifies and advocates for the preservation of critical historic features.

He advised the advocacy of a list of these critical historic features is a means by which to say which aspects of the historic resource must be observed in order for the overall historic character of the resource to remain in tact. He commented that following the discussion of the advocacy of a position with respect to critical historic features, there should be a discussion of the proposed development, its character in detail, and then the extent to which that proposed development will impact the historic resources which have been catalogued in the discussion of critical historic features and then what steps can be taken as development proceeds, and shall be taken to provide for mitigation of any impact on the critical historic features. He suggested that the specificity and detail necessary to address these concerns is missing in the document and in their earlier reports they have addressed how other submissions have insufficiently addressed these concerns.

Mr. Decker recalled in their discussion of the Table of Contents, they further expressed concerns over the nature of the proposed Homeowner's Association and other review and guideline procedures. He believed these should be carefully set forth and in their earlier report, they reviewed the proposed Homeowner's Association and guidelines of the original submission and made commentary about the problems in that discussion. He found the early submission is not referenced in the Plan and the discussion here continues to be problematic with respect to setting forward conditions for the Homeowner's Association and other covenants, restrictions and easements which will provide for the preservation of the historic resource.

FUD App.
Mar-a-Lago
(cont'd)

Mr. Decker mentioned that this is their first opportunity to see the information submitted today, entitled 'Supplementary Information Special Town Council Meeting - March 5, 1992 - Mar-a-Lago - PUD-4' and was pleased to see that photographic materials are beginning to be a part of the materials submitted by the applicant. He recalled one of the things that was compelling about their working session in November was walking on the site and viewing the conditions of the site. He felt that was an important key in examining the potential for the development of this site and the visual materials assist in coming to an understanding of what can - shall - or could take place in the development of the Mar-a-Lago site.

PUD App.
Mar-a-Lago
(cont'd)

Mr. Decker stated they proposed a series of four tasks which need to be performed in order for the provisions of the historic resource to be adequately cared for:

- (1) Research and documentation. He believed in his report he did address their concerns about the extent to which research and documentation is not now complete.
- (2) Identification of critical historic features. He said this is a position of advocacy on the applicant's part, as these are the features which shall be preserved and some of these features might include the structures, landscaping, topography, viewsheds interior and exterior to the sight and accessory improvements such as roadways, tennis courts, pools, walls, etc.
- (3) Plan for the development of the Resource. What is being proposed? What are we going to see constructed on the site and where will it be located? What will its' character be?
- (4) A Plan for the mitigation of development impact. He stated this task is extensive. It should talk about guidelines, specificity, detail, and restrictions for changing topography, etc.

He has tried to discuss various aspects of the Plan and their concerns about issues which have not been sufficiently addressed. He stated there is an extensive discussion on landscaping in his report and in the Plan. He advised they have tried to enumerate their concerns, conflicts, contradictions, unresolved contention, and all of this needs to be resolved.

Mr. Decker stated they have attempted to answer the question as to whether or not Mar-a-Lago is developable and they have tried to bring out in their working sessions the outline and extent to which that development was possible and needed to be tailored and perhaps the zones are a potential way to think about the siting of potential structures and the preservation and redesign of vegetation and landscaping on the site. He felt additional specificity was required and an important point is that the provisions of the preservation should be phrased in terms of advocacy as they would like to see the statement that the applicant "shall" conserve aspects of the historic resource and not that they "should" be conserved but that they "shall" be conserved. He made this point because it is an expression of a tone of approach which he felt needed to be incorporated into the provisions for preservation and it is believed it is an expression of the level of detail that the Town should require for development to go forward.

He stated rather than retaining phrases like "generally be preserved" they thought it was in the Town's best interest and in the long term best interest of the applicant to be detailed about what shall be preserved.

Mr. Decker indicated they reviewed zones for building and ancillary structures and came up with six criteria by which to review these zones:

- (1) Ability of the zone to accept construction by being properly screened from the main house.
- (2) Ability of the zone to accept development by not substantially impacting existing vegetation.
- (3) Ability of the zone to accept construction without interfering internal and external view sheds.
- (4) Ability of the zone to accept construction without causing negative impact to critical aspects of the topography.
- (5) Ability of the zone to accept construction without requiring infrastructure support which will negatively impact the historic resource.
- (6) Ability of the zone to accept accessory uses without negatively impacting the resource.

He stated there is a direct correlation between advocating a potential zone as suitable for development and a proper listing of critical historic features, pointing out they have seen these two aspects of provisions for the preservation of Mar-a-Lago to be extricably connected with one another - first, the critical features which will be conserved to be articulated; and second, the zones and development for the site be evaluated with respect to those critical historic features. He did not believe that activity was sufficiently completed for the Council to feel that adequate provisions have been made for the preservation of Mar-a-Lago.

He has some concerns about the site infrastructure and development impact and about the building massing and footprints and the heights of the buildings and believed these matters should be set down in great detail and although additional detail has surfaced today, he felt there was more specificity required in order for the historic resource to be conserved appropriately. He stated they have looked at architectural components and guidelines, ancillary structures such as swimming pools, tennis courts, refuse collection, lighting, etc. and at a construction plan and in that discussion, they have tried to express their greatest concern that there be adequate provisions for the Homeowners' Association and to be certain that that Association will accept the covenants, easements and controls and not at some future time move to change those to the detriment of the historic resource and he seeks assurances in the description of that Association.

Cheryl Inghram commented on Section 12, Preservation of Mar-a-Lago mansion, asking who will be responsible for the maintenance of the landscaping in the easement area as that is not clear. She noted the view corridor in the Homeowners' Declaration is said to be to the benefit of the main house and it is not clear that it will be maintained in perpetuity in good condition. She asked whether the Preservation Plan does preserve the Estate status of the main house and whether or not it provides enough service access and guest parking. She believed the language was stated in conditional and contingent terms and the Preservation Plan does not state that certain aspects of the resource should be conserved or the treatment should be undertaken in a certain way, rather it uses the word "should" rather than "shall" or "must".

PUD App.
Mar-a-Lago
(cont'd)

Mr. Decker stated their report has a conclusion section wherein it is stated it is believed that the Preservation Plan must account for all underlying assumptions about the historic resource and its provisions for preservations and they have a concern that the documents offered to the Town do not present appropriate levels of prescriptive materials to provide for the preservation concerns. He believed the documentation to handle these concerns needs to be offered to the Town for their consideration. He stated he was quite confident that these matters can be set forth for Town Council consideration and is concerned that these matters have not yet been presented and he urged the Council to seek that those provisions be in place specifically and in detail before development goes forward.

A short break was taken.

Meeting reconvened by President Heeke.

William Brisson, Senior Vice-President of Adley, Brisson & Ingman addressed the Council, stating he had been requested to look at the subdivision in June and the PUD-4 in November and while the application was being reviewed for various aspects with regard to zoning, density, design aspects, etc., the primary areas of their concern were related to concurrency and consistency with the Town's Comprehensive Plan. He found the proposals for both the Subdivision and the PUD-4 met all of the requirements of the Comprehensive Plan and was consistent with the various policies, goals and objectives of the Plan as adopted by the Town, and would meet the concurrency requirements of the Town. He explained the concurrency requirements state the Town has adopted a Level of Service "E" on State Road A-1-A in the Town and they shall issue no development order which would allow traffic to degrade below the adopted Level of Service. He recalled initially when he issued that determination, there was some question that this proposal would not allow the traffic on the roadway to degrade below the Town's Level of Service, and he looked at it again and explained his methodology. He stated in the original adoption of the Level of Service "E", the Town recognized that this particular stretch of A-1-A had traffic problems. He looked at this roadway as a roadway in its entirety and then major segments of the roadway, rather than any one individual point on the road, and there was clear language that stated the Town did recognize the additional residential development in the general vicinity of A-1-A from Gulfstream south to State Road 80. He stated the roadway is adequate to accommodate the expected minimal residential development which would occur in this area during the planning period. He recalled this was a fairly limited number of dwelling units which incorporated the various single family lots in the general facility as well as the potential to redevelop some of the larger properties with a greater number of units than presently existed.

Mr. Brisson recalled at the time the Comprehensive Plan was adopted, it showed the traffic counts in the immediate vicinity of Mar-a-Lago approaching the level of service or at the level of service which would be allowed. He commented that this was recognized at the time the Comprehensive Plan was adopted and knowing that they fully expected to allow and to ensure the anticipated residential development would be allowed to occur, they looked at that roadway to allow an averaging approach to the traffic levels on that roadway. He believed that had they not envisioned that technique at the time the Plan was adopted, the roadway would already have been considered at over capacity and no development would be allowed. He stated they used a somewhat unique approach of averaging of traffic counts along various locations to determine acceptable levels of service, which is not always used in most communities, but this technique does meet the types of standards identified in the Traffic Engineering Manual issued by the Florida Department of Transportation and has been reviewed by the Tampa Bay Regional Planning Council which issued a letter of concurrence stating while that procedure is not a technique that they may have used themselves, the municipalities have the right and ability to look at its level of service and determine how it should measure them and set its own policies. He stated this two page letter was submitted to the Town and generally supports the approach in making concurrency determinations.

Mr. Brisson stated what they are looking at is a very small development with regards to traffic which will have a minimal impact on the roadway and he believed that impact will not degrade the roadway below the Town's adopted Level of Standards.

Mr. Heeke called for public comments from those who are in favor of the application.

Rose Harwitz addressed the Council stating she has always been a supporter of the preservation of this Town and the landmarks, and has served 12 years on the Zoning Commission and her opposition to what has been going on in the discussions and the procedure on this application and she believed the Zoning Commission had no right to take the action they did by telling the applicant, (who under the law has an incontrovertible right to subdivide,) to sell the property. She thought the Council should recognize that the applicant has that right and the Council for the residents can impose conditions over that right but should not take it away or drag it out as to whether or not they have that right. She stated her factual reasons are the Zoning Code, when she was serving on the Commission, did not address whether or not the applicant before them which was Mr. Prosperi had the right to develop the property at the corner of South Ocean Boulevard and Royal Palm Way and that went to court and the taxpayers had to pay for that. She has not heard today them state they had no right and whether they like the applicant or not, Mr. Trump bought that property and the man who sold it to him did have the right to subdivide and came before this Council to do so and this is going contrary to all of that which was recognized at that time. She reminded them that they needed to recognize the rule of law and that cannot be broken. She stated everything that had been discussed at the Zoning Commission hearings in years past and it should be recognized that this is their right and when they see the dilatory tactics dragging this out, for instance, talking about specificity - she found none in the Clarion report. She requested that if there is something lacking in the Ordinance, as Mar-a-Lago has existed for years and the Council wanted to keep it as is, it should have made a change in the Ordinance so the right to develop was left to the applicant. She asked the Council to make a decision on this matter today and not permit this matter to go to court, as if the applicant is denied the right, the taxpayers will be the ones paying the bill.

Herbert Swope addressed the Council indicating he is not really speaking in favor of the application but he had three questions:

- (1) He has been told there was an actual bid with a check for the property as a whole and he doesn't know if that is true or not, but he believed the bid has now expired.
- (2) Mr. Broberg keeps reminding the Council that preservation has not been mentioned in the Ordinance, which he believes is setting up an irrefutable legal case.

- (3) He suggested the Council read in today's Shiny Sheet where Mr. Trump is quoted that "this will cause Palm Beach more money than it has to pay.....and I am no longer willing to negotiate."

He asked if this was an exercise in futility as that concerns him as a citizen of the Town. Mr. Heeke responded he is not aware of whether or not there was a bid made for this property.

Mr. Heeke called for comments in opposition to the application. Mr. William C. Cudahy, a member of the Zoning Commission, addressed the Council indicating the reason the application was not approved is that it was not in the public interest and that is in the language of Section 7.10 and it did not meet the intent of the Ordinance in that it does not preserve the structure and/or premises of significant historical or architectural value. He believed that referred to is the landmarked property which is historical in the highest sense as it is landmarked and the Council agreed with the findings of the Landmarks Commission that their disapproval was correct and it was returned to them by the Council. He recalled Mrs. Volk, the Chairman of the Landmarks Commission addressed the Zoning Commission and elaborated in the greatest detail on the Clarion Report data about all the things that were wrong with the subdivision and one could barely see Mar-a-Lago.

FUD App.
Mar-a-Lago
(cont'd)

Attorney Frank Chopin addressed the Council noting the development of Mar-a-Lago has been an issue in this community for about fourteen months. He recalled Mr. Broberg making a point that it has been before the Landmarks Preservation Commission for a Certificate of Appropriateness which was denied, and then appealed to the Council who upheld the Landmarks Preservation Commission. He advised it has been before the Zoning Commission on a PUD-A application, which was denied and now it is before the Council for a review of that application. He thought it was now time for the issue to be put to rest and he quoted from the Shiny Sheet Editorial to "Just Say No."

Mr. Chopin addressed the traffic issue, advising the Council that since the last meeting they have listened to every tape and read the minutes on the adoption of the Comprehensive Plan and he didn't believe the Council needed to address the issue of traffic today, however, he wishes the record to be clear, and he wanted the Council to know that what they heard today about the traffic issue is not what they heard when they were adopting the Comprehensive Plan. He recalled Mr. Brisson telling the Council today that he used an "averaging" technique to calculate the level of service on A-1-A and that is not accurate as Mr. Brisson did not do so. Mr. Chopin announced the Comprehensive Land Use Plan does not include an "averaging" of traffic north of Gulfstream and south of Southern Boulevard. He advised there is nothing in the record that anticipated the development of Mar-a-Lago and allow for the development of Mar-a-Lago consistent with the Comprehensive Land Use Plan. He advised this is an issue they are willing to litigate and this is not based upon an emotional response, but is based upon the fact that the Level of Service for traffic count when the Comprehensive Plan was adopted was at its peak and since that time, relying on County figures, the traffic count now is several hundred cars higher than it was then, so they are well beyond the Level of Service "E" to "F".

