# MINUTES OF THE TOWN COUNCIL MEETING HELD ON MARCH 9, 1999

## I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Lesly Smith at 9:30 A.M. in the Town Council Chambers on March 9, 1999. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Allen Wyett, Councilmen Jack McDonald, Samuel McLendon, and Leslie Shaw. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Chief Code Compliance Officer Brian House, Acting Finance Director Cheryl Somers, Fire-Rescue Assistant Chief Kent Koelz, Fire Marshal John Wandell, Information Systems Manager Spencer Wilson, Planner/Projects Coordinator Tim Frank, Planning, Zoning & Building Director Robert Moore, Zoning Administrator Paul Castro, Assistant Police Chief Michael Reiter, Public Works Director Al Dusey, Public Works Facilities Maintenance Division Manager Joseph Ugi, Purchasing Agent Charles Boggs, Recreation Director Russell Bitzer, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

## II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Mary Pollitt, and the Pledge of Allegiance was led by President Smith.

## III. PRESENTATIONS

1. Retirement of Dwight Wilkins, Police Parking Enforcement Officer - 10 Years and 1 Month

Mayor Ilyinsky presented a plaque to Mr. Wilkins.

2. Recognition of Laurel Baker, Architectural Commission, Member from 1993 to 1999, Alternate from 1989 to 1993

Mayor Ilyinsky presented a plaque to Mrs. Baker.

3. Recognition of Lindley Hoffman, Landmarks Preservation Commission, Member from 1996 to 1999

Mr. Hoffman was not present.

4. Recognition of Arthur M. Silverman, Landmarks Preservation Commission, Member from 1995 to 1999, Alternate from 1990 to 1994

The Mayor presented a plaque to Mr. Silverman.

5. Recognition of Theodore G. Metzger, Zoning Commission, Alternate Member from 1995 to 1999

Mayor Ilyinsky presented a plaque to Mr. Metzger.

6. Recognition of Robert Wood, Zoning Commission, Member from 1992 to 1999

Mayor Ilyinsky presented a plaque to Mr. Wood.

7. Recognition of the Shore Protection Board Members, from 1995 to 1999:

| | | |
|---|---|---|
| 1. | Garrison D. Lickle, Chair | Not Present |
| 2. | George M. Moffett, II, Vice Chair | Received Plaque |
| 3. | Eileen Curran | Received Plaque |
| 4. | Wayne F. Dimm | Received Plaque |
| 5. | Edward L. Hennessy, Jr. | Received Plaque |
| 6. | Charles C. Isiminger | Not Present |
| 7. | Gerald H. Levy | Received Plaque |
| 8. | Joel Martino | Not Present |

9. Richard Raffo Received Plaque

## IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky reminded everyone of the Crime Watch Wine & Cheese Event scheduled for Thursday, March 11th at the Colony Hotel Pavilion.

The Mayor mentioned the importance of the public attending one of the three scheduled informational meetings regarding the Shore Protection Board's recommendations. The meetings were scheduled to be held on the following dates:

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|---|---|
| March 17th | Four Seasons Hotel, 2800 South Ocean Blvd. |
| March 18th | Town Hall Chambers |
| April 20th | St. Edward"s Parish Hall, 144 N. County Road |

Mayor Ilyinsky thanked everyone for the many cards, flowers, and telephone calls during his recent hospitalization.

## V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

**TIME CERTAIN OF 2:00 P.M.** - Agenda Item XVI. A., page 7, Presentation by Raymond Gindroz, Urban Design Associates,, on the "Pattern Book" Concept and Proposal to be considered at a time certain of 2:00 p.m.;

**REMOVE** Item XVI.C.1, page 7, Site Plan Review No. 1-99, 530 South Ocean Boulevard, from the agenda;

President Pro-Tem Wyett moved that Item XVI.C.1 (Site Plan Review No. 1099, 530 South Ocean Boulevard) be removed from the Agenda. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

**DEFER** Item XVI.C.2., page 7, Site Plan Review No. 4-99, 218 Royal Palm Way, to the April 13, 1999, Town Council Meeting;

President Pro-Tem Wyett made a motion to defer item XVI.C.2 (Site Plan Review No. 4-99, 218 Royal Palm Way) to the April 13, 1999, Town Council Meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

**ADD** Item XIV. E. 11., page 6, Request by Bell South to place Aerial Cables Along North Lake Way;

President Pro-Tem Wyett moved that Item XIV.E.11 (Request by BellSouth to place Aerial Cables Along North Lake Way) be added to the Agenda. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

**DEFER** Item XIII. B. 4, page 4, Create a Civic Award to be Presented by the Mayor and Town Council, to the April 13, 1999, Town Council Meeting;

President Pro-Tem Wyett moved that Item XIII.B.4. (Create a Civic Award to be Presented by the Mayor and Town Council) be deferred to the April 13, 1999, Town Council Meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

**ADD** Item XIV.E.12., page 6, Consideration of the Letter Received From the Weitz Corporation Regarding Leasing Property for Staging;

Councilman Shaw moved that Item XIV.E.12. (Consideration of the Letter Received From the Weitz Corporation Regarding Leasing Property for Staging) be added to the Agenda. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

**DEFER** Item XIV.E.9, page 6, Proposed Consent Order Regarding Sewage Spill Incident of November 12 and 13, 1998, to the April 13, 1999, Town Council Meeting.

President Pro-Tem Wyett moved that Item XIV.E.9. (Proposed Consent Order Regarding Sewage Spill Incident of November 12 and 13, 1998) be deferred to the April 13, 1999, Town Council Meeting. The motion was seconded Councilman McLendon. On roll call the motion carried unanimously.

**REMOVE** Item XVI. D.2., page 9, Request by Cartier, 214 Worth Avenue for a Waiver to Section 42-199 of the Town Code of Ordinances, Hours of Construction, to be determined by staff;

Councilman McLendon moved that Item XVI.D.2. (Request by Cartier, 214 Worth Avenue for a Waiver to Section 42-199 of the Town Code of Ordinances, Hours of Construction, to be determined by staff) be removed from the Agenda. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

**ADD** Item XIV.E. 12., page 6, Discussion of changes in the Alcoholic Beverage License Hours.

President Pro-Tem Wyett moved that Item XIV.E.12. (Discussion of Changes in the Alcoholic Beverage License Hours) be added to the Agenda. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

President Pro-Tem Wyett moved approval of the Agenda, as amended.. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

## VI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Mr. Lowry Bell, member of the Architectural Commission, addressed the Town Council, and said he was disappointed that the Town Council did not approve a recommendation of the Zoning Commission related to second story setbacks. He also said that subject to Mr. Raymond Gindroz's presentation later in the meeting, he thought all of the local architects already had "pattern books" and did not need new ones as Mr. Gindroz will present.

Mrs. Meredith Newton, representing the Garden Club, said she would like to make some suggestions and remarks concerning the Historic tree issue. After discussion, she said she would state her remarks when that subject was heard later in the meeting.

Mr. Eric N. Gilbertson, 151 Chilian, complimented the Town Council for holding firm on the water issues confronting the Town.

## APPROVED AGENDA

## VII. APPROVAL OF MINUTES OF JANUARY 28, 1999

## VIII. APPROVAL OF CHECK REGISTERS FOR FEBRUARY 1999

## IX. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF FEBRUARY 24, 1999

## X. LICENSES AND PERMITS

1. Charitable Solicitations

   Other - Application Filed Late and $25 Late Fee Paid

   1. American Society for Technion-Israel Institute of Technology; No. 137-99
   2. Junior League of the Palm Beaches, Inc.; No. 173-99
   3. Croquet Foundation of America; No. 216-99
   4. Il Circolo - The Italian Cultural Group of the Palm Beaches; No. 460-99
   5. United States Holocaust Memorial Museum; No. 461-99
   6. Leaders in Furthering Education - LIFE; No. 462-99

## XI. OTHER

1. Request for Approval of Proposed FY2000 Budget Calendar per Memorandum dated February 26, 1999, from Finance Director Demming

2. Appointment of Selection Committee to Review Proposals from Architectural Firms per

Memorandum dated March 4, 1999, from Town Manager Doney

3. Florida Department of Environmental Protection's Program for Florida Beach Erosion Control - Memorandum dated February 23, 1999, from Public Works Director Dusey

4. System for the Distribution of Parking Permits per Memorandum dated February 17, 1999, from Town Manager Doney

5. Appointment of Town Representative(s) to the Strategy Development Board Subcommittee of the Intergovernmental Coordination Program per Memorandum dated February 26, 1999, from Messrs. Frank and Moore

Councilman McLendon moved that the "Approved Agenda" be approved. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

**REGULAR AGENDA**

**XII. PUBLIC HEARINGS**

*Item XIV E.5. Historic/Specimen Trees - Issues Related to Memorandum dated January 7, 1999, from Public Works Director Dusey, was heard in conjunction with the following item:*

1. Designation of 32 Historic/Specimen Trees; Resolution No. 11-99

Public Works Director Al Dusey explained that additional historic/specimen trees had been identified within the Town, with 32 trees being added to the list. All property owners had been notified, with the exception of one at 15 S. Lake Trail (which would be deferred until the April 13, 1999, Town Council Meeting). The Flagler Museum had requested that a tree identified on its property not be designated, as they would properly care for the tree.

Town Attorney Randolph read Resolution 11-99 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DESIGNATING CERTAIN SPECIMEN TREES LOCATED ON PROPERTIES WITHIN THE TOWN OF PALM BEACH; PROVIDING FOR THE RECORDING OF SAID DESIGNATIONS AGAINST THE LAND UPON WHICH THE TREE OR TREES ARE LOCATED; PROVIDING THAT A COPY OF THIS RESOLUTION BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

At this time President Pro-Tem Wyett moved that Item XIV. E. Other 5. (Historic/Specimen Trees) be discussed at this time, since it was similar subject matter. President Smith passed the gavel to second the motion. On roll call the motion carried unanimously.

