

John Lindgren

From: Joshua Martin
Sent: Friday, October 04, 2019 5:23 PM
To: Wayne Bergman; Emily Stillings (emily@murphystillings.com); Janet Murphy; Paul Castro; John Lindgren
Cc: Joshua Martin
Subject: FW: Letter to Council, Mayor post LPC vote some good options
Attachments: Letter to Council post LPC vote Sept 18 some options.pdf; ATT00001.htm; 2003 Sea's only 45% of 85% needed PLANNING.pdf; ATT00002.htm; 1995 \$21,000 already paid and declined Seas.pdf; ATT00003.htm; 1999 Landmarks already studied & declined Seas.pdf; ATT00004.htm

Josh Martin, AICP, CNU-A Director

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6401
Mobile: 843-247-2057
www.townofpalmbeach.com

From: Bobbie Lindsay <BLindsay@TownofPalmBeach.com>
Sent: Friday, October 04, 2019 4:01 PM
To: Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: Fwd: Letter to Council, Mayor post LPC vote some good options

Sent from my iPhone
561-797-9405

Begin forwarded message:

From: "Steven Jeffrey Greenwald, Esq." <3102724@gmail.com>
Date: September 19, 2019 at 3:23:22 PM EDT
To: jrandolph@jonesfoster.com, pcastro
<PCastro@townofpalmbeach.com>, council@townofpalmbeach.com, Danielle Hickox Moore
<dmoore@townofpalmbeach.com>,
blindsay@townofpalmbeach.com, mzeidman@townofpalmbeach.com, Julie Araskog
<jaraskog@townofpalmbeach.com>, mayor@townofpalmbeach.com,
tcouncil@townofpalmbeach.com, townclerk@townofpalmbeach.com,
lcrampton@townofpalmbeach.com, KBlouin@townofpalmbeach.com
Subject: Letter to Council, Mayor post LPC vote some good options

*******Note:** This email was sent from a source external to the Town of Palm Beach. Links or attachments should not be accessed unless expected from a trusted source. Additionally, all requests for information or changes to Town records should be verified for authenticity.*****

Honorable Council, Mayor and Town Attorney:

Attached is my letter (and some attachments) to you with some good options for Council since the Landmarks Commission vote of **September 18** (yesterday). Thank you for your hard work on this matter.

Kind regards, your neighbor Steve

Steven Jeffrey Greenwald, Esq.

Email address:

3102724@gmail.com

U.S.A. Telephone & voicemail:
561-310-2724

Mailing address: P.O. Box 3407
Palm Beach, Florida 33480 - U.S.A.

Honorable Town Council and Mayor:

Per the vote of Landmarks (LPC) yesterday, the Town Council has many options, and has the clear authority and power to do any or all of the following **3 options** (remedies). There are additional options too, but let's look at these **3**, and the supporting notes below.

Option 1: Vote to end this at the next council meeting. End what has been proposed time and again, on record at Council hearings (under oath) and shown to be a nonstarter: singling out the Seas for blanket landmarking. Money has already been spent by the Town researching this, and past recent reports, studies can be dug up by staff. A vote now will preempt any damages. A Council vote can at this point simply be a **quash, voiding or striking** of the LPC's 2 past votes on this issue. See **important notes, citations below**.

Option 2: Eliminate Town code **54-163 (8)** as it is unnecessary, and simultaneously vote to quash the LPC vote. A simple read of other Section 54 subparts show it already provides for notice and hearings before LPC and Council on proposed landmark districts. It is clear that 54-163 (8) is unnecessary and in violation of State Law in practice. **See notes below** for links, quotes to explain.

Option 3: Simply strike the LPC vote, as their meeting was **without notice**. The Town Council votes should be "with prejudice" or this will continue endlessly stressing neighbors, Council and staff. For one thing, such a vote will protect the Town and Council from liability. There is more than enough **law** on this noted below with citations. See the **notes** below:

Notes as to Option 1:

The below quotes were taken from the report of **Jane Day** (through Jay Serzan's September 8, 2019 letter to Town Council). **Jane Day's report** was her "roadmap" for determining those significant properties is the Historic Sites Survey which was last updated in **2010**. **Jane Day, was the former historic consultant for the Town**. Jane Day's report contains the below observations on what to do:

"Continue to designate historic properties..... Work on a site-by-site basis unless strong neighborhood support, with a majority of consenting homeowners, is brought forward....." (p. 30)

"In the Town of Palm Beach establishing Local Historic Districts has always been controversial. Although in many cities and towns creating districts has imposed architectural control for otherwise non-contributing structures, this has not been necessary in the Town of Palm Beach. In Palm Beach, as construction and alteration on non-historic buildings is reviewed by the Architectural Commission." (p. 24)

".....a review of the preservation movement in Palm Beach suggests that the site-by-site method will have more concrete results. Past efforts to designate Worth Avenue, Golfview Road, and Pendleton Avenue as districts resulted in recommendations by the Town Council to proceed on an individual basis. Also, by working on a site-by-site basis buildings are more thoroughly documented making their protection more defensible in the future." (p. 25)

At the end of **Jane Day's** 2010 report there is a list of 90 properties that are listed as "potentially eligible for a local register." (pp. 37-51). Jay Serzan appears to have correctly pointed out in his Sept 8th letter, the current status of the 90 properties since 2010:

19 have been Landmarked
8 have been demolished
3 were considered but not recommended
1 was removed from the list

That leaves 59 properties available Townwide to be considered for individual landmark designation.

The logical question posed in Jay Serzan's Sept 8th letter to Council:

"why are we placing Seas homes of less significance into a district when there are more important town buildings to consider?"

Lastly, the 2009 Landmark Manual, also prepared by **Jane Day**, says on page 6: *"Not all old structures are worthy of landmark status."* and *"A historic district is intended to protect an area highly concentrated with significant structures."*

Important testimony in my "2003 attachment" (that this letter was attached to) states that there are not enough homes on the Seas streets to qualify for a district! This per past sworn testimony at the 2003 Town Council hearing:

In the 2003 attachment to my email that this letter was sent with: in transcript of the open Town Council hearing under oath in 2003, it was already testified to after study, that the Seas streets were declined as district, because only 45% to 50% of homes are truly landmarkable, while 85% would be necessary for a district.

It would be a great idea for council to order staff to dig and find this 2003 work that was already paid for by the Town, and save some expenses. Also **\$21,000** was already paid for a study of all of this (See all 3 attachments, relevant **Council witnesses sworn testimony** shown in yellow).

Phipps Plaza experiment: We all know the Phipps Plaza landmarking years ago has not at all added to the value of their homes. Landmark districting has *decreased* values there. Hence the huge home owned by the John and Lori Volk was priced at \$10 million, but sold in the \$4 million range last year. Anyone can walk around Phipps and see the decay and problems of all those old Phipps Plaza homes.

The cost to do landmark regulated work in Palm Beach (as opposed to say Nashville) is extraordinary. People give up. The internet is full of articles and “studies” and if one wishes they can find many articles warning of Landmarking (or Districts). In neighborhoods near blighted areas, landmarking makes sense. In an area of high land value, it is not at all helpful. It scares buyers, we all know that. Ask any candid broker in Town. Hence why the Stricklands (and their buyer) and others knowledgeable have fought landmarking so hard.

I have researched landmarking heavily, time and again since buying my home 22 years ago. I and the lawyers and other experienced homeowners, developers, etc., living on the Seas already know far more about this than the LPC wants Council to believe.

Fact: There are few buyers willing to take on these very expensive red tape projects. Fewer builders have the experience, those builders that do charge far more. It will be very expensive for the elderly (both people and homes) on fixed incomes to prop up these Seas homes, especially hurricane after hurricane.

ARCOM and Council during all of the last 5 years have already done an outstanding job regulating construction on the Seas. Perhaps the LPC should landmark Peruvian, other streets, the estate section? Or perhaps the LPC members wish to donate several million dollars each for their urgent cause?

We Seas owners at great expense (including myself) have done a fine job keeping our homes up for decades. It is **not true** that all Seas homes are or will be torn down, and it is not so easy to get such approval given the edicts and published Code notes of the town that ARCOM relies on, that the Seas are a “special place”.

It is a difficult decision to tear down a home, never taken lightly. We all know the truth: it is rare that Seas homes are torn down, as opposed to other streets in town. Far more owners on the Seas have chosen to improve at great expense.

National Park Service and other publications point out one should not to be lulled by anyone saying landmarking Districts are all so easy and wonderful. Moreover, it would be very difficult to get any tax advantages for the many non-descript, changed (inside or out) and later improved

Seas homes on the middle and lake blocks. There are absolutely no guarantees that this will work out for Seas neighbors.

The **National Park Service**: *"Ordinarily buildings that have been built within the past 50 years shall not be considered to contribute to the significance of a district unless a strong justification concerning their historical or architectural merit is given or the historical attributes of the district are considered to be less than 50 years old."* The Seas have plenty such homes that do not qualify as landmarkable.

The regulations of **FEMA** on landmarking (including districting) are even more complex. A retired Seas homeowner on fixed income may need to keep many landmark experts, architects, contractors, lawyers (and tax accountants) well paid with serious money.

This regardless of the happy thoughts of the LPC. Landmarking of the many Seas homes will be a financial bonanza for the professionals that the Seas owners will need to rely on. **See the link to complex notes from FEMA on landmarking:**

<https://sema.dps.mo.gov/programs/floodplain/documents/nfip-historic-structures.pdf>

Notes as to Option 2:

Our Town Code Sec. **54-163 (8)** accidentally provides a draconian result that is totally not in keeping with Supreme Ct rulings. In practice we see it is obviously in conflict with Article 1 Section 24(b) of Florida's constitution, as it provides for no notice prior to hearing and vote affecting residents' properties.

In practice it is also clearly in conflict with the Sunshine Act and Supreme Court rulings on the Sunshine Act. See the many cases below. It is also in conflict with the requirements of Florida Statute section **166.041 (3)(c)(2)(c)** (in link below). Which requires mailed notice: *"to each person owning real property within the area covered... Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of any public hearing on the proposed..."* Link to 166.041 (3)(c) and specifically to subsections at (3)(c)(2)(c):

<https://casetext.com/statute/florida-statutes/title-xii-municipalities/chapter-166-municipalities/part-i-general-provisions/section-166041-procedures-for-adoption-of-ordinances-and-resolutions>

Town town code 54-163 (8) needs to simply be *eliminated*, as **other parts of this Section 54 of the Town code on this subject already do provide for required prior notice, and then hearings before the LPC and Council for any Landmark District.** Town code 54-163 (8) is thus in conflict with other parts of Town Code 54, which do require notice! Read/see other parts of town Code Section 54.

Town Code **54-163 (8)** is thus simply unnecessary and violates State law and other parts of the Town Code Section 54 in practice. It amazingly reads the following happens *without any notice or due process* by simple unnoticed (even secret) vote of an arm of the Municipal government:

"...prohibit the issuance of building, exterior remodeling or demolition permits affecting any property under consideration for landmark designation without a certificate of appropriateness, this prohibition to remain in effect for the length of time required by the commission and the town council for final action on the proposed designation. The commission shall accomplish such prohibition by furnishing the building official a list of all property under consideration for landmark designation."

The effect of the above we have seen, is in practice a violation of the Florida Sunshine law and strict State Statute and constitutional notice requirements.

Option 3 notes:

A **vital element of the Sunshine Law** is the requirement that commissions like the LPC *must* provide "reasonable notice" of all meetings. **The fact that LPC met in Town Hall, and was audiotaped is irrelevant.** *The courts have said time and again if there is no notice, the meeting is essentially a **secret** meeting. (Palm Beach vs Gradison cited, quoted below).* Notice is a strict requirement. See s. 286.011(1), F.S.

The required **notice** did not happen on **August 21** for the LPC meeting and vote. There was no notice whatsoever, and this was in the middle of summer while all are out of town. The Seas issue was not even on the LPC agenda for August 21! (As to the Sept 18 meeting and vote, this was also not noticed by the LPC, though it was on the agenda in some brief form, with no indication there would be a vote).

What is the law on this:

Baynard v. City of Chiefland, Florida, No. 38-2002-CA-000789 (Fla. 8th Cir. Ct. July 8, 2003):

Reasonable notice is absolutely required even if the subject of the meeting is “relatively unimportant.” Baynard v. City of Chiefland (Fla. 8th Cir., July 8, 2003).

Notice is required even though meetings of the board are “of general knowledge” and are not conducted in a closed door manner. TSI Southeast, Inc. v. Royals, 588 So. 2d 309, 310 (Fla. 1st DCA 1991).

And “Governmental bodies who hold unnoticed meetings do so at their peril.” Monroe County v. Pigeon Key Historical Park, Inc., 647 So. 2d 857, 869 (Fla. 3d DCA 1994).

While the Sunshine Law requires reasonable public notice be given, the LPC was also subject to **additional notice requirements imposed by other statutes**, charters or codes. In such cases, the requirements of that statute, charter, or code must be strictly observed. Fla. Attorney General Inf. Op. to Mattimore, February 6, 1996. In our case that would be primarily **166.041(3)(c)(2)(c)** described above, and **other statutes** and subsections.

An example of **other statutes** applicable: Section **286.0105, F.S.** requires “each board, commission, or agency of this state or of any political subdivision thereof ***shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal*** any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing...”

The above of course also was **not done** for either the August or Sept meetings of the LPC.

See also: See Florida Attorney General opinion (hereafter “AGO”) 03-53, stating that “[i]n the spirit of the Sunshine Law, the commission should be sensitive to the community’s concerns that it be allowed **advance notice** and, therefore, meaningful participation on controversial issues coming before the commission.”

The Government in the Sunshine Law and its notice requirements apply to “*any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision.*” City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971). “*All governmental entities in Florida are subject to the requirements of the Sunshine Law...*” Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755, 762 (Fla. 2010).

The Sunshine Law and its notice requirements are equally applicable to elected and appointed boards or commissions. AGO 73-223. Special district boards (AGO 74-169) and boards created by interlocal agreement (AGO 84-16) are also included. And see Inf. Op. to Martelli, July 20,

2009 (State Fair Authority, created by statute as a public corporation, subject to Sunshine Law). Cf. *Turner v. Wainwright*, 379 So. 2d 148, 155 (Fla. 1st DCA 1980), affirmed and remanded, 389 So. 2d 1181 (Fla. 1980)

Advisory boards and committees created by public agencies are subject to the Sunshine Law and its notice requirements, even though their recommendations are not binding upon the entities that create them. This is especially true if the committee has been delegated any "decision-making authority," as opposed to mere "information-gathering or fact-finding authority." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). In the case of the Palm Beach LPC they are in fact acting as a decision making authority at their unnoticed August 21 and Sept 18 meetings.

And we can't forget the most important case on this: the **Florida Supreme Court** in **Town of Palm Beach v. Gradison**, 296 So. 2d 473 (Fla. 1974) (yes our town). There a citizen planning committee appointed by Council to assist in revision of zoning ordinances was found to be subject to the notice requirements of the Sunshine Law. The Florida Supreme Court, concluding that the committee served in making tentative decisions, stated that "any committee established by the Town Council to act even in an advisory capacity would be subject to the provisions of the government in the sunshine law." *Id.* at 476.

See also *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694, 695 (Fla. 3d DCA 1988). There a committee which compiled a report that was perfunctorily accepted by the board made a significant ruling affecting decision-making process and was subject to notice requirements of s. 286.011; *"even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is (nevertheless still) subject to the Sunshine Law"*.

See also *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000). The case states that the notice requirements of the Sunshine Law applies to site plan review committee created by county ordinance to serve in an advisory capacity to the county manager. See also AGO's 98-13: citizen advisory committee appointed by council to make recommendations to the council regarding city government and city services.

And in case you are still wondering, the Sunshine Law does not establish a **lesser standard** for members of advisory committees. See *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994) "[T]he Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials..."

There are other Council options in addition to the above 3. The LPC serves at the pleasure of Council. Regardless of the emotion shown in the Palm Beach LPC meetings (on audiotape)

in case anyone is wondering about the seriousness of Sunshine act strict **notice** requirements, perhaps the news story (in link below) just a few weeks ago will bring it home.

That committee in the below linked news story also showed great “emotion.” But the story is clear, emotion is not helpful when strict notice requirements of Florida law and the Sunshine Act are involved:

<https://www.amisun.com/2019/07/22/judge-rules-cnobb-members-violated-sunshine-law/>

Respectfully, Steven Jeffrey Greenwald. Esq.
128 Seaspray Ave., Palm Beach

All of the above is based on information and belief

NEIGHBORHOOD MEETINGS
OVERLAY ZONING PROPOSAL FOR THE SEA STREETS

February 27, 2003

1st Session: 3:00 p.m. to 5:00 p.m.

2nd Session: 7:00 p.m to 9:00 p.m.

Town Council Chambers, 360 South County Road, Palm Beach

This represents a brief accounting of the record of the aforementioned meetings. The tapes of the meetings are available at the Planning, Zoning & Building Department.

<u>STAFF PRESENT:</u>	<u>1st Session</u>	<u>2nd Session</u>
Robert L. Moore, Dir. of PZ&B	Yes	Yes
Veronica Close, Asst. Dir. of PZ&B	Yes	Yes
Paul Castro, Zoning Administrator	Yes	Yes
Timothy Frank, Planning Administrator	Yes	Yes
William Brisson, Zoning Consultant	Yes	Yes
John C. Randolph, Town Attorney	Yes	No
Cynthia M. Delp, Sec. to Zoning Comm.	Yes	Yes
John Moore, Smith & Moore Architects	Yes	No
Ted Song, Smith & Moore Architects	Yes	Yes

<u>TOWN OFFICIALS PRESENT:</u>		
Mayor Lesly Smith	Yes	No
James Bertles, Chairman, Zoning Comm.	Yes	No
Lowry Bell, Zoning Commission	Yes	No
Nancy Murray, Zoning Commission	Yes	No
Norman Goldblum, Town Council Member	No	Yes
Leslie Shaw, Architectural Commission	No	Yes
Ann Blades, Landmarks Pres. Commission	Yes	No

<u>RESIDENTS PRESENT (#):</u>	33	24
-------------------------------	----	----

Mr. Castro welcomed the residents to these important meetings relative to a proposed overlay zoning district for the Sea streets, namely, Seaview Avenue, Seaspray Avenue, and Seabreeze Avenue. Mr. Castro introduced staff members present. He stated that the Town Council requested that the residents be invited to hear this proposal and offer essential feedback relative to the proposal. Mr. Castro reviewed the history of proposals for changes to the R-B Zoning

District over the past several years. These changes have been contemplated in an effort to minimize the impact of change to the distinctive neighborhoods in the Town. The Sea streets are a unique example of such a neighborhood. In previous workshop meetings with residents, one clear opinion surfaced that the residents approve of the existing zoning regulations for the Sea streets, since they like the character of their neighborhood as it exists. Mr. Castro pointed out, however, that with existing zoning regulations, buildings on the Sea streets cannot be replaced in their existing size and footprint. The Town Council directed staff to try to emulate the existing conditions on the Sea streets in the form of an overlay zoning district. Mr. Castro referred to the mailer which was sent to each property owner on the Sea streets which invited them to these meetings and outlined the specifics of the proposed overlay district, and he proceeded to review the proposed regulations included in the overlay zoning. Mr. John Moore and Mr. Ted Song of Smith and Moore Architects gave a presentation regarding the results of their analysis of the existing and proposed zoning regulations to illustrate the full effect of taking advantage of the provisions in the code. They presented comparisons of site plans and elevations, and a model to illustrate their findings.

COMMENTS/QUESTIONS - 3:00 P.M. TO 5:00 P.M. SESSION:

Residents offered commentary and asked questions in both the afternoon and evening sessions. Please refer to the tapes of the meetings for a full record of the discussion. Here is a sampling of comments/questions/suggestions heard:

Staff was asked about the effect of the proposal. *Mr. Castro responded that the existing homes on these streets today are larger than the existing zoning allows. The proposed overlay zoning district, contrary to the sliding scale in place today, would allow new construction with the same volume as the homes which exist on the street now, thus preserving the character of the neighborhood.*

Mr. Keith Jones, 139 Seabreeze Avenue: With regard to proposing a 100 ft. limitation on lot width, Mr. Jones questioned if it was appropriate that residents on the Sea streets are being prohibited from doing what people elsewhere in town can do, and was concerned that this would decrease property values. *Mr. Castro responded that the overlay provides much more flexible zoning than is found elsewhere in town.*

Mrs. Polly Earl, 209 Seaspray Avenue: Commended the effort to provide motivation for allowing continuity in the pattern of having a house and an accessory structure serving as a garage or guest house, but was dismayed at the failure to recognize the overall character of the streets, specifically when the area was characterized as “smaller, older homes.” There is considerable character and diversity on these streets, both larger and smaller homes. She felt that the proposed overlay will have impact on the value of the properties. Mrs. Earl thought that the larger properties should be given credit for all the lots they encompass as that is a reflection of their impact on the street. In addition to her concern over property values, Mrs. Earl questioned the motivation to developers to break up lots, that may be afforded by the proposal. *Mr. Castro responded that the overlay provides more flexibility, and as such, should promote favorable redevelopment, thus increasing property values.*

Ms. Ann Pepper, 333 Seaspray Avenue: Expressed her primary concern over the height of new homes, especially over and above required FEMA heights.

Ms. Ann Connelly, 109 Seabreeze Avenue: Stated that homes in Palm Beach are very expensive, and are an investment. The limitations of the proposed overlay will make these homes less desirable. Prefers uniform zoning regulations in Palm Beach for all owners. Questioned whether this would limit her ability to get the best price for her home. *Mr. Castro replied that curb appeal is one of the strongest selling points, and these streets have unique character. The overlay is not limiting; it is primarily a relaxation of the code, with the exception of the height, lot coverage, lot width, and setbacks of accessory structures from the street.*

Mr. Jim Bertles, Chairman of the Zoning Commission: This is a recommendation from staff to achieve a certain goal...to relax the zoning regulation on the Sea streets to perpetuate the character of the streets as it exists now. The Town Council needs resident input before any changes are made. *Mr. Castro added that regardless of staff's recommendation, staff will communicate residents's opinions, both pro and con, to the Town Council.*

Mrs. Gavin Letts, 419 Seaview Avenue: Would hate to see any of the houses change. She felt there are not enough restrictions; would hate to see combined lots with huge houses; was very much in favor of the proposal.

Mr. James Howe, 432 Seabreeze Avenue: Questioned whether existing CCR's could be grandfathered, especially in the cases where the CCR is greater than the existing or proposed regulations would allow. *Mr. Castro felt that this concept was worthy of further consideration.*

Mr. Michael Ainslie, 415 Seaspray Avenue: Feels that the overlay will invite development with the increased flexibility provided; but also, it will lead to bungalows being bought up quickly and new larger homes being placed on small lots.

Ms. Marianne Johnson, 323 Seabreeze Avenue: Concerned with water run off as a result of new construction.

Ms. Ethel Kinsella, 243 Seaspray Avenue: Urged staff to control the massiveness in new construction.

Mr. Keith Jones, 139 Seabreeze Avenue: Advocated letting owners do what they want with their properties, i.e., "trust the genius of the property owners to develop the property the way it was done 50 or 60 years ago." *Mr. Castro responded that the Town of Palm Beach was one of the first communities in the State of Florida to have a Zoning Code. The Zoning Code was implemented in 1930 to insure appropriate character in development of the town. So the neighborhoods we see today are not the result of the discretion of the property owners.*

Mr. Moore addressed the residents, thanking them for their participation. He reminded them, however, that this opportunity for discussion should not be adversarial in nature. It is a venue

for feedback. Addressing Mr. Jones' comment, he stated that in 1978-1980, the Town had to stop trusting residents and architects, when the land became more valuable than the homes; that's when square footage began to be crammed onto lots. In meetings with residents three years ago, residents made it clear that they like their neighborhoods the way they are. The existing Zoning Code is more restrictive than the proposed overlay. The overlay provides for nine regulations which are more flexible than the existing code, and four which are more restrictive. The Town needs feedback which will be forwarded to the Zoning Commission and Town Council for further consideration.

Architect John Moore stated that, in his opinion, the smaller lots suffer under the existing zoning regulations. Under the overlay, the larger lots would suffer. Perhaps, a compromise could be developed.

Mr. John Martin: Has lived in various areas of town. With regard to trusting the homeowners, Mr. Martin stated that the population of Palm Beach is very different than it was in years gone by; instead of having owners concerned about Palm Beach, there are now too many focusing on speculation and making a dollar.

Mrs. Nancy Murray, Zoning Commissioner: In general, most all owners are against building "McMansions" with no green space, which is happening all over town. The Sea streets are so identifiable in their character. The overlay is designed to help the owner with the 65' lot when they are ready to sell their home, because the new owner will have so much more flexibility to make changes. If an owner already has one of the larger lots, it can only be more valuable if the new lot width maximums are placed into effect. The Sea streets are just a starting point in the town. This exercise will help the Zoning Commission and the Town Council perpetuate other areas in town which are likewise identifiable as a neighborhood with particular character.

Mrs. Ann Blades, 402 Seabreeze Avenue: Thanked staff for all their time and effort. We should all work together to save the town and avoid "Boca-ization."

Ms. Barbara Davidson, 424 Seaspray Avenue: Sees no objection to taking two lots and making a better house. There are some bungalow style houses on these streets which are not worthy of saving. ARCOM will insure that new construction on these streets will be sensitive to the neighborhood.

Mr. Michael Ainslie, 415 Seaspray Avenue: Agrees with the principle of restricting maximum lot widths to avoid huge homes being built; this would not be good for the Sea streets; "it would destroy what we have as a real neighborhood."

Mr. Castro had stated that a preservation ordinance had been considered with regard to the Sea streets, but that idea was abandoned. Mr. Tim Frank, Planning Administrator, stated that according to the National Trust for Historic Preservation, 85% of the homes in a district must be of landmark quality for the district to qualify as historic. The Sea streets were previously studied as a possible historic district, but it was determined that only 45%-50% of the structures were

eligible individually for landmark status.

Staff distributed a “Resident Survey” relative to this subject. Residents present were asked to complete the surveys and return them in the self-addressed stamped envelopes provided.

Mr. Moore passed on a reminder from the Mayor that if the residents do not want this overlay, the elected officials will not approve it. He cautioned the residents to look carefully at the existing zoning code to see what could be built under that existing code.

COMMENTS/QUESTIONS - 5:00 P.M. TO 7:00 P.M. SESSION

Mr. Leslie Shaw, 318 Seaspray Avenue: The flexibility in the setbacks may permit an existing home to be sandwiched in by new construction, which is a negative situation. In concept, he is opposed to an overlay because it creates confusion. Instead, he preferred that this area be zoned as a specific area, RB1, RB2, etc. If an overlay is created, limit the overlay to the homes which were conforming when they were built, but because of zoning changes, are no longer conforming. “What is there should be permitted to go back.” To not allow the use of the front yard for a single story entry feature or garage does not help the neighborhood, and conversely, allowing it to happen does not hurt the neighborhood. “To force the garages to either be in the back, as an auxiliary structure, is taking away from our ability to use our yards, and have a place to have a pool and be outdoors, especially on the smaller lots.” *Mr. Castro responded that allowing the movement toward the front is not in keeping with the character of the Sea streets.*

Mr. Goldblum: Try to adjust the side yard setbacks so houses are not on top of one another.