Mr. Chopin stated he wanted to make the point which addresses the development of the property, short of an amendment of the Land Use Plan, they don't have to reach that issue today, as the issue today is not the development of Mar-a-Lago, as Clarion has told the Council that Mar-a-Lago can be developed.

Mr. Chopin stated the Preservation Foundation, for whom he speaks, has never taken the position that the Council should in every case, every event, reject the development plan which has been submitted for Mar-a-Lago. He indicated the issue is this proposed development plan, and not the development of Mar-a-Lago in general. He believed it was time for the Council to say no to this proposed development because it is inadequate and it is fundamentally universally lacking in detail, not just with respect to the preservation of a historic property, as the PUD Ordinance specifically requires the historic character of the property be preserved and the Council must make a specific finding of fact with respect to how that preservation will occur.

Mr. Chopin stated he was not going to debate the issue of whether the Preservation Plan is inadequate or not, as he told someone that they could call it a bimbo plan but what they have to address is the substantive issue as to what they are doing with the character of the property, which is a requirement of the PUD application, as the PUD Ordinance specifically contemplates that it will be an historic property which is going to be divided. He thought, even aside from the Clarion Report which he felt addressed the Preservation Plan in terms of what is lacking, as they told what it should say and told what it didn't say. He thought the Preservation Plan was inadequate as it didn't give enough information to be able to judge the adequacy and effect of the development on the Town and on the residents of the Town. He thought what they are being asked to do is to say yes to seven houses and approve them without knowing where the houses are going to be built, how large they will be, where the accessory structures will be located, how the fire and police will get to those houses to provide for public safety. He stated he heard Mr. Pitchford say earlier they have provided for them to get to the houses but they don't know how the police and fire trucks are going to get out. He pointed out the Council has been asked to approve the Plan without knowing the width of the streets because the proposal while it tells them it will substantially be less than what is required in other circumstances, this is something they have told Council they will get together with someone and work it out later. He believed the list goes on and on and on and the Council has heard it over and over again for fourteen months.

He believed the applicant does know it is inadequate recalling there was a hearing several months ago and the day before that hearing, the applicant's representatives ran in with a Preservation Plan which no-one had an opportunity to review or study. He stated after the Plan was reviewed, it was found out it was inadequate. He indicated today they brought in a report entitled "Supplementary Information - Special Town Council Meeting March 5, 1992". He asked why they turned in this report and exactly what does this report address - it has no detail about the type of houses and we see a bunch of pictures. He stated this report doesn't tell them what the houses will look like, but they submitted pictures from Worth Avenue and other areas around Town and it has nothing to do with what they are proposing to develop. He felt it was time to deal with what exactly Mr. Trump wants to do. He stated the report goes on and on about the narrower streets, the parking area for parties, etc. and they have an array of people coming before the Council to tell them about this. He found it frustrating because he didn't believe that was the way the process was supposed to work. He believed the Council was to be a deliberative body and they are supposed to do their homework and it is the obligation of the applicant to allow the Council to do what they are supposed to do, so they are prepared to make an informed decision. He stated it was axiomatic that the applicant had to give the report in today and the Council was not prepared as they haven't had a chance to study it, nor has the staff had an opportunity to study it. He stated

FUD App.
Mar-a-Lago
(cont'd)

it is also axiomatic that the Council should reject the Plan as they don't know what it says. He knows that Mr. Trump has been told about the deficiencies and this has been going on for fourteen months and Mr. Trump has been given more time and latitude to provide the missing information and he hasn't done it. Mr. Chopin believed that Mr. Trump has callously refused to provide the information. Mr. Chopin stated he doesn't know why and he can't get into Mr. Trump's head but he didn't think he had to, as all he has to do is read Business Week, particularly the issue of 3-23-92 in an article entitled "Finance - The Donald's Trump Card" where he tells the world why he doesn't have to give any information and he quoted: "They (referring to the five of you who have a vote on this issue) will do a complete fold-up."

Mr. Chopin believed the answer to why the applicant feels the Council will fold up is because Mr. Trump has threatened the Council constantly that he will sue the Town for more than it has to pay - and he is going to sell the property to the Moonies - all of these horrible things. Mr. Chopin stated he will deal with the lawsuit as that is where Mr. Trump thinks he will get the Council by scaring, bullying, intimidating them and they will fold up and cave in and will give the applicant what he wants, even what he wants has not been documented in the way the law requires it be documented.

Mr. Chopin wanted go on record with the statement that he is here to tell the Council that the threat of a lawsuit is just as shallow as the applicant's development plan. He thought they had heard it all over the last fourteen months from the leading experts around the United States on the question of the likelihood that Mr. Trump would have a viable law suit against the Town and Mr. Chopin submitted a letter from Dean John Costanis, the Dean of Vanderbilt Law School, and a former and leading recognized expert in this field of the law. He advised the Dean could not be here today and apologized for that, but has asked Mr. Chopin to distribute to the Council a letter addressed to them and he submitted it as part of the record. (Exhibit #3). Mr. Heeke acknowledged the letter is submitted as part of the record. Mrs. Wiener pointed out the Council has not had the opportunity to review this letter.

Lunch Break was taken.

Meeting reconvened by President Heeke.

Mr. Chopin referred to the letter from Dean Costanis noting the letter reiterates the opinion expressed by Dean Costanis orally at previous meetings and reaffirms those opinions. Mr. Chopin recalled Mrs. Wiener made the point the Council had not had an opportunity to review the letter and he was calling the kettle black and he wished to acknowledge that, pointing out he only received the letter yesterday, so he could blame it on the Dean, but it does make a more telling point as this is a two page letter which addresses the legal issue and reiterates an opinion given previously. He pointed out the document received today is not a legal opinion and is not two pages long and doesn't reiterate anything but addresses for the first time new issues, with the attempts to supplement, but on its face this is a deficient and inadequate Plan that Mr. Broberg is asking the Council to approve today.

Mr. Chopin stated he was willing to compromise and tell them not to consider Dean Costanis' letter, but don't consider the additional information submitted by the applicant either. He thought that was fair as the process is important and they have been saying that from the beginning. He realized it is not just important that they make a decision, but is important that the Council adhere to a process which institutionally is designed to lead to the direction of a right decision. He did not believe that they could have documents given to them at the moment of the decision, when no-one has had an opportunity to review and comment on the information that has been submitted.

Mr. Chopin read from Dean Costanis' letter:

"The applicant's implied argument--is has never been set forth in a precise and carefully documented fashion--seems to be that he has a legal 'entitlement' to exploit his property for its most profitable use, and that any interference with this 'entitlement' violates the Court's proscription against governmental action interfering with his 'investment-backed expectations.'"

He recalled Mrs. Harwitz mentioned this earlier. He commented on the violation of constitutional rights stating that lawyers have enough trouble with constitutional law and this is probably an area where lay people should stay away from as they are not capable generally of having the background to understand it. Mrs. Wiener interrupted pointing out that Mrs. Harwitz is an attorney. Mr. Chopin responded he wasn't referring to Mrs. Harwitz but was referring to anybody who addresses constitutional issues and over the last fourteen months, they have all read in various newspapers and heard from people and the point being made is that they cannot take somebody's property away from them as that is unconstitutional. He wished to address the issue which goes to the heart of that argument and to make a point which he recalled Mrs. Wiener made some meetings ago that they have a right to use the property, but is subject to appropriate regulation and that is in fact, the way we are entitled to use the property and the fact that the United States Supreme Court has ruled in the Penn Central case, that they do not have an unfettered right to do whatever they want to do with their property and it is not unconstitutional to place restrictions on historic property which deprive them from being developed to the best of all possible investment gains.

Mr. Chopin read again from Dean Costanis' letter:

"This argument is flatly specious for numerous reasons:

1. The Court rejected it by stating that "the submission that (the applicant) may establish a 'taking' simply by showing that (he has) been denied the ability to exploit a property interest (he) heretofore had believed was available for development is quite simply untenable." Id. at 130.

2. The applicant's claim that he had a "reasonable" investment-backed expectation flies in the face of facts that he himself has established. In his writings, he has acknowledged that he was aware upon purchasing Mar-a-Lago that it was a designated landmark, and that he intended to continue it in that state as a single family residence.

3. Third, the Court makes clear in various points in Penn Central and in other takings cases too numerous to distill in this letter, the pertinent differential in value is not that between the property's most profitable use (highest and best use) and its property in its landmark state but

between its value as determined by "reasonable expectations", id. at 125, and its use in its landmark state. In the case of Mar-a-Lago, however, there is no value differential between what the applicant could reasonably have expected and the site's use as a landmark. Again, he purchased it knowing it was subject to the full gamut of restrictions imposed by Florida and Palm Beach law on landmark properties. Credible evidence exists substantiating that the price he paid for the property was fully discounted in light of these restrictions. Powerfully contradicting any claim of a taking, moreover, is the applicant's own successful effort securing, in a real estate tax appraisal challenge, a judicial determination at his request that the "highest and best use" of the Mar-a-Lago property is its use as a personal residence.

Hence, my firm conclusion that a development denial at this stage (or almost certainly at any substantial stage in these proceedings) will not expose the Town of Palm Beach to monetary damages for a 'taking'."

Mr. Chopin felt the bottom line is that if Mr. Trump sues, he will lose. He commented that the Preservation Foundation does not want a law suit, but he wished to assure everyone that if there is one, the Town will not sustain any damages and will incur no expenses whatsoever in connection with that law suit. He hoped that the resources that a lawsuit will consume will be better used to resolve the issue by developing an adequate plan, capable for review and represents a commitment to proceed in a particular way and allows the Council to make findings of fact, which they are required to do.

Mr. Chopin recited the findings of fact and asked Council if they were in a position to make those findings of fact with good faith. He referred to the historical preservation development noting it is intended to preserve structures and/or premises of significant, historical or architectural value to the Town by allowing for low-density residential development at a density calculated on the area of the entire property. He stated when this issue came up and was addressed, Mr. Moore and his staff came forward to inform the Council that he and his staff did not have the expertise to make that evaluation and as a consequence, Clarion Associates was hired to evaluate the Plan as submitted in the context of this specific finding of fact. He recalled Clarion told the Council "We have concluded that as a document setting forth the objectives for the preservation of the estate and the means by which those objectives will be achieved, the Preservation Plan is deficient in many respects. The most significant of which we will address in this memorandum, moreover, in our opinion, even if the document is considered as a draft plan and for purposes of granting tentative approval for PUD with conditions, the provisions for the property's preservation are too vague, inadequate and contradictory and the shortcoming of documentation and data are too numerous to assure the Town that the proposed development will be in the public interest and consistent with the Town's statement of purposes on Planned Unit Development."

He stated what they have told Council, as the experts, is that the Council cannot make a finding of fact that the proposed development is consistent with the Town Ordinance.

Mr. Chopin stated another finding of fact that needs to be made is the extent to which the Plan departs from zoning and subdivision requirements. He recalled an eleven lot plan was reviewed by experts that the Preservation Foundation hired and found the applicant told them there were deviations from the Ordinance and that the lots were smaller than required and the setbacks were less than they were supposed to be and that the front elevations could not be calculated in accordance with the Zoning law and then the seven lot plan was submitted and he didn't tell you any of those things in his application, nor in the supplemental information submitted today. He supposed the Council might be able to go in and try and figure out those things for themselves, but Mr. Trump didn't tell them.

Mr. Chopin felt the most curious one deals with the proposed setbacks, which states: "the proposed setbacks for one or two story structures indicated by the building zones in the application. These zones locate the spaces in which the houses can be built and should not be confused with lots in the subdivision. The lots are also shown for the purposes of ground maintenance, real estate taxes and other considerations. The building zones are the only locations whereby the buildings or ancillary structure are able to be located." Mr. Chopin stated he went to the Site Plan and looked at the building zones and it doesn't tell you about the setbacks, how far back the houses have to be located, or the setbacks from the streets, and it doesn't talk about easements. He stated it is saying to you they are going to build a house in the zones and they can't tell you where it will be located, or how close it will be to the roadway, or how close it will be to a public easement; or what the elevations measures will be; but simply states it will be in the zone some place. He stated the simple bottom line is the Council cannot make a determination, and aside from the fact that they can't make that determination, someone who has an opportunity to review the supplemental information and analyze it and digest it and put it into a proper order, if the documentation had not been filed today, the Council might have found out about this supplemental information.

Mr. Chopin continued another provision is there should be adequate provision for public services, control of vehicular traffic and furthering amenities of light, air, recreation and visual enjoyment. He stated the applicant's representatives have admitted they don't know how they are going to get the fire trucks out of there. They admit they may be able to get them in on an 18' roadway, even though the Ordinance requires a 30' roadway. He stated they didn't tell you anything about the dumpsters and the simple bottom line is the Council just doesn't know. He stated it is not bad that they don't know unless they give tentative approval, then it becomes bad, because they are supposed to know and there is no excuse for not knowing and it is not the Council's fault, but the applicant's fault since the obligation to advise the Council in clear, concise and definable terms is the applicant's responsibility and not the Council's. He stated it is the Council's job to look at it and decide if it is a good plan and they cannot do their job because the applicant didn't do his job.

Mr. Chopin referred to another provision - the adequacy for provision for preservation of historical structures and premises - he asked the Council to listen to their paid experts who told the Council they don't have enough detail in order to be able to make the judgment as to whether they can preserve the historic structure of Mar-a-Lago and the whole of the property. He felt there was nothing in the record which contradicts those conclusions.