5. Historic/Specimen Trees:

1. Issues Related to Memorandum dated January 7, 1999, from Public Works Director Dusey

Public Works Director Al Dusey explained that the letter dated January 7, 1999, was a summary of the trees in Town that had deteriorated over time.

Mrs. Meredith Newton, of the Garden Club of Palm Beach, commented that the Garden Club officers had recently toured many of the proposed specimen trees with officials of the Town of Palm Beach. Most of the properties were beautifully maintained, with the specimen trees in good condition. The Garden Club suggested the following for consideration in re-writing the historic and specimen tree ordinance: For properties where the owner voluntarily requests the Town to assume the maintenance of an historic or specimen tree, the Town should do so at its own expense. For those properties where the trees are well maintained, there should be no Town interference, other than an annual inspection by the Town horticulturist to recommend pruning, trimming, etc., as well as a follow up inspection after six months. For properties where the owner has indicated his/her desire for the Town not to do the work, preferring to do it himself, after the tree has been inspected and recommendations made, and if six months later inspection reveals that the work has not been done, the ordinance should mandate that the Town go onto the property, perform the work, and bill the owner. If any tree has been pruned, cut, trimmed, neglected, etc., without permission of the Town in such a way as to destroy its specimen characteristics, the owner should be fined to the extent of the law, and any outside contractor should have some kind of black mark against future permit applications. Properties to be cleared for construction should have all specimen and historic trees located and labeled on the plot plan by the Town. A circle around the tree should indicate a perimeter inside which there will be no building of any structure, nor any paving that would destroy the root system, nor would it be allowed to place any construction material or park any vehicles inside that circle during construction. The radius of the circle would be determined by the Town horticulturist, according to the needs of the tree. Contractors violating that circumference may jeopardize their permits to work in the Town. These measures should strengthen the ordinance without undue interference from the

Town, and perhaps eliminate the few cases of neglect and poor maintenance that become evident from time to time.

Scott Lewis spoke in support of the statement of Mrs. Newton. He stated that he hoped the trees could be protected from damage, as they were worth preserving.

President Pro-Tem Wyett moved acceptance of Resolution 11-99, and the total list provided by Mr. Dusey. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

B. Survey Results Regarding Possible Town Maintenance of Historic/Specimen Trees

Town Attorney Randolph suggested that the current Ordinance be reviewed to determine what changes should be made, and that he would need to do some research concerning the ability of the Town to go onto private property.

Councilman McDonald moved that this item be referred to the Ordinances, Rules, and Standards (ORS) Committee. The motion was seconded by Councilman Shaw.

Councilman Shaw suggested that trees of specimen quality at their infancy could fall under the guidelines of the Town maintenance program, as that may be the motivation to see that the trees would be developed properly.

Mayor Ilyinsky commented that perhaps the realtors in Town could be advised of the location of specimen trees as well the ordinance itself. Councilman McDonald commented that it could be included in the orientation program for new realtors.

Mr Dusey advised that a survey had been done, with 42 letters being sent to owners of existing specimen trees regarding a potential Town maintenance program, and 22 had responded affirmatively, with 9 of those having some sort of conditions; 7 had replied negatively. He anticipated that approximately $25-30,000 per year would be needed for fertilization, minor trimming, etc. for the specimen trees.

President Smith suggested that Mr. Dusey provide a detailed memorandum to the property owners involved relating exactly what would be done, explaining that the Town would not be undertaking the major trimming of the trees.

On roll call the motion carried unanimously.

6. Landmark Designation of 212 Seaspray Avenue; Resolution No. 9-99

Planner/Projects Coordinator Tim Frank reported that the Landmarks Preservation Commission had found that the property at 212 Seaspray Avenue met the criteria for designation as a landmark in the Town of Palm Beach.

Historic Preservation Consultant Jane Day reported that the property was part of the Poinciana Park Development, which was developed by City Builders Realty, Inc., early in the boom time eras of the Town of Palm Beach. It was a Mediterranean Revival style structure, topped with a barrel tile roof.

Mr. Dick Zuver, owner of 212 Seaspray Avenue stated that he fully supported the designation of the property as a landmark. The property had been in his family for quite a few years, and there was a great sentimental attachment to the property.

At this time Town Clerk administered the oath to all those who would be speaking to the issues being discussed at the meeting today.

Councilman McDonald moved acceptance of the designation report. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Town Attorney Randolph read Resolution 9-99 by title:

> A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION ON THE PROPERTY HEREINAFTER DESCRIBED, AND MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK, PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Councilman McDonald moved that Resolution 9-99 be adopted, designating the property at 212 Seaspray Avenue as a landmark of the Town of Palm Beach on the basis that it meets the criteria identified in the Designation Report, Section 54-161 of the Town of Palm Beach Code an the Landmarks Preservation Ordinance No. 2-84. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

7. Landmark Designation of 745 Hi-Mount Road; Resolution No. 10-99

Planner/Projects Coordinator Tim Frank stated that property notification had been received on property at 745 Hi-Mount Road, and the Landmarks Preservation Commission was recommending west facade designation only, including the area from the west property line to the west facade of the structure, and 5' eastward from that west facade, which met the criteria for designation.

Historic Preservation Consultant Jane Day reported that the house had won the Ballinger Award given by the Preservation Foundation as a sensitive example of both renovation and rehabilitation. There had been a major alteration on the back of the house, and that was the reason the front facade only was being recommended for designation.

Councilman Shaw moved acceptance of the Designation Report. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Town Attorney Randolph read Ordinance No. 10-99 by title:

> A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION ON THE PROPERTY HEREINAFTER DESCRIBED, AND MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK, PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Councilman McDonald moved that Resolution 10-99 be adopted, designating the property at 745 Hi-Mount Road as a landmark of the Town of Palm Beach on the basis that it meets the criteria identified in the Designation Report, Section 54-161 of the Town of Palm Beach Code an the Landmarks Preservation Ordinance No. 2-84. President Smith passed the gavel to second the motion. On roll call the motion carried unanimously.

## XIII. OLD BUSINESS

1. Ordinances

   1. Ordinance No. 19-98 - Amendment to Newsrack Ordinance *(Final Reading)*

Town Attorney Randolph read Ordinance No. 19-98 by title:

> AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 106 OF THE TOWN CODE OF ORDINANCES RELATING TO STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES BY CREATING A NEW ARTICLE 8, PROVIDING FOR THE PLACEMENT OF MOVABLE FIXTURES WITHIN THE RIGHT OF WAY; PROVIDING FOR PURPOSE AND SCOPE; PROVIDING DEFINITIONS; PROVIDING FOR CERTIFICATE OF COMPLIANCE; PROVIDING FOR STANDARDS FOR MAINTENANCE AND INSTALLATION; PROVIDING FOR LOCATIONS; PROVIDING FOR PROHIBITED LOCATIONS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR ABANDONMENT; PROVIDING FOR ENFORCEMENT; PROVIDING FOR APPEALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Assistant to the Town Manager David Jakubiak reported that according to Ordinance No. 19-98, it was the responsibility of the Town to purchase and install additional enclosures at the specific locations addressed in the Ordinance. He requested that the amount of $25,000 be transferred from the General Contingency Fund for the purchase of such enclosures.

Councilman McDonald moved approval of Ordinance No. 19-98. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

Councilman McDonald moved approval of the transfer of $25,000 from the General Contingency Line Item Within the General Fund for the purchase and installation of new enclosures. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Chief Code Compliance Officer Brian House indicated that he would send certified letters to the news organizations notifying them that the Ordinance had been passed today, and they would have ninety days to come into compliance.

2. Other

   1. Royal Park Bridge Status Report by the Public Works Director

Public Works Al Dusey reported that the Florida Department of Transportation (FDOT) had scheduled a Public Meeting which will be held on April 7, 1999, at 7:30 p.m. at the Sheraton West Palm Beach Hotel to discuss the bridge construction. He noted that there had been adjustments to traffic flow patterns by FDOT to improve congestion.

Mr. Dave Whaley, Project Director, PCL Civil Constructors, Inc., introduced Gayle McKenna, the onsite Project Manager, who would be able to address any daily concerns. He explained that pile driving would begin shortly. He also explained that bridge opening timings had followed the Coastguard schedule as closely as possible.

The Mayor and Town Council stressed the importance of having controlled bridge openings on the weekends, and of addressing the issue of traffic backup in Palm Beach as a result of uncontrolled bridge openings on the weekends, resulting in a public safety issue.

2. Water Supply Issues:

1. Status Report

Public Works Director Al Dusey reported negotiations for the supply of high quality bulk water had been successfully concluded with Palm Beach County. Mr. Dusey presented details of the negotiations and mentioned that a draft agreement was in final form and ready for Town staff review. Costs for purchasing the West Palm Beach system would approximate the costs for purchasing water from Palm Beach County. Negotiations with West Palm Beach were ongoing, and an offer had been made; a term sheet had been received, although it had not yet gone through a formal review. Mr. Dusey recommended that a Special Town Council Meeting be set in order to discuss the water issues.

The Town Council set a Special Town Council Meeting for Friday March 19, 1999, at 1:00 P.M. in the Town Council Chambers. Representatives of both Palm Beach County and the City of West Palm Beach would be invited to attend.

2. Request by Hartman & Associates for Additional Funding to Secure a Consumptive Use Permit for a Proposed Town Reverse Osmosis Water Treatment Facility

Public Works Director Al Dusey reported that two permit processes were underway for reverse osmosis; one permit was to get water out of the ground to treat; the other was to dispose of the brine waste that comes from the reverse osmosis process. Additional authorization was now needed to continue the process with the Consumptive Use Permit with South Florida Water Management District (SFWMD). Hartman & Associates had estimated the need for a not to exceed figure of $5,000 for the next step in the process. The brine disposal process would also require an additional $5,000.