Ms. Jane Myers, 246 Seaspray Avenue: Likes the idea of the overlay as it recognizes the character of the neighborhood. Expressed concern over the homes on the 50 ft. lots in the neighborhood not getting enough concessions in the proposal, especially considering they are essential to the character of the neighborhood.

Mr. David Hamilton, 217 Seabreeze Avenue: The proposal is a disadvantage because these properties would have an overlay that no other properties have; this is a negative factor to the real estate value; why do this here?; why not at the north end?

Ms. Helen Starr, 202 Seaspray Avenue: Expressed concern about having a corner lot under the overlay. *Mr. Castro recognized the problem with corner lots and stated that staff will look into this issue to seek some sort of relief for these owners.*

Ms. Sue Strickland, 145 Seaspray Avenue: Fears that the Sea streets will experience too many tear downs thus changing the character of the streets with its older homes. *Mr. Castro responded that this is a concern of staff that the overlay may encourage redevelopment (including tear downs) rather than encouraging the preservation of the streets.*

Mr. Moore added that this exercise not only serves the tear down and rebuild situations, but also

is to help those who wish to remodel and/or enlarge their homes.

Ms. Dorothy Martin, 312 Seabreeze Avenue: Mentioned two houses being built now that are so out of character with the street. “Architecturally, we are losing Howard Chilton, Belford Shoumate, Henry Harding, and they are all beautiful architecture on those Sea streets.”

Mr. Leslie Shaw, 318 Seaspray Avenue: Recognized a consistent theme in this and previous workshops...the issue between what we have and what someone else may want to build: the need to preserve, yet renovate to meet modern needs. Suggested that there be a focus on an overlay for renovations everywhere in town, not for distinct neighborhoods, and not for new construction. *Mr. Castro felt this was a very good idea.*

Ms. Maria Hamilton, 217 Seabreeze Avenue: Felt that some of the new homes being built are more beautiful than the ones which they have replaced.

Ms. Christelle Martin, 312 Seabreeze Avenue: Fears townhouses on the Sea streets

Ms. Jane Myers, 246 Seaspray Avenue: Felt the town was proceeding in the right direction, and thanked staff for doing the work. Felt the new homes on Seaspray are beautiful, in fact, better than those which were there previously; good additions to the street.

cmd

compensation increase as explained by Mrs. Martinuzzi. He noted that overall, the insurances have increased by \$180,000 for the realignment. He continued that the three computers mentioned by Mr. Wilson are included in that program.

Chief Elmore reported the Fire Fighting program was increased by \$59,000 which included the work uniforms to bring them in line with the fire fighters' standard for non combustible fabric. He noted new equipment costing \$105,000 for the third year payment of a five year plan for the aerial truck purchased two years ago; replacement fire hose; replacement of self contained breathing apparatus; and portable radio costs of \$3,000. Chief Elmore said the \$3,000 would not be needed if the new radio program requested by the Police Department was approved since these older units would not be used (line item 64-03, part of the \$9,000). Mrs. Smith said the assumption was the radios were included with the Police Department budget and the \$3,000 should be removed. Chief Elmore said \$18,000 was proposed for a replacement automobile and \$36,000 for a first year payment (on a five year payment plan) for a replacement special operations truck to handle hazardous materials and various equipment needed for hazardous conditions as mandated by the State or Federal governments.

Chief Elmore reported the EMS program showed a decrease of \$56,000 and covered increases for uniforms, medical supplies, and training as mandated. He added the Building Maintenance program is projected to increase \$22,000 to cover the cost of painting the exterior of the North Fire-Rescue Station.

After discussion, THE COMMITTEE RECOMMENDED THE APPROVAL OF THE FIRE-RESCUE DEPARTMENT BUDGET; ELIMINATING \$3,000 FOR THE RADIOS AND SUGGESTED BORROWING FUNDS FROM ANOTHER DONATIONS ACCOUNT, BEING HELD IN A DESIGNATED RESERVES FOR THE PURCHASE OF A REPLACEMENT MICU UNIT, TO COVER THE PURCHASE OF THE PROPOSED SPECIAL OPERATIONS TRUCK.

Chief Elmore reported that \$150,000-\$200,000 of EMS transport services may be billable, and a report will be submitted to the Town Manager. Mrs. Smith suggested that Mr. Doney and Chief Elmore investigate the possibility of obtaining funds from donated or willed monies for other pieces of equipment to cover the cost of the truck. This may require legal opinions.

H. RECREATION DEPARTMENT: Russ Bitzer, Recreation Director, addressed the Committee noting that the overall budget increases were due to the scheduled replacement of equipment and the increased classes and programs. He added that where increases in expanded program participation occurs, offsetting revenues at 100% or better will be generated. Mr. Bitzer reported that the expenditures for the Recreation Facility Maintenance program is projected to increase by \$4,000; the Tennis program is up by \$12,500; the Adult program is down \$1,000; the Youth program is up by \$5,700; and the Golf program is projected at an increase of \$42,000. Mr. Bitzer projected that all revenue lines would increase in FY96.

After discussion of the proposed lighting of the two tennis courts and the back wall including the potential pay back, the number of hours the courts would be used, and the number of tennis players who would use the courts, THE COMMITTEE RECOMMENDED MR. BITZER RETURN TO THE FINANCE COMMITTEE MEETING SCHEDULED FOR JULY 27, 1995, WITH INFORMATION REGARDING THE REQUEST FOR THE LIGHTING OF THE TENNIS COURTS TO INCLUDE: HOW MANY PEOPLE PLAY LATE, THE NUMBER OF PERMIT HOLDERS ADDED SINCE THE EXISTING LIGHTS WERE INSTALLED (RESIDENTS AND NON-RESIDENTS), CONSIDERATION OF RAISING THE DAILY FEES TO MAKE THE PERMIT ALTERNATIVE MORE ATTRACTIVE, AND REVIEW THE FEE SCHEDULE.

L. PLANNING, ZONING & BUILDING: Robert Moore, Director of Planning, Zoning and Building, addressed the Committee. Mr. Moore reported that his Program 211, Planning & Zoning, is projected to increase 9% or \$38,000 because of the liability assigned from legal fees, and an additional \$30,000 has been earmarked for an evaluation and appraisal report for the mandated State Comprehensive Plan. Mr. Moore noted his Department was up 690% because of the liability claims budgeted dollars for FY96 assigned to his Departmental Programs.

Mr. Moore identified the Permit Issuance program as having proposed increases of \$14,000 plus a \$12,000 reduction in reallocation of insurance. A \$10,000 increase in contractual employees (line 212-31-12) to be used for plan review as determined by need. A \$5,000 construction project is planned to provide an improved reception area desk and storage cabinets. He noted that the Inspection and Compliance program increased by \$6,000. Mr. Moore requested authorization for an additional part-time person for Code Compliance. Mr. Moore said \$13,000 has been allocated for that position.

Mr. Moore noted that the Landmarks Preservation program is proposed to increase by \$21,000 to cover special legal costs and additional monies have been set aside for matching funds from a State of Florida grant for a survey of the "Sea" streets as a potential historic district.

Mr. Moore reported that the proposed FY96 budget totals \$1,305,708 compared to the FY95 budget of \$1,228,084 and the FY95 operating expenses exceed the approved budget by approximately \$92,000 from legal fees, reimbursable consultant fees, and other professional services. Mr. Moore noted the Department had approximately a 30% increase in building permits in FY95 generating a 30% increase in revenue.

Mrs. Smith said the \$66,000 total contractual services expenditures proposed for Landmarks was excessive, and she questioned the amounts for other professional services (account numbers 31-12 and 31-35) when a full time landmark expert

MOTION CARRIED UNANIMOUSLY.

Item 3: 444 North Lake Way

Owner: Estate of Ziuta Akston c/o Betty Marcus, Personal Representative

① Please note that the owner has requested a deferral of this matter, and has waived her right by Ordinance requiring the commission to act within 30 days.

MOTION BY MRS. ALBARRAN DE MENDOZA FOR DEFERRAL TO THE OCTOBER MEETING.

MOTION SECONDED BY MR. PANDULA.

MOTION CARRIED UNANIMOUSLY.

Item 4: Pendleton Avenue Historic District

Owners:

Bethesda by the Sea Church

Mary A. Asher

Bethesda by the Sea Church

Risa Property Co.

Paul & Lori B. Lapidus

Robert Forrest TR

Mr. and Mrs. James G. Pressly Jr.

Anthony R. & Doris M. Cataldo

Stephen Shapiro & Edward Curan

Mary A. Firestone

David L. Roth

Linda R. Olsson

Stephen J. & Donna Dellaquila

Kane M. Tilney

Dr. Horst Niehues-Paas & Rebecca Weerth

Charles M. & Brooke W. Huttig

Edward M. & Camille Kassatly

Cynthia H. Tilney

John M. & Sharlyn R. Carter

A. & Carol J. Stephen

David E. & Audrey W. Colflesh

(Owners continued on Page 4)

James N. & Joan S. Harris

Leon & Margie Lewandowski - **requests deferral**

Robert S. Crompton

Laurel-Ashton Assn Ltd c/o Shelby P. Wyckoff - **requests deferral**

William D. & Melanie K. Bone

Edith G. Bliss TR HLDR - **requests deferral**

Helen D. Goodhue TR TI HLDR

Ridgely M. & Leta A. Foster

D. Dixon & Pauline B. Boardman

D. Dixon & Pauline B. Boardman

Alice Z. Pannill

Paul B. Dickey Jr.

Danielle A. Hickox

Alan J. & Lynn E. Ciklin

① Mr. Frank stated that proof of publication and proper legal service were achieved with respect to this matter.

Mrs. Delp administered the oath to Attorney Frank Chopin and Mrs. Edith Bliss. Please note that the following is a verbatim transcription of the Designation Hearing for the Pendleton Historic District. The speakers' names are noted at the left margin.

MR. SMITH: May I please have the staff recommendation?

MR. TIMOTHY M. FRANK, PLANNER/PROJECTS COORDINATOR: Thank you, Mr. Smith. Staff has reviewed the subject district and for clarification, we are calling it Pendleton Historic District, and in some cases it's been referred to as Pendleton Avenue Historic District, but the report refers to it in the former because Pendleton Lane is also involved. Staff studying this area has found that it meets the following criteria for designation as a landmark in the Town of Palm Beach...

- (a) Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town.
- (c) Embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction or use of indigenous materials or craftsmanship
- (d) Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized or who influenced his age.

In this case, the architects are...or the master builders and architects are John L. Volk, Gustav Maass, Treanor and Fatio, Wyeth and King, Howard Major, and also I believe that there is a major builder involved in this too. Mrs. Day will articulate that later. Also meeting criterion (e)...

That it constitutes a unique area of architecture, landscaping and planning.

I'd like to mention, before Mrs. Day starts with her presentation also, that this particular district is the culmination of a study that has spanned almost three years in duration. The proposal was brought forward to the Town by the Preservation Foundation. The staff of the Preservation Foundation lobbied extensively for staff to consider districts in this town, and the terminology "like West Palm Beach does" was introduced that we should do it like they do and we should landmark by district. I opposed this as staff. I opposed doing what they do in West Palm Beach. The reason for my opposition was that I live in the El Cid Historic District in West Palm Beach. I've seen the reports. I don't think that they're very well done. They have a tendency to lump projects into a single report and treat them as a whole, and I don't think that the houses and structures are individually addressed. Following my insistence, we actually subcontracted a report. The report took about a year and a half to complete, almost two years to complete. That report evaluated the entire town. The entire town was looked at to see if there were clusters of historic structures that might constitute a district, and my feeling was that not only should we be looking at the quality of architecture and the quality of historic specimens in a particular area, but we should also rank them with regard to what is more important than another, and then we should move forward. This study was underwritten by the Town of Palm Beach. It was sponsored by this commission, and as I mentioned before, it was on the insistence of the Preservation Foundation that we do this. The results of the report...we came out and we determined that the Pendleton area was the most likely place in town that could be districted. We found that in excess of 90% of the structures on Pendleton Avenue and Pendleton Lane would qualify by themselves as landmarks in the Town of Palm Beach. We did not stop there. We did not lump this study, as you can see. It's not the five or six pages that West Palm Beach has doing their El Cid District. We looked at each and every one of these structures individually and we evaluated each and every one on its own merits, and our recommendation as to whether they are contributing

structures or non-contributing structures are part of this report. Now, with the details, I'd like Mrs. Day to continue, and I will help her with some presentation material.

ATTORNEY FRANK CHOPIN (representing the Boardmans): Tim, if it would please the commission, since Mr. Frank has just testified, I believe I have the right representing Mrs. Boardman, to ask him a couple of questions regarding his testimony before you proceed with the next witness.

MR. SMITH: Mr. Randolph?

TOWN ATTORNEY, JOHN RANDOLPH: You can set the procedures however you wish, however people are entitled to cross examine witnesses. If you'd like them to cross examine them immediately after their testimony, you may, or you may go forward with the entire presentation and then allow cross examination. It's whatever you choose.

MR. SMITH: It may be easier to do it immediately, I think. Mr. Chopin's got a point. Otherwise, he may forget what Mr. Frank said. So, uh, Mr. Frank...

MR. CHOPIN: For the record, my name is Frank Chopin. I am an attorney. I represent Pauline Boardman who is the owner of the property at 5 Lake Trail, which is included within the proposed historic district. She is also the owner of an additional property within this proposed structure. Mr. Frank, I would just like to make clear that you're not under any misapprehension regarding the Preservation Foundation's position with respect to this matter.

MR. FRANK: I have no doubts in my mind whatsoever. The Preservation Foundation has not only entertained myself, but they have entertained the Chairman of this commission and the consultant with their request to have a district.

MR. CHOPIN: Now would you accept my representation, Tim, that as the Trustee of the Preservation Foundation, as its counsel, as its secretary, that the Preservation Foundation at its last monthly meeting considered this particular report, considered the recommendation with respect to the designation of Pendleton as a historic district, and concluded not to support that representation?

MR. FRANK: This is the first time I have directly heard this from anyone related to the Preservation Foundation, and we did invite representatives of the Preservation Foundation to be here and testify on behalf of this, and my understanding is that they're not here. We directly asked the Chairman to come to this meeting.

MR. CHOPIN: The Chairman, I'm sorry? Would you explain what you mean by Chairman?

MR. FRANK: I mean the Director. No I mean the Chairman of the Foundation. Mr. Smith handled the details.

MR. CHOPIN: I know Mr. Smith called Mr. Mashek yesterday, and Mrs. Polly Earl is, in fact, not going to testify today because of the action of the Executive Committee in not supporting this historic application. That's not the way to present this to you, but I don't want you, at the outset, to be left with the wrong impression as to the Preservation Foundation.

MR. FRANK: The point is that I can accept your representation.

MR. CHOPIN: I appreciate that, Tim, but I'd also like to make a point of distinction because I think it's important. The Preservation Foundation has, in the past, urged the staff to look at the question of districting. Is that correct?

MR. FRANK: That is correct.

MR. CHOPIN: O.K. The Preservation Foundation has never come to you and insisted that you recommend the Pendleton area and areas which are not, in fact, Pendleton as well, to be included within a particular district

irrespective of whether it warrants designation as a historic district. Is that correct?

MR. FRANK: The staff of the Preservation Foundation has come to us with other areas that they believed should be districted, but not Pendleton Avenue.

MR. CHOPIN: ...Not Pendleton Avenue. At one point in time, there was a strong desire to consider the question of the Sea streets as a historic district. Is that not correct?

MR. FRANK: That is correct.

MR. CHOPIN: And the town staff, on its own, acting as prudent professionals concluded that that was not an appropriate historic district?

MR. FRANK: The town staff did not act on its own in that determination. We went back to the Landmarks Preservation Commission, this commission. We asked them for support to do a study. It was the results of the study that came to that conclusion.

MR. CHOPIN: And so the Sea streets were, in fact, not recommended as a historic district.

MR. FRANK: That is correct. That was the result of the study.

MR. CHOPIN: O.K. Just not to leave the sense of the Preservation Foundation, they're saying look at historic districts, and you looked at historic districts. Is that correct?

MR. FRANK: That's correct.

MR. CHOPIN: O.K. Nothing wrong with looking at it, is there?

MR. FRANK: That's correct. We looked at it.

MR. CHOPIN: But just as you looked at the Sea streets and concluded that was not appropriate...

MR. FRANK: Well, the Preservation Foundation...it should be a little bit further articulated than that. They did not want us to just look at historic districts. They wanted us to follow a procedure like other communities and designate following that procedure.

MR. CHOPIN: And that would, of course, been against the recommendation of Ms. Day, would it not?

MR. FRANK: I believe that Ms. Day looked at the entire town, and she agrees with this procedure. That's why we're doing this today.

MR. CHOPIN: No, I understand that, but my question is a little bit different, Tim, if you don't mind, I'll try it again. The idea of looking at a designation on the basis of a historic district is, in fact, contrary to the recommendation that your consultant, Ms. Day, has offered in the past. Is that not correct?

MR. FRANK: Mrs. Day is here. I think she can answer for herself.

MR. CHOPIN: And she'll have that opportunity, I promise you, Tim, but I'd like you to answer the question...as the staff, you have received recommendations, have you not, from Mrs. Day, you know, we get into this habit we've got to call everybody Ms. and not Mrs., so I certainly didn't mean that in any way to be offensive, Jane, but you did,

in fact, receive a recommendation from your town consultant, the preservation consultant, Mrs. Day, that that is, in fact, not the way to explore landmarking and designation in the Town of Palm Beach.

① MR. FRANK: I believe that that is one of her recommendations, but I do not know fully the answer to that question, because the question is, of course, a very complex question.

MR. CHOPIN: Why is it so complex?

MR. FRANK: The answer is I don't know.

MR. CHOPIN: You don't know the answer.

MR. FRANK: That is correct.

MR. CHOPIN: Well, would you accept, subject to my showing it to you in a few minutes or showing it to you through Mrs. Day, that, in fact, Mrs. Day has, in fact, specifically recommended a site by site approach as opposed to a districting approach.

MR. FRANK: Certainly.

MR. CHOPIN: Absolutely?

MR. FRANK: Yes.

MR. CHOPIN: You'll accept my word for it, but you still don't know if that's true or not?

① MR. FRANK: That's correct.

MR. CHOPIN: O.K. I just think we have to say that the Preservation Foundation, as I personally who have been involved with the preservation for almost twenty years, certainly believe strongly in landmarking, but at the same time, Tim, I believe you know that we believe that properties should be landmarked that are worthy of landmarking, not just because somebody wants a district, and I'm sure you agree with that as well.

MR. FRANK: I accept that.

MR. CHOPIN: You accept that. O.K. I don't have any other questions for Mr. Frank at this time. Thank you.

MR. SMITH: Thank you. Ms. Day, would you please begin your presentation.

MRS. DAY: I'm going to do things a little bit differently this morning also. Although I usually show slides to this commission, and in this case because there are 33 houses being reviewed, and there are also three vacant lots on the Pendleton Historic District, at the suggestion of the chairman, I did a video of the street. It gives you more of a feel for how this street feels, how the properties relate to the street, to each other, to the foliage and the landscape. So, if you'll bear with me, this is my first attempt at making my own home video of a historic district or landmarking. It's about twenty-eight minutes long because I did go house by house, but it will replace, at the beginning of my presentation, my usual slides. When we get down to looking at properties individually, if we go that far, I do have slides of every property, so we can do that as well. I also want to make very clear to you what is important to look

① and think about when you look at this video is that we're looking at historic context. We're looking at ...were these properties all built, designed and developed during a contiguous time period. We're looking at the scale of the houses and how they relate to each other which is something that you look at when you look at districting.

We're looking at ...are there common materials. We are not saying, because I personally looked up every building permit on every property on this street, that these properties have not been altered. They have all been altered. But as you know from other landmarking in the town, that's true of almost every building within the Town of Palm Beach. If we use that as a criteria for or against landmarking, we would have nothing left to landmark. So, these buildings have been altered, but they retain their architectural integrity. My contention is that they tell a very complete story of the development during the Depression era in the Town of Palm Beach. They represent some of the work of some of the great architects that were practicing during that period, and the architecture, itself, although not identical, is a very good example of how development can be done with economic restrictions on that development, but with enough variation in detailing by well trained architects that you can come up with a beautiful cohesive whole. Thirty (30) of the buildings qualify. Three (3) of the buildings, is my contention, that do not qualify as contributing structures to this district. If there is a district in the Town of Palm Beach, my belief is that it is on Pendleton because this is the most cohesive. It tells the same story from the lake to Bethesda by the Sea Church, and it also has a very, very high percentage of contributing buildings. Thank you, and I'll be glad to answer questions afterward.

MR. SMITH: Thank you.

MRS. DAY: Keep your fingers crossed on the video. (The following is the audio portion of the video) This is Jane Day. I'm the landmark consultant for the Town of Palm Beach and I am at the proposed Pendleton Historic District. I'm doing a brief video to show you not only the ambiance of the street, but also the factors that help to make up the contributing things that go into a successful historic district. As you can see from this brief walk, all of the setbacks, roof lines, scale and size of the buildings on both sides of the street are compatible. The district, itself, goes to South County Road, and is anchored by Bethesda by the Sea, and then to the west, extends to Lake Worth. Of the thirty-three houses on this street, thirty of them are contributing members to this proposed historic district. On the corner is one by Belford Shoumate, designed in 1957 that is not contributing. This is 201 Pendleton Avenue. The reason for that is that this is a ranch style house. It was built later than the main time frame for the building of Pendleton Avenue, and although most of the architectural integrity of the house has been retained, there have been some alterations to it since its design including, in this section, there used to be a garage, and now that has been enclosed to another room of the house. 206 Pendleton Avenue was built in 1937 for Bethesda by the Sea Church. It still belongs to the church. It's a very simple Colonial Revival style building, and although no architect was listed in the town records for this building, the master builder, E.B. Walton, did do the building of the house in 1937. It is typical of the style...wood frame, windows are six over six, and six over nine with shutters and little has been done to this property since it was built in 1937. Across the street at 207 Pendleton Avenue is a very lovely Georgian Revival style house designed by John Volk in 1940. The contractor was Arnold Construction Company. This house is wood frame with a brick exterior. I particularly like it because some of the design details that Volk accomplished with this house are things like the quoins. They're very subtle. Again, they're in the brick facing, and have a very nice play of light, dark and shade. There is a garage wing to the house to the east of the property, and although there have been alterations done since the house was built in 1940, it retains its architectural integrity. The front door is particularly lovely and you're able to view it on Volk's original plans. 216 Pendleton is a Monterey style house that was designed by Gustav Maass in 1936. It originally cost \$10,500.00 and it's been undergoing some restoration. It's a good example of the style, the cantilevered balcony, three bays over the front door, brings your eye to the front entranceway. It's both wood frame on the second floor and block on the first floor. Windows are the traditional sash with shutters. Here's another Monterey style building although this one is done by Maurice Fatio. As you can see from just the few houses that we've looked at already, we've already had E. B. Walton, John Volk, Gustav Maass and now Fatio, all next to each other on a street that was developed by the major builders in Palm Beach from the late 1920s to the late 1930s. This Monterey style is a little more elaborate than the last one we saw...again, the cantilevered balcony. Original plans on file with the town show that these awning windows are not original. They were originally double hung sash windows here, but the fenestration is the same, and this obviously could be changed back if the owner wanted to do that. The other original feature is the bay window with the copper roof that is seen on Fatio's plans. There have been changes to this house over time. Behind this tree, there was an eastern

extension to the property that was done in 1956, but the front of the house, aside from the change in the windows, still retains the integrity of Fatio's original design. Another Georgian Revival house, this time by Marion Sims Wyeth, was designed and built in 1939. It has many of the characteristics...symmetrical fenestration, a side facing gable roof, a one car garage wing to the west of the property, and a canopy and shuttered entryway with a transom light above the front door. Howard Chilton designed this Georgian Revival style building in 1940. It's a good example of the style, and really in color and in person shows a lot more imagination and a lot better in person than it does in a black and white photograph that's in your report. In particular, the natural colors of the brick add to the design. Few building permits have been pulled since this was built in 1940. There was a garage apartment that was added in 1945, but again, Howard Chilton was the architect for that. There is a lovely bay window on the west side of the building, symmetrical fenestration, sash windows, side facing gable, very compatible with the other properties on the street, and a good example of Howard Chilton's interpretation of the Georgian Revival style. 229 Pendleton is another Monterey style house by Treanor and Fatio. In this design, Maurice Fatio was a little more elaborate in the importance of that cantilevered porch that again goes over the main entry. Windows are six over six, and eight over eight double hung sash. There have been alterations to this property since it was originally designed. There was a second story wing added in this section of the house, but if you compare what is here today, and how it has been maintained, it is exactly like the original designs by Maurice Fatio...the front entryway with the traditional fan light over the top of the door. 230 Pendleton is a Georgian Revival building by Gustav Maass. It was built in 1938. It's an interesting adaptation of the style. The entryway is set back from the main block of the house with a small second story balcony above that is very effective. There are two bay windows still in tact on the front of the property. And there are some small design details like the dentil work at the roof line. The original owner/builder of this property is a man named Samuel Taylor and he goes on with Maass to do another design and building project on the street. We'll see that further down Pendleton Avenue. 236 Pendleton Avenue was designed a little bit later than most of the houses we've been looking at, but is compatible, for a number of reasons, with the other properties on the street. Again, it is a Georgian Revival style. It was built in 1948 after World War II. The designer is Gustav Maass, and interestingly enough, Maass did this house for himself. So, one would think that the designer could go out...the architect could go all out when he did his own private residence. Little has been done to this house since it was originally built. This entryway is an unusual addition to a Georgian Revival house, but probably typical of the late 1940s and typical of Maass's other work. The wrought iron details are again placed under the windows to give added emphasis, with full length shutters. Another post World War II house is 237 Pendleton Avenue. This Monterey style residence was designed by Howard Chilton in 1947 and is really a cross between the Spanish and French Creole variance of that style...the Spanish with the barrel tile roof with the lacy ironwork of French Creole architecture. You can see the exposed rafter tails, and there have been a number of alterations to this house. One alteration was the addition of the two bay windows. This was accomplished in 1948, and Gustav Maass was the architect for that. The other alterations...the last one in 1971 that was completed by Howard Chilton, himself, are all to the rear of the property. The other thing that does, in a small way, change the front of the house is that the garage originally had two openings and that was changed to one opening. None of these things, however, are things that take away from the integrity of the house, and this structure does contribute to the Pendleton Historic District. Designed in 1936 for Palm Beach Modern Homes, Maurice Fatio, again, shows the Monterey style for a house on Pendleton Avenue. This variation on a theme is one of the things that's most interesting on the street. You can see how different architects and different time periods were adapted to very slight changes that form a compatible whole in this proposed historic district. There have been a number of alterations to the rear of this house, but it still retains the architectural integrity of Fatio's original design. There is the garage, over to the east side of the property. 240 Pendleton is not a contributing structure to the Pendleton Historic District. This house was designed by Howard Chilton in 1950, but in 1967 a major alteration changed the complete exterior of the property. It was originally Moderne in design. In 1967, the entryway was enlarged, and a round window that was on the second floor of the property was enclosed. These gave it its Moderne...one of its Moderne features. Now, although there was an attempt in 1967 to make the structure more compatible with the street, I don't believe it contributes because it does not retain its original architecture. 245 Pendleton Avenue is a John Volk design. He designed this house in 1935, and here we see how Volk approaches the style. Again, there is a three bay cantilevered balcony over the front door, but it's flanked by wings on either side that are hipped roof, and really project to the front block of the house.