Mr. Chopin pointed out Mr. Trump is free to submit another plan, properly prepared and documented which should be submitted well enough in advance to be analyzed and understood by the staff and others who have an interest in what the applicant wants to do and if that is done, the

PUD App.
Mar-a-Lago
(cont'd)

FUD App.
Mar-a-Lago
(cont'd)

Council can exercise their responsibility in a reasonable and careful way. He felt for the sake of the people in the Town and the area, the Council should not be bullied nor intimidated in folding by agreeing to a Plan they know nothing about. He asked the Council to send a message that a properly documented Plan will be considered with no bias or restrictions and that is the position of the Preservation Foundation and has been their position for fourteen months and will continue to be their honest position. He stated they continue to be ready to work with anyone to give their ideas and thoughts if the applicant will tell them what they want to do and then they can tell the applicant whether or not it is viable in the context of what they are trying to do. Mr. Chopin advised that concludes his comments and he has to ask to be excused from the rest of the proceedings as he has another meeting to go to. Mayor Marix thought that may present a problem as there may be someone who wishes to ask questions of Mr. Chopin. Mr. Heeke called for questions for Mr. Chopin.

Mrs. Douthit asked about the Homeowners' Association and asked who would maintain the street, and now the grass asking if that would be under the Association's purview. Mr. Chopin responded Clarion addressed a part of that as there was an outline of the Homeowners' Association set out in the December application which was not cross referenced in the documents submitted today. He believed the problem they really had with respect to the Homeowners' Association as to how it functions in conjunction with protection and how it will provide that protection is just not set out any place. He believed if individuals are to take care of their own landscaping, some will do a better job than others and they may want to know how this will affect the view easements, or the ability of the property to drain. He pointed out this is not an insurmountable task to come up with a binding set of rules which specify obligations and impose obligations on the people who will buy the lots and build their homes there. He felt the issue was not that they can do it but they didn't do it and as the Council sits there and if you are going to protect the people based on a Homeowners' Association, how are they going to ensure what the rules are, and that the Association will enforce the rules and what the position of the Town is with respect to that Homeowners' Association and how will this Plan be made to work? He felt it was important as how it works is how Mar-a-Lago and the property will be preserved.

Mayor Marix wondered if there is a Homeowners' Association, what protection would there be that if it doesn't exist anymore and would there be some protection for the Town in the event there would be a lot owner who went bankrupt and wondered if that provision could be put into the agreement? Mr. Chopin stated there should be some oversight jurisdiction which could take over the Association to make assessments against the various homes but the problem that they face is how they will deal with the preservation of the property until such time as the lots are sold. He believed they could end up with no effective means to assess adequately for the continued maintenance of the property.

Mr. Weinberg made a statement: "I'd rather not comment on the engineering detail or legal aspects of this case since I am neither an engineer or a preservationist or a counselor at law. I believe the responsibility of the Council is to protect the rights of single citizens as well as the rights of the entire community. When this problem first arose, the Council, in recognition of its' needs to be thorough, knowledgeable and fair, hired experts to guide us. The first Clarion Report indicated possible progress. I continue to urge cooperative endeavors on behalf of both parties to no avail, regrettably. Whether or not there is a legal basis for a Preservation Plan or not, such a Plan is needed and desirable. The negative tone of the second Clarion Report seems to show no particular attempt to cooperate on this activity and this difficult problem, however, despite this the Report cannot be ignored. A mutually cooperative approved viable Preservation Plan is vital and necessary and would help bring these problems and discussions to a conclusion, meeting the best interests of the total community and citizens. It is the obligation of both parties - it takes two to tango - don't say no and we will not fold up."

Mrs. Wiener recalled for several months she stated there should be some conclusions that yes, there could be development at Mar-a-Lago or they're can't be development at Mar-a-Lago. She has been mystified at the opening presentation of Mr. Chopin as that is the heart and core to the problem of Mar-a-Lago as to whether or not it should be developed. She recalled the opening remarks concerned the traffic situation and the Preservation Foundation had extremely strong thoughts about it and stated we may not be complying with our Comprehensive Plan. She thought if it was Mr. Chopin's stand that the traffic pattern as described is contrary to the Comprehensive Plan, then she didn't understand how Mr. Chopin on behalf of the Preservation Foundation can say the property can be developed, because this would preclude them from having development if it is in contravention with the Comprehensive Plan. She asked if he felt the traffic as it is before the Council is not in compliance, how can Mr. Chopin tell the Council the Preservation Foundation is in favor of the development of Mar-a-Lago?

Mr. Chopin recalled this same question was asked of him at the last hearing and he apologized at not being clear so it had to be asked again. He felt the answer depends on what the question is - and it is not simple. He felt the fact of the matter is the Council has a decision to make and they don't have to make a global decision and do not have to decide things which are not before them. He stated the core and the narrowest question or issue which needs to be decided is limited to the question of whether this Plan meets the requirement of the FUD-4 Ordinance. Mr. Chopin stated it is possible for the Council today to dispose of what it has to dispose of on the basis that, irrespective of what the traffic issue is, that this Plan is deficient and it should be rejected on its terms, because it is deficient. He advised them they could go further than that and make the decision that irrespective of whether the Plan itself is deficient, development of Mar-a-Lago is not possible because it violates the terms of the Comprehensive Land Use Plan. He stated this does beg the question and the reason it does is that the Council has the power to amend the Comprehensive Plan and the letter which Mr. Frank received from the Regional Planning Board states that the Council could have taken the position which allows for the development of the traffic into a "F" grade road by having it diminutive rule similar to the one per cent rule which is here in the County of Palm Beach. He recalled it also stated that it was reported the Council did so, and they could anticipate there are a few remaining single family lots remaining in the area to be developed and that the designation of the road at the traffic levels which existed at the time would not violate the level of service by being developed, but the Council didn't do that. He reported the County's plan with the diminutive rule has not been approved by the State of Florida.

Mr. Chopin stated the Land Use Plan can be changed by the Council - specifically the Traffic Element, if they want to, but unless they do, the fact of the matter is and he read the transcript, he listened to the tapes and read Mr. Brisson's report, as well as the Traffic Engineer's Report and listened to the Town's traffic experts and their traffic experts and the facts are the Council

designated the Level of Service in the road to be Level "E" and defined what the count was that constituted a "E" grade road; they showed in the Traffic Element the peak season usage was in excess of what it was defined to be and that was specifically to allow for the development of the single family lots - not Mar-a-Lago, and that point was made by Mr. Brisson when he gave his report. He advised the Council they did not take an average north of Gulfstream and south of Southern and include that in the Traffic Element of the Comprehensive Land Use Plan. He stated this shows the count to be specifically what it was at that one point on A-1-A. He advised since that time the usage of that road has increased substantially by several hundred trips and it is now an "F" Grade Road and if it is an "F" grade road by the definitions adopted by the Council, they cannot allow development unless the Comprehensive Plan is changed. He didn't believe he was being inconsistent but the fact of the matter is that the plan presented stinks and it has for fourteen months and it should have been corrected.

FUD App.
Mar-a-Lago
(cont'd)

He stated what he said is they were not opposed unalterably to the development if the Plan makes sense, and there is a world of difference as this Plan doesn't make sense and the fact that it violates the traffic counts is a fact which the Town has control over as they can propose something, but as it stands now, it does violate the Traffic Element of the Comprehensive Land Use Plan.

Mrs. Wiener could not see any reason to keep spending the taxpayer's money or the applicant's money as if this is against the Comprehensive Plan, she could not vote for it. She felt that she has been sitting here and participating in a shell game and she doesn't know where to watch anymore, as this Plan is no good and the next one is no good. Mr. Chopin interrupted by stating he didn't think that was fair at all. Mrs. Wiener stated she was being fair as she wasn't saying it was just from Mr. Chopin but from either side, and it keeps shifting and in order to stop tearing everyone apart, they should get serious and if it is against the Comprehensive Plan, they ought to say they can't do it, or if it is with the Plan, then we move forward in some direction. Mr. Chopin responded it is not his job to advise the Council but if he was the Town Attorney, he would advise them as Mr. Randolph has recognized this is a high profile, volatile issue and to help guide the Council in a way to ensure the applicant's due process rights have been protected, and if there is a lawsuit, the Town's interest will be protected. He felt Mr. Randolph has been conscious of the fact if they chose to allow this, there will be a lawsuit from other people who will attack and Mr. Randolph is just as interested in the decision that is made is carefully thought out and is defensible.

Mr. Chopin pointed out the Council has before them the expert on the Comprehensive Land Use Plan, and Mr. Brisson has said something which Mr. Chopin would hate to see defended in court, but the Council has to decide that as they have Mr. Brisson's testimony which is from Day One, he intended to average, but he forgot to put that in the report. He indicated to the Council they do not have to make that decision today, but they have to decide the question and he doesn't mean to be rude, but means to be firm - the Preservation Foundation has not nit-picked anything but has taken a consistent position. He has been saying for fourteen months that he can't figure this out. He stated the Town Council hired Clarion and paid them \$60,000 and Clarion told them the same thing. He stated the Town has had a traffic engineer, Mr. Schwartz, who also has been paid a great deal of money and he can't figure it out. He noted there have been drainage engineers and this Plan has been supplemented on the eve of the last two hearings and the Plan submitted is not an adequate Plan. He commented this is not nit-picking but shifting sand. He thought if they told Mr. Lawrence they didn't like the entrance, Mr. Lawrence would respond that is no problem, they will move it, so it shifts, and the Council can't fight it and that has been the problem for fourteen months.

Mr. Chopin felt the applicant should put something before the Council and let the Council make the decision if it is good, bad or should be modified - and that is the problem with what has been going on and not something the Preservation Foundation has done. He agreed with Mr. Weinberg that they should be cooperating, recalling these folks spent eight hours at Mar-a-Lago with the applicant trying to help them put together a Plan. He recalled Mr. Mrachek's statement at the last hearing stating the Preservation Foundation was excluded from that meeting, and although they would have been happy to be there as they could have pointed out some things that were lacking, they weren't invited.

Mr. Chopin believed the Town Council set the tone that should have been adhered to in the whole process which is to cooperate, but there can be no cooperation when someone makes the decision that they won't do what everybody has to do, because these people are going to fold and he thought that was the attitude here and one can't cooperate with that. He recalled two traffic experts were heard and both said the averaging is not the way to do it, although it could have been done that way if the State approved it in the Comprehensive Plan but this was an afterthought and is a way to justify something that should have been thought about in the beginning. He thought maybe they ought to amend the Plan, and they should listen to the tapes as they were all there. Mr. Chopin stated he listened to the tapes and it was arduous, but there is nothing in those tapes that supports what they have been told by Mr. Brisson. He thought if they wished to decide the issue, that was fine, but as a matter of law, they are deciding something they don't have to decide and this sort of approach that the Preservation Foundation is taking is a prudent, legal approach.

Mr. Heeke asked if there were any further questions for Mr. Chopin.

Mr. Chopin asked if the transcript and the tapes of the Comprehensive Land Use Plan hearings could also be incorporated into the record? Mr. Heeke stated he had no problem with them being a part of this record and he would so rule. Attorney Randolph asked to comment on that stating those have not been presented for anyone to look at or question or cross-examine and they are already public records and are available as public records for anyone to use in the future, but he would hesitate making it part of the record as the documents themselves have not been presented today, and all we have heard today is the attorney for the Preservation Foundation has listened to the tapes and from that standpoint, he did not think it was appropriate to incorporate them as part of the record. Mr. Heeke stated he would defer to the advice of counsel.

Attorney Betsy Burden addressed the Council on behalf of the bank who is the guardian of the Estate of Liliane C. Loomis, which property is next door to Mar-a-Lago. She has registered objections throughout the entire proceedings and wished to elaborate as to why they are objecting. She stated they have legitimate concerns which have not been addressed, such as the increased traffic, the lack of buffering, the noise, the dust, etc., and as guardian of the property they have the statutory duty to protect their client and has a court order which has asked them to be here to continue to protect Mrs. Loomis' property.

PUD App.
Mar-a-Lago
(cont'd)

She pointed out on the site plan where the Loomis property is located and submitted photographs which showed the sparse landscaping between her client's property and Mar-a-Lago. She noted the road has been moved and is no longer two feet from her client's property and is now ten feet, however, they do not believe that was quite far enough. She noted this is a road where all traffic to the property will be travelling. She noted there is no fence and a lack of vegetation on the rear of her client's property. Mayor Marix asked how big was the lot of her client? Ms. Burden advised it is not a very large lot. Mayor Marix noted the house there is well into the southern part of the lot as it sits quite far back.

Attorney Burden noted the photographs show the holes in the hedge and the fence which actually stops at one point. She took issue to some of the statements in the Preservation Plan which would lead one to believe there is heavy vegetation around the property and that the fence is there as that is simply not true. She advised that the National Park Service has issued a report to Congress about Priority One and Two landmarks which are threatened and endangered and Mar-a-Lago was added to that list and the reason it was added was this particular construction plan, and she submitted that document as a part of the record. (Exhibit No. 4).

Mrs. Wiener recalled the National Park Service was the owner of this property and they didn't want it and returned it to the Estate and if they had hung onto it, this wouldn't have happened so this is their failure.

Attorney Burden stated the second thing she would like to bring to the Council's attention which has to do with the Surface Water Management Permit which Mr. Trump had filed an application for with the South Florida Water Management District and that application has been withdrawn by the applicant and the file has been closed, so there is no Surface Water Management application pending and this permit is required and necessary for any development of the property.

Attorney Burden stated she has other information to submit and has retained three consultants and none of these are new issues and these questions were raised when this was being considered as a Subdivision. She stated one of the consultants is a preservation architect, Jan Abie and she came to the exact same conclusions that Clarion did and that was the Preservation Plan was not adequate and there should be an objective planning document and it does not meet that requirement.

Attorney Burden stated the second consultant is a landscape architect, Mr. Winston Lee and his report is in the record and illustrates some of the points made earlier about the roadway and the lack of vegetation.