Councilman McLendon moved approval of an amount not to exceed $10,000, for the funding requested by Hartman & Associates, to be taken from the General Contingency Fund. The motion was seconded by Councilman McDonald.

President Pro-Tem Wyett recused himself, citing a possible conflict of interest as he was a member of the Board of Directors of Ionics, which may submit a bid relating to the reverse osmosis process.

On roll all the motion carried 4/0, as President Pro-Tem Wyett had recused himself.

3. Renewal of Banking Services Agreement with First Union National Bank and Authorization of the Town Manager to Execute Necessary Documents *(Deferred from February 9, 1999)*

Town Manager Doney requested that Public Works Director Al Dusey report on the survey concerning the installation of an ATM machine, and requested that the Town Council reconsider the one year approval for the agreement with First Union National Bank.

Councilman Shaw withdrew his suggestion that an ATM be installed, and moved that the agreement with First Union National Bank for banking services be renewed for two years. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

4. Create a Civic Award to be Presented by the Mayor and Town Council *(Deferred from February 9, 1999)*

**This item was deferred to the April 13, 1999, Town Council meeting.**

## XIV. NEW BUSINESS

1. Resolutions

1. Resolution No. 8-99 - Extension of Contract with Palm Beach County for Operation and Maintenance of the Sand Transfer Plant

Town Attorney Randolph read Resolution No. 8-99 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, EXTENDING THE EXPIRATION DATE FOR THE INTERLOCAL AGREEMENT BETWEEN THE COUNTY OF PALM BEACH AND THE TOWN OF PALM BEACH FOR THE LAKE WORTH INLET SAND BYPASSING PLANT UNTIL SEPTEMBER 30, 2002.

Councilman Shaw moved approval of Resolution No. 8-99. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman McDonald was temporarily out of the room.

2. Ordinances

1. Ordinance No. 3-99 - Removal of Abandoned Vehicles Within the Town's Corporate Limits

Town Attorney Randolph read Ordinance No. 3-99 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 118 OF THE CODE OF ORDINANCES, TRAFFIC AND VEHICLES, BY CREATING A NEW ARTICLE 4 RELATING TO ABANDONED VEHICLES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph explained that this was a housekeeping matter, to reinstate an ordinance that had been left out during codification.

President Pro-Tem Wyett moved approval of Ordinance No. 3-99. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as Councilman McDonald was temporarily out of the room.

3. Sealed Bids

1. Sealed Bid No. 99-04 - Purchase of Fifty-Five (55) Police Handguns

Assistant Police Chief Reiter explained that there had been a trend over the past 15 years for all law enforcement to change from revolvers to semi-automatics, as it was much easier to fire and more accurate, and the capacity was greater. He noted that funding was a combination of donations and a small amount from the Forfeiture Trust Fund.

President Pro-Tem Wyett moved approval of Sealed Bid. No. 99-04. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

4. Appointments

1. Architectural Commission - Two Member Terms to Expire March 2002

Lowry Bell and Eric Adams were appointed to terms to expire March 2002.

Billy VanPelt was appointed as an Alternate Member.

2. Landmarks Preservation Commission - One Member Term to Expire March 2000 and Two Member Terms to Expire March 2002

Ann Blades was appointed to a term to expire in the year 2000.
Jacquie Albarran-deMendoza and Ann Lilja were appointed to terms to expire in the year 2002.
Judy Wells Hoffman and Jack Pyms were appointed as alternates.

5. Other

1. Request by Publix Super Markets, Inc. to Review Section 6-8 of the Town's Code of Ordinances Regarding Sale of Hours for Alcoholic Beverage Consumption Off Premises

Mr. Clayton Hollis, Jr., Vice President of Public Affairs for Publix Super Markets, Inc., addressed the Town Council. Accompanying him was Mark Morabito, Store Manager of the Palm Beach Publix Super Market. Mr. Hollis explained that many customers had complained regarding the inconvenience of not being able to buy beer and wine in the store in the evenings after 8:00 P.M. and on Sundays. He requested that the pertinent ordinance be reviewed for possible change.

Town Attorney Randolph advised that he had proposed the hours for sale of alcohol as follows: no sales of alcohol after 10:00 P.M. during the week, and no sales of alcohol on Sunday until 1:00 P.M. to be considered for incorporation within the ordinance.

Mr. Mark Morabito advised that he believed the West Palm Beach hours for selling alcohol in super markets was 12:00 P.M. on Sunday. He stated that the store was opened from 6:30 A.M. until 9:00 P.M. every day of the week.

President Pro-Tem Wyett addressed the parking issue at Publix, and requested that efforts be made to provide more parking.

Mr. Hollis replied that Mr. Morabito was consistently addressing the parking problem, and had instituted a valet parking program, and that the home office was studying the situation.

Councilman Shaw moved approval of incorporating into the ordinance the requirement that there be no sales of alcohol after the hour of 10:00 P.M. during the week, and not before the hour of 1:00 P.M. on Sunday for the sale of alcohol. The motion was seconded by Councilman McLendon.

President Pro-Tem Wyett objected to the 10:00 P.M. requirement, since the store closed at 9:00 P.M.

On roll call the motion carried 2/3, with Councilmen Shaw and McLendon casting affirmative votes; President Smith, President Pro-Tem Wyett, and Councilman McDonald casting dissenting votes.

President Pro-Tem Wyett moved approval of incorporating into the ordinance the requirement that there be no sales of alcohol after the hour of 9:00 P.M. during the week, and not before the hour of 1:00 P.M. on Sunday for the sale of alcohol. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/1, with Councilman McDonald casting a dissenting vote.

Town Attorney Randolph advised that the ordinance would undergo first reading under Item XIII. Any Other Matters.

2. Request to Extend Lease Agreement for Sixty (60) Days Between the Town and Adelphia Cable (Agreement Formerly with Tele-media) for Tower Site on Town Property Located at Okeechobee Boulevard

Councilman Shaw moved approval of the request to extend the Lease Agreement for 60 days between the Town and Adelphia Cable for the Tower Site on Town property located at Okeechobee Boulevard. The motion was seconded by Councilman McLendon.

Town Attorney Randolph requested that he be allowed to negotiate the final rate for the extended 60 days.

Councilman Shaw incorporated approval of the request that Mr. Randolph negotiate the final rate for the extended 60 days into the motion. The seconder of the motion agreed.

On roll call the motion carried unanimously.

3. Request by Newlands Design Group to Install Dune Plantings on Town Road Right-of-Way Opposite 260 North Ocean Boulevard

After discussion, including a report by Public Works Director Dusey, a statement by Attorney Michael Buckner representing owner Thomas Wheeler, and presentation by Mr. Wall, Councilman Shaw moved that this item be deferred to the April 13, 1999, Town Council Meeting, so that staff could review the plans for proper access at the south end of the property. The motion was seconded by President Pro-Tem Wyett.

Town Engineer Bowser advised that Atlantic was private property, and was not like Dunbar, which had a full road right of way that extended to the ocean. The private property owners in that subdivision did have lots on the east side, and in this case the road right-of-way curves and comes to the seawall, which means that the majority of the project was within Town road right-of-way. He noted that he had requested an elevation indicating that the ocean vista would be maintained, that the hedge would be seagrapes, and be trimmed properly, and maintained below four feet.

President Pro-Tem Wyett and Councilman McDonald expressed concern over the public access.

On roll call the motion to defer carried unanimously.

4. Audit Issues:

1. Audit Report for Fiscal Year Ending September 30, 1998 - Discussion and Acknowledgment of Receipt

Town Manager Doney referred to a memorandum from himself and former Finance Director James Demming, dated March 2, 1999, referring to the Annual Audit Report for Fiscal Year Ended September 30, 1998, noting that the Town had received a qualified opinion due to the Year 2000 issue. The qualification would be standard for local government audit reports for periods ended September 30, 1998. Due to the unprecedented nature of the issue, the auditors did not believe that sufficient audit evidence existed to assure themselves that the Town operations and the way the Town conducts business with third parties are Year 2000 ready, even though the Town began its Y2K preparedness efforts in 1990, and the auditors believe that all of the Town internal software and hardware was Y2K compliant. Mr Doney submitted the memorandum dated March 2, 1999, referred to earlier, for the record.

Councilman McDonald moved that the Town Council acknowledge the receipt of the Audit Report for Fiscal Year Ending September 30, 1999. The motion was seconded by Councilman McLendon. Councilman McDonald included approval of the Town Comprehensive Annual Financial Report (CAFR) for the fiscal year ending September 30, 1998, in his motion, which was approved by the seconder of the motion. On roll call the motion carried 4/1, as President Pro-Tem Wyett had temporarily left the room.

2. Management Letter and Staff Response - Acceptance (Pages 84-88 of Audit Report)

Mr. Doney explained that pages 84-88 of the CAFR, entitled "Management Letter", and dated January 29, 1999, contained the specific comments and recommendations of the auditor and staff response to each individual item.

Councilman Shaw suggested that, for the budget process, recurring bills for electronic fund transfer be reviewed, as it would save the Town the cost of billing, processing, and would be an aid.

Councilman Shaw suggested that if annual financial disclosures were not filed, perhaps there should be no parking permit issued to that person.

Councilman McDonald commented that he supported the comments of Councilman Shaw, and suggested that the appointment of anyone not filing the financial disclosures form on a timely basis be terminated. Councilman McDonald moved that anyone not filing the required State forms on time be terminated from service. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 3/2, with Councilman McDonald, Councilman McLendon, and President Pro-Tem Wyett casting affirmative votes; Councilman Shaw, and President Smith casting dissenting votes.

After discussion concerning the intent of the motion, President Pro-Tem Wyett then withdrew his affirmative vote, and cast a dissenting vote, failing the motion 2/3, with Councilman McDonald, and Councilman McLendon casting affirmative votes; Councilman Shaw, President Smith, and President Pro-Tem Wyett casting dissenting votes.

Director of Planning, Building & Zoning Robert Moore commented that there were several boards that required the financial disclosure forms, and sometimes it escaped notice of the members that it was necessary. He suggested that reminders be continued to be sent.

