MINUTES OF THE TOWN COUNCIL MEETING HELD ON FEBRUARY 9, 1999
(Meeting Continued to February 10, 1999, Then continued to March 10, 1999)

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Lesly Smith at 9:33 A.M. on February 9, 1999, in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Samuel McLendon, Councilman Jack McDonald, Councilman Leslie Shaw, and Councilman Allen Wyett (declared President Pro-Tem after Swearing In Of Elected Officials/Election of Officers). 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, Fire-Rescue Chief Ken Elmore, Information Systems Manager Spencer Wilson, Planner/Projects Coordinator Tim Frank, Planning, Zoning & Building Director Robert Moore, Zoning Administrator Paul Castro, Police Chief Frank Croft, Public Works Director Al Dusey, Purchasing Agent Charles Boggs, Recreation Director Russ Bitzer, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of the Shore Protection Board Members, From 1995 - 1999:

1. Garrison D. Lickle, Chair
2. George M. Moffett, II, Vice Chair
3. Eileen Curran
4. Wayne F. Dimm
5. Edward L. Hennessy, Jr.
6. Charles C. Isiminger
7. Gerald H. Levy
8. Joel Martino
9. Richard Raffo

The Shore Board Members will be recognized at the March 9, 1999, Town Council meeting.

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky commented on the success of the Golf Tournament held at the Par 3 Golf Course that benefitted the Town. The Mayor also commented that he had previously expressed his opinion concerning the proposed shore protection plan and the related recommendations for financing its implementation and educating the public. He noted that he would express his thoughts again when the Town Council considers the substance of the proposal. He reminded everyone that one of the reasons Palm Beach was such a special place was that the citizens had a real opportunity to participate in major decisions. He strongly urged all Town residents to attend the public meetings that would be scheduled to let the Town Council know their feelings and give input.

V. APPROVAL OF THE AGENDA

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

VI. COMMUNICATIONS FROM CITIZENS

Mr. Eric N. Gilbertson, 151 Chilian, complimented the re-elected Officials on their service and commented on the issue of beach re-nourishment.

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF DECEMBER 8, 1998, AND JANUARY 12, AND 19, 1999

VIII. APPROVAL OF CHECK REGISTERS FOR JANUARY 1999

IX. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF JANUARY 27, 1999

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

X. ANY OTHER MATTERS

There were none.

XI. ADJOURN SINE DIE

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

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

XII. SWEARING IN OF ELECTED OFFICIALS - The Honorable Stephen A. Rapp, Circuit Court Judge, Palm Beach County

Mayor Paul R. Ilyinsky was installed for a two year term to expire in February, 2001.

Councilman Samuel C. McLendon was installed for a two year term to expire in February, 2001.

Councilman Allen Wyett was installed for a two year term to expire in February, 2001.

XIII. ORGANIZATIONAL ITEMS

A. Elected Officials

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

Lesly S. Smith was declared Town Council President.

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

Allen Wyett was declared President Pro-Tem.

XIV. APPROVAL OF AGENDA

The following changes were made to the agenda:

DEFER Item XXIII.A.1, Site Plan Review No. 1-99 With Variances, 530 South Ocean Boulevard, to the March 9, 1999, Town Council meeting;

Councilman Shaw moved deferral of Item XXIII.A.1, Site Plan Review No. 1-99, to the March 9, 1999, Town Council Meeting. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

MOVE item XXIII.A.7, Site Plan Review No. 3-99 with Special Exception and Variances, 241 Seaview Avenue, to last item under Development Review before Item XXIV.

Councilman Shaw moved approval of moving Item XXIII.A.7, Site Plan Review No. 3-99, to become the last item under "Development Review." The motion was seconded by Councilman McLendon.

REMOVE from the Approved Agenda Item XVII. Other D. Appointment of David F. Jakubiak, Assistant to Town Manager, to Serve on the Florida League of Cities' Federal Action Strike Team (FAST) to Assist Congressman Shaw's Office on Legislative Issues per Memorandum dated February 2, 1999, from Town Manager Doney, XXI **to be considered as item. New Business D. 7;**

Councilman McDonald requested that Item XVII. Other D. of the "Approved Agenda" be removed to be considered as Item XXI. New Business D. 7.

ADD Item XXI. New Business D.8, Discussion of the Issue of Specimen Trees, Including an Up-to-date Report;

Councilman McDonald moved the addition of Item XXI. New Business D.8, to be added to the March 9,1999, Town Council Agenda. - Discussion of the Issue of Specimen Trees, Including an Up-to-Date Report. President Smith seconded the motion. On roll call the motion carried unanimously.

ADD Item XXI. New Business D.9, Discussion of the Issue of Attendance of Commission Members at Meetings:

Councilman McDonald moved the addition of Item XXI. New Business D.9 to be added to the March 9, 1999 Town Council Agenda - Discussion of the Issue of Attendance of Commission Members at Meetings. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

ADD item XXI. New Business D.10, Review of the System Used for the Distribution of Parking Permits Used by Commission Members;

Councilman McDonald moved the addition of Item XXI. New Business D. 10 to be added to the March 9, 1999, Town Council Agenda - Review of the System Used for the Distribution of Parking Permits Used by Commission Members. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

ADD item XXI. New Business D.11, Consideration of the Elimination of Term Limits for Commission Members, and Discussion of Conflicts of Interest.

President Pro-Tem Wyett moved the addition of Item XXI. New Business D.11 to be added to the March 9, 1999, Town Council Agenda - Consideration of the Elimination of Term Limits for Commission Members, and Discussion of Conflicts of Interest. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

ADD item XXI. New Business D. 12, Consider Discussion of the Issue of Administrative Approval of Charitable Solicitation Permits.

President Pro-Tem Wyett moved the addition of Item XXI. New Business D. 12 to be added to the March 9, 1999, Town Council Agenda - Discussion of Charitable Solicitation Permits. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

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

APPROVED AGENDA

XV. LICENSES AND PERMITS

A. Charitable Solicitations

1. Opportunity, Inc.; No. 342-99
2. The Salvation Army Women's Auxiliary; No. 362-99
3. Vetsville Cease Fire House; No. 372-99
4. Deaf Service Center of Palm Beach County, Inc.; No. 389-99
5. American Orchid Society; No. 392-99

Other - Application Filed Late and $25 Late Fee Paid

6. Save-A-Pet, Inc.; No. 236-99
7. CaP Cure -Association for the Cure of Cancer of the Prostrate; No. 436-99
8. Pediatric Heart Foundation; No. 458-99
9. Juvenile Diabetes Foundation, Greater Palm Beach County Chapter; No. 459-99

Other - Application Filed Late ($25 Fee) and Results Filed Late ($25 Fee)

10. American Committee for Shaare Zedek Medical Center in Jerusalem; No. 396-99

XVI. CONTRACT AND AGREEMENT RENEWALS

A. Renewal of Banking Services Agreement with First Union National Bank and Authorization of the Town Manager to Execute Necessary Documents per Memorandum dated January 8, 1999, from Finance Director Demming

This item was taken off the Approved Agenda and put on the Regular Agenda as item XXI. D.7 (a).

XVII. OTHER

A. Authorization for Town Manager to Proceed with Recruitment to fill Position of Finance Director per Memorandum dated February 4, 1999, from Town Manager Doney

B. Independent Evaluation of Town's Financial Information System *(Deferred from Finance & Taxation Committee Meeting of December 11, 1998, which Report was approved at the Town Council Meeting of January 12, 1999)* - Funding Request Deferred to FY2000 Budget per Memorandum dated February 4, 1999, from Town Manager Doney

C. Authorization to Reallocate Existing Funds for a Valve Insertion Program for Sanitary Sewer Force Mains per Memorandum dated January 27, 1999, from Public Works Director Dusey

D. Appointment of David F. Jakubiak, Assistant to Town Manager, to Serve on the Florida League of Cities' Federal Action Strike Team (FAST) to Assist Congressman Shaw's Office on Legislative Issues per Memorandum dated February 2, 1999, from Town Manager Doney (*This item was added to the regular Agenda as item XXI. New Business D. 7).*

Councilman Shaw moved that Item XVI. A. "Contract and Agreement Renewals," - (Renewal of Banking Services Agreement with First Union National Bank and Authorization of the Town Manager to Execute Necessary Documents per Memorandum dated January 8, 1999, from Finance Director Demming) be taken off the Approved Agenda and put on the Regular Agenda as Item XXI. D.7.(a). The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

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

REGULAR AGENDA

XVIII. LICENSES AND PERMITS

A. Charitable Solicitations - Applications Filed Late and $25 Late Fee Paid

1. Boys & Girls Clubs of Palm Beach County, Inc.; No. 104-99
2. International Children's Museum; No. 373-99

Town Clerk Pollitt explained that the Boys & Girls Clubs of Palm Beach County had held an event November 28th at The Breakers, and had filed the appropriate papers late. Ms. Mary O'Connor was present as a representative.

Ms. O'Connor, Executive Director of the Boys & Girls Clubs of Palm Beach County, Inc., explained that the organization had been filing the paperwork for a Charitable Solicitation Permit for 20 years, and apologized.

President Pro-Tem Wyett moved approval of Charitable Solicitation Permit No. 104-99. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Town Clerk Pollitt explained that the International Children's Museum had also filed the paperwork late for a Charitable Solicitation Permit.

Mrs. Claude Rozinski, representative of the International Children's Museum explained the late submission of paperwork, stating that her assistant had passed away and she was running the organization alone.

President Pro-Tem Wyett moved approval of Charitable Solicitation Permit No. 373-99. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

XIX. PUBLIC HEARINGS

A. De-Designation of Two Historic/Specimen Tabebuia Pallida Trees at 4 Arts Garden; Resolution No. 4-99

Town Attorney Randolph read Resolution No. 4-99 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DE-DESIGNATING CERTAIN ALREADY DESIGNATED HISTORIC/SPECIMEN TREES, KNOWN AS PINK TRUMPET TREES (2) AT A PROPERTY ALREADY DEFINED AS THE FOUR ARTS GARDEN LOCATED ON PROPERTY WITHIN THE TOWN OF PALM BEACH, PROVIDING FOR A RECORDING OF THE DE-DESIGNATION AGAINST THE LAND UPON WHICH THE TREES ARE LOCATED; PROVIDING THAT A COPY OF THIS RESOLUTION BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

Public Works Director Al Dusey reported that a request had been received from The Garden Club of Palm Beach to de-designate and allow the removal of two specimen Tabebuia Palida Trees at 4 Arts Garden. An inspection report had been provided.

Mrs. Wynne Ballinger, Chairman of the 4 Arts Garden, addressed the Town Council, stating that the two trees were very old and had become very large. Over the last 4-5 years they had seriously declined in health. An expert had believed that the branches presented a public safety danger. Mrs. Ballinger requested permission to de-designate and remove the trees.

Councilman McDonald made a motion to adopt Resolution No. 4-99. Councilman Shaw seconded the motion.

Councilman Shaw remarked that when de-designations were requested documentation should be made as to what preservation efforts had been done to maintain the tree/s.

On roll call the motion carried unanimously.

B. Landmark Designation of 173 Root Trail; Resolution No. 5-99

Town Attorney Randolph read Resolution No. 5-99 by title:

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

Planner/Projects Coordinator Tim Frank verified proof of publication. The Landmarks Preservation Commission had found that the property met the following criteria for designation:
Criterion A: exemplifies or reflects the broad cultural, political, economic or social history of the nation, state, county or town.

Historic Preservation Consultant Jane Day reported that the house at 173 Root Trail was very representative of the early history of Palm Beach, and was located in Root Subdivision, the first platted area of the Town, which was done in 1900 by Captain Enoch Root and his wife, Virginia. The Roots had moved to Palm Beach from Chicago, and he was the first postmaster of the Town, and in 1911 was elected to the First Town Council.

Councilman Shaw moved acceptance of the Designation Report for 173 Root Trail. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Mrs. Fisher commented that she had been restoring the house for fourteen months to return it to its historical condition, and that the house was one of the oldest houses on one of the oldest streets in Town.

Councilman Shaw moved that Resolution No. 5-99 be adopted, designating 173 Root Trail as a landmark in the Town of Palm Beach. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously. On roll call the motion carried unanimously.