Windows are sash, which is compatible with the street and shuttered, and the exterior facing of the property is brick. The house retains its integrity and is a contributing structure to the Pendleton Historic District. This is the second house that Gustav Maass did with Samuel Taylor on this street. This particular house was designed and built in 1938. It's a Georgian Revival style house and has just gone through a major renovation. They did a wonderful job on it. It's really a very, very nice adaptation of the Georgian Revival style...the dentil work at the roof line, eight over eight double hung sash windows, and of course, the front entranceway with its small portico with its gable front facing is really a very nice adaptation of the style. 258 Pendleton Avenue was designed by Wyeth and King, Marion Sims Wyeth. It's a Georgian style house. Originally the roof on this house was wood shingles, and in the 1980s it was changed to cement tiles. Windows are double hung sash, and there is a small canopy over the front entranceway. 258 1/2 Pendleton was originally the staff quarters for the house that I just showed you that was next door. They were also designed by Marion Sims Wyeth. 259 Pendleton Avenue is a Monterey style house designed by John L. Volk. It was designed in 1935. Like other projects that Volk did on this street, it was built by Arnold Construction Company. The cantilevered balcony is to the center...hip roof. Windows on the house are awning windows at this time. They are not original. Originally the windows were double hung sash. So, the house does retain its architectural integrity, and is a good example of Volk's adaptation of this style. The Regency style building at 260 Pendleton Avenue was designed by John Volk in 1935. It is already a landmark of the Town of Palm Beach. 269 Pendleton Avenue is a Neo-Classical Revival style house by John Volk. It was designed in 1936. Brick on the exterior, it blends with many of the other houses in the neighborhood, but it's different because of the two story classical columns on the porch in the front of the house. Again, the windows are sash windows with shutters, front facing gable. 277 Pendleton is another house that was designed by John Volk. It is already listed as a landmark of the Town of Palm Beach. Note the double belt course between the first and second floor, and the two story entryway with its covered porch under the roof line. Because of landscaping, 270 Pendleton Avenue is a little more difficult to see than some of the others. It's a Monterey style house that was designed by John Volk in 1937. You can see the cantilevered balcony with the wrought ironwork on the second floor. Designed in 1936 by John L. Volk, this Monterey style house is one of the larger ones on the Pendleton Avenue section of the proposed historic district. The two story porch on the front floor emphasizes the entryway to the house with its sidelites and transoms. Again, the use of brick, but with a whole different feel to the overall design of the property. Windows are double hung sash, six over six and eight over twelve on the first floor. 303 Pendleton Lane is another of John Volk's houses on the Pendleton Avenue Historic District. It's a Monterey style residence. It was completed in 1937 for Arnold Construction Company who were working then under Palm Beach Modern Homes. Note the delicate railing on the cantilevered balcony, transom laid above the front doors. This house has a barrel tile roof and exposed rafters giving it an almost Spanish flavor. Pendleton Lane could almost be a textbook case to study John Volk's work, and his design adaptations during the 1930s. Here's another Monterey style house, like the one across the street. The railing gives a different flavor to the property, but again, the basic design ideas of the Monterey style house...this was designed for Arnold Construction Company in 1937. In 1938, Volk completed this French Creole style design for Pendleton Lane, again the Monterey style. The design details change the overall appearance of the house, this time with french doors on the second floor balcony and a much more interesting filagree in a black ironwork. This house has been renovated, but still retains its architectural integrity from 1938. In 1938, Volk completed this Georgian Revival style design at 315 Pendleton Lane. Instead of the second floor balcony, we've got a one story porch that topped the front entryway, and this particular example has got a hipped roof with standing copper seams, but using the traditional double hung sash windows with shutters, a hip roof and elaborated chimney. A wing to the west that extends toward the street from the main block of the house. All of these houses that I've just shown you use similar materials. They've got brick exteriors. They're compatible in style, in scale, in setback. It's just the design details that give them each an individual appearance and is one of the reasons that the Pendleton Historic District is so important to the Town of Palm Beach. This house was designed in 1937 by John L. Volk. Its address is 322 Pendleton Lane. In 1955, Gustav Maass added an addition to the rear and in 1987, Eugene Pandula did a complete restoration. The house still has its architectural integrity and is a good example of Volk's work...railing details, double hung sash windows, transom lights, shutters...the same elements put together in different ways for interest on a street that is really quite cohesive in its history, its style, and its scale. 324 Pendleton Lane was once the tennis pavilion for the house next door at 322. It is now a single family residence, and although

it was designed by John Volk in 1937, because of its small size, it is not really in scale with the rest of the neighborhood, and is not being listed as a contributing structure. 333 Pendleton Lane is another John Volk design, this time from 1937...oh, I'm sorry...1940. Again, it's brick. It's a little bit later than the others, but he has used the same good design techniques and elements...the wrought iron balcony on the cantilevered section over the front entranceway, the main entrance recessed slightly from the front of the house, and something I haven't addressed before, but it is visible on all of these houses, is the placement of the garage wings that are to the side and set back from the main block of the houses. This was a good solution to the cars and where to put them in the 1930s, and remains a good solution today, where it keeps the automobile away from the front of the house. Built in 1940 by Arnold Construction Company, the architect for this house was also John L. Volk. This is 345 Pendleton Lane. Notice the quoins on the corners that are typical of Georgian Revival style architecture. This house is a good example of that style with its symmetrical fenestration and the pediment over the front door. The Monterey style residence at 4 Lake Trail was also designed by John Volk...this time, however, not until 1946, after the end of World War II. This house was proposed for landmarking in 1990, but because of owner objection, it was not recommended to the Town Council. Now, because it is over 50 years old, and that was the only objection at that time, it is being brought back as a contributing structure to the Pendleton Historic District. It's a good example of the Monterey style, and in a few minutes I'll walk to the Lake Trail section so we can see it from the other side as well. This is the terminus of the Pendleton Historic District, at the end of this small lane that walks out to the Bike Trail on Lake Worth. Foliage prevents very much visual contact with the house at 4 Lake Trail from the Bike Path, but just so the commission can see what you can see from the Bike Path, I've brought this to you now. This is the lake side of 5 Lake Trail, and in a moment I'll show you what's visible from Pendleton Lane. This house was built in 1940. The architect was John Volk and the original owner was Mr. Ballentine. 5 Lake Trail is the house that I just showed you the Bike Path a second ago. This is the front of the house where you enter from a cul-de-sac at the western end of Pendleton Lane. You enter under an archway of ficus trees around the cul-de-sac into a very lovely design by John Volk...the fanlight over the front entrance, a bay window, regular fenestration, double hung sash windows, all executed in brick, and with the integrity of its original design. In conclusion, as I walk down Pendleton Lane, you can see the landscaping which is important to the fabric of the neighborhood, but more important is the historic context of these houses....their scale, their setback. The Lane, in particular is all the work of John L. Volk and Arnold Construction Company for Palm Beach Modern Homes. To see these houses now, you probably wouldn't even think about the Depression era times that produced them, but they certainly are a scaled down version of the Mediterranean Revival mansions that were popular during the 1920s. They show how Volk took basic plans and materials and adapted them with refined detailing to make a neighborhood that is interesting, ever-changing and still compatible, one house from the next. If Pendleton Lane is important for its examples of John Volk's work, Pendleton Avenue is important because it shows the work of all the great Palm Beach architects during the Depression years of the 1930s. As you walk down the street, and as I went through all the examples, you can find design work from Treanor & Fatio, Marion Sims Wyeth, Howard Chilton, John Volk, Gustav Maass. It's a street that works because it's good design. And it's a street that works because it's put together with similar historic content, design details, and fabric. Together, Pendleton Lane and Pendleton Avenue should form the Pendleton Historic District. (Video presentation with commentary ends)

MR. SMITH: That was very nice, Jane.

MRS. DAY: Thank you.

MR. SMITH: Do you have any other information to add?

MRS. DAY: It's my recommendation that you designate this a historic district for the Town of Palm Beach. Truthfully, I'm concerned with the amount of artillery I see in the hearing room, and I'd be happy to answer any questions from any of those folks, and I hope that it's just education that can show why this particular area of the Town of Palm Beach is worthy of becoming a historic district, because it tells a story all together. All of the thirty houses that I have listed as contributing, I believe, could fulfill the criteria for being designated on their own. And

also, as I said earlier, there have been alterations on these streets, but the basics of the 1930s still remain, and it's the fact that they're together, it's the fact that all of the different elements on this street make such an important statement about history, about design, about scale, about all of the things that are important now that make it important to preserve it for an area of study. It's also important to realize that the middle section of this street is about 4-1/2 feet above sea level, so that there are problems from the standpoint...from a technical standpoint...and I would hate for anything to happen that these houses couldn't be put back exactly the way they were because it makes such a great statement about the Town of Palm Beach. While I was doing this video, I had some folks who were jogging from the Breakers who wanted to know what I was doing, and was I a realtor, or what was this about. They applauded your effort, the way the Town looked, and said that they absolutely thought that it was one of the nicest and most cohesive neighborhoods that they had seen on their visit to Palm Beach. Any questions for me?

MR. SMITH: Jane, one question I have is do you know what the typical lot sizes are for the houses on Pendleton Lane and Pendleton Avenue.

MRS. DAY: I can have it for you in a minute. I've got all my paperwork here, and I'm a little muddled here today, if you hadn't noticed.

MR. SMITH: O.K. I understand. That is a very nice presentation, and I think what I've learned from it is that we should do more video presentations because it really....

MRS. DAY: Well, that was my first one.

MR. SMITH: O.K. Well, you did a very nice job. Mr. Moore, did you want to address the commission?

MR. MOORE: Yes, first of all, I need to be sworn in, and anyone else that's here to speak who hasn't been sworn in needs to be.

MR. SMITH: Anyone else? Anyone who wants to address the commission at all today, please stand up and be sworn in.

MRS. DELP: Do you swear that the testimony which you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

PERSONS WHO STOOD TO BE SWORN: I do.

MR. MOORE: Mr. Chairman, you have just seen the presentation, albeit a new type of presentation with video, and certainly, as you are well aware, we are a quasi-judicial hearing and that was direct testimony, so the public will have an opportunity to question Mrs. Day, as the Town's expert, and perhaps any additional questions for Mr. Frank or even myself, for that matter, as direct questions, as your staff. However, unfortunately, due to the fact that Mr. Randolph had to attend a tele-conference call, he has asked that the cross examination of these witnesses and these proceedings wait for his presence so he may rule on the appropriateness of it, and so, therefore, it would be our suggestion that you take a break until we can have him back. We do expect him back shortly.

MR. SMITH: Is it possible that we could ask these questions in executive...

MR. MOORE: Yes, you, as the Chairman, have the right to set up your rules and if, in fact, as I said, it is quasi-judicial, not purely judicial, so you may go outside the bounds of what a normal court proceeding would be. So, if you, as the commission, wish to ask Mrs. Day any questions at this point, I think that would be entirely proper. Please keep in mind, though, that the public will have a right to cross examine on the questions that you're asking just as much as her original presentation.

MRS. DAY: And I have the lot sizes.

MR. SMITH: O.K. Thank you, Mr. Moore. And as soon as we're finished asking any questions we may have of Mrs. Day, then we'll take a break and wait until Skip returns.

MR. CHOPIN: Jeff, if I can suggest something...I have two witnesses, one of whom is Diane Jenkins. I'm quite prepared to...I would prefer to have a chance to ask Mrs. Day some questions first to put things in context, but if it would facilitate the Landmarks Commission, I would put Ms. Jenkins on out of turn so that she can present her testimony on a direct basis, which I think would facilitate, from a time point of view, and is not likely to cause any problems as it relates to...

MR. MOORE: I, not being Mr. Randolph, but that is a reasonable request and I do not foresee that that would be objectionable in any way, shape or form to let Mr. Chopin go out of order and then return to the questions that he wishes to ask under cross examination.

MR. SMITH: Plus, it is possible that Skip may ask some questions of the witnesses.

MR. MOORE: Mr. Randolph would normally be sitting here to advise you, to help be judges. He would not normally participate in the examination or cross examination.

MRS. DAY: Lot sizes...

MR. SMITH: Yes, please, Jane.

MRS. DAY: Pendleton Avenue. The lots were 55' across the front and had depths of about 110'-111'.

MR. SMITH: On both sides of the street?

MRS. DAY: Yes, on both...on the south side of the street, excuse me, the lot depths are about 92'-91', but the same 55' across the frontage. On Pendleton Lane...

MR. SMITH: But Jane, we have to then go further into the report to find out how many lots they added to...like, half of, you know, half of one lot, all of the other lot. Correct? I mean that's not the typical piece of property these houses sit on....

MRS. DAY: That's the typical piece of property these houses sit on.

MR. FRANK: No, hold on. I can add to that. Mrs. Day is correct. The lots on Pendleton Avenue are 55' in width. Most of the lots on Pendleton Lane are 100' wide in width, but back to Pendleton Avenue, most of the development takes place on two or more of these lots.

MRS. DAY: Right. I'm sorry, Jeff. That's correct.

MR. SMITH: So, let me go back. The..which one's Pendleton Lane, again, and which one is Pendleton Avenue? The middle block...

MRS. DAY: Pendleton Avenue is the one that the lots were originally 55' wide.

MR. SMITH: And that's the lake block or is that the middle?

MRS. DAY: No, that's the middle block.

MR. SMITH: They were 55'

① MRS. DAY: Right, by about 110' on the north side deep, and 90'-92' on the back side.

MR. SMITH: Oh, O.K. this is what I need. This is all I need. (Looking at a map)

MR. PANDULA: Most of these have been combined.

MRS. ALBARRAN DE MENDOZA: Most of them , maybe, are two lots wide. So 110'.

MR. FRANK: In your report, the diagram following page 33 is a photograph of the Town Atlas, and it depicts the lot sizes.

MR. MOORE: Those are platted lots versus actual lots that houses occupy, to answer your question correctly.

MR. SMITH: O.K. Thank you. Does anyone else have questions of Mrs. Day?

MR. PANDULA: I've got one question, Jane. In your experience with districts, elsewhere in the state and the nation, typically what's the percentage of contributing buildings versus non-contributing. I mean is 90%, where we're at now, average or high.

MRS. DAY: It's extremely high. It's an extremely high percentage of houses that contribute to the district. Usually, 75% is what the state likes as a cut off point for doing districting. So, we've got a larger percentage of buildings
① that do contribute on this two block area in Palm Beach.

MR. SMITH: Any other questions?

MR. MOORE: Mrs. Day, you do realize that you will need to be here to answer any questions from the public.

MRS. DAY: Sure.

MR. MOORE: Mr. Chopin is up at the mic and he wished to go first with his public portion and his public presentation, and Mr. Chairman, if you don't have any objection, he should proceed.

MR. SMITH: Well, I think, probably at this point we should probably MAKE A ...MOVE THAT THE

MR. MOORE: Oh, yes, excuse me, you're right.

MR. PANDULA: I'll do that. I'LL MAKE A MOTION THAT THE DESIGNATION REPORT BE MADE A PART OF THE RECORD.

MRS. WILKEY: I'LL SECOND THAT.

MR. SMITH: MOTION MADE AND SECONDED. ALL IN FAVOR? AYE. (ALL) OPPOSED? (NONE) SO MOVED. Mr. Chopin, will you please begin with your witnesses.

① MR. CHOPIN: Yeah, I just want to be clear that I'm being a nice guy in doing this out of turn. It's not what I want to do. It's, in fact, the exact opposite of what I want to do, Mr. Moore.

MR. SMITH: Well, if you would prefer...

MR. CHOPIN: No, no. I think to use the time effectively because I think unfortunately a lot of this is going to be tedious. A lot of it's going to take time. I hope I can entertain you at the same time that I educate you.

MR. SMITH: You always do.

MR. CHOPIN: I'll do my best, but the fact is that a twenty-eight minute video tape is not going to cover the issues that are involved, and it doesn't cover the issues that are involved, and I think we need to look more carefully if we're going to understand the harm and the lack of good that's involved with this designation. I'll deal with that when we have a chance, when Skip returns. I would call, out of turn, and of course I'm anxious to have an opportunity to chat with Mrs. Day, Diane Jenkins as a witness, and it may be easiest to use the hand mic and I'll go over here.

MR. SMITH: That's fine, Frank, whatever you...would you prefer the hand mic, or standing there is fine. Standing there is probably the best.

MR. CHOPIN: I'm calling, on behalf of Pauline Boardman, Diane Jenkins, who is a Certified General Real Estate Appraiser. I'm going to let Ms. Jenkins give her testimony without a lot of questions. I would like to offer a copy of her resume' and ask that it be inserted in the record, but I would also ask you, Diane, if you will...by the way may I just ask a question of the Chairman in the motion that Mr. Pandula made regarding making the Designation Report a part of the record. I assume that the video that we saw would be included as part of the record as well.

MR. SMITH: Yes.

MR. CHOPIN: Was that included in the motion?

MR. PANDULA: Oh, absolutely.

MR. CHOPIN: O.K. Thank you. Diane, would you tell these folks a bit about your background?

MS. DIANE JENKINS: Certainly. Good morning. My name is Diane Jenkins. I'm a State Certified General Real Estate Appraiser. I own my own business, Jenkins Appraisal Service, which is located in West Palm Beach. I have been in the real estate appraisal business for twenty-five years. I have a degree in Business Administration from the University of Florida, and I have been doing this work right here in Palm Beach County for that extent of time. I was asked to take a look at 5 South Lake Trail, if I may just continue to keep this moving along.

MR. CHOPIN: No, I just want these folks to know how really good you are, Diane, so they can appreciate the full value of your testimony this morning. You have, in fact, assisted the Town and the Landmarks Preservation Commission in the past, have you not, with input regarding the affect that landmarking has on valuation?

MS. JENKINS: Yes, I have.

MR. CHOPIN: O.K. And you've submitted reports and the like.

MS. JENKINS: Correct.

MR. CHOPIN: Just, again, to sort of expedite matters, I think you generally concluded, particularly in the last few years, based upon a study which you did, that, in fact, landmarking had a positive affect on the value of buildings that have been landmarked by the Town.

MS. JENKINS: That's correct. In August of 1997, I prepared a report for the Preservation Foundation that, based upon a paired sales analysis, which is an appraisal term, obviously, we concluded that landmarking does, in general, have a positive impact on values.

MR. CHOPIN: And did you find, in the course of the study, that you undertook on the subject that that was universally true, that you could apply it in all cases to landmarking?

MS. JENKINS: No.

MR. CHOPIN: Could you explain to these folks what the exceptions or distinctions were as...based upon your study.

MS. JENKINS: Certainly. We were not able to extract any type of paired sales analysis to determine landmarking impact on what we called the "omega" estates...a lot of the waterfront properties, the larger properties. And the other place that we found a definite negative impact on properties from historic designation is if the property were an under-improvement.

MR. CHOPIN: Now, did you have, at my request, an opportunity to take a look at the property at 5 Lake Trail?

MS. JENKINS: Yes.

MR. CHOPIN: You saw the back as well as the front?

MS. JENKINS: Correct.

MR. CHOPIN: Were you able, on the basis of that inspection, including, in some cases, the interior parts of the property, have an opportunity to come to an opinion as to the affect that the indirect landmarking of this property would have on its value?

MS. JENKINS: Yes.

MR. CHOPIN: And could I ask you, based on your expertise as a Certified Real Estate Appraiser, to tell us what that conclusion was please?

MS. JENKINS: Yes, this particular property was a little bit different from most of the properties on Pendleton Lane in that the site size is quite a bit larger from the typical, let's say, twelve to twenty thousand square foot site. This site is about 33,000 square feet, and the site coverage ratio, in looking at the other houses on Pendleton Lane as compared to this house, was significantly different. This house has a far lower coverage ratio than the other properties. This property, of course, is right on the lake, and in looking at the existing improvements, and looking at what was on the balance of the street, and looking what has happened in the Town on properties similar to this, we certainly concluded that this was what we call a "tear down," where if somebody purchases this property, they're going to put a new home on this site that would be larger, that would utilize more of the site.

MR. CHOPIN: And the affect of the not being able to, perhaps, redevelop the house on its valuation would be what, in your opinion, as an expert in this field?

MS. JENKINS: This would be one of the properties that we would consider an under-improvement where, if this particular property is landmarked, it will be negatively impacted.

MR. CHOPIN: Well, it's certainly not going to protect the value of the house or enhance the value of the house or perpetuate the value of the house if it were to be landmarked...is that correct?

MS. JENKINS: No. This one would have the opposite impact.

MR. CHOPIN: Do you recall what the Property Appraiser has assessed this property?

MS. JENKINS: The total assessment on this property was \$2,046,619.00.

MR. CHOPIN: O.K. Now, could you break that out? I'm less interested in the value on the building and improvements than on the land itself.

MS. JENKINS: Certainly. The two, actually, where the land was assessed at \$1,700,000.00. The building was assessed at \$ 346,619.00. So, in other words, the land resulted...or the building resulted in being 17% of the assessed value.

MR. CHOPIN: O.K. So, in addition to reflecting on its face that the land value well exceeds the value of the improvement to the property, you also note that the property on the lake is assessed at a much higher level than the properties particularly on Pendleton Lane, excuse me, Pendleton Avenue would be assessed. Is that right?

MS. JENKINS: Yes.

MR. CHOPIN: Probably four or five times as much in most cases?

MS. JENKINS: Certainly. The waterfront property is considerably higher.

MR. CHOPIN: Does that suggest to you that these properties are similar based on the assessed valuation?

MS. JENKINS: Well, certainly not just based on the assessed valuation, but based upon many things. No, they're certainly not similar. You have a different sized property. You have a total different amenity involved, and a different type of purchaser generally.

MR. CHOPIN: O.K. I don't have any other questions of Ms. Jenkins.

MR. SMITH: Thank you.. The only thing I'd like to get on the record is that I did not call for any exparte communication, and I did have exparte communication with Mr. Chopin.

MRS. ALBARRAN DE MENDOZA: So did I.

MR. SMITH: And, I'm just trying to think if there was anyone else. I spoke with Mrs. Earl.

MS. BLADES: Yes, so did I. I spoke with Mrs. Boardman and Mrs. Goodhue.

MR. SMITH: I think that was all I had. Anyone else?

MR. CHOPIN: While you were out, Skip, we held off on the cross examination, but I'd like now, if I may, to have a chance to ask Mrs. Day a few questions. I'm going to go back over there. I'm going to tell Diane it's O.K. to go unless someone wants to ask her any questions.

MR. PANDULA: I have two questions. Regarding 5 South Lake Trail, you call it under-improved. Suppose somebody wanted a house of that size and land. Would it still be under-improved if the value they attached to laying a property was yard area and green space?

MS. JENKINS: From a real estate appraiser standpoint, yes, because we always have to look at properties from what we call the highest and best use, which means we look at what is maximally productive for the site so that even though maybe a particular buyer may like the property the way it is, and it's a beautiful property the way it is. That not the way, from an appraisal standpoint, we have to view it because somebody will not generally pay that much for land given those improvements if they plan to keep those improvements. So, from a valuation standpoint, we would still consider that an under-improvement and sometimes people do buy under-improvements and then maintain them, but that is not the typical market.

MR. PANDULA: But if someone wanted a tennis court or a large pool or gardens, that would be perfectly appropriate for them to buy this property.

MS. JENKINS: They certainly would have the opportunity to do so.

MR. PANDULA: And even if it's under-improved physically, couldn't it be improved by careful additions to the existing house or an increase in square footage elsewhere on the grounds, or are you suggesting that the only way to improve it is to tear it down?

MS. JENKINS: No, I'm suggesting that what the market generally does, because what we try to do is reflect what is the market's general trend, and particularly from a valuation standpoint, how does the market address these issues. And generally, the market, with a home like this, would tear it down. From looking at the house, it's not...it certainly wouldn't be an easy house to add on to because of the way the layout is done. So, that was one of the things I looked at...to see if this is something where somebody could come in and say...oh, I could put my media room here and this flow would be very easy...it doesn't lend itself to that, so I didn't feel that that was an opportunity for the property.

MR. CHOPIN: I'd like to ask you a couple of follow up questions based upon what Gene asked you. If somebody came along and were prepared to effectively overpay for the property because they wanted the land, would they be facing, on re-sale, the same difficulties of having an under-improved piece of property and facing a market valuation that would be probably less than if the property were capable of being re-developed?

MS. JENKINS: Yes, of course.

MR. CHOPIN: That's it.

MR. SMITH: Mr. Frank, you have a question.

MR. FRANK: Yes, I have a couple of questions. First of all, I notice you've been using a term "highest and best use," and I'm a little confused by that because I'm an urban planner, and to me, "use" is how the property is used, and I think that's the context in which we deal with it at the Landmarks Preservation Commission. I believe that what you're describing to us is not the highest and best use at all. I believe it's the highest and best value or the best market return for the property. I think the highest and best use on this parcel might be single family, but I don't want to suggest that to you. In addition....

MR. CHOPIN: Is there a question here somewhere?

MR. FRANK: It's a question. Do you believe that...is your testimony based on the highest and best use...is the dollar value the use of the property?

MS. JENKINS: Highest and best use is an appraisal term, and is a term that we are actually governed by legally. We are to appraise property to its highest and best use, and what highest and best use means to us is what is the

maximally productive use of this site, meaning what use returns the highest land value to this property. So, absolutely, when you say is there a dollar value connected to highest and best use...yes, it is. It is not the same as you would look at a use. They are two different terms.

MR. FRANK: O.K. So is it your testimony that your reference to use refers to the same use that we talk about in our ordinance?

MS. JENKINS: The highest and best use I'm talking about is an appraisal term that says what's the best use of that site as far as a market valuation.

MR. FRANK: Thank you. Also, related to that, is can you tell me how that relates to our ordinance, and what this commission's role is?

MR. CHOPIN: Mr. Chairman, I'd like to object. We called this lady as an expert real estate appraiser. Only lawyers can tell you what the code means, and we haven't figured it out entirely yet.

MR. RANDOLPH: But she ought to be able to say, if she doesn't know, that she doesn't know.

MR. CHOPIN: Well, she's not been qualified as an expert along those lines, but neither has Mr. Frank.

MR. RANDOLPH: She can answer the question.

MS. JENKINS: Obviously, that's not my area of expertise. My only comment is that my impression of the ordinance is that one of the things that is your responsibility is to help ensure property values for individuals, and I think that if you do something to diminish an individual's property value, that you need to be well aware of that before you take such action.

MR. FRANK: Thank you. You've answered my question.

MS. JENKINS: You're welcome.

MR. MOORE: Mr. Chairman, I do have just one question, Frank. Ms. Jenkins, and I remember the report you did for the Preservation Foundation and you certainly made it available to us and we were very appreciative of that too. And I heard you testify that you have said that this property, because it is lakefront waterfront, and it is underutilized in square footage and ratio to the amount of the square footage of land, that it would therefore be, and I think you used the term "tear down?"

MS. JENKINS: Yes.

MR. MOORE: O.K. Do you find that that would be that same relationship would be true to interior lots or other lots that would not necessarily be waterfront...that the value of the ...the appraised value of the property is, indeed, lower than expectations and that the value of the land is higher? Is it not true throughout the town that the middle blocks, for instance, the non-waterfront blocks have an inordinately high value in land and an inordinately low value in structure?