President Pro-Tem Wyett then made a motion to reconsider the motion of Councilman McDonald. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

There was no further action taken in this regard.

President Pro-Tem Wyett moved acceptance of the Management Statement of Explanation concerning the auditor Management Letter comments. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

3. Renewal of Contract for Auditing Services with Caler, Donten, Levine, Druker, Porter & Veil, P.A.

Town Manager Doney referred to the memorandum dated February 26, 1999, regarding this matter, indicating that the auditing firm was proposing a fee of $60,000 for FY99 and for FY2000, and then to negotiate a fee for the remaining years FY01, 02, and 03 prior to the commencement of work each year. In addition, the proposal included a provision for cancellation by either party with a 30-day notice. Mr. Doney explained that the Town was pleased with the professional level of service that had been received, and it was considered that it would be in the best interest of the Town to approve the proposal from Caler, Donten, Levine, Druker, Porter & Veil, P.A.

Councilman Shaw moved that the contract be modified to include a two year agreement, with three one-year options. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

5. Historic/Specimen Trees:

1. Issues Related to Memorandum dated January 7, 1999, from Public Works Director Dusey

*This item was heard in conjunction with item XII.A. Designation of 32 Historic/Specimen Trees, Resolution No. 11-99.*

2. Survey Results Regarding Possible Town Maintenance of Historic/Specimen Trees

*(The above Item was heard in conjunction with Item XII.A., Resolution 11-99)*

6. Issues Regarding Boards and Commissions

Director of Planning, Zoning & Building Robert Moore advised that an outline of the number of boards had been provided to the Town Council, including type of term limitations, etc. He explained that the Town Council had indicated an interest last month in a discussion of term limits, and conflicts of interest. He noted that staff recommendations were as follows:

From Mr. Moore: Suggests that this item be referred to the Ordinances, Rules & Standards (ORS) Committee, so that the necessary time could be spent in discussion.

From Mr. Bitzer: Agrees with the suggestion of Mr. Moore.

Councilman Shaw commented that he would like to see the "unexcused absences" and "consecutive absences" defined more clearly.

President Pro-Tem Wyett expressed concern over term lengths, as well as the number of conflicts of interest submitted.

Councilman McDonald commented that attendance requirements should be more clearly defined, and questioned if attendance requirements were necessary.

After further discussion, the ORS Meeting was scheduled for April 23, 1999, at 9:00 A.M. in the Town Council Chambers.

Mrs. Polly Earl, speaking for the Preservation Foundation, commented that term limits allowed for some turnover on the commissions, without endangering the continuity of Town business. Regarding conflicts of interest, she commented that the number of conflicts filed was not a problem, however, the way the conflicts were dealt with was more important. Mrs. Earl also suggested that the attendance requirements may be too stringent; in the case of the Landmarks Preservation Commission background and training was an important factor, and there had been cases where commissioners had wished to go to seminars, etc., for professional development and had not been able to go because they were not able to get an excused absence.

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The Town Council Meeting was temporarily adjourned for lunch at 12:30 P.M.

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7. Discussion of Proposed Issuance of Administrative Approval of Charitable Solicitation Permits

Town Clerk Pollitt referred to her memorandum of March 2, 1999 concerning this subject, which outlined the current method of the process of issuing Charitable Solicitation Permits. These permits could be issued administratively, according to Town ordinance, which was a policy decision of the Town Council. She indicated that a report could be submitted on any basis determined by the Town Council as well.

President Pro-Tem Wyett moved that the Charitable Solicitation Permits be issued administratively. The motion was seconded by Councilman McLendon.

Councilman McDonald suggested that a fine be assessed to the establishment where the events are held, in addition to the applicant, when applications are not filed within the required time period. He explained that he believed it was important for the establishments to ask the charity if they had obtained a permit before the function was held.

Town Attorney Randolph indicated that he would review the ordinance in order to attempt to incorporate that suggestion.

President Pro-Tem Wyett included the direction that Town Attorney Randolph review the ordinance within the motion.

On roll call the motion carried unanimously.

8. Proposed Settlement Regarding the Petroleum Products Corp. (PPC) Superfund Cleanup Site

Assistant Town Manager Peter Elwell referred to the preliminary recommendation of the Town Attorney and Town Staff regarding the potential settlement of the Petroleum Products Corp. (PPC) Superfund Cleanup Site, requiring the Town to pay $29,785.80 in exchange for eliminating as much liability as possible in this matter. He explained that any action taken by the Town Council should be taken with the understanding that staff would follow through until everything was completed with the investigation of its records. If there were any changes in the status quo he indicated that he would alert the Town Council; otherwise, the settlement would be implemented.

Councilman Shaw made a motion to approve the settlement. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

9. Proposed Consent Order Regarding Sewage Spill Incident of November 12 and 13, 1998

**The Town Council deferred this item to the April 13, 1999, Town Council meeting.**

10. Expanded Mid-Town Beach Nourishment Project

Town Engineer James Bowers reported that the United States Army Corps of Engineers (CORPS) and The Florida Inland Navigation District (FIND) were looking for a disposal site for sand, and he requested authorization to proceed on the mid-Town expanded design, in the hopes that the Town could secure a permit as soon as possible, so that the sand could be disposed of at mid-Town.

President Pro-Tem Wyett moved approval of the expanded mid-Town Beach Nourishment Project and authorized $500,000 from the Coastal Protection Reserve Account as the costs for obtaining the necessary permits. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/1 as Councilman McDonald had temporarily left the room.

11. Request by BellSouth to Place Aerial Cables Along North Lake Way

Town Engineer James Bowser distributed a copy of the regulations from the Public Works Right-of-Way Manual pertaining to telecommunication providers. He explained that BellSouth had requested an emergency placement of aerial cables along North Lake Way between Monterey and Merrain. The regulations, in Section 3.4, addressed overhead versus underground facilities, and BellSouth could put lines in overhead that were currently underground, provided that they give an estimate to the Town of the costs to put them underground, with the Town having the option to maintain them underground. BellSouth had been unable to provide a hard estimate at this time, however, had given a conceptual estimate of 1,500' of replacement cable on North Lake Way, which would approximate $300,000 if underground; aerial cable would cost $25,000. There was no more capacity on the current cable, and the rainy season could bring problems for service. Mr. Bowser explained that according to the regulations, BellSouth could do the work, however, the Town Council decision was whether the Town wished to pay to have the facility placed underground.

President Smith suggested that a representative from BellSouth address this request, commenting that it was a terrible precedent to put underground lines overhead.

The Town Council suggested that more information be gathered concerning costs, and that Mr. Bowser return to the Town Council Meeting scheduled for tomorrow, March 10, 1999.

12. Request From the Weitz Corporation Regarding Leasing Property for the Neiman-Marcus Project to be used for a Staging Area

Town Manager Doney reported that the final agreement regarding the leasing of property for the Neiman-Marcus Project for use as a staging area would be provided for consideration by the Town Council at a later date.

Councilman Shaw moved approval of the request from the Weitz Corporation, with the provision that the Town Manager provide a draft agreement for the April 5, 1999, Town Council Meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

13. Discussion of Changes in the Alcoholic Beverage License Hours

Town Attorney Randolph explained that Ordinance 4-99 addressed the request by Publix Supermarkets for modifying the hours for sale of off premises consumption. He noted that page 2, Section 6-8, Chapter 6, had been amended to provide that no alcoholic beverages may be sold within the Town between the hours of 9:00 P.M. and 9:00 A.M., or at any time before 1:00 P.M. on Sundays. In addition, an Article 2 had been created as part of the Ordinance, relating to adult entertainment, regulating specific types of adult entertainment at establishments within the Town; basically it indicated that certain types of activity may not take place in conjunction with the sale of alcohol; it provided certain criteria relating to the definition of adult entertainment activity, such as locations, etc. He recommended that the Ordinance be placed on first reading.

Town Attorney Randolph read Ordinance 4-99 by title (first reading):

> AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA, AMENDING CHAPTER 6, ALCOHOLIC BEVERAGES OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, BY PROVIDING THAT THE PREVIOUSLY ADOPTED SECTION 6-1 THROUGH 6-9 BE INCLUDED IN ARTICLE 1 TO BE ENTITLED "IN GENERAL," AMENDING SECTION 6-8 RELATING TO HOURS OF SALE FOR OFF-PREMISES CONSUMPTION; PROVIDING FOR THE ADOPTION OF AN ENTIRELY NEW ARTICLE 2, TO BE ENTITLED "ADULT ENTERTAINMENT CODE," PROVIDING FOR REGULATIONS REGARDING ADULT ENTERTAINMENT, AND ADULT ENTERTAINMENT ESTABLISHMENTS; PROVIDING DEFINITIONS; PROVIDING PENALTIES; PROVIDING A CONFLICTS CLAUSE; A SEVERABILITY CLAUSE; AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Councilman Shaw moved approval of Ordinance 4-99. The motion was seconded by President Pro-Tem Wyett.

President Pro-Tem Wyett referred to page 7, and questioned the inclusion of the word "restroom," suggesting that it be considered for deletion; the residential zone location limitations; and language on page 12, item 6-36, Classifications, suggesting the inclusion video and internet be included.

Town Attorney Randolph responded that he had checked with Building Director Moore, and he had indicated that 250' would be appropriate; video and internet use was included in the definitions.

On roll call the motion carried unanimously.

## XV. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman McDonald commented that he was concerned with the way the Town Council meeting regarding the Palm Beach Day School (meeting of February 9th) was conducted and believed that as a quasi-judicial proceeding the people attending the meeting should have the feeling that the Town Council was unbiased, and that feeling had not been portrayed at the meeting. He explained that if a judge made comments about taking one side or another before all evidence was presented, one would find it troubling. He explained that his comments had nothing to do with the Palm Beach Day School application, but merely the conduct of the hearing. He suggested that the Town Council needed to present themselves in a way that would not give an applicant, or someone affected by the application, the feeling that minds had been made up before all evidence had been presented.