XX. OLD BUSINESS

A. Ordinances

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

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

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

Mr. Randolph commented that the title and the format of the Ordinance had been changed slightly from its draft form in order to make it in conformity with the numbering system within the new Code. That change would not have required an additional reading; however, in the interim, the newspapers had commented in regard to two or three items that they objected to within the Ordinance, and staff had met with them in this regard. The newspapers had requested changes relating to 106.291 of the Code; the section which addressed coming into compliance within 30-days of adoption of the Ordinance – they had indicated that they could not possibly come into compliance within 30-days, and that 90 days would be needed in which to order the modular units. Mr. Randolph suggested that the 30-day requirement be continued for those portions of the Ordinance not relating to the replacement of the modular units, with 90 days being allowed for the replacement of modular units. The other change had related to the permit fee of $25, which the newspapers considered excessive and had indicated that a $10 fee per newsrack was fair, and that they would rather seen an overall fee for the operation of newsracks within the Town. As a result of the adoption of the Ordinance several newsrack locations had been lost, and the newspapers were not happy with that, however, they agreed to the locations, requesting a modification to Item E. on page 6 of the Ordinance, to change that to another location. In regard to Item 5 on page 11, the newspapers had indicated that there were certain times that special editions were published, and in those instances they would like to be able to not go through an application period to add newspapers in the Town. They had requested that, for extraordinary news events, they would not have to go through the application period, but that any added racks would be removed within 14-days afterwards. They had also requested that the length of time for the application process be shortened for the addition of new newsracks, as well as the ability to add additional locations. Staff had proposed that the application time period approval be shortened to 10-days, rather than 30-days. The newspapers would then have 10-days time to appeal any decision made by the Code Enforcement Officer to the Town Council, and the Town Council would then act within 30-days of the filing of a notice of appeal. Because of the amendments, Ordinance No. 19-98 would be brought back to the next Town Council Meeting.

Ms. Barbara Bolton-Litton, representing the Palm Beach Post, commented that Mr. Randolph had made a thorough report of the meeting held by staff and newspaper members. Although each modification was minor, it addressed important concerns of the Palm Beach Post.

Councilman McDonald commented that the Ordinance was not perfect, however, it was a way to start that could be corrected as needed; he mentioned two organizations that had assisted with the adoption of the ordinance – the Palm Beach Civic Association, and the Palm Beach Flagler Rotary Club.

Councilman Wyett suggested that the fee per newsrack be $15, rather than the $10 proposed by the news organizations.

Ms. Polly Earl, President of the Preservation Foundation, addressed the Town Council, referring to the newsrack location that would be near the Preservation Foundation. She asked if there would be an increase in the mass of the boxes that were currently there.

Mr. Robert Moore assured her that was correct, under the Ordinance that was proposed.

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

B. Other

1. Royal Park Bridge Status Report by the Public Works Director *(See Agenda Item XXI.A.1.)*

Public Works Director Al Dusey reported that the construction on the old bridge had begun, the lanes had been narrowed, and the dividers/concrete barriers had been moved. The unloading of the old structure had started. Traffic patterns on the west side had changed. Mr. Dusey announced a public hearing was tentatively scheduled for early April to discuss the replacement structure.

Mr. Dave Whaley, PCL Constructors, said two test piles had been put in and quantities of production piles would be driven before the end of the week and would last approximately four months before the operation was finished. He mentioned that monitoring devices had been installed in the historic building on the west side of the bridge and the devices would be used in the 4 Arts Building on the east side. Mr. Whaley confirmed that he would report at the March 9, 1999, Town Council meeting.

2. Water Issues:

A. Report by Hartman & Associates Regarding Cost to Upgrade the Water Distribution System Within the Town

Mr. Gerald Hartman said the water system capital improvement evaluation involved 1) correcting hydraulic deficiencies within the Town; 2) replacing the asbestos cement pipe within the Town; 3) replacing cast iron pipe, unknown pipe materials, and certain valves and hydrants; 4) installing five master meters between the Town and the City of West Palm Beach, two master meters between the Town of South Palm Beach and the Town of Palm Beach, and one overall master meter for the City of Lake Worth's beach and pier area; 5) installing new customer meters over time and modernizing the meters from the present configuration and age to automatic metering; and 6) providing for 2,000,000 gallons of additional storage for a total of 3,000,000 gallons.

B. Proposal to Determine Cost for Total Replacement of the Water Distribution System Within the Town

Mr. Hartman reported that the original cost estimate within the Town is $15,280,000 with a 30% contingency or $12,930,000 for the 10% contingency. The cost for two subaqueous crossings is approximately $3,000,000 with service from the City of West Palm Beach for a total of $18,150,000 with a 30% contingency or $15,360,00 with a 10% contingency. Mr. Hartman said the cost for a County option would be $26,050,000 with a 30% contingency or $22,040,000 with a 10% contingency.

Mr. Hartman said a full replacement cost would be $33,500,000 which includes an approximate $15,000,000 additional cost to replace everything versus replacing what needs to be replaced. Mr. Hartman quoted additional amounts incorporating the conditions as presented in the previous paragraph.

Mr. Hartman said that the system has approximately $15,000,000 of value that does not need to be replaced immediately but needs to be replaced over time.

Councilman McLendon expressed concern over the funding for the three meters on the connections to South Palm Beach, suggesting that a manifold be in place at the Town line, with a meter on the common line and accomplish everything with one meter.

Mr. Hartman replied that the report should be corrected to say two meters to South Palm Beach, and one meter for Lake Worth.

C. Request by Hartman & Associates for Additional Funding for Evaluation of West Palm Beach's Water Distribution System Within the Town

Public Works Director Al Dusey reported that Hartman & Associates had approached staff regarding additional funding for the evaluation of the West Palm Beach Water Distribution System, as a greater amount of money had been spent on the study than had been envisioned, and an additional $20,014 was being requested by them.

Mr. Gerald Hartman explained that costs had been incurred above the budget amount as a result of information coming in bits and pieces, and misinformation that had been received from the City of West Palm Beach, requiring the report data to be re-evaluated.

President Pro-Tem Wyett commented that the rates were at the normal billing rates for Hartman & Associates, and moved approval of $10,000 reimbursement.

Councilman Shaw commented that additional expenses had been incurred beyond the budgeted amount as a result of lack of cooperation from the City of West Palm Beach, and Hartman & Associates went through with the report that had been authorized.

Mr. Hartman commented that the assignment was an approximately $75,000 assignment, and approximately $120,000 had been incurred in costs. Hartman & Associates had written off half of the excess amount, and full costs had not been recovered.

President Pro-Tem Wyett withdrew his motion.

Councilman Shaw stated that the quality of work from Hartman & Associates was excellent, and the Town should work with a sense of trust with them; because of circumstances beyond their control costs were exceeded. He moved approval of the reimbursement of $20,014, and stipulated that in the future advance notice be given of any excess amounts. The motion was seconded by Councilman McLendon.

Mr. Dusey requested that the motion include the requirement that the allocation come from the General Fund Contingency.

Councilmen Shaw and McLendon were in agreement.

On roll call the motion carried 4/1, with President Pro-Tem Wyett casting a dissenting vote.

President Smith asked Mr. Hartman if the distribution system proposal had taken into account the use of the pipe coming from the airport down Southern Blvd. for distribution from the County?

Mr. Hartman replied that he had, and the transmission system within the Town as well as going east/west would amount to a total cost of approximately $10,000,000 for both.

Town Attorney Randolph recalled that a tentative meeting had been scheduled for 4:00 P.M. on February 10, 1999, to be held in the event that discussions were needed in regard to the litigation with the City of West Palm Beach. He suggested that the meeting be postponed, since the negotiations with the City of West Palm Beach had not been completed.

3. Application Form for the Town of Palm Beach Recreation Advisory Commission *(Deferred from January 12, 1999)*

Recreation Director Russ Bitzer referred to his memorandum of January 28, 1999, concerning the revised application form for the Town of Palm Beach Recreation Advisory Commission for the review of the Town Council, which included the suggestions of Councilman Shaw, as well as all of the requirements as outlined in Ordinance No. 18-98.

Councilman McDonald moved approval of the application. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Mr. Bitzer then requested direction from the Town Council regarding the eligibility of current Golf Commission and Seaview Park Commission members who were now serving, but who had completed two consecutive three year terms, and asked if the consecutive term limit applied to these commission members, since the Golf Commission and Seaview Park Commission were both recreation affiliated?

Town Attorney Randolph explained that this would be a policy question to be decided by the Town Council.

After discussion regarding the application form, Under "Areas of Knowledge or Interest," President Pro-Tem Wyett moved that the language "Please Check One" be inserted so that any individual filling out the form would be considered for a particular category of interest; the ballots would then be prepared accordingly. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Councilman McDonald moved that there be no restrictions on terms of service requirements as they affected former commissioners who had served on the former commissions. President Smith passed the gavel to second the motion. On roll call the motion carried unanimously.

****Luncheon Break was taken at 12:00 P.M.****

****The meeting was reconvened at 1:50 P.M.****

4. Set Date, Time, and Place for Next Special Town Council Meeting to Receive Additional Public Comments on the Recommendations of the Shore Protection Board and to Set the Dates, Times, and Places for Additional Special Town Council Meetings on this Matter, as Needed

Shore Protection Board Chairman Gary Lickle recommended that public meetings be advertised to create public awareness so that the public could hear the recommendations of the Shore Protection Board and comment with their views.

Mr. McAllister proposed that a Town staff member who was experienced with the issues, as well as in making presentations, be authorized to prepare a 10-15 minute presentation which would begin each workshop; he also proposed that Town staff be authorized to negotiate a contract with a cap of $5-$10,000 with Kate Gooderham in order to prepare some audio-visual aids for that presentation – a brief, inexpensive presentation which would present a brief survey of the shoreline problems, the analysis that the Shore Protection Board had completed, and a general description of the recommendations.

Mr. Lickle commented that much information that would need to come forth on shore protection videos would involve several issues regarding presentation, i.e., aerials, shoreline, other beach projects, etc.

President Pro-Tem Wyett commented that the major issue that was upsetting many residents was how the project would be financed. He suggested that there should be agreement on that topic before any workshops were held, with all alternatives considered.

Mr. Lickle responded that although the Shore Protection Board had recommended financing through ad valorem taxing, there were alternatives available. He commented that the workshops were necessary so that people would understand the process. He clarified that Kate Gooderham would not be doing the presentations, and would simply be the expert determining how to put the power point presentation together, assist with putting that together, and then work with a staff person to enable them to do the presentation.

Councilman McLendon commented that the financing of such a project should stick to the regular assessed valuation numbers, since any other method would open the door to special considerations, etc.

Councilman Shaw proposed that the first workshop meeting be held on March 15th, as an addition to an already scheduled meeting, also requesting a revised proposal from Ms. Gooderham for a mini-presentation that could be put together, which could be presented and considered at the meeting scheduled for February 15, 1999.

Public Works Director Dusey estimated that the funding for Ms. Gooderham regarding preparing a power point presentation would not amount to more than $10,000.

Councilman Shaw moved approval of funding not to exceed $10,000 from the General Fund Contingency for Kate Gooderham to prepare the power point presentation. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

President Pro-Tem Wyett commended the Shore Protection Board for the three long years of searching for solutions to the beach problem, commenting that each member had served very faithfully, and went above and beyond. He encouraged them to remember that good ideas needed time to be appreciated and considered.

The following meetings were scheduled for the workshops:

March 17th	Four Seasons Resort 1:30 p.m. 2800 South Ocean Blvd.	
March 18th	Town Hall Chambers 5:30 p.m. 360 S. County Road	
April 20th	St. Edward's Parish Hall 165 N. County Road	5:30 - 10:00 p.m.

Mr. Lickle suggested, on behalf of the Shore Protection Board that the board be sunsetted, and the Town Council could then consider reappointing a board formally at an appropriate time. He explained that because of the Sunshine Law, members of the board could not talk amongst each other, and could be of much greater assistance during the workshops.

President Pro-Tem Wyett moved that the Town Council approve the completion or sunsetting of the Shore Protection Board as of February 9, 1999. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

5. Determination of Issues to be Addressed at the Special Town Council Meeting on April 16, 1999, at 9:30 A.M. to Review the Town Manager's Performance and Long Range Goals *(Continued from January 12, 1999)*

Mr. Pryor offered that the Civic Association would be happy to underwrite the fee for Dr. Larry Gross to address the Town Council at the Town Council Meeting to be held on April 16, 1999.

After discussion, President Pro-Tem Wyett moved approval of the attendance of Dr. Gross, with a fee not to exceed $1,000 to come from the General Fund Contingency. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/2, with President Smith, President Pro-Tem Wyett, and Councilman McLendon casting affirmative votes; Councilmen McDonald and Shaw casting dissenting votes.

Town Manager Doney commented that discussion at the meeting would include each department head addressing long range planning efforts that had been in place for years.

XXI NEW BUSINESS

A. Resolutions

1. Resolution No. 6-99 - Royal Park Bridge Temporary Easement *(See Agenda Item XX.B.1.)*

The Town Council approved Resolution No. 6-99.