MS. JENKINS: Palm Beach is such an unusual market that generally, if we're over in West Palm Beach, we'll say ...O.K., the land is worth 25% of the improvements. You will never ever see that contingent in Palm Beach, so that absolutely true. That is, I would say 99% of the time, you're going to find that situation. I've looked at the balance of the 300 block to see, and I didn't inspect the other homes on the 300 block, so I can't tell you individually whether or not I think those are appropriate. I can only tell you that certainly their percentages are far closer to what

you would consider a norm which is more like maybe a 35% or a 50%, somewhere within that ratio...that that's how much the home is improving. The land is certainly still more valuable because the land is so limited in Palm Beach and it's in such high demand. Yes, when you get to waterfront properties, then the percentage becomes even further out of whack which is what we find in a situation like this.

MR. MOORE: So, it's fair to say the premium for the waterfront property is higher than the interior property for the obvious reasons. It's more desirable.

MS. JENKINS: Yes.

MR. MOORE: Thank you.

MR. PANDULA: Can I ask one more question, please? Are you aware of...have you been following the discussions with the Town's Architectural Commission here in regard to structures that are too similar or too dissimilar and how that's rattled its way through the Zoning Code, and other related aspects?

MS. JENKINS: I'm aware of it to an extent in some of the north end properties only because I have some friends who have come before you trying to do various things, and trying to do a tear down and build a new house. So, I can't say I have attended the meetings or that my knowledge is great. I can only tell you what I've heard second-hand from friends.

MR. PANDULA: So, hypothetically, a philosophical thing here. You're terming this property under-developed or under-improved. Suppose you tore down this house and you couldn't get back any more square feet on a new building than you've got now because of the way the system is. Is it still under-improved or is it essentially maybe that you've got what you're going to get. Where do you go from there?

MS. JENKINS: Certainly, if you were to....this house has, let's say, I think it's about 4,100 to 4,200 square feet of living area, and on a 33,000 square foot site, somebody would anticipate gaining more square footage than that. If they could not....if they could not gain more than that, they would certainly come in with a design that flowed better than what is there now, unfortunately. And chances are somebody would do that. The rooms inside are kind of small, and it's not something somebody living on the water would particularly find desirable, and I'm sure that somebody would certainly want more square footage, but I can't tell you what would be approved, obviously.

MR. SMITH: Let me ask you this from an appraisal situation. If you currently have, and let's think about the middle block, the 300 block, no, excuse me, the 200 block, and a house is over-developed for the site by our zoning for the town...let's say it's over-developed by 20%, and a hurricane comes by and demolishes the house, or a fire or what not, and demolishes more than 50% of the house, which means that the house has to be re-built according to the current code, which means that a property that sits in setbacks that no longer are with the current code, ...if you're losing 20% of the volume of the house because of that, how much does that diminish the property value...20%?

MS. JENKINS: That would depend. It could be more significant than that because you could end up with a house that was so small that it would not be desirable. I'm not saying that you shouldn't address the potential of landmarking some of the other properties in this area that don't suffer the same situation.

MR. SMITH: I know you're the expert for the lakefront. I'm just thinking, while we've got an expert here...

MS. JENKINS: I think, for those people, they should be in here asking for it. You know, I think for them that's an ideal situation. It only helps them and benefits them, and protects their property values. I just think that when doing a district, I think it's very difficult because you don't want to impact anybody negatively. You certainly want to

help out the people where it's going to be a positive scenario. So, I think it's very hard to do a district, per se. I think it's important to look at every individual house and see what's the impact on that particular property.

MR. MOORE: Mr. Chairman, if I might, and I know that this is always a confusing issue, this about 50% rules, about zoning and 50% about FEMA, and 50% about bringing the house up for code, but for the record, since it is quasi-judicial, I must advise you now that the Town Council and Zoning Commission and Council, in its infinite wisdom, has also said that any house, now, any single family residence may be re-built in the event of a fire or hurricane, in its current location, current footprint, current cubic content, with the exception that the floor must be raised to 7.5 feet. So, that one time advantage that landmarking used to have is no longer solely a landmark advantage. So, I must straighten that out for the record at this point. But your answer was right and that's one of the reasons we used to ask people to consider landmarking because of that advantage.

MR. SMITH: Thank you. Any other questions of the witness? Hearing none, I believe you may...thank you.

MR. CHOPIN: I think I would like to use the hand mic because I have some charts and things and I think it's going to mean moving around, so....

MR. SMITH: Where is the hand mic? I think it got hocked. You can remove that. That has nothing to do with this. That was probably a council issue.

MRS. ALBARRAN DE MENDOZA: Interesting though.

MR. SMITH: It would never get approved at this...

MR. MOORE: It looks like one of your zoning requests...variance requests.

MR. CHOPIN: You know, Bob, we always try to keep things to a bare minimum here. Jane...

MRS. DAY: Yes.

MR. CHOPIN: I know you're not feeling well..

MRS. DAY: Yes.

MR. CHOPIN: And I'd like to just rush on through, but there are some things that I really have to ask you.

MRS. DAY: Let's do it.

MR. CHOPIN: And don't take any of it personally, but you can understand that my client has probably several million dollars at stake and these are important issues to her. Alright?

MRS. DAY: I understand.

MR. CHOPIN: O.K. Can I just take a couple of sort of preliminary points. I watched your movie. You do a good job, but I think you indicated that that ranch house you don't like was built in 1957. We don't have to run the tape back, but that's not accurate is it?

MRS. DAY: Well, I'll have to check the building permit.

MR. CHOPIN: Well, you could also check the Designation Report which says it was built in 1950.

MRS. DAY: I think I made a mistake on the street.

MR. MOORE: Which one was it, Mr. Chopin, I'm sorry?

MR. CHOPIN: The Designation Report...it's the Shoumate ranch house.

MRS. DAY: It says 1957 in the Designation Report.

MR. SMITH: It says 1950 on my Page 2.

MR. CHOPIN: I'm sorry. It does say 1950. It's not a big issue since I know you don't like ranches, but you did say '57 on the film.

MRS. DAY: O.K. I said that because the text says 1957 on the interior. I was looking at the text when I was doing the film on the street. Page 37 of your Designation Report.

MR. CHOPIN: Right. So what's the answer?

MRS. DAY: I'll have to get the building permit and look for you.

MR. CHOPIN: Do you want to get me the building permit. I'll tell you what it is off the building permit. Did you, by the way, look at all the building permits?

MRS. DAY: Yes, I did.

MR. CHOPIN: And the building permits show who the architect is, doesn't it?

MRS. DAY: Not always, but sometimes they do.

MR. CHOPIN: And sometimes they may show that the architect is somebody different than what you showed in the historic Designation Report too, right?

MRS. DAY: I don't know which one you're telling me about.

MR. CHOPIN: Well, we'll get to it later, I promise you.

MRS. DAY: O.K. Good.

MR. CHOPIN: I got to deal with this Preservation Foundation thing, if you will. O.K....because Tim raised it, and I don't think you see Polly Earl or anybody other than me from the Preservation Foundation here. I know you don't like to approach designation on the basis of districting. Is that right?

MRS. DAY: In the Town of Palm Beach, that's correct.

MR. CHOPIN: In the Town of Palm Beach that's correct.

MRS. DAY: Correct.

MR. CHOPIN: You've recommended to the Town, and I wish Tim would read your reports, and then he'd know the answer...that they do it on a site by site basis.

MRS. DAY: That's correct. I said that.

MR. CHOPIN: And the reason you came to that conclusion, I believe, was because, among other things, it gives you a more comprehensive basis for being able to defend the designation and protect the property in a subsequent attack.

MRS. DAY: Correct.

MR. CHOPIN: You also indicated that in several past occasions when Worth Avenue, among others, was recommended as a district that the Town Council suggested you consider matters on a one by one basis.

MRS. DAY: That's also correct.

MR. CHOPIN: O.K. But you're still recommending a district. Why?

MRS. DAY: I was advised by Tim Frank, Bob Moore, and at the insistence of Polly Earl, who we feel represents the Preservation Foundation...

MR. CHOPIN: So does she, but she doesn't.

MRS. DAY: That districting was a way to go in the Town of Palm Beach, and after we completed the Historic Sites Survey in 1997, and even after I put the paragraph in there that you're alluding to that says in Palm Beach I would prefer to go site by site, I was told to look at what areas of the town would be the best district, if you are ignoring the fact that this is the Town of Palm Beach. If you are strictly looking at landmarking as you would in any other community in the State of Florida, and my expert opinion was that that area would be the Pendleton Historic District that I proposed to you this morning.

MR. CHOPIN: Right. So you were pressured into recommending a district because somebody wanted you to go out and find it. Right? We needed a district for the sake of a district, and that's why you went against your principles on this matter.

MRS. DAY: I don't think I went against my principles. I think I'm a very pragmatic preservationist and I think that I have realized, since I came to work in the town in 1992, that districting creates problems like we have here this morning. You just heard your own witness say that if she were in that middle block, we were doing those property owners a huge favor by doing this. So, I am getting conflicting viewpoints from different people within the Town. This is a historic district, I believe, under our current ordinance. Politically, it may not fly because of the folks in the Town of Palm Beach, their experts and the artillery that they bring out in a hearing like this, but this is a district. And I also, just last week at the Town Council, had Mr. Leslie Shaw, one of our Town Councilmen, when it came up about Root Trail and we were doing those one at a time because it had been suggested earlier on and on that Root Trail be a district, they turned down 153 and 155 Root Trail at the Town Council for districting, even though the property owner wanted it, and Mr. Shaw sat up here on the stage and said to me...why don't you look at Root Trail as a district. So I am getting conflicting opinions from different people in the town. All I can do is look at the properties, and see how they relate to the Town of Palm Beach ordinance.

MR. CHOPIN: And Mr. Shaw told you to look at it. He didn't tell you to come in and recommend it. Did he?

MRS. DAY: No, he did not, and nobody told me to come in and recommend the Pendleton District. They told me to look at it, and see if there was one in the Town of Palm Beach, where that would be, and what my opinion was on that.

MR. CHOPIN: O.K., but you did feel pressure, and what you really have said to this commission more than once already today...if, if there's a district, if there's going to be a district, this is the best one. That's what you've been saying, isn't it?

MRS. DAY: Yes, because I don't know what either this Landmark Commission or the Town Council is going to do.

MR. CHOPIN: Well, I mean, we have a number of other districts already, don't we?

MRS. DAY: Yes, we do.

MR. CHOPIN: But if we're going to respond to the pressure...by the way, I got a letter from Mr. Smith. Would you get me that letter? Mr. Smith wrote me back...took him two months to do it...when I wrote you folks and said...gee, I don't think you should be looking at 5 South Lake Trail because this thing is so different, and it's going to cost my client an awful lot of money for us to get prepared. And he wrote me back and he said...ha! You're out of line, Frank Chopin. He said this thing is before the Commission because some property owners in the Town of Palm Beach came...no, I don't want to misquote you, Jeff. What he said was some homeowners on Pendleton, homeowners on Pendleton...I'm getting the letter right now in case you need to refresh your recollection.

MR. RANDOLPH: Excuse me, are you asking a question, or are you making a statement? This is cross examination.

MR. CHOPIN: Well, it is cross examination, and I'm asking a question, but if I don't give them the predicate for it, they're not going to know what I'm talking about. But the letter which I got from the Town of Palm Beach, signed by Mr. Smith said that some folks on Pendleton Avenue had come to the Town and requested the town to landmark this property. Is that true?

MRS. DAY: There have been property owners on Pendleton who have asked to be landmarked. Yes.

MR. CHOPIN: Before you began the process recommending a historic district, were there property owners on Pendleton that came to the town and requested that it be landmarked.

MRS. DAY: Yes.

MR. CHOPIN: Who was that?

MRS. DAY: The first one was Michele Clarke Royal who is a commissioner, and she had a party at her home that I attended and Polly Earl hosted, that they wanted to create a district on Pendleton, and I talked to quite a few property owners that day who were enthusiastic about the process. The Websters, who were at 260, also requested landmarking, and Mr. Dickey, who I think is in the audience, has also been on the phone to Mr. Frank a number of times to say why is this process so slow, and what's going on. He wants to be a landmark.

MR. CHOPIN: I see. Now, because I think you're very good at what you do, Jane, I pay a lot of attention to the procedures that you recommend, and it seems to me that I recall that you recommended that the process of districting should begin with the homeowners on the street, that they then should take steps to solicit the support of their neighbors, and that the town should only support a district when it's supported by a majority of the residents of the street. Is that right?

MRS. DAY: I did say that.

MR. CHOPIN: You did say that. You wrote that. You recommended it to the Town, didn't you?

MRS. DAY: I did.

MR. CHOPIN: Yet because of the pressure that you're feeling because of Polly Earl, apparently, and whoever these other folks are, instead of following your own recommendations, you instead have bypassed the process, have you not?

MRS. DAY: No, I haven't. We don't have owner consent in our ordinance, so that you can landmark anything in this town whether the owners want it or not, according to the ordinance.

MR. CHOPIN: Yes, and I understand that, but that's not my question. Is it, Jane? My question to you is that you said don't come to the town to recommend a district unless a majority of the residents of the street support it.

MRS. DAY: That was my suggestion.

MR. CHOPIN: That was your recommendation.

MRS. DAY: Yes.

MR. CHOPIN: O.K. You prepared, in 1997, the Town of Palm Beach, Florida Historic Sites Survey.

MRS. DAY: That's correct.

MR. CHOPIN: And in that you made recommendations to the town as to how it should proceed with landmarking, did you not?

MRS. DAY: Yes.

MR. CHOPIN: And the recommendation you made is that a district simply should not proceed unless it proceeded on the basis of majority support from the residents of the town.

MRS. DAY: That's correct.

MR. CHOPIN: And you don't have majority support from the residents of the town, or residents of Pendleton Lane, Pendleton Avenue and Lake Trail, which is not even part of the subdivision. You don't have that majority control, do you?

MRS. DAY: I haven't done a count, really?

MR. CHOPIN: Well, have you done any kind of a count?

MRS. DAY: I've only seen five letters. I think it's only four or five letters that are opposed, and we have those here as well.

MR. CHOPIN: Do you think all these attorneys are here representing nobody, Jane?

MRS. DAY: Well, you know what, not...the town doesn't always take all of my recommendations to heart, and in this particular case, in this particular case, the Landmark Commission said...let's go look at this, and I studied it, and I gave it my best, and I think it meets the criteria of our ordinance.

MR. CHOPIN: But it doesn't follow the procedures, does it, that you suggested be followed in landmarking?

MRS. DAY: And suggest is a better word than recommend...yes.

MR. CHOPIN: Well, can I call your attention to the history survey, here? Let me refer you...do you have a copy of it?

MRS. DAY: Not with me.

MR. CHOPIN: Can you give her an extra copy?

MRS. DAY: That's alright. I know what I said.

MR. CHOPIN: O.K.

MR. MOORE: If you need a break just say you do.

MRS. DAY: I'm doing fine.

MR. MOORE: But if you need one...

MR. RANDOLPH: You are doing fine.

MR. MOORE: Just say you need one.

MRS. DAY: I may need more water.

MR. CHOPIN: Jane, I'm not going to be-labor this, but on Page 40, the heading in big bold black type says "recommendations." It doesn't say "suggestions", right?

MRS. DAY: Right.

MR. CHOPIN: O.K. On Page 41 in big, but not as big bold black type it says "Specific Recommendations for the Town of Palm Beach," doesn't it?

MRS. DAY: Yes.

MR. CHOPIN: O.K. Can you please tell me on what page do I find this word, suggestions, as opposed to recommendations?

MRS. DAY: Well, you know, I think you're nit-picking on words here, and all of it gives the option to proceed whether you count it as a recommendation or a suggestion to the chairman and the people that work in the town all the time.

MR. CHOPIN: But you do appreciate that there are consequences to the people in this town, to people who live on Pendleton, that willy-nilly taking away their property rights is not something that should be allowed to happen. You agree with that, don't you?

MRS. DAY: I object to the word, "willy-nilly." I don't think that that was a correct way that this was done, and if I didn't believe that this was something that was good for the property owners on Pendleton, all of them, then I

wouldn't have recommended to this landmark commission that they go ahead with it, because I would have to live with myself, and I object to you suggesting that about me.

MR. CHOPIN: Well, that's fine. You can note it, but let me suggest to you that, in fact, Diane Jenkins, do you recognize her as an expert? Have you had a chance to work with her in the past?

MRS. DAY: I have not. I'm not a realtor and I don't ...the property value, itself, that she's talking about is not something that's addressed in our ordinance, which is what I have to use to write my reports.

MR. CHOPIN: O.K. But you will....did you want to interrupt me?

MR. SMITH: Mr. Chopin, I did want to interrupt. I want to ask you one question...several questions, actually. Is Mrs. Boardman your only client today?

MR. CHOPIN: Yes.

MR. SMITH: O.K. Then I would like to cut to the chase. I think that your witness did bring, at least to my attention, that the two lakefront...and I see Mrs. Boardman's property and I also lump with that the Pannill's property as being lakefront, as being totally different in size, character, value than the rest of Pendleton Avenue, and I am quite willing to lump the two of those off as not part of the district, myself, and I hope someone else agrees with me that could make a motion to that effect, and then we could go on with the meeting because I definitely think that although in architectural characters, the houses are similar, I think as far as development of the property, I think they're totally different.

MR. CHOPIN: Well, obviously, I wouldn't accept non-contributing status...

MR. SMITH: I'm saying lump it off.

MR. CHOPIN: but to the extent that the edges of the...

MR. SMITH: I'm saying lump it off.

MR. CHOPIN: As much as I hate the thought of missing out on the benefits of all of the work that I've done....

MR. SMITH: I'm just trying to get this to happen, Frank.

MR. CHOPIN: If you guys will exclude Mrs. Boardman's property from the historic district...it would be what you should do, to be honest with you...and then you can get on to deciding whether there should be a district without the benefit of my advice. So, it's up to you folks.

MR. SMITH: Would anyone care to join in with me for that? Any comment? Any motion?

MRS. ALBARRAN DE MENDOZA: The only comment that I have is that I would agree with that. The only thing is if it's torn down, it will go then to the Architectural Commission instead of to us, and that would be my only worry, not so much that it be kept intact because of the smallness of the house with respect to the size of the lot, so I don't know if there's any way...

MR. SMITH: Well, both of them are cul de sac homes and they're not really part of...

MRS. ALBARRAN DE MENDOZA: No, no, and I agree, and I agree with that and I have no problem supporting

you and lumping them off...

MR. CHOPIN: But Jacquie, let me explain something, I mean, while we're talking about value here, there are no immediate plans to put the house on the market. There are no immediate plans to tear the house down, but as a prudent owner of property, obviously, Mrs. Boardman is concerned about protecting her property rights, and one of the options may well be, at some point in the future, to do that. And yes, it would go to ARCOM. And yes, ARCOM would have to approve demolition, and there are some folks that believe that ARCOM is a lot worse than coming here, in terms of things that they want to do. So, as Mrs. Day said to this commission, we haven't had a problem in the Town of Palm Beach, unlike other jurisdictions, because there is ARCOM, which is the successor of the Arts Commission, which does regulate the development of property. So, you know, our interest is very real. This property does not belong in the district, and it would probably save you a lot of time if you didn't have to listen to me.

MRS. ALBARRAN DE MENDOZA: When a property is non-conforming, does that mean that it comes before us, but it can be torn down. Is that the difference?

MR. CHOPIN: Oh, no. I won't accept non-contributing.

MRS. ALBARRAN DE MENDOZA: I meant non-contributing. Sorry. Non-contributing.

MR. CHOPIN: That's not acceptable to me.

MRS. ALBARRAN DE MENDOZA: No, No. Just a question.

MR. FRANK: He doesn't want it to be in the district anyway. Correct?

MR. CHOPIN: That's correct. I'm not prepared to give up the fight on non-contributing.

MR. FRANK: The answer to your question is that the non-contributing...how we've handled this in the past, and we do in Town Hall Square District all the time...is this commission reviews the redevelopment, but basically, we follow ARCOM guidelines. Now that's a condensed version, but basically...

MRS. ALBARRAN DE MENDOZA: And it can be torn down just like with a non-landmarked house, obviously.

MR. FRANK: Oh, it could be torn down. Actually, a landmarked house and a contributing landmarked house in a district could be torn down with your approval.

MRS. ALBARRAN DE MENDOZA: That answers my question.

MR. PANDULA: I think I started stirring this pot up here and I agree with Jeff and Jacquie. I'm not sure at this moment that I'm willing to make it just go away 100%, but in my sense, our conversation has spun out to left field here. I don't think we're necessarily talking about designating this house or designating it as part of the district. I think maybe what you really wanted to be talking about was the edge of the district.

MR. CHOPIN: I got to get there before we can talk about it because if I talk about it, I'm the only one that will talk about it because this report doesn't do that, although, in fact, there is an expert, Ms. Divoll, who is here to talk about that precise subject as an expert.

MR. SMITH: The subject of what?

MR. CHOPIN: I beg your pardon?

MR. SMITH: What precise subject...the edges?

MR. CHOPIN: The question of the districts, the report, the edges of the district, what's not done, what should be done...that sort of thing.

MR. MOORE: In all fairness, Mr. Chairman, I'd like to...one of the questions that Mr. Chopin answered, excuse me, that was put forward...the ability to tear down a landmarked house is not the same ability to tear down a house that is governed by ARCOM. There is a set of procedures that are much more complicated to tear down a landmark house. I don't want the public to, or the impression to be given that it's a very simple procedure. It's not.

MRS. ALBARRAN DE MENDOZA: Actually, my question was in a non-contributing house, is it more similar to the ARCOM procedure when it's not landmarked? I would suspect.

MR. MOORE: I am going to have to defer to Mr. Frank or Mrs. Day, but I'm not sure our ordinance actually defines contributing and non-contributing in the demolition process. I believe it would be the same process that would have to be gone through for a contributing or non-contributing building.

MRS. ALBARRAN DE MENDOZA: But that means that they would have to prove economic hardship and all of these different things versus...it's just...

MR. FRANK: I totally agree with what Mr. Moore says, but to kind of follow and tag along on that, I believe it would be a lot easier and that's based on what you have done as a commission in the past. There have been some sites that were fully landmarked where there were accessory structures on those sites that were not part of the original construction, and you very quickly allowed demolition of structures like that, and I believe that in this case and you're sitting in the commission...you'd know better, but I believe it is safe to say that it would be more easily accomplished.

MR. RANDOLPH: But you don't know that. I mean they would still be part of the district, and even if they were non-contributing, they would still be subject to your jurisdiction, and they would have the burden of proof in going forward at that time to show why they should be able to demolish.

MR. SMITH: What I was trying to do is get someone to make the motion to eliminate the two lakefront homes from the district. Hearing none, Mr. Chopin would you please continue.

MR. CHOPIN: You may be sorry, Jeff.

MR. SMITH: I am already sorry.

MR. CHOPIN: O.K. Well, alright, that being the case, let's go on and try and deal with some other issues, if we can. Jane, what is the purpose of creating a district?

MRS. DAY: To protect the properties that are similar in size, scale, historic content, and criterion (e), "constitutes a unique area of architecture, landscaping and planning."

MR. CHOPIN: Well, that's the criteria for why you do it, but I'm asking you what the purpose of it is.

MRS. DAY: I think that that's the purpose...to protect that unique area.

MR. CHOPIN: O.K. I don't know how to do this because I only have one chart, and if I put it up here, it'll be on the television, but I'm not terribly sure that you'll be able to read it.

MRS. DAY: I will.

MR. CHOPIN: O.K. Is that alright with you if I put this up here? Now, the town actually has an ordinance which tells us what the purpose of landmarking and creating a district. No, you're not going to be able to read it, I'm afraid.

MRS. DAY: I can read that.

MR. CHOPIN: You can read that. Well, I guess you know when you get to be my age you can't read it.

MRS. DAY: I only need these for close work.

MR. CHOPIN: I see. O.K. Jane, so, hello...it says that the purpose and intent, and this is referring to the landmark ordinance, it is declared to be a matter of public policy that the protection, right?

MRS. DAY: Um Hmm.

MR. CHOPIN: Is one of the reasons that we designate a property. Is that correct?

MRS. DAY: Didn't I just say that? Protect this unique area.

MR. CHOPIN: I beg your pardon.

MRS. DAY: I think I just said that...to protect this unique area of concern.

MR. CHOPIN: Is that all you want to protect?

MRS. DAY: No, there are other portions...I'm sorry, please...

MR. CHOPIN: But the purpose, we'll come to the criteria in a minute, but the purpose of the ordinance is at least, in part, to protect the property.

MRS. DAY: Correct.

MR. CHOPIN: Protect it against what?

MRS. DAY: Demolition.

MR. CHOPIN: Against demolition? I'm sorry. Did you say against demolition?

MRS. DAY: I think that that's one of the reasons to protect it...and.....

MR. CHOPIN: Well, what else are you protecting it against other than demolition?

MRS. DAY: And against alterations so that the buildings would no longer maintain their architectural integrity. They would come to this commission which has more expertise in the historic context, the styles that they were built, and wouldn't allow things to change the properties on the face value so that they would look differently than

they were when they were originally designed.

MR. CHOPIN: These houses were built in the '30s.

① MRS. DAY: The earliest ones in '27, and up through the '50s.

MR. CHOPIN: In this district?

MRS. DAY: Yes.

MR. CHOPIN: In '27?

MRS. DAY: I think that there's one that's very early.

MR. CHOPIN: Could you tell me which one that is?

MRS. DAY: No, not off the top of my head, I could not.

MR. CHOPIN: Well, then take your time, and tell me which one it is.

MR. SMITH: Frank, is that crucial to your presentation?

MRS. DAY: Yeah, I think...

MR. CHOPIN: What is this, Jay Leno or something?

① MR. SMITH: Let's just get this....I mean, let's cut to the chase.

MR. CHOPIN: Mr. Chairman, I'd love to cut to the chase, but we have millions of dollars at stake,

MR. PYMS: Mr. Chairman, I have done some personal research. According to the tax rolls, I see that 223 Pendleton was built in 1930.

MR. CHOPIN: You said 223, sir?

MR. PYMS: Yes.

MR. CHOPIN: So, it's contrary to what the historic designation report reflects which is 1935.

MR. SMITH: Jane?

MRS. DAY: Yes, Mr. Smith.

MR. SMITH: You said that the house was built in '28. Do you have...

MRS. DAY: No, and I'm mistaken, and I'm really not feeling well, and these houses are from the 1930's. I did pull the building permits, and I don't think those are the kind of questions that are crucial as to whether this constitutes
① district. If you want to nit-pick on every single construction date, the county tax records often reflect something that's different than the Town of Palm Beach building records, and

MR. CHOPIN: Ms. Day, I'm only relying on what you said.

MRS. DAY: I understand.

MR. CHOPIN: And I'm not nit-picking because your whole theory for districting this is that this is a change in the political and cultural and economic conditions of the Town of Palm Beach brought on by reason of the land boom bust and the great stock market crash of 1929. Now, you've had nine months to prepare this report, and I've had less than 30 days to look it over and do my research. I'm not nit-picking. I want to make sure these folks know what the facts are, rather than take a sail down Memory Lane without really appreciating the consequence it may have to my client. So, if you say, 1927, I want to deal with that. If you say, as you have said, it was built in the '30s, I want to deal with that.

MRS. DAY: They're built in the 1930's.

MR. FRANK: Mr. Chopin, I just heard two different pieces of information introduced here. One gentleman said that according to the Property Appraiser's office, and Mrs. Day said according to the building permits. Now, this type of discussion can go on for quite some time, but as you know, they are different agencies, and they have different purposes for putting different dates on different things. There might have been a structure there in 1930...