Attorney Burden indicated the third consultant is Fred Schwartz, a traffic expert and she would submit those reports into the record. Attorney Randolph asked if there was any objection to the receipt of these reports and asked if they were in the room to which Ms. Burden responded the only one here today is Mr. Schwartz, who the Council has heard from earlier but the testimony now would be as it relates to her client's property. Attorney Mrachek stated it is hard to object to something that he hasn't seen, however, for those who took the time to be here today, he would have no objection. Attorney Randolph advised the Council to not accept the reports from those persons who could not be cross-examined by the applicant today.

Frederick W. Schwartz, P. E., President of Traffic Engineering, Inc. was administered the oath by Mrs. Peters.

Attorney Burden advised Mr. Schwartz has told her the Loomis lot is 100' by 135'. Mrs. Burden submitted the letter written to her by Mr. Schwartz dated April 13, 1992 as part of the record. (Exhibit No. 5).

Ms. Burden noted that generally speaking, one does have a right to do with one's property as they wish, subject to any applicable regulations, however, she thought there was legal precedent here as this is a historic property, and a National Historic Landmark, and there are restrictions due to the public welfare and interest. She has cited some cases in the Subdivision hearing and provided those to the Town Attorney, where development of historic properties was specifically denied. She referred to a case from the Supreme Court of New Hampshire which was very similar to this, and the development was denied on the character and significance of the building, particularly since there is a street being constructed through the property and parking issues, and all of those factors will be applicable in this case. She recalled another case decided last year by the Connecticut Supreme Court stated the Comprehensive Plan was to preserve historic properties so development was denied and pointed out the Town's Plan also states it is to preserve the historic properties. She quoted another case from New York which is similar. She thought there were several Florida legal cases, and there have been zoning requests denied because of historic and aesthetic issues. She thought all they needed was substantial expert evidence to support their decision and they have had expert testimony and legal authority which would hold up to scrutiny any denial and encouraged them to do so.

Leslie Smith was sworn in by the Clerk. Mrs. Smith addressed the Council for the Garden Club noting they were working off the landscape plan submitted earlier and did not know of the revised plan which she heard was submitted today. She stated the last eleven months, the Garden Club representatives have heard the Subdivision and PUD applications and voiced their concern and raising questions about the Blakely report received 6-17-91. She pointed out that part of this report was reproduced almost verbatim in the Preservation Plan and it was done in generic terms, such as "mixed tropical planting" and "mixed tropical shrubs and palms". She voiced the Club's alarm over the lack of attention to this particular aspect of the Subdivision and PUD Plan, she was told she shouldn't worry that they wished to preserve the landscaping and they would move the trees the Garden Club wished to save elsewhere on the property. She felt these remarks and others made today were quite upsetting to the Garden Club as the Garden Club is concerned about the landscaping. She stated their fears could be alleviated if they knew for certain that Mr. Lawrence would be the architect on the project, however, no-one can predict what architect would be chosen and from where by the new individual lot owners which will make up the Homeowners' Association. She thought at the moment the Homeowners' Association is Mr. Trump - period.

Mrs. Smith advised the Garden Club commissioned a computer-enhanced visualization comparing Mar-a-Lago as it is today to the proposed development and the resulting loss of vegetation and tree canopies. She stated the video was shown to the Landmarks Commission and members of the Town Council and representatives of the Clarion Group and a copy of the video is at Town Hall. She agreed with Blakely Landscaping at the Landmarks Commission meeting in June that a landscaped

architect should review the property and the Garden Club was willing to assist in finding a landscape architect and historic preservationist to accomplish this task, but nothing has happened.

Mrs. Smith advised on 9-24-91, a schematic Landscape Plan was submitted by Blakely Associates and was in the package for the PUD-4 application, and this Plan contained the generic phrases such as "a vegetation preserve would be maintained" and "vegetation shown as existing and/or relocated" and "mixed tropical vegetation" and "mixed hedge" and "relocated mixed tropical vegetation line". She doesn't know what the mixed tropical vegetation line is and in addition, the landscaping outside the wall is neither managed nor does the Plan show the street plantings on the grading on the outside of the wall. She felt conditional approval should be that all the landscaping be maintained. She recalled the comments of Mrs. Harwitz referring to the lack of specificity in the PUD application and the Garden Club has been very specific for a long time as before the Zoning Commission in December; the question was raised as to what vegetation exists, and what will remain, and where are the open vista easements, and who will own and maintain them - what does the statement mean: "No trees without consent of the Association in open vistas"? She wanted to know what kind of specific sight screening is envisioned and what does "vertical windows open access to the view corridors" mean? She can't figure it out. She believed approximately one-third of the Clarion Report is devoted to the description of the landscaping and these are the same areas the Garden Club has been concerned with since the beginning of this submission. She stated her concern noting the Clarion Report supports the concerns of the Garden Club and she requested a denial of this application.

PUD App.
Mar-a-Lago
(cont'd)

Mary Ratliffe, Executive Director of the Palm Beach Civic Association addressed the Council indicating it does appear that the criteria necessary to present a PUD application have not been met and she is confident the Council will achieve the right balance between the Town's and the applicant's needs and to this end, supported the ongoing process. She thought it would be an understatement to say this is a very important piece of property, and the process is in place to determine specifically what can be done with Mar-a-Lago and the entire site and she hoped the Council would persevere until all the criteria is met.

Adrian Winterfield, 445 Brazilian Ave. addressed the Council pointing out the Preservation Plan has one and one half pages in it under Section 12, entitled "Preservation of Mar-a-Lago Mansion". He believed the landscaping was extremely important, however, so is the building. He read from the report which stated the mansion should remain as a single family residence. He felt the preservation of the mansion is the topic here and the applicant doesn't state how, but states it is there and we should trust him. Mr. Winterfield felt the preservation of the mansion was an essential part of the Plan and the Preservation Plan is totally lacking in how that will be done. He noted there was some question as to how the maintenance would be ensured and perhaps one way would be to require that an Endowment Fund be established in a sufficient amount to cover estimated expenses.

Mr. Winterfield asked two questions on the preservation of the main house:

- (1) The treatment of the oceanfront. He felt any approval of the Council should restrict development of the oceanfront opposite Mar-a-Lago with the exception of a cabana or beach house, according to regulations.
- (2) He advised there is a mortgage on the property in the amount of twelve million dollars and it states that the mortgagor will not change the property.

He suggested it might be appropriate to obtain a letter from the Bank agreeing to the application.

Col. I. Henry Stern addressed the Council, reading from an excerpt of a meeting of the Zoning Commission when Mr. Grace, the Chairman, stated: "I take it then that you are moving that the Zoning Commission shall deny the application in that it adversely affects the public interest?" Col. Stern recalled he added "and public welfare" to which Mr. Grace added: "...because it does not preserve the landmarked structure and premises." Col. Stern recalled Mr. Randolph made the statement that the clarification suggested by Mr. Grace would be beneficial as part of the motion as the Ordinance does provide that the Town Council when it makes its findings in the granting of denying should state to what respect the Plan would or would not be in the public interest, and the preamble to Article 7 states the PUD-4 - Historical Preservation Residential Development is intended to preserve structures and premises. Col. Stern advised he then accepted the comments of Mr. Grace into his motion.

Col. Stern then introduced into the record a letter to the Town Council and Mayor dated April 6, 1992 (Exhibit No. 6). He thought the important issue should be whether or not the PUD application is in the public interest. He thought if the Town Council approves the application, it would mean the elimination of the Landmarks Preservation Commission as the addition of these residences on landmarked properties will result in increased density, increased traffic, more public services needed, etc., all of which is contrary to the best interest and quality of life of the Town of Palm Beach. He affirmed that these statements are the truth.

Attorney Ron Kolins addressed the Council on behalf of Mrs. Evelyn Massey indicating his appreciation that all of the proceedings will be incorporated into the record, by reference. He recalled Mr. Broberg stating the Clarion Report was arrogant and it does indeed disagree with Mr. Trump's position and in fact he called the Preservation Plan "hogwash". He read from the Clarion Report, page 2 of April 18, 1992 ".....we find the document to be poorly written, confusing, disorganized and inconsistent. There are errors of fact. There are introductions of bias, that we find irrelevant and lacking in professional objectivity. Many assertions are made that are unsupported, many positions about issues are taken without justification, and the text fails to cohere as a unified and comprehensible approach to the issues outlined."

He thought it was arrogant of the applicant to present new information at today. He thought it was arrogant to tell the Council the Codes are silent on the requirement for a Preservation Plan and to suggest that the request for one is out of thin air. Mr. Kolins referred to Section 7.33 (7) which calls for "findings of fact relating to the provision of preservation." He thought this meant the applicant had to tell the Council what they are going to do about preservation and that to him was Preservation Plan. He thought it was arrogant for the applicant's representatives come before the Council with the "trust-me-theory" to request development approval.

Mr. Kolins reported he listened carefully to Mr. Broberg today and his "trust me attitude" stating of course, they would be doing it - landscaping - screening, etc., and suggested to the Council they require something more than the "trust me" theory of development approval.

FUD App.
Mar-a-Lago
(cont'd)

Mr. Kolins addressed the question of traffic. He stated that given the Comprehensive Plan that is now in place, the Council may not approve the application, period. He stated there are alternatives, one, they can deny the application and the Comprehensive Plan can be changed and then they can come back with an application and if it meets that Comprehensive Plan, fine, and if it doesn't, it will be measured at that time. He stated another alternative is to tell him and the traffic experts they don't know what they are talking about and the application is approved. He felt the traffic issue alone makes this application incapable of being lawfully approved.

Mr. Kolins found it interesting in listening to Mr. Brisson who stated his methodology was unique and also that he went to the Tampa Bay Regional Planning Council to get an opinion that it was okay for him to use that methodology. He can't figure out what Tampa Bay has to do with Mar-a-Lago. He recalled Mr. Brisson's statement that this Plan will have minimal impact to that road. He didn't think that was the case at all, as the latest count will be for seven additional homes proposed and the people who will be buying these lots will be people who will be building large homes and they can afford the larger homes and with those homes go not only so many trips per household but add the maintenance people, the service people, the maids and all of the other kinds of folks who will be hired to work at these homes. He was sure this would generate much more than what the average single family home would generate and you add that number, they would not be talking about something minimal and it certainly would not be minimal to his client who lives directly across the street from the entrance proposed.

Mr. Kolins referred to the item in the supplementary information submitted today by the applicant's representatives with regards to the entrance/exit proposed to be located on Southern Boulevard and he viewed this as begging the question as it doesn't address one of the issues which his client is specifically interested in. He commended Mrs. Harwitz on the vigor in which she presented her views, although he disagreed with them, but she presented them in grand style. He recalled she said they have to live under the rule of law and he agreed as the Rule of Law is because of traffic, this application cannot be approved, and a Preservation Plan is required and (c) the consultants have told you the Preservation Plan is hogwash, therefore, he suggested the application be denied. He thought this should be denied on the key issue of the preservation of the landmark and the traffic issue which is inconsistent with the Comprehensive Plan. He believed if this was denied, it in no way would deny the applicant the right to come back with a Plan that is right and if it is done right and the Comprehensive Plan is changed, this can be reconsidered in that light.

A break was taken and meeting reconvened by the President.

Mrs. Harwitz addressed the Council noting they do agree that the applicant has a property right and to the rules of law, however, her point this morning was made that while the applicant has a property right, the Council has the right to impose reasonable conditions and she believed if this did go to court, like Prosperi did, it took them 14 months and all they talked about was traffic and if they couldn't agree on the traffic during the fourteen months this present application has been in existence, that record in a court of law, becomes very significant.

Mr. Heeke called for questions of those who have spoken to which there was no reply and Mr. Heeke then called on Mr. Broberg for his summarization.

Mr. Peter Broberg, attorney for the applicant, addressed the Council indicating he would like to have the experts answer some of the questions in their particular areas. Mr. Joseph Pollack addressed the Council indicating he had stated last month that the Town's Comprehensive Plan clearly indicates this specific section of Ocean Blvd., in the immediate area of Mar-a-Lago has a traffic volume which exceeded the Level of Service "B" which was set in the Comprehensive Plan for that particular roadway and he believed the volume on that road at the time the Comprehensive Plan was approved, was greater than the Level of Service adopted. He advised the Comprehensive Plan does contain the discussion about why the Level of Service "B" was set and it clearly contemplates limited, additional residential development on the vacant parcels within the Town. He thought it was clear that the Comprehensive Plan clearly allows for limited residential development and that is why the Plan was written as it was, and that is why that section was included in the Plan and that is why that other residential projects in this area could be approved and they have been approved. He advised there has been quite a bit of discussion about the Averaging Technique and he testified that that is not typically a normal practice but this is a practice which is used and the Florida DOT's Level of Service Manual does include a provision for looking at roadway sections and averaging traffic volumes and he knows that technique is used in Broward County in determining the capacities of roadway sections. He knows that Palm Beach County has used this technique in determining whether a particular roadway in its Long Range Transportation Plan met the desired level of service standards which the County had set.

Mr. Pollack recalled Lee County has in their Comprehensive Plan and their concurrency management system an allowance which looks at roadways in a given geographical area and averages the demand and the capacities of all those roadways to determine whether the system is in compliance with the established standard. He thought there was precedent for what the staff has done and the method that has been used and he sees no reason to say that this method is not applicable for this particular development and based upon that, he believes the project does meet the intent of the Town's Comprehensive Plan.