2. Resolution No. 7-99 - Support Request for State Legislature to Enact New Laws Regulating Pawnbrokers

Town Attorney Randolph read Resolution No. 7-99 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, IN SUPPORT OF A REQUEST FOR THE STATE LEGISLATURE TO ENACT NEW LAWS REGULATING PAWNBROKERS.

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

B. Ordinances

1. Ordinance No. 2-99 - Amendment to Restricted Boating Areas

Town Attorney Randolph commented that Ordinance No. 2-99 had been adopted previously, however, the restriction of 400' regarding the placement of buoys had not been approved by the Coast Guard, as the current was such that boats would not be able to idle properly. They would approve a 300' restriction. Mr. Randolph indicated that there was activity with Palm Beach County regarding this issue, and recommended that the current Ordinance be left in place, with no buoy system in place, until the results of circumstances with Palm Beach County were determined.

President Pro-Tem Wyett moved approval of the suggestion of Mr. Randolph that the current Ordinance No. 2-99 be left in place, with no buoy system mentioned to date. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

C. Appointments

1. Zoning Commission - Two Member Three-Year Terms to Expire February 2002

Town Attorney Randolph explained that the Zoning Commission terms were very specific, and ended on the first Tuesday after the first Monday in February.

The Town Council made the following appointments:

<u>New Regular Members</u> Rita Taca

Jorge Sanchez

Alternate Members (Pamela Hoffpauer stays)
Peter Broberg
Richard M. Kleid

D. Other

1. Request by the Preservation Foundation of Palm Beach for the Mayor and Town Council to Attend the Dedication Ceremony of the Historic Loop Street Lighting Project during their Lunch Break on April 13, 1999

The Town Council accepted the invitation from the Preservation Foundation for the 12:30 p.m. ceremony.

2. Yard Trash Storage Issues on Rights-of-Way Between Par 3 Golf Course and Lake Worth Road

Public Works Director Al Dusey reported that a survey had been completed of all properties in the area between Par 3 Golf Course and Lake Worth Road, and that his recommendations had been made via memorandum dated January 27, 1998. Mr. Dusey explained that most of the problem was in areas where trash was stored in the parkway between the roadway and the bike path, and the solution was to pave an area to store the trash, which the Florida Department of Transportation (FDOT) would allow under a permit situation.

In response to Councilman McDonald, regarding usage of the FDOT and requiring property owners to pave the areas, Town Attorney Randolph replied that he believed owners could be required to pave, as long as the appropriate arrangements had been made with FDOT.

Mr. Horowitz commented that Ocean Blvd. was a world class drive, with beautiful views of the ocean, however piles of trash marred the area. Most of the buildings in the area had gardeners to remove trash and did not put the trash out on the right-of-way. He suggested that if all buildings did the same there would be no problem, and if a voluntary procedure could not be followed, perhaps an ordinance would be necessary.

Mr. Dusey indicated that those buildings involved with unsightly trash piles would be approached for solutions to the problem on a voluntary basis, and he would then report back to the Town Council at the April Town Council Meeting.

3. Adopt a Policy to Charge Private Individuals and Organizations for Research by the Town Attorney

Town Attorney Randolph stated that it was very difficult to draw a black line in regard to issues of charging fees or not, particularly when it related to something as small as a phone call from a Town resident. He commented that he personally did not feel it was appropriate to tell a Town resident that he could not to talk to them, and he had not taken that policy. To date, he had talked to Town residents when he felt it was Town business, and then charged the Town. There had been few occasions when he had charged people for work that he had done, as most of the work he considered Town business. In the particular instance referred to by Councilman McDonald relating to Attorney Rogers, Mr. Randolph explained that he had used a great deal of time doing research, and had felt it appropriate that a bill be sent to the property owner who had requested the research; the property owner believed that the Town should be responsible for half of the bill. There had been other instances where Mr. Moore requested him to meet with applicants for variances or special exceptions, etc., and those kinds of things were not charged. He suggested that an appropriate Town policy could be established, if so desired by the Town Council.

Councilman McDonald moved that in the future, any requests to Mr. Randolph made directly from a Town resident or an attorney of a Town resident, that has not been approved by the Town Council, Town Manager, or a Town Department Head, would be billed directly to the person making the request.

Mr. Randolph clarified that if an attorney called him and wanted to meet with him, and the request had not been made by a department head of the Town, or the Town Council, he would advise that they would have to pay his standard hourly rate. He noted that he did not anticipate that the policy would include isolated items, for example, a call on the telephone.

On roll call the motion carried unanimously.

4. Proposed Procedures for Annual College Scholarship to be Awarded to a Child of a Town Employee (Donation to the Town from the Palm Beach Civic Association and the Citizens' Association of Palm Beach)

Assistant Town Manager Peter Elwell referred to his memorandum dated February 2, 1999, outlining the proposed procedures for an annual college scholarship to be awarded to a child of a Town employee, as well as the proposed application form.

Councilman Shaw moved approval of the application form. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

5. Create a Civic Award to be Presented by the Mayor and Town Council

Councilman McDonald commented that he had placed the discussion of the creation of a civic award on the Agenda, and basically wanted to determine today if there was enough interest by the Council to then let every Council person present their thoughts, perhaps in writing, and discuss the matter again next month or the following month. He explained that he was proposing an annual award that would recognize people who do volunteer activities for the Town, with the entire Council nominating and choosing the people – if there were five people qualifying in a particular year, there would be five winners that year.

President Pro-Tem Wyett commented that the Town was full of candidates for such an award, and that the Town could afford to be generous with its awards.

It was determined that all Council members would consider the issue, and discussion would take place at the next Town Council meeting.

6. Alternatives for Town Use of the "Boynton Landscape Property" (Southwest Corner of South County Road and Peruvian Avenue) and Related Issues Regarding Town Facilities in the Midtown Area

Assistant Town Manager Elwell referred to the outline in the back up material presented to the Town Council, which concerned the Boynton Landscape Property. Staff had considered the future needs of the Town in regard to utilization of the property.

President Smith suggested that discussion of this item could be discussed at the Long Range Planning Workshop on April 16, 1999, as it was a major project.

Councilman McDonald moved approval of discussion taking place at the Long Range Planning Workshop on April 16, 1999. The motion was seconded by Councilman Shaw, and on roll call carried unanimously.

Mr. Elwell then requested authorization to commence the Consultants' Comprehensive Negotiation Act process so that the Town could hire an architect to assist in pursuing with any alternatives that required further study. A Selection Committee would be created, with one Council member and several staff members, with no out-of-pocket expenses incurred. In addition, he requested authorization for Town staff and Town Attorney to negotiate with the current owners of the Boynton Landscape Property regarding the possibility that the Town may utilize the property before actually taking ownership.

Councilman Shaw moved approval of authorization to commence the Consultant's Comprehensive Negotiation Act process, and authorization for Town staff and Town Attorney to negotiate with the current owners of the Boynton Landscape Property regarding the possibility that the Town may utilize the property before actually taking ownership.

Councilman McDonald commented that the current ownership had already indicated a willingness to allow the Town to utilize the property before taking ownership, and he questioned the idea of negotiating with the owner before there was any finalization of the use of the property.

Mr. Elwell responded that was correct, however, there had been no specific terms indicated.

On roll call the motion carried unanimously.

7. Appointment of David F. Jakubiak, Assistant to the Town Manager, to Serve on the Florida League of Cities' Federal Action Strike Team (FAST) to Assist Congressman Shaw's Office on Legislative Issues per Memorandum dated February 2, 1999, from Town Manager Doney.

Councilman McDonald requested that he be appointed a co-designee with Mr. Jakubiak to serve on the Florida League of Cities' Federal Action Strike Team (FAST) to assist the office of Congressman Shaw on legislative issues.

President Pro-Tem Wyett moved the approval of appoint Councilman McDonald as co-designee with Mr. Jakubiak to serve on the Florida League of Cities' Federal Action Strike Team (FAST). President Smith passed the gavel to second the motion. On roll call the motion carried unanimously.

7.(a) Renewal of Banking Services Agreement with First Union National Bank and Authorization of the Town Manager to Execute Necessary Documents per Memorandum dated January 8, 1999, from Finance Director Demming.

Councilman Shaw explained that the reason he had requested that this item be pulled from the Approved Agenda was as result of the prior discussion that had taken place regarding ATM machines. He requested that Public Works Director Al Dusey poll his employees to determine the desirability of the installation of an ATM machine in the Public Works area as part of the package of banking services.

Mrs. Barbara Garcia, representing First Union National Bank, commented that a study had been performed in 1997, and the Town Council had been presented with two ways to implement an ATM machine in the Public Works area: one outside ATM which would be used by both the public and Town employees, and one inside ATM for the use of Town employees only. She would be happy to move forward and provide more information.

Councilman Shaw explained that he was proposing that if 50% or more the employees agreed that an ATM machine was desirable to be made available at the facility, then the bank would be obligated to provide that as a part of the service agreement; an agreement could then be made for one year, and he moved approval of his proposal. The motion was seconded by President Pro-Tem Wyett.

Mrs. Garcia responded that she would gather information and bring the issue back at the next Town Council Meeting.

On roll call the motion carried unanimously.

8. Discussion of the Issue of Specimen Trees, Including an Up-to-Date Report on Proposed New Designations

Councilman McDonald referred to the memorandum of Public Works Al Dusey of January 7, 1999, and moved approval of placing it on the Agenda for the March Town Council Meeting, requesting that the report described in the last paragraph (which referred to the process of designation of Specimen Trees) be completed before that time. The motion was seconded by Councilman Shaw.

Mr. Dusey explained that it had been planned that the Town Council would be presented a list of proposed new designations at a public hearing to be held in March. He noted that there were two issues involved; trees that may no longer be of specimen quality, and adding new trees to the list. The entire historic and specimen tree program would be reviewed at the March Town Council Meeting.

Councilman Shaw requested that de-designation requests be accompanied by the history of care of the tree and how it arrived at its condition.

Mr. Dusey agreed that a maintenance history could be obtained.

On roll call the motion carried unanimously.

9. Discussion of the Issue of Attendance of Commission and Board Members at Commission and Board meetings

Councilman McDonald moved approval of the addition of an item on the March Town Council Agenda regarding discussion of attendance requirements on all Commissions and Boards. Councilman Shaw seconded the motion. On roll call the motion carried unanimously.

10. Review of the System Used for the Distribution of Parking Permits Used by Commission Members

Councilman McDonald moved approval of an addition to the March Town Council Agenda regarding review of the system used for parking permits used by Commission members. The motion was seconded by President Pro-Tem Wyett.

Mr. Moore of the Building/Zoning Department offered that all Commission and Board members would be provided a schedule of meetings, and advised of parking conditions on meeting days.

On roll call the motion carried 3/2, with President Pro-Tem Wyett casting a dissenting vote, and President Smith casting a dissenting vote, explaining that she was not in favor of staff spending time on the issue.

11. Discussion of the Number of Terms and the Number of Conflicts of Interest for Commission Members

President Pro-Tem Wyett expressed concern about the future continuity of leadership and experience, specifically regarding the Zoning Commission, and moved that discussion of term limits and conflicts of interest for Commission members take place at the March 9, 1999, Town Council Agenda. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

12. Discussion of the Issue of Administrative Approval of Charitable Solicitation Permits

President Pro-Tem Wyett commented that he believed time could be saved by eliminating the process of people addressing the Town Council as to the reasons for being late in applying for Charitable Solicitation Permits, and considered that the permits could be handled administratively, and moved that the issue be discussed at the March 9, 1999, Town Council Agenda. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

XXII. COMMENTS OF THE TOWN COUNCIL MEMBERS

Mr. Wyett thanked the Council Members for his election as President Pro Tem.

Mr. McDonald thanked the Council Members for his appointment to the FAST Committee.

XXIII. DEVELOPMENT REVIEWS

A. Variances, Special Exceptions, and Site Plan Reviews

Town Clerk Pollitt administered the oath to all those who would be speaking to the Development Review matters.

Old Business - Major

1. SITE PLAN REVIEW NO. 1-99 with Variances - Edward D. Ltd., Co., 530 S. Ocean Blvd; located in the R-A Zoning District; height variance for retaining wall allowing 9' above the lowest grade in lieu of 7' maximum allowed. *(Deferred from January 12, 1999)* - Request for Deferral to March 9, 1999, per letter dated February 8, 1999, from Mr. Ronald K. Kolins

   This item was deferred to the March 9, 1999, Town Council meeting.

