MINUTES OF THE TOWN COUNCIL MEETING HELD ON FEBRUARY 10, 1998

I CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Lesly Smith at 9:30 A.M. on February 10, 1998. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Leslie Shaw, Councilmen Jack McDonald, Sam McLendon, and Allen Wyett. 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, Finance Director James Demming, Assistant Finance Director Cheryl Somers, Fire-Rescue Chief Ken Elmore, Planning, Zoning & Building Director Robert Moore, Planning, Zoning & Building Administrator Paul Castro, Planner/Projects Coordinator Timothy Frank, Police Chief Joseph Terlizzese, Police Major Frank Croft, Public Works Director Al Dusey, Recreation Director Russell Bitzer, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

II INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Father Frank Lechiara of St. Edward's Church. President Smith led the Pledge of Allegiance.

III PRESENTATIONS

A. Recognition of Dean Vegosen, Zoning Commission - From 1994 to 1997

Mayor Ilyinsky presented Mr. Vegosen with a plaque in honor of his service to the Town.

B. Presentation of "Certificate of Achievement for Excellence in Financial Reporting" by Representative of Government Finance Officers Association for Fiscal Year Ending September 30, 1996, to Town Elected Officials and Staff.

Town Manager Doney recognized the efforts of Assistant Finance Director Cheryl Somers in her role as Acting Finance Director in FY 1996. He presented her with the Certificate of Achievement for Excellence in Financial Reporting, as Mr. Kent Olson, President of the Palm Beach County Chapter of the Government Finance Officers Association was unable to attend the meeting.

IV COMMENTS OF THE MAYOR

Mayor Ilyinsky introduced the Honorable Walter N. Colbath, Jr., Chief Judge, Palm Beach County, who would be administering the oath of office to the members of the Town Council for the ensuing term.

V APPROVAL OF THE AGENDA

Through motion of Councilman Wyett, seconded by Councilman McLendon, the Agenda was approved unanimously.

VI COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Resident Eric Gilbertson acknowledged the recent newspaper photographs of the Mayor and Mrs. Ilyinsky, and Mr. and Mrs. Samuel McLendon.

Resident Adrian Winterfield commented on the Palm Tran buses making the turn on East Inlet Drive.

Resident Eugene Fagan commented on the privately funded plan proposed for the enhancement of Root Trail.

APPROVED AGENDA

VII APPROVAL OF MINUTES OF JANUARY 13, 20, AND 26, 1998

Councilman Wyett moved approval of the approved Agenda. Motion seconded by Councilman McLendon, and carried unanimously on roll call.

REGULAR AGENDA

VIII APPROVAL OF CHECK REGISTERS FOR JANUARY 1998

Councilman Wyett moved approval of the Check Registers for January 1998. Motion seconded by Councilman McLendon. On roll the motion carried unanimously.

IX ANY OTHER MATTERS

There were none.

X ADJOURN SINE DIE

The meeting was adjourned sine die at 9:45 a.m.

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The meeting was reconvened at 9:46 a.m.

XI SWEARING IN OF ELECTED OFFICIALS - The Honorable Walter N. Colbath, Jr., Chief Judge, 15th Judicial Circuit, Palm Beach County

Judge Walter N. Colbath, Jr., administered the oath of office to Town Council members Lesly S. Smith, Leslie A. Shaw, and Jack McDonald.

XII ORGANIZATIONAL ITEMS

A. Elected Officials

1. Election of Town Council President - Pursuant to Section 3.01 of Town Charter

Mayor Ilyinsky called for nominations of Town Council President. Councilman McLendon nominated Lesly Smith as Town Council President. There were no other nominations, and Lesly Smith was declared Town Council President.

2. Election of Town Council President Pro-Tem - Pursuant to Section 3.01 of Town Charter

Mayor Ilyinsky called for nominations for President Pro-Tem of the Town Council. Councilman Wyett nominated Councilman Samuel McLendon as President Pro-Tem of the Town Council. There were no other nominations, and Samuel McLendon was declared President Pro-Tem of the Town Council.

XIII COMMENTS OF THE MAYOR

Mayor Ilyinsky commented that the repairs to the Royal Park Bridge would be discussed in detail at a later point in the meeting.

Mayor Ilyinsky congratulated the Golf Commission, Mrs. Ann Herman, Chairwoman of the Golf Commission, and the Par 3 staff on the recent successful golf tournament.

Mayor Ilyinsky congratulated Police Chief Terlizzese on the recovery of the jewelry that had recently been stolen.

XIV APPROVAL OF AGENDA

The following changes were made to the Agenda:

Added Item XIX D. 3, 4, 5 (Mar-a-Lago lawsuits) per the approval of Town Council President Smith, to be heard at a time certain immediately following the lunch break.

Deferred Item XXI. D. 1 (Special Exception 23-97 - Galaxy Grille) to August 1998 Town Council Meeting. Motion made by Councilman Wyett, seconded by President Pro-Tem Shaw, and carried unanimously.

Deferred Item XXI. D. 2 (Special Exception 43-97 - Testa's Inc.) to the June 1998 Town Council Meeting. Motion made by Councilman Wyett, seconded by Councilman McLendon, and carried unanimously.

Added Item XIX E. 6 - Consideration of Formulation of Agenda. Motion made by Councilman Wyett, seconded by Councilman McDonald, and carried unanimously.

Added Item XIX E. 7 - Consideration of Formation of a Long Range Planning Town Commission. Motion made by Councilman McDonald, seconded by President Pro-Tem Shaw, and carried unanimously.

Added Item XIX E. 8 - Consideration of Formation of a Town Water Board. Motion made by Councilman McDonald, seconded by President Pro-Tem Shaw, and carried unanimously.

Added Item XIX. E. 9 - Discussion of Timed Openings for Lake Worth Bridge. Motion made by Councilman McDonald, seconded by President Pro-Tem Shaw, and carried unanimously.

Councilman McLendon moved approval of the Agenda as amended. The motion was seconded by President Pro-Tem Shaw, and carried unanimously.

APPROVED AGENDA

XV LICENSES AND PERMITS

A. Charitable Solicitations

1. American Associates, Ben-Gurion University of the Negev; No. 277-98
2. The Auxiliary of Bethesda Memorial Hospital, Inc.; No. 290-98
3. The Mary Obolensky Underwood Foundation; No. 320-98
4. Opportunity, Inc.; No. 342-98
5. The International Children's Museum; No. 373-98
6. Lupus Foundation of America, Southeast Florida Chapter; No. 399-98
7. CAP Cure (Association for the Cure of Cancer); No. 436-98
8. Neemanim, Inc. (Israel Air Force Association); No. 437-98
9. The Benjamin School Foundation; No. 438-98
10. Wycliffe Chapter of Brandeis University Women's Committee; No. 428-98

Other - Results Forms Filed Late and $25 Late Fee Paid

11. South Florida Science Museum; No. 359-98

Other - Application Submitted Late and $25 Fee Paid

12. Big Brothers/Big Sisters of Palm Beach County, Inc.; No. 142-98
13. Miami Children's Hospital Foundation; No. 439-98

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

REGULAR AGENDA

XVI LICENSES AND PERMITS

A. Charitable Solicitations

1. American Red Cross, Palm Beach Chapter; No. 20-98

Mr. McCann of the American Red Cross, Palm Beach Chapter, explained the delay in submitting the necessary paperwork for Charitable Solicitation Application 20-98, and apologized for the oversight.

Councilman Wyett moved approval of Charitable Solicitation Application 20-98. The motion was seconded by President Pro-Tem McLendon, and on roll call carried unanimously.

XVII COMMITTEE REPORTS

A. Report of the Finance and Taxation Committee Meeting on December 15, 1997 *(Deferred from January 13, 1998)*

REPORT OF THE FINANCE & TAXATION COMMITTEE MEETING HELD ON DECEMBER 15, 1997

I. CALL TO ORDER AND ROLL CALL

The Finance and Taxation Committee meeting was called to order by Chairman Lesly Smith at 10:06 a.m. on December 15, 1997, in the Town Council Chambers. On roll call, Mrs. Smith, Chairman, and Leslie Shaw, Committee Member, were found to be in attendance. Elected Officials, Mayor Paul Ilyinsky and Councilmen Sam McLendon and Allen Wyett also attended the meeting.

Staff members attending for all or part of the meeting were: Town Manager, Robert Doney; Finance Director James Demming; Assistant Town Manager Peter Elwell; Fire-Rescue Chief Ken Elmore; Assistant Fire-Rescue Chief Ken Koelz; Major Frank Croft from the Police Department; Program Coordinators Carla Kneipp and Pam Russell from the Personnel Department; Public Works Director Al Dusey; Director of Planning, Zoning, & Building Robert Moore; Administrative Aide Wendy Zamecnik from the Planning, Zoning, & Building Department; Supervisor Allen Brown from the Recreation Department; and Town Clerk Mary Pollitt.

II. APPROVAL OF AGENDA

The agenda was approved as presented.

III. CONSIDERATION OF TENTATIVE RESULTS OF TOWN AUDIT FOR FY97 ENDING SEPTEMBER 30, 1997

Mr. Doney reported tentative results for the fiscal year ending September 30, 1997, are available as outlined in Mr. Demming's December 12, 1997, memorandum (copy attached), and the final audit is not complete at this time. Mr. Doney said that he concurred with Mr. Demming's recommendation that the Finance and Taxation Committee not recommend the appropriation of any funds from the General Fund Undesignated Fund Balance at this time due to the preliminary nature of the information available. The Committee should consider re-visiting the issue after the completion and review of the final audit for Fiscal Year 1996-97. Mr. Doney said the final audit should be available in February or early March and would be an item on the March 10, 1998, Town Council agenda.

Mr. Demming said, based on the audit adjustments that have been prepared and presented, the fund balance appears to be approximately $6,900,000. Mr. Demming said that during the FY98 budget adoption process, the Town Council designated $5.1 million as designated reserves, and that was done to allow appropriations from that amount by the Town Council without utilizing an ordinance procedure to amend the approved budget. By doing that, the Undesignated General Fund Balance is $1,752,000 within the General Fund. Mr. Demming noted that during the last four years, the Town has used various amounts of the fund balance to balance the Operating Budget. For this year, $1.3 million was utilized; the previous year was $2.2 million; $1.6 million and $1.0 million for the two years prior to that. Mr. Demming said that by having $1,752,000 available, over and above the 15% policy, this amount could be used as had previously been done. Mr. Demming noted that the Capital Improvement Fund is an accumulation of completed projects with the money rolled back into the fund balance, and approximately $273,000 will be available for different projects. The total available fund balance is $673,000, of which $400,000 was appropriated as designated reserves during the FY98 Budget process. The remaining fund balance of $273,000 is presently undesignated. Mr. Demming said many projects produced a great amount of activity in the Capital Fund, and final figures will be forthcoming.

Mr. Shaw said he thought that it was important, given the location of Palm Beach, the coastline, and other issues, that the Town maintain a liquid position should it ever be needed.

William Guttman, resident, addressed the Committee. Mr. Guttman expressed his confusion regarding the terminology for "Undesignated General Fund" and questioned how a reserve fund, as set up in the Town of Palm Beach, differs from an undesignated fund or a rainy day fund. Mr. Guttman requested someone explain the purpose of the Undesignated General Fund in generally accepted budgeting practices and describe precisely what the Reserve Fund is intended to do? Mr. Guttman said he knew the Town has a financial policy of maintaining an Undesignated General Fund balance of between 12-15% of the current year's budget and questioned how the Town arrived at that percentage? Mr. Guttman said he was aware that, normally, undesignated funds are intended to be available for emergencies–unforseen types of events–and (in his opinion) that would be a hurricane or some type of storm.

Mr. Doney replied that the Town's policy has been to maintain an unappropriated General Fund balance to address emergencies, major losses, or unforeseen expenses at a minimum level of 12-15% of budgeted expenditures. Mr. Doney said that this retention amount would provide for approximately two months of operating expenditures and has been considered prudent. Mr. Doney said this amount has been revisited each year to determine if the Finance & Taxation Committee, and subsequently the Town Council, believes this to be good, conservative, and prudent financial planning. Mr. Doney said, as Town Manager, he believes that the amount was reasonable at this point.

Mr. Doney referred to a December 15th Palm Beach Daily News article which may have been confusing regarding the terminology for budget adoption. Mr. Doney said that presently the budget must be adopted by ordinance which requires two readings, and one of the potential Charter amendments is to adopt the budget by resolution. Mr. Doney supported Mr. Demming's recommendation that the Town Council designate, through the budget ordinance, reserves, formally identified as the Undesignated General Fund Balance. This allows the Town Council to retain control of the funds and authorize, by motion, any expenditures as deemed necessary.

Mr. Guttman responded with the statement that Mr. Doney indicated a reserve fund and the Undesignated General Fund balance are one and the same. Mr. Guttman asked if the purpose of the Undesignated General Fund balance and reserve fund is to comply with the financial policies, as outlined by Mr. Doney, what type(s) of appropriations have been made or are anticipated to be made from the reserve fund?

Mr. Demming replied the funds are labeled "unanticipated" because the Town Council does not know what they are. Mr. Demming said that to date for this fiscal year, $160,000 has been appropriated for installation of Lake Trail street lighting that was not authorized as part of the FY98 Budget.

Mrs. Smith clarified that nothing with the Undesignated General Fund balance could be routine when future items are unknown.

Mr. Guttman said he recalled that the very first appropriation from the reserve fund, before the close of the past fiscal year, was a merit rate increase for the Town Manager and questioned if this did happen?

Mr. Doney responded that the increase did not come from reserves but from the Undesignated General Fund Balance (FY97), because the FY98 Budget had not yet been adopted.

Mr. Adrian Winterfield, Town resident, addressed the Committee. Mr. Winterfield said the ambulance fee is an enormous source of income and has been considered and set aside in the past. He urged restudying of the fee, because it is money that is there for the taking and simple ways exist for eliminating the financial exposure of the residents.

Mr. Shaw referred to Exhibit D, User Fees vs. Ad Valorem Taxes, dated May 21, 1997, (copy attached) and questioned if service related items should be attached to land values versus having them in a service oriented fee basis. Mr. Shaw suggested the user fee option for solid waste, generated in mostly commercial environments–not residential– should be looked at prior to the budget period to see if a change should be made and what ramifications would be involved in doing so.

Responding to questions from Mrs. Smith, Mr. Shaw said he would like to see the Committee recommend that the items he was discussing be passed on to the Town Council and then to the different Department Heads for consideration.

Mr. Shaw clarified that two items in the Sanitary Sewer Maintenance and Treatment category with an approximate value of $2.5 million are currently under ad valorem taxes. Mr. Shaw noted that these items are listed on Exhibit D every year for consideration. After discussion, **THE COMMITTEE RECOMMENDED THAT THE PUBLIC WORKS DIRECTOR, AL DUSEY, STUDY EXHIBIT D FOR THE FY99 BUDGETING PROCESS TO DETERMINE IF THOSE ITEMS IDENTIFIED AS USER RELATED FEES(STORM SEWER, SANITARY SEWER, MAINTENANCE TREATMENT, SOLID WASTE COLLECTION, AND YARD COLLECTION) SHOULD BE IN THE AD VALOREM TAXES OR IN A USER FEE CATEGORY.** Mr. Shaw said these items should either be considered or removed.

Mr. Doney identified the title of Exhibit D as, "Potential User Fees–Estimated Reduction in FY97 Operating General Fund Ad Valorem Taxes if Services were Paid via User Fees". Mr. Doney said that this appeared in budgets over the last ten years, and Town staff has never advocated implementing any user fees. Mr. Doney said that each of the user fee categories provides the Town Council with the opportunity to implement a billing program for any of the categories if they so direct. Mr. Doney pointed out that the Town is in a relatively healthy position regarding the millage rate of just over 4 mills when the State Law cap for cities' millage rates is 10 mills.

Mr. Shaw said the Public Works Department has been successfully reallocating resources; however, the commercial solid waste side needs to be looked at (not pertaining to restaurants) regarding recycling from the standpoint of what amount of trash is basic garbage? Mr. Shaw suggested this approach should be used for planning the FY99 budget with alternatives, i.e. an "A" plan and a "B" plan.

Mr. Dusey asked for clarification regarding the desired goal for the level of service. Mr. Dusey suggested the formation of a studies group, funded in Public Works, to do the types of research necessary for these types of projects.

Mrs. Smith said that every member of the Town Council has specific interests and areas of concerns; however, each member understands that it is not up to the individual Council Member to instruct a department head to do something. Every study item is agreed upon by the entire Town Council, and the department heads cannot stop daily activities to react to an individual Council Member's request. Mrs. Smith said that Town Council will direct any actions that will be taken from these recommendations.

Mr. Shaw said that discussion had occurred regarding a revenue management system that was to be headed by the Finance Department, and he had not seen a plan to confirm that all revenues due to the Town are received. Mr. Shaw cited the incident of Occupational Licenses where late payments were being collected and requested an update on activities.

Mrs. Smith asked Mr. Moore what the time frame was for reporting back to the Town Council regarding the Occupational License fee issue?

Mr. Moore responded that Mr. Doney, Mr. Demming, and he have begun the review of the process and are considering some alternatives other than just switching (between the departments). Mr. Moore said Occupational Licenses have been in Planning, Zoning, & Building Department for twelve to thirteen years, and the issue was also related to issuance of permits with contract registrations which no longer require occupational licenses. Mr. Moore said this item will be presented to the Town Council at the March 10, 1998, Town Council meeting.

Mr. Shaw said the Building Department can become overworked, and that department has been sensitive to their budget as it related to providing services to the Town and the residents. Mr. Shaw suggested the department may be reaching a point where they need to look at their level of service and look at expanding the department considering the pluses and minuses. Mr. Shaw said it may entail a restructuring of inspection fees or re-inspection fees to be able to provide the number of inspectors necessary to meet the needs. This is a budgetary issue.

Mr. Moore reported that with the addition of an already approved inspector's position, the department should level out, and he did not anticipate he would have to return to the Finance & Taxation Committee for additional funds for new personnel. Mr. Moore said the monies are in place, and the appropriate level of service is being met.

Mr. Shaw named four Capital Improvement Projects:

1. Profitability of the Golf Course–may include a club house or facility to better serve the residents;

   Mr. William Guttman said it might be a good idea, rather than just focusing on a club house, to do a business plan to look at both revenue and expenses, looking at the entire range of activities rather than just focusing on one particular element.

   Mrs. Smith said the Golf Course does have a plan and the idea for the club house was initiated by Robert Grace in a letter sent to the Town Council last year.

   Mr. Adrian Winterfield suggested the use of a revenue bond for a club house on the golf course, because it benefits the users of the golf course and not the public in general.

2. Proposal with the Recreation Department to have a shared expense with the Palm Beach Day School to redo one of the fields;

Allen Brown reported that a project to redo the athletic field and the baseball field was approved in this year's Capital Improvement Program, and the Palm Beach Day School will fund $20,000 or half of the cost of the improvements.

3. Consider acquiring or leasing the property at 3000 South Ocean Boulevard to be used as a police, fire, mixed-use, or library facility;

   Mr. Shaw reported that the owner of the property is looking for a buyer.

   Mrs. Smith said it would be premature to send this to the Town Council; however, the owner of the property should be identified first before presentation to the Town Council.

4. Look at the Beaumont parking lot to expand needed office space for Town Hall without losing parking spaces;

   Mr. Doney recalled that Ramp Engineering had submitted a cost for doing a feasibility study for a parking garage on the Beaumont lot approximately ten years ago; however, the Town Council thought the cost for the study was too high and chose not to continue.

Mr. Shaw said that concluded his list, and he would like to see these issues, if approved at this level, go to the Town Council and see if the Town Council thinks these items should be included in the budget in the future.

Mr. Doney mentioned that the Town has the Comprehensive Plan for Land Use and also plans with each department for a ten year horizon for the operational needs for each department. Mr. Doney cited examples in the Public Works and Fire-Rescue Departments used for advanced planning of equipment replacement.

Mrs. Smith said Mr. Shaw's ideas represented tremendous costs that may entail bonds, etc. Mrs. Smith suggested these issues should be addressed at a separate meeting to allow sufficient discussion time.

Mr. Allen Wyett commented on Mr. Shaw's proposals, and said they seem to set a platform for more government, more taxes, and he did not believe more government was needed.

Mr. Sam McLendon said each of the Council Members probably has a list of items that they would like to see but had not formulated them to the point Mr. Shaw has. Mr. McLendon agreed with Mrs. Smith's idea to have a special meeting to discuss all of the ideas from all of the Council Members.

Mrs. Smith said she anticipated another meeting of the Finance and Taxation Committee would be held after the February election. Mrs. Smith added that this forum would provide an opportunity for the general public to offer suggestions also.

Mr. Louis Pryor addressed the Committee and suggested, if a meeting is held, an additional item be considered–the Undesignated General Fund, as a policy, should not go below 12 or 15% of the annual budget. Mr. Pryor questioned if 15% was sufficient, especially in the event of an emergency situation such as a hurricane.

Mr. Doney responded that in addition to retaining two months operating expenses for the Town, the Town has an insurance program and a Comprehensive Emergency Management Plan. Mr. Doney said the Town could not budget a sufficient amount of funds to provide for devastation such as a hurricane could produce nor could any other community.

Mr. Doney said, since this report will not be presented at the January 13, 1998, Town Council meeting, after the February 10, 1998, Council meeting, if the Council directs action, the department heads will be able to cite the scope and costs related to operational implications at the time this report is subsequently considered by the Town Council.

Mrs. Smith said the only items to be presented to the Town Council will be the issues of the user fees and the ad valorem tax base. The golf course building, the proposed building on the Beaumont lot, (the revenue management system and occupational licenses are coming back to the Town Council) the commercial solid waste pick-up, and the recycling (Basic Garbage Plan A and Plan B) have not been recommended to go to the Town Council at this time. Mrs. Smith said it would be premature to do that before another Finance & Tax Committee meeting is scheduled to allow additional ideas presented by other Town Council members and the public. Mrs. Smith said another date will be set for the Finance & Tax Committee at the January 13, 1998, Town Council meeting.

Mr. Shaw replied he was not pushing to have his issues presented at a Town Council meeting; however, he was interested in having these items brought forward, and a special Town Council meeting may be appropriate.

IV. ANY OTHER MATTERS

There were none.

V. ADJOURNMENT

The meeting was adjourned at 11:10 a.m.

Lesly S. Smith, Chairman

Leslie A. Shaw, Committee Member

President Smith advised that the recommendations of the Finance and Taxation Committee after consideration of the tentative results for the Town Audit for FY97 were:

To recommend that Public Works Director Al Dusey study Exhibit D for the FY98 budgeting process, to determine if those items identified as user related fees (storm sewers, sanitary sewers, maintenance treatment, solid waste collection, and yard collection) should be in the ad valorem taxes or in the user fee category.