MR. CHOPIN: Mr. Frank, do you know that to be the case?

MR. FRANK: I don't know that to be the case.

MR. CHOPIN: O.K. Well, I can show you the permit of every house set in this district. It shows the date that it was built, and if you want to take the time to do that, I will take it out right now.

MR. FRANK: I believe we have done that.

MR. MOORE: Mr. Chairman, excuse me, just a moment. Mr. Chairman, as staff member, senior staff member here, I would like to address Mr. Chopin for just one moment, if it's alright with you, through the chair? Mr. Chopin, I think we're getting the...totally from the staff standpoint, and I'm fairly sure the Landmarks Commission is as well, we're getting the flavor of your case as you're putting it on to rebut the case that's been put on by the town through its Designation Report. Would it do any good to stipulate, at this point, that there may be an error, or may be a difference between the County tax records and our building permit records, so we can move to the real heart of your case which you want to put on because there are other members of the public here...

MR. CHOPIN: I understand, Mr. Moore.

MR. MOORE:...both against and for.

MR. CHOPIN: Mr. Moore, let me just explain something which I prefer not to do, because I'd like to have the opportunity to ask Mrs. Day the questions, but let me explain it so you will understand where we're coming from. I've read this report in my sleep. I've read it so many times. And in trying to understand why Pendleton ought to be a district, and I know why it's being recommended as a district, because Mrs. Day and the staff have been pressured. But to give credence to the reason for suggesting that this has some significance, you have to listen to what the report says, and what the report says, and by the way, this is the first time that criteria (a) has ever been used in attempting to support landmark designation...the first time. And what criteria (a) says is that it is an important part of our political, cultural, and economic history, and for that precise reason, it should be landmarked, it should become a district. Now, to understand the argument behind that, you have to, in the historical significance report...section of the report, itself, it says we're building all these houses in the '20s, and then we have

the land bust, and then we have the stock market crash, and all of a sudden things changed, and as a consequence of that, we saw this political, and economic, and cultural change, which is best exemplified by Pendleton. And I have to tell you, I do question the predicate for that. It doesn't and isn't supported historically. So, I have to pursue that. The fact of the matter is that the reason that '27 is important is because #1, it didn't happen, but #2, it would be out of sequence, timewise, #3, you heard Mrs. Day talk about Depression Era houses being built. Well, it's important for you folks to know 4 South Lake Trail was built in 1946, and by every historical account I know, the Depression was all over in 1946. 345 was built in 1940 which is a pre-war period. 207, 1940. 236, 1948. I can go on. The fact of the matter is it's important because you have to support the criteria. And these things came out of the sky and they're not supported historically. And I don't know any other way of dealing with it, but I can't stipulate, you know, that these things are not important. They are important because if you're going to judge that the criteria is what Mrs. Day has told you the criteria is, then you're going to have to focus on the dates of construction, and it's not going to jive at the end of the day. I'm sorry to take the time. I'll go as fast as I can. I'm not giving you any dates that she hasn't given. It's that she's giving you dates that are different than what are in the report, and I'm sorry, I just read it and prepared myself, and I know that they're not right, and I'm going to correct it when it comes up. So, if I'm allowed to proceed, I'd like to proceed, and I promise you, I know Mrs. Day is not feeling well, and I'm trying my best to do this as easily as I can, but again, there is a great deal at stake, and I'll go home if you take us out of the district.

MR. SMITH: I understand, Frank, thank you.

MR. CHOPIN: Jane, the fact of the matter is...you say the purpose of recommending this is, in fact, to protect these homes, and then, then I'm trying to bring you back into the flow of things after we had this exchange, and you said you're trying to protect it against demolition. Right?

MRS. DAY: Yes, that's one thing.

MR. CHOPIN: And the other thing I believe you told us is that you're looking to protect it against changing the character of the property.

MRS. DAY: Inappropriate alterations.

MR. CHOPIN: Inappropriate alterations. In your film, tell me, did you note any inappropriate alterations?

MRS. DAY: Yes.

MR. CHOPIN: Which ones?

MRS. DAY: Some awning windows that weren't appropriate. Some additions that were done to properties that I've also noted on the street. There are some windows that have been enclosed that change the fenestration of some of the buildings. All of the buildings on this street have been altered.

MR. CHOPIN: Oh, I understand that, even some more than you've told us about which we'll get into in a bit. But the fact of the matter is that you told us that with the exception of two houses, each one of those, with the changes and with the warts, had not lost their integrity and had not lost their character and they were contributing to the district. Is that correct?

MRS. DAY: Yes.

MR. CHOPIN: The houses go back to 1930, so they've withstood the '30s, they've withstood the '40s, withstood the '50s, withstood the '60s, withstood the '70s, withstood the '80s, and they're just about to make it to the

millennium without being landmarked. Why do you think that's true?

MRS. DAY: I don't have a clue.

MR. CHOPIN: Well, are you suggesting that after sixty years, almost seventy, of these houses still being around, and in your judgement still reflecting the original character and integrity of the architect, that there is something that needs to be done to protect them in the future?

MRS. DAY: If you don't believe that this ordinance does any good for any of the Town of Palm Beach, you can argue your way. I think that the people in the Town of Palm Beach, for the most part, have been very sensitive to their architecture and to their surroundings, but we do have an ordinance in place that's been in place since 1979, and when it first came up in the Town of Palm Beach, I believe that every single person who was originally proposed for landmarking, except for one, opposed that, and it has still continued and has now become an award winning program within the State of Florida by the Florida Trust. You, yourself, have said that you are the attorney for the Preservation Foundation. Well, the Preservation Foundation can raise all the money that they want to for worthy projects, but it's this body here, in the Landmarks Commission and the Town that has the clout, backed up by our ordinance, to really do the actual protecting of these buildings. And I think that that's why this is important.

MR. CHOPIN: And I think it's important as well. I sort of resent the fact that you would suggest that all we do is raise money. I think we've done a lot more than that over the last twenty years, Mrs. Day, but that really isn't my question. It's probably a better answer to a question I didn't ask, but the fact of the matter is that what I've asked you is what do you need to protect when the properties have existed unchanged, in character, with integrity for the better part of the last sixty to seventy years. Where is the need?

MRS. DAY: Any future development or property owners that may want to demolish, tear down or alter property that they will not contribute to this street that is so cohesive would be a detriment to all of the property owners on the street, and we're seeing that in other areas of the town, and some members of the public are objecting to it.

MR. CHOPIN: O.K. Now, are there other ways to safeguard and protect these properties?

MRS. DAY: Yes, you could look at them all individually and go one at a time and see if someone fulfilled the criteria individually and brought them all forward. That was done on Golfview Road.

MR. CHOPIN: No, no, no. I'm sorry if I wasn't clear. What I'm asking you are there other protections, safeguards that exist currently in the law which protect these properties?

MRS. DAY: Yes, there's the Architectural Review Committee.

MR. CHOPIN: Yeah, let me read you something and tell me if you agree with it. It says, "In the Town of Palm Beach, establishing local historic districts has always been controversial, although in many cities and towns, creating districts has imposed architectural controls for otherwise non-contributing structures. This has not been necessary in the Town of Palm Beach. In Palm Beach, construction and alteration of non-historic buildings is reviewed by the Architectural Commission. This Architectural Commission is a legacy of the Art Jury that was established in the 1920's. Do you agree with that?"

MRS. DAY: I wrote it.

MR. CHOPIN: You absolutely did write it, and you said, Mrs. Day, that because we have a system in place to protect, we don't have to do what they do in West Palm Beach, didn't you?

MRS. DAY: Yes, I did.

MR. CHOPIN: O.K. And now, you're telling us that at least in one case that the reason for landmarking or creating this district is to do exactly what you told us we didn't need to do...only in 1997. Is that right?

MRS. DAY: I think that this district is different. I think that it is different because of the history of the street, and you can nit-pick...

MR. CHOPIN: We're going to get into the history of the street.

MRS. DAY: You can nit-pick and find, and I'm sorry, I don't want to use the word nit-pick again. You can find confusions, type-o's and all kinds of things with dates. The truth of the matter is that the Depression starts in Florida in 1926 after the devastating hurricane in Miami, and in 1928 with the banking crisis in this state. It pre-dates the Depression which is nationwide, and our architecture in this town changed because of changing economic conditions, and this is not the first time the criteria has been used. There are other reports that have used that, most recently the two properties that were designated on Root Trail have used criteria (a), and it has been used. This is not the first time.

MR. CHOPIN: I didn't say that. You know, I almost feel like I'm married.

COMMISSIONERS: Yes, you did.

MR. CHOPIN: No, I'm sorry. I said it's the first time...in 1997 was the first time that it was used, and I will demonstrate it because I have every designation report right here. Criteria (a) was used for the first time in 1997, and that's what I said. (See bottom of Page 36 for verbatim testimony.) O.K., but it's neither here nor there. We're going to come back to it, but the reality is that we've at least accepted that ARCOM protects houses. We've done that, right?

MRS. DAY: Um. Hmm.

MR. CHOPIN: We've established that the houses in question have been able to maintain their integrity and their character over the last sixty to seventy years without the need for landmarking, haven't we?

MRS. DAY: Well, I think that there's something else that's here, too. This is a problem.

MR. CHOPIN: Could I ask for you to answer my question, please?

MRS. DAY: I'm sorry.

MR. CHOPIN: My question is that we established that the houses that had been built in the '30s and '40s, according to your testimony, still have their character, still have their integrity, and they were able to maintain that without the necessity of landmarking. We established that, didn't we?

MRS. DAY: Yes.

MR. CHOPIN: That's your testimony.

MRS. DAY: Yes.

MR. CHOPIN: O.K. Now I asked you if there were other things that insured this protection and we talked about

ARCOM. Are there other things as well?

MRS. DAY: The zoning laws of the town.

MR. CHOPIN: The zoning laws of the town, and do you know the district that these houses on Pendleton Avenue, in particular, find themselves in?

MRS. DAY: No, I don't.

MR. MOORE: R-B.

MR. CHOPIN: Thank you for answering my question, Mr. Moore.

MRS. DAY: And I am not an expert on the zoning. All of those questions go to Mr. Frank.

MR. CHOPIN: O.K. Well, Mr. Frank can correct me any time he wants to, but it is in R-B.

MS. SHIELDS: Mr. Chopin, excuse me. Can you tell me about how much time you are going to need to make your case because we do have others here who would like to be heard?

MR. CHOPIN: No, ma'am. I can't. You know, a lot depends on how long it takes to get the answer, how many times other people want to stop the process. I had advised Mr. Smith, in advance, that we were going to explore this process because we needed to because of the issues that were involved, and because, to be quite honest with you, we have to build a record to protect against appeals, either to the town or into the courts, and so, I'm trying to go as fast as I can.

MR. RANDOLPH: I know, but I think they're entitled to know for their plans approximately how much time you need for presentation of your case. If a judge were asking you that question, I think you'd be required to advise him of an answer.

MR. CHOPIN: Yeah, well, I don't mind answering the question the best I can, it's just very difficult to be precise. I've already called Ms. Jenkins as a witness. I intend to question Mrs. Boardman for a very few minutes, literally. I intend to ask Leslie Divoll to make a presentation. We've retained her as an expert, but those of you who know Leslie, she's going to tell you her opinions, and I'm not going to ask her any question. She's just going to give you the benefit, and I don't know how long that will take. I believe that if we could proceed, you know, fairly quickly, and I will try to do that, we can finish up this questioning on this report, which comes to you as the primary source of information you have, in another hour or hour and a half. I'll do the best I can.

MR. MOORE: You may want to consider, Mr. Chairman, a lunch break at some point, but before Mr. Chopin is finished, is there anything, Mr. Chopin, that the staff can stipulate to that can assist you and move you along to help your case.

MR. CHOPIN: Yeah, I think it would be a big help if you could stipulate that the lakefront trails are not part of...the lakefront properties are not part of the subdivision which comprises Pendleton Lane or Pendleton Avenue. I think you could stipulate that the sizes are very different. I think you could stipulate that it's not cohesive, and I think you could stipulate that it should be...

MR. MOORE: As for the first two, we can certainly stipulate what Mr. Chopin said. As to the cohesiveness of it, that's in the opinion of our expert, and that will have to stand, but certainly the first two are stipulate to.

MR. CHOPIN: You wish...in terms of lunch...I mean, I'm going to go as fast as I can.

MR. SMITH: Well, you're not going to make it...let's ...is 12:30 or one o'clock, anyone have a ...

① MRS. ALBARRAN DE MENDOZA: 12:30.

MR. SMITH: 12:30 for lunch. We'll take a break at 12:30 for one hour.

MR. CHOPIN: O.K. Jane, let's try and hurry this up, and maybe if no one objects, I'll try and ask you some questions, and maybe you can answer yes and no, and that will speed things up. On Pendleton Lane, excuse me, Pendleton Avenue, it's in the R-B zoning district. Is that correct?

MRS. DAY: I would have to look.

MR. CHOPIN: Alright, Mr. Frank's going to correct you if it's not correct, but I think we can all tell you it's R-B zoning.

MRS. DAY: Yes.

MR. CHOPIN: O.K. And the setbacks in R-B zoning are 15 feet...side setbacks?

MRS. DAY: I'll defer to Mr. Frank.

MR. MOORE: Side setbacks are 15'. I'll help on that, but Frank, I do have to go back, though on the Cocoanut Grove. Was your question to stipulate that there are two subdivisions or was it...

① MR. CHOPIN: You have two subdivisions. You have Cocoanut Grove. You have...Reservoir...I guess is how you say it. I didn't say it right. I have to look at the word.

MRS. DAY: Reverie.

MR. CHOPIN: But the land on the lake is unplatted. It's a metes and bounds description. It's not part of this subdivision.

MRS. DAY: That's correct.

MR. SMITH: Mr. Chopin, I'd like to correct that. The setback is 15' for a two story and 12.5' for a one story.

MR. CHOPIN: O.K. Then I stand corrected, and in fact, I think the new town ordinance which is effective, Mr. Smith, changes that as well, but the fact is that we have a plat which has less restrictive setbacks, do we not? Let me try it a different way. The houses that you looked at that were built on Pendleton Avenue, in fact, are not set back twelve or fifteen feet, even the two story ones, are they?

MRS. DAY: I didn't get in to measure them, but no, they are not.

MR. CHOPIN: They are not, so that if someone were to demolish one of these houses, they'd have to comply with the R-B zoning, and as a consequence of that, they couldn't build the house as big. Is that correct?

① MRS. DAY: That's correct.

MR. CHOPIN: O.K. And that protects, does it not, the urge to destroy that you are so concerned about, because if you destroy it, you're ending up with a smaller house. Right?

① MRS. DAY: That makes sense to me.

MR. CHOPIN: O.K. We also have cubic content ratio numbers which are there to protect against people building too big houses, right?

MRS. DAY: I haven't dealt with any of the cubic content ratios, and that's not something that is my expertise. Mr. Frank deals with all of those questions.

MR. CHOPIN: O.K. But there are restrictions in the plat that control minimum setback requirements and that sort of thing.

MRS. DAY: Yes.

MR. CHOPIN: So, they are already in place...plat restrictions, they're already in place. Zoning ordinances, zoning ordinance requirements, which today are more onerous than would be applicable to the houses, generally, on Pendleton Avenue, and in fact, nothing has transpired that suggests that these houses are in immediate danger, and in fact, they've probably withstood sixty or seventy years without a serious challenge. Right?

MRS. DAY: Yes.

MR. CHOPIN: And you've been very pleased in your film at the work that was done on these houses, and you express that as part of your presentation as to why this, in fact, should be landmarked. Right?

① MRS. DAY: Pleased with what?

MR. CHOPIN: With what you saw. The state of ...

MRS. DAY: Oh, the state of the street. Yes, I'm pleased with the state of the street.

MR. CHOPIN: O.K. Can we go on, if you take a look, the purpose also is, according to Section 54-1, is to "enhance" in addition to protect. Right? Do you see that, the word right next to protect?

MRS. DAY: You're looking at number one.

MR. CHOPIN: Well, it's in the second line. It's the fourth word.

MRS. DAY: Yes, I see it.

MR. CHOPIN: Enhance what?

MRS. DAY: Enhancement and perpetuation of properties of special, notable, aesthetic or architectural character or historic interest or value as a public purpose and necessity. I didn't write this part of the ordinance.

MR. CHOPIN: Do you know what it means?

① MRS. DAY: Oh, I'm not thinking real clearly today.

MR. CHOPIN: Well, if you don't know what it means, then, I think all the lawyers in here would tell you not to answer the question.

① MRS. DAY: Well, then, I won't answer the question right at this moment, thanks.

MR. CHOPIN: I'm sorry. I didn't hear that.

MRS. DAY: I'm not going to answer the question right now.

MR. CHOPIN: That's fine. But do you think it's possible that it might mean enhance the property values?

MRS. DAY: It doesn't say that.

MR. CHOPIN: It doesn't say that. O.K. You indicated previously that this commission has the right to landmark a house whether somebody wants it to be or not, right?

MRS. DAY: Yes.

MR. CHOPIN: Do you think they should do that if it's going to diminish the value of the property?

MRS. DAY: I don't know of very many cases that diminished the value of the property when they're landmarked.

MR. CHOPIN: No, and I don't either, Mrs. Day, and that's what makes this a more serious issue, frankly, but if it were, in fact, going to have the effect of diminishing the value of the property, do you think that the house should be landmarked?

① MRS. DAY: I think that sometimes that's best for the public good.

MR. CHOPIN: And when the public good is benefitted at the expense of the individual, they are normally compensated, right?

MRS. DAY: I think that those are philosophical questions that aren't in my area of expertise, and I think I'd have to....

MR. CHOPIN: No, but I'm sure it is in Mrs. Boardman's pocketbook, if it's going to take money away from her to landmark something.

MRS. DAY: If I were in Mrs. Boardman's case, I'd be thrilled to be living in a John Volk house that I know that I could not only add to the property, but I could get the tax abatement for doing so, and make it be what I wanted plus have a John Volk house. So, we might have a difference of opinion with that.

MR. CHOPIN: Yeah, I don't question that for a moment that there is a difference of opinion. The next word in the sentence is "perpetuate," like enhancement. The purpose is declared to be, as a matter of public policy, that the perpetuation...what does that mean to you?

MRS. DAY: To have it continue.

① MR. CHOPIN: To have it continue.

MRS. DAY: Right.

MR. CHOPIN: O.K.

MRS. DAY: And I think that enhancement means, now that we're back to that, as I'm thinking about it, and I do apologize, I really am not very well today...I think that the purpose of this is that properties that were built at the turn of the century, in the '20s and the 1930's, could be made to be more well used in the 1990's and in the new millennium so that you can do things to them that they're not white elephants...that they're things that will be liveable buildings. I like to say that building is a verb as well as a noun. We have something here that lives and breathes with the people that live there, and I think that that's the intent of that. Now, we can go every word for word if you'd like to....

MR. CHOPIN: Thank you. But we're seeing we're looking to protect, enhance, and perpetuate properties of special, notable, aesthetic or architectural character or historic interest or value, right?

MRS. DAY: That's what it says.

MR. CHOPIN: O.K. So, it's not every property that we're looking to protect, enhance, and perpetuate.

MRS. DAY: That's what it says.

MR. CHOPIN: O.K. And at least in the first criteria, you suggest that the reason that these properties should be protected, enhanced, and perpetuated, although we've seen no evidence that they're not protected, enhanced and perpetuated, is because, in fact, they reflect a period of our history. Is that not right?

MRS. DAY: Yes.

MR. CHOPIN: And that history reflects a change brought on by the land collapse of 1927, actually, Jane, in Miami, and the stock market crash of October 1929, right?

MRS. DAY: Yes.

MR. CHOPIN: And your suggestion is that what happened was that as a consequence of those two dark economic events, people start building different kinds of houses, and that's a marked point in the history of the Town of Palm Beach, right?

MRS. DAY: Yes.

MR. CHOPIN: O.K. Are you familiar with the Landmark manual?

MRS. DAY: I've looked at it.

MR. CHOPIN: Well, in fact, it was passed out with your Designation Report, right?

MRS. DAY: I did not write it.

MR. CHOPIN: I beg your pardon.

MRS. DAY: I did not write it.

MR. CHOPIN: You didn't write it?

MRS. DAY: I did not write it. I'm not...

MR. CHOPIN: Is there something in there that you disagree with?

MRS. DAY: Well, you can give me a specific and I'll answer. I don't have it to memory.

MR. CHOPIN: Thank you. Well, let me just read to you on Page 1, in the Introduction section, it says, "Palm Beach reached its pinnacle as the American Riviera in the mid '20s. Oppulent living and expansive sprawling mansions were the norm. However, all of this came to an abrupt halt with the Florida Land Bust and Stock Market Crash of 1929. This short period of economic instability had an impact on the architectural design of the island creating a restrained approach to architectural endeavors." Do you agree with that?

MRS. DAY: More or less.

MR. CHOPIN: Alright, well, I thought you should agree with all of it, but when I read you the next line, let's see if you still continue to agree because it says, "However architecture and social events quickly returned to Palm Beach in the 1930's."

MRS. DAY: I don't agree with that.

MR. CHOPIN: You don't agree with that.

MRS. DAY: No.

MR. CHOPIN: O.K. Let me call your attention, if I can, Jane...

MR. PANDULA: Frank, are you confusing good architecture with big architecture?

MR. CHOPIN: Oh, no. I'm not.

MR. PANDULA: O.K. So, if it just states that architecture returned, then smaller scale buildings that are well done...

MR. CHOPIN: I don't think we'd find a statement in the Landmarks Manual that referred to just architecture. I think they were talking about good architecture. But let me give you another example of a comment that was significant on this precise subject, and then I'm going to show you some homes that were built at this time that you folks have landmarked that were significant homes and the like, but let me just refer you, if I can, to the Designation Report of 174 Via Del Lago. Many of you have been to the home. It is Stanley B. Tollman's home. It's on the lake. It was landmarked and in the criteria for designation...now this came from the staff...it says, "174 Via Del Lago was built at the height of the Depression when many people couldn't afford to feed their families, let alone build new homes. It's \$ 125,000 construction cost served to reflect the enormous wealth and immunity to general economic realities that existed in Palm Beach." Now, that was in the Designation Report from the staff. Anybody's ever seen the home knows that it is an absolutely magnificent landmark and it was built in the early 1930's. And it was landmarked by this commission, and the point that was made as a part of the criteria for landmarking is that Palm Beach, unlike other places, in fact withstood the calamity of the economic depression.

MR. RANDOLPH: Wait a minute. May I make a suggestion, Mr. Chairman.

MR. SMITH: Please.

MR. RANDOLPH: Because Mrs. Day is not feeling well, and because Mr. Chopin has points that he would like to make, although it would be out of the ordinary to allow him to testify and to make those points, I think it might be a faster way for you to do it, as opposed to attempting to do it through cross examination. I mean he has just indicated a point that he is trying to make, and it might be easier for you if you could just hear from him the points that he would like to make, and testify to those, as opposed to trying to make the point through a question and answer process. I think this is very hard on Mrs. Day, and I think that it's delaying the proceedings...not intentionally, and he's doing it the way he should, but I think it would be faster if you could just ask him to make the point just the way he made that point now so that it came across to you as to what he was trying to establish. And let Mrs. Day sit down for a while, and let him do what he wants.

MR. CHOPIN: I'll try and do that because I am concerned about Jane, just like everybody else is, but on the condition that we all understand that she's your consultant. She's coming to you as an expert, and she does good work, but in this case, she's just wrong. She's wrong about a lot of things, and she's responding to the pressure that she's acknowledged, and it's important for you to know that, but let me try and do it that way if it speeds things up. But there will be times, unfortunately, that I may just have to ask Jane some questions, but I'll try and do it that way in the interest of getting it done. I've already eliminated an awful lot that you don't know about that I would have otherwise questioned, only because it's taking time, and I'm not looking to create any enemies for my client, but at the same time, I'm looking to protect my client because it's an important issue, and it's cavalier to suggest that you give away somebody else's money, and for the privilege of living in a house that you don't have to pay for. But let me try. I'll do that if that's O.K. with everybody.

MR. SMITH: Thank you Skip. I think that's an excellent idea, Jane. Why don't you take a

MRS. DAY: I'll be right here.

MR. CHOPIN: O.K. Let me...

MR. MANLEY CALDWELL, ATTORNEY FOR SIX PROPERTY OWNERS: I'm Manley Caldwell. I represent six property owners who I'll identify. I had some questions of Mrs. Day. I assume that Frank can go ahead and then she'll still be available for me to ask.

MR. CHOPIN: Oh, yeah, it was not my understanding that she's leaving. You don't mind if I come here. Let me show you a chart that we put together that was intended to list current landmarks, that is, properties that were landmarked in this town as being significant property meeting the criteria. And I assure you not a single one of them was it suggested that the criteria is that they are the product of a soup kitchen or a shanty town. They were suggested to be significant historical and architectural achievements. Now, there are a lot more landmark buildings. There are several hundred of them, but what I tried to do to make a point was to gather information regarding landmarked properties that were designed by the same architects that are represented on Pendleton with respect to houses that were built during exactly the same time period that we're supposed to be suffering the need to down-size, if you will, houses. And as you can see, there is no dearth of homes built in that time period that have been landmarked by architects Chilton, Maass, Major, Volk, Treanor and Fatio, Volk & Maass, Wyeth, Wyeth & King. Now, these are the architects that are represented on Pendleton. Let me show you some pictures of those houses so that you will understand that they are significant houses. Josh, would you hand me...I don't have my notes...I think it is 5 and 6. Let me just point out to you that there were no Mediterranean Revival homes on Pendleton. Mediterranean Revival, a significant architectural style....there were such houses built in the Town of Palm Beach by these same significant architects, and so I have a couple of pictures, but they're not there, but it's important to understand that we were still building Mediterranean Revival during the period of the '30s. Let me show you. But we were also building the other styles as well. Specifically, 245 El Vedado. It's a Volk house. It's landmarked. It's Neo-Classical revised...revision. 260 Dunbar...now that's a house you should be considering because it's not landmarked. If you can see it...can you see it?

MR. SMITH: I can see it, but you have it wrong. You have Volk. That's a Mizner home that's a landmark from the 20's. So, whatever, the picture's wrong, wrong, wrong, wrong....

MR. CHOPIN: Well, the picture may be wrong, but at 260 Dunbar it's not. So, I apologize for that. I'll talk to my staff when I get home.

MR. SMITH: That's Villa Flora, and it's 260 North Ocean Boulevard.

MR. CHOPIN: O.K. South Lake Trail. I have a client that actually made these photographs for me, and I'll talk to her, Jeff.

MR. SMITH: Oh, O.K.