2. SITE PLAN REVIEW NO. 2-99 - Ceebraid Signal Corp., The Dorset House, 190 Bradley Place; located in the R-D(2) Zoning District. To review a proposal to reduce the number of residential units from 24 to 20, reconfiguring the vertical and horizontal interior spaces, redesigning the facades, and reducing the number of parking spaces from 53 to 46. *(Modified Site Plan Review No. 13-98 which was conditionally approved on December 8, 1998)*

Attorney James Brindell, representing Ceebraid Signal Corp., addressed the Town Council, stating that Architect Gene Lawrence would review the site plan with the Town Council. Mr. Lawrence explained the project, noting that adjustments had been made, which allowed elimination of paving on the Seminole side of the project.

President Pro-Tem Wyett moved approval of Site Plan Review No. 2-99. The motion was seconded by Councilman McLendon.

Councilman Shaw referred to a letter of objection to Town Manager Doney, received from L'Hermitage, regarding employee and service personnel parking.

Attorney Brindell commented that before the project was started, a construction meeting would be held with staff in order to review details such as construction worker parking, deliveries, etc.; the issue of concern to the L'Hermitage could be dealt with at that meeting.

Zoning Administrator Paul Castro commented that the Public Works Department had a concern with drainage requirements; a letter had also been provided by the applicant relating to using the yacht at the existing dock for a sales office. Staff had no objection to the exterior/interior improvements.

Director of Planning, Zoning & Building Robert Moore explained that there would be a pre-work conference of the project, which would also require a resident inspector. The primary requirement would be that construction personnel parked on site. If that could not be done, then arrangements could be made to bus workers to and from the job site.

Architect Gene Lawrence stated that there would be no reason to eliminate the street parking during construction, and that he would be glad to meet with L'Hermitage to explain.

President Pro-Tem Wyett amended the motion of approval, to include the requirement for a bond that in such case that the building was in a condition of non-completion, the bond would cover the cost to the Town of tearing it down, and that the drainage concerns of staff be addressed.
Councilman McLendon, as the seconder of the motion, accepted those amendments.

Mr. Moore explained that a normal demolition of any building required a bond in the amount of the cost to demolish the building; if the project was not finished, and was half-way through and would not be finished for some reason, the Town would be covered for the costs of removing the building. Staff and the applicant would meet to discuss the terms of the bond.

Mr. Jay Denger, Manager of Park Regent Condominium, which was immediately south of the proposed project commented that the Board of Directors was very happy with the proposed project, and considered it an improvement to the neighborhood, however, they were concerned with the amount of dust which would result from the demolition, and requested that all precautions be taken.

Architect Lawrence explained that the demolition would be done in such a way that a minimum of 50% of the exterior walls would be up at any given time, which would minimize dust as well. He estimated that the demolition stage would take approximately 8-12 weeks, however, the exterior of the building would take longer.

President Pro-Tem Wyett proposed that all demolition be completed by the beginning of the season, using the Worth Avenue Guidelines, and no later than Thanksgiving. He then clarified the conditions of his motion of approval:

A. The bond conditions would be worked out with Town staff and applicant.

B. The drainage concerns would be addressed by applicant.

C. The demolition would be completed no later than Thanksgiving.

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

Attorney Brindell then addressed the request that the sales office be located on a boat that would be docked at the Dorset House docking facility.

President Pro-Tem Wyett moved denial of the request, commenting that it would be too commercial, the wrong use, and a bad precedent. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/1, as Councilman McDonald had temporarily left the room, and Councilman Shaw cast a dissenting vote.

New Business - Minor

3. VARIANCE NO. 1-99 - Eugene Bernard, Unit 4# @ Villas; commonly known as 425 Worth Ave; legal description on file; located in the R-D(2) Zoning District. To allow construction of addition by enclosing an open balcony contrary to Section 134-1061(4) of Town Code.

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

Director of Planning, Building & Zoning Robert Moore reported that this was a minor matter, and the address had previously been granted variances for the enclosure of balconies, and it was a staff recommendation that the application be approved.

Councilman McLendon moved approval of Variance No. 1-99. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

4. SPECIAL EXCEPTION NO. 3-99 - Edward W. Cook, Trustee, 223 Sunset Ave.; located in the C-TS Zoning District. To allow use of 2,349 sq.ft. of second floor office space for a property management business. To amend SPR4-82 deleting a requirement relative to shared payment involving a north walkway.

Ex-parte communication was declared by Councilman Shaw with the landlord of the building, Mr. Cook.

Director of Planning, Zoning & Building Robert Moore reported that the request was for an increase just over the minimum 2,000 sq. ft. requirement. In addition, there had been a condition placed upon the property in 1982, which was a cloud on the title, which would have provided a sidewalk in conjunction with development of adjacent property in the nature of a via. The property had never been developed as a via, and there would be no need to carry that requirement, as long as the applicant could provide Town serving documentation. Staff recommended approval of the application.

President Pro-Tem Wyett moved approval of Special Exception No. 3-99. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

5. SPECIAL EXCEPTION NO. 4-99 - Daniel Foxx, 218 Worth Ave.; located in the C-WA Zoning District. To allow expansion of a second floor retail space from 1,216 to 2,525 sq.ft.

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

Director of Planning, Zoning & Building Robert Moore reported that staff had no objection to the request to enlarge on the second floor with offices and storage only for retail use, with the condition that the Town serving documentation was provided.

President Pro-Tem Wyett moved approval of Special Exception No. 4-99, with the condition that the Town serving documentation be provided. The motion was seconded by Councilman Shaw.

In response to the query of Councilman Shaw, Attorney James Brindell explained that the first floor contained 1,216 sq. ft., and the second floor was 1309 sq. ft., and it was proposed to use that floor for office, storage, and alteration uses, and not for a sales area. The space had been previously approved for the exact same uses.

On roll call the motion carried unanimously.

New Business - Major

6. SPECIAL EXCEPTION NO. 5-99 WITH VARIANCE - Palm Beach National, 125 Worth Ave.; located in the C-WA Zoning District. To allow a 1,736 sq.ft. second floor expansion increasing total from 10,660 to 12,396 sq.ft. A variance is requested to waive the requirement for 2 additional parking spaces.

Ex-parte communication was declared by President Pro-Tem Wyett via a discussion with Mr. Anderson, and Councilman McLendon with Nancy Mizell of Palm Beach National Bank.

Attorney James Brindell, on behalf of Palm Beach National Bank, addressed the Town Council, stating that in October of 1998, approval had been granted for some additional space of 679 square feet. He exhibited a chart delineating the 679 square feet. He continued that subsequent to that approval, the space outlined in green, which was 2415 square feet had become available, which was right in between the existing areas occupied by the bank. The bank, therefore, wished to acquire the space in order to create additional space for a conference room, and for more efficient layout of some of the current service areas, which should suffice their needs for a substantial period of time.

Director of Planning, Zoning & Building Robert Moore commented that staff had no objection to the small variance for 2 additional spaces, however, requested that consideration be given to the number of times the bank had expanded through the years.

Councilman Shaw moved approval of Special Exception No. 5-99 with variance. The motion was seconded by President Pro-Tem Wyett.

President Smith pointed out that the bank had made their requests piecemeal, so that every year it was another expansion.

Attorney Brindell responded that Mr. Anderson had assured him that this was the space that would satisfy the needs of the bank for the future.

On roll call the motion carried unanimously.

7. SITE PLAN REVIEW NO. 3-99 WITH SPECIAL EXCEPTION & VARIANCES - Palm Beach Day School, 241 Seaview Ave.; located in the R-B Zoning District. To allow construction of a 2,326 sq.ft. art studio addition to the main bldg.; to construct a 13,151 sq.ft. gymnatorium, to construct a 28 space parking lot; and to demolish 3 houses and construct a playground and stabilized grass parking. Applicant will seek special permission regarding start and finish time limits for construction. Special Exception approval is also sought to modify a previous condition of approval limiting number of students to 310, to now allow a 360 student cap. A request for 16 Variances are as follows: Gymnatorium Related - to allow a 20' front yard setback in lieu of 30' required; to allow 5' rear yard setback in lieu of 10' required; to allow a 9' west side yard setback in lieu of 15' required; to allow a building height of 39'2" in lieu of 22' maximum allowed, an overall height of 47'2" in lieu of 30' allowed; to allow a bldg angle of

vision of 146 degrees in lieu of 116 max. allowed; to allow a FAR of 103% in lieu of 45% maximum allowed; to allow a CCR of 15 in lieu of 4.5 CCR; to allow a 9'frontyard setback in lieu of 24' required for entry platform at stairs. South Side of Seaview - to allow 51% lot coverage in lieu of 30% max. allowed; to allow construction of a parking lot providing no front yard setback. North Side of Seaview, @ parking lot - to allow a 5' front yard setback in lieu of 30' required; to allow 8.5% interior landscape area (east parking lot and drive aisle) in lieu of 10% required; to allow a 4' high hedge in lieu of 6' required site-screening the parking lot and playing fields. To allow stabilized parking for 92 required spaces in the west athletic field in lieu of paved spaces and to allow said 92 parking spaces in lieu of the required 111 spaces for special events held at the gymnatorium; and to allow overnight parking of school buses on the play field in the front yard setback. Administration Building - allow 47% front landscape space and 49% overall in lieu of 40% required.

Under "Approval of Agenda," this item was moved to become the last item heard under "Development Review," through motion of Councilman Shaw, seconded by Councilman McLendon.

(After discussion later in the meeting, it was determined that this issue would be discussed further on the following day, February 10, 1999, at 3:00 P.M. After lengthy discussion at that time, the Town Council again adjourned the meeting to Wednesday, March 10, 1999, at 1:30 P.M., at which time discussion would continue).

8. SITE PLAN REVIEW NO. 4-99 WITH VARIANCES - ARC, L.C., 218 Royal Palm Way; located in the C-OPI Zoning District. To allow construction of a 47 sq.ft. elevator/mech equip room. Variances requested are to allow a lot coverage increase from 31.48% to 31.72% in lieu of 25% allowed, and to allow a decrease in landscape open space from 16.11% to 15.88% in lieu of 30% required.

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

Architect Robert Bell, representing the applicant, addressed the Town Council, presenting exhibits of the proposed site plan. He stated that the subject building was located on the south side of Royal Palm Way, with the majority being a two-story building with a partial third floor, which was residential in nature. There was an existing elevator at the south end, which served the residential unit, however, the elevator was not ADA accessible, and there was no other elevator within the building. Various locations within the building had been considered in which to locate an elevator, and the primary location would be the existing stairwell, however, there were some structural considerations, as well as the fact that it would eliminate the only interior stair in the building. The applicant was requesting to place the actual elevator shaft within the footprint of the existing covered canopy on the west side of the building, and placement of a 47 sq. ft. elevator equipment room adjacent to the north. It could not be placed on the south because it would infringe on existing parking space. Essentially, a 47 sq. ft. increase in lot coverage was being requested, however, leasable tenant area on the second floor would actually be reduced by 96 sq. ft. on the second floor by the creation of an elevator lobby off of the elevator.

Director of Planning, Zoning & Building Robert Moore commented that Mr. Bell would need to address why the elevator could not be located inside the building, rather than putting it on the outside of the building.

Mr. Bell responded that there was an existing lobby, and to the northeast of that was the only existing interior stairwell. That had initially been considered, however, that area would conflict with the existing pads of existing columns, and by placing it in that location the stairs would be eliminated.

Mr. Mark Haisfield, owner of the building, commented that the base structure of the pads hold up the existing structure, and if the pit for the elevator was built in the current lobby/stair area the building could fall down.

President Pro-Tem Wyett moved that Site Plan Review No. 4-99 be deferred to the March 9, 1999, Town Council meeting so that an engineer could be present to explain the hardship of the variance request. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

D. Other

1. Reconsideration of Conditions in the Mitigation Plan outlined in the Town's letter dated November 25, 1998, for FH of Palm Beach, Inc., commonly known as C-15 and C-16 of the Palm Beach Hotel, 251 Sunrise Avenue *(Condition of Approval at the November 10, 1998, Town Council Meeting was to return February 9, 1999, to Report on Progress of Implementation of the Mitigation Plan.)*

Ex-parte communication was declared by Mayor Ilyinsky, who commented that was all that people in that part of Town talked about.

Attorney Maura Ziska addressed the Town Council, stating that there had been a four month stay on the demolition order that had been issued by the Town, and today the status of that demolition order and further procedures would be discussed. She produced an affidavit on behalf of the head of security with regard to noise concerns, and occupancy concerns, stating that there was compliance with the conditions placed. The one condition that the applicant had been unable to comply with was the supplemental off-site parking, as they had been unable to find a property owner who would be willing to enter into a third party agreement to allow use of their property.