Councilman Shaw commented that once the point of a vote was reached, it would behoove the Town Council to simply make a vote, and not get into the reasoning behind it. Reasons could be handled during the discussion period, and when the vote was called a simple yes or no would be appropriate.

## XVI. DEVELOPMENT REVIEWS

A. Presentation by Raymond Gindroz, Urban Design Associates, on the "Pattern Book" Concept and Proposal - **To be Considered as First Item after the Lunch Break, Time Certain 2:00 P.M.**

Mr. Raymond Gindroz, of Urban Design Associates, presented a proposal, which was an approach to establishing a method of dealing with the various design issues existing in the Town of Palm Beach; the proposal would provide design services to create a pattern book in a public process. The proposal was the result of a series of steps: an exhibit funded by the Palm Beach Preservation Foundation; a presentation to the Zoning Commission; and a presentation to the Town Council today. He commented that increasingly, communities of great value were becoming concerned about the impact of changes in the physical environment. In most cases, the architectural and urban character, the quality of the streets and public spaces was an integral part of the value. In the Town of Palm Beach there was often conflict between feeling the need to encourage new, and at the same time preserve the essential qualities and characteristics that were so treasured. The design of a house was both very personal and very public; there was the private world of the family inside of the house, with the public dimension between the house and the street, between the individual and the community. It is within that interface between the private world of the family and the public realm of the community that conflicts arise. The parts of the design of houses that had to do with the public realm were a relatively small percentage of the total design issues associated with a house. It was important to recognize the importance of individual property rights and community responsibilities to see that the part that requires and needs some kind of consensus is approximately 15-20%, which was not a severe limitation on creativity or the rights of property owners.

Mr. Gindroz introduced a slide presentation, which explored some of the design problems that were being experienced in the Town of Palm Beach. The primary focus of his work had been to understand what the essential qualities of Palm Beach were, so that those could be characterized. A sequence of indoor and outdoor rooms was a characteristic of Palm Beach homes, and in many ways the current mechanisms were no longer adequate to meet the needs. Streets in the north end of Town had homes of different sizes with similar space/sequence of outdoor and indoor rooms, had buildings of high character, sometimes very close to the street, but very much consistent with the character of Palm Beach. These streets were subject to real estate pressures for redevelopment, and the impact of conforming to the zoning must be considered in rebuilding the area.

Mr. Gindroz suggested that the best way to proceed in order to retain the characteristics and offer tools to facilitate development in a positive way could be in the form of a pattern book. These were the result of a long history in this country, and most of the neighborhoods in the U.S. were built with pattern books, which were produced by builders for builders as a helpful aid. They represent a consensus amongst the building industry about how to build a good neighborhood and a good house. Mr. Gindroz exhibited several examples of neighborhoods where pattern books had been used. He explained that in a town like Palm Beach, it was important to look at each type of street, and develop some criteria and images in a pattern book.

Mr. Gindroz stated that the process proposed emerged in the course of discussion with the Zoning Commission, with the first step recommended by the Zoning Commission to do part of a pattern book as a demonstration, focusing on the R-B Zoning District, probably being the most contentious streets, and be sure that the sampling includes all of the different conditions that would need to be reflected. A draft pattern book could then be produced in time for the next zoning season for consideration. Mr. Gindroz continued with more detailed discussion of the process proposed for creating a pattern book in the Town of Palm Beach.

Director of Planning, Zoning & Building Robert Moore explained that the presentation was being heard today because the pattern approach was in concert with the current Zoning Ordinance. The Zoning Commission had recommended that the Town Council give favorable consideration to the concept of sampling several streets. An assignment which was suggested to Mr. Gindroz was to apply the pattern approach to a street like Jamaica Lane, or any other street that was ripe for redevelopment, work with the residents, bring back the results to the Zoning Commission, let the Zoning Commissions review the results, and then make any recommendation to the Town Council.

President Pro-Tem Wyett commented that he did not believe the pattern book approach would apply to Palm Beach, and did not know how the streets to be studied would be determined.

Mr. Gindroz responded that the Town would indicate which streets should be studied, according to suggested criteria – streets that had within them the seeds of change; streets that were below the flood plane, that were subject to FEMA restrictions on reinvestment were looked at as potential redevelopment areas; streets that contained smaller homes that did not conform to spatial needs of the current residential markets. The first step would be to identify streets which embody and demonstrate some of the seeds of change. The pattern book was usually applied to the most sophisticated towns, with the most valuable heritage and beauty, subject to the most pressures from current real estate and development practices.

Councilman Shaw commented that the streets should be put into types of categories so that they could be studied accordingly.

Mr. Moore responded that idea had been discussed during the workshop hearings.

Mr. Gindroz commented that it was fundamental to the idea of a pattern book that it was looking for patterns – it was not a plan – patterns were things in which there were possibilities when change takes place in order to preserve a certain character. The notion of identifying streets by type would establish patterns.

Mr. Gindroz estimated that the cost of a pattern book would be approximately $5,000 per page. The range of costs of pattern books was between $75,000 and $500,000. He estimated that Palm Beach would be in the middle of that range, and initial testing would be one-third of that cost. The initial testing would be the process with neighbors, the three identified streets, the research on the architectural styles, the development of draft pages for approximately 20 pages of text.

In response to President Smith, Mr. Moore indicated that three streets that would be representative of Palm Beach for initial study were streets that ran from the ocean block to the lake block which were prime streets for redevelopment; streets north of the Country Club between No. Ocean Blvd. and North Lake Way, such as Jamaica Lane; streets in the older section of Town in the R-B District. He also suggested that a varied size of lots be included.

Councilman Shaw suggested that three or four dissimilar characteristics be identified, and a process developed for them; recommendations could then be received from Mr. Gindroz from a clinical approach.

Mr. Gindroz replied that the next step would be to put together a step by step work program that would identify each step and costs involved. He indicated that he could then submit a proposal package.

Mr. Moore commented that Mr. Gindroz and his firm were consultants, but they were subcontractors to Mr. Brisson; therefore, any proposals would be forwarded through Mr. Brisson, as he was the planning/zoning consultant.

In response to President Pro-Tem Wyett regarding zoning setbacks, etc., Mr. Gindroz replied that there was a certain set of zoning requirements, and the pattern book approach would provide opportunities that were overlays to that, so that one could vary and depart from a side yard setback under certain conditions to achieve certain goals for the site, and if it did not inflict certain hardships on adjacent properties.

Town Attorney Randolph noted that it should be kept in mind that as the process continued, the Consultants' Competitive Negotiations Act (CCNA) may be involved in selecting an ultimate proposal. Right now, through Mr. Brisson, as a consultant to the Town, the preliminary steps had not yet required a CCNA.

In response to Councilman McLendon concerning sub-zones, Mr. Moore responded that the re-zoning of the R-B District had been considered by staff, and a complete re-zoning would reduce the amount allowed to build, and there could be possible exposure to a claim or a taking of the property. Rather than that approach, it had been suggested to look at the size of the lots; the sliding scale was then developed.

Councilman McLendon expressed concern regarding the bonus system, as he believed it may lead to arbitrary or favorable considerations.

Mr. Gindroz replied that the key to making that work was to make sure that the patterns were ones that were based on real concerns of people, so that they would be responding to the correct issues; having them tested would be necessary to see how they work, finding the ranges of opportunities that people have so that they can meet their particular needs and requirements. The key was to make sure that the players were part of the process; that the different points of view on various sides were represented. Making design the focus of the process was a way of reaching consensus.

Councilman Shaw moved that the Building Department be instructed to go through Mr. Brisson's office so that he could then forward a request for a step by step proposal from Mr. Gindroz to be presented at the Zoning Commission Meeting scheduled for April 22, 1999. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/1, with President Pro-Tem Wyett casting a dissenting vote.

Mr. Moore explained that it would then come back to the Town Council at the May Town Council Meeting to discuss further action, and to assign funding for the project.

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At this time, Mr. Moore explained that Attorney Royce was in the audience, and had submitted Special Exception Application No. 9-99, with Site Plan Review, which was to amend the original Special Exception - Declaration of Use Agreement for the Mar-A-Lago Club. He noted that it was a proposal to build 14 cabanas with a swimming pool, snack bar, and pavilion to replace the current tent, and Mr. Moore suggested that a Special Town Council Meeting be scheduled to review the plans.

The Town Council set a Special Town Council Meeting for April 15, 1999, at 9:30 A.M. in the Town Council Chambers.

Attorney Ray Royce waived the requirement that the application be heard within 30-days by the Town Council. He agreed that the date of April 15, 1999, would be acceptable.

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2. Time Extensions

1. Request for a One-Year Time Extension for Variance No. 9-98, 288 Via Marila, by Mr. Jay R. Jacknin

Director of Planning, Building & Zoning Robert Moore explained that Mr. Jacknin could not be present today because of an emergency situation, and that this was the first time that he had requested an extension, and a first request was normally granted.

President Pro-Tem Wyett moved approval of the request for a one-year time extension for Variance No. 9-98, 288 Via Marila, by Mr. Jay R. Jacknin. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

2. Request for a Six-Month Time Extension for Special Exception No. 4-97 with Variance, 333 Peruvian Avenue, by Mr. Peter S. Broberg

Attorney Peter Broberg, on behalf of McCann, Coyner, Clarke, tenants of the building, addressed the Town Council, stating that two years ago permission had been obtained to expand the real estate office to the second floor. Last March, a one-year extension had been requested, and that had been approved. He now requested a six-month extension as the property was in a trust, and controlled by the trustees, and negotiations were on-going to purchase the property. An agreement to purchase the property had now been entered into and some extra time was now needed.

President Pro-Tem Wyett moved approval of the request for a six-month time extension for Special Exception No. 4-97 with Variance, 333 Peruvian Avenue. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

3. Variances, Special Exceptions, and Site Plan Reviews

At this time, all those who would be speaking to the following issues, were administered the oath by Town Clerk Pollitt.