Mr. Pollack stated there were other statements made about the magnitude of traffic related to the proposed development and the traffic generated would be significantly greater than a standard single family residence, but the traffic consultant who has been working with Attorney Kolins and Attorney Chopin and Attorney Burden indicates the traffic generation rate for this type of development would be 15 trips per mansion and that is higher than the number the County typically uses for single family development in Palm Beach County. He thought if that higher number which Mr. Schwartz has referenced, they are still talking about considerably less than one per cent impact on this roadway, which would still meet Palm Beach County standards as far as allowing minimal amount of additional development on roadways already exceeding the Level of Service standards in the Comprehensive Plan.

He advised the Comprehensive Plan of Palm Beach County has been challenged as there are some elements that have not been signed off on by the Department of Community Affairs, however, Palm

Beach County has approved numerous projects in the past two years under that provision and until it is changed, that will be the law as far as Palm Beach County is concerned. He felt the issue of whether the amount of traffic coming out of the project is significant or major, he agreed with the staff that it is a minimal amount of traffic and corresponds to the minimal amount of development which was contemplated when the Comprehensive Plan was adopted.

Attorney Ron Kolins asked to be heard on a point of order noting that Mr. Pollack was not a part of the initial presentation and Mr. Kolins pointed out he has not had an opportunity to address the issues that Mr. Pollack has brought up and asked for an opportunity to address some of the issues which have been raised by Mr. Pollack as there are some important points which need to be addressed.

Attorney Randolph advised the procedure in the past has been to let the applicant have the last word and Mr. Pollack has spoken at previous meetings, and the purpose of this hearing is to allow everyone due process and everyone should be allowed to cross examine anyone who has spoken but the applicant should have the last opportunity to sum up and speak before this Council, so if Mr. Kolins wishes to ask questions of Mr. Pollack, he should be allowed to do so.

Attorney Kolins advised that Mr. Schwartz had to leave the hearing to attend a disposition in Ft. Lauderdale, so he is not here to speak to the points raised by Mr. Pollack and there were two - one, Mr. Pollack talked about the contemplated development of undeveloped property in the Comprehensive Plan and he would suggest to the Council that this contemplated development had nothing to do with new subdivisions or PUD's but existing platted lots in the Town. He advised the second point about the one per cent rule regarding traffic in Palm Beach County is correct, however, the Town of Palm Beach do not have that rule so while the traffic may comply with a portion of the County's traffic standards, it does not comply with the Town's standards as the Town doesn't have the same criteria.

Mr. Joe Pollack responded to the best of his knowledge, the undeveloped lots referred to did include or contemplate some development in Mar-a-Lago as well as other lots in the Town of Palm Beach.

Mr. Robert Pitchford addressed the Council on the drainage question, particularly the withdrawal of the application with the South Florida Water Management District advising the application was withdrawn for two reasons, one being they made the application based on the original plan and that plan has been changed considerably, specifically the road location and number of lots; and secondly, they have changed the concept of realignment so it is not above grade in retention areas but below grade in exfiltration trenches, so that application will have to be refiled based on the outcome of the findings made today.

Eugene Lawrence, Architect, addressed three issues, one, noting that Mr. Chopin has made the point he didn't know where the lots were and pointed out on the Site Plan that all of these are irregularly shaped and the shape was derived on the site by specifically locating on that particular site by a vegetative, geographic or topographic characteristic and noting it on an aerial photograph. Secondly, Mr. Lawrence continued stating they have committed to build a wall to match the service area one at Mar-a-Lago along the Loomis property. Mr. Lawrence advised in response to Mrs. Smith's comments, they do intend to retain all the planting outside of the wall.

Attorney Peter Broberg summarized the proceedings, indicating they have tried to get to the substantive concerns of the Council and the public and address them, and he felt that they had. He reminded the Council the purpose of a subdivision pointing out that is what they are trying to do and work this out. He recalled Mr. McCarthy's statement indicating he knows what they are trying to do, but he had two concerns, one being drainage which has been addressed and the other, was the force main on the road and if that is addressed, he had no problems with the Plan.

Mr. Broberg said to the Council they should give them tentative approval and put any safeguards that they feel are necessary onto the approval, so the experts can work it out. He did not believe they could keep on bringing stuff in and not know where they are, as they have to know they can develop the property or not develop the property and when they are at that point, they can move to the next item, and a determination made as to what the substantive safeguards are which the Council needs to be satisfied that the development will preserve the critical historical feature.

Mr. Broberg advised he had a five page fax letter from Blakely & Associates which he received late yesterday in response to Clarion's Report and he thought it was quite explicit and needed to be read very carefully and requested permission to have it admitted into the record. Attorney Kolins, Attorney Burden and Mrs. Smith all objected. Mr. Heeke felt it was an important document and requested it be read it into the record:

Mr. Stephen Crowell of Blakely Associates read the letter into the record: (Exhibit 7)

Letter from Blakely & Associates dated April 16, 1992 addressed to Eugene Lawrence: "I received a copy of the Clarion memorandum to the Town of Palm Beach dated April 13, 1992 yesterday (April 14) at 4:00 PAM and set about reviewing those areas which pertained to the Mar-a-Lago landscape. I was surprised that, at this late hour, a memorandum of such acrid and caustic character would be generated, particularly in light of the perceived mutual respect and good will built during our attempts to arrive at accommodation and common ground. The degree of arrogance found in the criticism within the memo was as shocking as it is histrionics as in its ignorance of the subject it purports to be objectively reviewing. It is contradictory of its own findings (as outlined in the Clarion Report of August, 1991) wholesaling a firm grasp of the obvious and seeking to use it punitively. I will attempt to answer all the points raised in the new report and hope to inject some common sense into the debate.

The memorandum states that the only documentation used in the Blakely Report was contained in a excerpt copied verbatim from the August 1991 Clarion Report. If Clarion's researchers had investigated, they would have seen the date of the Blakely Report to be June 6, 1991, a full two months before their report saw the light of day. A complete bibliography is listed in the Blakely Report and the fact that limited print material exists on this subject might indicate that we both used some of the same sources, especially as it relates to the landscape. It is doubtful that Clarion had been retained by the Town of Palm Beach when the Blakely report was released, and a less generous person might conclude that Clarion research was copied verbally from Blakely.

PUD App.
Mar-a-Lago
(cont'd)

FUD App.
Mar-a-Lago
(cont'd)

We were retained to provide an inventory of existing plant materials, documenting their locations and indicating species of specimen plants with recommendations for their preservation or relocation, if warranted. Because of our experience of over 60 years in Palm Beach County, a history and background of the estate and its landscape was included. Only later, in subsequent hearings and after the Clarion team became involved, was a preservation plan discussed.

The personal attack in the current memorandum stating that our report had "little basis in fact and was filled with assumptions, personal bias and incorrect conclusions..." stands in contradiction to Clarion's August comments that, "The Blakely report furnished in conjunction with this project was very thorough and accurate in its identification and description of the existing vegetation. With a couple of very minor corrections, it will prove to be a good reference...."

We are further criticized for taking the position that the landscape, landforms and planted areas are not of sufficient quality or in a suitable condition to be considered of significant historical importance. The Clarion August report is contradictory to this position, stating that "unfortunately, time, wars, economic conditions, ownership transitions, Mother Nature, and benign neglect have all taken their toll on the cultured landscape. Plantings that would have been of significance have been removed, altered or simply perished and little, if any of the original plantings remain today." Are we to conclude from Clarion's own assessment that a vital piece of landscape architecture exists as an important historic relic today?

We also discussed that the landscape design was not considered as a major component of the property's development. Referring to this statement, Clarion omitted the next sentence which says, "Certainly no firm or individual of the celebrity of importance of Joseph Urban or Wyeth and King were retained to prepare a master landscape plan consistent with an estate of this importance." Is this arguable? Mrs. Post had available to her several purely landscape architectural firms of great reputation. Among them were the Olmstead Brothers, descendants of Frederick Law Olmstead, the designer of Central Park and the man who is known as the Father of Landscape Architecture. The firm was working here during Mrs. Post's time and designed Kelsey City which is now Lake Park. This issue interfaces with another criticism made by Clarion that the fact that landscape architecture was not a regulated profession at the time and has absolutely no bearing on this discussion. This is, in fact, critical to the discussion and understanding of how work was accomplished and what kind of acceptance landscape architects enjoyed. Given that even today, the profession is misunderstood by a large segment of our society, imagine a time when a new professional endeavor was seeking respect and recognition.

During the formulation of our report, I interviewed Mr. Richard Webel, F.A.S.L.A., a man known to many in New York, Hobe Sound and Palm Beach for his contributions and excellence in design. He is indeed a man of immense reputation. Mr. Webel is still practicing today well into his eighties and provided accounts of Louis and Valentine, the nursery selected for plant installation at Mar-a-Lago. First, Lewis and Valentine was a nursery. Our private library contains one of their employees' handbooks from the period in question. It provided services like most large nurseries of the time did with plans drawn as part of the merchandising of materials. As far as it is known, no plans exist today of the original Mar-a-Lago landscape. Mr. Webel was a young landscape architect then, having graduated from Harvard University and working in New York City. He recalls the planning and undertaking of Mar-a-Lago and the selection of Lewis and Valentine for landscape work. He made it quite clear that in the academically trained community of legitimate practitioners, these draftsmen were not considered landscape architects. This follows a general remembrance on the part of many that at Harvard in the early years (Harvard initiated the first course and programs in landscape architecture around the turn of the century), both the architectural faculty and some student factions felt it a slight to architects to use the term "landscape architect" and that really all that was required was a good gardener to carry out the wishes of the architect. This certainly seems consistent with the personality of such as >Joseph Urban, who considered himself a great garden designer. Certainly, the importance attached to the landscape of other great estate properties (i.e.: The Biltmore in Asheville, N.C.) was absent from Mar-a-Lago. This is incontrovertible. Neither is the fact that there is no architecture of the land in any formal sense. This is an assemblage of sprawling proportions which grew over time as Mrs. Post acquired plants that she liked and found places for, outbuildings needed buffering or the elements forced new plant materials to be found for experimentation. My grandfather, S. J. Blakely, had been supplying much of the landscape material being used on estates during the 1920's in Palm Beach and our own records indicate large train carloads of cactus were brought in to be used in landscape planting. Cactuses were popular for seaside villas and many appear in photos of Mizner's early works. Cactus was also used at Mar-a-Lago. Experience showed it to be unsuitable for ocean use due to the high humidity and the hurricanes of the late 1920's finished off the rest. The point here is that everyone experimented. Native plants, in general, were hard to relocate and grew too slowly to propagate into large trees economically.

The response of Clarion to my comment on the current changes in elevation and sculpting of the land as clumsy as it relates to the natural ground forms brought an uncharacteristically weak reply from Clarion that "absent the sophisticated earth moving capabilities of the present day, extensive grading operations of this era were major undertakings." Lancelot Capability Brown, a landscape architect of the Mid-Eighteenth Century, moved large amounts of fill in creating much of the look in the English landscape today, without benefit of the technology of the 20's. Does Clarion mean the forms are not clumsy or, if they are, that they should be left as historical evidence of lack of mechanical capability?

A thorough review of the estate's landscape was performed. No amount of pedagogical babble will change the obvious. The landscape is highly diverse. Some specimen forms are valuable and should be preserved. Others are easy to repair and relocate. These were singled out in the report of June, 1991. No landscape architect would wish to destroy a site, its resources or its identifying characteristics. We wish to see reasonable use of the property consistent with sound principles of design and resource allocation.

We were roundly criticized for giving our professional opinions yet were retained for that specific purpose. Clarion notwithstanding, our opinion is based upon long years of experience in creating estate landscape in Palm Beach, Gulfstream and Jupiter Island. Over a period of time dating back to 1922, the Blakelys (Samuel, James, Jeffrey) have designed environments for estate properties including Mrs. Horace Dodge, Mr. Averill Harriman, Mrs. Enid Haupt, Montsorel (for Mrs. Robert R. Young), Laddie Sanford, the Wrightsman Estate, the Palm Beach Country Club, the Biltmore, the John Mashek Estate as well as working directly with Maurice Fatio, Addison Mizner, John Volk and other clients and projects too numerous to include here.

My original assertion that the estate as presently constituted, is Mar-a-Lago still stands. The residence itself is wonderful. The grounds, for all of the reasons outlined previously, are not and nothing will change that outside of a major plan for updating the landscape as necessary.

Nowhere in this discussion has the use of water been introduced. With water restrictions and conservation as visible and necessary as it has become, a property with such a vast amount of turf and irrigable surface ash become problematic. Such a private property, which utilizes a resource in large amounts, does not, by its very existence, exempt itself from public responsibility.

In conclusion, Mar-a-Lago is no different in its plant material palette than most other important properties on any given street in Palm Beach. If Mrs. Post (who loved to tinker in her garden) were alive today, no one would question her right to initiate modifications to the landscape or start over if she felt it necessary.

How much regulation or oversight is necessary and how much is simply pedantic tedium? Clarion, in its memorandum, now wants a history of lighting with respect to the entire estate! Exterior lighting was in its infancy in 1928. What possible relevance does this have to current methods and equipment except by limiting the spectrum as recommended in our report?

This process needs to come to an orderly and enlightened conclusion with balance and reason among all parties intent on reaching a fair and equitable solution."

Jeff Blakely, ASLA, F. Reg. Landscape Architect No. 825

Mr. Broberg recalled the question asked by Mrs. Douthit of Mr. Chopin which was who was going to take care of the roadway and the view easements? Mrs. Douthit stated it was a bit more than that as she also wanted to know about the Homeowners' Association. Mr. Broberg reported in the document submitted, specifically with regards to the landscape maintenance, there is Section VI which states: "The Association for the private roads, beach easement and open view vista, shall at all times, at the Association's expense, maintain the private road, beach access and open view vistas in good condition and repair....and should include the maintenance of these items....and on landscape maintenance....the Association is responsible only for that landscaping that is in the ocean vista easement. Each owner shall maintain all landscaping located in his or her lot or that landscaping adjacent to each residence which is not included in the Open Vista." He advised in that same article it also address that in the event the owner fails to observe and perform the obligations imposed upon the owner by the terms and provisions of this Declaration, with regards to maintenance repair or replacement of his lot, and improvements thereon, or causes any damage to any building and it goes on to set out the manner to which the owner would have to rectify these situations.