President Pro-Tem Wyett commented that there had been non-compliance on the occupancy condition, as there had been crowded conditions, as noted by the Fire Department, on at least three separate occasions recently. He expressed concern about the attitude of the operators of the restaurant towards adhering to the conditions in the mitigation plan. He referred to a letter he had received from the former president of the Biltmore Condominium objecting to the noise emitting from 251 Restaurant.

Ms. Ziska replied that she believed that the noise had subsided since the opening of the club in 1997.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: he stated that the staff had been in contact with Ms. Ziska consistently, working on the parking issue, as well as the noise. He noted that Chief Code Compliance Officer Brian House had been called early Saturday morning, at 2:00 A.M., as well as one of the police officers, as a result of noise complaints. The parking issue had been a problem, as the valet company was charging for the valet service on the street, which was a total violation of Town ordinances. The valet service had leased the List parking lot, which was a licensed public parking lot, and they were in compliance regarding the aspect of where they were parking. Complaints from residents of Park Avenue were ongoing, however, Mr. Moore stated that he believed that the applicant had attempted to comply with the intent of the agreement.

Police Chief Frank Croft addressed the Town Council, stating that he did not know in fact that an agreement had been reached between the valet service and the parking lot, which was an issue of public safety. He noted that there had been no request, to date, for the designated signs provided by the Town for valet parking.

Ms. Ziska responded that Prestige Valet Service had been hired, and they had agreements with Jack Grace, and Aquaterra, as well as with List Management for a lot on Sunset Avenue, for exclusive use from 6:00 P.M. to 6:00 A.M. She noted that there was a red curb passenger loading zone in front of the restaurant, and the valets used the blue cone passenger loading sign, as well as a table for the valet service.

Councilman Shaw commented that the street had two-way traffic, and questioned whether a loading zone was needed on both sides of the street.

Chief Croft replied that he had some concerns about the legality of the parking lot agreement, as it sounded as if the property was being used by several different restaurants and valet services.

Mr. Moore commented that it was a licensed use as a parking lot, and whoever used it was up to the owner, who had a right to sublet space.

Chief Croft noted that he had met with Ms. Gilda Beane and Dr. Nasser during the last week, who had continuous concerns regarding noise, and there was consensus between Town staff that the loud beat of the music was a violation of Town ordinances. He noted that the only reason the restaurant was not cited Saturday night was the fact that it was 2:30 A.M., and Ms. Beane did not feel like cooperating to the point of making an official statement for the police officer called to the scene.

President Pro-Tem Wyett noted that Ms. Beane had relayed to him that she was exhausted and confused at that time of the morning, and did not feel it was appropriate for her to sign anything.

Chief Code Compliance Officer Brian House addressed the Town Council, stating that when he arrived on the scene on Saturday morning, at approximately 2:28 A.M. he could not hear very much. When he asked the police officers they replied that they could just barely hear the noise. He then turned the noise meter on, and could get nothing, however, as he walked closer to the door (within 5-10 feet) he could get a measurement, which was not above 50 decibels. He then asked the off-duty police officer if the music had been turned up or down at any time during the night, and he had replied that it had been exactly the same all night. He suggested that the amplifiers in the patio area could be turned down, which should alleviate any noise being heard.

Chief Croft added that there was staff agreement between the Police Department and the Building Department, that there would be citations issued if the thumping sound could be heard from a residence. He pointed out that a lot of taxpayer's money was being spent by sending police officers to the site 7-10 times per week.

Fire Chief Elmore addressed the Town Council, stating that the major concern of the Fire Department was overcrowding, and that the proprietor must be relied upon to govern that. He noted that at midnight on Saturday night an inspector counted 230 people in the establishment. He noted that consideration of a 10% error must be given, as it was very difficult to count people who were moving continuously. The inspector then notified the proprietor, and 15 minutes later the count was down to 196. He commented that there was more cooperation this season than last season, as there were only two occasions this season of overcrowding.

Public Works Director Al Dusey addressed the Town Council, reporting that there had been no problems with recycling and garbage pick up.

President Pro-Tem Wyett suggested that the owner of the establishment tell the Town Council what the plans were to solve the problem?

Mr. Alan Heise, proprietor of the establishment, commented that he did not believe there was anything that could be done to make Ms. Beane happy. He stated that there were 50-60 residents that lived closer to the establishment, and they were kept happy, however, there were certain people that just could not be pleased.

Councilman Shaw commented that he perceived the issue as being the parking problem; shared parking had been discussed as to what was permitted, and he believed the attorney for the proprietor, the proprietor, and the valet people should know the regulations. He mentioned that he had dinner recently at the restaurant, and had gone two other times to eat at 10:00 P.M., and the kitchen was closed, which was not in accordance with the conditions placed on the establishment. He stated that he found the noise levels, at times, excessive, and also questioned conformance to the Town serving requirement. He then made a motion to allow the establishment another month to resolve the issues, and return to the Town Council at the March 9, 1999, Town Council Meeting.

Councilman McDonald seconded the motion of Councilman Shaw.

Ms. Gilda Beane addressed the Town Council, commenting that the record of the establishment had not been good, and that complaints were not frivolous. The noise was a nuisance to the residents of Park Avenue, as the noise vibrations traveled to neighboring homes. She stated that she hoped a certified acoustical engineer could be hired to assist in solving the problem, and dispensed some information regarding same. She noted that she had not signed the complaint last Saturday night because she had not understood what the police officer was asking for when she asked that a statement be signed.

Mr. Moore asked if she would be willing to sign a statement, now that she knew what it was, if she was disturbed again?

Ms. Beane replied affirmatively.

Attorney Ron Kolins addressed the Town Council, representing the Property Owners Association of the Biltmore. He stated that he regretted the fact that discussion had proceeded to the point it had before suggestions were made to the Town Council, as it was clear that the drum beat was not measurable in terms of decibels, and that there had been many complaints from many people over many months. He suggested that the Town Council had been more than patient with the establishment, and should have the right and obligation to withdraw the approvals, as the establishment had not lived up to the requirements. He referred to Section 12-48 of the Town Code, regarding noise, as well as Section 12-64, both of which he maintained had been violated.

Mrs. Polly Earl commented that she was speaking as a mother and as a resident, and that for her son and his friends, 251 was a destination of choice for young adults, and that she was glad to have a place that they wanted to go in Palm Beach, and come home from safely.

Ms. Sherman, 265 Park Avenue, commented that she had never called the police, however, her husband frequently was awakened by the thumping sounds from 251.

President Smith noted that there did not seem to be any degree of cooperation from the establishment, and that there must be some solution to the problem addressed by the establishment.

In response to Councilman Shaw, Mr. Moore explained that it had been indicated that the operation would operate as a restaurant. The Special Exception issue discussed in the November 13, 1998, Town Council Meeting, was directed at restaurant versus plain nightclub.

Councilman Shaw stated that he did not believe they were operating as a restaurant, and questioned the next step?

Mr. Moore deferred to Town Attorney Randolph for discussion on that matter.

Upon request, Town Clerk Pollitt read the motion made by Councilman Shaw, seconded by Councilman McDonald, for the establishment to return to the March 9, 1999, Town Council Meeting with resolutions to the issues of base noise, the overcrowding issues, and accommodate the neighbors.

Mr. Moore added that the valet situation should also be corrected between now and next month, and that statements of residents being disturbed could be obtained for code enforcement action to be taken.

President Pro-Tem Wyett entered the police report handed out by Ms. Beane into the public record, stating that there would be no need for the establishment to come back if it had not complied with all conditions.

On roll call the motion carried unanimously.

2. Request for Waiver to Section 42-199 of the Town Code of Ordinances, Hours of Construction, for the Esplanade and Saks Fifth Avenue, 150 Worth Avenue, by Mr. James R. Brindell

Attorney James Brindell, on behalf of the Goodman Company, addressed the Town Council, stating that major renovations had been completed on the face of the Esplanade, however, there was still some construction work that must be accomplished, which had been previously approved for the Esplanade and Saks Fifth Avenue. He indicated that the additional work would involve pre-cast stucco and painting, would take about 6-8 weeks, and would require closure of the sidewalk to achieve the work. A Waiver of Construction Hours had been approved for the Neiman Marcus project, which was across the street, in July of 1998. That approval would allow construction to start there on April 12, 1999. The first portion of work there would not require the closure of the sidewalk. He suggested that the exterior work on the Esplanade could be done during the same period of time. He requested that work be allowed to commence on April 12, 1999, to run through the first several weeks in tandem with the Neiman Marcus project.

Director of Planning, Zoning & Building Robert Moore reported that staff had met with Attorney Brindell, representatives of Goodman Company, Saks Fifth Avenue, and Weitz Construction, and believed that the request should be approved.

President Pro-Tem Wyett moved approval of the request for Waiver to Section 42-199 of the Town Code of Ordinances, Hours of Construction, for the Esplanade and Saks Fifth Avenue, as presented by Attorney Brindell. The motion was seconded by Councilman Shaw.

Councilman Shaw asked the normal construction dates for the Worth Avenue area?

Mr. Moore replied that they were May 1st to November 15th.

Councilman Shaw expressed concern with the construction schedule of Neiman Marcus.

Town Engineer James Bowser commented that he understood that the wall of the parking garage was at the private property line, which gave him some concern as to sidewalk closings.

Don Jones, of the Goodman Company, commented that there would be two rigs doing the auger piling, however, they could do it entirely from the site. The sidewalk itself was currently a 10' sidewalk, and workers would be inside of that area with the auger piling.

Mr. Bowser replied that it was awfully close to the sidewalk, and expressed concern as to public safety.

Mr. Moore commented that the pre-work conference would address all such concerns.

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

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At this time Item No. 7 - New Business - Major - SITE PLAN REVIEW NO. 3-99 WITH SPECIAL EXCEPTION & VARIANCES - Palm Beach Day School, 241 Seaview Avenue, was heard.

7. <u>SITE PLAN REVIEW NO. 3-99 WITH SPECIAL EXCEPTION & VARIANCES</u> - Palm Beach Day School, 241 Seaview Ave.; located in the R-B Zoning District. To allow construction of a 2,326 sq.ft. art studio addition to the main bldg.; to construct a 13,151 sq.ft. gymnatorium, to construct a 28 space parking lot; and to demolish 3 houses and construct a playground and stabilized grass parking. Applicant will seek special permission regarding start and finish time limits for construction. Special Exception approval is also sought to modify a previous condition of approval limiting number of students to 310, to now allow a 360 student cap. A request for 16 Variances are as follows: Gymnatorium Related - to allow a 20' front yard setback in lieu of 30' required; to allow 5' rear yard setback in lieu of 10' required; to allow a 9' west side yard setback in lieu of 15' required; to allow a building height of 39'2" in lieu of 22' maximum allowed, an overall height of 47'2" in lieu of 30' allowed; to allow a bldg angle of vision of 146 degrees in lieu of 116 max. allowed; to allow a FAR of 103% in lieu of 45% maximum allowed; to allow a CCR of 15 in lieu of 4.5 CCR; to allow a 9'frontyard setback in lieu of 24' required for entry platform at stairs. South Side of Seaview - to allow 51% lot coverage in lieu of 30% max. allowed; to allow construction of a parking lot providing no front yard setback. North Side of Seaview, @ parking lot - to allow a 5' front yard setback in lieu of 30' required; to allow 8.5% interior landscape area (east parking lot and drive aisle) in lieu of 10% required; to allow a 4' high hedge in lieu of 6' required site-screening the parking lot and playing fields. To allow stabilized parking for 92 required spaces in the west athletic field in lieu of paved spaces and to allow said 92 parking spaces in lieu of the required 111 spaces for special events held at the <u>gymnatorium</u>; and to allow overnight parking of school buses on the play field in the front yard setback. Administration Building - allow 47% front landscape space and 49% overall in lieu of 40% required.

Attorney James Brindell, on behalf of Palm Beach Day School, addressed the Town Council, stating that the Palm Beach Day School currently does not have sufficient classroom space, nor a modern auditorium, art room or gymnasium, and no delineated parking. He noted that the school had an independent management association analyze the facilities of the school, and indicated that it needed augmentation.

Mr. Jack Thompson, Headmaster of Palm Beach Day School, addressed the Town Council, explaining that his responsibilities are to administer the policies set by the Board of Trustees, hire faculty, work with them, and carry out the missions of the school. He stated that mixed abilities of students are being served, the auditorium has been converted to classrooms, and the business office moved across the street. Older students share classroom space approximately 80-90% of each day. He pointed out that the school could not survive without the Town Recreation Department, as a result of cooperative arrangements for access to fields, tennis courts, and the sharing of expenses such as re-surfacing. He addressed the request to raise the cap to 360 pupils, which would keep classrooms in the low teens, provide more flexibility, and be economically more feasible.