Old Business - Major

1. SITE PLAN REVIEW NO. 1-99 WITH VARIANCES - Edward D. Ltd., Co., 530 S. Ocean Blvd; located in the R-A Zoning District; height variance for retaining wall allowing 9' above the lowest grade in lieu of 7' maximum allowed. *(Deferred from January 12, 1999, and February 9, 1999)* - **Request for Removal per letter dated March 1, 1999, from Mr. Ronald K. Kolins**

*This item was removed earlier in the meeting.*

2. SITE PLAN REVIEW NO. 4-99 WITH VARIANCES - ARC, L.C., 218 Royal Palm Way; located in the C-OPI Zoning District. To allow construction of a 47 sq.ft. elevator/mechanical equipment room. Variances requested are to allow a lot coverage increase from 31.48% to 31.72% in lieu of 25% allowed, and to allow a decrease in landscape open space from 16.11% to 15.88% in lieu of 30% required. *(Deferred from February 9, 1999)* - **Request for Deferral to April 13, 1999, per letter dated March 3, 1999, from Mr. Ronald K. Kolins**

*This item was deferred to the April 13, 1999, Town Council meeting earlier in the meeting.*

New Business - Minor

3. SPECIAL EXCEPTION NO. 7-99 - Jovins Fla. Enterprises, Inc., Palm Beach Historic Inn, 365 South County Road; located in the C-TS Zoning District. To allow change in tenant on this 2,230 sq.ft. retail occupancy doing business as Scotti's Wines & Liquors, pursuant to Zoning Section 134-1109(b) of the Town's Code of Ordinances.

Zoning Administrator Paul Castro explained that the application was for a new tenant to be located in Scotti's Wines & Liquors, assuming the same name. The only concern of staff was related to the Town-serving requirement, and that it be continued to be demonstrated, and staff recommended approval.

Councilman Shaw moved approval of Special Exception No. 7-99. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

New Business - Major

4. VARIANCE NO. 2-99 - Patricia Gallagher, 312 Cherry Lane; located in the R-B Zoning District. To allow construction of an addition providing 8' rear setback in lieu of 10' required, and to allow construction of additions which will increase the existing angle of vision from 128 degrees to 137.5 degrees in lieu of the maximum allowed of 116 degrees.

There was no ex-parte communication declared.

Stephen A. Yeckes, Architect, and agent for Patricia Gallagher, addressed the Town Council. He explained that the hardship was that this lot was very wide, but not deep, and expansion of the house would entail either going up or widening the house. The addition would involve a two car garage, and making the master bath and guest room slightly larger.

Director of Planning, Building & Zoning gave the following staff comments: Town Engineer: owner to sign a utility encroachment easement for the pool deck encroachment on the utility easement. Building Department: Shallow lot and odd shape of the lot is the hardship.

President Pro-Tem Wyett moved approval of Variance No. 2-99, finding that the criteria set forth in the ordinance had been met. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

5. VARIANCE NO. 3-99 - Leslie & Doris Shaw, 318 Seaspray Avenue; located in the R-B Zoning district. To allow construction of a second story addition providing a 3.6' side yard setback in lieu of 15' required.

Ex-parte communication was declared by President Pro-Tem Wyett with Mrs. Doris Shaw.

Councilman Shaw recused himself from the proceedings, as he was the applicant.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the house had been built in 1924, and the request was to fill in an area on the second floor above an existing first floor area, to add about 95 square feet to a bedroom area in order to provide a more functional space.

Director of Planning, Building & Zoning Robert Moore gave the following staff comments: the variance was a fill-in variance, except for the corner, which lined up with the existing side yard setback. The houses in the area were on 25' lots, and staff found no objection.

President Pro-Tem Wyett moved approval of Variance No. 3-99, finding that the criteria of the ordinance had been met. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Shaw had recused himself.

6. SPECIAL EXCEPTION NO. 6-99 - Paramount Church, Inc.(Jo's Restaurant), 139 N. County Road; located in the C-TS Zoning District. To allow 20 outdoor restaurant seats (retaining a maximum total of 48 seats).

Ex-parte communication was not declared by any Council Member.

Attorney Peter Broberg, on behalf of Paramount Concepts, Inc. d/b/a Jo's Restaurant, addressed the Town Council, stating that approval was being requested for the outdoor seating within the building, for 20 of the previously approved 48 seats to be placed outside as needed and as desired. He produced the accountant determination that Jo's Restaurant in the past had been Town-serving, and explained that the base of customers would remain so.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: One of the tables seemed to be in the middle of a walkway area, and the former restaurant had some problems with the tables placed in that area.

Attorney Broberg advised that placement of the tables would be at the discretion of the Town Council.

President Pro-Tem moved approval of Special Exception No. 6-99, with the condition that the outside tables be placed along the wall. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Ms. Jo Larky, owner of Jo's Restaurant, stated that the hours of operation would br from 11:00 A.M. - 3:00 P.M. for lunch, and 5:30 P.M. - 10:00 P.M. for dinner.

7. SPECIAL EXCEPTION NO. 8-99 WITH SITE PLAN REVIEW & VARIANCES - Howard Sontag, Trustee & R.H. Trust, 1495 North Ocean Blvd., expanded to include a parcel previously known as 104 Mediterranean Road; located in the R-A & R-B Zoning Districts. To allow additions to a single family dwelling (R-A) and a guest house (R-A & R-B) located on a lot exceeding 4 times the minimum lot size for the R-A Zoning District. Variances are requested to allow a building and overall height point of measurement to begin at 13.65 NGVD in lieu of 7.5' permitted for the main house, and to similarly allow a 10.42 NGVD point of measurement for the guest house.

Councilman McLendon declared ex-parte communication with Mr. Lynch; Councilman Shaw had returned a phone call from Mr. Lynch, but was unable to meet with him or discuss the application at any time; President Pro-Tem Wyett with Mr. Lynch on the telephone two times.

Attorney Frank Lynch, on behalf of the applicant, addressed the Town Council, exhibiting a diagram showing the existing house and guest house, as well as the proposed new construction. A special exception was being requested because of the lot size, and a variance to match the finished floor elevation of the existing main house; as well as a variance requested to match the elevation of the existing guest house. He explained that the hardship was the lay of the land.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: this Special Exception had been identified with Site Plan Review as being necessary under the Zoning Ordinance. He noted that when the original house was built it had been granted a variance for the condition of the slope of the property, and staff had no objection. He added that the Town Engineer had indicated that the proposed construction would have an encroachment on a utility easement, which must be abandoned and relocated. A Unity of Title would be required as well. He noted that Mr. Lynch would need to come back next month for a variance for a point of measurement, and that a neighbor, Mrs. Shipley, had expressed concern regarding the service entrance, the parking spaces, and the landscaping of same.

Attorney Lynch indicated that there was no objection to the abandonment and relocation of the utility easement.

Mrs. Nicole Shipley, 1498 North Ocean Way, which was right across the street from 104 Mediterranean, addressed the Town Council, stating that she had forwarded a letter to the Town Council outlining her problem with this matter. She expressed concern regarding the service entrance and parking lot, which would be facing her home. She suggested that the parking lot be removed from Mediterranean.

Attorney Lynch commented that the applicant would provide site screening that would basically eliminate the parking area from view. He introduced Ralph Canton, Architect, who could explain the project in more detail.

Architect Ralph Canton commented that there would be dense hedging provided; there was no current construction going on; the vehicles were as a result of landscapers, chef, and other people coming to the property everyday. He agreed that the parking lot could be moved 30' back and to the east, and drew it on the exhibit so that there would be no confusion as to what would be done.

Councilman Shaw suggested that the air conditioning units be as far away from adjoining properties as possible.

Mr. Canton replied that consultants had been hired to determine the decibel level, and a roof could be put on the units to make them quieter, if so approved.

Councilman Shaw replied that he believed that would solve the problem.

Zoning Administrator Paul Castro pointed out that the air conditioning pad would need to be moved back 10' to meet the street side yard setback, and that the structure should be completely enclosed.

Mr. Canton agreed with those statements.

After further discussion, President Pro-Tem Wyett moved approval of Special Exception 8-99. The motion was then withdrawn.

Attorney Lynch advised that the hardship was the pitch of the property, as the grade of the property rose both from Mediterranean and from North Ocean Blvd. to the dune line, and the existing structure which would be matched as to existing finished floor elevation and height.

President Pro-Tem Wyett moved approval of Special Exception 8-99, with the hardship being the lay of the land and the existing structure. The motion was seconded by Councilman McLendon.

Councilman McLendon inquired if a business was operated on this property?

Mr. Moore replied negatively, explaining that no business, no commercial activity, was permitted on this property; at one time it had been alleged that the owner of the property had broadcast from the house, and the owner had been put on notice, and offices were now rented on Royal Palm Way.

Councilman Wyett withdrew his motion, as did the seconder of the motion, Councilman McLendon.

Councilman Shaw commented that he had no problem with the two variances, but that he did see a problem with the Site Plan Review, in that the driveway should not be located where it was shown, and the parking lots should be reconfigured on the property.

Mr. Moore responded that a great deal of the property was across the dune, and that if there was a problem with the Site Plan Review it would be the responsibility of the Town Council to be satisfied with the location of the driveways, which was not an ARCOM function.

Councilman McDonald moved approval of Special Exception 8-99, incorporating the conditions outlined, and based on the hardship of the lay of the land. The motion was seconded by President Pro-Tem Wyett. On roll call, the motion carried 4/1, with Councilman Shaw casting a dissenting vote.

8. SITE PLAN REVIEW NO. 5-99 WITH VARIANCES - Poinciana Management, 340 Royal Poinciana Way #336; located in the C-PC Zoning District. To allow redesign of the northwest parking lot of the plaza to allow for tandem parking space rows, providing 120 parking spaces. Variances are requested to allow some 3 tandem parking in lieu of the maximum of 2 tandem parking spaces, to allow 8.5' wide parking spaces in lieu of 9' required, and to allow a drive aisle width of 24.5' in lieu of 25' required.