Councilman McLendon stated that he preferred to see costs that were fairly distributed based on the ad valorem basis, as that became a tax deduction for those paying the bills. If there was complete diversity of cost over the Town, then he was in favor of paying fees, although he did not know it was determined if the ad valorem method was fair or not.

Town Manager Doney explained that this issue had been re-visited every few years, and the primary reason that prior Town Councils had elected to have the described four charges paid for from ad valorem taxes was because it was a tax benefit to the tax payers in the Town. Based upon the current millage, it did not provide a threat as far as the town approaching the 10 mill cap. It would result in a millage reduction of approximately 1.128 mills, and would reduce the budget by several million dollars, however, it was just a matter of how it was accounted for. If a user fee system was implemented, a billing department would be needed. Mr. Doney remarked that it would be more appropriate to discuss the issue during the preparation of the FY99 budget.

Councilman McLendon commented that he did not have a problem leaving it on an ad valorem basis, as he believed it was cost effective for the residents.

After debate, it was determined that the Town Council had no interest in instructing Town Manager Doney to pursue looking into the other alternative.

Councilman Shaw remarked that the sanitary sewer maintenance and treatment plant may not be balanced between residential use and commercial use, and he was opposed to the residents, as a whole, subsidizing a commercial venture. Commercial garbage collection was billed to the commercial properties, commercial yard trash collection was billed to the properties where it was excessive, and simply from a fiscally responsible position, he believed it was something that needed to be addressed. He suggested that the items did not need to be re-analyzed if there was no interest in going forward. Every part of the budget process cost the Town money and time, and the recommendation was that the issue be addressed during the budgeting process.

Councilman Wyett moved approval of consideration of the issue to be conducted during the FY99 budget process. The motion died for lack of a second.

President Smith noted that Councilman Shaw had brought up several capital improvement projects during the Finance and Taxation Meeting. The Committee had not sent these on to the Town Council, because the projects were major, requiring major time and money. President Smith mentioned what the capital improvements had been: a new club house or facility for the Golf Course; shared expenses with the Recreation Department and the Palm Beach Day School to re-do one of the fields; to consider acquiring or leasing the property at 3000 South Ocean Blvd., and to look at the Beaumont Parking lot to expand needed office space for Town Hall. Some of the items were included on the agenda today, and the Committee had not recommended that the remainder of the items be discussed today.

Councilman McLendon requested clarification of the use of the Reserve Fund.

Town Manager Doney explained that within the FY98 budget there were designated reserves, and because of the manner in which the budget needed to be adopted this year (by ordinance) the Town Council had taken a portion of the Undesignated General Fund balance to be designated as reserves, which would allow the Town Council, by motion, to appropriate funds for specific projects.

Councilman McLendon asked if there was reason to generate the need for more office space in Town Hall?

Councilman Shaw responded that as the Town was becoming more of a year round community there was a greater need to provide services. Staff had been added, and there were some very tight spaces, and if it was decided that expansion was necessary a plan should be in place.

President Smith clarified that during the course of the Finance and Taxation meeting, various department heads had clarified that there was no problem with space or personnel. She noted that Director of Planning, Zoning & Building Moore had stipulated that the Building Department was not overworked and understaffed.

Town Manager Doney commented that each year during the budget process, each department head and he looked at potential needs for office space as well as personnel, and if it was needed, proper justification would be submitted for consideration.

President Smith concluded the Finance and Taxation Committee Report. Councilman Shaw moved approval and acceptance of the Finance and Taxation Committee Report. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

XVIII OLD BUSINESS

A. Resolutions

1. Resolution No. 3-98 - Amendment to Rights-of-Way Standards Manual *(Deferred from January 13, 1998)*

Town Attorney Randolph read Resolution 3-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE DEPARTMENT OF PUBLIC WORKS ENGINEERING DIVISION STANDARDS APPLICABLE TO PUBLIC RIGHTS OF WAY AND EASEMENTS WITHIN THE TOWN OF PALM BEACH.

Public Works Director Al Dusey reported that the utility companies had been contacted, and there were several individuals present to offer their opinions regarding Resolution 3-98.

Mr. Rod Macon, Regional Manager with Florida Power & Light Company (FPL) addressed the Town Council, stating that he had communicated with Town Engineer Bowser via letter, which he briefly summarized. He expressed opposition to the proposed changes in standards, as there were concerns with both the degradation and occupancy fee. With respect to the degradation fee, he noted that FPL currently had a Franchise Agreement in place with the Town of Palm Beach, for which an annual fee of more than $1.3 million was paid. One of the conditions of the Franchise Agreement was that when FPL excavated in Town rights of way, they were required to make proper repairs to a level at least as good as when excavation began. He suggested that if FPL was creating a problem with respect to the degradation of rights of way, perhaps the Town should take that up with them; applying this standard to all utilities was not required. He noted that another condition of the Franchise Agreement was that for all such fees paid by FPL, such as the proposed degradation fee, future franchise payments would be reduced by a like amount. The net result would be, of course, that there would be no change in FPL expense, or Town income as a result of the proposed Resolution 3-98. He submitted that the only thing that would result was time and paperwork to account for this proposed change in standards. He addressed the occupancy fee, stating that the position of FPL was that it was an invalid tax, not allowed under the laws of the State of Florida. This issue was currently in litigation in another location in the State of Florida, and he recommended that the outcome of that litigation be reviewed before considering this particular aspect of the proposed standards.

Mr. Jim Atkins, Florida Public Utilities Company, addressed the Town Council, stating that they were also a franchised utility within the Town, and indicated that they also had a franchise fee concern. In addition, there was some concern about the fact that the proposed information had not been received until late in January. He suggested that the proposal be postponed for thirty days, in order to give them the opportunity to analyze the impact. He noted that there was some concern about the erosion control issue, and suggested that there be some criteria as far as depth or volume that is removed. Most of the work done by Florida Public Utilities Company on the right of ways were very small excavations that were filled the same day. The erosion control plan would add more administrative work to that.

Public Works Director Dusey explained that there was no occupancy fee proposed as part of the revisions; although there was a provision that allowed one to be placed by Town Council in the future. He was not sure if FPL could subtract the degradation fee from its franchise payments, and suggested that Town Attorney Randolph evaluate that. The intent of the proposal was not aimed at only utility companies, but at the many other firms that used Town right of ways.

President Smith recommended that Resolution 3-98 be deferred in order to give the utility companies, Town Attorney, and staff to study he issue.

Town Manager Doney requested that Assistant to the Town Manager Jakubiak address a letter he received from the law firm of Richard Miller, the firm engaged by the Town for legal assistance on the Telecommunications Ordinance as well as the Rights of Way Standards Manual.

Assistant to the Town Manager Dave Jakubiak addressed the Town Council, referring to the letter received from the Miller firm, noting that clarification had been requested about the proposed fees in the Rights of Way Standards Manual. The obstruction, degradation, construction parking and construction permit fees, according to Attorney Miller, were legally defensible.

Councilman McLendon moved that Resolution 3-98 be deferred to the May 12, 1998 Town Council Meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Councilman McLendon mentioned that if water pipes were eventually run through the City of West Palm Beach under a Franchise Agreement with them, consideration could be given to a right of way use fee for the City of West Palm Beach for water mains in the Town of Palm Beach.

Town Attorney Randolph replied that he had not been given direction in that regard, but it could be studied, along with the entire study of use of rights of way.

B. Other

1. Consideration of Additional Town Council Actions on the Historic Loop Street Lighting Project as Funded by the Preservation Foundation of Palm Beach

Public Works Director Al Dusey reported that there was a sole source provider of the historic poles and luminaires, Union Metal Corporation of Canton, Ohio. The cost was one-hundred sixty-three thousand, five hundred thirty dollars ($163,530), and Mr. Dusey requested authorization from the Town Council to proceed.

President Smith clarified that the Town was fronting the money, because the project would be underwritten by the Preservation Foundation of Palm Beach, in the amount of three hundred thousand dollars ($300,000).

Councilman McLendon moved approval of authorization to proceed with the purchase of historic poles and luminaires from Union Metal Corporation. The motion was seconded by Councilman McDonald.

Councilman Shaw remarked that there were some other areas in the Town that should be reviewed for renovation of street lighting.

President Smith commented that would be looked at during the Finance and Taxation budget hearings.

On roll call the motion carried unanimously.

2. Consideration of Report by the Public Works Director Summarizing Information Accumulated and What is Needed for Town to Proceed with a Reverse Osmosis/Water Re-Use Program

Public Works Director Al Dusey reported that he had requested concept level cost estimates of several alternatives from John Potts of Hutcheon Engineers. The alternatives were 1) a dual water system; or 2) a combined water system.

John Potts of Hutcheon Engineers addressed the Town Council, explaining the specifics of each alternative.

Councilman Wyett made a motion to authorize Mr. Dusey to set up a Water System Workshop within a six week time frame; to invite all qualified participants, and to approve the suggestions of staff as set forth below:

A. Consider the concept level estimates for two basic alternatives.

B. Authorize the selection of a water resource engineer via the Consultant Competitive Negotiation Act (CCNA) process.

C. Invite three to nine private companies to discuss the pros and cons of the private construction.

3. Consideration of Date and Time for a Special Town Council Meeting to Consider the Comprehensive Coastal Management Plan Update and the Shore Protection Board's Recommendations

Public Works Director Al Dusey reported that the Mayor and Town Council had indicated that they wanted to consider the Comprehensive Coastal Management Plan (CCMP) Update when the winter residents were in Town, in order to have full participation. It was being brought back at this time as a reminder that time was growing short, and Mr. Dusey suggested that it be discussed at the March Town Council Meeting.

Chairman of the Shore Protection Board, Gary Lickle, clarified that the Shore Protection Board had recommended that a special meeting not be held at this time on the Comprehensive Coastal Management Plan Update, but recommended having the Town Council accept the CCMP report, and await the funding mechanism that was in process currently; this would be for the purpose of bringing the financing package together with the CCMP report at a workshop, so that the public would have information regarding costs. He maintained that to debate the report now, without the financial element, would be premature.

4. Consideration of Concerns by Residents on Park Avenue Relating to Commercial Establishments on Sunrise Avenue *(Deferred from December 9, 1997, and January 13, 1998)*

Town Manager Doney reported that updates concerning the concerns of residents on Park Avenue were available from staff and would be heard today; eighty-one letters had been received by the Mayor and Town Council regarding this issue.

Director of Planning, Zoning & Building Robert Moore reported that the 251 Restaurant was having garbage and trash serviced from the Sunrise side, and deliveries continued on the Sunrise side. The loading zone continued to exist on Park Avenue.

Chief Code Compliance Officer Brian House reported that a Code Enforcement Board Hearing was held on January 15, 1998, on the noise violation, and found C.J.'s in violation of the noise ordinance in regard to the fan from the kitchen exhaust. Compliance was ordered by the February 19, 1998 Code Enforcement Board Hearing. The fan did now comply, as it had been replaced. It had later been discovered that the intake fan was also making noise, and a replacement had been ordered.

Mr. House referred to the 251 Restaurant, noting that the recycling bins were being moved to the rear and serviced from the front of the building.

Mr. Wyett expressed concern over the storage of trash in the rear, and suggested that the restaurant keep all garbage and trash inside and put it out in the morning.

Mr. House replied that there was no storage place inside, and the trash would be stored in an enclosure at the rear of the restaurant. Nothing would be put out after 8:30 p.m., or before 8:00 a.m. off-season, 9:00 a.m. in season.

Police Chief Terlizzese reported that, although there was an inordinate number of police hours spent in the vicinity, schedules and shifts had been re-arranged so that the rest of the community was being covered.

Police Major Frank Croft reported that Park Avenue had been quiet for the past five weeks. There had been four parking complaints and one noise complaint. The activity at 251 Sunrise had been slightly greater, but still much less than in the past. There had been two parking complaints, five noise complaints, and several miscellaneous complaints. As a comparison, on the 200 block of Sunset Avenue during that same five week period, there had been fifty-eight police actions, whereas there had been only forty-two on Sunrise Avenue. On Park Avenue there had been a total of eleven police actions. He explained that he was suggesting that activity was much greater on Sunset Avenue, and the concerns on Park Avenue and Sunrise Avenue had seemed to diminish.

Fire-Rescue Chief Elmore reported that evening inspections were continuing. Overcrowding was not as prevalent, and some establishments were running lines to prevent overcrowding. He noted that there was a proposed ordinance in this regard which would be heard later in the agenda.

Public Works Director Al Dusey reported that there had been no change since last month in garbage/trash services in the area. He commented that if trash from the hotel could be stored on the east side of the building it could be serviced from Sunrise Avenue.

Attorney Charles Hickman, representing the Palm Beach Hotel Condominium Association addressed the Town Council with an update on the conditions on Park Avenue. The smell complaints had been addressed, and he produced a report from the Health Department for the record. The problems with cleanliness had been addressed with additional recycling containers. The northwest corner of the property was the only area for temporary storage of construction debris or large trash materials, and procedures had been implemented where the debris/trash would not stay longer than ten days before removal. The drain in the middle of the alleyway in the back collected all the spray-down done with the use of bleach. Noise complaints had been addressed through the Code Enforcement Board, as mentioned by Mr. House. The trucks used by C.J.'s were no longer unloaded in the evening. Trash/garbage storage and removal had been a big issue, and several approaches had been investigated: smaller trucks were considered, however, that had been found to be a logistic impossibility; Dr. and Mrs. Whelton had responded negatively to using the Biltmore Galleria area for trash removal; conversion of the east area for garbage/trash storage and removal had been evaluated and the costs were not acceptable to the condominium residents. He mentioned that the Declaration of Condominium, Section 13-B, prohibited the utilization of any of the common elements for other than their intended purpose; therefore, it would have to be amended if the east area was converted to garbage/trash storage. In that case, he noted that 80% of the owners would have to agree to that modification. Mr. Dusey had been able to change the time for garbage/trash removal to a more acceptable time, and had requested that hotel staff roll the dumpsters down the alleyway, staging them on the borders of the property so that when the trash truck removed the garbage/trash the unloading time would be shorter. The Palm Beach County Health Department and Solid Waste Authority had been consulted on the relocation of the trash/garbage dumpsters, and they had concluded that keeping the dumpsters in the current locations, and moving them to the north end of the alley shortly before daily pick-up would pose the fewest logistical problems and potential health threats. Mr. Hickman noted that all the trash behind the north fence had been cleaned up, all recommendations for removal or disinfection of potential health threats had been complied with, and there was no further Health Department action pending.

Mr. Hickman reported that a meeting had been held with the Park Avenue Association and Attorney Kolins in order to find an area of compromise. Dr. Nasser had been offered seventy-five thousand dollars ($75,000) to take down the fence and allow use of the alleyway, which had been refused. The Park Avenue Inn had offered to buy the property of Dr. Nasser, but was told that it was not for sale. He summarized that the only area left for garbage/trash storage and removal was to the east, which involved a one-hundred forty thousand dollar ($140,000) special assessment, and was objected to by a majority of the residents of the condominium, as well as adjoining property owners. He concluded his presentation.

Palm Beach Hotel Manager Don Dement read a letter written on behalf of a unit owner of the hotel:

I represent the condominium owner Olga Luczyn, owner of Unit MZT, and am writing concerning the *meeting now scheduled for Tuesday, February 10, concerning the continued use of the alley on Park Avenue. Ms. Luckson has been a unit owner for approximately ten years, and is vehemently opposed to the closing off of the alley on Park Avenue, and the relocation of trash storage at the Palm Beach Hotel. Our unit is one of the largest units facing Sunrise Avenue, and close to the Catholic Church. If the trash storage area was relocated to the Church side of the hotel property, the value of her unit would greatly diminish. Since the alley has been used for years before the current Park Avenue property owners objected, Ms. Luckson cannot understand why they would be able to, at this late date, have the status quo changed, since they were aware of the situation prior to having purchased their properties. In other words, they bought their properties knowing that the alley was being used to service the hotel, and now seek to change the way in which operations were always conducted by imposing their will on the condominium unit owners in order to have it their way. The way our democratic system works, however, is that the minority cannot impose their will on the majority, especially in this case, where the Park Avenue owners knew what they were getting into before they bought on that street. The bottom line is Ms. Luczyn is opposed to closing off the alley, and would request that you enter this into the record.*

Attorney Suzanne Dockerty, with the law firm of J. Patrick Fitzgerald, P.A., representing the Diocese of Palm Beach, on behalf of St. Edward's Church, declared opposition to the relocation of the trash bins to the east.

Mr. Richard Limehouse, Park Avenue Inn, owner of approximately seven percent (7%) of the property on Park Avenue, and representing over fifty percent (50%) of the residents on Park Avenue. declared opposition to the relocation of trash. He noted that he had made an offer of three hundred fifty thousand dollars ($350,000) to Dr. Nasser to purchase her property, however she was not willing to sell.

Mr. Jonathan Pro-Rock, resident of the Palm Beach Hotel, suggested that Dr. Nasser be offered more money for her property.

Ms. Teresa San Filipo, resident of the Palm Beach Hotel, stated that the hotel and its residents had done everything possible to appease the Park Avenue residents.

Mr. Peter Hostyn, owner of three residences and fourteen units at the Palm Beach Hotel, stated that he was concerned with the grandfather clause, which had protected many people, and should protect the owners. He asserted that residents of the hotel were now faced with a one hundred forty thousand dollar ($140,000) assessment against a four hundred dollar ($400) fence.

Attorney Ron Kolins, representing residents of Park Avenue, addressed the Town Council, commenting the problems on Park Avenue had been ongoing for years, and for many years nothing significant had been done to address them. Recently a few things had been done, with good results, however, the bulk of the problems remained. He stressed that the fence on Dr. Nassar's property was not the problem; that the fence was on Dr. Nassar's property, and she had every right to have it there. He asserted that the problem was that the hotel and the various business in the location had created nuisances–noise, odor, traffic, etc. Those nuisances were of a sufficient nature to dramatically impact the quality of life of the citizens residing on Park Avenue. He maintained that Park Avenue, which was a residential district, was being used as a commercial street.

Mr. Kolins circulated photographs of activity in the alleyway, as well as Park Avenue itself. He presented a video to be viewed by the Town Council, exhibiting the problems in the area. He indicated that the hotel and its commercial space were all owned by Mr. Jack Grace. He expressed that the problems in the area were as follows:

A. Deliveries, loading and unloading on Park Avenue.
B. Trash storage and pick-up, as well as recyclable pick-up.
C. The location of the recyclable receptacles.
D. Parking of employee vehicles.
E. Noise from vents and blowers.
F. Noise from 251 Restaurant.

He submitted that all of the problems were violations of the law. He cited several sections of the Town Code which were violated by the commercial activities from the hotel: Section 4.20(a) - precludes land or structures being used for purposes that do not comply with the rules for that district. Section 11.6 - does not allow pedestrian or vehicular activity greater than normal for that district, or which is offensive or objectionable due to noise, glare, vibration, odor, or other disturbance. Section 11.12 - does not allow operation of trucks over 5,051 lbs. or other commercial vehicles without a permit from the Police Chief, unless the truck is serving a house on that street. Section 6.64 - does not allow parking in residential districts to gain access to other places. Chapter 12 defined nuisances: Section 12.17(a) - it is unlawful to have an accumulation of filth, garbage, trash or debris. Section 12.17© - garbage must be kept in fly-tight containers. Section 12.48 - it is unlawful to make noise which tends to annoy the community or which annoys or disturbs any considerable number of persons. Section 12.49 - addresses noise associated with loading and unloading. Section 12.49(h) - addressed noise associated with blowers or power fans. He indicated that these were some of the sections of the Town Code which were being violated.

Mr. Kolins submitted that one of the businesses in the hotel, C.J.'s Kitchen, was a large part of the problem, and was a nonconforming use which had been grandfathered in under the code. Several years ago the business had expanded, and Mr. Kolins maintained that to the best of his knowledge, there had been no special exception approval to do that. Mr. Kolins asserted that the operation was too big, and too intensive of a use for the area. The fall-out was that trucks were coming in and out during all hours, loading and unloading food and materials.

Mr. Kolins addressed the 251 Restaurant, stating that when approvals had been granted, it had been maintained that it was not a nightclub. The restaurant was opened until 3:00 a.m., and there was music emanating when the doors were kept open.

Mr. Kolins offered the following suggestions:

1. The commercial loading spot on Park Avenue be eliminated.
2. The recyclables be moved and held in an enclosure until ready for pick-up, and there be no emptying into those receptacles except between the hours of 9:00 a.m. and 6:00 p.m.
3. Parking should be precluded for employees back there.
4. Noise from the blowers must be addressed.
5. The doors from the 251 Restaurant must remain closed all the time except for use as an emergency exit.
6. The trash problem - elimination of all the other problems could help with tolerating the trash problem. He suggested that the loading space be designated for the use of Town vehicles only.

Mr. Jonathan Pro-Rock, owner of Apartment 1028, addressed the Town Council, stating that he was in the diamond business, but did not do any business in Palm Beach in diamonds. His apartment was the furthest away from the garbage storage area, and on a warm day he could not open his windows because of the stench of garbage from the commercial ventures. He suggested that the garbage could be kept inside the respective areas of business. When it was time to take it out to the street, it could be taken out the front lobby and the trucks could be waiting out there.

Dr. Belke, owner of a unit at the Palm Beach Hotel for ten years, addressed the Town Council, remarking that the garbage problem was serious, and that residents could not have known ten years ago that there would be a huge catering business in the hotel that would create garbage, trash, noise, odors, and bacteria which exceeded all environmental standards. She suggested that Mr. Grace offer a place across the street in his new parking lot on Sunrise Avenue, at no cost to the Palm Beach Hotel unit owners, where garbage could be hygienically stored in an environmentally safe storage unit.

Mr. Nathan Goldberg, owner of an apartment in the Palm Beach Hotel for five years, addressed the Town Council, recommending that Sunrise Avenue and Sunset Avenue be turned into one-way streets, with no parking for commercial vehicles on one side of the street. He objected to the valet parkers in front of the 251 Restaurant from a public safety standpoint, as it was difficult for older people to cross the street.

Attorney Hickman noted that Dr. Whelton had been asked if there were any conditions under which the hotel could have access over his property, and the response had been a definite no. There had been no consideration given to money. The parking lot immediately to the west of Aquaterra Restaurant on 230 Sunrise had been leased to the condominium association for sub-leasing to unit owners. It was specifically taken as an action by the association to deal with the parking problem for the building.

Mr. Hickman noted that the Palm Beach Hotel had been standing since 1920, which was prior to the enactment of any of the ordinances referred to by Mr. Kolins, and there were certain grandfathered rights.

Mr. C. J. VanSchaffelaar, operator of the banquet facilities in the Palm Beach Hotel, addressed the Town Council, stating that his truck was not loaded and unloaded in the parking garage of Mr. Grace.

President Smith asked where deliveries to the hotel were made prior to the fence being erected?