Architect Rene Tercilla described the site plan and addressed the east end parking area in the master plan developed for Palm Beach Day School.

Mr. Jerry Wentzel, of DKS Associates, explained that in analyzing traffic patterns at the school, it was found that there was minor congestion for 15 minutes periods in the morning and afternoon. Projections for proposed additional students would incur about 15% more traffic. He recommended more off-street parking, and a pick up/drop off arrangement. He maintained that the Palm Beach Day School did not cause congestion at County Road or Cocoanut Row.

Attorney Brindell addressed the Town serving requirement, noting that today there were more families with younger children in Palm Beach, and the Palm Beach Day School had a mutually beneficial relationship with the Town, as the school contributed to re-sodding the field, new scoreboards, etc. That good relationship was very indicative of Town serving. The gymnatorium could provide another facility to the town when the school was not using the facility. Town serving documentation provided that over 50% of the students met Town serving criteria. He explained that the school cap had been at 210 for 20 years, and the Town had changed a lot in 20 years. He summarized that there would be no excessive noise as a result of the requested variances, no affect on ingress or egress, no additional impact on utility services, refuse would be provided for, there would be no traffic flow impacts, and it would not adversely affect municipal police or fire services.

Diane Jenkins, of Jenkins Appraisal Services, addressed the Town Council, stating that she had completed analysis of the property along Seaspray that had sold over the past four years, and she compared them to properties that had sold on the north side of Seaspray, or along Seabreeze, to see whether properties backing up tot he school were impacted negatively by the school, and the analysis indicated that there was no impact currently to the properties that backed up to the school.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Police Department: concern with traffic circulation plan and study; Fire Department: requiring complete fire sprinkling system; Comprehensive Plan: traffic circulation study should be conducted. Gym should conform architecturally to the north side of the street. Building No. 3 should be brought into overall plan. Landscape area covered should not be reduced. Town Engineer: meet Town Code requirements for drainage improvements; clear all utility easements of encroachments and maintain them unobstructed. Building Department: Town serving must be addressed; variance criteria was not addressed previously, unity of title required. Town Manager: concurs with the above staff comments.

Police Chief Croft commented that Seaview Avenue was one of the most congested streets in Town as a result of the schools and Recreation Center, and that he had reservations about additional vehicles. He noted that he liked the plan in general, however, he believed the street was too narrow the way it now exists. He suggested that the road could be widened and parking provided on the north side of the street, and expressed concern about additional cars with the increase in students.

Fire Chief Ken Elmore commented that the main concern for his department was the sprinkling system for safety issues. He noted that at various times the street is congested and difficult for Fire-Rescue vehicles to get down the street.

Recreation Director Russell Bitzer commented that he believed it was a wonderful opportunity for a joint use arrangement with the Day School and would benefit all Palm Beach children.

Town Engineer James Bowser commented that the clearing of utility easements was a prime concern, and the turn into the easterly parking lot was tight and barely acceptable. Drainage regulations would have to be adhered to, and the gym site would have a difficult time meeting drainage requirements. He noted that there were high water tables in the area and a waiver must be received.

Attorney Ron Kolins, representing 12 families that live near the Palm Beach Day School, addressed the Town Council, explaining that some of the families lived near the east end and some lived near the west parking lot, and some lived in Phipps Plaza. They opposed the plan, as it would interfere with the quiet enjoyment of their homes and property. They were willing to co-exist with the Day School, however, the proposed expansion of the school physically, and in terms of the enrollment, was the objection. He noted that there was also an intense use of the street that was inherently incompatible with a residential Town. He extensively questioned Headmaster Jack Thompson, Architect Rene Tercilla, and Traffic Expert Jerry Wentzel. He maintained that the applicant had not met the Town Code for the following reasons:

A. Existing structures of the school were nonconforming structures, and existing structures could not be expanded if they were nonconforming.

B. The applicant needed a Special Exception, and the standards could not be met.

C. The proposed expansion and increase in enrollment will substantially injure property values.

D. The use is not compatible with adjoining development and the intended purpose of the district in which the school is located.

E. The use will result in economic, noise, glare/odor impacts on adjoining properties.
F. Adequate ingress and egress will not be provided.

G. Exterior lighting will not be compatible with properties in the district.

H. Adequate landscaping and screening must be provided.

Attorney Kolins introduced the Curriculum Vitae of Appraiser John Underwood in to the record, and asked that he address the Town Council.

Mr. John Underwood addressed the Town Council, stating that he was president of the Formal Appraising and Consultants in Palm Beach County, was a member of the Appraisal Institute, and had previously served as the national education chair for the Institute, and was currently on the faculty. He submitted that value was a matter of perception, and the more harmonious the use, the stronger the values would be. In the proposed application by the School, all of the Special Exceptions and Variances proposed increased the intensity of use close to the residential development. These exceptions would increase the intensity of use so strongly that he believed there would be a dramatic impact on the property values. He had looked at sales that were proximate to the school, and at sales that were not proximate to the school, and there were some differences, however it was difficult, in the time frame, to say what they were attributable to; historically, when he had looked at a house adjacent to a school, it would not sell for as much as one that was a block away, particularly adjacent to the outside activities. The overall impact on property values would be felt in two ways: marketing time, which would be increased with properties most proximate to the proposed changes; and holding time for the seller. He identified areas on the site plan where he believed intensity would increase.

Attorney Kolins then addressed the Site Plan criteria, stating that it had not been met, as the use was too intense in relation to the adjacent and nearby properties; ingress and egress was limited; screens and buffers would be necessary to preserve external and internal harmony and compatibility with uses inside and outside property boundaries; the uses are not harmonious between residents and the school; privacy would be dramatically changed, and the use would be dramatically intensified because the newer and better facilities would attract more uses.

Mr. Kolins stated that there was no hardship for any of the variances that were being requested, and that most of them were self-created. He suggested that mitigation could occur if the school agreed not to increase its enrollment.

After discussion, the meeting was temporarily adjourned at 9:25 P.M.on February 9, 1999, to continue on February 10, 1999, at 3:00 p.m. to further discuss Site Plan Review No. 3-99, with Special Exception & Variances - Palm Beach Day School, 241 Seaview Avenue.

XIX ANY OTHER MATTERS

There were none.

XX ADJOURNMENT

At 9:25 P.M., on February 9, 1999, the meeting was temporarily adjourned, to be reconvened on February 10, 1999, at 3:00 P.M. to further discuss Site Plan Review No. 3-99 with Special Exception & Variances - Palm Beach Day School, 241 Seaview Avenue.

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TOWN COUNCIL MEETING OF FEBRUARY 10, 1999, AS A CONTINUATION OF TOWN COUNCIL MEETING OF FEBRUARY 9, 1999

The Town Council Meeting of February 9, 1999, was called to order by President Lesly Smith, and reconvened, at 3:08 P.M. on February 10, 1999, in the Town Council Chambers.

At this time, the following citizens spoke in support of the requests of the Palm Beach Day School:

Mrs. Kristine Curtis
Mrs. Susan Barnhart
Mrs. Susan Keenan
Mr. Kendall
Mrs. Lisa Burroughs (reading a letter from her husband, James Burroughs)
Mr. Monell

The following citizens spoke in objection to the requests of the Palm Beach Day School:

Ms. Jane Burdocker
Ms. Jane Baker
Mr. Dick Zuver
Mr. Ron Fick

The following citizens spoke to urge that more consideration and evaluation be given to the project before any decision is made:

Mrs. Jane Volk
Mrs. Paige Benjamin

Police Chief Frank Croft addressed the Town Council, explaining that he had voiced public safety concerns; Seaview was a very congested street, but that there were also 20 other congested streets in the Town. He agreed with the idea of the east parking lot, as it would take parking off the street, and maintained that the streets were in need of improvement, such as widening. He addressed the parking issues raised by Mrs. Baker, and commented that the Police Department used its discretion as far as parking was concerned; there had never been any parking agreements signed with the Police Department in the area, and if the project went forward he would like the opportunity to sit down with the staff and iron out the elements of parking on and off street. He advised that he would speak with Mrs. Baker regarding the parking problems she had experienced.

Town Engineer Bowser commented that the Site Plan being proposed by the Day School must meet the drainage requirements, and that would be a reason to deny their permits if the drainage issue could not be addressed.

Attorney Kolins commented that he understood that this was a very difficult political matter for the Town Council, however, the situation could be compared to attempting to stuff 15 pounds of potatoes into a 5 pound bag, and that could not be allowed. He maintained that the application could not be approved under the law, because it does not meet the standards for Special Exception, Site Plan, and Variances.

Attorney Brindell responded that the Day School use pre-dates the Code criteria; the area in question was one of an extreme mixture of uses; the requested variances would allow the school the reasonable use of its property, and that the school must be able to provide the facilities needed to teach properly. He requested that the application be approved.

Mayor Ilyinsky commented that one of the great disadvantages to being Mayor was that sometimes you have to say no to some of your best friends, and yes to some you do not even know. He noted that he had attended Palm Beach Day School 65 years ago, and that the school was a jewel to the Town and belongs in Palm Beach. He suggested that enormous cooperation was needed with planning and noise abatement, and that if he did have a vote he would vote in support of the application.

Councilman McDonald commented that he would like to see the concerns of the clients of Mr. Kolins addressed so that the project could go forward.

Councilman Shaw commented that he believed there were two major issues: the gymnatorium variances requested, which he believed could be adjusted in height, design, etc.; and the parking. He suggested that the street could be widened, valet parking could be used for special events held, low level lighting could be used, the lots should be gated or chained off at nights from 5:00 P.M. on; buses should be parked on the south side, car pooling could be promoted, perhaps Palm Tran buses could be used.

Councilman McLendon commented that he believed the school needed to do the project, however, conditions would have to be applied.

President Smith commented that, thanks to the school, there were more young families moving to Palm Beach, and that the school must be kept doing. She noted that she did not believe that the facility should be used for Town events, and that the cap could perhaps be increased over a 5-year period. She stated that she hoped that the concerns of neighbors could be addressed, and that she would like to see more details regarding compromise.

Mr. Moore acknowledged that one more variance would be needed regarding the expansion of a nonconforming building, which was the art center. Staff believed the criteria for Special Exception and Site Plan were addressed, and that the hardship was a unique issue, as the Code did not contemplate special zoning districts for schools. He noted that the Palm Beach Day School had applied for permission to put in a two-story building in 1982, and it was passed with some conditions. Subsequent to that, the Day School had requested to expand the media center in 1988, and that too, was approved. He maintained that it was necessary to examine the variances to determine if they were the minimum needed to accomplish what the school needs. He urged that the door to compromise remain opened.

Attorney Brindell requested a 5-minute break so that he could respond to all of the issues discussed.

Attorney Kolins suggested that there were a number of issues that needed to be worked out, and he requested that a final vote not be taken until everyone had the opportunity to come forward with compromises or thoughts on mitigation.

Town Attorney Randolph clarified that code criteria must be followed, and that criteria could not based on a policy decision. Then a decision must be made on whether variances to that criteria could be made. There was precedent to giving consideration to schools, and it must be kept in mind that Site Plan Review consideration must have findings of affects of public interest and satisfactory provisions have been made to satisfy the Code. He cautioned that precedent would also be set for schools, churches, clubs, and synagogues, which were all special exceptions, and that in considering the Site Plan Review, findings must be found as to whether or not the proposed plan would or would not adversely affect the public interest, and determine whether satisfactory provisions had been made in regard to all of those items set forth in the Code. All conditions placed could be incorporated within a Declaration of Use Agreement that could be recorded and run with the property.

Attorney Brindell responded that some concessions could be made, such as the tie beam being brought down to 35', landscaping to provide screening in the parking area, consideration of valet parking, chaining off the east parking lot at 5:00 P.M., parking business on the south side only, car pooling, bus use and exploration of the Palm Tran service, limitation on Town use of the gymnatorium, raising the enrollment cap over 5 years, landscaping in front of the gym and on the west end of the parking lot.

President Pro-Tem Wyett thanked Attorney Brindell and Attorney Kolins for recommending adjustments, noting that, in his estimation, there was a hardship, as the plan was part of public policy, and communities must have schools and provide education, although he did not think the cap should be continued, as a school could not add more students than it could accommodate.

Councilman McLendon made a motion to defer this issue until the March 9, 1999, Town Council Meeting. The motion was seconded by Councilman McDonald.

Attorney Brindell commented that if the issue was deferred he would like to know exactly what was expected at the next meeting.

Councilman McLendon replied that the issue could either be deferred or acted upon with conditions; he was not prepared, and did not think anyone was prepared, to adequately list the terminology of all of the conditions at this time.