Mr. Broberg advised Section 7 speaks to assessments and there is a provision in this document which allocates assessments and this would be an annual assessment and a provision for placing a lien on the property owner's property if it isn't paid.

Mr. Broberg heard the question as to what would happen if the properties are not sold and the developer runs out of funds, who would pay and he advised the developer is responsible for these items not owned by private owners. He did not believe anyone could complain about how the property is being maintained by the applicant to date and he will continue to maintain the property as long as he is control and when he is a member of the Homeowners' Association, he will carry his fair burden.

Attorney Broberg advised he heard Attorney Burden's concern about the noise, etc. and pointed out there has been construction on an adjoining property and it has been going on for many months and asked if her client or she on behalf of her client had contacted the Code Enforcement Board about noise, odor and glare on that particular construction site? Ms. Burden responded that particular property is 750' from her client's property and she has not made complaints.

Attorney Broberg announced he has read all of the reports and he believed the Council would allow the Council to grant tentative approval, subject to whatever provisions the Council feels is substantive to protect its concerns. He has read the Clarion Report and their concerns about the Preservation Plan and he has not read anywhere that the Preservation Plan must exist prior to the granting of the tentative approval. He thought tentative approval was necessary before the applicant can go forward and develop the property. He stated the property can be or cannot be developed and the Council has to make that decision.

Mr. Heeke announced they are now in Executive Session. Mayor Marix asked if they could receive the comments of Mr. Decker on the letter from Blakely.

Mr. Decker advised the principal landscape architect throughout this process is Glen Herbert and he is not here today. Mayor Marix asked if it was possible for Mr. Herbert to be called and come to this meeting? Ms. Inghram advised she and Mr. Decker are in a position to provide some response as they have all worked closely together. Mr. Decker stated they do appreciate the Blakely letter as an important inventory document as they have investigated and inventoried what is presently at Mar-a-Lago in terms of vegetation. He advised an inventory of what condition exists is not a statement of the critical historic features and is not a position of advocacy with respect to what has to be provided in terms of preservation. He felt it was a good report and they don't intend to attack Mr. Blakely but it is not an advocacy of positions of historic features. He thought additionally, in their working sessions together, they have emphasized working as a team and the important issue of additional research and they have identified a number of potential sources for this research, and would continue to encourage that the additional research be taken.

He advised they would like to make a distinction between the value of the design that Mr. Blakely has interpreted and may reasonably criticize them but the design value and historical value as there is sufficient evidence uncovered in their examining of this issue to believe that there are plenty of occasions in which Mrs. Post personally directed. He believed the clumsiness or design characteristics of these elements of the historic resource do not compromised their historic character and that is an extremely critical difference to make as something may be identified as a critical historic feature, but it is historic because of who created it, how it was created and the extent to which it represents an important expression of characteristics and approaches to this question relate to the time it was made. He recalled the main house has been criticized from a design point of view and it has been called florid, over-exuberant, but those criticisms are distinct from the historic merit and value of either the building or the grounds. He believed that

FUD App.
Mar-a-Lago
(cont'd)

following an inventory of the vegetation and principal landscaping, a position of advocacy must be taken with respect to what critical historic features shall be preserved, followed by a discussion on guidelines by which impact on those critical features will be mitigated.

Mayor Marix asked if they were saying that when this house and property was landmarked it was done so because it was considered worthy of landmarking and not whether it was fashionable, pretty, updated, formal, Versailles or whatever and now the problem is that if it is going to be altered in any way, it can be decided on that basis?

Mr. Decker stated that was correct and whatever alterations that would take place, would not negatively impact the critical historic features of either the house or the grounds. He stated this is considered standard procedure in preservation and these are the steps which have been discussed today and they are standard procedures with respect to historic landmarks and the preservation of same.

Mrs. Smith speaking for the Garden Club stated their concern is for the designated historic landscaping which is an integral part of the property and it ties the site and the mansion together. She registered her objection to this letter as it was received yesterday at 5:22 PM, so it should have been included in the supplemental information which was received earlier today. She finds nothing in the letter which changes the objection of the Garden Club to the Blakely report filed on 6-6-91 or 9-26-91. She agreed the vegetation is important and should be saved and the tree canopy, historic trees, vegetation, plantings inside and outside of the wall, all have been designated and in the letter just read it states they have recommendations for the preservation or relocation of specimen plants. She stated they are not talking only of specimen plantings but landmarked architecture and in that vein they would have liked to see an inventory of all the planting on Mar-a-Lago.

President Heeke announced there was a representative here today making a presentation on behalf of a client and President Heeke's son is an associate lawyer in that law firm and this concerned him that this might be a conflict of interest. He has conferred with the Town Attorney who called the Commission on Ethics and asked for an opinion with respect to this and there may be a conflict. Atty. Randolph advised this could be questionable under Fl. Statute 112.3143 which states "No municipal public official shall vote in his official capacity on any measure which will inure to his special private gain, which he knows will inure to the special private gain of any principle by whom he is retained.....or which he knows will inure to the special private gain of a relative or business associate of the public officer." He has related the facts to the Ethics Commission and although a formal opinion could not be granted as to whether that is a conflict, as there are many things that have to be taken into account, it was determined that the better course of action would be for Mr. Heeke to declare the conflict and abstain from voting on the matter.

Mrs. Wiener did not believe this was new information and asked for a further explanation as to how they got to this point asking if this was a new position Mr. Heeke's son was in? Mr. Heeke responded it was not. Mrs. Wiener asked why are they bringing this up now after fourteen months as she viewed this as jeopardizing this whole situation. Mr. Heeke did not believe it was jeopardizing the whole situation as he hasn't voted on any matter at this point, but he was concerned that he did not vote on this matter without making sure there absolutely was no conflict involved. He did not think this inured to the benefit of his son, as he is an associate. Mrs. Wiener did not think it did either. Mr. Heeke felt he had to disclose this as Ms. Burden is representing through a guardianship proceeding a neighboring property owner. Ms. Burden addressed the Council noting she thought there was no problem with this and there was, she believed, a Supreme Court ruling on a similar issue, and through the Municipal Attorney's Association, she believed there was no problem here and this is all the information she knew about this. She thought it may be a problem if Mr. Heeke's son was here today but they are both associates with the firm and it is a standard hourly rate on a guardianship procedure and it was her legal opinion that it would not fall into the Statute quoted.

Mr. Randolph agreed there may or may not be a conflict as he has not had an opportunity to research the Supreme Court opinion, however, he heard of this just this afternoon when he was asked if it would be a conflict and he called the Commission on Ethics and it is still not clear if it is or is not, however on the basis of the Statute, an informal opinion was given that perhaps the best position to take would be to announce the situation as it exists and abstain from voting.

Ms. Burden advised this is not new information as she has been participating in this matter for almost a year. Mrs. Wiener recalled there have been votes in the past. Mayor Marix recalled the votes were to return it to some Commission. Mr. Heeke stated he was very sensitive to the fact there may be a conflict of interest and that is why he raised the question with the Town Attorney. Mr. Weinberg suggested the meeting be adjourned until the Supreme Court ruling can be researched or a ruling by the Commission on Ethics is received.

Mr. Heeke believed the proceedings can continue as he will not vote on the issue and he will take no part in the discussion but will continue to chair the meeting. Mrs. Wiener stated she had a problem with that as in the past when the President had a conflict, he usually left the room and here we have highly sensitive issue which has been chaired by Mr. Heeke. She personally felt there was no conflict here but if Mr. Heeke perceived that there might be, this should be treated the same way as it has in the past. Mrs. Rose Harwitz asked to be heard. Mr. Heeke stated he didn't believe this item was open for public discussion. Mrs. Rose Harwitz felt there was a legal question involved and asked if because of everything that has gone on and if Mr. Heeke were to vote on this issue, there could be a question raised later on by the opposing side. Mr. Heeke stated that is the whole problem.

President Heeke declared since there has been an informal opinion from the Commission on Ethics that there may be a conflict, he will turn the gavel over to President Pro Tem Weinberg, so as not to prejudice the right of any party. He stated the Town Attorney suggested that perhaps we should wait until we had a formal opinion from the Commission on Ethics, but he believed that would take some time to get and he believed this process needed to proceed, unhampered, and he wished to exercise the option that this may well be a conflict and he will so declare it. He stated this is an ultra-conservative position and no bias or prejudice whatsoever and as Mrs. Wiener has pointed out in the past when he had declared a conflict, he has absented himself from the proceedings and he sees no reason to depart from that procedure.

Mayor Marx asked Mr. Heeke and she wanted him to know she is not trying to be difficult but wished to know if he considered this a zoning matter as if it is, there have to be four people voting for it and asked if she could vote on this? Mr. Randolph advised this is an application for a Special Exception and she could not vote.

Mr. Ilyinsky believed there was no point in reviewing everything that happened today and he has enormous sympathy to all sorts of factors in this complicated matter and there are so many things to sum up and so many ways to express them, so he wished to get to the heart of the matter. He stated he did not believe the applicant had sufficiently addressed the many delicate balances between development and the preservation of this recognized historical landmark and for that reason, he would move the application be denied. Mr. Heeke left the meeting at 4:59 PM.

Mr. Ilyinsky withdrew his motion.

Mr. Randolph reviewed the procedure as set out in Section 7.33 and 6.40 and 9.60, reading portions of those sections, pointing out their final action shall include not only conclusions but finding of fact.

Mrs. Douthit commented that it will take thirty days to properly word the motion to include all of those items. Mr. Ilyinsky did not see how all of these questions could be answered. Mayor Marx thought there were some items which could be addressed as each item was heavily discussed and with the help of the Council and the Town Attorney, if a lot of thought were given, one could address each one and if they reviewed them thoroughly, they could find reasons for or against the seven things read by the Town Attorney. Mr. Randolph explained they have sixty days to make a decision in writing by Resolution, and if they wish to adjourn this hearing and come back and discuss all that has been presented, or they can go ahead and make findings in regard to each of these items, and ask that the findings be incorporated into a Resolution and that will be brought back at a subsequent meeting. He advised it does have to be done ultimately in writing by way of a Resolution, but in preparation of that Resolution, he would need guidance as to the findings. Mr. Ilyinsky asked what happens if they disagree on some of the findings? Mayor Marx recalled Mr. Ilyinsky was trying to make the motion and his immediate finding was in spite of all of the pros and cons, he did not feel there was enough detail in the Plan and she thought if they went over each item with him, there would be enough information to draft the necessary resolution.

Mr. Randolph believed there should be discussion to make the determinations on the findings and then the determination can be made as to whether or not approval should be granted or denied. Mrs. Wiener pointed out they have been sitting here all day listening to the pros and cons and she has questions she would like to propose and they may not necessarily change her mind, but then again they may. She asked the Clarion representatives if there was anyone capable of preparing a Preservation Plan? Mr. Decker responded affirmatively pointing out that in August of 1991, for the Landmarks Preservation Commission, they were asked to prepare a report and in that report, they called for a Preservation Plan. He advised the applicant filed a PUD-4 application September of 1991 and a section in that application was authored by John Bell of the firm of Byer, Blinder, Bell. He advised Mr. Bell is a very respected preservation architect and in the applicant's PUD-4 application, they too called for the development of a Preservation Plan. He recalled in November 1991, he and others met with the representatives of the applicant and had an extremely productive day talking about the contents of a Preservation Plan and what it needed to do - they walked the site extensively and began to understand certain aspects of what needed to be accounted for. He recalled they talked about the detail by which the facts needed to be represented and accounted for.

He recalled on the 22nd of November, they received a letter from Mr. Lawrence which had an attachment from Mr. Bell, which was quoted in their report to the Council and it stated: "It was agreed the technical tasks would be substantially completed in order to submit a Preservation Plan in draft format for review by all parties involved."

He advised it was possible to create a Preservation Plan which adequately protects the historic resources of Mar-a-Lago and he thought they were making progress towards the creation of such a Plan and one of the reasons why his report suggests frustration is because they were making progress but when the Preservation Plan was made available to them, all of the tasks that he thought were to be considered and accounted for were not considered and accounted for.

Mrs. Wiener asked what she was really getting at was it possible for a layman who is not a person involved with historical work to prepare a complete Plan of this nature? Mr. Decker responded if a layman were to create such a Plan, it would require study and he believed their report to the Town Council described four tasks which needed to be completed. Mrs. Wiener asked what would be the most feasible correct way of getting a Preservation Plan - to whom would you go to - would you give it to the developer - could she do it - could anyone in this room do it out of good will or does it require a background in the field of historic preservation? Ms. Ingraham responded their report submitted in August provided the beginnings of an outline and criteria for what constitutes a Preservation Plan and that outline was an outgrowth of Mr. Decker's and her background in historic preservation. She stated Mr. Bell also possesses the professional capability of preparing a Preservation Plan which would adequately provide for the protection of Mar-a-Lago.

Mrs. Wiener asked if the criteria which was provided to the applicant - could the applicant, without having a thorough schooling in historical preservation, could he or should he have attempted to do it or should they have hired someone to do it? Mr. Decker responded the team that the applicant has created, the representatives of the applicant with whom they have met are capable, in their opinion, of creating a Preservation Plan. Mr. Weinberg asked what happened to that agreed upon Plan? Mr. Decker responded he did not know.