Mr. VanSchaffelaar responded that the trucks backed up in the alley off of Park Avenue , close to the hotel.

Councilman Shaw asked Mr. VanSchaffelaar if he believed the problem was mainly caused by his operation?

Mr. VanSchaffelaar responded that the fence had created the loading and unloading problems.

Councilman Shaw asked if the deliveries were the catering business deliveries?

Mr. VanSchaffelaar responded that 50-60% were his deliveries.

Councilman Shaw asked how many other catering services on the island did all their cooking, food service, storage, and preparation on the island?

Mr. VanSchaffelaar responded that he believed he was the only one.

Attorney Kolins made the point that no matter how long the alley had been used for unlawful purposes, the Town Code controlled its use. He noted that the two points still not agreed upon were the employee parking, and the deliveries. He suggested that the service area for the purpose of servicing the commercial spaces, which was located beyond the foyer area of the front entrance of the hotel be used for deliveries. The other alternative was to come down the east side of the hotel and go north with deliveries, where access to the freight elevator was available. He urged that the loading space and deliveries from that space be eliminated, as well as the hours for deliveries to be made at reasonable hours.

Councilman Wyett suggested that the number of spaces for no parking on Sunrise Avenue should be increased, designating more loading zones to accommodate the needs of the Public Works Department. He commented that he believed the suggestions of Mr. Kolins should be accepted.

Chief Terlizzese responded to the suggestion of eliminating the loading zone on Park Avenue and the creation of additional loading zones on Sunrise Avenue, stating that there were 49 on-street parking spaces on Sunrise Avenue to accommodate 400 people, which was grossly insufficient.

President Smith clarified that the loading zone on Park Avenue would remain with signs posted for the use of Town vehicles only.

President Smith asked who owned the alley that ran between the hotel and St. Edward's Church?

Attorney Hickman replied that the area was not an alley; vehicles had never been allowed there, and it was designated as green space owned by the hotel in accordance with the Declaration of Condominium.

Chief Terlizzese noted that the nearby commercial loading zone could be enlarged, however, he questioned if deliveries could be accepted by the hotel from that loading zone?

Attorney Hickman replied that would be approximately 450' to the service elevator.

Attorney Kolins stated that he did not believe the green space area was being used for that purpose, and that there was nothing in the Condominium documents of the Palm Beach Hotel which defined the area as green space. There was one sentence about common elements which read as follows: "The common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the units." He expressed that he believed the law of the community would prevail over any Condominium document provision.

Councilman McDonald asked if it was possible to work out an easement agreement across the green space?

Attorney Hickman replied that it was his opinion that could not be done without the consent of 80% of the unit owners and all of their lien holders.

Councilman Shaw requested the advice of Town Attorney Randolph as to conditions imposed by the Town Council in this situation?

Town Attorney Randolph replied that the Town Council had taken the action to place the loading space on Park Avenue, so obviously it had the right to deal with that.

Councilman Shaw asked if the Town Council could mandate the points that Mr. Kolins had suggested regardless of whether the hotel wishes to accept them or not?

Town Attorney Randolph responded that he had not heard a suggestion from Mr. Kolins requiring anything be done in regard to the eastern green space. He advised that before responding to any questions regarding the green space to the east he would need to review the Declaration of Condominium. The Town Council had the right to make a determination in regard to loading spaces and parking spaces on the particular streets, and then it would be up to the hotel to make a determination as to how deliveries would be made.

In response to Councilman Shaw, Town Attorney Randolph advised that the Town Council had the right to change the designation of a parking space for the use of Town garbage collection only.

Attorney Kolins commented that he had read a section from the Town Code which allowed trucks on a street as long as they were servicing a house or facility that was on the street, so a truck could come down Park Avenue to pick up something or deliver something to one of the houses on Park Avenue, but could not use Park Avenue to service something that was not on Park Avenue.

Chief Terlizzese commented that when residents notified the Police Department of deliveries, moving vans, etc., the Police Department accommodated them with parking spaces. He cautioned that although occasional service vehicles could be accommodated, deliveries to the extent of dozens and dozens every day could not be handled in the same manner. He suggested a good sized loading zone in the front of the building on Sunrise, near the front door, which could be used at night for the restaurant valet service. He asked Mr. Hickman if deliveries could be made through the front of the building?

Mr. Hickman responded that he did not know, as it would depend on vendor reaction; the vendor reaction to existing changes had just about put the Roof Top Ballroom unit out of business as a catering location. He expressed that the level of inconvenience was tremendous, and pointed out to the members of the Town Council that there were possibly 20 residents of Park Avenue affected by this, whereas there were over 300 unit owners in the Palm Beach Hotel, some of them being full time residents. There were far more people in the Palm Beach Hotel than were located on Park Avenue. Park Avenue would always be a buffer zone-- it already contained a church, rectory, and a 32 unit apartment house.

President Smith commented that the Town Council was trying to find a compromise solution for all of the residents both on Park Avenue and in the Palm Beach Hotel. It appeared that a very difficult situation had developed because of the fence. She pointed out that the Town Council had gone to bat for Park Avenue on numerous occasions to the tune of $147,000 in defending the lawsuit on the annex. She expressed that there was not an ideal solution, however everyone in those two blocks–not just one block–could be accommodated.

Attorney Kolins responded that it was clear the delivery problem could be worked out with the removal of the loading space off of Park Avenue. He suggested that the Town Council accept his plan, order that it be implemented, and see if it worked.

Councilman McDonald suggested that the residential nature of Park Avenue needed to be preserved, and commercial activity needed to be forced off the street. He moved that the recommendation submitted by Attorney Kolins be accepted on a trial basis, with both parties coming back at the May Town Council Meeting to give a progress report. Councilman Wyett seconded the motion.

Attorney Kolins read all the points for clarity:

1. Commercial loading space on Park Avenue would be eliminated to be replaced by a Town Vehicle Loading Space for certain hours determined to be appropriate so that trash can be picked up there.

2. The recyclables would be moved as far to the south as possible in that area, dumping into the recyclable receptacle would be limited to between the hours of 9:00 a.m. and 6:00 p.m.

3. Employees would not be allowed to park in or through the alleyway.

4. The blowers at issue would be replaced as was currently being done.

5. The 251 Restaurant rear doors would be made emergency exit doors. Times of delivery would be limited to reasonable hours 8:00 a.m. - 7:00 p.m.

6. The trash would be left as it is, with the proviso that the hotel would continue to keep it as clean as possible.

Attorney Hickman stated that he was not in agreement, and the points would be enforced against the will of his client.

Town Attorney Randolph referred to the motion made by Councilman McDonald, requesting clarification on what would be included, as he was not comfortable with requiring the hotel to adhere to all the points presented by Attorney Kolins.

Councilman McDonald explained that the motion was to enforce Park Avenue as a residential zoned area, and that, in effect, would move all the commercial activity off Park Avenue; to allow one loading zone for Town Vehicles to pick up the garbage on Park Avenue; and to expand several of the unloading areas on Sunrise Avenue.

Town Attorney Randolph replied that the Town Council had the authority to do that, and that was what he thought the motion had been.

Councilman McDonald responded that was correct, however, when Mr. Kolins read his recommendations they had seemed reasonable because some of them were in the process of being taken care of, but if Mr. Randolph felt that complicated the matter he would remove them from being a part of the motion.

Town Attorney Randolph advised that he did feel the inclusion of the Kolins' recommendations would complicate things.

Councilman McDonald then clarified that the motion would approve enforcing the residential zoning on Park Avenue; allowing for Town vehicle pick up of garbage, expanding the loading zones on Sunrise Avenue, and returning in May to assess progress.

Councilman Wyett clarified that the garbage and trash would be picked up on Park Avenue with the loading zone saying "For Town Vehicles Only."

Attorney Kolins was in agreement.

Attorney Kolins then asked Mr. Hickman if there could be a voluntary agreement to some of the points he had brought up, as many of them were in the process of being done?

Attorney Hickman replied: "We intend to comply with the Codes of the Town of Palm Beach."

Attorney Kolins responded that he was hopeful that the hotel would agree not to park cars in that area because it obviously was a great disturbance to people.

President Smith advised that the Town Council was not going to mandate that.

Director of Planning, Zoning & Building Moore explained that there was an easement for egress and ingress from across that property, and there was a vehicle ingress and egress and there was no provision or prohibition of parking in that paved area directly behind the Palm Beach Hotel.

Attorney Kolins responded that the easement was between the two people that were parties to the easement, and as between them, the hotel had the right to drive those cars up there. But as far as between the hotel and the law of the Town, they did not have that right. He referred to a section of the code that specifically precluded access to a commercial area from a residential area, and asserted that was precisely what was being done.

Director of Planning, Zoning & Building Moore replied that access had existed since the 1920's; It was a grandfathered access, and he did not think Mr. Kolins wanted to get into a debate about what properties were there and for how long.

On roll call the motion was approved unanimously.

XIX NEW BUSINESS

A. Ordinances

1. Ordinance No. 3-98 - Amendment to Article IX of the Town Code of Ordinances Relating to Architectural Review and Procedure

Town Attorney read ordinance 3-98 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING ARTICLE 9 OF THE TOWN CODE OF ORDINANCES, "ARCHITECTURAL REVIEW AND PROCEDURE" AT SECTION 5-387, CRITERIA, AMENDING SECTIONS E AND F THEREOF; PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Director of Planning, Zoning & Building Moore explained that the amendment of Ordinance 3-98 was a clarification as to the definition within it of neighborhood within 200'.

Councilman Wyett raised the issue of clarity of the ordinance as it was now amended. He referred to page 3/4 where he indicated that dissimilarities in the height of building/roofs was addressed. He maintained that a two-story house could then be prohibited on a one-story street, if the Architectural Commission (ARCOM) so ruled.

Councilman Shaw moved approval of Ordinance 3-98. President Smith passed the gavel and seconded the motion.

Councilman McDonald commented that Mr. Wyett had raised a level of doubt as to the clarity of Ordinance 3-98.

Town Attorney Randolph noted that the substance of the Ordinance as it existed had not been changed, other than to talk about the area that an application would be compared against. The only thing that was being changed was the preface, so as to indicate that the Permit Applications would now be compared against other structures within 200', instead of the way it used to read–"any structure facing upon the same or intersecting public or private way within 200' of the proposed site."

Mrs. Joanna Frost-Golino, of ARCOM, explained that nothing was changed by taking out the language that was removed. The language simply clarified that anything outside of the 200' would not be compared. She disagreed that the amendment would prohibit two-story houses on a one-story street. She noted that square footage was also a consideration when considering dissimilarities, and the amendment was meant to eliminate some confusion in the existing language.

Director of Planning, Zoning & Building Robert Moore explained that a member of ARCOM believed the language needed to be changed for clarity. It was not intended to change anything already existing in the Ordinance.

Councilman Wyett expressed concern for northend homes, where there were streets of all one-story, mostly two-story, and some streets with only a few two-story homes and the rest single. He stated that there was a right to maximize a house to the allowable square footage. If someone had a 2,800 square foot house, and needed more room for some reason, he/she should not be denied. He maintained that the person owning a house in the middle of one story homes, and wanting to put a second story up, would be affected. He suggested that the ordinance be reviewed in a comprehensive manner.

On roll call the motion of Councilman Shaw for approval of Ordinance 3-98 carried 4/1 with Councilman Wyett casting a negative vote.

2. Ordinance No. 4-98 - Authorizing the Fire-Rescue Chief to Vacate and Close Public Assembly Occupancies

Town Attorney read Ordinance 4-98 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES RELATING TO FIRE PROTECTION AND PREVENTION AT ARTICLE 2, BY INCLUDING A NEW SECTION 7-27, TITLED "PROCESSES DEEMED HAZARDOUS TO LIFE AND PROPERTY" AND A NEW SECTION 28, TITLED "EVACUATION OF OCCUPIED BUILDINGS OR STRUCTURES" PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

Fire-Rescue Chief Ken Elmore advised that Ordinance 4-98 gave the Town the ability to close a building down that continued to be over-crowded.

Councilman Wyett asked what would happen if a building was found to be over-crowded earlier in the evening and cleared out, and it was then found that it was again over-crowded later in the evening.

Chief Elmore replied that the Code Enforcement Board would be advised.

Town Attorney Randolph pointed out that there could be a separate citation for each time there was a violation.

Attorney Mariano Garcia, on behalf of Gail Coniglio of E.R. Bradley's and Allen Heise of 251 Sunrise, commented that the two businesses enjoyed a good working relationship with the Fire-Rescue Department, and were all for the ordinance and were all for safety. Mr. Garcia commented that he had several concerns whenever he saw an ordinance that gave a public official the right to close down a business: one was with regard to due process, and the second was with regard to how much discretion that public official may have. He requested that the Town Council carefully consider the ordinance, as he believed there were some sections that could be clarified: Section 7-271: that provision gave the Chief of the Fire-Rescue Department or his designated representative the power to immediately order the cessation of any "activity, operation, or process when such activity, operation, or process is in violation of the fire prevention code." Mr. Garcia suggested that some of the terms used were vague and required clarification. He referred to the section addressing anything that constituted a severe and immediate hazard, which he believed also could be clarified. He advised that he believed it was important for business owners to know what criteria they had to meet. He referred to section 7-28, the evacuation of occupied buildings or structures, and commented that it, too, needed clarification. He noted that he did not disagree that the Fire-Rescue Chief had the power to order the immediate evacuation of any building that constitutes a fire hazard whenever there is an obstruction to the exit, or when there is overcrowding of the premises, however, any other hazard or potential presenting immediate danger to the occupants needed clarification. He questioned if the power of the Fire-Rescue Chief was being expanded, and he was being given more discretion beyond that power to order the cessation of anything that he would think did not look right.

Councilman Shaw commented that he believed this item could have gone to the Ordinances, Rules, & Standards (ORS) Committee, rather than the Town Council. He mentioned that he thought the idea had been to also establish some form of a fine or methodology to address violations, and that it would be premature to accept Ordinance 4-98, as modified, today.

Town Attorney Randolph explained that this amendment had been considered a tool by which Fire-Rescue Chief Elmore felt his department needed to deal with situations on the spot. He indicated that he understood that there were other concerns in this regard, that the Town Council may wish to deal with by way of a separate ordinance.

Fire-Rescue Chief Elmore explained that the modification to the ordinance would now allow the Police Department to assist in closing an establishment. He advised that careful consideration would be given to closing an overcrowded establishment, which would only be done after the establishment had either refused to remove people, or continued to become overcrowded a short time later. When all efforts to reduce the numbers of people down to the occupancy level, the assistance of the Police Department would be requested in order to keep the occupancy at a safe level.

Councilman Wyett moved approval of Ordinance 4-98, as modified. President Pro-Tem McLendon seconded the motion.

Gail Coniglio, 201 LaPuerta Way, commented that the relationship of E.R. Bradley's Saloon with the Fire-Rescue Department was one of compliance. Her hope was that warnings would be issued, and the relationship would remain a working relationship. Chief Elmore had assured her that there would continue to be a working relationship, and she advised that in that case the ordinance would be fine.

On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

B. Resolutions

1. Resolution No. 10-98 - Increasing Application Fee for Major Projects Considered by the Town's Architectural Commission

Town Attorney Randolph read Resolution 10-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, IMPOSING A FEE FOR APPLICATIONS FOR MAJOR PROJECTS CONSIDERED BY THE TOWN'S ARCHITECTURAL COMMISSION, PROVIDING AN EFFECTIVE DATE.

Director of Planning, Zoning & Building Robert Moore explained that the fee structure had been evaluated, other communities had been surveyed, and a three hundred dollar ($300.00) fee had been considered appropriate. He advised that it had been determined that three hundred thirty-three dollars ($333.00) was expended through staff time in processing these application.

Councilman Shaw commented that if the costs were three hundred thirty-three dollars ($333.00) he believed it would be inappropriate to charge three hundred dollars ($300.00) and moved that it be changed to three hundred fifty dollars ($350.00). The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

C. Bid Awards

1. Sealed Bid No. 98-02 - Peruvian Dock Replacement - Marina Fund; Resolution No. 9-98

Director of Public Works Al Dusey reported that bids had been received for the Peruvian Dock replacement, which was the last of the three docks to be replaced. The low bidder had been Shoreline Foundation, Inc., and he recommended that Resolution 9-98 be approved, awarding the bid to Shoreline Foundation, Inc.

Councilman Shaw moved approval of Resolution 9-98, and Sealed Bid 98-02. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0 as Councilman McDonald had temporarily left the room.

D. Appointments

1. Seaview Park Commission - Four Member Three-Year Terms to Expire February 2001 and One Alternate Member Term to Expire February 2000

Gail Coniglio was reappointed as a regular member for a three year term, Ann Drake was reappointed as a regular member for a three year term, Eileen Morris was reappointed as a regular member for a three year term. Stanley Silken was appointed as a regular member for a three year term. Thomas Turchan was appointed as an alternate for a two year term.

2. Zoning Commission - Two Member Three-Year Terms to Expire February 2001 and One Alternate Member Term to Expire February 2000

James Bertles was reappointed as a regular member for a three year term; Michele Clarke Royal was reappointed as a regular member for a three year term, Theodore Metzger and Jorge Sanchez remained on as alternates for a second term, expiring in 2000. The new alternate appointed was Pamela Hoffpauer.

E. Other

1. Consideration of Proposal to Councilman Shaw from Mr. Rocco DeStefano, P.A., to Sell Property Located at 3000 South Ocean Boulevard to the Town of Palm Beach

Councilman Shaw explained that he had brought up this matter at the Finance & Taxation Committee Meeting, as he felt that the property at 3000 South Ocean Boulevard had a tremendous amount of potential to the Town of Palm Beach in the area of long-term, long range planning. He expressed that there would be a need for another Fire-Rescue station in that area in the near future. He suggested that some method of acquiring the property be established.

Mr. Rocco DeStefano, owner of the property at 3000 South Ocean Boulevard, addressed the Town Council, stating that while he could not make an outright donation of the property, he could sell it for nothing down in accordance with the mortgage arrangement he currently had.

President Smith clarified Mr. DeStefano was offering the property to the Town for which he had spent $844,360.31, with a mortgage of 15-years at 8% with monthly payments of $8,069.20

Councilman Shaw requested that the Town Council authorize staff to take a serious look at how the property could be used, and what the options for using it were. At the same time, he requested that staff meet with the appropriate members of the Citizens Association to determine if they would become part of an acquisition venture. He asked Mr. DeStefano if he would consider an option on the property, which would put the Town in the position to acquire the property in the future.

Mr. DeStefano replied that he would consider an option, as long as it was not a lengthy one, because he was currently working on an invention and needed funds to promote his invention.

Councilman Shaw noted that he had spoken with Mr. Fink of the Citizens Association, and the concern was whether the organization was empowered to own real estate. He requested that the Town Council authorize staff to look into the specific long term uses that would come as a result of the purchase of the land, and then enter into discussions with the Citizens' Association to determine if they would like to join with the Town in a public/private venture to consider the acquisition of the property.

President Smith commented that rather than have staff investigate the issue, she would like to hear from the Citizens' Association, or any other group, at the meeting next month, to determine if they had any interest in the property. She noted that there were other owners in Town that owned properties more mid-Town that had been offered to the Town, and these possibilities had not been explored.

Councilman Wyett concurred with President Smith, and noted that the property had no oceanfront, and almost no street front, and was grossly overpriced.

Mayor Ilyinsky thanked Mr. DeStefano for taking the time to write and appear before the Town Council, and wished him luck.

President Pro-Tem McLendon recalled that the assessed value was approximately $775,000 two years ago, and he did not think the property was overpriced, however, the possible utilization of the property by the Town was the question.

2. Consideration of Funding of the Town's One-Third Share of Local Sponsors' Costs for Preconstruction, Engineering, and Design (PED) for the Lake Worth Inlet Sand Transfer Plant

Assistant Town Manager Peter Elwell reported that the Lake Worth Inlet Management Plan had included several different projects, with a primary one being to improve the efficiency of the Sand Transfer Plant operation at the Inlet. The Tri-Party Agreement signed between the Port of Palm Beach, Palm Beach County, and the Town of Palm Beach contemplated that the local share of the projects included within the Lake Worth Inlet Management Plan would be funded equally among the three parties. The potential existed for the Federal Government paying the vast majority of construction of a state of the art Sand Transfer Plant at the Inlet. This study would lead to that construction, and would be done at the cost of $600,000, of which the Federal Government was willing to pay 75%, and 25% would be a local share. The Town of Palm Beach share of that 25% would be $50,000 to be spread over three fiscal years. The recommended actions were as follows:

1. To authorize Town participation in the project, with the total cost to the Town being $50,000 over the three fiscal years.

2. To appropriate the first portion of the three payments; with the first year being $11,000 appropriated from the Coastal Protection Reserves in the Capital Improvement Fund.

3. In order to provide for the local sponsor relationship between the three parties, authorization for Town staff and Town Attorney to work with Palm Beach County and the Port of Palm Beach to prepare a document for approval by the Town Council that would amend the existing Tri-Party Agreement.

In response to Councilman Shaw, as to the breakdown of the three payments, Mr. Elwell explained that it related to the fact that the project was a two-year project that would be spread over three fiscal years. It would start in the middle of FY98 and continue until the first half of FY2000. The Port of Palm Beach had advised of the appropriate amounts that would cover the expenses that would occur during each of the three fiscal years.

President Pro-Tem McLendon moved approval of the funding of the Town of Palm Beach share of the local sponsors' costs for preconstruction, engineering, and design for the Lake Worth Inlet Sand Transfer Plant. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

3. Consideration of Proposed Wording for Plaque Recognizing Town Elected Officials, Town Staff, and Greater South County Road Association Directors and Patrons Who Contributed to the South County Road Palm Tree Project Beautification

Christine Franks, representing the Greater South County Road Association presented the layout of the text (revised as of February 9, 1998) that would appear on the plaque recognizing Town Elected Officials, Town Staff, and Greater South County Road Association Directors and patrons. She explained that the plaque would be composed of a rosy colored granite, with overall dimensions being 30" x 60" x 8". The plaque would stand on a four inch base, which was included in the overall dimensions. The plaque would be placed on the northwest corner of Brazilian Avenue and South County Road, as previously approved by the Town Council.