Ex-parte communication was declared by Councilman McLendon with Attorney Doyle Rogers and Mr. Lawrence; by Councilman Shaw with Attorney Rogers and Mr. Lawrence concerning the plans; by President Smith with Attorney Rogers via phone on the merits of the application; by President Pro-Tem Wyett with Attorney Rogers via phone on the merits of the application.

Attorney Doyle Rogers, representing the Royal Poinciana Plaza, addressed the Town Council, indicating that Mr. Sidney Spiegel and his son, Robert Spiegel, were present today, as well as Mr. Laurie Gregan, Prestige Valet. He explained that Mr. Gene Lawrence would present the plan. He referred to the minutes of January 12, 1999, page 39: "The Poinciana Management will return for a modification of the Site Plan Approval of 1995 to deal with the 120 spaces, with a review of the conditions of the Site Plan Approval of 1995. Mr. Spiegel will be responsible for that, and it would be added to the Agenda for March 1999." This had been one of the conditions of the motion of Councilman Shaw for approval of the Palm Beach Grille. He cited page 41: "President Smith reminded Mr. Spiegel that he was expected to return to the Town Council in March to address the parking reconfiguration and clarified that if the parking was not reconfigured, Houston's would not receive their approval and their certificate of occupancy." He explained that the parking would be addressed today, and that the Plaza ownership was really under a hardship for which there was no solution other than starting to stack the parking spaces in the parking plan.

Architect Gene Lawrence presented Site Plan No. 5-99 for the review of the Town Council, commenting that it had been modified as a result of conversations with staff. He exhibited the parking plan, indicating the direction of traffic flow and traffic circulation.

Zoning Administrator Paul Castro commented that the original concerns of staff were that the Site Plan did not meet the on-site conditions, and that issue had been corrected. The Site Plan had been re-designed to show a better traffic circulation. Another concern had been related to the valet and traffic circulation and how that would operate during peak hour traffic. A new valet station had been provided on the northwest side, which would serve that entire area. Staff had been concerned with the aesthetics of the parking, and had recommended landscaping that would screen the parking from the street, and it appeared that the landscaping shown today was not substantial enough to provide the necessary screening.

Councilman Shaw expressed concern about ingress and egress, as there was only one way of getting out of the parking lot.

After further discussion, it was determined that the 25' aisle in the valet operating area could be used by the public as an exit. Mr. Laurie Gregan, of Prestige Valet, anticipated that the hours of valet operation would be from 11:00 A.M. until closing. In the down time, such as from 3:00 P.M. - 6:00 P.M., the valet business could be conducted in the northwest corner of the parking lot.

Councilman Shaw moved approval of Site Plan Review No. 5-99 with variances with the following conditions:

1. That the Site Plan was is modified from the original approval of 120 parking spaces to 116 spaces.

2. The drive lane of the north stacking area be accessible to the general public for exiting purposes.

3. As needed, signage would be posted to facilitate the movement of traffic during peak hours.

4. That an additional landscape buffer of both hedge and tree material along Royal Poinciana Way, to be approved by ARCOM.

5. At the termination of the exiting lease of any leased parking spaces, those spaces would not be renewed or extended, regardless of whether the tenant renews their own lease.

The motion was seconded by President Pro-Tem Wyett.

Mr. Sidney Spiegel concurred that the commitments to the people for parking spaces would not be renewed or extended for parking along the curbside.

Mr. Gregan commented that there were four designated valet areas in the Royal Poinciana Plaza.

Councilman McDonald commented that the landscaping must be heavy and lush with beautiful plantings, running down to the corner.

On roll call the motion carried unanimously.

******Councilman Shaw left the meeting at 6:20 P.M.******

D. Other

A. Reconsideration of Conditions in the Mitigation Plan outlined in the Town's Letter dated November 25, 1998, for FH of Palm Beach, Inc., commonly known as C-15 and C-16 of the Palm Beach Hotel, 251 Sunrise Avenue *(Applicant to Return to March 9, 1999 meeting to report on compliance with conditions as directed at the February 9, 1999 meeting)*

Attorney Roy Watson, of the firm of Adams, Coogler, Watson & Merkel, addressed the Town Council, stating that he, along with Attorney Martin Perry, now represented Allen Heise, who had been previously represented by Maura Ziska of the same firm. He assured the Town Council that Mr. Heise was attempting to come to some resolution of this matter on an amicable basis, and that there was no question that he made some remarks to the press that were inappropriate, and had been made out of a feeling of frustration. He suggested that Mr.Heise be allowed to make a statement at this time.

Mr. Allen Heise, owner of the 251 Club, addressed the Town Council, stating that he apologized for any unfriendly remarks about dealings with the Town. He explained that his frustration had stemmed from trying to solve problems with individuals, who he believed preferred to deal with the issues in front of the Town Council, rather than dealing directly with him first to see if a resolution could be made. He noted that he had dealt successfully with many issues since the beginning of the business; he had purchased two of the three condominium units directly above the establishment, and some minor issues with the hotel unit owners had been addressed, as well as valet and garbage issues. He commented that he had personally stood at the fence of Ms. Beane late on Friday and Saturday nights, and in front of the Biltmore in order to determine what people were claiming to hear. He had recently substantially reduced the volume again, and had offered to put a clear plastic film on one of the neighbor's bedroom windows, although when he stood back there he heard nothing at all. He noted that he had approached a resident at the Biltmore to determine what another unit owner could possibly be hearing. He submitted an affidavit from the resident (Mr. Green) asserting that there was no noise that could be heard. He stated that he believed he had complied with the Town concerns, and urged that the Town Council lift the demolition order.

Assistant Police Chief Michael Reiter commented that there had been nine complaints registered at 251 on noise matters since the last Town Council Meeting. In addition, on February 21, 1999, a code enforcement Notice to Appear had been issued, resulting from complaints of Ms. Beane, under Section 42-1963, involving disturbing noise to a considerable number of people. That was pending before the Code Enforcement Board.

In response to the query of Attorney Watson, Assistant Chief Reiter specified that the complaints of February 12, 13 were by Arnold Hoffman; who lived at the Biltmore; February 14 by Gilda Beane; February 20 by Mr. Hoffman; February 21 by Ms. Beane; March 4 by Ms. Beane; March 5 & 6 by Mr. Hoffman; and one by Donna Dunn.

Chief Code Compliance Officer Brian House commented that he had been out to the site, at Ms. Beane's fence, and closer to the back of 251 to see whether he could register anything on the noise meter, and he could not. He noted that the last time he was there he could not hear any noise of any kind, until he got within almost touching distance of the back doors, nor could he feel any vibrations, as he had in the past. He explained that vibrations could only be measured on the "A" scale of the noise meter, and it did register inside the last time he was there, in February, but not on the outside.

Director of Planning, Zoning & Building Robert Moore commented that he wanted the Town Council to be aware that the standpoint of Code Enforcement was that the applicant had made an effort to address some of the problems identified.

Attorney Ron Kolins, representing a number of residents with noise problems with 251, addressed the Town Council, commented that the noise measurement on the "A" scale had been taken only one time, and he asked Mr. House if he would agree that he had no idea whether there had been any other time in the history of 251 where noise had emanated from there that would have registered on the "A" scale?

Mr. House responded that he would agree with that statement.

Attorney Kolins asked Mr. House if he had any reason to believe that the people making the complaints were anything less than sincere?

Mr. House replied that he had no thought about that one way or the other.

Assistant Fire-Rescue Chief Kent Koelz addressed the Town Council, stating that the only information he could bring forward was the issue on overcrowding of the establishment. He had no information from within the past three months that there was overcrowding at 251 at this point in time, although there had been several occasions where there was marginal overcrowding, which was very difficult to pinpoint.

Mr. John Dunn addressed the Town Council, stating that he was concerned with the issue of parking in back of Fedco, where cars were being parked, which was not allowed.

Mr. House commented that cars were not allowed to park there, and that he had spoken to the owners, and their attorney, and the understanding was clear that no one was to be parking on that lot anytime after the hours that the establishment on that property was opened.

Ms. Cutty Sherman, 265 Park Avenue, addressed the Town Council, submitting twelve signatures saying that nothing had changed, urging that the "boom boom" sound be eliminated.

Mr. Arnold Hoffman, resident of the Biltmore, addressed the Town Council, stating that he had heard loud drums coming from 251. On March 1, 1999, he was awakened by the loud drums, and telephoned the Police Department, who offered to send someone to his residence, which he declined, as he wanted to sleep. Approximately 15 minutes later an officer appeared with a complaint form for him to sign. He took the form and the officer then left. Sometime thereafter, he received a call from the Police Department to explain why the form was necessary – to verify that there was a disturbance. He then sent the form to the Police Department, and the next day, on March 2, 1999 he was again awakened, called the Police Department to complain, and requested that no one come to his residence. Again, 15 minutes later there was a Police Officer at the door, and Mr. Hoffman refused to see him. He then wrote to the Police Chief about the matter. He noted that he was not sure of what the complaint form was all about, and suggested that very serious consideration should be given to the entire procedure.

Assistant Police Chief Reiter explained that the Town ordinances provided two mechanisms with which to deal with these problems, the first of which was the noise meter reading. Historically, over the last year, noise meter readings had not indicated violation of the threshold levels. Since the noise meter did not show any violations, the second part of the ordinance relating to the disturbance of a considerable number of persons was considered. The Police Department believed the appropriate way to document any noise heard by a resident was to obtain a written affidavit at the time the resident was being disturbed, after completing the first step related to noise measurement. The resident would be asked to sign the affidavit right at the time of the disturbance, however, in most cases the complainants refused to sign the affidavits. The affidavits that were signed were collected until a considerable number of persons was obtained, at which time it was brought before the Code Enforcement Board.