Mrs. Wiener asked what has their experience been in matters of this nature - have the people they were dealing with able to come up with a Plan or did they have to send them back, four, five or seven times to come up with the right answers? Mr. Decker responded with respect to their experience in the past and with their experience in this matter, they were making good progress and believed that after their discussion in August, the PUD application was filed in September, they met with them in November and thought they were making good progress as it was clear what the elements of the Plan needed to be, and here we are in April and all of those things which were discussed and agreed upon are not present and he can't account for the reason why that is so. Mrs. Wiener asked if this was typical in these kinds of situation or is out of line? Ms. Ingraham was not sure she was grasping the question. Mrs. Wiener continued commenting she assumed the Clarion people have been involved in these kinds of things before, and in the normal course of events, do they find they have to have three or four attempts the applicant has addressed all of

PUD App.
Mar-a-Lago
(cont'd)

FUD App.
Mar-a-Lago
(cont'd)

Verbatim
Transcript

the issues, or do they find it takes longer? Ms. Ingrham responded it takes fewer than three or four times. Mr. Decker commented they should be able to get it right on the first or second try. Mrs. Wiener asked if at this stage, what would the recommendation be of the Clarion representatives asking if there is anything here to salvage? Mr. Decker responded they are frustrated and the reason is because there are sufficient materials absent to make it difficult to evaluate whether or not the Plan can be considered to be forthcoming. He thought if tentative approval was offered with conditions with respect to the development of a Preservation Plan, he believed they should look forward to the completion of that Plan. He felt it left the matter rather open-ended and if they approve it with the proviso an acceptable Plan be submitted, how would they define the term "acceptable"? He thought it was difficult to speculate on this point based on the evidence which is before the Council as to whether or not an adequate Plan is creatable under the circumstances. He did not believe the Council had enough information in front of them with respect to the provisions for the preservation of the historic resource to make a judgment about the adequacy of those provisions.

(The following is a verbatim transcript of the remainder of the meeting).

COUNCILWOMAN NANCY S. DOUTHIT: I, with Mr. Randolph's help would be willing to hopefully make a proper motion and start off by generally saying that the applicant planned to deal with the historic preservation of the Mar-a-Lago structures and grounds is sufficiently inadequate to safely protect the interests of the Town. I'm going to continue, but I therefore move to deny this particular PUD Number 4. On Item No. One, I have stated that their Plan is inadequate and that many things are mentioned, but there are no details.

ATTORNEY JOHN C. RANDOLPH: You're on Item One?

COUNCILWOMAN DOUTHIT: On One.

ATTORNEY RANDOLPH: Alright.

COUNCILWOMAN DOUTHIT: Now, Item Two, the Plan departs and here we lack details such as the setbacks, actual locations, this - we have our zones and we have been told that it is perfectly clear when you look at the topography where the house has to go, but I find this vague. #3, Open Space - that's all fine - but there are no details - there's been talk of the Home Association and that all sounds lovely, well and good and that it will be maintained but it lacks details and the Home Association lacks its creation - its preservation - all of this - lack details. And number four, the physical design, plan, manner, etc. provision - Public Services - we've been talking about somewhat narrow roads for cosmetic benefit. And that sounds great but we don't have any details about Public Safety vehicles and their turnarounds. We have seen where they would like to have the road - it isn't even settled as to where the entrances/exits are in this and basically, I would like to see two with no north/south access road - but that's a personal thing. But it's a Public Safety. Now, number five is relationship beneficial as proposed plan PUD neighborhood - well, it's clear as the nose on your face as the Plan stands now, the citizens of the northerly street, Woodbridge, bear the full burden of every ounce of construction - no road can be built - no nothing can be done - none of these houses as the present plan exists, can be constructed without disturbing the citizens of Woodbridge who are within spitting distance away. Noise, my God, concrete mixers are notorious. Dirt - etc. Pollution. Let's see, now, I had here - am I still on five? Maybe that was six. Five. I also have parking. Development over a period of years. In any case, I think I got these slightly....

MR. RANDOLPH: You were on five. And six probably is not applicable because I don't think it proposes development over a period of years, unless....

MRS. DOUTHIT: Well, you don't know. These lots have to be sold. I don't know for anybody whether it's better to just live with sheer hell for two years or dribble it out and have a lesser over a longer period of time. But, that's just a question and nobody can answer it, I don't believe. Historic and architectural significance. We are on seven now, I think.

MR. RANDOLPH: Correct.

MRS. DOUTHIT: Yeah. Historical and architectural significance of any structure - well, we are back to the placement of the buildings and the possible - there've been no statistics on the vegetation - trees - the clumps of tropical planting and location of the houses and road placements or the degradation of the vegetation, because clearly this will not be an improvement over what is existing. So what is going to be - in particular - what will be destroyed, relocated, etc. And this has all been, again, pretty vague.

MR. RANDOLPH: You are concerned with the adequacy of the provisions for the preservation - on number seven?

MRS. DOUTHIT: With the --- Yes. The -with their Plan - it is all too vague and on the these seven - a few particular places, there are many others, where this inadequate planting shows up.

MR. RANDOLPH: Is your concern as to the structure and the premises - when you deal with the adequacy of the provisions for preservation?

MRS. DOUTHIT: Yes. Well, certainly, I would like to see something constructive done for the Preservation of the major Mar-a-Lago residence. Hopefully in perpetuity. Because that building can't be allowed to crumble while this rest is going on around it. Something has to be done for the building. And I think I addressed the open spaces - the maintenance of the vistas - this. The Homeowner's Association and a lack of particulars there. But it's for the major structure and now there's been no mention of the existing other structures on the property. Mr. Griffin's house - which has been there forever and all. There are other important subsidiary structures on the property and there's been nothing in particular mentioned of those.

MR. RANDOLPH: I think if you are going to make any findings in regard to the adequacy of the provisions for the preservation of the structure and/or the premises, that you should make direct reference to the report from the Clarion Group, who are your consultants.

MRS. DOUTHIT: That I am perfectly happy to do - is describe in the Clarion Report - who are the experts hired by the Town - and they are the experts, so I am willing to go along....

MR. RANDOLPH: That would include their original report to the Town as well as the most recent report?

MRS. DOUTHIT: Yes. Yes. Because the original certainly said that development quote was totally possible and I agree that to a degree, it is. I personally feel it is and in this day and age. I just do not think - that that's why I worded in particular in the very beginning - this particular PUD-4. I wasn't saying any - I was saying this particular one - ah, I feel is inadequate - or the Plan is inadequate.

MR. RANDOLPH: Have you made a - did you make a motion? I'm sorry, Mr. Chairman, I am asking you....

MRS. DOUTHIT: Yes. I made a simple original motion with the points to - ah - these are my points to back it up.

PRESIDENT PRO TEM WEINBERG: The points are seven in number?

MRS. DOUTHIT: Yes. Myorig....would you like me to repeat these originals?

MR. RANDOLPH: Um. No. I think you preceded all of your comments by making a motion that the PUD application not be granted - be denied tentative approval and then you went through items one through seven, with some of your comments about one through seven.

MRS. DOUTHIT: Yes.

MR. RANDOLPH: Mr. Chairman, it's up to you to....

MR. WEINBERG: All I can ask for at this point - is there a second?

MR. ILVINSKY: I'll second, Mr. Chairman.

MAYOR MARIX: Now, it is open for discussion.

MR. RANDOLPH: I would suggest that there are some points of 6.40 that I would like to call your attention to - which is the Special Exception section of your Code. I think in discussing the findings, under the seven items that you addressed, that you should give consideration to how those relate to 6.40 and quite frankly, it appears to me that the applicable provision of 6.40 which ought to be addressed in considering this are perhaps Items b, c, and d thereof.

MR. ILVINSKY: We don't have those in front of us.

MR. RANDOLPH: 6.40 under Special Exception Uses, (b) indicates that the Use is so designed, located and proposed to be operated that the public health, safety, welfare and morals will be protected. (c) - that the use will not cause substantial injury to the value of other property in the neighborhood where this is to be located.

MRS. DOUTHIT: (C) is a distinct threat

MR. RANDOLPH: (D) that the Use will be compatible with adjoining development and the intended purpose of the District in which it is to be located. There are others that are listed, but those are looking directly under Section 6.40 are perhaps items that you would like to address in making your final Determination and then under 9.60 of Site Plan Review, there's an Item (i) which states - 9.60 is Site Plan Review and it states that you should make findings in regard to the Site Plan Review as to how the proposal will or will not adversely affect the public interest and there's an Item (i) which says you can apply such other items as exists within the Zoning Code. Of course, those would include Items One through Seven which you have now addressed. I think in order for the staff in preparation of any kind of a Resolution either granting approval - granting approval with conditions - or denying tentative approval of the PUD would have to have a vote or a discussion on all of the items that you've just addressed, Mrs. Douthit. I mean, if it can be done in one vote and everybody can vote comfortably on what has been stated, you can do that, but another way to address the findings is to deal with them separately and then to have a vote on each as to the findings to make sure - to see whether or not everyone is in conformance in regard to those.

MAYOR MARIX: Mr. Randolph? I can't remember when you have other exceptions like this when a person has made a motion and gets a second. I don't remember each item being voted on separately.

MR. RANDOLPH: Again...you don't....

MAYOR MARIX: Because the thing I can imagine is - everyone agrees on one and three and disagrees on six - and goes against five - it seems to me the motion of one through seven - people agree or do not agree. If they don't - one has to go find another motion.

MR. RANDOLPH: You can do that. I'd ask you to incorporate the comments in regard to the items that I subsequently addressed.

MAYOR MARIX: Like that (i) the Site Plan Review - well, this is - I think is very difficult to conform to that because I think part of what Mrs. Douthit was saying was the matter - it's so vague - you know, a lot of it is difficult to say what's wrong - maybe nothing's wrong but it's so vague - how can you tell? I don't know how to answer that in those three paragraphs - I don't have a copy of it here.

MR. RANDOLPH: Well again, under 6.40, Items (b) (c) and (d) are as follows - that the use is so designed, located and proposed to be operated that the public health, safety, welfare and morals will be protected.

MAYOR MARIX: Well.....

MRS. DOUTHIT: Well, I don't think they are going to build a bordello.

MAYOR MARIX: I think our problem is - it's so vague that - she's hoping it wouldn't happen but how can you tell. So how do you address that problem?

MR. RANDOLPH: Well, the way I would address it for the welfare...

COUNCILWOMAN HERKINE WIENER: Because we are not permitted to build bordellos in this Town.

MR. RANDOLPH: ...The way I would look at that statement....

MRS. WIENER: Sorry about that....

MR. RANDOLPH: ...The way I would look at that statement, I would take into consideration all of the evidence that has been presented, including the Plan that has been presented by your consultants, and make a determination as to whether this Plan protects the welfare of the residents of the Town, and if you find that on the basis of the information that's been presented to you that it does not protect the welfare, because it is not specific enough to allow you to feel that the historic integrity is being protected, that you could make such a finding in regard to that item.

MRS. DOUTHIT: I believe that that indeed is true and I think that was stated in the earlier part of the motion - that the historic preservation, structures and grounds are not inadequate to protect the interest the interest of the Town, therefore tax payers, because of the vague lack of detail.

MR. RANDOLPH: Alright - so that you would - in addressing 6.40 (B) also make that finding and I suppose your further comments - your previous comments would also relate to Item (C) that the use will not cause substantial injury to the value of other property in the neighborhood where located?

MRS. DOUTHIT: The - I'm of mixed emotions there - because as the Plan exists at the moment, the burden to the residents of Woodbridge Road - if supposing like Mr. Broberg has brought up - the house that is being remodeled on the corner - now, no-one in their - they'll probably put out a For Sale sign - now no-one in their right mind is going to buy that house if they have several years of construction - and big heavy construction going on - as I said before - in spitting distance away. It's a matter of a few feet. Twenty - they've moved the road - that gives ten - but alright their ten where there were none before.

MR. RANDOLPH: The other item I addressed....

MRS. DOUTHIT: But then that's going to involve variances with Mr. Griffin's house that has not as yet been brought up.

MR. RANDOLPH: The other item addressed under 6.40 and another item that was addressed is that the use will be compatible with adjoining development and the intended purpose of the District in which it is to be located.

MRS. DOUTHIT: That I do not dispute. The end result would probably - I don't know how it will bear sight-line wise in this - with Mar-a-Lago - cause I've always been concerned on the south side with the most easterly and the most westerly lots. The most westerly lot of the - the most westerly of those four - I think it's four, isn't it - on the south side - well in any case, the most westerly I see as a threat view-wise from Mar-a-Lago because of height, land, all of this and I see it as a threat to Mar-a-Lago in one's approach to the east.

MR. RANDOLPH: So, on the basis of the information that's been presented, you cannot make a finding that it will be compatible with adjoining development.

MRS. DOUTHIT: Those two in particular I have always been concerned about - yes. The easterly one - there are lots of Australian Pines all of this on that corner and I'm afraid from the southbound direction on Ocean Boulevard that easterly one might - and I know that it's a one story house - and I - but I have no idea in relationship to Mar-a-Lago - is that going to look that "what's that out there?" - you know - what's to become of the pines with the construction - do they come down? And presumably, then there would be huge arguments because they're not native green. And what goes up in their place and all of this is vague.

MR. RANDOLPH: Mr. Chairman?

MR. WEINBERG: I'm at a loss - I am at a loss as to how we can vote on this - one by one? And what happens - altogether? All seven at one time?

MAYOR MARIX: He said we could vote all together - as a group.

MR. ILYINSKY: Didn't Mrs. Douthit just make a motion?

MRS. DOUTHIT: I made one a bit ago - but I was going over the items that....

MR. ILYINSKY: I second.

MR. RANDOLPH: The only other item I addressed was the Site Plan Review - Item (I) which indicated you may impose under Item (I) such other standards as may be imposed under the Zoning regulations for the particular activity involved. In this instance, it was the PUD-4 and the zoning regulations that are involved are those relating to historic preservation and others that are set forth in the seven items that you previously addressed.