Councilman Shaw moved approval of the plaque and wording, as modified. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

4. Consideration of Florida Department of Transportation Plan of Action Regarding the Royal Park Bridge

Director of Public Works Al Dusey reported that the Royal Park Bridge would be closed at 7:00 a.m. on February 11, 1998, in order to load test. The problem was that wood borers had eaten away much of the wood support structure, and although periodic inspections had been made, it was recently found that serious damage had been done. If the testing showed compression of the support structures, the westbound, north side of the bridge would be closed, and a process of replacement, estimated to take approximately seven years, would be started. If the bridge showed no signs of failure, visual inspections would continue on a monthly basis and load testing would be done annually. The Florida Department of Transportation (FDOT) wanted to save what was in place if possible. They had indicated that they were searching for people who might have some expertise as to how to repair the bridge, and at the current time they believed that the problem was not repairable on the north side of the bridge. The south side of the bridge was only forty years old, however, they indicated high chlorides in the concrete, and if they replaced the north side they believed they would replace the south side at the same time. He noted that some of the issues facing the FDOT were that whenever a bridge was replaced the Coast Guard wanted as much clearance as possible; the minimum clearance was 25' and the bridge currently had a 17-18' clearance; they were cognizant of the fact that the bridge was a gateway to the Town, and the desire was to replace the bridge with an arched structure because of the aesthetic impact. If the load testing showed no signs of failure, the bridge would stay just as it was. He noted that if the bridge was closed for repairs, the eastbound side would be used one way in each direction. Palm Beach County officials as well as West Palm Beach officials had attended the meeting held with FDOT, and the County had appeared to be very willing to make major modifications inter-connecting their traffic signals on the westbound side of the bridge, as well as the north and south bridges to facilitate the movement of traffic in and out of Town. In the past they had been somewhat reluctant to make any significant changes because repairs had always been short term repairs. They appeared very willing to do something more substantial in this case. Mr. Dusey emphasized that FDOT representatives were willing to come and speak to the Town Council at any time. He added that FDOT had estimated that it would take seven years, starting immediately, to have a new bridge in place.

Town Manager Doney commented that the FDOT was going to have a Technical Advisory Committee, consisting of the Department of Transportation, Palm Beach County, City of West Palm Beach, and the Town of Palm Beach. It was his intent to designate Mr. Dusey (or Town Engineer Bowser if Mr. Dusey was unavailable) to represent the Town at these meetings, and to report back monthly back to the Town Council to apprize them of what was happening. A very thorough traffic circulation plan would be in place so that on-island streets, as well as routes to I-95, etc., were accessible.

Councilman Wyett suggested that in the event the eastbound lanes of the bridge were closed, permission be requested from the FDOT for emergency medical vehicles to be able to use the side of the bridge that would be closed off as the bridge was being repaired/rebuilt.

Mr. Dusey replied that he would take this under advisement with the FDOT.

George Frost, former Town Manager, and a civil engineer, commented that prior to his working with the Town of Palm Beach he had been the County Engineer and Assistant County Engineer, and had been involved as the County representative on the construction of ten bridges, which included the south two spans on the Royal Park Bridge. Prior to that the Royal Park Bridge was a bridge consisting of sand-filled arches, and a horizontal swing span, where a man went out and cranked it around to let the boats through.

Mr. Frost recounted that he had heard through hearsay, some years ago, that the first three spans had not been built right; when they were building the bridge they just about had it finished and three spans fell in the water–this was the east three spans on the existing Royal Park Bridge. Mr. Frost said that he had limited knowledge of the structural condition of the north two lanes of the bridge, but he did know that the bridge pavement had been settling for thirty years –he noted that between the arches the pavement was continually setting, and asphalt was continuously added. He had no data that would refute what the FDOT said about the bridge, but he had been given no data that told him there was anything wrong with the bridge. He noted that they had done a wonderful job of making it look like the old bridge, with the north two spans being true arches, and the south two spans being fake arches. It had been made to look like that because Mayor Reese wanted it to look like the old bridge. Mr. Frost said that he thought it would be a tragic mistake to take the newer portion of that bridge out of service when it was still serviceable and could be used without any difficulty. The south two spans had been built while the north two spans were under service and in place, being used, and he believed the same thing could be done with the two lanes that could be built after demolition of the two lanes that were there on the north side of the bridge. He expressed that if the bridge needed to be demolished, Town officials would need to deal with the Coast Guard regarding a high rise bridge. He noted that any bridge built in the past 20 years in Palm Beach County had more than the minimum 25' clearance. He urged the Town Council to do everything possible to hold the newer portion of the total bridge in place as long as possible.

Director of Planning, Zoning & Building Robert Moore commented that the bridge was landmarked to the center, which would further reinforce the position of Mr. Frost to try to keep the south bridge and the configuration of the bridge.

5. Consideration of Dismissal and Settlement Agreement Regarding Mar-A-Lago Club, L.L.C., L.C. vs. Town of Palm Beach, Case No. CL 97-4545 AE (Fla. 15th Circuit); Mar-A-Lago Club, L.L.C., L.C. vs. Town of Palm Beach, Case No. AP 96-010816 AY (Fla. 15th Circuit); Mar-A-Lago Club, L.L.C., L.C. vs. Town of Palm Beach, Case No. 97-8020 CIV-HURLEY (U.S.D.C. S.D. Fla.)

Town Attorney Randolph reported that he had submitted information setting forth a proposal relating to the dismissal of the three cases regarding Mar-A-Lago. The case transferred to Federal Court had been dismissed by the plaintiff, however, there was a motion pending filed by the Town of Palm Beach regarding attorney fees. The court had acted on that, and there was no further action to take. The Town of Palm Beach had prevailed in the case regarding the Petition for Writ of Certiorari, and there was no further action to be taken in that regard. There was one case pending in the Civil Court. He had met with the attorney for the plaintiff, Barry Richard, and determined that the best way to resolve these matters would be to dismiss the pending case, and agree not to appeal any of the matters remaining in the other cases. The Settlement Agreement provided that:

1. The one pending case in the Circuit Court would be jointly dismissed, without prejudice, each party to bear their own costs and fees (Case No. CL 97-4545).
2. Mar-A-Lago would not appeal the decision of the Appellate Panel in the Writ of Certiorari case (Case No. AP 96-00816).
3. The Town would not appeal the decision of the U. S. District Court denying the attorney fees in the other (Case No. 97-8020).

Mr. Randolph introduced Attorney Barry Richards, representing Mar-A-Lago, who addressed the Town Council, stating that he was participating in the joint presentation of the settlement with hopes of having a more productive and less expensive way of dealing with each other in the future. He explained that several months ago Mr. Trump had a conversation with Richard Fields in which he told Mr. Fields that he had the feeling that the litigation had grown considerably out of proportion to the issues that had precipitated it in the first place, and he asked Mr. Fields to look at the entire matter. Mr. Fields had then asked Barry Richards to review it, as a lawyer who had no involvement in it and could look at it more objectively. After reviewing everything he had conversed with Mr. Fields and Mr. Trump, told them that the issues were not irreconcilable, and believed that there had been a significant breakdown in communication, a large chunk of which was the fault of their side of the table. He had then recommended to Mr. Trump and to Mr. Fields that a proposal be made to the Town to stop fighting and just start talking, and he had proposed that to Mr. Randolph. What was being suggested was that hostilities be called off, with neither side proclaiming a victory, with an effort to have a more civil way to have a dialog in the future, should anything arise.

Mayor Ilyinsky remarked that he agreed with Mr. Richards, and he personally congratulated Town Attorney Randolph for his part in the arrangement. He thanked them both, and wished to transmit the message to Mr. Trump that he was very smart to get in touch with Mr. Richards.

President Smith thanked Mr. Randolph and Mr. Richards for their efforts.

Mr. Randolph explained that once the Settlement Agreement was approved, the Stipulation for Dismissal would be executed by all of the attorneys and presented to the court.

Councilman Wyett moved approval of the Settlement Agreement as presented. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

6. Consideration of Agenda notification procedure.

Councilman Wyett commented that the agenda notification procedure had been in place for three years, and he would like to try a new approach–the Town Council members and/or the Mayor could place items on the current agenda by notification to the Town Manager fourteen days in advance of a scheduled meeting, which is the same method citizens of the Town used.

Town Manager Doney commented that, from staff perspective, the item could be placed on the agenda for consideration by the Town Council, as a body, however, he was concerned if the intent was to have staff or Town Attorney direction prior to the Town Council Meeting, which would involve time, energy, and/or legal expense.

Councilman Wyett replied that currently he considered himself one of five equals, with an inferior role about the right to put an item on the agenda without breaking the Sunshine Law rules.

President Smith clarified that members of the public did not put items on the agenda. When members of the public write letters, they were distributed to the Mayor and Town Council, and if it was something of interest it was brought up at the Town Council Meeting by any Council member. That gave the staff a four week lead period to look into any item if the Town Council decided to pursue the subject. No member of the Town Council or the Mayor was in a position to direct any member of the staff to undertake a study on his/her own whim–the Town Council acted as a body.

Councilman Wyett responded that no single council person had the right to ask staff to do anything. Staff could only operate at the direction of the Town Council, however, if a relatively simple action was needed for an item, Mr. Wyett saw no reason why the Town Council could not respond with a "yes" or "no".

Town Manager Doney commented that he worked with the Town Council President on those items requiring policy action by the Town Council as items that would be added to the agenda. He clarified that if an item was added to the agenda through a memorandum fourteen days in advance, he would provide a copy to each staff member involved, as well as the Town Attorney, however, he would not expect any staff member or the Town Attorney to expend any time on it, but note that it would be considered at the upcoming Town Council Meeting, where brief comments could be made in order for the Town Council to decide on any further action. The next month would be when the matter actually came forward.

Councilman McDonald clarified that he believed Mr. Wyett was suggesting that often there were items that did not require any staff research, and there was no reason to delay them for a month, rather than following the current policy so rigidly.

Town Manager Doney questioned the possibility of violation of the Sunshine Law in the circumstance where a Council Member wrote a memorandum to him, and he circulated it to the other Council Members and to appropriate staff members?

Town Attorney Randolph replied that it would not violate the Sunshine Law, as long as it was being given for back-up material, and as long as he was not asking if they agreed or disagreed whether the item should be on the agenda.

Town Manager Doney requested that any Council Member or the Mayor write a memorandum if they wished an item to be added to the agenda, so that it would be well defined.

President Smith clarified that had been the request of Councilman Wyett. A memorandum would be sent to Town Manager Doney with the request of an item to be added to the agenda.

7. Consideration of formation of Long Range Planning Commission.

Councilman McDonald moved that this item be placed on the agenda for the Town Council Meeting scheduled for March 10, 1998, commenting that staff would not need to prepare for this item to be on the agenda for next month. He explained that the Long Range Planning Commission would be a regular commission, to basically do long range planning for the Town of Palm Beach. The motion was seconded by Councilman Wyett.

On roll call the motion carried unanimously.

8. Consideration of formation of Water Board.

Councilman McDonald proposed that a Water Board would function similarly to the Shore Protection Board, and would be a sunsetted board that would only deal with one issue, and once that issue was finished the board would no longer exist. He explained that water issues had been ongoing for some time, and a workshop was now scheduled for information regarding water use, which would provide information, and he believed one centralized group should be responsible. He expressed that he did not have the time, capability, or expertise as a Council person, to be able to evaluate all the water alternatives.

President Smith commented that she would like to hear from the members of the existing Water Committee that had worked so hard for years.

President Pro-Tem McLendon remarked that he thought the formation of a Water Board was premature, as he thought the Town Council would make decisions based upon the recommendations of engineers. He suggested that costs for having such a board be determined, and that the Town Council be advised of the costs to date on the Shore Protection Board, for example.

President Smith commented that the Shore Protection Board had been an outstanding committee that had accumulated information for the Town Council for a shore protection project, and was still looking into the funding part of it. As far as the background on water, Mrs. Smith noted that it had been studied for eight years. There had been an excellent Water Committee that had been assimilating the information and passing it on the Town Council. She saw no reason to establish a new commission to review the information of eight years.

Councilman McDonald stated that he had heard the same type of argument when he had proposed the Shore Protection Board.

Councilman Wyett agreed that this was not the right time to consider a Water Board. The workshop was the next step, where much would be learned, and the direction of the Town Council would soon be established.

Councilman McDonald moved that the creation of a Water Board be considered at the Town Council Meeting to be held on March 10, 1998. The motion died for lack of a second.

9. Consideration of Timed Openings for the Lake Worth Bridge

Councilman McDonald advised that he had a request from the Citizens' Association to once again look at requesting the Florida Department of Transportation (FDOT) to consider timed openings for the Lake Worth Bridge.

Town Manager Doney noted that the other three bridges (Royal Park, Southern Blvd., and Flagler Memorial) were under consideration currently. He explained that the center line of the intracoastal in the area of the Lake Worth Bridge (Robert A. Harris Memorial Bridge) area was in the corporate limits of the city of Lake Worth. They would have to be contacted and then make the request from FDOT.

Councilman McDonald requested that a letter be directed to the city of Lake Worth from the Town of Palm Beach to request timed openings for the Lake Worth Bridge. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

XX COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman McDonald commented that he had recommended that the procedure in the future would be to communicate with people doing business in the Building Department when, for example, there was zoning in progress, in order for them to be able to alter their plans accordingly. He explained that there were several architectural firms in Town that were not aware of the zoning in progress, and had prepared plans that fell under the old zoning code, and he had asked Director of Planning, Zoning & Building Moore to notify such people. He had agreed to do that, and Councilman McDonald suggested that such notification become a policy in the Building Department.

Councilman McDonald recommended that the Building Department notify architectural firms that had submitted plans, perhaps over the past year of zoning in progress, so that if they were in the process of preparing plans they know that they could not submit them under what would be the current zoning. He gave as another example the revision of fees presented today, and suggested that there needed to be some method of getting that revised fee out, otherwise applications would be submitted with the old fee.

Director of Planning, Zoning & Building Moore responded that an application with the incorrect fee would not be rejected, but the Building Department would simply request an additional check. He noted that the Building Department would run through the list of architects that normally submitted plans to the Town, and notify them of zoning in progress.

Councilman Shaw suggested that a public notice be published in the newspaper, rather than having to contact each building and architectural firm individually.

Mr. Moore explained that there were many contacts with the Building Department offices prior to any plans being prepared, so there was ample opportunity to advise them of upcoming zoning changes. He proposed a sign posted in the Building Department stating that zoning in progress would begin in thirty days. He noted that zoning in progress was declared through advertisement in the newspaper, however, Councilman McDonald had suggested that the firms normally doing business in the Town be advised also, which would be done.

President Pro-Tem McLendon commented that he understood that there was an agreement for the City of West Palm Beach to supply wholesale water to another community for $1.20 per thousand gallons, which may be information that would be useful. He asked if any determination had been made to inquire about the water meter system to determine the actual water supply needs of the Town?

Director of Public Works Al Dusey responded that no action had been taken, and he was not certain what purpose that information would serve, if the Town would not be using the water from West Palm Beach.

Councilman Wyett considered that staff investigation was premature at this point, because any of the firms attending the forthcoming workshop could respond to many questions and provide further information.

President Pro-Tem McLendon advised that he would bring the subject up again for discussion at the next Town Council Meeting.

XXI DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of January 28, 1998 - Minutes Available in Town Manager's Office

DEFERRALS AND CONTINUATIONS - MAJOR PROJECTS

B99-97 Application by Mr. and Mrs. John Zenko, 232 Tangier Avenue, for new two story Neo-Classic residence - approved.

B100-97 Application by Euro-Homes, 306 & 314 Chilean Avenue, for new two story Mediterranean style duplex - denied.

B106-97 Application by Mr. and Mrs. Charles Henderson, 231 Via Las Braces, for new one story residence - deferred.

B107-97 Application by Mr. and Mrs. F. Quinn Stefan, 1554 North Ocean Way, for 1,242 square foot second floor addition - denied.

B108-97 Application by Mrs. Lida Fromstein, 238 Via Las Braces, for new one story single family residence - deferred.

B111-97 Application by Mr. K. P. Knudsen, 593 Island Drive, for request to demolish existing residence - approved.

NEW BUSINESS - MAJOR PROJECTS

B1-98 Application by The Breakers, One South County Road, to remove approximately 9,500 s.f. of ballroom and pre function space and construct a new addition to the existing hotel. This addition would encompass a new 15,000 s.f. ballroom with approximately 8,000 s.f. of pre function space. There will also be a service basement below the new ballroom of approximately 13,500 s.f. for storage and kitchen support facilities. Demolition of the existing 48,000 s.f. beach club, two-story cabanas and pool and build a new 20,000 s.f. facility comprised of a fitness center, 400 seat indoor/outdoor dining room and new cabanas will be constructed in the same location - deferred.

B3-98 Application by Mr. William W. Powell, 211 Jungle Road, for addition of a single story "garden room" of approximately 20' x 30' - approved.

B4-98 Application by Jay R. Jacknin, 288 Via Marila, for new second floor addition to existing residence - withdrawn.

The Major Matters considered by the Architectural Commission, and the report of the meeting held on January 28, 1998, as corrected on page 2, were approved through motion of Councilman Wyett, seconded by Councilman Shaw. On roll call the motion carried unanimously.

F. Appeals

1. Consideration of Appeal of the Architectural Commission Regarding ARCOM No. A3-97, 101 Nightingale Trail, Dr. and Mrs. Marvin Rosenberg *(Deferred from January 13, 1998)*

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

Ex-parte communication was declared by Councilman Wyett with Attorney Kolins concerning his representation of Dr. Rosenberg; by Councilman Shaw with Attorney Kolins and Mr. Bell; by Councilman McDonald with Dr. Rosenberg and Mr. Bell. *(Later in the meeting President Pro-Tem McLendon recalled that he had a telephone conversation with Dr. Rosenberg some time ago in regard to this matter- please see ex-parte communication under Item 2 below).*

Attorney Ron Kolins addressed the Town Council stating that the two appeals on the agenda today both involved appeals from Architectural Commission (ARCOM) decisions. He commented that, for a variety of reasons, not many ARCOM decisions were appealed to the Town Council. However, a true and meaningful appeal process was central to due process, and the two appeals must not be looked upon as a challenge to ARCOM, however, human beings did error, and when they did it was up to the appellate body to reverse the decision and correct the error or the injustice. He asked that the Town Council look upon itself as an appellate court, reviewing the decision of a lower court. Appellate courts reversed lower courts every day, and when they did so it was not viewed as demeaning to, or a degradation of the lower court, but rather as merely the natural result of a system of law designed to protect the rights of the individual, and that was what the appeals today were about.

Mr. Kolins then continued with his presentation. He advised that he represented Dr. and Mrs. Marvin Rosenberg in a very unusual case, because it was very complex and very simple at the same time. He maintained that the issue involved a 6" difference in the height of an entry feature between the last set of approvals from ARCOM and how it was built in the field. Admittedly there was a 6" difference, which was a result of the involvement of different professionals in the creation of the house. Mr. Kolins displayed architectural plans, noting that the house had first been approved by ARCOM with the height from the top of the arch to the finished floor being 18'10". Another architect (Jackie Alberran) had been employed to look at the house and make some cosmetic suggestions. She had sketched a different shape for the entryway, which was taken to a CAD company to be professionally drawn. Somewhere along the line two mistakes had been made, as when it came back from the CAD company the height of the entryway was shown as 18'4", and the shape of the arch was no different than the shape of the arch before the architect had changed it, and the sides of the arch were not at the top of the roof line, but about 6" below the roof line. At this time the architect of record (Steve Yeckes) got a second set of approved construction drawings.

Mr. Kolins continued with his explanation, advising that the contractor, Ray Puzatella, now had to put on the entryway in the only way technically possible, which was at the roof line. In order to follow the drawings, the whole roof structure behind the arch would have had to be torn apart, involving trusses, air conditioning ducts, electrical ducts, insulation, etc., and it was not reasonable to believe that was the intention. Mr. Puzatella did know that the higher shape arch had been approved by ARCOM. Today there was an entry feature that was 18'10", which was originally approved by ARCOM. The difference between the 18'10" and 18'4" was not a product of malevolence or intention on the part of anyone. When the Building Department had notified of the 6" differential, Dr. Rosenberg went back to ARCOM. Mr. Kolins maintained that the difference in size was absolutely de minimus and meaningless in the whole scope of the project. Dr. Rosenberg had no knowledge of it, and only found out about it some months after construction.

At this time Town Clerk Pollitt administered the oath to Robert Deziel.

Dr. Rosenberg addressed the Town Council, stating that at no time did he, his wife, or the builder have any idea that there was a 6" differential. The construction documents had been stamped and approved by the Building Department and the structure had been built exactly as those plans stated. The difference between the ARCOM sketch and the construction documents was 6", however, he had not learned of it until being notified by the Building Department.

Architect Steve Yeckes addressed the Town Council, exhibiting a drawing of the structure in question, commenting that the original design called for a tie beam height of 14'6" above finished floor. That had never changed. He pointed out the structural material that needed to be put above the tie beam to get to the proper roof height. The way it was shown was the way it was designed to be done structurally to get the necessary roof loads, and the tie beam height to coincide with the top of the arch and the entry. When the Alberran architectural drawing was received it was a change in the facade without considering the structural implications, and the Alberran drawing showed not only a lower height in the arch, but a lower flat height, which goes below the roof beyond, and that could not happen if the tie beam was at 14'6". He summarized that there was then a resulting difference in what really had to be built, and the builder built it the way it was always designed in the structural drawings, and the way it was up before the Alberran drawing made some changes, forcing the flats and the arch to come up an additional 6" that was necessary for the structure to work.

Mr. Kolins concluded that the reality was that while the structure had never been intended to be built at 18'4", there was a drawing approved by ARCOM at 18'4". Mistakes had led the structure to be 6" off. The issue was what could now be done? ARCOM was approached with alternatives on how to get back down to 18'4" if that was what was desired by ARCOM. He exhibited drawings of the alternatives, which were to leave things as they were, to lower the contour of the arch 6" so that there would be an 18'4" entryway, to take the arch off altogether and have a flat roof. Mr. Kolins stated that he was shocked when ARCOM rejected those alternatives and told Dr. Rosenberg that he had to build the structure exactly according to the Alberran drawing, which meant that the whole roof structure, tie beams, etc., had to be torn out to reduce the roof 6", to then reduce the entryway 6".

Mr. Kolins maintained that there was no explanation, except one–ARCOM was being punitive; the hostility expressed at the ARCOM meeting toward Dr. Rosenberg was shocking. He stated that he knew Dr. Rosenberg was an alternate member of ARCOM, and that his view on some things that came before ARCOM differed from the majority of the members. He declared that, in his judgement, for one reason or another there were some emotions and feelings there, and this was the opportunity to get him; expressly in the transcript it was stated that he was being treated differently than anyone else who came in because he was a member of ARCOM, and should have known better. Mr. Kolins specified that Dr. Rosenberg did not know about it, and when he found out about it he came in with ways to cure the problem. He stated that ARCOM acted beyond their authority; they were not an enforcement or punitive body, and had no such powers, and that clearly they said they were going to use this case to send a message, and the message was–do what we tell you, or else. He indicated that there was precedent to the contrary; there were cases where someone did something different than what ARCOM approved, and when they went back to ARCOM, it had been left alone–one example was Phipps Estates and the type of tile that was put on the roof.