Mr. Josh Green, resident at the Biltmore, addressed the Town Council, stating that his bedroom, living room, and terrace looked out over Sunrise Avenue. He had listened to see if he could hear noise from 251, and submitted an affidavit to the effect that he could not hear anything over Bradley's and the noise on the street, and could not hear 251 on his terrace. He explained that he did hear Bradley's, however, only when he was outside on the terrace.

Assistant Police Chief Reiter commented that most recently there had been a number of complaints reporting noise from 251, and there had been a couple of occasions where it had been determined that the noise had come from E.R. Bradley's. It was very hard to tell where noise was coming from in that particular area, as there were parking spaces and other dynamics involved as well.

Attorney Kolins stated that he represented people living on Park Avenue, and the Biltmore Condominium, and it seemed to him that the best contribution he could make to the consideration of these matters would to go over several points, and then make suggestions as to how to resolve them.

After some disagreement between Attorney Kolins and Attorney Watson regarding the rules of procedure, Town Attorney Randolph explained that the letter sent by Mr. Castro addressed not only the four conditions that were discussed at the last meeting, but the fact that they must comply with all of the conditions that were previously imposed, one of which was that they were going to maintain a restaurant operation. He noted that new menus were mentioned at the last meeting, as an indication that they were going to make this more of a restaurant operation.

Attorney Kolins asked why it was necessary that the restaurant be opened until 3:00 A.M.? He explained that there was currently a conflict between residents living in the area and the restaurant, and suggested that there must be a way to mitigate. He suggested that the contrition heard from the applicant today was a contrivance, and that the applicant must take responsibility for the impact of his business on other people, and the Town Council was responsible for enforcing the conditions it had imposed on the applicant. He cited provisions in the Town Code which would allow fines to be assigned to 251, such as: Section 12-48 "Prohibited Noise Generally," Section 12-49(b) "Specific Acts That Are Prohibited, and (b) related to the playing of musical instruments, Section 12-64 "Nightclubs, Dance Halls and Similar Establishments - General Operation as Nuisance.

President Smith defined the conditions referred to in the February 26th letter:

1. Resolve the east/west and west/east traffic flow problems. Requesting passenger loading both sides of Sunrise Avenue.

The letter from Police Chief Croft indicated that the Police Department determined that they could not or should not have a loading zone on the south side of Sunrise Avenue. She asked what could be done to mitigate the valet problem with cars on both sides of Sunrise Avenue.

Assistant Police Chief Reiter replied that there should not be a loading zone on the south side of Sunrise Avenue because of the number of curb cuts and openings, and driveways on the south side of Sunrise. It would be unsafe to put another valet space on that side.

Mr. Laurie Gregan, Prestige Valet, addressed the question of the one loading zone. He explained that he did not anticipate a huge problem, because the Police Department had been very cooperative. The only time he had felt congestion was when several limousines pulled up at the same time. Under normal circumstances, traffic could be managed. There was an arrangement with the List Companies that their parking lot be used on Sunset to handle the traffic at 251. He believed the parking situation had been made better. Regarding the Fedco lot, he explained that cars were no longer being parked there.

President Smith went on to the second item addressed in the letter of February 26th:

2. Reduce the bass on the music, and work to alleviate the noise complaints of the neighbors.

Attorney Watson commented that he did not see a problem with the drum/bass sound.

President Pro-Tem Wyett commented that residents did hear the noise, and that on the weekend he himself could hear noise as well. He suggested that the amplifiers were the problem, and he suggested that the amplifiers could be turned down to reduce noise/vibration, and that a double pane glass window be considered for the windows of Mrs. Beane. He noted that it was within the hands of the owners of the establishment to solve the problems, and the Town Council could solve it only if the owners did not find resolution.

President Smith noted that the applicant would go before the Code Enforcement Board the 21st of March, and at that hearing the neighbors could complain again if they heard the noise in the next few days before the hearing.

President Smith went on the third item addressed in the letter of February 26th:

3. Eliminate the overcrowding in the restaurant.

President Smith noted that Assistant Fire Chief Koelz had reported that in the last several weeks there had not been any overcrowding in the restaurant, and it thus appeared that condition had been met.

Attorney Kolins commented that the traffic problem for the residents was when the valets parked or picked up the cars, as well as customers themselves, there was a lot of screeching of tires, slamming of car doors, etc. He suggested that the valets should conduct themselves in a quiet, responsible manner. In addition, trash and bottles were still being placed in front of the restaurant early on weekend mornings, which created noise. He suggested that the proprietor do whatever he could do to insist on compliance in that regard.

Town Attorney Randolph commented that the length of time the applicant could be involved in mitigation was a consideration. He questioned what would happen if the Town Council deferred this item to next month, and then heard the same kind of testimony?

President Pro-Tem Wyett moved deferral of the reconsideration of the mitigation plan for 251 to the April 13, 1999, Town Council Meeting, which would be after the Code Enforcement Board hearing, and another month of experience could be gained. He suggested that the applicant could be certain that the amplifier could be turned down enough so that people would not be complaining, and take any other reasonable steps to mitigate the problems.

President Smith suggested that the applicant turn off the bass for one month.

Attorney Watson replied that his client was willing to turn off the bass for a month, and that if there was a complaint about noise, then it would have to be investigated immediately in order to document the validity of the problem.

Mr. Moore pointed out that unless those complaining were willing to sign complaints and testify to the Code Enforcement Board, the Town had no recourse.

President Pro-Tem Wyett requested that if and when a Police Officer was called for noise complaints, the Police Officer would go directly to the source of the complaint, and then go to the person making the complaint.

Assistant Police Chief Reiter agreed.

Attorney Watson suggested that rather than turn the bass all the way off, it could be turned down, and the Police Department could come in and check to see if there was a problem, as he was concerned that once the bass was turned completely off there would be a requirement to leave it off.

President Smith replied that the Town Council was capable of being reasonable, and an equitable solution was being sought for both the client of Mr. Watson and for the residents of the surrounding area.

Councilman McDonald moved deferral of this item until the April 13, 1999, Town Council Meeting. The motion was seconded by President Pro-Tem Wyett.

Attorney Martin Perry commented that unless there was an issue that was previously addressed prior to this meeting, such as the restaurant operation itself, that discussion at the April meeting would be limited to the issues that were the issues at hand. He explained that it seemed to be that everything had been resolved, with the exception of the noise, and that topic would be the primary focus at the next meeting; if something new came up within the next 30 days, the applicant would respond to that. He commented that somewhere closure was needed on some of the prior issues that seemed to keep recirculating.

Town Attorney Randolph replied that the focus next month would be on the noise issue, however, that was not to say that any other violation would not be addressed.

On roll call the motion carried 4/0 as Councilman Shaw had left the meeting at 6:20 P.M.

2. Request for Waiver to Section 42-199 of the Town Code of Ordinances, Hours of Construction, for Cartier, Inc., 214 Worth Avenue, by Mr. Dale R. Hedrick

*This item was removed from the agenda and deferred to staff earlier in the meeting.*

## XVII. ANY OTHER MATTERS

There were none.

## XVIII. ADJOURNMENT

The meeting was adjourned at 8:00 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk
E:\MINUTESTOWNCOUNCIL\1999\sue.wpd

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

| | |
|---|---|
| LAST NAME—FIRST NAME—MIDDLE NAME<br>SHAW Leslie Alan. | NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE<br>Palm Beach Town Council |
| MAILING ADDRESS<br>318 Seaspray Ave. | THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:<br>☑ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY |
| CITY Palm Beach COUNTY Palm Beach. | NAME OF POLITICAL SUBDIVISION:<br>Palm Beach. |
| DATE ON WHICH VOTE OCCURRED<br>March 9, 1999 | MY POSITION IS:<br>☑ ELECTIVE ☐ APPOINTIVE |

## WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

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

## INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

**ELECTED OFFICERS:**

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

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

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

* * * * * * * * * * * * * * * *

**APPOINTED OFFICERS:**

You must abstain from voting and disclose the conflict in the situations described above and in the manner described for elected officers. In order to participate in these matters, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

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

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

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

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

## DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Leslie A Shaw, hereby disclose that on March 9., 19 99:

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

___ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, ___;

___ inured to the special gain or loss of my relative, ___;

___ inured to the special gain or loss of ___, by whom I am retained; or

___ inured to the special gain or loss of ___, which is the parent organization or subsidiary of a principal which has retained me.

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

I am the applicant.

March 9, 1999

Date Filed

[signature]

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.

Item XIII B.2.b.

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

| | |
|---|---|
| LAST NAME—FIRST NAME—MIDDLE NAME<br>Wyett, Allen S. | NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE |
| MAILING ADDRESS<br>1145 No Lake Wy | THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:<br>☐ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY |
| CITY PB / COUNTY 33480 | NAME OF POLITICAL SUBDIVISION: |
| DATE ON WHICH VOTE OCCURRED<br>3/9/99 | MY POSITION IS: ☐ ELECTIVE ☐ APPOINTIVE |

## WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

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

## INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

**ELECTED OFFICERS:**

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

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

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

* * * * * * * * * * * * * * * *

**APPOINTED OFFICERS:**

You must abstain from voting and disclose the conflict in the situations described above and in the manner described for elected officers. In order to participate in these matters, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

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

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

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

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

## DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Allan Swygett, hereby disclose that on 3/9, 1999:

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

____ inured to my special private gain or loss;

____ inured to the special gain or loss of my business associate, ________;

____ inured to the special gain or loss of my relative, ________;

____ inured to the special gain or loss of ________, by whom I am retained; or

____ inured to the special gain or loss of ________, which is the parent organization or subsidiary of a principal which has retained me.

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

If R.O. is approved, my conflict may become apparent if IONICS Inc closes to bid. I am a director of IONICS Inc holding (2,000) out of approx (16,000,000) shares

3/9/99
Date Filed

Allan S Swygett
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.