Town Engineer Bowser commented that it was difficult to review such a major project on the short notice he had received, and that he could only make rather broad statements at this time. He suggested that discussion could take place with the applicant between now and the next meeting to work out a more definitive plan.

Mr. Moore explained that when an application is received by the Building Department, they are charged with processing the application and getting it before the Town Council for a decision within thirty days. Staff had an obligation to review plans as quickly as possible and make a determination of any deficiencies.

Attorney Kolins commented that a deferral would be fine with him, if that was the decision of the Town Council.

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

Councilman Shaw moved that the motion be re-considered. The motion was seconded by President Pro-Tem Wyett. On roll call the motion to re-consider carried unanimously.

Town Attorney Randolph explained that the Town Council was in executive session regarding the items presented in this regard today. Any new items would be open to public comment.

Attorney Kolins suggested that there was no reason why a special meeting could not include the executive session on what had been done so far, as well as include the additional two variances that would be needed.

After discussion, at 6:40 P.M. the continued Town Council Meeting (continued from the previous day, February 9, 1999) was adjourned on February 10, 1999. Councilman McDonald moved that a continuation of the February 9, 1999, Town Council Meeting (which was continued to February 10, 1999) be held at a reconvened Special Town Council Meeting to be held on March 10, 1999, at 1:30 P.M. in order to further discuss Site Plan Review No. 3-99 with Special Exception & Variances - Palm Beach Day School, 241 Seaview Avenue. President Pro-Tem Wyett seconded the motion. On roll call the motion carried 4/0, as Councilman McLendon had left the meeting.

Director of Planning, Zoning & Building Robert Moore clarified that the two additional variances would be advertised for the same date, March 10, 1999.

XX ADJOURNMENT

The continuation of the Town Council Meeting from February 9, 1999 was adjourned at 6:40 P.M., on February 10, 1999, to be reconvened at a Special Town Council Meeting to be held on March 10, 1999, at 1:30 P.M. to discuss Site Plan Review No. 3-99 with Special Exception & Variances - Palm Beach Day School, 241 Seaview Avenue.

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SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 10, 1999 (RECONVENED FROM TOWN COUNCIL MEETING OF FEBRUARY 10, 1999, WHICH WAS RECONVENED FROM TOWN COUNCIL MEETING OF FEBRUARY 9, 1999)

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting, continued from February 9, 1999, was called to order by President Lesly Smith at 1:45 P.M. on March 10, 1999, in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Allen Wyett, Councilman Jack McDonald, Councilman Samuel McLendon, and Councilman Leslie Shaw. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Town Attorney John Randolph, Fire-Rescue Chief Ken Elmore, Planning, Zoning & Building Director Robert Moore, Zoning Administrator Paul Castro, Police Chief Frank Croft, Recreation Director Russ Bitzer, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. APPROVAL OF AGENDA

The Agenda was approved through motion of President Pro-Tem Wyett, seconded by Councilman Shaw, and, upon roll call, carried unanimously.

IV. REQUEST BY BELLSOUTH TO PLACE AERIAL CABLES ALONG NORTH LAKE WAY BETWEEN MERRAIN ROAD AND MONTEREY ROAD TO CORRECT REPORTED EMERGENCY SITUATION, PER LETTER DATED MARCH 8, 1999, FROM MR. PAUL DAVIS *(Continued from March 9, 1999, Town Council Meeting).*

Town Engineer James Bowser reported that a representative of BellSouth was not available for this meeting, and that he had received via Fax a cost estimate for aerial versus buried lines from BellSouth, and had furnished a copy of same to all members of the Town Council. He noted that the aerial estimate was $21,245.52 and the buried estimate was $131,186.74.

Councilman Shaw moved deferral of this issue until the Special Town Council Meeting to be held on March 19, 1999, and authorized the Public Works Department to provide a cost estimate for the Town to install underground conduit. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

V. <u>SITE PLAN REVIEW NO. 3-99 WITH SPECIAL EXCEPTION & VARIANCES</u> - Palm Beach Day School, 241 Seaview Ave.; located in the R-B Zoning District. To allow construction of a 2,326 sq.ft. art studio addition to the main bldg.; to construct a 13,151 sq.ft. gymnatorium, to construct a 28 space parking lot; and to demolish 3 houses and construct a playground and stabilized grass parking. Applicant will seek special permission regarding start and finish time limits for construction. Special Exception approval is also sought to modify a previous condition of approval limiting number of students to 310, to now allow a 360 student cap. A request for 16 Variances are as follows: Gymnatorium Related - to allow a 20' front yard setback in lieu of 30' required; to allow 5' rear yard setback in lieu of 10' required; to allow a 9' west side yard setback in lieu of 15' required; to allow a building height of 39'2" in lieu of 22' maximum allowed, an overall height of 47'2" in lieu of 30' allowed; to allow a bldg angle of vision of 146 degrees in lieu of 116 max. allowed; to allow a FAR of 103% in lieu of 45% maximum allowed; to allow a CCR of 15 in lieu of 4.5 CCR; to allow a 9'frontyard setback in lieu of 24' required for entry platform at stairs. South Side of Seaview - to allow 51% lot coverage in lieu of 30% max. allowed; to allow construction of a parking lot providing no front yard setback. North Side of Seaview, @ parking lot - to allow a 5' front yard setback in lieu of 30' required; to allow 8.5% interior landscape area (east parking lot and drive aisle) in lieu of 10% required; to allow a 4' high hedge in lieu of 6' required site-screening the parking lot and playing fields. To allow stabilized parking for 92 required spaces in the west athletic field in lieu of paved spaces and to allow said 92 parking spaces in lieu of the required 111 spaces for special events held at the <u>gymnatorium</u>; and to allow overnight parking of school buses on the play field in the front yard setback. Administration Building - allow 47% front landscape space and 49% overall in lieu of 40% required. *(Deferred from February 9, 1999, Town Council Meeting)*

<u>VARIANCE NO. 4-99, AS PART OF SITE PLAN REVIEW NO. 3-99 WITH SPECIAL EXCEPTION & VARIANCES</u> - Palm Beach Day School, 241 Seaview Avenue; located in the R-B Zoning District. A continuance from February 9, 1999, of the subject application with the following <u>additional</u> variances requested. Applicant also requests variances to allow a 10' east side yard setback, in lieu of 15' required for the gymnatorium; to allow a two-story addition (an art studio) thereby expanding a nonconforming building; to allow a waiver of the requirement for a 4' landscape strip and hedge along the west property line; to allow overnight parking of school buses on the south side of Seaview Avenue west of the gymnatorium within the required 30' front yard setback; to allow overnight tandem parking of buses along the west side of the gymnatorium; and to allow 27% landscaping overall in lieu of the 40% landscaping required.

Attorney James Brindell, on behalf of the Palm Beach Day School, addressed the Town Council, indicating that this was a continuation of a prior hearing on Application 3-99, which included Special Exception, Site Plan Review and certain Variances, and today Application 4-99 was being presented as well, which included some new Variances. He commented that since the last hearing, on February 9, 1999, the school had attempted to meet with all neighbors abutting the school on the north parcel and the west end of the north parcel. Invitations were sent to all of them to come to the school and meet, or to arrange a special time to meet. The meetings had occurred on March 4, 9, and 10, 1999, and as a result, there had been agreement to certain conditions in an effort to respond to concerns of neighbors. He submitted a copy of the letters that had gone to the property owners at the west end of the west play field, and four property owners who lived adjacent to the proposed east parking lot, labeling them as exhibits 10 and 11. Several modifications to the Site Plan would be proposed in order to try to address some of the issues of concern. Architect Rene Tercilla pointed out these modifications on the Site Plan itself.

Attorney Brindell addressed the following issues of concern:

<u>PARKING:</u>

- A 6' strip would be provided by an easement along the west play field to create additional parking, which would accommodate 16 cars; as a result a row of cars had been lost on the north side of that. He added that use of a valet parking layout would accommodate approximately 120 cars. The variance request for 97 parking spaces in lieu of the required 111 parking spaces could be dropped, if the new parking arrangement was found acceptable.

- The vehicular entrance on the west end of the field had been eliminated.
- All bus parking on the north parcel was eliminated.
- The gymnatorium had been moved to within 10' of the east property line, at the request of Mr. and Mrs. Lowes.
- The two buses that had been destined to park there had been moved to the west side of the building, so there is now a place for parking for 4 buses that could be parked in tandem and not extend beyond the north face of the gymnatorium.

Relief had been requested from the requirement to have a landscape buffer plan along the west side in order to have room for buses and for students to walk. Mr. Bitzer had suggested that a wind screen be placed on the east side of the fence, which would then totally screen the buses from the tennis courts.

Mr. Bowser had required curbing along the west property line to ensure that any surface waters would not flow onto the tennis courts, and that would be done.

The height of the gymnatorium would be reduced to 33'. In addition, the original measurement was starting at 7.5 NGVD, and it could actually go to 5.5 NGVD, which would drop the apparent height another 2'. He introduced a document from the National Federation of State High School Associations, which recommended that the clear area for volleyball be free of obstructions to at least 30', so further reduction of the gymnatorium was not being considered (Exhibit 12).

The tower element in the front of the building had been reduced to 45'.

By starting the first floor level at 5.5', the amount of ramping needed for handicapped access would be reduced in front of the gymnatorium, with only about 6' needed instead of 24'. The amount of landscaped open space in the front of the building would thus be increased.

The dumpster in the northwest corner of the east parking lot would be moved to the interior island.

Attorney Brindell listed the variance requests that could now be withdrawn:

- Variance C-3 - the west sidearm setback for the gymnatorium (replaced by Variance A-1 of Application 4-99).
- Variance C-13 - front landscape area (replaced by Variance A-5 of Application 4-99).
- Variance C-16 - the portion which provided for overnight parking on the north. (Variance A-4 of Application 4-99 requested overnight parking of school buses along the west side of the gymnatorium in tandem).
- Variance C-10 - if proposal of the valet parking layout was accepted.

Attorney Brindell then proceeded with explaining the justifications for Variances A-1, A-2, A-3, A-4, and A-5 in Application 4-99. He incorporated all of the previous statements he had made in this regard in the record. He explained that, in essence, the school had been in the same location for 68 years, was a vested and lawful use, the Code that now exists is not the Code that existed then, and the requests of the school are needed in order to be an adequate facility.

He explained that in regard to Variance A-1, which was a request for a variance to provide a 10' east side yard setback in lieu of the 15' required, the dimensions of the gymnatorium were the minimum dimensions to make it work. This was the only place possible to place the gymnatorium.

He explained that Variance A-2 was a request to allow the expansion of a nonconforming building, and the building on the north side was nonconforming because it was within the 30' setback of the street. The art studio that was being proposed between the current auditorium and the library would be back within the 30', but because it was being appended to a structure that was nonconforming, it would require a variance.

Variance A-3 was a variance to allow a 0' landscape strip without a hedge, in lieu of the required 4' landscape street with a hedge along the west property line of the gymnatorium, and a variance to allow overnight parking of school buses on the south side of Seaview, west of the auditorium, within the 30' front yard setback.

Variance A-4 was a variance to allow buses to park overnight in tandem, which was clearly the most efficient way to store the buses overnight.

Variance A-5, was to allow for an overall landscaping of 27% in lieu of the 40% landscaping required. Due to the configuration of the property and the minimum dimensions required for the structure this was the only way to accomplish reasonable use of the property accorded to the school.

At this time staff comments were heard.

Zoning Administrator Paul Castro commented that the Palm Beach Day School and the school facility in the R-B district was permitted by Special Exception, however, the lot yard and bulk regulations within that district did not contemplate all of the uses, or all of the buildings that go with the uses, that would be allowed for a school. Thus the application was unique. As discussed at the last meeting, there were several issues that the applicant was requested to address, such as drainage, landscaping, height of gymnatorium. The applicant had proposed that the buses be moved over to the west side of the property, and the building moved further to the east. The applicant had also looked at specifically providing the width of the street, as requested by the Council, and the landscaping and drainage to the ball field on the northwest side of the school premises. Staff thus believed that the applicant had attempted to address all conditions considered by the Town Council, and had also looked at the dumpster location, relocating it to the interior of the site. All of these changes have provided the mechanism to handle the traffic in a more expeditious fashion, and staff believed that with the changes provided, and meeting of the hardship criteria, the requests should be granted.

Town Engineer James Bowser commented that he had received a conceptual drainage plan, which appeared to work, however, it showed that the gymnatorium would have a finished floor at 7.5', and the calculations for lowering the gymnatorium must be made regarding meeting drainage requirements. He mentioned keeping the easements clear of obstructions and landscaping on the north side of the property and noted that there was still a wall and hedge located there.