Mr. Kolins asserted that ARCOM had not enumerated any criteria that were violated by the structure owned by Dr. Rosenberg. He noted that ARCOM had certain criteria, and were required to express the criteria being violated in each case. That had not been done in this case, because none of the criteria was being violated. What had been built could never be considered so out of touch that it violated the criteria. Mr. Kolins expressed that there had been an error of no aesthetic consequence, an error that was totally unintentional, and that ARCOM had clearly acted with emotion, rather than acting with reasoned judgment, imposing an unnecessary, excessive, and unreasonable hardship and burden on Dr. Rosenberg. He requested that the Town Council reverse the decision made by ARCOM, and allow the house to remain as it currently was, or to select one of the other two alternatives described.

Director of Planning, Zoning & Building Robert Moore commented that there was a discrepancy between the height described by Mr. Kolins and the height that ARCOM first reviewed, which were indicated in drawings that were exhibited for the review of the Town Council. Since there were four different architects involved, Mr. Moore advised that there may have been some confusion by Mr. Puzatella in the field when construction began, and there was a drawing done by Mr. Brennan, architect with Quincy, Johnson, Baretta, which Tim Frank, Planner/Projects Coordinator, would describe.

Planner/Projects Coordinator Tim Frank addressed the Town Council, advising that the drawing by Mr. Brennan was the one reviewed by ARCOM. The drawing that Mr. Kolins had exhibited was a working drawing that had been submitted to the Building Department. When the plans reviewer reviewed the two drawings he looked at both drawings and saw that they were similar, and therefore approved them. He had looked at the drawings for hundreds of other things, such as hurricane code adherence, etc. Essentially the difference in the drawings were that the Brennan drawing showed the parapet area, with the parapets being below the peak of the roof, so ARCOM never saw a drawing that showed parapets above the peak of the roof. He contended that the difference was not 6", but 11". The other drawing that Mr. Frank exhibited was the Alberran drawing, which indicated the parapet detail below the roof, and he again noted that ARCOM had never seen a drawing that showed the parapet above the roof level. He expressed that what was presented to ARCOM by the builder was that they were actually using the original drawings for construction, and should not have been because Mr. Yeckes was the architect of record at this time. He explained that the problem that ARCOM had was that they had never seen a drawing as detailed in the later presentation was given.

Mr. Kolins responded that he was not involved in this when it had initially gone to ARCOM, and all he could say was that his knowledge was that the first set of approved construction drawings had been approved by ARCOM, and there were errors made somewhere along the line. The question was what was the magnitude of the error, what anyone had intended, and what ought to be done about it, and in that connection, he read excerpts from the transcripts of an ARCOM meeting: "Lowry Bell: I have a suggestion, because I know most of us here are concerned, as Floyd is, that we are letting someone on this commission get by with something. However, it's a hardship, that if anybody else came before this body that we probably would say, okay, it's six inches, and wouldn't make that much difference and probably let it go... Theoretically, we approved two drawings, the original and the Jackie Alberran. So why should we be insisting on Jackie Alberran as...if we've already approved the original one to start with. I don't see why we should.

Laurel Baker replied: Because the SKA plan came in as a requested revision from the original.

Lowry Bell said: I understand it came in as requested, but we had already approved the other one to start with. We approved both of them, actually.

Eric Adams: But there's an unusual element here that I—

Lowry Bell: It's not the unusual element. It's the problem with not following through on it. But I just don't see the aggravation we're putting ourselves through when we insist that it be Jackie Alberran's as opposed to us insisting that it be Joe Brennan. Either one we approved. The Commission is certainly not stupid enough to approve one, throwing out the original one that we approved. Why can't we say either one is okay, if he does either one?"

Mr. Kolins continued, commenting that the only people affected by the 6" difference would be the people across Nightingale Trail who would be the only ones that would ever see the straight view of the house. He submitted for the record two letters, from Mrs. Marsha Cole and Mr. Avril Fisk, neighboring property owners, who had absolutely no problem with the house, and considered it a welcomed addition to the neighborhood. He distributed two photographs of the house, to be made part of the record, showing beginning of the landscaping package going in, noting that when the landscaping was fully completed, there would be no problem whatsoever.

Councilman Shaw inquired if Mr. Kolins had a letter of opposition?

Mr. Kolins responded that he knew nothing of it, and had not heard of it, or seen it.

Mr. Kolins expressed that the refusal of ARCOM to allow one of the three alternatives presented by Dr. Rosenberg was arbitrary and unreasonable, thus the appeal to the Town Council.

Councilman Wyett asked if an ordinary resident of the Town could tell a difference by looking at the two drawings without studying them, by just glancing at them, or from the street?

Mr. Kolins replied that it was his opinion that there would be no difference noticed.

Councilman Wyett stated that he agreed.

President Smith noted that there was one letter of objection, which would be entered into the record.

Mr. Kolins commented that he did not know the people who wrote it, or the circumstances of how they came to write it, but something in the letter jumped out at him, and that was that it contained facts, or alleged facts, that they themselves could not have known. He asserted that they had been given information with which to submit the letter.

Attorney Robert Deziel, member of ARCOM and resident of the Town, addressed the Town Council, stating that he was confused about the presentation today, and requested that the general contractor be questioned.

Mr. Kolins responded that this was not a quasi-judicial hearing, however, any questions asked would be entertained.

President Smith remarked that would be up to Mr. Kolins.

Mr. Kolins responded that any questions would be answered. He indicated that he did not think there would be cross-examination by Mr. Deziel, who he submitted had been the leader of the opposition in this case, and could make his own arguments.

Mr. Deziel replied that was totally out of line, and he was not going to get personal. He stated that he would accept the proposal of Mr. Kolins to make the conversation in good faith, and he submitted that someone had committed perjury at one of two public hearings, and it was either Mr. Kolins or the general contractor. Mr. Deziel then read from the minutes of the ARCOM hearing from which the application was being appealed, as quoted below:

"Robert Deziel said I just want to ask the builder a couple of questions. I proceeded to ask, and he's referred to here as Ray, so I think–is it Mr. Puzatella? Okay. Mr. Kolins has told us that, and if I'm wrong, correct me, that what was built in the field where this specific issue that is in question came from these construction drawings. So, I asked, and this was under oath at the Architectural Commission, I said, Mr. Puzatella where did you get that elevation from, that you constructed in the field? He said Richard Himmel. I said do you know who drew that drawing. He said, who drew it? I said yes, was that a drawing that you knew to have been submitted to the Building Department? He said there was a small structural change in elevation and we submitted that to the Building Department. I said, after the change was made? He said, before the change was made. And he said, and all it had were some recesses in the wall that were a structural change."

Mr. Deziel commented that the improvements that were in the field, and it was right in the minutes, were not constructed from either of the drawings that Mr. Kolins showed. Mr. Deziel then related the sequence of events that occurred, quoted as follows: "The builder was in the field, and he had some approved construction drawings, and he was building in accordance with those drawings, and in accordance with instruction from the owner. Richard Himmel drew some modified plans for the builder to follow in constructing a modification to this entry feature. That drawing was given to the builder, and the builder constructed those improvements in accordance with that modified drawing. He tells us right here under oath that he got the drawing from which he constructed these improvements from Richard Himmel."

President Smith asked who Richard Himmel was?

Mr. Deziel replied that he did not know, that he understood he was a designer or something.

Councilman Wyett interjected that he was a very famous Chicago designer, and also a resident of the Town of Palm Beach. He was a resident of the Town of Palm Beach and a noted interior designer, world famous.

Mr. Deziel continued: "The point being that I believe that Mr. Kolins' presentation is totally out of context here. This idea that there was a mistake made by a CAD operator—that's not what happened. What happened was Dr. Rosenberg brought this application, I want to put this in perspective for you, he brought this application to the Architectural Commission, I might be off by about one time, but he came to the Architectural Commission about nine times. He had four architects, two lawyers, a CAD operator, and a builder, all giving us presentations at various times. The last hearing that we had with him was the issue about the discrepancy of what was built in the field. His contractor told us under oath that those improvements were put in place in accordance with a drawing that Mr. Kolins hasn't even shown us today. So, what was taking place at the Architectural Commission is, at least myself, when I was voting on this application, I just wanted the applicant to construct in place what he presented as an application and told us he was going to construct in place, and as to Mr. Kolins' comment, I'll sum it up where he said that–I'll paraphrase it saying that there was no bad faith involved here, certainly there was bad faith involved. In the field, which is something the Architectural Commission has to deal with all the time, is an applicant making a modification, and then coming to us later, and granted there have been situations, and there's been exceptions where those modifications have been approved at the Architectural Commission level. I'm not speaking about your jurisdiction, but at our level, but me, sitting there that day, I'm looking at an application where we had seen it nine times. It had been an extremely difficult application, because it was an applicant that, in my opinion, was very difficult to work with because of the constant change in the professionals and the constant pressure by the applicant to get something that was obviously in contravention, or, in confrontation, with what the Architectural Commission was willing to approve. What we have here is an applicant that intentionally made a violation, in terms of improvements, than was approved by the Building Department, or the Architectural Commission. Then Mr. Frank's office finds out about this, goes in the field, measures it, finds out it's an eleven inch difference, and from what my understanding is, is that it was because the decorator wanted a higher ceiling, so they raised the trusses. If that's the case, and that's under oath here, I would like that conversation to come out, because I never heard Mr. Kolins one time mention Mr. Himmel or his drawings. That's the end of my presentation."

Mr. Kolins responded: "First of all, for someone who is not going to get personal, to then accuse me of perjury smacks to me a little bit two-faced, but let's let that go by. I'm glad Robert said what he said to you today, because number one, it makes me feel a whole lot better about what happened at ARCOM, because it's clear now that what happened at ARCOM was the product of ARCOM being, certainly Robert Deziel, and he's a very bright person, and if he was totally confused, I'm sure many other members of ARCOM were totally confused on what went on here. I didn't mention Himmel to you, because as I said at the beginning, there are extraneous issues here that really have nothing to do with why we're here, and I'm not going to mention them unless I have to, but I have to on this one. So, let me tell you what happened with Mr. Himmel, and why, when Robert tells you I'm perjuring myself, he's referring to the wrong drawing and the wrong set of circumstances, and when he gets an understanding of the facts, I'm sure he and I will shake and make up. At some point during the construction of this house, Baylie and Dr. Rosenberg engaged the services of this Richard Himmel for design advice, and what have you. In the course of that relationship, Mr. Himmel said in effect to the Rosenbergs, I don't think you should have this entry feature. Just have the door, kind of a flat, you know, just a flat door. Don't have this arched entry feature. That was his design idea. Beauty is in the eyes of the beholder. Now, Dr. Rosenberg did something here that was a mistake, but it's a mistake of no consequence. What he did was originally build the place without the arched structure, or if it was on there, they took it off, to see what it would look like the way this fellow, Himmel, suggested. Now, quite frankly, he should not have done that without going to ARCOM first, but he did, thinking if he liked it he'd go to ARCOM, and if he didn't like it he's putting the structure back on. You can't get a CO for the place if ARCOM approved an entry structure, and he's building a house without one. Should he have gone to ARCOM on that, yes. But, the Himmel drawings, and the whole Himmel thing, is of no consequence. It was done, and then it was put back the other way again, and has nothing to do with the discussion we had today, which relates only to the drawings and the discussion I've given you. I've taken an oath on that, and that is the truth."

Councilman Wyett commented that he believed a lot had been heard about very little, and that this was a very minor issue. He reminded the Town Council that when he was on ARCOM the first month, Mr. Martino was constantly coming to them on the street with very minor infractions. For a while it was given to him, because they were minor, and then members got annoyed and started tightening up, but they were lenient. Again, Phipps Estates was mentioned, and a very experienced builder substituted barrel for "S" tiles, and ARCOM met in special session to acquiesce to the change, which was greater than this. He said that he was disappointed that the fine people on ARCOM couldn't settle this situation in their own quarters. They had been given three choices, and now this situation had taken up more time than it would probably cost to make the change; a lot of time had gone by, and if it could be agreed upon that ARCOM was a little overzealous, he moved that the decision of ARCOM be reversed, and the drawings as the building now stood be approved. Normally, if the time had not run so long, Mr. Wyett noted that he would have suggested sending it back to ARCOM with the suggestion of choosing one of the three alternatives. The motion died for lack of a second.

President Smith then requested Mr. Kolins to finish his summary.

Mr. Kolins stated: "Option A - leave it the way it is. Option B - in the field, we will lower the arch, the shape of the arch, so the entry feature is six inches lower. Or, number three, we will cut off the arch altogether, and make it a flat roof."

Councilman Shaw commented that he believed ARCOM had both the judgment and the wisdom to be able to evaluate which of the three proposals would best suit the project, and moved that the issue go back to ARCOM at the next scheduled meeting, to allow them to chose one of the three options.

Mr. Kolins replied: "If that is the way this Council feels, and that's the way it votes, we will accept that graciously, and we'll do it, but I just would like to point out that if you agree on two things, then there's no reason why the house that's in the field should not be left that way, because the only reason to make a change is, A: if you think the difference is material–somehow it looks wrong the way it is and will look better the other way; or B: if you feel Dr. Rosenberg did something intentional, and needs to pay a price for it. I would respectfully suggest that neither of those things is correct, and therefore, there is no basis to do anything but leave it as is. However, I'm not going to be argumentative about it. If you want it to go back, and leave them the choice of the three, we will do that, but I hope you will think about that as you decide what to do."

President Smith remarked that a lot of emotion had run very high today, and that she did not believe it was an appropriate forum for anyone to accuse anyone of perjury or misdoing–if it was an honest mistake, it should be treated as an honest mistake. If Mr. Kolins said it was not intentional, she stated that she believed him. She expressed that the Town Council had not been privy to the Architectural Commission meeting and did not know what was said, and she did not believe that Mr. Kolins was guilty of perjury, but she did believe that ARCOM does it job and does it well, and if the emotions could be left out, a decision could be made regarding this project.

On roll call the motion of Councilman Shaw passed unanimously.

2. Consideration of Appeal of the Architectural Commission Regarding ARCOM No. B100-97, 306/314 Chilean Avenue, Euro Homes

Ex-parte communication was not declared by any Council member. (At this time President Pro-Tem McLendon corrected the record regarding ex-parte communication on Item 1 above, stating that he had a telephone conversation with Dr. Rosenberg on the case, long enough ago that he had not recalled it at the time ex-parte communication had been declared).

Attorney Ron Kolins, representing Euro Homes distributed various exhibits regarding this issue; curriculum vitae from three expert witnesses (Architect Gene Pandula, Planning Expert Howard Ostrout, and Urban Designer Henry Skokowski); copies of charts to be used in the discussion, and copies of a Petition signed by 15-16 residents of the street in support of the application of Euro Homes.

At this time Town Attorney Randolph clarified that these hearings were quasi-judicial hearings.

Mr. Kolins stated: "This is also an appeal from a decision of ARCOM, but it is an entirely different kind of a case than the one we heard a moment ago. This one goes to the question of whether or not the basis for the denial of Euro Homes application was factual, or arbitrary. Let me describe the case to you. Euro Homes proposes to construct a duplex. It's going to construct this duplex hopefully on Chilean Avenue, immediately west of Pan's Garden, near the intersection with Hibiscus. It had been before ARCOM a number of times, and they asked for various changes, and various changes were made, but the last time it was denied, and the basis for denial was Section 5-187, which is the section of the Code dealing with ARCOM's criteria, Subsection (f), and in a nutshell, that section says that they have found that Euro Homes' proposal is visibly, excessively, dissimilar to the area around it. Everybody on ARCOM and everybody associated with this case knows, and the record clearly shows, that the point of difference between ARCOM and Euro Homes is the matter of the square footage the size of the house, or the houses. Somewhere along the line ARCOM said we want you to reduce the size of each of those duplexes to 3,500 - 4,000 square .feet. In other words, they wanted it reduced between 20% and 30%. Therefore, there is but one issue in this case, and that is whether, in this neighborhood, two duplex units, each of 4,993 square feet is in effect, and if I can use the vernacular, out of whack. Is it visibly, excessively, dissimilar? Now we're going to show you that the size of these units is very compatible with the neighborhood, and we're going to show you that ARCOM's demand that the units be dramatically reduced was arbitrary and was baseless, and thus in applying the criteria to these facts they did so in an arbitrary way and without legal basis. Now let me show you this house as originally presented the first of the three or four times that the application went before ARCOM. I'm going to direct your attention to the bottom elevation. When that house was first presented, there was no mention of square footage, but ARCOM requested more neighborhood information to see how this house stacked up, if you will, in comparison to the rest of the neighborhood. What happened was, Mr. Pandula, the architect, went back after that meeting, and made some changes to the house. When he came back to ARCOM in November, number one, he gave that neighborhood information that was asked for. Number two, he had removed 3,000 cubic feet from the house. Number three, he had reduced the tower tie beam from 25 feet to 23 feet. He had reduced the main structure tie beam from 23 feet to 22.6 feet. He had modified the windows, and he had added balustrades. But ARCOM said the house is too massive, and it gave an option, and I want to read this exactly as it appears in the minutes–(This is the minutes of the December ARCOM) –It was felt that the project was still too massive, even though the plate height was lowered, which was a great improvement. It was suggested to create one story elements on either end of the building, or cut down on the total square footage, and they talked again about 3,500 to 4,000 square feet, and it was suggested in that meeting by the Chairman that what we really ought to do was make them compatible with the duplexes existing and being built on Brazilian Avenue not terribly far away. Go make them like that. Okay. So, in January we came back to ARCOM. We took the option, option A, of creating one story elements on either end of the building. Let me show you a rendering where the building was changed, cutting down the sides to one story, and in doing so significantly reducing the roof structure on either side as well. Now the square footage was not reduced. What the architect did was essentially take the elements from the sides and put it over the garage in the front, and he's going to describe that all in greater detail to you in a moment. I don't want to step on his feet. But, that's what he did. Now, basically the design of the structure met with ARCOM's approval, but we did not reduce the square footage, and ARCOM's reaction to that was one of anger. In other words, we told you to reduce it, you didn't, you're going to do what we tell you. Well, first of all, that's not what they told us per se, but in any event, it was with that approach that they denied or were again to defer this, and we took a denial so we could come to you to discuss the relationship of the size of the houses as we want them to the neighborhood around us, to see if there was any reasonable basis for ARCOM's denial. Now, with that, I'm going to ask Gene Pandula to come up here. You have Gene's resume. He is an architect, and an expert in the field of architecture. If you want to know anything more about his background he'll be happy to tell you, but he's going to describe the exterior and interior of these buildings. He's going to describe the changes that he made. He's going to go over the site plan, and essentially deal with the architectural issues relating to this house. Gene."

Gene Pandula stated: "Thank you. Good evening. My name is Gene Pandula, and I'm the architect for this project. Essentially what Ron said is completely accurate, and I think it is also accurate and fair to say that the issue, as it now exists, is one of size and not aesthetics. I think the aesthetics have pretty much been ironed out with the Architectural Commission, and it's my understanding, at least, that the building, as it looks, as it fits into the fabric of the neighborhood, is essentially acceptable. It was always our intention to do a background or a fabric building, not something that stuck out, and in fact, when we went for our demolition permit for the two nonconforming buildings that were there, we were asked to do a building that had no smultz–to just be simple and straight forward, and let it fit in. It was our intention, and I think we've also done that. The site is 125 feet by 125 feet, just over 15,600 square feet total. It is bordered by Pan's Garden to the east, by an eight unit multi-family building to the west, and by the back end of the Peruvian Avenue commercial district to the south. We have constructed a building and located on its site, such that it's a cruciform in shape and plan, and we've done that for several reasons. The first reason is to hold as much of our building perimeter back away from our minimum setback lines as possible. If you were to take a look at the required set back limits it turns out to be 370 feet of total perimeter set back area. Our building borders that at its minimum requirements at only four locations, totaling 104 feet, so only 29% of our building, or 28% is built to the side or rear or front lot line maximums. Of that 29%, two-thirds of which, one is along the garage front elevation, and the other is at the rear elevation bordering Peruvian Avenue, is two-story. The other areas are one-story buildings. So we thought we were being very compatible with the neighborhood, stepping down towards Pan's Garden, which is a one-story library element on the ground floor, and a guest bedroom suite on the second floor, and also doing a little bit of ying-yang here with the multi-family building, who has its private areas in the center, and there are solid walls here, so what works for them also works for us. It just happens to dovetail. Lastly, we also wanted to open ourselves up to the southeast–the wind exposures and the sun, and not build an L-shaped building that caused us to put all of our private areas in shade or shadow, so we're taking advantage of that, and just pretty much ignoring what's here on Peruvian Avenue, dealing with that through landscaping. Our original plan footprint that was submitted to ARCOM had the one-story elements here above the automobile garage, closer to the street. It was our philosophy that in mitigating mass that was the approach we were going to take. As ARCOM presentations developed, it became very clear that there was a distinction there, and they were preferring to see the mass mitigated at the corners, so that the building in pure elevation looked to be smaller, so ultimately, that's what we did, was relocated square footage, and these darker areas that you see shaded here now where the second floor mass was taken away, and rooms were shifted. This form allowed us to enter the building in the middle, and was a very efficient plan use, as it gave us the higher ratio of gross square footage to net. This made us reduce some room sizes in order to keep the square footage about where it was by moving the masses around and putting bedrooms up front, but nevertheless, the two end units here of the house have become one-story units, even stepping down further both to Pan's Garden and into the building to the west. I'll just quickly show you the floor plans. Basically they are similar and opposite hand, however, the detailing is different on the outside, so that they look more as a single family house, rather than two split units made opposite hand. The garages are tucked up front, and in the center of the site. Both garage doors are side loaded. Nothing is visible from the street. And, it's two houses that are meant to be for families, so it's average room sizes. There is nothing extraordinary about the layout, or quantity or quality of these rooms. Thee is an entrance foyer, a powder room, a library, living room, dining room, kitchen, and either a guest bedroom or a cabana out back; flipped on the other side. The second floor has simply a master suite and two guest bedrooms, with a balcony area in the front, terrace spacing east facing Pan's Garden here off of one guest bedroom suite, the roof form of the library below, which is a one-story element, and then flipped on the other side in a more octagonal shape, the one-story library roof below, and also a flat roof facing the private grounds of the residential unit to the west. And finally, I'll show you the latest front elevation of the building, which I believe you saw a moment ago, which is where the eroded mass of the second floor has been taken from, in this case increasing the side yard setback for the second floor to approximately 27 feet at this location, and 21 feet further back. The same is true dimensionally on the opposite side, 27 feet from the property line to the main second floor mass here, and then back further in the site to 21 feet."