MR. CHOPIN: But 8 South Lake Trail...Volk. 328 El Vedado...Volk...Neo-Classical. 343 El Bravado (meant El Bravo)...Volk and Maass. 201 El Bravo. 190 South Ocean Boulevard...Volk...Mediterranean Revival. 801 South County...Mediterranean Revival. 550 South Ocean...Mediterranean Revival...Treasor and Fatio. 300 El Brillo...Treasor and Fatio. 820 South County Road. It goes on. I'm not going to read them all to you in the interest of time, but I think you're familiar with these properties. I think you will agree that they are significant properties. I think you will agree that they are landmarked properties. And I think that you will agree that you will not find them on Pendleton Avenue. Nothing wrong with Pendleton Avenue. What is wrong is the suggestion that Pendleton Avenue is there because we couldn't build these houses anymore because we didn't have any money. And that's what the report tells you, and that's what I have to counter because if you believe that then you should landmark it. And you shouldn't landmark it because it doesn't deserve to be into a district. There are a lot of other houses. Let me show you some other pictures. Get me the five style houses, you know, Monterey, and the other houses. While we're pulling out these charts, let me make a point for you. First of all, Pendleton Avenue has smaller houses. O.K. That's a fact. So does Sanford. So does Queens Lane. So do most of the north end houses. O.K. Now, if you want to believe that the reason for that is the stock market crash, then you also have to believe in the psychic ability of Mrs. Pendleton. Let me tell you why. It's not in the Designation Report, but if you look at, and this is a certified copy, which I'll offer, and I'll even take it off the board if I can get it there. This is the plat of Pendleton and I think that one of the things that you should pay most attention to is the date on which this plat was created. See the date.

MR. SMITH: No.

MRS. WILKEY: No, what is the date?

MR. CHOPIN: February, 1919. Now, if you believe the Designation Report, you're going to believe that they rushed in to build these little houses or smaller houses because our life styles have changed. In 1919, they platted 55' front lots on Pendleton Avenue. Now, how big a house could you build on a 55' lot, even if you, in fact, acquire a couple of the lots. O.K. Let me point out something else to you. You're going to have to look real close, but I think apparently, there is some confusion as to size of the lots. Now, I think we all agreed that it was 55' frontage, but what's the depth on the lot. Well, if you look on the south side of the street, you'll see it's about 86' deep. O.K. Now, Jeff, you see this line, you see that line along the back of the property...you know what that is...it's a plat restriction, not a deed restriction...a plat restriction, which says you have to be set back at least 10' from the property. Now, I'm going to tell you lawyers, since we're taking liberties, you cannot change plat restrictions. No way. No court. No nothing. You can't change a plat restriction. And also, if you'll look at it, will see that there is a front setback of 15'. Now, if you go across the street, you'll see that the properties are about 100', that is on the north side of Pendleton Avenue, they're about 100', about 110' deep. So, my point really is that Pendleton Avenue is a platted subdivision of small houses...small lots, small house...lots generate small houses. And even acquiring several lots is not going to give you the depth. It just isn't going to give you the depth. And so, the real reason that you saw

the development of these lots in relatively smaller type homes that reflected the style that was elsewhere reflected in town, is the fact that the lots were smaller, and folks other than people living on big lots on the ocean or the lake lived in Palm Beach, and they did it a long time before 1930, when the collapse came. And they had smaller houses.

Now, Mrs. Day told you that they looked at the Sea streets. Now, that was a Josie development, and it was never intended to be anything other than smaller houses for people who spent and lived by their means, but most of the north end streets fall into that exact same category, and it doesn't reflect the Depression. It reflects the fact that we've always had people from different economic backgrounds and ways of life living in the Town of Palm Beach. Now, there's nothing wrong with the architecture on Pendleton Avenue. There's nothing wrong with it. There are two points that you should understand. The first point is that the same architects did much better jobs elsewhere, where their talents had an opportunity to be exhibited, where the plans that they put together were really done in a magnificent style because the money was there to build the kind of houses. But, you know, and I can give you the quote, but since we're abbreviating this, E.B. Walton, who is one of these great builders that built them...and E.B. Walton was a client of mine at one time, and he was a very nice guy, so I don't mean any disrespect, but I'll give you the quote, if you like from the bibliography material that Jane gave us that says, "Fatio was so busy in 1934 that he had to give 13 more houses that year to E.B. Walton, who was building them like a developer. Now, the architects here go crazy when they hear the word developer, because that means, My God!, someone who's going to do bad architecture. But what we're talking about here is, in fact, houses, some of which were built on spec, not that many. They were built as developer homes. They were not built with, and you can look in the files and look at the plans, they were not built with the kind of architectural drawings and the kind of architectural plans that you find on El Vedado, but of a certain basic style. But now, that's one thing you should know. There are better examples and I showed you some of them, but there are also an awful lot of other examples. There are basically five styles of architecture. Now, I'll show you at some point in time that when you look at the '97 survey, they're not sure what that style is, when you compare it with the '88. Is that nit-picking? When you turned down 4 South Lake Trail, it wasn't because it wasn't 50 years old. It was because the Designation Report said it doesn't have any significant characteristics that justify landmarking. All of a sudden, it's been beatified. It's become a different

Property. Not only is it a better property than it was nine years ago, it's also an entirely different kind of property described today as Monterey, when in the past, it was Georgian Revival. I've got the Designation Report. I will assure you that I'll show it to you. In our extensive research to match the nine months it took to get this thing here, we went into the town and we looked to see, well, Monterey, which is the biggest number of houses in terms of style, on Pendleton, were they building any Monteys any place else? Or was it just on Pendleton that they were building it? So, what we did is that we went in and we researched the records and what we found is that in the time period that's covered by the Designation Report, sixty (60) houses by the same architects were built in the Monterey style on other streets. Sixty. Basically, cookie cutter Monterey houses. Nice houses. You know, we'd all be proud to live in the houses, or I think most of us would be proud to live in the houses, but not particularly special. They were built all over town. Now, the fact of the matter is Major built one of them, and you landmarked it. He built it in 1931. He built another one on 270 Queens Lane in 1937, and you landmarked it already. Treanor and Fatio built one at 19 Golfview Road in 1938, and you landmarked it. Volk built one on 300 Queens Lane in 1940, if I'm reading correctly across line, and you landmarked it. So, the point really is what you're seeing ain't unique. They're all over town, and you've landmarked some of them. Now, unfortunately, there are some very well meaning people who believe that you should landmark everything. I don't...never have, and I've been as involved as a lot of other people. Landmarking is important, and we've fought long and hard to get people to recognize the importance of landmarking, but we don't believe that you should diminish the importance of landmarking by landmarking everything. If we want to preserve the lesser of the Monterey style houses by landmarking it, well, we've already done that. We don't have to do it again. And we don't have to landmark seventeen more of them because they happen to be located on Pendleton, and that's what you've been asked to do...is to take willy-nilly, a term I use very advisedly, and landmark them because they happen to be on Pendleton. It's not a good enough reason. O.K. Georgian Revival...the second-most popular style on Pendleton...did the same thing...went out, checked around, wanted to see if Georgian Revival houses were being built on other streets by the same architects during the same period of time...and what we found, that there were fifty-nine (59) of them built. Very hard to tell the difference between Georgian Revival and Colonial Revival. I know you three architects can do it, and you folks

on the Landmarks Commission can do it, but your staff can't always do it, and I certainly can't do it, but I can tell when they write it differently. In any event, just as we saw in connection with the Monterey, same architects...Chilton, Maass, Major, Treanor & Fatio, Volk, Volk & Maass, Wyeth, built Georgian Revival homes during the same time period...fifty-nine of them on a wide variety of streets....Sanford Avenue, several of them there, one of which you've already landmarked, one that's on County Road that you've already landmarked, one on South Lake Trail, which you've already landmarked, one on Via Bellaria which you've already landmarked. The point is we're not looking to throw these houses away. You know, you can't have it both ways. Not even lawyers can have it both ways. You can't come in and say, My God! Would you look at the houses that were built on Pendleton Avenue, and the way they were taken care of and the way they were preserved and the way they were protected, and the wonderful job that was done, and then say, we've got to landmark it because they're all going to go away, but for the last seventy years, they haven't been landmarked. But the fact of the matter is I can't tell you that nobody's ever going to tear their house down on Pendleton Avenue, but I can tell you this...that you three architects know they ain't going to build as big a house if they do, because the zoning isn't going to permit them to build as big because the zoning requirements, the setback requirements, the cubic content ratio is going to make them build a smaller house, and that's what's protecting those houses, and that's what's causing the people to take care of the houses, because you can't develop it. And you don't have to preserve another seven Georgian Revival houses, excuse me, preserve...it'll be preserved. You don't have to take another seven Georgian Revival houses and landmark it because there is no dearth of these houses. There are many examples that are there and they are all over town. O.K. Neo-Classical...I'm working without my notes, but this is the third most popular house on Pendleton. I think there are three of them. There are less houses around town, but that's consistent with the culture and the taste of the people that built it. We did the same thing. Neo-Classical Revival. Architects...exactly the same architects that are reflected on Pendleton Avenue. Exactly the same time period, and in fact, Neo-Classical Revival had been built in other places...and two, one on El Vedado, which is an absolutely superb home, has been landmarked, and another one, on Adam Road, which is a very small street on the north end of town has also been landmarked. So, you see, you know, the sort of trade off. The grand Neo-Classical Revival on El Vedado and the much smaller one reflecting the same style by the same architect on Adam Road. South Ocean Boulevard...Wyeth & King. So, a grand house. Pardon me? A grande house. O.K. I know the architect that's re-done it, and the fact of the matter is it was built during the period of this great Depression you've been hearing about, where you were told we couldn't afford to build these houses. I've been in Estee Lauder's house. I didn't see anything that suggested a Depression in this house at 126 South Ocean Boulevard. And I'm not making fun of anybody. What I'm trying to do is to get you to understand that history is being re-written for the sake of justifying something which is very difficult to justify. Now, let's speed it up. Colonial Revival...that's the next. O.K. Did exactly the same thing. I think there are two Colonial Revivals, and again, let me assure you it would be very, very difficult to tell the difference between Colonial Revival and British Colonial...Colonial Revival. The fact is they were built in other places around town by the same architects in the same time period, and while you haven't landmarked any of these other properties, they're there and they've been there for fifty or sixty years. Regency...well, I think there's only one Regency on Pendleton, but there's a lot more Regencies in the town, and I'm not talking about that Regency that you folks are thinking about right now. But let me assure you that, in fact, there are a lot more that are on this chart, when you think about Mr. Mack and the grand Regency style or Palm Beach Regency style which he brought to Palm Beach that are here, but there are lesser versions of the Regency, some of which you've already landmarked such as the Treanor and Fatio on Algoma or the 5 Middle Road property, which has been landmarked. I just sort of find it interesting that the ranch house was thrown away, and yet, it sort of suggests a part of our culture as well because we were building them in Palm Beach. And look who was doing it. Mr. Volk, Mr. Treanor and Fatio, Chimed, Major, Maass, Chilton, Wyeth & King...I'm sure nobody here would ever dare live in a ranch style house, but the fact is, in the '30s, these houses were built by these architects on streets all over Palm Beach, and I'm suggesting to you that they're still here. Some people like them. So, you know, when you come back to it, where's the beef? I mean, where is it? Why do this? Why landmark this property? Let me show you something else. We looked at Pendleton Avenue. We're looking at it again. Where's the other one? Let me show you Cocoanut Row. This is a certified copy of the plat, which, again, I'll provide, of Cocoanut Grove, which is Pendleton Lane, the property west of Cocoanut Row. I'm going to do what we did before and look at when this property was platted.

Now, you got to believe, since you know already that this is the bigger properties, that logic would tell you that if you believe the Designation Report, then, in fact, it should have been done earlier, because according to the Designation Report, we start building smaller houses, and...but you look at the date, and lo and behold, you find in 1937 that we platted Coconut Grove, which it has lots that have much bigger properties. It does not support the notion of poverty. One other thing I'd like you to note, which is that the two lakefront properties are not platted. They are a metes and bounds description. You should also know that in the north property, which is 4 Lake Way (meant 4 South Lake Trail), it's not reflected in the Designation Report, as so many other things regarding the edges or boundaries of the district are not dealt with, but the current owner acquired seventy-four (74) feet of the property on the lake to the north. Are you going to landmark that? It also should be known, it's not covered in the Designation Report, but it certainly is in the records... you should know that Mrs. Boardman has acquired forty-five (45) feet to the north from what is shown here as Lot 5, so that she has a property that is 132' by 157'. So, they are considerably bigger...four times bigger than the properties on Pendleton. So, you know, common sense tells you that when you move from a subdivision which has property 55' x 86' or on the other side of the street, 110' to cross over Coconut Row...I wonder what you're going to do with Coconut Row...to properties which are 100' x 129', to properties that are 132' in one case, and 206' on the other, on the lake, by 212', that ain't cohesive. That is not similar in style and scale. That's a big difference. And so, everything's been grouped together, and you're not supposed to ask the question...Well, gee whiz, where's the similarity? Where's the scale? You're not supposed to ask that question, but you need to ask that question because it's not there. There is no similarity between the lakefront, and Coconut Grove subdivision is very, very different than Reverie. We have another chart over here. There's something else I'd like to show you because I think it's important. This is the last comment, and then we can break for lunch. This is the subdivision of Pendleton Avenue. If you take a look, this lot right here...it's the north half of Barton. Same subdivision. It's divided at exactly the same ties, and the same size lots. Similar houses, but it ain't in the district. Now, to me, that's extraordinary, and it's not accounted for in the Designation Report. You can ignore Barton, and include two lakefront houses, and describe it as similar in scale and cohesive.

MR. SMITH: Thank you. We'll adjourn now and re-convene at 1:45 p.m.

(Let the record show that the meeting re-convened at 1:53 p.m., and all members were present.)

MR. SMITH: I'd like to re-convene the Landmarks Preservation Commission meeting of April 21, 1999. Mr. Chopin, you were in the middle of your presentation before we took our lunch break. Would you like to continue now?

MR. CHOPIN: Yeah, I would, if you'd give me just one second please. I'm trying to figure out from my notes what I covered in a way I didn't intend to cover.

MR. SMITH: We'll remind you if you repeat yourself.

MR. MOORE: Mr. Smith, while Mr. Chopin is going through his notes, could I ask Mrs. Day a couple of questions for our benefit. Mrs. Day, when you originally did the research on the district, can you tell us the areas which you looked at first, or was this a total district you looked at? Was Barton Avenue, with the old subdivision, or this end, Mr. Chopin's client's end of the street, was all of that being looked at at one time, or how did you come to your final conclusion?

MRS. DAY: When I originally looked at the district, I first looked at Pendleton Avenue, which is the street that is in the middle of...

MR. MOORE: From Coconut to County.

MRS. DAY: From Coconut to County. However, when I looked at the Coconut Row (meant Grove) subdivision,

which is Pendleton Lane, they were all John Volks. They were all from the same time period. They were all the Monterey architecture that went with the things on Pendleton Avenue and it made sense to include them. If I had had my druthers, I would have gone from there to County Road, and included the other half of Barton Avenue, because that was originally part of the Reverie subdivision. I looked up the plat maps, as well, that Mr. Chopin showed you, and saw that it was an early plat, and it was interesting, because it was Pendleton's wife that had done it, not the gentleman himself, and it was interesting to me that nothing was built on it, even though it was platted so early, so I think that plat does coincide with Oscar Josie's plat of Poinciana Park and those original developments of Palm Beach, but I would have drawn the boundaries slightly different than they were in this report. I think that the reason to include the two properties on the lakeside was in part driven by some of the controversies at the north end of the island, where large houses are being built in the midst of neighborhoods with smaller houses, and those two houses are accessed by the cul de sac at the end of Pendleton Lane...so that it would impact the neighbors, what was built on those lots, as far as the rest of the street is concerned.

MR. MOORE: Thank you. Thank you very much.

MR. SMITH: Jane, is there any history about the Pendleton Lane area, was it one estate at one time, and then broken up into the subdivision...or...I know it's part of the really old part of the town where development did begin along the lakefront, and I just wondered was it, you know, like the Anthony house, it was next door to it so...

MRS. DAY: Off the top of my head, Jeff, I don't remember exactly which part of the estate, but all of Palm Beach was one thing like...one estate like that. It's interesting, from a development point of view, in the '30s because it was all Arnold Construction Company and a company called Palm Beach Modern Homes. That's how they advertised and sold these properties, and they were originally built on speculation. Some of the plans even say Plan A, Plan B, and then as an owner would become interested, then they would personalize them for individual families who decided to contract for those lots, and all of the Cocoanut Row (meant Grove) subdivision was designed by Volk.

MR. SMITH: Thank you.

MR. CHOPIN: I'm going to try to make this really quick, and I want you to know, I am functioning at a disadvantage because I continue to tell you that the only evidence before you folks is what you hear from the Town's consultant, and I think Jane does a good job...don't misunderstand me, but I think she was pressured into doing something which is very much against her principles in recommending this, and it's important for, I believe, you to understand it. Let me just make a couple of points that I think are relevant. First of all, let me call your attention, if I can, to the fact that 4 South Lake Trail is shown to be a Volk house and is shown to be in the Monterey style. O.K. Keep that in mind. If I can come forward...

MR. SMITH: Frank, I don't believe that microphone is working.

MR. CHOPIN: There's two on/off switches.

MR. MOORE: That's to trick you, Frank.

MR. CHOPIN: They got two buttons. I think they designed this for me, actually, but I don't know who built the house, O.K., but I know what the permit says is the architect, and I'd like to show it to you. I'll substitute for this, if I can, for the record, but let me show you what is the Palm Beach, Florida 1946 Permit #4146 for 4 South Lake Trail. There is a line that says architect. It says Mr. Graham. It doesn't say Mr. Volk. I don't know who designed. I don't even know who Mr. Graham is, but that's what the permit says. I think it's important, because it goes sort of the heart of the matter, if you think about it. But I'd like all of you to think about something else. If you add up the number of houses that were designed by these particular architects in this period of time, and you apply

your experience, and this is, of course, easier for the architects, I'd suggest...ain't no way they could design that many houses. I'd also suggest to you that they did what developers do today. They stamp the plans. They're cookie cutter houses and they stamp the plans because they had to stamp the plans in order to pull the permit. It's

Not physically possible to turn out the number of houses that were turned out during this period of time by the same Architect in the same year. We're talking about fifteen, sixteen, seventeen, houses at the same time that they're doing significant works which have been recognized as landmarks. I don't represent 4 Lake Way...but I want to...South Lake Trail is what I meant to say, but it was proposed for landmarking status in 1990. This is the Designation Report. When it came before the Landmarks Commission, it was described, and I quote, and this is your record by the way, "as a good example of British Colonial style. Now, is it Monterey or is it British Colonial. I don't know, but something must have happened over the last nine years because it seems to have gone through a metamorphosis in terms of changing its style, but as unimportant as I even think that is, I don't think it's unimportant for what the Designation Report says about the property itself which is slightly different than what you've heard from Mrs. Day, so let me read it to you so you can make your own judgement. In the Statement of Significance, it says "this building does not have an extensive historical background and is not a significant example of a particular style. It does not have any outstanding features, and is not in danger of demolition by neglect. Staff recommends that this building not be designated as a landmark. This is your staff. This is the Landmarks Preservation, and by the way, you didn't landmark it. Now, when you are doing a site by site designation process, and the property was looked at, the staff had the opportunity to look at the quality of the house itself, and it concluded this is not a landmarkable house and the commission agreed. All of a sudden, because you can group thirty-two (32) houses together and look at the front of them, and play in your mind again, if you will, the video tape you saw, with the exception of the stroll down to the Bike Trail, and the look up above the shrubbery to the second floor, you don't see the backs of any of these houses. Now, big decision for me and I'm going to decide it in your favor...I'm prepared to go through all thirty-two houses and show you the changes that were made, in many cases, which you can't see from the street. I'm not going to do that, but I would represent to you that if you read the Designation Report, it's acknowledged that there were considerable changes. I will also represent to you that if

Anybody wants to question it, including Mrs. Day, I will do this...that there are countless examples on house after house after house where modifications and changes were made that are not documented in the Designation Report. I'd also tell you that the process is important, and when you look at the Designation Report, what you hear and what you see is that this doesn't change the integrity and the character of the house. That's a conclusion that, at some point, you're supposed to reach. But you're supposed to do it on the basis of the facts as they're presented to you. What you don't know is what has been done to those houses, and frankly, you're not in a position to make that judgement. But there have been changes over the years. It's a nice street. Nobody's knocking Pendleton, but there have been a lot of changes, and so what I think really, you know, you're confronted with here is developer houses, stamped plans, not significantly developed plans as Mr. Volk and Mr. Fatio and these other very fine architects did on the very significant houses that they were building in other parts of town. But rather simple plans, that by and large, and you may hear this today from a witness who is a first hand witness that it was stamped by these architects during this period of time. But I'm going to talk to you, if you will, about my client's house because I want to show you the changes that were made that were not documented, and I think that they're very significant changes, over a million dollars of modifications were made to the house that are not documented in the Designation Report...

\$ 1,000,000 to a house that cost \$ 20,000 to build, if you believe the stamps or the fees that are paid to the town. Let me just call your attention to the Designation Report which was prepared on November 17, 1993. Mrs. Day was here then...for the property at 220 Monterey. Let me read you something under the Historical Information section of that Designation Report. It says, "The house at 220 Monterey Road was designed in 1935 by the architectural firm of Treanor and Fatio, and built by E.B. Walton. It was Commission #302, and the fifth of thirteen houses that Fatio designed as spec houses for the builder. And I suggest to you, or I better get a different explanation the next time I can't get plans out of an architect who tells me it takes so long that it ain't possible. It just ain't possible to do that many houses that fast and still claim that they are special, notable examples of the

Works of those architects. Look...they're nice houses built by experienced builders, designed probably by those Builders, by and large, resembling houses that they built all over town with some relatively modern modifications. But it is not a special, and that's what the ordinance calls for, a special notable work of that particular architect. It's

just not possible, and I think your common sense will tell you that. Also, I would tell you that if you go into the town records, and you look at the plans, I know that John Volk used to draw...Jane told me this...these absolutely unbelievably detailed plans for his houses. You won't find them there. They're not there. They weren't done. They were done on some of the houses that he did elsewhere that have been landmarked...very, very special plans, but they're not in the files, because these are not special, notable works of this particular architect or any of them. That doesn't make them bad people. They were developing relatively inexpensive development type houses on small lots that had been platted many years prior to the time they were built. I want to call Pauline Boardman for just a few minutes to let her help me take you through the changes that were made to her house. Pauline, do you want to come on up here? I need this. That's alright. You can take that...and the chart. We're going to go up there. Pauline, come up here.

MR. SMITH: Yes, please.

MR. CHOPIN: I want you to know that these are pictures that I took. So, someone else developed and blew up, but I took these pictures. Now, keep in mind that, again, on your walk down video land, what you saw was the front of the houses, but also keep in mind that what's unique about the two lakefront properties is that at a bare minimum, they have two front sides, and the major front side is really the side that faces west. Pauline, let me...before we get to the house itself, let you tell these folks, if you will, which direction does the front of your house face?

MRS. PAULINE BOARDMAN (Owner of 5 Lake Trail and another parcel in district): The lake.

MR. CHOPIN: That's not a trick question. Where is your front door?

MRS. BOARDMAN: The front door?

MR. CHOPIN: Yes. What direction does it face?

MRS. BOARDMAN: East.

MR. CHOPIN: East. O.K. I suppose that the Pannill house faces east as well, right?

MRS. BOARDMAN: It does.

MR. CHOPIN: Well, I think you should be aware, in looking at this cohesive group of houses that you have, that every other single house on Pendleton Avenue and Pendleton Lane, with the exception of the two lakefront houses, face either north or south. They don't face east. They're not fronting onto the street, and that's a very significant difference because it goes with the question of the similarity in scale and size and the cohesiveness of this property when you compare it to the others. O.K. Now that we've got that out of the way, you know how much afraid I am of asking the next question. O.K. Pauline, when you bought the house...

MR. SMITH: Frank, I think that she should state her name for the record, at least so that...

MR. CHOPIN: Oh, I'm sorry. And state where you live.

MRS. BOARDMAN: My name is Pauline Boardman and I live at 5 South Lake Trail here in Palm Beach.

MR. CHOPIN: Pauline, after you bought the house....no you hold that and talk...after you bought the house, did you make certain modifications to the house?

MRS. BOARDMAN: We made significant modifications in 1989 which interestingly are not registered in the book

that was handed out.

MR. CHOPIN: Once you get 'em started, you can't get 'em to shut up. We'll come back to that in a minute, Pauline. Let's look at some of the changes that were made to the house, if we can. I'm going to bring it closer because I couldn't see it on the TV screen, and I'm not sure you can see it either. Pauline, come on up here, if you will. Let me direct your attention to this photograph, and in particular, to the first floor area. When the house was new and original, could you tell us what was in this location?

MRS. BOARDMAN: It was open porch down below and it was three rather imperfect arches and the flooring was old brick and it was a different level to what it was supposed to be the living room directly east of that inside those doors.

MR. CHOPIN: O.K., and what did you do to make that modification to the facade of the house?

MRS. BOARDMAN: Well, what we did is we incorporated that porch and took away a planter that was inside that porch and made it into one large living room, thereby making three french doors on the west facade of the house, quite different to what it was before.

MR. CHOPIN: O.K. And these are french doors going to what had been an open loggia?

MRS. BOARDMAN: That's correct.

MR. CHOPIN: Now, let me ask you to move up to the balcony I'm pointing to in the photograph itself. Was that balcony a part of the house at the time you...

MRS. BOARDMAN: No, I added it there. I put it there.

MR. CHOPIN: O.K. What had been in that general area of the house?

MRS. BOARDMAN: Well, above the balcony there were the three french doors are also, there was a sleeping porch and it was mostly of wooden slats and a couple of rather odd windows that sort of didn't seem...that were "higgeldy piggeldy."

MR. CHOPIN: Is that like willy nilly?

MRS. BOARDMAN: That's right. So, again, what we tried to do was to make one large master bedroom and therefore put in those three french doors.

MR. CHOPIN: O.K., So you closed in what had been a sleeping porch...

MRS. BOARDMAN: Correct.

MR. CHOPIN: ...added a balcony...

MRS. BOARDMAN: Correct.

MR. CHOPIN: Let me see if I can find it in another picture...yes, right here. This is the...for the record, let me tell you that this is, in fact, the south end of the house in the area where the bedrooms are located. Did you also close that in?

MRS. BOARDMAN: We closed in a window there, yes.

MR. CHOPIN: And that is wood slats?

① MRS. BOARDMAN: Yes, it is.

MR. CHOPIN: By the way,...

MRS. BOARDMAN: But it was wood slats around the window.

MR. CHOPIN: O.K., but you closed that in and enclosed the sleeping porch.

MRS. BOARDMAN: Yes.

MR. CHOPIN: Sleeping porches were a common element of houses in South Florida, built at that time because we didn't have any air conditioning. And so, folks would go out there to try and get away from the problems that the heat and humidity otherwise brought. So, you closed that in. Let me take your attention immediately below where you closed in that window and call your attention to this french door as well. This would have been in the living room area. Is that correct?

MRS. BOARDMAN: Correct.

MR. CHOPIN: And did you cause that window to be added?

MRS. BOARDMAN: We put that in. We added that window.

① MR. CHOPIN: Again because it had been an open porch.

MRS. BOARDMAN: Correct. Yes.

MR. CHOPIN: ...the small loggia that you turned into a living room. O.K. Let's go across to this french door. This is your dining room area. Is that correct?

MRS. BOARDMAN: Yes.

MR. CHOPIN: Was that french door there at the time?

MRS. BOARDMAN: No, it was not.

MR. CHOPIN: And you added that french door?

MRS. BOARDMAN: Yes, we did.

MR. CHOPIN: Point here to this wheel sort of window on the second floor to the north of the balcony itself. Was that added?

MRS. BOARDMAN: We added that there to give more light to the room.

① MR. CHOPIN: So, would it be a fair statement that from the west side front of the house, at least, that all of the important rooms...the dining room, the living room, the master bedroom, the facade in every case was changed

dramatically from the way you bought it?