MRS. DOUTHIT: But in particular, I would like to see something in particular done - I'm repeating myself - for the mansion itself. And then the - this - this and this.

MR. RANDOLPH: Well staff is going to have to prepare in conjunction with whatever you decide today - a Resolution which will incorporate your findings. Not just discussions, but findings, so I'd like to perhaps - if I could - go through Items 1 through 7 and ask what - if I'm clear - in your findings in regards to these things. You correct me if I'm wrong. Under Item 1 - in what respect is the Plan consistent with the purpose of a Planned Unit Development - it's my understanding that you determined that the Plan is not consistent with the PUD-4 - that it does not meet the intent of preserving the structures or the premises and you would reference the Clarion report in regard to that Item One in

MRS. DOUTHIT: ...Yes...

MR. RANDOLPH: ...which they state it's deficient in the manner in which it provides for the adequacy for the preservation of the property?

MRS. DOUTHIT: Yes, indeed - that is....

MR. RANDOLPH: Item 2 - the extent to which the Plan departs from Zoning and Subdivision regulations - you have indicated that the Plan is deficient in the advice of the extent to which it parts from those Zoning and Subdivision requirements - I'd like to point out.....

MRS. DOUTHIT: Well, yes, this is - there's no things like setbacks - I mean, they're all mentioned - yes - but there are no feet or inches or really where - where's these going to happen - and from where - because the Site Plan has the zones but there's no spot where the house goes.

MR. RANDOLPH: Alright - then, is that important to you in determining how the - the structure and the premises are going to be preserved architecturally and historically?

MRS. DOUTHIT: Absolutely.

MR. RANDOLPH: Alright.

MRS. DOUTHIT: I'm talking the new - but also the old.

MR. RANDOLPH: Item 3 - is the purpose location and amount of common open space in the Planned Unit Development the reliability of the proposals for maintenance and conservation of the common open space and the adequacy or inadequacy of the amount and purpose of the Common Open Space as related to the proposed density and type of development? Am I correct in reading your comments that you are not confident that - of the reliability of the proposals for maintenance and conservation - and would those also be based upon the information you heard from the Clarion Report.

MRS. DOUTHIT: Well, in the Clarion Report - yes - but also the Homeowner's Association has been spoken of but there've been no really hard core details.

MR. RANDOLPH: In regard to Item 4, the physical design of the Plan and the manner in which the design does or does not make adequate provision for public services - is that a concern?

MRS. DOUTHIT: That was a concern to me on the grounds that there's been talk for this, as I've said for the sake of beauty - the road has been narrowed from its regular - what is it - twenty-four to eighteen - and this I am in total sympathy with because none would look even better - but is this adequate from a public safety standpoint - for our assorted emergency vehicles - the fire engines are of rather colossal proportion. Also, we have mentioned before and it'll come up again - how does this go with extra guest parking and this sort of thing.....

MAYOR MARIX: That's something I....

MRS. DOUTHIT: Yes, I know.

MR. RANDOLPH: What I am trying to do...

MRS. DOUTHIT: ...But it exists in both places....

MR. RANDOLPH: ...because I've got to prepare findings is rather to have a discussion to determine what the findings are that are going to be incorporated in the motion. Item 5 - the relationship beneficial or adverse of the proposed Planned Unit Development to the neighborhood in which it is proposed to be established - I think I understand your comments in regard to that particular item. I think that Item 6 may or may not be applicable - I don't know - quite frankly whether the plan is proposed for development over a period of years - I'm not sure that's been addressed and finally, Item 7 - the historical or architectural significance of any structure and/or premises and the adequacy of provisions for its preservation. Now I understand that your concern that there have not been adequate provisions made for the preservation of the structure and/or the premises and you referenced the Clarion - both Clarion Reports in regard to that item.

MRS. DOUTHIT: That indeed I did.

MR. RANDOLPH: And that finally you've addressed under 6.40, Items b, c, and d and you've indicated under 9.60, I presume that you make a finding that the proposal will adversely affect the public interest because these seven items have not been met to your satisfaction. And you....

MRS. DOUTHIT: ...That is my thinking. Now, do we need to vote on this or do we vote when you've got it written up?

MR. RANDOLPH: Well you can vote on the motion and direct me to prepare it in writing to come back to you for....

MRS. DOUTHIT: Well, I....

MR. ILYNSKY: That's exactly what we're doing.

MR. WEINBERG: It becomes a single motion with seven subdivisions which will be put into a Resolution hereafter.

MAYOR MARIX: Plus those 6.40 things.

MR. WEINBERG: Plus the 6.40.

MAYOR MARIX: Yeah.

MR. WEINBERG: Is that correct?

MR. ILYNSKY: That's right.

MR. WEINBERG: Is there any discussion? Mrs. Wiener?

PUD App.
Mar-a-Lago
(cont'd)
Verbatim
Transcript

MRS. WIENER: Well, I just find it a little disheartening to sit here for....

MR. WEINBERG: Fourteen months?

MRS. WIENER: My God....nine hours and we've heard a lot from a lot of people and this Council has a very very serious weight on its shoulders and there's no discussion - other than that - I have no comment.

MAYOR MARIX: Well, I think it - ah - I will add to a little bit of discussion. I think it is very very important to remember that we are, I think, all trying to do right on both sides and in no way would this particular resolution of this immediate problem would be a permanent one, because it's been clearly identified what - what our problems seem to be on it and that if the Plan were more complete in many ways, it doesn't prohibit in any way it being heard again - the Clarion people said it should be relatively - relatively easy - the Clarion people I'm talking about - you - I believe you said it should be relatively easy should someone wish to come back with a more positive Plan. So it's not like we're slamming some big door - we are just trying to get this particular matter resolved. So that's my comments.

MRS. WIENER: Well, I believe, the last time we met under this set of circumstances, we were trying to save the baby and get rid of the bathwater. I'd like to ask Clarion whether they feel there's been any definitive progress at all since the last time we've sat together on this subject?

MR. ILYINSKY: Can we call the question?

MRS. DOUTHIT: Did he run out?

MR. ILYINSKY: Madam Clerk, I'm going to call the question, if you don't mind.

MRS. WIENER: I'm in the middle of a question to which we are getting an answer.

MR. DECKER: May I then answer your question? Mrs. Wiener, we feel as we have said on several occasions today that we have felt that progress was being made. And we were heartened by that. We have said that we felt that progress was especially made during our November working session here with representatives of the applicant. We felt that a clear understanding was arising with respect to the contents and nature of this document. There was some measure of agreement about very serious issues such as building setbacks and zones and locations. We thought that we ended that working session with an understanding about the required details and findings of fact that were required. The specificity and the kind of prescriptive nature that was required of such a document. I remember that we all agreed that this was the case and I believe that if those working sessions were continued that that progress presumably could continue. And I reiterate again that one of our frustrations has been the extent to which there seems to be a conflict between the understanding we felt we had come to in November and the document that you have asked us to review. So, yes, progress is possible and I think we have made progress. There are substantial resources that the - that are represented on the applicant's team and there's no question that progress could be made. We continue to be mystified by the progress that we've made and the agreement we came to vis a vis this document - but we do have faith that indeed, it can be done. Indeed, it can be done.

MRS. WIENER: Mr. Town Attorney, one question - if it should occur that this PUD be turned down today, at - how long would it be before the applicant could reapply and start from scratch?

MR. RANDOLPH: They could reapply immediately for next Zoning season - I think the deadline - is it September before they can...

MR. ROBERT MOORE: No - they could reapply immediately - the deadline for filing would be in September.

MAYOR MARIX: In other words, it has to be before September.

MR. MOORE: Correct.

MR. RANDOLPH: Let me just say, that the final Resolution of this matter has to be in writing. So a final decision wouldn't be made until we come back to you with the written Resolution which would incorporate the findings and the conclusions that have been discussed here today. At that time, you would vote on the Resolution.

MRS. WIENER: But at this point we have a motion.

MRS. DOUTHIT: Well, I think we need - we had a motion - but did that go by the board. Should it be withdrawn?

MR. RANDOLPH: No, your motion is still on the floor.

MAYOR MARIX: This motion gets voted on. What he was saying is when they've written it up....

MRS. DOUTHIT: ...But then we need another motion - a second motion then after this....

MR. WEINBERG: Well, then let's take one at a time....

MAYOR MARIX: No. No. No.

MR. ILYINSKY: There's been a second motion.

MR. RANDOLPH: I understand that the - what I am trying to state is this. You have made a conclusion and some findings orally.

MRS. DOUTHIT: Yes.

MR. RANDOLPH: I would understand your motion to be that you vote on those findings and conclusions and direct that the staff come back to you with a Resolution incorporating those conclusions and findings and that you will ultimately vote on it. Your vote today will not be a final decision. What you are doing is you're voting to have your findings and conclusions incorporated in a

Resolution and brought back to you as a Council, with an opportunity for you to vote on that written Resolution.

MAYOR MARIK: In other words, they can change their mind if they want - either way.

MR. RANDOLPH: Sure. You have sixty days within which to take a final action in regard to this matter and absent that, the Plan will be approved.

MRS. WIENER: Let me just ask you....

MR. ILVINSKY: ...Can we get this done by tomorrow, Bob?

MRS. WIENER: As far as the Resolution is concerned, would this be another one of these all day events - or is this simply a matter of.....

MR. RANDOLPH: You've had...

MAYOR MARIK: ...It gets read by title.

MR. RANDOLPH: ...what you are required to have and you know, you can receive comment on it, but quite frankly, the public hearing process is over and all you are doing is asking for an administrative task to take place to incorporate what you've done today.

MR. WEINBERG: Mrs. Peters, will you call the roll, please. Until we get a Resolution, we are working on this generic seven point 6.40 situation.

MRS. PETERS: Mrs. Douthit?

MRS. DOUTHIT: Yes.

MRS. PETERS: Mr. Ilvinsky?

MR. ILVINSKY: Yes.

MRS. PETERS: Mrs. Wiener?

MRS. WIENER: I think I read the mood of the Council at this time. And I am very hopeful that we can get back to this and the various problems can be corrected, but I vote Yes.

MRS. PETERS: Mr. Weinberg?

MR. WEINBERG: It seems to me the both sides agree to disagree unless they sit down to work this out cooperatively - I don't see how we can make progress now - but I am hopeful that in the future our current preservation plans will become acceptable. Yes. Now, there's a second one, Mrs. Douthit?

MAYOR MARIK: No.

MRS. DOUTHIT: I think we now need....

MRS. WIENER: No. That's it.

MR. WEINBERG: No. She said....

MAYOR MARIK: A motion to adjourn. The next one will be for the Resolution.

MRS. DOUTHIT: Yes.

MR. RANDOLPH: I thought your motion included my preparing this document.

MRS. DOUTHIT: Yes.

MRS. WIENER: Okay. Move we adjourn, Mr. President.

MR. WEINBERG: The meeting is adjourned.

Meeting was adjourned at 5:55 PM.

Adjournment

Grace T. Peters
Town Clerk

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

LAST NAME—FIRST NAME—MIDDLE NAME <u>HEEKE BERNARD ALLEN</u>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <u>PALM BEACH TOWN COUNCIL</u>	
MAILING ADDRESS <u>124 Seabreeze Avenue</u>		THE BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <u>(CITY)</u> COUNTY OTHER LOCAL AGENCY	
CITY <u>PALM BEACH</u> COUNTY <u>PALM BEACH</u>		NAME OF POLITICAL SUBDIVISION: <u>TOWN OF PALM BEACH</u>	
DATE ON WHICH VOTE OCCURRED <u>April 16, 1992</u>		MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE	

WHO MUST FILE FORM 8B

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

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

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

In either case, you should disclose the conflict:

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

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

APPOINTED OFFICERS:

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

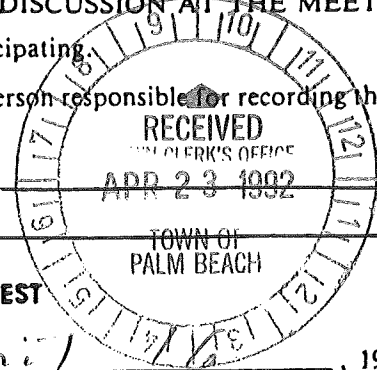
A person holding an appointive local office otherwise may participate in a matter in which he has a conflict of interest, but must disclose the nature of the conflict before making any attempt to influence the decision by oral or written communication, whether made by the officer or at his direction.

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

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

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

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



DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Bernard A. Neeko, hereby disclose that on April 1, 19 92:

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

☐ inured to my special private gain; or

☐ inured to the special gain of _____, by whom I am retained.

(b) The measure before my agency and the nature of my interest in the measure is as follows: My son is an associate (an employee and not a partner) with a law firm with which Ms. Burden is also employed as an associate. Ms. Burden represents the guardian of Mrs. Moonis who is objecting to an application for approval of a PUD which is before the Town Council. Although I did not personally feel my son would have a special private gain which would inure to his benefit, after Ms. Burden appeared before Council and before a vote was taken, I requested the Town Attorney discuss the matter with a staff attorney with the Commission on Ethics. The Town Attorney was advised, in an informal opinion, that a conflict "may" exist. On the basis of this information I declared a conflict and left the Council chambers before any vote was taken. Although I had known of the situation relating to the employment of my son and Ms. Burden prior to the date of this declaration of conflict, I did not previously feel, nor do I now feel ^{on to me}, that a conflict exists which inures to the benefit of my son. I had based this decision on review of previous decisions of the Ethics Commission involving a spouse in which it was declared there was no conflict. This declaration is made out of an abundance of caution in light of the informal opinion the Town Attorney received from the staff member of the Commission on Ethics mentioned above.

April 23, 1992

Date Filed

Bernard A. Neeko

Signature

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