Attorney Kolins then stated: "Thank you, Gene. What we had to do was show you–what we have to do is show you that this house is perfectly sized for the neighborhood; certainly not visibly, excessively dissimilar. Now to do that, first of all, you've got to understand the neighborhood. Let me tell you what we've done. You see three picture charts up there, and they are numbered. Those numbers correspond to this layout of the area. These lots right here are the lots we're talking about as to where this duplex would go, and you can look at those pictures, and the numbers that are on them, and compare them to these numbers, and the numbers run, one, two, three in sequence, 19 to 11, 12, 13, 14, 15, and so forth. You can see the numbers here, and they're the same numbers that correspond to that. The first think you need to understand about this neighborhood is that it is ver eclectic. It is very diverse. It is not a neighborhood that has all the same kind or types of houses. To our west over here we have a park, Pan's Garden. To the west of that, all over here, is parking lot. Across the street we have mostly multi-family, with a couple of single family units. On this side of the street we have mostly multi-family, and we have commercial back on this street, so it is a complete mixture, and to make this visibly clear to you, let me show you this chart here. What we have done is color categorized each different type of structure in the neighborhood. So, first of all, the green here is Euro-Homes property that we're talking about. As I told you, we have Pan's Garden here. This slashed area is parking lot. The yellow houses that you see are single story, single family homes. The orange, and there is only one, is a single family two-story home. The red, of which there is a lot, is multi-family, and the blue are duplexes, not terribly dissimilar to what we want to put here. So you can see that there is a great variety, plus, of course, the commercial to which it backs up to here on Peruvian. Hoping that visually that shows you the kind of diversity that we have in this area, and in fact to orient you just a little bit, these houses are Ed Curry's duplexes that you approved and he put up. These are recently put up duplexes, and we're right over here. Now, we are in the R-C District, and in the R-C District there is no requirement to meet any criteria for FAR or CCR. We've got a bunch of charts that I'm going to show you that compare all kinds of things, and we include FAR and CCR, not that we had to, but we wanted to be as complete as we could. And these charts that I'm going to show now, you've got copies of them, so you can follow along with your own materials. The first one–the fact that it's so large that we had to use two boards, and so you've got the first two pages in your package. The first one compares all of the houses that we've marked on that map, or all the structures, that are shown in these pictures, and they are also numbered in a corresponding fashion, and if you look at them–we've done lot areas for all of them–lot width, building coverage, square footage, or gross floor area–if they are CCR, unity be and floors. And if you compare us, we're at the very end. Compare our numbers to the numbers of all the structures in the area, you will see that in each and every category we compare very favorably. We are very similar. We are certainly not visibly, excessively different. To bring that home, we did the next chart. What this chart does–it takes all the information from the first two pages that you have, and simply distills it down to show for each of the categories in that neighborhood the highest, the lowest, and the number of the proposed unit, and you can see as you look all the way across in every single category, we compare very, very favorably. Now, we were asked specifically by ARCOM–well, before I do that. We also decided to do what I'll call a duplex analysis of all the duplexes in the area. And so we have a chart that's called a Duplex Analysis. Now we were told by ARCOM, as I told you, to compare ourselves to Brazilian. We were told to do it about the size of those duplexes on Brazilian, so we did. I invite you to look at this chart, which compares the numbers for the Brazilian Avenue duplexes, and our duplex, and you can see that our numbers are right on the mark with those. Quite frankly, we tried to present information about this to ARCOM, but we weren't even allowed to get it out of our mouths the last time–it was like pooh, pooh, no longer of any importance. We did another chart, adding to this one the Curry duplexes as well, and even when you do that our numbers compare very, very favorably. The point being, that no matter how you look at the numbers for that neighborhood, we are compatible with the neighborhood, and it is unreasonable, grossly unreasonable, to look at this information and say that we are visibly, excessively dissimilar. Now, I would like to introduce to you two of our expert urban design witnesses, and have them comment on this. The first is Henry Skokowski. I know you heard Henry last night on another case, and as you know, therefore, he's a principal in Urban Design Studio. He is an urban design expert. He's going to tell you about some studies he's done, which is very appropo to the issue that's before us today, and he's going to comment on this situation for you."

Henry Skokowski stated: "I'm all for the briefly part. You're going to hear this a little bit repeated, I think, in terms o f maybe some of the things that are more relevant, by Howard Ostrout. You heard my credentials yesterday, so I won't go through that here again. It's a matter of your records in the Town. What is relevant, is that I have been working on the issue of large homes in several communities. It's been a very interesting assignment. I worked several years back for the Town of Gulfstream, which is a residential community, on the issue of dealing with the problem when homes are built within existing neighborhoods, and they were too large, and they become offensive in a number of different ways. I brought that manual here with me. We worked very hard on it. We think it's an excellent document. It did receive a national award, and that came me the good fortune of sort of propelling me to be interviewed by the Wall Street Journal a couple of times. I got hired by Ocean Ridge, and I'm currently working for Delray Beach on exactly the same issue. And my cohorts in California are going to Carmel, and all kinds of places, exactly dealing with the same issue. So, it's all over the place. CNN has had reports on it, etc. As we worked on this, and it's been interesting real quickly, to compare some of the things that we came up with in the Town of Gulfstream, and frankly I've recommended in other instances, to what's happening here. I have viewed this property. I have looked at the neighboring properties. I am familiar with all of the plans that are being proposed here for this site. There are two issues that I think should be considered. I will speak to one. I think Howard will speak to the other. The first issue is, if you're going to have a building of a certain size, if that's acceptable, how do you not keep it from looking big, just by virtue of its design, and you can do that. You do that simply by coming up with a design which references a human scale. And without getting into the concept, and any kind of detail, in the interest of time, let me tell you some of the specifics that we look at. Number one on my list was what Gene had already talked about–you have minimal setbacks. I am involved, I'll tell you, in a case in the Town of Manalapan, which is still pending, where a home was built, and the entire mass of the house was built along one property line to its maximum height. In that case, was there sensitivity of that homeowner to the abutting property? There certainly was not, and there's a lawsuit in that case. When I looked at this property, one of the questions to look at was how were the setbacks treated, and as I think Gene told you here, there is minimal portions of this house which are minimum setbacks, in all instances, on the side, as well as on the front. Secondly, what about another major consideration as far as how the house looks is how the is the two-story mass of the house treated, especially as it relates to an abutting property line, and again, as you've seen here, it has been stepped down. It's a one story relationship to the abutting property. That visually simply also makes the house look smaller, regardless of the size that it is. Number three, what about the number of eave lines? That's something that maybe you don't talk about here. We did in Gulfstream and Ocean Ridge. Does the house look really busy? Do you have seven different tie beams and eave lines to make the house look big and complex and busy? No, you don't. The eave lines are minimal here. It's interesting, yet restrained. What about the building height. It was an interesting question here for me just to real quickly look at what we did in Gulfstream, which I only reference because from my experience they are probably the most restrictive community that I've worked in. Their standards are as follows, very briefly: if you're over 24 feet, 6 inches on the tie beam of a second story house, the tie beam over 24'6" is prohibited–it's just prohibited, you can't do it. If you're between 22 feet, 6 inches and 24 feet 6 inches, if you're in that two foot, we'll consider it, the Town of Gulfstream says; we'll look at the design. We discourage it, but we'll consider it, but it is discouraged. Anything less than 22 feet, 6 inches is in fact what's referenced in the document as being preferred. Anything less than that is okay. What you have here is a building with a scale where the tie beam at the second floor is interestingly enough at 22 feet, 6 inches. That's something we didn't plan. It just was discovered as I reviewed this particular proposal. Next, what about the front entry to this building? One of the biggest offenses, I feel, and I've testified to this professionally a number of times, is when a home comes in and builds a very large porte cochere; you may have seen some of those–I hope I'm not offending anyone if you live in one of those homes, but I've seen porte cocheres that make a home look like a hotel, and when that is not characteristic of a residential area or a neighborhood, it does, in effect, dramatically change the sense of the size of that building. That is not present here. The entries to these two units here are very restrained. Fifth, and second to last, are there any large expanses of glass? We dealt with that. Do you have floor to ceiling glass, as it relates to the street? Are there large, sort of picture windows, that are undifferentiated by mullions, and so on? No, there is not in terms of the character of this building and the sense of scale and scaling it down. What about large blank walls? The last one of many that I think that I can clearly site here. It just is not present. So, when you look at all of those kinds of considerations, you see a design, it clearly seems to be designed in a way that is very sensitive to trying to look as small as can be, and the last question, and then I'll turn this over to Mr. Kolins and Mr. Ostroud, is simply, how does it relate? And we certainly looked at that in all the other communities I've worked in– how does it relate to the rest of the neighborhood? And I know that you have this standard of 200 feet. I don't know how exactly you apply that. It's certainly a very reasonable standard to start with, and it is perfectly reasonable when you have a homogenous street. If you have a single family neighborhood, a block of single family homes, it's perfectly reasonable to say, well, let's look 200 feet in either direction and see what those homes are like, and see how we relate. What I've found, and what you've heard here tonight, is that that's not what you have here. You have a very diverse type of a street here. There are small single family homes, and there are fairly large multi-family buildings in this area. I think when you have that type of environment, it's perfectly reasonable to look at an entire block, and look at, is there a pattern if I go beyond 200 feet–is there some sort of a pattern than emerges that I really should relate to? And in this case, clearly, there does not seem to be. There is quite a diverse pattern, and in fact, if you looked at a couple of duplexes that do begin to show up, if you go outside of the 200 feet, that are not very far away, they are virtually the same as the proposal here. So, it seems to me that everything has been done, and Mr. Kolins has done a lot of research that we've reviewed and confirmed, and Mr. Ostroud will comment on that. That will conclude my comments here. Thank you very much."

Director of Planning, Zoning, & Building Robert Moore stated: "Under cross examination, Mr. Skokowski, please. Did you just make the statement that if we go outside the 200 feet that you find duplexes that begin to appear, and they're virtually the same? Was that what you just said?"

Mr. Skokowski replied: "I believe that's exactly what I said, yes sir."

Howard Ostrout, landscape architect/planner stated: "You have my resume there. I won't get into the background of my experience, but it's extensive in Florida and throughout the United States, and we're currently doing projects overseas also. I had a very detailed two-hour presentation to go over the specifics, comparing square footages, but I'll do a summary for you. I think the key chart here is the chart that compares the high and the low to this project. It's in your handout, and what I'd specifically like to point out within this chart is the section of the code that we're discussing that the denial was based on, which is Section 5-87(f), page 558 of your Code. There are three major points which are looked at within the Code related to this proposal. In the first is the cubical contents ratio, comparing the cubical contents of the proposed structure with the cubical contents of similar structures on the street, and what we have is a high of 13.78, a low of 2.55, and the proposal at 7.2, which falls pretty close to a mid-range. The second item is the gross floor area. Again a high of 47,004 square feet, a low of 1,589 square feet, which is a small single family, and the proposal of 9,986 square feet. The third is the height of the building. In the comparison chart when you're looking at the overall chart which lists all the properties, we have a floor height on that chart, and there is one building that's on this block that's outside of the 200 feet, but speaking in terms of the neighborhood, I think a 200 foot boundary is really artificial when you're looking at trying to feel the character within the neighborhood. There's that six story building right at the end of the same block. The low structure is the one-story single family home, and the Euro-Home proposal of two-stories. I'd like to point out that sixteen of the twenty-one properties within the neighborhood are the two-story properties. Looking at the duplex units only, which are the three duplexes within the neighborhood, again, there is a high cubical content ration of 7.3, a low of 6.7, and then the Euro-Homes proposal at 7.2. Gross floor area: again, a high of 11,100 square feet, a low of 10,058 square feet, and then Euro-Homes proposal of 9,986 square feet. Height of building: they're are all two stories, on the duplexes, so the high and the low and what is being proposed is two-stories. The fourth item within that section of the Code that is looked at is the architectural character in fitting in with the neighborhood, and I think both the architect, and Hank described what is being proposed, and I also agree that it is very appropriate for the neighborhood, and if you look at the apartments, other multi-family units on the street–what is being proposed is actually a great asset for the street, and it is my opinion that it would really be improving that street. So, that's a quick overview of my presentation. If there are any questions."

Tim Frank, Planner/Projects Coordinator stated: "For Mr. Kolins. Essentially, I'm interested in these numbers that are coming across, and I guess what I'd like to do is just put on the record–were these figures available for ARCOM? I don't remember seeing them."

Mr. Kolins replied: "A number of neighborhood statistics, I think, were given by Gene at one of the ARCOM meetings. These charts and everything you're seeing here today was prepared for this hearing, and we did not have them at ARCOM, no, but I think Gene Pandula, at a prior hearing, had given the neighborhood information that was requested. I was not at that hearing, so I could only tell you from the minutes that I read, what transpired."

Mr. Frank responded: "I just don't remember this sophisticated of an exercise being presented at ARCOM, although they did ask for it."

Mr. Kolins replied: "Well, you know, you raise a very good point, Tim. You're right, that this sophisticated an exercise was not done at ARCOM. And I guess I need some guidance from ARCOM and this Council, because if this sophisticated an exercise is required every time you go to ARCOM, the cost of going to ARCOM becomes impossibly prohibitive. This is an appeal. It's an unusual case; so the client authorized us to do all these things, but I can tell you, it doesn't come cheap, and I can't believe that everybody should do this kind of an exercise, whenever they go to an ARCOM hearing, but if I'm wrong, then maybe that's got to be done. I do want to point out that in addition to the sixteen or so names on the petition that we sent, four letters in support were submitted for the record at the last ARCOM hearing, and just interestingly enough, one of the supporting people was the person that lived in and owned the house immediately across the street from this lot. Let me sum up. I know it's getting real late.

What we've simply tried to show you is that in this neighborhood, with six-story multi-family buildings not far from hotels, with a number of other duplexes, primarily a multi-family street, backing up to commercial, it is just flat out not reasonable to say that this duplex cannot be built because it is visibly, excessively dissimilar in square footage, and we should cut it back by 30%, and in so doing destroy its usefulness for a family. We hope you will agree, and I know it's late. You've had a very long day, and I thank you very much for your attention."

Director of Planning, Zoning & Building Moore stated: "Staff comments: this is not a case where you would be comparing the houses, as you were. Mr. Kolins did say that it was different. It's ironic that he was handling both cases here. This is the R-C Zoning District. It is a district that does not use FAR or CCR, and this is quite a sophisticated chart, as Mr. Frank has pointed out, and it certainly would be available for, and good for ARCOM to use. Their charge, even though it's not required under the R-C Zoning District for–their charge still deals with cubic content and square footage. Mr. Skokowski, and I apologize for the hard to pronounce name, did testify before us last night. I think he did a great job testifying here today. I think he presented some issues that are–were very pointed, on point. I think they were issues dealing with mass, and, after all, that's what ARCOM is looking at in this particular case, and oftentimes in cases in the single family zoning district is mass. How it appears; how it compares. He, unfortunately, did make one statement which I know he didn't mean to, and I'm not taking it out of context, but for him, it will probably identify what part of our problem here is; it's that not only are we not to be too dissimilar, we're not supposed to be too similar. And, in fact, the duplexes that are being compared are, in fact, and ARCOM has found them to be very similar. And that is one of the issues that they have been trying to get the developers of the duplexes to consider. The statistical data is on line and it shows them very favorably. The fact that it's an eclectic street, backed up to commercial on the south, I think bodes well for them as well, for their need, and desire on how they compare, but beyond that, the issue of the duplexes is one that ARCOM has been trying to get the developers to deal with, and Mr. Kolins' chore here today was to convince you that, in fact, he has dealt with that in a manner that would be sufficient for you to overturn ARCOM. But, in fact, and I believe Mr Pandula stated it correctly, design isn't the issue, but mass is, so I believe that the mass issue is still here before you, and I think what you need to do in this particular case is consider this mass, if you feel that ARCOM has not looked at the mass correctly, then you may want to overturn them. If you feel that mass is a concern that should be looked at more carefully, you may want to return it to the Architectural Commission with instructions to look at the mass, look at the comparison of the street, and at that point make their decision. That would be the staff comments."

President Smith stated: "Mr. Kolins, I saw in reading the minutes that the original action of the Architectural Commission had been for deferral, and you specifically asked for the denial, so they did not deny you right off the bat."

Mr. Kolins stated: "Yes. If I could explain why I did that."

President Smith responded: "Well, I think I know why you did that. What I was going to ask was for Mr. Pandula, being the great architect that he is, and I always say this to all you architects, if the project had been deferred, Mr. Pandula, would you have been able to reduce the mass without substantially changing the design, which is something that I think we all like."

Mr. Pandula stated: "The answer to that is no. This was our third presentation to ARCOM."

President Smith responded: "No. I'm not asking you how many times you've done it. I'm asking you, would you be able to reduce it more, and you're saying no?"

Mr. Pandula replied: "No, not this design, and not these requirements."

President Smith responded: "Why not?"

Mr. Pandula responded: "Because it is, in terms of the square footage of the building, it's a family home. It has three bedrooms upstairs, and as I explained before it has a living room, dining room, library, and a kitchen downstairs. They are not of extraordinary scale. These rooms are not the scale of Mar-A-Lago, so my point is that it's a very reasonably scaled home. It has a 13 foot tie beam for the one-story units and a 9'6" tie beam for the second story units, which is the average of what's being built these days. It doesn't offer extraordinary space, but it's not cramped either. And if you were to reduce square footage, which is the only to reduce bulk at this point, you would, in fact, lose more than an entire suite of rooms, and it becomes a completely different project, which was not what we asked to accomplish."

President Smith replied: "All right. Did they give you a specific amount that they wanted these houses produced?"

Mr. Kolins replied: "Yes ma'am, they referenced on more than one occasion 3,500 to 4,000; a reduction of 20%-30% of the house. You might be interested to know. I think I'll tell you this. It might be relevant. The owner of Euro-Homes, Mr. Ciomek, is planning, if these area constructed, to use one of these duplexes for his private home, and he has a wife, and two children, and a mother-in-law that would be living there, and every one of those rooms is accounted for, and that's why it's a family home, and not built for just a couple, which is what would result, I think, if Gene had to cut it down by 20% or 30%."

Director of Planning, Zoning & Building Moore stated: "Mrs. Smith, may I ask Mr. Pandula a question, since there was a statement? Mr. Pandula, are you really telling the Council here that you could not reduce that floor plan by 500 square feet of each unit, and still not have a marketable, a comparable type unit? Because that's a pretty strong statement. I mean 4,900 square feet on each unit–."

Mr. Pandula replied: "Well, you can, but it becomes what's reasonable, and I don't know that I'm the expert on saying that if you have bedroom that's 15 feet by 15 feet can you reduce it to 14 feet by 14 feet, the answer is yes. On the other hand, there is a standard, and I think Palm Beach has a standard of what's acceptable for–"

Director of Planning, Zoning & Building Moore stated: "Right, even in our single family R-B Zoning Districts, 4,500 square feet is the maximum that you could put on a 10,000 square foot piece of property, so you're saying that these would have to be bigger than a single family home in an R-B Zoning District."

Mr. Pandula responded: "Well, they're essentially equivalent. If you take 450 or 500 square feet out for a garage, you've dropped from 4,900 to 4,500, so you're right there. It's an equivalent number."

Mr. Moore replied: "I wouldn't argue with you on that, but 4,900 versus 4,500 is 400, so I'm not going to argue with you for a 100 square feet, but we believe–staff does believe they could take out some square footage to address some of that, but that's an option that they would have."

Mrs. Smith stated: "Well, Mr. Pandula said he couldn't."

Mr. Pandula responded: "We were asked to take 2,000 square feet out, which is a far cry–"

Mrs Smith replied: "No, I asked you, could you reduce it? And you said no. I understood that your answer was no."

Attorney Kolins stated: "Well, let me make sure we're not–you can reduce anything. Of course this house can be reduced. This house can be reduced to 1,000 square feet or 100 square feet. The question is can it be reduced in a meaningful way for what it's intended to be. I don't want us to be cute with you when Gene says no. Of course it can be reduced, but I just would like to remind you that the issue is not whether it can be reduced from 4,900 to 4,500, just for the sake of taking something away, which probably wouldn't visibly change very much, but whether what it is at, 4,987, or whatever, 93, is it out of visibly dissimilar with what's around it? And the evidence today clearly, without question, shows that it isn't, and that's really what our case is to you."

Councilman Wyett stated: "Ron, what's the maximum number of feet you can legally build there?"

Mr. Kolins replied: "The maximum number of square feet? I'd have to defer to–."

Mr Pandula stated: "It's going to be about 10,800; 35% lot coverage is just slightly more than 5,400 per floor."

Councilman Shaw stated: "I really don't have any problems with the proposal. I think what I'm a little confused about is this process. The people that denied it, I would think should be the ones that would explain, on the basis of why they have denied it. I mean, I realize that staff is relaying the feeling, but I think if we are sitting here–."

Director of Planning, Zoning & Building Robert Moore responded: "The normal process would be for you to have the staff comments, and yes, that is our responsibility to try to do it in technical terms to, but the Chair of the Architectural Commission is here, and if you wish to ask them any questions."

President Smith stated: "We don't usually have the appeal presented by the Chair of the Architectural Commission. We have it done by the applicant and then by the Building Department."

Councilman Shaw responded: "I guess what my feeling is in the last case, where there really is no comment coming back from ARCOM, then we're going to make a decision. I mean, I don't see where there's a problem. I've heard your points, and I understand what you're saying, but I mean, unless there is something that's coming to me that says why ARCOM feels this cannot work, I really–Mrs. Baker is now going to do it–but I think that's what I need before I'd like to comment on the project."

Chairman of the Architectural Commission Laurel Baker stated: "I'm Laurel Baker. I serve as Chairman of the Architectural Review Commission, and obviously live in Palm Beach. I'd like to clarify a few things: the first being when the demolition request came in, the directive was, don't bring anything back hoity-toity, not schmaltzy, and the direction was an attempt to have them look at the neighborhood, since it is a neighborhood with a project being presented in transition, and try to be somewhat sympathetic, a little more eclectic, if you will, rather than adding to the acres and acres of barrel tile roof in the community. That's number one. Number two, for clarification, when the applicant was directed to look at the projects on Brazilian Avenue it was not to be exactly like that project, but to see how the massing was accomplished, realizing that the lots on Brazilian are significantly deeper, and have, I believe, more green space available on the project. The massing details, how it relates to the neighborhood, the chart that you provided this evening for the appeal was excellent. I would point out that in the application process for the Architectural Review Commission, part of the application has a form that asks for a comparison of CCR, FAR, lot size, square footage, of houses within 200 square feet of the proposed project, with the request that the average be figured in and put onto the chart, not including the project proposed figures, because that would obviously skew the overall figures. So the chart may have been helpful last month in discussing what was liked and disliked about the project, however, a review of the minutes will also show that when the project came back last month they were instructed to reduce the overall square footage, and address the massing issue, which they did by creating a one-story library on the corners, however, as the records will reflect, there was an overall increase in the square footage of the project. Now, I don't know how the Commission is supposed to respond when a directive is given, and an applicant, be it this applicant, or anyone else who comes before our group, if they are given directives, and they don't follow them, how is the Commission supposed to respond? How do we measure what was presented in December to what is being presented in January? Have they followed the directives? Fine, we can take it from there. If they haven't followed the directives, what is our response to be? We offered a deferral, you requested a denial. You got what you wanted. I would point out in the original presentation, the reference was made–we cut out 3,000 cubic feet. How many square feet is in 3,000 cubic feet? There is a big difference. It sounds like you just whacked that building down to size that anyone would like, when in fact, it wasn't. I really would like to know what criteria you would like for us to use. The criteria that was presented through the Gulfstream plan is excellent. We are working with the guidelines we are given, and we try to respond. The Commissioners, obviously, are concerned about this project, and a number of others, or they wouldn't be here tonight to listen and to respond to the statements that were made. Mr. Shaw, does that cover what you were looking for?"