MRS. BOARDMAN: Significantly. Yes.

MR. CHOPIN: And I call your attention now to this. Is this the den of your house?

MRS. BOARDMAN: The library, yes, the den, yeah.

MR. CHOPIN: O.K. Now, there's a fire chimney here. Was that added?

MRS. BOARDMAN: We added a fireplace there two years ago.

MR. CHOPIN: You did?

MRS. BOARDMAN: Yes.

MR. CHOPIN: And the window itself, has that been modified?

MRS. BOARDMAN: It was altered. It was made higher and larger, and we changed a beam just under the gutter here, in order to accommodate a much larger window.

MR. CHOPIN: Pauline, do you see any other features that I've forgotten about in talking to you today.

MRS. BOARDMAN: I think you've pretty well covered it.

MR. CHOPIN: O.K. Well, now we've heard all throughout that nothing but the finest materials have been used in the building of these houses. You've heard that statement being made today. Could you tell these ladies and gentlemen what your house is made out of?

MRS. BOARDMAN: Well, this part here...it's made of brick, wood and cement, and if you look at the south wing, more or less, is wood. The center section is brick and the whole garage and north section, the northwest section is all cement.

MR. CHOPIN: Is it your understanding as the owner who commissioned this house is that what it really was built with was materials that had been left over primarily...

MRS. BOARDMAN: It was a spec house, and they just used up what they had...is the impression that we had.

MR. CHOPIN: O.K., but to suggest as it has been suggested that the finest of materials were used in building the house, would miss the point. Is that a correct statement?

MRS. BOARDMAN: Yes, it is.

MR. CHOPIN: I don't have anything else here for Mrs. Boardman, but if you all would like to ask her any questions, I'm sure she'd love to answer them.

MR. SMITH: Any questions? Thank you, Mrs. Boardman.

MR. MOORE: You did get permits for all that, Mrs. Boardman?

MR. CHOPIN: We're going to get that too. Yes, sir. I'm going to now show you that none of these...

MR. SMITH: A million dollars worth of permit, right?

MR. CHOPIN: Absolutely. I think that she even paid architects to design it, and builders to build it, but now, if I can call your attention to the Designation Report, I would ...this is 5 South Lake Trail...if you were to take a look at your page in the Designation Report, that you would see that it reflects Permit #9540, which is the original construction of the house...the permit pulled, you know, to build the house. You'll see that it references Permit #35559, which is to repair the existing lake bulkhead in 1959, and you will see that Permit #87871 in 1971 to repair a balcony and install some canvas. What it doesn't show is Permit #8373, in 1973, to install the air conditioning. It doesn't show Permit B5711 in 1979 to re-roof the house for \$23, 825.00. It doesn't reflect Permit B5867 to re-roof the house for \$16,193.00 also in 1979. It doesn't reflect Permit B08729 to remodel the second floor porch for \$19,000.00 and enclose the porch in 1980, and this was before Pauline bought the house. It doesn't reflect Permit E89 043891 in 1989 which is to demolition...electrical demolition, Permit B89 025496, and these are the permits that Bob was worried about whether we did this work without a permit, for the demolition by E.B. Walton. It doesn't reflect Permit #8014754-2 in 1997 which is to alter the window that had been there and to install the french doors into the dining room. It doesn't reflect the Permit 8014754-1, which is to add a new library fireplace in 1997. It doesn't reflect the permit for the new pool pavilion and cabana, which cost \$103,000.00, or the additions and alterations by John Gosman for \$312,647.00 which included much of the changes that Mrs. Boardman just described. It doesn't reflect the hurricane shutters which were added in 1994. It doesn't reflect, in 1994, the permit which was obtained for the repairs for the leak in the garage. My point is I guess you would think it hadn't been changed very much if you didn't know about all these things, but in all fairness, if you did know about it, you probably would change your mind and conclude that whatever it was at one time, and while it continues to be an extraordinarily charming house, and it is...Pauline doesn't suggest otherwise. It is a very different house in its appearance than it was when it was built in 1940. And, so, we would suggest to you that on top of everything else, even if you were to otherwise conclude that the lake ought to be included in this district, then we would suggest that this house ought not to be included for the simple reason that it has been substantially modified. Now, all of this information, I will enter into the record, again, at one time, and I would be delighted if Mrs. Day would like to question any of this. I will tell you, in fairness to anyone who searches the records, it's something I just found out...that you can't rely just on the microfiche. You also have to go to the records which are not yet on microfiche, and that's not just what took place in the last few months. In many cases, it's work that took place many, many years prior to the current date, and that's not a reflection adversely on the Building Department. It's simply a statement of fact. So, the house was modified very, very substantially. O.K. Let me just make a few final and concluding remarks and then I'd like to let Leslie Divoll speak to you on the subject matter that she's more qualified to talk to than I am. We would just as soon not be in this process, to be honest with you. I would have personally preferred not to be in the process because it's a lot of work, and I'd like to use this opportunity to give you an opinion that really has very little to do with this particular application. But I'd like to tell you because it might come in to be useful in the future. On June the 9th, we received a letter from the town congratulating us because we were going to be considered for landmarking. The affect of that on a house such as Pauline's is that it limits the ability to deal with the property. She didn't have any intention of dealing with the property, but it does place that limitation on her. Now, this is April the 22nd. That's ten months and two weeks later. We got the Designation Report thirty days ago. The Town and its professional staff had nine months to research and review this, and our option was to do it in thirty days or ask for a deferral, and if we ask for a deferral, that would have had the consequence of causing the Sword of Damocles to hang over this property for some additional period of time. Skip can tell you whether the deferral allows you to hear these kind of applications in May through October, but whatever period of time it was that it was delayed it would have continued a bad process. It seems to me that when you're particularly talking about thirty-two houses, that the people that live on the street, and in some cases, don't have the same resources, need to be given, in fairness, an opportunity to review what's going on, and they can't do it in thirty days. As Bob Moore can tell you, we've had people living here for the last month researching the town records, literally, for as long as they were open and could put up with us, we were getting records. We have put in hundreds of hours doing

the research because we had no choice but to do it. I suspect you're going to hear from a lot of other people who live on the street that that was not a possibility for them. So, I would suggest to you, Jeff, that in the future, recognizing that it's a lot easier to deal with your own house than thirty-two other houses, the fact of the matter is

That in fairness, the homeowner is put at a disadvantage that unless they're prepared to spend enormous amounts of money, they're not going to be able to overcome in trying to protect their property rights if they believe that's what they should be doing. But let me get off of my soap box and I do tell you that in the most positive sort of way, because as many years as I've been involved in landmarking, I didn't realize just how difficult a position the homeowner was when he gets that thirty day letter with the Designation Report, until we had to do it ourselves. But I'd like to, if I can, call your attention to the Town of Palm Beach Historic Sites Survey, which was prepared in 1997. And I think it's terribly important that the process be honored. It's very easy to ignore the process, but if landmarking and the protection and preservation of property is going to be done in a meaningful and professional way, it occurs to me that the process has to be honored, and frankly, it wasn't in this case, and I would suggest to you that that is as much a reason to deny designation as any other reason that we've talked about today. For example, I already talked to Jane about the fact that it was her recommendation that a district should be originated by owners of property on the streets that are in question. I've already talked to her about the fact that once that initiative comes from those residents, it becomes incumbent on those residents to go out and talk to their neighbors and stir up some support, and then to take it to the Landmarks Commission. And then, the policy is...the recommendation has been that you don't deal with districts unless the majority of the people in the so-called designated or proposed district approved. None of those things were done. None. But there's a further recommendation that I think you should be aware of is what...and it's very valid and Jane is right. She is absolutely right, and it is an important part of the landmarking process. We've fought a long and difficult battle for landmarking over the last twenty years, and we've just about won, but we'd better not give it away. We've won because people have come to realize that there is a value in landmarking in the right circumstances, and that was a difficult process. That was a difficult sell. That was a difficult thing to convince people that they were not willy-nilly giving away their property rights, and we ought not to do anything that undermines the wins that we've

Chieived to this point. But on Page 40 of the Survey, Jane tells you that historic preservation, however, will not be successful if implemented strictly by government action and control. I heard today that you can do anything you want to. Somebody said you never tell the king what he can do, but what he should do, and the fact is that yes, you can do that. You can't sustain it at the town, but you can do it. The fact is that Jane recognized, as your consultant, that she shouldn't do it...that rather, citizen and community support is vital. Workshops should be set up for interested property owners and convincing arguments for historic preservation need to be made both to supporters of the preservation movement and their opponents. That did not happen. Rather than trying to impose, at a governmental level, people who live on Pendleton what some people want to impose on them, the process should have been followed. It should have originated from the town...from the street. It should have been supported by a majority of people that lived on the street, and there should have been a coordinated program of workshops to explain the process. The town, its consultants and staff may have learned something had they conducted those workshops because, quite honestly, it's a two way street. They may have learned more about the neighborhood. They may have learned more about the era in which the houses were built, and who built them, and who the architects were, and whatever, but it would have built a consensus, and I think that's an important point, and it wasn't followed, and it is a part of your process. On Page 44, Jane tells you the following: "Where a cohesive historic district might make sense because of large numbers of structures with similar history or style, such as Pendleton Avenue that was developed entirely during the 1930's, it is recommended that neighborhood groups get the cooperation of other property owners, and bring the request to create the district to Landmarks." I don't want to repeat that, but I want to tell you two things that are important about that. When Jane was writing to you in 1997, she suggested that Pendleton Avenue might be a suitable district. She didn't say anything about Pendleton Lane and she didn't say anything about the lakefront properties. She said Pendleton Avenue. She also told you, unfortunately, that these properties were all developed in the 1930's, and the fact is, they were not. They were developed between 1930 and 1950, which is a twenty year period of time. I'll just tell you real quick because we've covered it, at least inferentially on Page 53 of the report, entitled "Immediate Action Plan." It sounds like GI Joe, but it's what you ought to do immediately. It says, 1. Continue to designate historic properties under Ordinance

#1-79 and amended Ordinance #2-84. Work on a site by site basis, unless strong neighborhood support with a majority of consenting homeowners is brought forward to the Landmarks Commission. These are the rules, and they weren't followed. And just what Jane told you less than two years ago would happen has happened because there was pressure to act. There was an attempt to impose on people what they didn't want without explaining, without studying, without getting their support. They're objecting. She told you what it was then and she's right. She didn't follow it, however. Let me just say one last thing. I'm probably not a great student of history, but I'm also older than a lot of people in this room, which I'm not happy about. I want you to know. I'm also a little younger than some people in the room, and I am happy about that. When you talk about the Depression, it didn't last until 1950. When you talk about the slow down in the economy and the land bust in 1927, and the stock market crash in 1929, you can't say the twenty year period that followed is representative of the economic depression which followed. You can't say it. Now, let me suggest to you that the time period that was fixed in this instance was fixed because that's when the houses were built. It wasn't fixed because Palm Beach experienced a certain economy during that time. It wasn't. For those of you who are too young to remember, we did have a Depression. In the mid '30s, particularly among wealthier people, things got a lot better, and some other people, working folks, continued to suffer a great deal. But wealthy people were not suffering in the middle '30s and later. But then we had a war, and the war ended the Depression, at least if you believe certain Republicans, going back to the '50s, who told you it wasn't the Democrats, but the Republicans, but we had a war. We had inflation. We didn't have Depression. And then we had a post-war boom from 1946 to 1950. Now, if the key to landmarking or creating this district is cohesiveness, I would suggest to you that you would probably find it difficult to find a less cohesive period of our history than the period from 1930 to 1950. It just didn't happen that way, and you're not going to be able to change the facts, and you're not going to be able to change the history, and you're not going to be able to change the economics of the area. That's all I'm going to say to you. I know that's enough and you'll be more than happy that I've come to that conclusion, but I would like to ask Leslie Divoll who, again, just so you know, we've retained to talk to you about the question of the...did you want to ask me something, Jane?

MR. RANDOLPH: No, she's trying to get the attention of the Chair.

MRS. DAY: I thought you said that I could make a few comments about what you just said.

MR. CHOPIN: Well, I'm in my case and you know, I know this is only quasi-judicial, but I want you to remember that I just put on my case in a way to accommodate the fact that you weren't feeling very well. Now if you're feeling better, I got a whole lot more material I'd like to ask you about.

MR. RANDOLPH: No, here's what the...here's the point. You invited Mrs. Day to comment or to challenge any of the comments that you made, and the question is whether you would like her to do that at this point, or subsequent to your case after Mrs. Divoll.

MR. CHOPIN: I'd rather do it afterwards, and I'd like to reserve the right to deal with whatever Mrs. Day has to say.

MR. RANDOLPH: Sure, you can do that.

MRS. DAY: That's O.K.

MR. CHOPIN: O.K. Leslie...Leslie Divoll...I'm going to sit down in a second. Would you give these folks your background and experience and so as to qualify as an expert to be able to give this testimony?

MS. LESLIE DIVOLL, Expert Witness for Pauline Boardman: Thank you very much. My name is Leslie Divoll. I'm a historic preservation architect and a former member of the Town of Palm Beach Landmarks Commission. I have an old and deep background in the creation of historic districts including the on the ground survey, house to

house, look at 'em, right 'em up, Master Site File descriptions, and also preparation of National Register nominations. I've been involved with the preparation of both the surveys and the winnowing down of surveys to find core areas that can sustain attack by virtue of the defensiveness of the underlying documents, and it's on that point that I'm going to focus my comments. Mr. Chopin asked me to please review the district and tell him what I thought, and this morning he said he reviewed my comments, which I gave to him last night in written form, and he reviewed my comments, and he asked if I would just deliver them as they are. We're entirely in agreement on some peripheral matters, but I can say that the heart of a valid historic district lies in Pendleton Avenue. This is my professional judgement as a preservation architect and one who's defended boundaries. The proposed perimeters are troublesome. They're based on flawed premises and incomplete data and I think that you've had a lot of that. I'm not here to question the accuracy of the data that has been included in the Designation Report. Rather these comments address what is not in the report, and I think that you are aware now, if you were not before, that what is not in the report is often as important as what is in the report, and what is in the report must be very accurate. I have three points that derive from these boundary issues. First, the boundaries of the proposed Pendleton Historic District are vague. Based on the information provided in the Designation Report alone, which I believe should stand on its own as a description of where the edges of this boundary are...based on that information alone, one cannot answer three critical questions. Where is the proposed boundary exactly? What property is included or excluded and why? I'll come back to each one of those a little bit later. My next point is that the boundaries, as currently shown, are arbitrarily drawn. They don't respond to natural edge conditions that are created by the powerful barrier of Cocoanut Row, or the dissimilar physical characteristics and historical associations of Lake Trail. I amI was particularly pleased to see that the video would be presented and then incorporated into the Designation Report. No one here had the opportunity to review that material before today for these hearing purposes anyway. I was troubled not to see in the video any discussion or photographic information about Cocoanut Row as a barrier or by giving descriptions, physical descriptions, of what this feature is. The video is also an audio, and if when you review this video and audio again, you listen as we approach Cocoanut Row. You hear some of its impact, and if you'll walk down Pendleton Avenue and attempt to cross, especially at certain times of the day, you'll find that it is a physical barrier of the first order. You could take your life in your hands if it were not for that traffic light with the pedestrian button to cross it. Without respecting that powerful barrier, and having some equally powerful, even bigger, more powerful magnet beyond it, the district breaks apart there. The third aspect of this boundary discussion is that the proposed district is neither cohesive, nor whole. I dwelled at some length on Cocoanut Row. That shatters the physical wholeness of the proposed district as it's currently drawn. The two segments, therefore, are easily distinguishable, very separate, and at some times of the day, you can even say isolated from one another. Without a strong description or definition of why Cocoanut Row is not a barrier, it leaves the question open..open for attack, open for discussion. If the proposed district is based on the work of prominent architects, architectural compatibility, development during a specific era or series of related eras and current architectural integrity, then nearby properties may have been excluded because they share these properties and these characteristics and I think I did not see this before Mr. Chopin presented them, but there's a pretty hearty list of nearby and adjacent properties and also the discussion of subdivisions that take different shapes and include similar properties, but are not included in the district. This is a factor of both...is the district whole and is the district cohesive. Some properties are excluded that might properly be included. If the proposed district is based on cohesive physical character of the neighborhood street that we perceive and saw in the video, in addition to those qualities of prominent architects, architectural compatibility, integrity, and that sort of thing, then one big missing part of the Designation Report is a serious discussion, in detail, of the streetscape. It used to be that streetscape is hard to discuss, because audiences were not familiar with it, but this audience is very familiar with the concept of streetscape as part of providing cohesiveness and providing identity. We've been privileged to be educated in that subject by the Civic Association and the Preservation Foundation and their respective consultants who have carried forward this discussion as something very important for the Town of Palm Beach to understand when considering what makes a neighborhood, what makes a district, what makes...what are the full characteristics. It's not just buildings. It's also the streetscape. The streetscape is, with the exception of a few brief and passing comments, not discussed at all, and there is where the continuity and the discontinuity lie...in the streetscape. I also have come to the conclusion that the proposed boundaries really do over-reach to include the lakefront and its associated Lake Trail properties. The dissimilar

physical and historical factors and the nature of the development of the lake, described in many different ways, are things that I saw independently and concur with. I think it is over-reaching to extend the boundary as far as the Lake Worth shore. There are some technical shortcomings that are....that raise questions, and what you don't need is to

①ise questions at this point, but they come to mind to me because I believe that districts are an important and valuable tool in managing and protecting the collections of more modest properties that don't have the stellar qualities necessary for independent landmark listing. And it's also an extremely valuable tool for supporting and encouraging and preserving and protecting and perpetuating characteristics of streetscape, but streetscape isn't discussed. It will be, I would submit, difficult to protect it in the future if it's not in the record now as something well described and identified as features of value. O.K. Technical shortcomings. The Designation Report contains no map. It contains maps, yes, but no map that clearly draws a boundary around an edge and says this is the boundary. In a Designation Report such a fundamental document cannot leave what goes without saying unsaid. It may be so obvious that it has been overlooked, but the map needs those very specific lines on it to, in part, to be defensible. When one attempts to put those lines on it, as I did, I took the imaginary exercise...O.K., where are the lines, based on the discussion? There are some areas of question that came to me. The Designation Report implies, but it doesn't state that the north and south boundaries are formed by rear lot lines of the properties located on Pendleton Avenue and Pendleton Lane. Now that's an easy assumption for me to make, and I think it's a pretty logical one, but there it is, it's an assumption. I've inferred that, and it has been implied, but not stated. The designation further states that the proposed district is bordered on the west by Lake Worth and on the east by South County Road. Jane was very helpful in one of her comments to Bob Moore, or when he asked a question about what she would have liked to have included, and those are some of the same things that I would have liked to have included or considered for inclusion, and then decisively excluded for specific reasons, then included in the report, but none of this discussion about what was considered on first and how it evolved into this well defended proposed district. There is no discussion along those lines in the Designation Report. So, some of the quick questions that spin out of that South County Road easterly boundary...is the road right of way in the district or is it out of the district or is it halfway in the district? What is the line of convenience? This sounds like a small issue, but it

①comes...can become a fairly big one because we don't know, and somebody is going to need the answer to that question someday, and there will be people on both sides that go at loggerheads over the question. You don't need that. This district, if it's ever established, doesn't need that question to rise. It should be in the report. The answer and the justification should be in the report. A historic district might properly include the right of way, itself, as a buffer at the gateway...at the visual gateway. It's actually an exit, a one way exit only. It's a visual gateway to protect or shape the district's identity. Alternatively, a district might properly exclude that very same right of way since it creates a formidable barrier reinforced by subdivision lines and other lines of convenience. This discussion doesn't appear here and we really don't know. Is it in? Is it out? Is it halfway in, and why? Coconut Row traverses the proposed district for about, by my calculation, by about 245'. Coconut Row is a long road, longer road than 245'. Is that small stretch of Coconut Row included or not? I can make my own inferences which would tend to be, yes, it's included, but one can argue that it's not described. There's no legal description of it. It's not ...doesn't have a back lot line to hem it in. Is it in or out? It's not mentioned, other than in quick passing, if at all,... I really don't recall now...in the video. Is it in? Is it out? This arterial street is a feature. It's a feature that doesn't share the character of landscape or architecture or pedestrian scale or open space, or with any other part of either side of the proposed historic district. Though visually quite beautiful if you're driving down it, when you deal with it transversely, walking across it or viewing across it, it offers tall hedges, a traffic light, and a blind corner, a blind curve. Some streets bind together a neighborhood. Other streets divide them. I would submit that Coconut Row is a powerful divider. The third transverse and linear piece that comes to question here is the 265', give or take, section of Lake Trail that also crosses the Lake Worth end of the proposed district. This raises a lot of questions to me. Is it in or is it out? Now, it's...I read that the district goes to the lake, so it sounds like it's in, 265' of Lake Trail is in the district. It's not described, and we don't know if it's contributing or not contributing. How do we deal with issues of improvement or the sorts of things that can affect Lake Trail. Is it in or is it out? Let's say it's

①. Is the wooden dock projecting into Lake Worth inside or outside? A quick aside...I'm very pleased in the report's bibliography to see the twenty year old guide to establishing....a guide to defining edges...delineating...guide to delineating edges of historic districts....still the authority on the subject. It's an authority I turn to. I'm very

pleased that Jane and the town turns to it, and lately, I learned that Frank Chopin also turns to the same basic guide. This very important authority tells us that when we come to the edge of a lake or a river or some other open geographic edge, we should take great care to pay attention to things that project over that edge like...and specifically describes docks and wharfs and those sorts of waterfront features that can be important. I don't know. Is it important? Is the dock a contributing architectural or historical feature. I guess. I would guess that it's probably a contributing historical feature, though it, in probability, has been re-built several times. But I'm guessing. I don't know. And the report doesn't say. So is it in? Is it out? Is it historic. Is it not? Is it architectural? Is it not? Is Lake Trail a feature of historic planning or landscape significance? I think it probably is, but that's me guessing. It's not described. It's not supported with discussion as a planning...as having planning or landscape significance, and yet, imagine that part of the Town of Palm Beach without it. It is vitally important and significant, I think. It's an opinion. It's not in the Designation Report, but just this 265' stretch? Is what's significant and valuable and why it should be in a district and why it might contribute to a district, is it....does that just occur along this 265'. We have a linear element that goes quite a distance in each direction, but this little piece, crossing a historic district, without benefit of any discussion about its significance would derive some benefits from being included, but the rest would not. This is...this is sort of arbitrary, and it's also sort of lacking in information. The boundaries...the point I'm making by raising these questions...some of them seem easy. Some of them are not so easy, but they are legitimate questions that can be asked based on...strictly on what is in the report, and more importantly, what is not in the report. I would conclude a string of questions, perhaps the one that glares out at me, are the north and south proposed district lines extended all the way to the edge of Lake Worth as a matter of convenience alone? Or is really the architectural, historical and planning integrity there to support it? I don't believe that the architectural and historical and planning integrity is there to support the extension of the north and south boundaries all the way to the lake. Then the question comes, well, if not to the lake, then where to? Jane referred to various factors that are considered in development of the boundaries for the district, and she discusses those briefly in the report, and indeed, they are extremely important, critically important factors to consider. She identifies some historic factors, some visual factors and some physical factors as the rationale for delineating the

Districts. There are other significant factors that fall into these categories that should be considered, and they may have been considered, but the consideration is not included in the Designation Report. So, nor neither directly, nor by reference in bibliography or other methods of referencing deliberations. Things that are omitted...factors that don't appear to have been considered or at least they're not discussed here. Prominent physical factors divide the proposed district into distinct non-cohesive segments. I mentioned those. First is the barrier, the significant barrier created by Coconut Row with its traffic light, fast cars, blind curve, high hedges. This road slices the proposed district into two, I think, isolated physical segments. They may share architectural heritage. They may share, to a degree, developmental patterns, to a degree, but they are so broken from one another physically that, in my judgement, they are not the same space. One third of it is in the Pendleton Lane Lake Trail segment, and the remaining two-thirds are in the Pendleton Avenue area. And as an aside, I think it's useful to note that Pendleton Avenue, you know, the two-thirds section, Pendleton Avenue is the same width as Coconut Row, which is staggering to me, when I look at this on a map, to see the relative intensities of these two streets. 40' right of way...40' right of way for both of them. It drops down considerably to not a right of way for Pendleton Lane, but the big difference between Coconut Row and Pendleton Avenue is not how big it is, but it's how powerful and potent and noisy and energetic and, and discontinuous. The second point is one of focus. This is a physical factor. If you're on the lakefront, the focus is the lake. I think that Ms. Boardman answered the question....where's the front of your house...on the lake. This is about focus. There was...the point was correctly made that all of the other houses, except the two lakefront properties, have a focus to the street, a formal front focus to the street, and the properties in Pendleton Avenue, on the north side of the street only, have a secondary and a kind of a secret, I would say, outer focus. It's a golf course focus. This is a serious force that has caused many of the houses on the north side of Pendleton Avenue to undergo so many changes. If you go through the permits and the discussion about changes, address by address, you'll start to note that there's an interesting pattern of odd numbered properties getting second floor additions and second floor pop outs, and second floor porch enclosures, and what they're doing capturing a view of another focus, the golf course. These changes are largely, I think they're largely undocumented, but if you walk behind, you can see. Walk behind. Walk along the north side. You can see lots

of changes, lots of changes that are not consistent with the styles that we see on the front and the character that we see, that maintains considerable integrity on the street side. So, focus on the lake for the lakefront properties, but there is no discussion in the report about why that focus tends to support inclusion of the lake properties, or exclude

① There's also no discussion about this focus on the golf course as being a force toward pushing buildings to be renovated and altered. Another set of factors are visual factors. We have physical factors. Visual factors, and Jane also considered historical factors which I will leave alone. Visual factors of lot pattern and street pattern provide a clear distinction between the two subdivisions. That third distinction is in the two subdivisions themselves, and in fact, as you heard earlier, it's two subdivisions, plus the two lakefront lots are unsubdivided, non-platted lots...metes and bound lots. So, we really have three different land platting lot development patterns, and because we do, one might say one could perhaps miss that out of hand, but when you start to look at the dimensions, which was brought forward earlier, there are some patterns you see here that bring about changes in the landscape and the streetscape between the Pendleton Avenue section and the Pendleton Lane section and the lakefront section. So these three are very responsive to the sizes of the lots, the shapes of the lots, the setbacks as required by plat. There's another aspect that has gone unrecorded in the report. Pendleton Avenue is a public road. Pendleton Way...when we talk about these good size lots, they're giving over a piece of private Pendleton Way. We have a considerably narrower little private road that ends in a cul de sac...a two way road that ends in a cul de sac, very narrow, and privately owned by the properties that front on it, and also the properties that don't front on it that front correctly on the lake. We've discussed at considerable length the relative sizes with the lake lots being roughly four times the size of the Pendleton Avenue lots and in general, roughly twice the size of the remaining lots on Pendleton Way. These characteristics, in the end, produce different patterns that are visibly discernible, and when added together with the powerful break, I believe, that is created by Coconut Row, the idea of cohesive just isn't there any more between the two parts and the lake making the third part. Is it whole? Possibly not. Other similarly situated properties, but on a different street are not included, but otherwise share the characteristics described in the report. I do not believe that the boundaries are defensible, in conclusion, and that as well intentioned as creating a historic district may be, if it cannot answer the most basic questions from its fundamental documents, the entire

① district is open to attack on a continuing basis, and I would suggest that it's not ready for that kind of...it's not ready for that kind of attack, and it's not ready to sustain that kind of attack on a continued basis, using your own documentation as backup. If you have any questions, I'll do what I can to answer them.