Councilman Shaw replied: "It's a generalization. I mean, I guess what I'm looking for. You've got to go back now and sort of put it back together as to specifically what it is that you want them to do. I know they came in slightly larger than you originally said. It answers it. I just think that that's part of this process. I think you need to be a part of the appeal system. I think that's important, since you are the ones that made the decision. I don't remember what the vote was."

President Smith stated: "I think, Mrs. Baker, if you could tell us when you deferred it, was it because of the design criteria, or totally the massing, or did you feel that the project could be reduced, which is why you gave the initial deferral?"

Mrs. Baker responded: "The issue is size."

President Smith replied: "Totally. But you felt it could be worked, which is why you did not deny it when they came in having added square footage to it, is that right? I mean, I don't want to put words in your mouth, is that right?"

Mrs. Baker replied: "We don't like denying things, and we did offer the deferral so they could go and re-study the size issue again."

President Smith stated: "But you felt there was potential for reduction, because basically the Council or the Commission liked the design, is that correct?"

Mrs. Baker responded: "Absolutely."

Attorney Kolins stated: "Madam President, may I have just one minute please. I don't want us to lose sight of something that is critically important here. Laurel Baker just said to us that ARCOM gave us a directive, and when we came back we didn't follow that directive, what are they supposed to do? Well, she's right. The directive was to reduce that house down substantially in square feet. It's our position that we don't have to do that because we don't fail any of the criteria. There's nothing in the Code or in ARCOM's criteria that requires it. That's why we're here. To tell you our size is fine, and indeed, it is. I want to explain one thing very quickly to you. It is true when we came back to ARCOM the last time we were a couple of hundred square feet larger than we were before. Let me explain how that happened, so nobody things that we were being greedy, or wise guys, or whatever. When Mr. Pandula redesigned the house to take mass from the sides, and he put it above the garages, nothing was changed in terms of number of rooms, size of rooms, or anything, but because of the change of locations of those rooms, some extra hallways, access-ways, had to be created so you could get to it. As a consequence, a couple of hundred square feet more was added for that access, so I don't want anybody we made the house bigger in living space because we really didn't do that. The real question here is not whether ARCOM thinks we can reduce it. They really don't have a right to tell us to reduce it if we are sympatico, compatible, with our neighborhood, which we showed you we are. And the reason we asked for a denial when they deferred it for the third time, we knew the only way, coming back month after month, the only way they would approve us is if we at some point reduced the size to 3,500 or 4,000 square feet. We knew that was not what we could do, so why keep coming back and coming back. We said let's take our denial, and we'll take our appeal, and that's what happened."

Councilman Shaw stated: "That answers my question. I just felt that I wanted to hear the reasoning behind it. I think square footage can be deceptive. I mean, I think you can add square footage by simply closing in a niche somewhere, or making another little recess on something, and all of a sudden you have either grown or shrunk. You can adjust cubic content by either adding a balcony or removing a balcony. There are a lot of ways to move some of the numbers around, and I think that mass is something that is important. I look at the project. I think that it looks very nice, and I think that it's compatible with the area, and I think that's part of what's supposed to be done. I just, you know, I have a very hard time making–the architectural decisions that ARCOM is supposed to make. We seem to make decisions, or we make offers of what we like, but ultimately, we're not the ones that have to build it, and I just wish there was a way that you didn't have to come here. I don't know where to go with it."

Councilman McDonald stated: "I'm wondering if the townhouses had been presented this way to ARCOM would they have approved it. I mean, this is quite a lengthy, thorough presentation, and perhaps if it was done this way ARCOM would have approved it. Maybe that's a question to Mrs. Baker. Well, Mr. Bell, you go first. Mr. Deziel's been up and Mrs. Baker. Let's give Mr. Bell a shot."

Mr. Lowry Bell, member of ARCOM stated: "Mr. McDonald, it was presented basically this way to start with, as far as the architectural design is concerned. These other numbers are very interesting, but that's not what we were concerned with. We knew it fit within the zoning of this Town. Practically everything that comes before has to meet the zoning, or it doesn't even appear before us, so that's not the issue. We felt it was too large to start with. We deferred it. We're the ones that made the suggestion, go one story. They came back one story on the two sides, but then built two stories up front, which is the most imposing part of the street, where everybody sees it, so we felt that was too large. In fact, they did increase the square footage, I think, from something like 400 or 500 square feet per unit. We had asked them prior to that to reduce it to 3,900 square feet, and they come in at 4,900 square feet, so there was a 1,000 square feet more than we had asked them to do. So, we were willing to work with them again, make more suggestions to them, and Mr. Kolins, as great as he, decided he wanted a denial. I did not wish a denial. I wanted deferral at that time, because I felt that the way it would be presented here is if we were doing something wrong. And I think we were well within our charter to comment about the size of it, even though it meets all the zoning requirements in this Town. I feel that they could have reduced it. Mr. Pandula has said many times, in front of us, ARCOM, that he couldn't reduce it because the client wanted it that size, so I don't feel that's an architectural reason not to reduce it. I think that there's two issues here tonight before you; the prior one Mr. Kolins represented, I was the only one that voted against it, because I didn't feel that an issue that small should come before this committee, the Town Council. I feel that most of the time we should be able to solve our problems at home. I feel that this is one we definitely could have solved, had Mr. Kolins been more reasonable."

President Smith stated: "Mr. Moore, if I could ask you, now what will be the course of action tonight, if the Town Council upholds ARCOM's decision to deny this project because it's too big, what happens them?

Director of Planning, Zoning & Building Moore replied: "Well, they would have to–the red tape decision would be they would have to re-file and bring back something substantially different in nature for them to consider again, or you could waive that, in my opinion, under the appeal process, and I defer to Mr. Randolph for the legal opinion on that, and send it back to the Architectural Commission for further discussion."

Town Attorney Randolph responded: "You wouldn't have to waive anything. You could remand this back to the Architectural Commission, with direction, but you'd have to give them some direction, if that were the choice that you were to make."

Attorney Kolins stated: "I don't understand something, Madam President. I just gotta get this straightened out here. ARCOM is firm that they were only going to approve this house if each one was between 3,500 and 4,000 square feet. That is not adequate for the purposes for which these houses were being built. Their only legal basis–you know, they keep saying, we want it smaller. They don't have an unfettered right to say they want it smaller. They have certain legal standards that they have to follow, and he legal basis that they chose to deny this on was that it is visually, excessively dissimilar. All of the evidence, <u>all</u> of the evidence tonight, shows that not to be the case. Therefore, it seems to me there is no legal basis for them to say, make it smaller, and we have a right to build it at this size. That's the purpose of this appeal, to show you, in relation to the issue that they used as the basis for denial, to show you that they were flat out wrong in this particular case, and they are. I don't see how one can deny that. So to remand this back to ARCOM, so that ARCOM can tell us again, make it smaller, I think gets us nowhere, but to shirk the appellate process. I think we have to make a decision."

Town Attorney Randolph responded: "I would like to add to that. The reason that this is a quasi-judicial hearing is because ARCOM and you, because now you're sitting in an appellate capacity, have criteria within your ordinance to apply. And so, in sitting this evening, you have to look at those criteria, and make a determination as to whether or not ARCOM was either correct in its decision, based upon the criteria that was stated in the motion, or whether based on the criteria, they were wrong. And you have to do that on the basis of the criteria that are set forth in the ordinance. So I think it's important that you know that, and in regard to the matter of not taking an extension, as opposed to taking a denial, you should know, and I've advised the Architectural Commission of this on many occasions, that the ordinance provides that the Architectural Commission shall act on an application within thirty days after the complete data have been filed, unless the applicant agrees to an extension. So, an applicant is entitled to action within that period of time, unless they agree."

President Smith stated: "All right, thank you, Mr Randolph. I think that everything has been said. I don't think there is anything else left to be said, so members of the Council? Mr. Wyett?

Councilman Wyett stated: "If I understood you correctly, John, I get the impression you're somewhat concerned that if this situation is appealed from this semi-judicial review to a higher court the issue of whether or not ARCOM or the Council, or both, has asked too great a reduction from the present Code. I am concerned about it. I don't where the line is. But, one of the things I have been reading in the paper, and I get most of my information in the paper, and then I read the ARCOM minutes almost a month later, is that there has been too much emphasis on how big or how small a house is, and if you're going to say it's massive, then hit it with the design of it, because just constantly telling him that he must bring it down, down, and down, I think you're in dangerous ground. I think it's possible you're buying this Town a lawsuit. On a light note, I would say that Euro-Homes should have hired Mr. Mizner, because Mr Mizner didn't feign any need for staircases and hallways, oftentimes, and therefore, he could easily get this down to the requested number."

Councilman McDonald stated: "Let me just clarify. Mr. Randolph, your comment, are you saying that ARCOM should make a decision in thirty days, rather than continuing deferring the project?

Town Attorney Randolph replied: "No, I'm not saying that, because I think the applicants will agree, and the Architectural Commission will agree that they have been very successful in coming up with projects that are suitable to both the applicant and to ARCOM by way of deferring, but where I was simply trying to point out that it should not be held against an applicant that they are not willing to take a deferral, because they are entitled by the ordinance to have a decision made within thirty days."

Councilman Shaw stated: "Mr. Kolins made a statement which I would take to be his legal opinion, as to the grounds that, or the extent to which ARCOM can go in rendering its decision, and without quoting him, I think he's saying that they do not have the right to impose a smaller size, unless they can show that that smaller size is not compatible with the neighborhood, and how it would adversely affect the neighborhood. Do you agree with that?"

Town Attorney Randolph replied: "Yes. I agree that they cannot come up with a different criteria than those that are set forth in the Code. If they feel that that direction that they give is necessary in order for an applicant to meet a particular criteria, then they're perfectly within their rights to do that, and I believe that that's what the Architectural Commission felt in this particular instance; that in order for this structure to be excessively dissimilar to other structures in the area that it should be reduced. I have to believe that that's what they intended by it, because the criteria, as I understand it, that was quoted, and I don't have the minutes, but it's been stated that the criteria that was used is that this particular structure is excessively dissimilar from other structures as it relates to cubical content, gross floor area, height of building or height of roof, and other significant design features. So your role here, on the basis of what's been presented, is to make a determination as to whether or not you feel that the Architectural Commission was correct in applying that criteria. And what you've got to base your opinion on, and Mr. Wyett in answer to your question–no, I didn't state this because I was concerned about what a higher authority might do in regard to this application. I was really stating it to give direction to you as to how to act on it, but what a reviewing authority will look at is the substantial competent evidence that's before you to make a determination as to whether or not you had the right to rule the way you do on this case."

Councilman Shaw stated: "If I understand what you're saying, and if I understand what is happening here, what has been presented is a neighborhood that is basically completely dissimilar because of the fact that a: it's in some form of transition, and that there is such diversity in the type of houses, that it's relatively difficult to say what is similar and what is dissimilar, since everything is different."

Town Attorney Randolph responded: "In this particular case, I don't think the criteria was applied that this was too similar, even though that came up here today, and I think Mr. Moore mentioned it, that direction was made not to make this so similar to other duplexes in the area, I don't think that was stated as a criteria."

President Smith stated: "Mr. Deziel, before you speak, I would like the Council to take some action. We've been on this now for an hour. I think we've heard...Council, let's give some direction here, please."

Attorney Deziel stated: "I would ask that you remand this case back to the Architectural Commission for review out of all fairness to the Commission for the reason that I truly believe that the case that you've been presented this evening is different than what we reviewed when this matter came up at the Architectural Commission on several occasions. For example, when the project first came–when they came for demolition, we told them, number one, we wanted to see something different than all the other duplexes the applicant was constructing, and number two, we wanted to make sure it fit in with respect to size. The applicant came back and did not bring the size data so that we could do a comparison. I don't believe we ever had the full size data comparison that you've had this evening, and I'll defer to Mr. McDonald and Mr. Randolph on this one, because I'm not a litigation lawyer, but in terms of appealing, my thinking would be that you would review the same evidence that we reviewed. We didn't have a full package of evidence that you're reviewing tonight, and for that reason, we were under the impression that this home was too large for the neighborhood, so if, for some reason, Mr. Kolins has the data that evidences the fact that it does fit in with the neighborhood, we have not seen that data, and for that reason I think that we should be able to look at this case for the first time with the same presentation that you've received. Thank you."

David P. Kane, resident, stated: "I don't know if any of you are familiar with my house, but my house is the pink house right down the street here, which is right next to the corner of Coconut Row, which I have personally been restoring for the past two years. I bought the house two years ago. It was kind of a thing that drew me in. I saw a house of great beauty, and I've heard a lot of different things here tonight as far as square footages, and I've heard things about six inches, and I've heard all these incidental things–to me they're incidental in this situation, because I think the important fact here is to have an understanding of what Chilean Avenue is about, first of all. I live on that street. I'm there on a daily basis. I'm not looking to knock something down, or to capitalize financially in any way, shape, or means. My house, to me, is a labor of love, and if any of you have seen it–I don't know if you have, but like I described, it's the pink house with the beautiful cypress windows on it. Now you can see the cypress windows, where before you couldn't see them because there were so many layers of paint on them. The beautiful pecky cypress beams on the side. It has a soul. It is a beautiful, beautiful house, and I've had pleasure in restoring it, and hopeful, sometimes I think I'm going to have to be reincarnated to get the job done, but I'm going to try to do the best I can in my lifetime to get it done, because it's a commitment I've made. When I first came to the Architectural Commission, and by the way, I do know Zack, and I have met the architect on this particular project, and I think the Architectural Commission, which I did mention to them when I first had come to the meeting, is that I feel for them as a group to make a decision, whether it be on Chilean Avenue, or be on South County Road, or be anywhere in the Town of Palm Beach, and this is a town that I love–see, there is beauty here that you're not going to see anywhere else in the world–that's my feeling about Palm Beach. That's why I bought this house, and that's why I'm doing what I'm doing. I think that it is imperative that they see the street–that they see what the street is about, because, see, Chilean Avenue, in fact, right across from this proposed development, are two little cottages that are very, very small–I don't know if you're familiar with them. They have extreme history. They've been here in this town a long, long time. They have a right to be protected also.

They have extreme beauty to them. I'm sure they wouldn't suffice for a family coming in with three children, but for somebody that likes that type of structure, it has beauty to it. I think the situation here is very simple in some instances, and I'd like to just offer some sort of suggestions to the Commission, and also the Architectural Commission, is that in a situation like this, I think part of the problem, which could be resolved in this matter, is, and I'm going to point out, and I'm going to talk about height for a moment. You all know from Worth Avenue, we have such structures as the Everglades Club, and we have Mizner architecture within the confines of that area, which did use height, and what he did by using height was he created a situation where there was more usable space–I''m talking about to put gardens in, and to put walkways in–user friendly space, space where you can go out and enjoy the beauty of Palm Beach, and still have something beautiful, where the nature work hand in hand with the structure. And, I cannot blame Zack, as far as a developer goes, for wanting to put a 5,000 square foot unit per lot. Zack is building for a potential customer. These customers want three bedrooms. They want space. So, I think the question is between the Architectural Commission and this Commission, is to figure out a way where something can be designed and built, where it is built where you have a hand in hand situation between the structure and the beauty, and the land–where you can have a courtyard, where you can have a situation where you might build up tier drop–build up three story, but yet, that would give you your square footage–put inside balconies looking down into a courtyard. There's other designs, other than just this, but what's happened is that, what I can see, in my opinion, driving down Brazilian Avenue, for example, what we have is a situation where we have these wide duplexes and townhomes on these lots, and I think part of the problem is they're created–this is what has been created. They have to build that way to get the type of square footage that they're going to need to suffice their customers, and I think that's what's happening, and I think there is alternatives. I think there is things that can be done. I don't think on Chilean Avenue–how can you say anything compares on Chilean Avenue? Right across the street from this development are these little tiny cottages–I mean, these are like little bungalows. You have my house, that was built in the early '20's. You have a Mizner house next door to me, and next door to that you have this development which was built, which I think they did a very nice job on, by the way, on the corner of Coconut Row and Chilean. Across from them we have an apartment building, some six stories high. So, how can we say anything–compare it to it? I think it's a visual thing. I think part of the thing is what the problem is. When you drive by Brazilian, these developments jump right out and bite you in the neck. See, I think part of the beauty should be, when you drive by, they're there. You know they're there, but they don't come out and bite you."

Councilman Wyett stated: "As a resident of Chilean, and if you were on this Council, how would you vote?"

Mr. Kane replied: "I would try to direct the–I would try to have some sort of situation between the Architectural Commission where as individuals would not have to keep coming back on a three month/six month type of basis–"

Councilman Wyett stated: "That wasn't my question. You've got to make a decision tonight on that house. Do you object to it, and think that it should be re-drawn smaller, or do you find it acceptable the way it is?"

Mr. Kane responded: "Do I find this acceptable the way it is? I think that from the current zoning regulations that are present in this town, I would have to say yes. I would have to because unless the design was changed and they were allowed to build the way I'm describing–"

President Smith stated: "I appreciate everything you're saying. I think we'd like to ask everybody in the room how they feel about this project, and then maybe let the consensus determine so we don't have to make the decision, but in the meantime, Mrs. Golino is going to speak, but Mr. Shaw is going to make a motion, and then anybody else can speak."

Councilman Shaw stated: "I'm going to make a motion that we send this back to ARCOM on the basis that there has been evidence presented at this hearing that apparently has not been presented to ARCOM. I think the guidelines of what has been presented here is what is to be re-presented there, and that they are to make their determination and evaluation based on that information."

Councilman McLendon seconded the motion.

President Smith stated: "Mr. Kolins. Could we wait for Mrs. Frost-Golino, because–we want to hear everything on this, but even as the members of the Architectural Commission have stepped up to say that they did not have the information presented to them at the initial hearing, we want to make sure that the applicants get the full hearing thing, and I would send it back to ARCOM on the basis that they get the figures and the presentation that you presented tonight, Mr. Kolins, and not any changes, if that is the way it is determined. Now, Mrs. Golino, please."

Mrs. Frost-Golino stated: "I have been reluctant to speak, primarily because I had a discussion with Mr. Randolph about whether it is appropriate for us, from ARCOM, to come and speak to you in a quasi-judicial appeal setting, and basically, his answer to me, although it may not have been as clear as I would have liked, was, if you're called upon, you may respond. I feel that I, in this case, am responding to something, and that is that, not only is there information here that we did not see at ARCOM, but there is information that you are not seeing, that we saw at ARCOM, on which we based our decision. This includes a street scape of the properties within 200 feet. I think that you're looking at properties, and maybe I'm wrong, and Mr. Kolins, I'm sure, will correct me-- I think there may be information of the structures and building that are outside of 200 feet. This becomes extremely important, because that's what we base our decision on; the 200 feet is in our ordinance; we have to base our decision upon that, and we did. So, again, I would reiterate we would be happy to see this again at ARCOM, but we denied it based on a street scape that we saw where it looked clearly different–visibly, excessively dissimilar. And I think one other small point is–it's visibly, excessively similar in relation to any other structures. There's some key language here that we have been working from and, I think, needs to be addressed. It's certainly visibly dissimilar from the two cottages Mr. Kane was referring to across the street. This kind of information is what we based our decision on. I think you should be seeing the same kinds of things if you're be going to be making the same kind of decision. Thank you very much."

Mr. Kolins stated: "I have a couple of things to say. First of all, with all due respect to Joanna, it was she, at the last ARCOM meeting, who recognized how difficult, if not impossible, it is to measure this in the terms of 200 feet, because of the eclectic nature of the neighborhood. She said, and I quote–'and the second issue I would like to ask you once again, remind us of what the gross square footage of everything within, let's say 200 feet. I understand this is very tough to handle here. I know you've got some five story buildings within the 200 feet, and you've got several across the street that are very small. But, just so I have an idea, for instance, the building immediately to the west.' Now I have a drawing, a chart here, that shows you a 200 foot radius, and it does not include the commercial, because ARCOM, at one point, told us not to include the commercial, so we didn't go all the way around to include the commercial. Now you can look at this, and let me tell you what we've got within this 200 feet. We've got a park, we've got parking lot, we've got condo, three single families, one of which is two story; the rest are multi-family. These are all multi-family. You can't make those kind of comparisons reasonably with that, and if indeed he standard is that if you are visually, excessively dissimilar from any one thing within 200 feet, then I submit that's totally unconstitutional and unreasonable, and we will pursue that. I am going to ask this body. I know there is a motion on the floor to send us back to ARCOM, so ARCOM can see the same numbers as we're showing you. I don't think my client should be bounced around month after month after month any longer. They voted us down pursuant to a standard after Gene Pandula showed them that street scape, and gave them the numbers for that street scape, and the numbers are the same as far as the street scape goes, as I've given you here tonight, and they decided to vote down this project on the basis of a criteria, and with all due respect, I believe it is the job of this Council–I think it is it's responsibility tonight, if you'll forgive me, to decide one way or the other, whether or not that criteria has been met or not. I don't think an applicant, a developer, should be bounced around month after month. It costs a fortune. It can drive you crazy. He's been to ARCOM ever since, I think, September, when the demolition application was before ARCOM, and there comes a time when a decision has to be made. If you send us back to ARCOM, I suspect my client will go–I don't know what he'll do, but I would urge you to make your decision here tonight."

Councilman Shaw stated: "Mr. Kolins, we can't design your house. You have to go back to ARCOM."

Attorney Kolins responded: "No, I beg your pardon, they have approved this house for everything except the one criteria, which is what's being appealed here. We don't have to go back to ARCOM anymore. Had they had a problem with other criteria, then they would have and should have cited them. The only thing that is outstanding from an ARCOM approval is this one issue, and Laurel Baker herself said the only thing is size–I mean, that's all we're talking about here. Everything else has been done."

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

Before voting no, Councilman Wyett stated: "The only thing about sending it back to ARCOM is that there is a difference between 4,900 feet and 3,500 feet, are the two extremes, and what are we sending it back for? We have to be more specific than just sending it back."

President Smith responded: "We didn't qualify 3,500.