MR. SMITH: Thank you. Any questions?

MRS. ALBARRAN DE MENDOZA: I have a question on the Pendleton Avenue, when you said about the 40' right of way. Do you know that that's actually the size of the asphalt because sometimes, you know, with smaller streets you know, the right of way is much larger.

MS. DIVOLL: I don't know, but some members of Mr. Chopin's staff were out there with tape measures.

MRS. ALBARRAN DE MENDOZA: I'm just curious.

MS. DIVOLL: On the subdivision maps, it is dimensioned as 40' right of way.

MRS. ALBARRAN DE MENDOZA: Right. I'm looking at the map and it does say that.

MR. SMITH: Not to plead your case, but I think there's one other, as you were calling...boundaries, and the differences between the two sides and such...Pendleton's one way, and you didn't mention that.

MS. DIVOLL: That is correct. Pendleton is one way and it exits at the gateway.

① MR. SMITH: So it really doesn't have...you've got...if you were living on Pendleton Lane, you couldn't go down Pendleton Avenue to get there.

MS. DIVOLL: That's right. It is one way headed east, and Pendleton Way is a little two way cul de sac.

MR. SMITH: So, I thought that was something that you missed, but interesting. It came to mind when you pointed out the differences.

MS. DIVOLL: Well, in passing, you know, Jeff, you know I'd love to spar with you. I did point out that it exits only on...at the gateway that is not otherwise protected by what could be a wonderful buffer, and perhaps, a valuable protection.

MR. SMITH: Thank you.

MR. MOORE: Just a couple of procedural things unless someone else on the commission? No. First of all, did you give us your curricular vitae? We know...curriculum vitae...we know, you know, we remember you very well from when you were on the commission.

MS. DIVOLL: I did not.

MR. MOORE: O.K. I think you ought to do that.

MS. DIVOLL: Thank you. I will do so.

MR. MOORE: The two other items are related to, and I have to do this, because I, we do do the Designation Reports for individual homes. I know we did them when you were on the commission. We haven't changed that procedure. We do use the address, and we do use the legal description, so for the commission's benefit, that's a procedure that we've always used. I think Ms. Divoll has said that she presented a better way to do it and we'll certainly take a look at that. And just one other question, as an expert witness that you're being held out here today as, how many designation reports for districts have you done and for which communities?

MS. DIVOLL: In Orlando, I was involved...I did the surveys. I was involved in advising a board like yours in establishing districts.

MR. MOORE: I know you participated, but how many were you the prime author, as Ms. Day is the prime author of this one? Or were you a participant in the process?

MS. DIVOLL: I was the prime author of a report that was absorbed into a report that their brand new consultant delivered..

MR. MOORE: You answered my question. Thank you.

MS. DIVOLL: Yes. I have also been involved, involved, not the prime author of projects...historic districts in New Smyrna and further additions to the historic district I have been the prime author for in two districts in Orlando.

MR. MOORE: Thank you.

MR. SMITH: Would anyone else care to address the commission? Anyone else from the public here to address the commission? Mr. Caldwell. You can use the other podium if you like, so Frank can continue organizing his war chest..

Let the record show that Mr. Pandula left the meeting at 2:55 p.m., during Ms. Divoll's testimony.)

MR. MANLEY CALDWELL, ATTORNEY: My name is Manley Caldwell. I'm a lawyer here in Palm Beach, and am a rare native of the Palm Beaches. As a child, I was raised at 250 Pendleton, so I'm familiar with the neighborhood. I represent Leon and Marjorie Lewandowski, 306 Pendleton, Laurel Ashton Association, 315 Pendleton, Edith Bliss, 324 Pendleton, Mrs. Kane Tilney, 245 Pendleton, Paul and Lori Beth Lapidus, 223 Pendleton, and Joan Harris, 303 Pendleton. If I might start, I'd like to ask Ms. Day some questions. It would probably be easier for me to move back. Ms. Day, I'm going to address 324 Pendleton, Edith Bliss's property. I believe there is a tennis house on that that used to be part of 322. Is that correct?

MRS. DAY: That is correct, and I called that building a non-contributing structure to the district.

MR. CALDWELL: But do you recommend that the property be included in the district?

MRS. DAY: Only as a non-contributing structure, all that we'd mean by that is that if there was any development on that property, that they would come to this board rather than ARCOM.

MR. CALDWELL: Well, obviously, for any subsequent purchaser, you agree that it's a tear down.

MRS. DAY: Well, I don't know that not having been in the property. I don't know if it could be added to. You know, that would be up to the Landmarks Commission to look at. I see it as a non-contributing structure, and I don't see that it's a problem for Mrs. Bliss.

MR. CALDWELL: Well, why should it...why should she have to come to the Landmark Commission rather than the ARCOM?

MRS. DAY: Well, because I think that the Landmark Commission, if this were to be made a district, would be better positioned to make recommendations for any new building that might be put on the property.

MR. CALDWELL: Are you saying that a new structure on the property is O.K., but it had better look like a John Volk house?

MRS. DAY: No, I didn't say that.

MR. CALDWELL: Then why include it?

MRS. DAY: Because it is geographically within the boundaries of the district, as proposed. It is one of three houses that I'm saying do not contribute to the fabric of the district, but if it were a non-contributing property to that district, the architectural review commission would look at it as an isolated building if the boundary were jury rigged around it, whereas if it were a non-contributing building and it came back to Landmarks, they could review size, scale, and design elements and see how they were compatible with the other things on the street.

MR. CALDWELL: But you'll agree that the value of that property, the overwhelming value of that property is in the real estate, and not the little tennis house?

MRS. DAY: Well, that's not really my expertise.

MR. CALDWELL: I have no further questions. I'm not going to take a great deal of the commission's time. Most of the points that I would make have been very ably made by Mr. Chopin, and I'm not going to try to say the same thing that he said. I have several points. I did write a request on behalf of the three clients that I represented at the time for postponement. Obviously, this report took many, many months. We had 30 days from the receipt of the report to make an adequate presentation, to consult experts, and that sort of thing, and that's not enough. And for

a project of this magnitude, it's not there. And the procedures. My clients have indicated that not one of them was ever personally contacted by anybody in reviewing the project, not to find out what their opinions were, what objections they had, what input they might have. All they received was the notice that it was going to be considered and the report. I doubt seriously...you have now eight members...eight persons that have come before you...I don't know whether there are other members in the audience in opposition or not, but that's a sizeable proportion of this district that are in opposition. If there are, indeed, structures on these two subdivision that should be landmarked, and a couple of them already have been, the approach should be on a house by house basis, unless there is an overwhelming groundswell coming from the owners of the district. That is not the case here. I've heard intimations of where the pressure has come from. It clearly has not come from the homeowners. They are not interested in adding another layer of bureaucracy to their enjoyment of their home ownership, and ultimate disposition of their homes. If there was a great majority here today saying we would like to be landmarked, such as happened in some of the landmarked districts of West Palm Beach, an overwhelming groundswell such as in Northwood, or in El Cid, to make those special districts, but that's not the case here. I don't know how many people, how many owners are here speaking in favor of it, but I am certain that there are more in opposition. Another point that's been made...I represent owners on both sides of Cocoanut Row. There is very, very little real honest relationship and similarity between Pendleton Lane and Pendleton Avenue. Frankly, all they have in common is a similar street name. Pendleton Avenue does, indeed, have smaller lots, houses built more closely together, but not entirely. For instance, one of my clients, Mr. and Mrs. Lapidus, their lot is not 55' or an add on to 55' as was my parents' property at 250. It's 150' frontage, which is an entirely different thing than these relatively small lots. And with the small lots, the point that Mr. Chopin made, these houses have been there since the '30s and '40s. The street looks very different than it did when I was there in the 1950's. Frankly, it looks better now, with some of the improvements that have been done to the houses, than it did then, but the basic character is the same. Because basically because of the size of the lots and other zoning criteria, it has to remain the same. There is not much that anyone can do with some exceptions, and with those exceptions obtained, like with Mr. Lapidus, an ultimate purchaser of that property should be able to decide if he wants to keep that house, or better utilize the one hundred and fifty front feet. Pendleton Lane is a private road. Pendleton Avenue is a public road. It's the position of my clients that this hasn't been done right. There's been no input by them. No workshops, as Frank mentions. You have two incompatible districts...one on the west side of Cocoanut Row. The only compatibility there is it appears that it was one big Arnold spec subdivision that John Volk signed the plans for. It's entirely different from Pendleton Avenue on the west...on the east side. Respectfully request that the districting...that the council recommend against the districting. Thank you.

MR. SMITH: Thank you. Anyone else from the public who would like to address the commission?

MR. PAUL LAPIDUS (223 Pendleton Avenue): I'll use this one...is fine. Just for the record, my name is Paul Lapidus, and my wife, Lori Beth, and I live at 223 Pendleton Avenue. And again, there were a number of things that I wanted to say that both attorneys that spoke today pretty much covered. In the discussions that have been occurring today, one of the things that was made clear to me is that the economics should be taken into account. That's important to my wife and I because when we did purchase our home, we did not see it as a special house. It was a home. It was a place where we could live, and we have two young children. We knew that it was a good sized piece of property that our children could play on, and that was very attractive to us. We did not buy the property specifically for the house. We were sophisticated enough, I believe, because we have lived in other homes on the island, that we knew, at some point, the property would go up in value as most of the other homes have, and that we or somebody else could tear down the house and build a nicer home. And we still feel that way. We don't dislike our home. It works out very nicely for us, but we have never considered it something special, either by looks on the outside or certainly by any special construction inside. There are many things that we don't like about the inside of it, but it works for us at this time. We're very, very surprised, as I think many people were on the street, to find out that all of a sudden our house was a significant structure that must be protected from being torn down in the future. And I have not seen any proof today or any other day that it is truly a significant structure, and that's the way I feel. Thank you very much.

MR. SMITH: Thank you. Anyone else...hearing none, we'll go into executive session. Comments from the commission members? Well, let's start down at the end of the table with Mrs. Sari Wilkey.

MRS. WILKEY: I believe that landmarking is very important, however, I think we probably have not done our job properly in this case in not educating the residents of the street, and at this point, I'm not sure exactly how I feel about designation of the street.

MS. SHIELDS: No comment.

MR. SMITH: No comments whatsoever. I find it very interesting today, especially the consultants brought to light a lot of differences between the areas and also to light the numerous different architects and their ability to do remarkable architecture within a very tight time frame as Mr. Chopin said. I do believe these architects did do this work, but I kind of have to agree too that they are not incredible homes. They're just very simple homes that were done, Plan A, Plan B, Plan C, change the facade, change the front door, put a bay window in, as most architects know. I think what makes it unique here is that these homes are so much better as a collection together, and they're also better than what we see developing now with architects that were not trained. These were done basically before the war when Classical architecture was still an interest to architects. After the war, they tended to be more modern and simplistic. I do have difficulty landmarking people's homes that are against landmarking when the structures are, I would say, not a great landmark in the town. I think that the district still does relate to each other very well and I even agree with Mr. Chopin's consultant that the heart of a district lies in Pendleton Avenue, and that's all I'll say.

MRS. ALBARRAN DE MENDOZA: I guess my main comment is possibly the two lakefront houses not being maybe part of the district. I do know the...I think it's 4 Lake Trail that is the Pannill's, and I know that house very well, and it does have quite a few additions and changes on the lakeside and then, of course, you showed quite well Lake Trail, and I really do believe that in almost all the other cases, the size of the home does benefit the current owners because they are a lot larger than probably would be allowed. So, I really do feel that it should be a district except possibly the two lakefront houses.

MS. LILJA: My feeling is that Mr. Chopin ably pointed out that there are many other houses by these architects on the island that might be of greater architectural merit, larger, but you don't have the opportunity of having them all on one street to walk down, to appreciate the concentration of some of our most well known architects in town. I do have a problem, again, with the boundaries. I think that there is a boundary problem. I think that the core of the neighborhood is Pendleton Avenue, and I think that the houses there merit landmarking as a unit.

MS. BLADES: I'm still digesting. I agree with everybody. I don't know. I do think it is very important to save as much as legitimately be saved. The boundaries worry me. The lakefront properties obviously are another kettle of fish. I don't like the opposition. I'd like to know, other than the few letters we have, whether or not there are more people opposed than there are for it. I am very confused at this point.

MR. ZUKOV: Ever since I remember discussions about Pendleton district, I only heard about Pendleton Avenue. I never heard of Pendleton Lane. So, if we should consider anything at all, I think it should be Pendleton Avenue. And I also believe that there are enough residences on the avenue who would like to individually be landmarked that we wouldn't have to create a chaos with the people that don't want it landmarked.

MR. SMITH: Any comments, Mr. Pym? I know it's your first day as a commission member.

MR. PYMS: Well, I note that there doesn't seem to be too much information coming from the neighbors, themselves, initially in getting the project started. And it's difficult to know exactly how many of the owners there are actually in favor at this point, so perhaps, you might consider getting further study as to how many owners are

interested. Should there be a majority, then you might want to consider doing the district. If not, you might want to consider doing it on an individual basis.

MR. SMITH: Thank you for your comments. Anyone else.

MS. SHIELDS: Mr. Chairman, I think this is an important collection, and it is unique to the Town of Palm Beach...this street...because of the scale and the rhythm of the street which I believe the consultant alluded to. I would like for us, as I'm calculating here those that are represented here today that are opposed to it, it represents only about 20% of the owners, but I don't know if that's the case. I'd like to take a look at...I'd like to further study the boundary question as well as learn more, maybe through a workshop that's been suggested, about the interests of the rest of the owners on the street. But I have to say that I do think that in the Town of Palm Beach, this is quite a unique street because of the size of the street, the collection of architecture, the various types and the architects whose work these buildings represent.

MR. SMITH: Thank you. Mr. Randolph, I don't believe we have the option of deferring unless the applicants agree to a deferral. Is that correct?

MR. RANDOLPH: Your Designation Hearings are supposed to be heard, and actually this is the last month of Designation hearings, and I think there'd be a very serious question...I suppose there is an argument to be made that if you were to defer this and...well, you could certainly defer it until another time in April without a problem, but if you were to defer it to the May meeting, I suppose there is an argument that could be made that you're not really holding the hearings in May, you're just finishing up your deliberations. But that argument is certainly subject to attack by anybody that wants to follow the letter of our ordinance. I would suggest that if your...unless you have an agreement from all the property owners to defer this to another time, that you act on it today.

MR. SMITH: Thank you. Hearing that advice from our attorney, yes, Mr. Moore...

MR. MOORE: I'd like to just offer a few words, if I can, from a staff standpoint, and I applaud the efforts that Mr. Chopin went through and certainly Mr. Caldwell went through and the other resident that spoke and came here today. We, as a staff, have consistently tried to make landmarking in this town, as long as I've been here...eighteen years and it's just about as old as the program is, something of real value, something that is to be cherished and not resented. What you're hearing today is some resentment. You're hearing resentment from property owners, and that's not what the program's about. That's not what the Preservation Foundation's about. That's not what the Town's Landmarks Preservation Commission is about. Some said, originally, our group was very heavy handed when they took on the chore of landmarking properties, and very significant properties. I think it was mentioned that out of the first six, five lawsuits were filed. And those were on what you would call today and what Mr. Chopin would call today extremely well qualified structures for consideration for landmarking. We've come a long way. Our staff has always taken a position that more is not better, but quality is the best, and what you should look at. We felt from the start that districting was going to be a very difficult thing to do, and I'm not talking about the Coral Cut. I'm not talking about the Phipps Plaza area, and I'm certainly not talking about the bridges, which are the...the approaches to the bridges, which are landmarked. We felt, even with Sanford Avenue, with the effort to do the trees on Sanford Avenue, that this was going to be a difficult thing to get everyone on a street or a majority of people on a street to be supportive of this particular process. Ergo we have always said that if there was a street or a district or someone felt that their house or their structure was of merit for landmark quality, they should bring it in, even though we don't distinguish between voluntary and involuntary landmarking in our ordinance, but they should bring it forward for us to study and bring to you for your consideration. That is still the staff's position. Please keep in mind that you authorized Mrs. Day to go forward with this particular study on this particular street because we were asked to do that, and that subject has been beaten to death here today. I'm not going to continue to beat it, but from the standpoint of whether there are structures...and I know that there are people here today, I've been informed, that actually support landmarking....but if they feel their house is worthy of landmarking, they can

always bring that house forward for consideration on Pendleton Avenue. And with that, I will shut up, but I do agree that Mr. Chopin's argument about Cocanut Row and the lakeside...I think that's a very, very good argument from a staff standpoint.

MR. SMITH: Thank you. I'm just here to listen to motions.

MS. SHIELDS: I have a question. Any of these individual properties could come forward even if the district didn't go forward? Is that correct?

MR. RANDOLPH: Correct.

MR. MOORE: They're not...you're not...if they bring them forward themselves, you're not precluded from hearing them.

MR. RANDOLPH: It doesn't even matter if they bring them through for themselves. What you're considering today is a district and if you deny the district, that does not preclude either one of them from bringing forth an individual landmark or from one of you, if you feel there's a landmark on there, placing it on the list for consideration.

MS. LILJA: Is it...let me ask a question...is it possible for us to set a boundary today, having given this Designation Report, or would we be opening ourselves up to some kind of attack if we alter the staff recommendation.

MR. RANDOLPH: No, you have the authority to change the boundaries of the district if your staff agrees.

MR. MOORE: But not expand it, just narrow it.

MR. RANDOLPH: No. She knows that you can't expand the district.

MR. CHOPIN: I think Skip said that you can't do that unless the staff agrees. You don't mean to suggest that they can't act without Jane Day's approval.

MR. RANDOLPH: No. No. I'm saying that...

MR. CHOPIN: Well you just said that if the staff agrees.

MR. RANDOLPH: Bob Moore just whispered in my ear that they can't expand the district, and I don't think you intended on expanding the district. You're wondering whether or not you can narrow the boundaries of the district as presented to you today, and when I said, if staff agrees, I meant to say that if what...if based on substantial competent evidence your narrowing of the boundaries is supported by the evidence, then you can do that. You certainly can't just willy-nilly change the boundaries.

MR. SMITH: The word for the day.

MR. MOORE: The word for the day.

MR. RANDOLPH: I've learned a new legal term today, and I wanted to use it.

MR. SMITH: Well, I think by looking...I was trying to keep a little chart here going of where the complaints are coming from, and if I'm correct, there are five of them on Pendleton Lane, and I believe I see only two from Pendleton Avenue, and those two on Pendleton that I've looked at are...I think it's 245 and 223...are there other

people being represented here that are on Pendleton Avenue that object that I don't have you on my...

MR. FRANK: We have people here on Pendleton Avenue that support this.

MR. SMITH: I know that, but I'm just trying to see...

MRS. ALBARRAN DE MENDOZA: Are there any letters from people on Pendleton Avenue?

MRS. DAY: Mr. Lapidus lives on Pendleton Avenue.

MR. SMITH: Yeah, we have some letters.

MR. FRANK: The letters are in front of you.

MRS. ALBARRAN DE MENDOZA: But I mean against.

MR. FRANK: The letters are in front of you.

MR. MOORE: Yes, I think you have one from Mr. and Mrs. Pressly.

(A woman speaking off mic in the background)

MR. MOORE: You need to come up forward and identify yourself and then put your information on the record.

MS. KANE M. TILNEY (Property owner at 245 Pendleton Avenue): I am Kane M. Tilney and I live at 245 Pendleton Avenue. On the street itself, these things just came out, and my adjacent owners across the way, whose address I do not have, the Dellaquilla's, have indicated verbally that they were against it.

MR. SMITH: What's your address? I'm sorry. 245.

MS. TILNEY: 245. (Indiscernible)

MR. SMITH: That's the one I mentioned already.

MS. TILNEY: Yes, I know, but as far as some of the other neighbors are concerned, Bunny Nelson's house has been bought by somebody else. It's on a basis of being leased out by the week or by the month. I don't know what the plans of the owner are, but it's in limbo. The other house, the Firestone house, Mrs. Firestone has gone to contract with some people in Long Island. So that house is in limbo.

MR. SMITH: She's not contributing anyhow. Well, what...O.K.

MS. TILNEY: I mean there are several houses there that are not represented at all, that are just in limbo.

MR. LAPIDUS: I just want to interrupt you. There is another one also. I spoke to a lawyer earlier.

MR. MOORE: Please, come on up. I know we couldn't get her all the way up, but we can get you up.

MR. LAPIDUS: I'm sorry. I spoke to an attorney earlier. His name is name is Donald Mintmire, and he represents Kisa Property, who is the owner of the home next door to my home. I'm not sure..I think it's 207 Pendleton Avenue, and he specifically told me that he wasn't able to come back this afternoon. He was here this morning, but

he asked me if there was any question about deferral, he wishes for this to be deferred because he needs more time to build up a case.

MR. SMITH: Thank you. What I'm going to propose, and we'll see how it goes, is if a motion could be made to diminish the area to just include Pendleton Avenue, and for Pendleton Avenue, possibly, for us to defer Pendleton Avenue for further...for a workshop...is what I'd like to do, with the residents on Pendleton Avenue and then come back to a commission meeting, and I think that would be...if we can get everyone to agree to that...that, or if I can get a motion on the floor...or the people that are represented here to agree to that. Well, Mr. Caldwell requested a deferral. I have it in writing for all his clients, so...

MR. LAPIDUS: Is that a deferral for Pendleton Lane and Pendleton Avenue.

MR. SMITH: No. What I'm trying to do is remove...

MR. LAPIDUS: Because you started off by...

MR. SMITH: What I'm trying to do is remove Pendleton Lane, the lake block from...

MR. LAPIDUS: I'm definitely not trying to be an attorney, but it's...the question I have is what we've been discussing right along is Pendleton Lane and Pendleton Avenue.

MR. SMITH: Correct.

MR. LAPIDUS: And part of the problem, from what I've heard here today is that in what was written and background information may not be 100% accurate, and points were well made by Mr. Chopin about the two houses right on the lake. But part of that problem was that they were larger pieces of property. That also applies to my property. To just go ahead and disconnect one section of the whole plan, so to speak, and just leave another section, and then defer that, does not work again. I think that's compounding the problem that is occurring here today, and that problem is that this whole thing was not presented, we feel, properly to us. I think if you wish and if you must look only at Pendleton Avenue, you need to start this process over, and that's how I feel. I think other people will feel the same way.

MR. SMITH: O.K. We can't start it all over. O.K. That's the issue. We cannot start all over again. We did have requests for deferrals. I am trying to accommodate everyone here and maybe the point is...

MR. CALDWELL: I only represented three persons at the time that I wrote the letter and they were all Pendleton Lane, and I would withdraw my request for deferral.

MR. SMITH: O.K.

MR. CALDWELL: ...on behalf of those three clients.

MR. SMITH: Fine then I will not try to accommodate anymore. O.K. I waiting to hear motions from the floor.

MRS. ALBARRAN DE MENDOZA: I think we kind of agree, possibly, that we would like to separate Pendleton Lane from Pendleton Avenue. So, I don't know how we can do that at this moment, and actually, I would love to have a workshop if that's doable too, for just Pendleton Avenue

MR. RANDOLPH: Well, I don't think you've got the ability to go beyond today's date to have a workshop. I would anticipate that if you had a workshop, that that would require another hearing after your workshop because you're

going to get input from the property owners at the workshop, and your ordinance states that your Designation Hearings should finish up in April, unless you get agreement, but you don't have agreement from the property owners, I don't think. I mean you've got...

① MRS. ALBARRAN DE MENDOZA: Or unless we defer until next designation season?

MR. RANDOLPH: Until when?

MRS. ALBARRAN DE MENDOZA: Until next designation season.

MS. BLADES: Can we do that?

MR. SMITH: No, you can't do that.

MRS. ALBARRAN DE MENDOZA: Oh, we cannot do that.

MS. BLADES: Why?

MR. SMITH: It has to be deferred to sometime within the month.

MR. RANDOLPH: Well, for a couple reasons. One, because you're holding these properties under the...what was the term?...under the Sword of Damocles for a whole year, not for a year, but until you get back to these things in November, and that means they can't really do anything with their properties unless they come to you, and now that you've sent out your designation notice, I think you have thirty...don't you have 30 days within which to act after the designation notice, unless you have approval from a property owner.

① MR. MOORE: Remember, when you defer, each time we say to you when you defer...have we got agreement from the property owner individually to make this deferral. Well, you need them from all the property owners in the district to be able to defer...not just...not just if you had twenty properties and you had nineteen people agreeing. That one person not agreeing and Mr. Chopin was telling you about plats and how you can't change a plat without everybody agreeing, and it's the same thing here. You just can't...you're going to have to bite the bullet in other words, from the staff's standpoint, we're going to tell you today, you've got to bite the bullet and either yes, no, or modify this particular designation.

MR. ZUKOV: I'd like to make a motion, since I can vote, right?

MR. SMITH: Yes.

MR. ZUKOV: I'D LIKE TO GO BACK TO REVIEWING INDIVIDUAL HOUSES, PENDLETON OR PENDLETON LANE, THAT WOULD BE MY MOTION.

MR. RANDOLPH: Your motion would be to deny the district.

MR. SMITH: Wait a minute. I don't think he can make a motion.

MR. FRANK: Yes, he can.

① MR. MOORE: He would be the senior alternate. Mr. Pandula is not here.

MR. FRANK: Yes.

MR. SMITH: Thank you. O.K. So your motion is to...

MR. ZUKOV: TO GO BACK TO REVIEWING EACH INDIVIDUAL HOME ON PENDLETON AVENUE OR
ON PENDLETON LANE.

MR. RANDOLPH: That can't be the motion. That's the reason for the motion, but the motion would be to deny the district.

MR. ZUKOV: TO DENY THE DISTRICT, YES.

MR. SMITH: O.K. THERE IS A MOTION ON THE FLOOR TO DENY THE DISTRICT. IS THERE A SECOND?

THE MOTION DIED FOR LACK OF A SECOND.

MR. MOORE: New motion.

MR. SMITH: You know we only have a few choices here.

MS. LILJA: Could I make a motion...

MR. SMITH: Are you seconding the motion?

MS. LILJA: No, I'm not.

MR. SMITH: THEN THE MOTION DIES FOR LACK OF A SECOND. O.K. Yes, now the floor is open for a new motion.

MS. LILJA: I WOULD LIKE TO MAKE A MOTION TO LIMIT THE SIZE OF THE HISTORIC DISTRICT TO PENDLETON AVENUE, AND TO MOVE THAT PENDLETON AVENUE BECOME A HISTORIC DISTRICT.

MR. SMITH: IS THERE A SECOND TO THAT MOTION?

MRS. ALBARRAN DE MENDOZA: I SECOND THAT MOTION.

MR. SMITH: MOTION MADE AND SECONDED. ALL IN FAVOR? OPPOSED?

MR. MOORE: TAKE A ROLL CALL.

MR. FRANK: ROLL CALL PLEASE:

MRS. DELP:	MS. LILJA:	YES
	MRS. ALBARRAN DE MENDOZA:	YES
	MS. SHIELDS:	YES
	MRS. WILKEY:	NO
	MRS. BLADES:	YES
	MR. ZUKOV:	NO
	MR. SMITH:	YES

MR. FRANK: MOTION CARRIES 5-2-0.