Councilman Wyett replied: "No. ARCOM did. ARCOM talked about 3,500–"

President Smith responded: "Well, they did, but that doesn't mean we're agreeing; we're saying smaller."

Councilman Wyett replied: "I think we should qualify this thing, and give them some idea of what we think is reasonable, because the applicant could go back, and ARCOM could say, no, we said 3,500–we'll go to 3,800–or ARCOM could say you have 4,900, we'll allow you 4,400; it's very ambiguous."

Town Attorney Randolph stated: "Then, I think the answer is no."

Councilman Wyett replied: "No."

Before voting no, Councilman McDonald stated: "I agree with Mr. Kolins. He deserves an answer, but before I vote no–do you want to go back to ARCOM, or I will vote no. Do you want to go back to ARCOM? I understand you want an answer."

Attorney Kolins replied: "No. What we want is for you to take the evidence we've given you and say, are we consistent with the neighborhood or not."

Councilman McDonald responded: "Okay. I believe you deserve an answer. I vote no."

Director of Planning, Zoning & Building Moore stated: "Just one point of clarification. I'm sorry for Mr. McDonald's benefit, because I think he was out of the room. But the motion, as I understood it, was for them to use the criteria that was presented here tonight. Their argument here is that they comply with that criteria. So, ARCOM has said they didn't see that criteria, so that would lend you to believe that reasonable people will treat it reasonably, so–"

President Smith stated: "Which is the reason I'm voting yes. And it's going back to ARCOM, so there will be full disclosure of all the criteria. Mr. Kolins?"

Attorney Kolins stated: "I have just spoken with my client, and I tell you what we are amenable to do, if you are amenable to have us do it. If we can be heard by ARCOM this month, two weeks from now, or whenever the next meeting is, we will go back with all this data and present it to them again, so long as I have the understanding that if things do not go well for us, we have the right again to appeal and come back here to you. So, if we can go this month, and preserve our right to, so to speak, re-appeal, and if that's your pleasure, we will agree to that."

Director of Planning, Zoning & Building Moore stated: "That's a question for Mr. Randolph, whether or not they could re-appeal again after they have been sent back again."

President Smith: "I would think that perhaps as intelligent people, having now spent an hour and thirty-five minutes before us--if I were going back to ARCOM with all this information, I would perhaps reduce the size a little bit. But, that's just my opinion."

C. Time Extensions - None

D. Variances, Special Exceptions, and Site Plan Reviews

Old Business

1. SPECIAL EXCEPTION NO. 23-97 - Galaxy Grille, 350 South County Road; located in the C-TS Zoning District; application was revised to include request for permission to provide supplemental off-site shared parking at the Gray's Mobil Station lot, 340 South County Road. - Approval granted at the August 12, 1997, Council meeting with condition that applicant return in six months with update of the parking situation with details regarding pick-up for valet parking. - **As of this date, the approval has not been implemented; Staff recommends deferral to August 1998**

2. SPECIAL EXCEPTION NO. 43-97 - Testa's Inc., 219 and 221 Royal Poinciana Way; located in the C-TS Zoning District; to allow the restaurant to provide live music thereby establishing a nightclub. - Approval granted at the November 12, 1997, Council meeting with condition that the operation would be reviewed in three months. - **As of this date, the approval has not been implemented; Staff recommends deferral to June 1998**

3. VARIANCE NO. 2-98 - El Vedado Way, Inc., 328 El Vedado Road; located in the R-A Zoning District; to allow construction of a 2nd story addition providing a 9.7' side yard setback in lieu of 15' required, and to allow additional height (5.5') to be added to an existing 2-story portion, providing a 9.7' side yard setback in lieu of 15' required, thereby requiring a variance from the required front yard setback of 49', in lieu of 30' existing. *(Deferred from January 13, 1998)*

Attorney Robert Deziel, representing Mr. and Mrs. Charles Holmes, who were the beneficial owners of a corporation that owned this home, addressed the Town Council.

At this time, Town Clerk Pollitt administered the oath to all those who had not yet been sworn in at the meeting.

Ex-parte communication was declared by Councilman Wyett with Attorney Deziel though a phone call; by President Pro-Tem McLendon through a telephone call with Attorney Deziel; by Councilman Shaw through conversations with Attorney Deziel and Mr. Lowry Bell; and by Councilman McDonald through conversation with Mr. Lowry Bell.

Attorney Deziel stated that the variance request was two-fold–one was a variance request for the in-fill addition as depicted on the cross hatch section of the site plan, and in addition there was a setback variance for the garage. He incorporated by reference all of the terms and provisions of the Variance Application that was submitted, along with the drawings prepared by Smith Architectural group. He recalled that this application had been on the agenda last month, however, he had received notification from Mr. Castro that a building height plane variance was required. Since then, Mr. Deziel stated that he had made a discovery in the Code, which he asked Mr. Castro to consider in the modified application.

Zoning Administrator Paul Castro responded that the lot was irregularly shaped, and the house was situated on that irregular shaped lot in such a fashion that it almost faced the corner of El Vedado Road and Pelican Way, although the address was on El Vedado Road, however, there could be an argument that the frontage was on Pelican Way. The interpretation could be that it, in fact, does front on to Pelican Way and the building height plane would be from that street. As shown on the site plan submitted, the average setback of the house was 63', however, at that one location where the existing garage used to be raised, it was only 30.1', and the Code required 35'. The reason why staff felt that the variance was required from that location was because of the address on El Vedado Road, and the unique situation of that garage to the street, however, it could be interpreted to be a Pelican Way house in terms of frontage.

Attorney Deziel continued with the presentation, pointing out that the property was in excess of 30,000 square feet, and was a landmarked property with a lot coverage percentage of 17%, so in terms of massing and lot coverage, it was very sensitive to the size of the lot. The home was set back very far on average, and if the building height plane test was done from Pelican Way, there would be no problem. He explained that the hardship was that the property was located on a corner with two front yard setback requirements, the configuration of the property was extremely irregular, and he pointed out that, in regard to the specific hardship on the garage, where the setback requested was 30.1' in lieu of 35', John Volk had designed the garage to be parallel to the lot line that was adjacent to it; the front garage would then not be parallel to the street, and a line was drawn to make the garage parallel to the street, and the little variance needed with shown on the site plan. He noted that on the second page handed out, there was a drawing showing the main house first floor, and second floor, and the new addition beam height which was 1.5' lower than the current, and when the addition above the garage it was lowered an additional 2'. The ceilings in the second floor of the garage, where the 4.9' variance was being requested would only be at 7', with a tray ceiling from there. Therefore, the minimum variance was being requested.

Zoning Director Paul Castro gave the following staff comments: No objection to the side yard setback, and based upon the evidence provided by Mr. Deziel relative to the garage itself, and the utility of the second floor, there was a hardship relative to the irregular shape of the lot, and that it fronts two streets, and that because of the configuration of the house itself and its landmarked status, there was a hardship related to the garage.

Councilman Shaw commented that the roof height had been changed since he originally saw the plans.

Mr. Castro replied that there was a change in the elevation from the garage tie beam height and he new addition height.

Attorney Deziel explained that the tie beam height had been lowered 4", and the gables had been put in so that the windows would fit. This had been done since the original application had been submitted.

Site Plan Review 2-98

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

LAST NAME—FIRST NAME—MIDDLE NAME MCDONALD JACK	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Palm Beach Town Council
MAILING ADDRESS 2875 S. Ocean Blvd	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Palm Beach, FL COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION: Town Council
DATE ON WHICH VOTE OCCURRED 2-10-98	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, Jack McDonald, hereby disclose that on 2-10, 1998:

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

X 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:

Site plan approval - 2-98

I am the owner of the lot applying for the site plan approval.

2-10-98
Date Filed

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.

Councilman Wyett commented that he was a little disappointed that legal manipulation had to be used in order to determine the front door of a house. He noted that he was very familiar with the house, as he owned land on El Vedado, and had admired the house. He explained that he had no problem with the in-fill, as it would not add to the visible mass, however, he did have a problem with raising the garage, as it would increase the mass, and would like to see the garage re-oriented to Pelican Way, rather than exposed on El Vedado.

Attorney Deziel responded that when the house was originally designed the garage had been set up as a service entrance area. When the building height plane test was implemented, it was really geared towards new construction of homes, as opposed to an addition of a structure such as that in question today. The house met the building height plane test on Pelican Way.

Councilman Wyett replied that nine out of ten people would agree that the front of the house was on El Vedado Way; the previous owner definitely thought it was El Vedado Way, and the current owner knew what he was buying.

Councilman Shaw stated that his concern was that if the plans had changed from when they were originally presented, then the project would not be heard. He said that he followed a procedure where he went out to look at a project, made notes, met with staff, and tried to make an evaluation based on what he saw and what the application said, and what staff told him would happen to the property. He noted that he was completely confused as to what was now happening.

Attorney Deziel offered to explain the situation, or to come back next month.

Councilman Shaw moved that Variance 2-98 be deferred to the March 10, 1998 Town Council Meeting. The motion was seconded by Councilman Wyett, who commented that he would appreciate consideration being given to putting in the garage doors the opposite way, because three garage doors were massive.

Attorney Deziel replied that the difficulty was that the house was a landmarked home.

On roll call, the motion carried unanimously.

New Business

4. VARIANCE NO. 4-98 - F. Eugene Dixon Jr., 220 El Vedado Rd.; located in the R-A Zoning District; to allow construction of front property line wall at a 7.4' elevation above the crown of the road in lieu of 6' permitted.

Ex-parte communication was declared by Councilman Wyett with Mr. Dixon, who requested help in approval of the variance, via a telephone conversation; by President Smith with Mr. Dixon. President Pro-Tem McLendon, Councilman McDonald, and Councilman Shaw did not have ex-parte communications. Mayor Ilyinsky had left the meeting at this time.

Director of Planning, Zoning & Building Robert Moore noted that the hardship involved in the raising of the wall was the topography of the land, and there was no question of that hardship.

Councilman Shaw moved approval of Variance 4-98. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

5. VARIANCE NO. 5-98 - Jerome & Ann Fisher, 334 N. Woods Rd.; located in the R-B Zoning District; to allow installation of a 4' chain link fence on top of an existing 6' wall, exceeding the 4' maximum total height allowed on Lake Trail.

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

Attorney James Brindell, on behalf of Mr. and Mrs. Fisher, addressed the Town Council, stating that the applicants were concerned about security on the property, arising from some rather unusual circumstances. There was currently a temporary chain link fence on top of the existing wall, that was permitted to secure the property during construction. Mr. Brindell submitted photographs of the area, noting that the fence could not be seen because of the ficus hedge in front of it and in back of it. Mr. Brindell requested that the chain link fence be allowed to remain on a permanent basis for security reasons. He explained that the 6' wall had been approved pursuant to a prior variance. He provided a letter from Mrs. Fisher expressing her security concerns, which he maintained supported the conclusion that there was a genuine hardship. He noted that the property was surrounded by public access ways, and that the additional fence would certainly provide a greater sense of security for the Fisher family.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: hardship not demonstrated; effect can be achieved through planting vegetation; Building Department: variance previously granted was for 6' high wall; Town Manager: request additional explanation on justification hardship for variance request.

In response to President Smith, who asked why a solid wall had not been requested, Mr. Brindell replied that a solid wall had not been requested strictly for aesthetic purposes.

6. VARIANCE NO. 6-98 - Stuart & Anita Subotnick, 1 Sloans Curve; located in the PUD-B Zoning District; to allow construction of a noise barrier wall to a height of 10' above the existing finished floor elevation, with a street side yard setback of 15' in lieu of 25' required.

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

Councilman McDonald asked if Attorney Deziel had reviewed the letter from Mr Silverstein?

Director of Planning, Zoning, & Building Moore responded that he had given Mr. Deziel a copy of the Silverstein letter.

Attorney Robert Deziel, representing Mr. and Mrs. Ed Sidman, who were the contract purchasers to buy the property from Mr. and Mrs. Subotnick, addressed the Town Council. He noted that he had seen the Silverstein letter, and had spoken with Mr. Silverstein. He submitted photographs and drawings of the area in question, which he reviewed with the Town Council. He explained that Mr. Silverstein was under the impression that the wall would impair his view to the southeast, when, in fact, the existing seagrape hedge would impair any view of the southeast, as the wall was 5' lower than the seagrape hedge.

Director of Planning, Zoning & Building Robert Moore commented that there was no objection to the proposed landscaping. He noted that the exterior hedge was an absolute requirement of the PUD; complete site screening of the whole area from A-1-A was a requirement, and he believed Mr. Silverstein would not see the wall as an impairment to his view.

Councilman Shaw moved approval of Variance 6-98, with the hardship being the fact that the property was a private residence on a dual curve on a very noisy road, and the wall would not have any negative impact on the roadway. In addition, he noted that there was an elevation issue between where the property and the point of measurement, which had some bearing as to the effect of the height. Councilman McLendon seconded the motion.

Director of Planning, Zoning & Building Moore noted that the outer wall, the seagrape, was part of the PUD; the buttonwood hedge would also be a requirement, as single family residences used the area as public access to the beach.

Councilman Shaw included the buttonwood hedge as a condition to approval of Variance 6-98.

Councilman Wyett asked if it would be necessary to specify that the seagrape hedge be deeded with the land, or incorporated into the PUD?

Mr. Moore responded that the exterior hedge was maintained and was the responsibility of the Sloan's Curve Homeowners' Association, which was a blanket association that took care of and maintained the seagrape hedge.

Councilman Wyett noted that the obligation was only to maintain that wall to the original agreement, and he questioned if a requirement should now be added, requiring that the seagrape hedge be maintained to its current full height?

Mr. Moore replied that could not be done; it could not be imposed upon Sloan's Curve Homeowners' Association, as they had an obligation to maintain the hedge, they had always honored it, and there was no reason to believe that it would be discontinued.

Councilman Shaw noted that the addition to the motion was sightscreening to the full extent of the wall.

On roll call the motion carried unanimously.

7. SPECIAL EXCEPTION NO. 4-98 WITH SITE PLAN REVIEW & VARIANCES - Indian Mound Corp., Cartier, 214 Worth Avenue; located in the C-WA Zoning District, to allow applicant to increase occupancy from 1,863 sq.ft. to 2,263 sq.ft. by constructing a 400 sq.ft. addition. Applicant requests a variance from the requirement to provide 2 off-street parking spaces. Said addition also requires a variance to increase lot coverage from 53.1% to 57.8% in lieu of the 35% maximum allowed.

Attorney James Wearn, representing Cartier, addressed the Town Council, stating that Cartier had been a retail store in Palm Beach for seventy-five years, and was requesting a renovation, with 400 square feet in the back of the store, on the ground floor, to include additional administrative and accessory space to better serve its customers. The additional space would not be for retail use, and there would be no increase in retail sales space; approximately 85 square feet of space that was currently used for retail sales would be converted to the administrative and accessory space. Therefore, there was a reduction in retail sales space. The addition of the 400 square feet of space necessitated a number of applications: A Special Exception with a Site Plan Review, because the 2,000 square foot limitation was slightly exceeded. A variance from the requirement of two required off-street parking spaces, and for first story lot coverage was also included. All of the grounds for the granting of the application were set forth in the application, and Mr. Wearn incorporated it by reference. Architect Tim Greer then presented the Site Plan and plans for renovation.

Architect Tim Greer addressed the Town Council, stating that Palm Beach regional architectural history was being drawn upon for the proposed renovation, and the goal was to capture the spirit of Palm Beach in the 1920's. He presented the drawing of the facade, which featured stucco walls, surmounted by a parapet roof of terra cotta barrel tiles. The renovation of the interior included traditional materials of stucco, cast stone columns, etc. The reason for the reconfiguration and expansion was the inadequate condition of the store support space. The re-designed space improved the efficiency and layout of the administrative spaces to better serve the predominately Town-serving customers.

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Attorney Wearn then continued, addressing the lot coverage question: The C-WA District allowed 70% lot coverage, but a separate code section provided that if there were two stories then the lot coverage for the two stories was 35% for each floor. Here the ground floor coverage was 53.1%, being increased by the 400 square feet to 57.8%. The second floor consisted of a small projection of a screened porch from an apartment on the second floor to the adjacent building. The second story was not accessible from Cartier. The second floor apparently was structurally supported by Cartier, as the building existed before the projection of the screened porch over Cartier. The lot coverage did not exceed the limited amount, and the second story was not at all visible from Worth Avenue. An underlying reason for the two-story division of lot coverage was to limit the size of the second floor, and encourage only one-story. The one-story appearance of Cartier would not be diminished by the granting of Variance 4-98.

Attorney Wearn then addressed the two-parking space variance: The 400 square feet required two parking spaces, however, the proposed space was to be used for administrative and support space only, and actually involved a reduction of the retail sales space by approximately 85 square feet. An attempt had been made to obtain additional spaces, without success.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Police Department: Applicant should provide the two required parking spaces: Comprehensive Plan: Application for variance is not clear; does not seem to meet criteria for granting variances; Building Department: Town-serving must be demonstrated. Parking should be provided off site. Lot coverage: no objection, and questioning the use of the second floor area. Town Manager: Concurs with the above. Mr. Moore noted that the lot coverage was not a problem, and the hardship was acceptable. He requested that approval be on the condition that the new area be purely for administrative area, and not for retail area, and that the parking issue be addressed.

Councilman Wyett moved that Special Exception 4-98 with Site Plan Review and Variances be approved.

Director of Planning, Zoning & Building Robert Moore clarified that Mr. Wearn had indicated that the vast majority of the request space of 400 square feet, which generated the requirement for two parking spaces, would be used for administrative support only, and not for retail sales. If the variance for the parking spaces was granted, that reason should be cited; otherwise, the next application for a retail store may want to see five spaces waived, based on this precedent.

Councilman Wyett re-stated his motion to approve Special Exception 4-98 with Site Plan Review and Variances with the 85' considered as retail space, and to waive the parking requirement based on the fact that there was a precedent set for not having to increase parking for office support space. In addition, he took note that Cartier was a very special store, where volume was not an issue; it was very exclusive, and did not promote a parking demand; in addition the Apollo Parking Lot had turned them down, and there was no other space in which to park.

Councilman Shaw suggested that Councilman Wyett break the motion down into two separate motions.

Councilman Wyett withdraw his motion.

Councilman Shaw moved that the additional 400 square feet of space be approved, with the Town-serving affidavit accepted. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

Councilman Wyett moved approval of the waiver of the two-parking spaces, based upon the fact that the addition was basically office space, that parking in the Apollo Parking Lot was not available, and based on the fact that the unique nature of Cartier did not create any more parking demand on the street than now existed. The motion died for lack of a second.

Attorney Wearn explained that the squaring off of the building provided the ability to renovate the store interior to supply the needed interior administrative support space, and that space would not provide any increased retail space for sales; as a consequence the hardship was in the building configuration itself. He commented that previously, a variance had been granted in the squaring off a building for one parking space; at another location on Worth Avenue, for Brad Greer setting up new business, a variance had been granted for five parking spaces. Mr. Wearn noted that was a new business, and Cartier was a seventy-five year old business.

Councilman Wyett moved that the requirement for two additional parking spaces be waived because of the precedent that adding office space did not necessitate complying with the retail parking increase; in addition he recognized that parking was difficult to acquire, and that the Apollo Parking Lot had turned them down; Cartier was a unique operation, and this exception was only for Cartier and not for a subsequent user. Councilman McLendon seconded the motion. On roll call the motion carried 4/1, with Councilman Shaw casting a negative vote.

In response to Councilman McDonald requesting clarification of the Brad Greer variance, which had been cited for precedent, Director of Planning, Zoning & Building Moore distinguished that the Brad Greer space was above the first floor in the 125 building, however, there was parking available there, and there was no parking at the Cartier building. The use related to the Brad Greer variance demanded more parking than was available, but there was parking available on site. He did not consider that a precedent setting variance. The variance granted at Nature's Way was a precedent setting variance.

8. SPECIAL EXCEPTION NO. 5-98 - Vesenax Holding Corp., The Legacy Collection, 211 Royal Poinciana Way; located in the C-TS Zoning District; to allow this retail occupancy to expand from 1300 sq.ft. to 4,000 sq.ft.,

of the Town-serving nature of the business. He submitted letters of support from many businesses in the community.

Councilman Shaw moved approval of Special Exception 5-98. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

9. SITE PLAN REVIEW NO. 2-98 - Jack McDonald, 2258 Ibis Isle Rd. East; located in the R-B Zoning District; to allow construction of a new residence on a lot 95.79' deep in lieu of 100' required.

Councilman McDonald recused himself as a Council person, and submitted the request for Site Plan Review 2-98, which had been approved by the Town Council last November, but had expired. The Site Plan was the same as the one submitted then. The house met all yard and bulk regulations; the platted lot did not meet the length dimension, and therefore needed Site Plan approval. The proposed house was to be built on a platted lot that was approved by the Town as a buildable lot.

Councilman Shaw moved approval of Site Plan Review 2-98.

Director of Planning, Building & Zoning Moore explained that the Site Plan was the same that had been previously submitted before, however, approval time had run out. Staff had no objections.

The motion was seconded by Councilman McLendon. On roll call the motion carried 3/0, as Councilman Wyett had left the room, and Councilman McDonald had recused himself.

D. Other

1. Consideration of Request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction, by Palm Beach Towers Condominium Association, Inc., 44 Cocoanut Row, for Emergency Lakefront Bulkhead Repairs

John Groskopf, General Manager of the Palm Beach Towers, addressed the Town Council, stating that during one of the recent storms, over 400 feet of seawall was lost, and a waiver of hours of construction was being requested in order to make the necessary emergency repairs to the seawall at this time. The engineers had come upon an area where it would be necessary to put in batter piles, which were not permitted by the Town. The Town Engineer had requested that this issue be brought to the attention of the Town Council.

Director of Planning, Zoning & Building Moore commented that approval of the repair work was recommended, even though it would involve pile driving king piles, which would be a noisy operation; recommendation was that the hours of operation be restricted to be from 10:00 A.M. to 4:00 P.M., six days a week, not on Sundays. The batter piles were the angle piles that went out to the intracoastal, and they were horribly unsightly. The reason they were prohibited in Town was because they were unsightly.

Ed O 'Leary with Murray Logan Construction addressed the Town Council, explaining that the batter piles could be seen at extreme low tide in front of the wall for approximately 2'.

Director of Planning, Zoning & Building Moore explained that the recommendation was to approve of this request, however, it was necessary to make the Town Council aware of the situation.

Councilman McDonald moved approval of the request for waiver of the hours of construction by the Palm Beach Towers Condominium Association, Inc. for emergency lakefront bulkhead repairs, incorporating the conditions that piling hours of operation be 10:00 A.M. to 4:00 P.M. six days a week, and not on Sundays. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as Councilman Wyett had left the room.

XXII. ANY OTHER MATTERS

There were none.

XXIII ADJOURNMENT

The meeting was adjourned at 10:15 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk
3/2/98