Attorney Brindell responded that the neighbors immediately to the north of the east parking lot had requested a 7' high stuccoed wall, and a Ficus hedge that would be maintained at 20'.

President Smith commented that she understood that was one of the conditions the Town Council wanted also.

Town Engineer Bowser explained that he was pointing out that the applicant was not mentioning that they needed a requirement for that also.

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

Mr. Dick Zuver, 212 Seaspray, addressed the Town Council, speaking as well for his neighbors, Richard Rorick, Paige Benjamin, and Sergio deAraujo. This group had met with the Day School last week, and reached agreement on some points of concern regarding the parking lot on the east side of the Day School property, as follows:

The chain link fence would be taken down in the parking lot, and in its place a white 7' high white stuccoed wall; that the school would plant a 20' Ficus hedge to screen from air and noise pollution; the school would maintain the hedge on both sides, as well as the wall with periodic painting; Jane Volk would be consulted on the landscaping plan for the east parking lot (that had already taken place); the school would erect some sort of a closure or gate at the entrance to the east parking lot, and that would be locked after 6:00 P.M. and on weekends, and as much as possible during the summer; that only short, down lit lights would be used. The group also encouraged that there be no Town use of the gym; encouraged car pooling and bussing, as well as a gradual increase in enrollment.

Mrs. Jane Volk, 206 Phipps Plaza, addressed the Town Council stating that she had the opportunity to review the landscape plan for the east parking lot, and thought it most attractive.

Mrs. Jane Baker, 235 Cocoanut Row, addressed the Town Council, stating that she was on the west end of the school, and that she had met with the school, and they had agreed to construct a concrete wall that they would maintain, that they would build a fence 10' east of the wall, and would maintain that as well. Because she had a pool, they would allow her to attach her fence to that. She stated that she felt the school had been extremely willing to work with her, and shared many concerns, one being that they had indicated they would be willing to participate in a meeting between the public school and the Town regarding traffic management. She indicated that the number of events held at the school would be limited to a maximum of twelve, although she preferred less; traffic management would be placed at Seaview and Cocoanut as well as on County Road and Seaview. She asked that the Town Council consider widening the street space by the tennis courts for off street parking on the south side. She also stated her concern regarding the time frame of the construction, as well as hours of construction and the increased enrollment.

Attorney Ron Fick addressed the Town Council, and read a letter that he had written and delivered to the Town Council members regarding his opposition to the Palm Beach Day School application, setting forth his objections pursuant to Section 134-201 of the Code of Ordinances that undue hardship may not be found unless no reasonable use could be made of the property without the requested variance. He commented that, clearly, the property owned by the Palm Beach Day School could be utilized for other reasonable school used that would not require such substantial deviation from the Code. He note that he objected to the variances for the following reasons:

- the evidence does not and cannot support undue hardship pursuant to Section 134-210 of the Code and Florida law; and
- the variances requested do not comply with the requirements set forth in Section 134-201 of the Code.

He respectfully requested that the Town Council deny the Palm Beach Day School Zoning Applications Site Plan Review #3-99 and Variance #4-99 revised, and requested that the letter be entered into evidence as Respondent Fick's Exhibit 1.

Mrs. Anne Metzger, resident, addressed the Town Council, urging all to support a positive change for the school that would enhance its future, stating that the growth of a young population with children in the community was vital to everyone.

Mr. Lewis Sang, resident, addressed the Town Council, stating that his son had graduated from the Palm Beach Day School in 1994, and that he had been a member of the Board since 1987, even after his son had graduated, as he was committed to the job he was doing. He urged the Town Council to grant approval of the application.

Ms. Jane Burdocker, 215 Phipps Plaza, addressed the Town Council, stating that she understood that certain requirements must be met, and requested that she be kept in mind as to the view from her apartment.

Attorney Brindell presented the proposed conditions of approval:

1. The height of the gymnatorium at the top of the tie beam (joist bearing point) shall be reduced to 33 feet and the overall peak height of the tower element shall be reduced to 45 feet (the Landmarks Commission shall evaluate whether the tower feature is an appropriate architectural element) as measured from 5.5 feet NGVD.

2. The school shall provide an easement to the Town on the north side of Seaview Avenue along the west play field for a width of up to six feet to facilitate the creation of on-street parking, to be paid for by the school.*

3. When the school uses the west play field for parking it shall utilize valet parking only in that field.

4. There shall be no lighting erected in the west play field.

5. The School shall construct a concrete block wall stuccoed and painted white on both sides at a height of 7 feet along the west boundary of the School property. That wall shall be set back from the west property line the distance necessary to insure that the footers remain on the School property or 2 feet, whichever is greater. The School shall landscape both sides of the wall. The School's landscape architect shall meet with the two abutting property owners in regard to the selection of the plant material on their side of the wall. The School shall install a fence 10 feet east of the wall. Any fences or walls which are located along the north and south boundaries of the properties abutting the west end of the west play field may be extended and connected to the wall.

6. There shall be no vehicle entrance at the west end of the play field.

7. Parking on the play field shall be limited to a maximum of 12 events per year.

8. Prior notice will be given to the owner of the property at 235 Cocoanut Row of major events which will occur at the School and which may generate a significant amount of traffic and parking.

9. The School shall provide traffic control at the east and west ends of Seaview Avenue during major events at the School.

10. The School shall participate in a meeting, or meetings, between the Town Recreation Department and the Palm Beach Public School to address parking and traffic management on Seaview Avenue.

11. There shall be no lighting erected in the east parking lot which is higher than four (4) feet above the ground. Any lighting in the lot shall be oriented so that the light is focused within the lot.

12. Access to the east parking lot shall be physically precluded after 6 p.m. except for school use, by a chain secured with a lock.

13. The School shall take down the chain link fence that currently exists along the north side of the proposed east parking lot.

14. A concrete block wall stuccoed on both sides and painted white on both sides shall be constructed at a height of 7 feet along the north property line of the proposed east parking lot. The footers for the wall shall be located entirely on the School's property. The School shall plant a Ficus hedge on the south side of the wall. Initially the hedge shall be at least 6 feet in height and shall be allowed to grow to a maintained height of at least 20 feet. The School shall maintain both sides of the wall and hedge.

15. No school buses shall be parked on the north school parcel.

16. The school shall develop within six months a program to promote car pooling and the use of bus transportation by students at the school, shall evaluate with Palm Than the possible transportation of students by public transit, and shall evaluate the staggering of arrival and dismissal times.

17. The student cap may be increased over five years from 310 to 360 students at a rate not to exceed 10 new students in any one year, except that if fewer than 10 students are added in a particular year, the remainder may be carried over to a subsequent year(s) in addition to the 10 otherwise allowed for that subsequent year(s).

18. A unity of title, acceptable to the Town, between the northern and southern parcels of land occupied by the school shall be recorded in the official records of Palm Beach County.

19. An additional windscreen will be added on the east side of the Town east tennis fence.

20. Curbing will be placed along the west property line of the gymnatorium to prevent surface waters from going onto the tennis courts.

21. The dumpster in the east parking lot will be relocated to an interior island in that parking lot.

22. The parking area discussed in Item No. 2 would be paid for by the applicant.

* Attorney Brindell referred to Item 2 of the conditions of approval, requesting that the applicant have the opportunity to return to the Town Council to discuss the matter of parking costs, if the amount turned out to be substantially more than $20,000.

President Smith responded that would be acceptable.

President Pro-Tem Wyett mentioned that he would like to see the cap removed, and a gradual increase accommodated.

Recreation Director Russ Bitzer commented that the wind screen, which is to be added on the east side of the Town east tennis fence, may allow the busses to be seen above the fence. Attorney Brindell agreed that the fence would be equal to or higher than the buses.

Town Engineer Bowser commented that the gas line, or any other underground facilities may need to be relocated or sleeved so that they could be properly removed and replaced, if the wall and hedge on the north property line was allowed. He noted that typically, there were Removal Agreements for maintenance that were signed between the Town and the proponents. He pointed out that the 20' hedge could be a problem with respect to the placement of aerial facilities on the pole lines, and that the utility companies could be contacted for their input.

Councilman McLendon commented that he supported the gradual increase in an enrollment cap, so that any additional traffic could be observed.

Town Attorney Randolph suggested that all conditions become part of a Declaration of Use Agreement between the Town and the Palm Beach Day School.

President Pro-Tem Wyett moved approval of Site Plan Review No. 3-99 incorporating the conditions of approval (22 items) as outlined by Attorney Brindell, incorporating a finding that the Site Plan would not adversely affect the public interest, that the zoning requirements governing the use had been met, and that all of the conditions of approval be incorporated within a Declaration of Use Agreement, and that a finding that Section 134-329 (1-11) of the Town Zoning Code had been met. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

Town Attorney Randolph noted that the one thing that must be found was that the Zoning conditions had been met, and consideration had not yet been given to the variances. He suggested that the motion could be held in abeyance, the Special Exception acted upon, then the variances, and then approval of the Site Plan.

President Pro-Tem Wyett moved that Special Exceptions as listed in the application be approved, based upon the finding that the requirements of Section 134-229 (1-14) of the Town Code had been met, and that the conditions of approval be part of the approval. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

President Smith clarified that the variances would be considered on an individual basis:

Attorney Brindell explained that Variance C-3 was deleted, and substituted with Variance A-1; Variance C-13 was deleted, and substituted with A-5; A portion of Variance C-16 was deleted (relating to overnight parking of buses on the north side), and retained the part that allowed buses (which were now only going to be on the west side of the gymnatorium) to park within the 30' front setback, but not exceeding the front face of the building.

Gymnatorim Variances: Variance C-1, C-2, C-4, C-5, C-11, C-12, C-14, C-16, A-1, A-3, A-4, and A-5 related to the gymnatorium:

President Pro-Tem Wyett moved approval of the Variances enumerated above relating to the gymnatorium, finding the hardship the narrow width of the site, and the lack of expansion space which the current school needs for normal expansion to accommodate the students in the community, and for the economic and social benefit of the Town of Palm Beach. The motion was seconded by Councilman Shaw, requesting that the motion also include the comment that approval was not contrary to the public interest, and in fact, was to the benefit of the public interest, and to the betterment of the entire community. According to the suggestion of Attorney Brindell, President Pro-Tem Wyett stipulated that the additional facilities were essential to the functioning and operating of the school, which was a valid, existing use, and a reasonable use of the property. Mr. Wyett incorporated the other reasons that were listed by the applicant in support of the application as part of his motion. On roll call the motion carried unanimously.

Regarding Variance C-6: Councilman Shaw moved approval of Variance C-6 (pertaining to the 51% lot coverage on the south side in lieu of the 30% maximum allowed by Code), defining the hardship as the size of the land, and how the building had to be placed on it, and the size of the building to meet the needs of the community and its betterment; also the fact that the parcel was split by a roadway, and, under Town Code, consideration could not be undertaken that the entire property of the applicant well exceeded the green space requirement. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

Regarding Variance C-7, and Variance C-8: Councilman Shaw moved approval, as better parking facilities would be provided; it was in the public interest; and met the intent of the Code. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

Regarding Variance C-9, Councilman Shaw explained that it had been modified to allow for stabilized parking under a valet approved condition for up to 120 cars in lieu of paving, and moved approval of Variance C-9, as modified. He pointed out that when valet parked, a car could not be retrieved anywhere except at the entrance to the parking lot, which he suggested be incorporated in the application. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

Attorney Brindell noted that Variance C-10 was no longer needed.

Regarding Variance C-15 (allow a 4' high hedge in the front street of the west playing field in the east parking lot on the north side of Seaview), Councilman Shaw moved approval of Variance C-15 as it involved the safety and well-being of residents and students. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

Regarding Variances as named in Application 4-99:

Councilman Shaw moved approval of Variance A-2, which was to allow the expansion of the nonconforming school building on the north side of Seaview, as a result of the fact that the building itself was nonconforming, and the addition of a conforming structure needed to have a variance. The new structure met all Code requirements, was an integral part of the school and community. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Attorney Brindell clarified that very extensive statements had been made in the record concerning each of the applications, and suggested that all justifications be incorporated as further support for the motions of approval.

Attorney Randolph agreed, and suggested that in regard to each variance approved the justifications given for each of them be incorporated as part of the record.

Councilman Shaw stated that the justifications and reasons outlined in the first motion made follow through on all motions made. He then made a motion that those justifications and reasons be appended to all of the subsequent motions made today. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

Mr. Moore clarified that Town Engineer Bowser had indicated that the walls and the hedging would normally not be approved in the easement area, and requested that Mr. Bowser address any waiver process or agreement in this regard.

Town Engineer Bowser responded that exceptions could be approved by the Public Works Director, and the Declaration of Use Agreement could include information regarding the wall, maintenance agreement, utility access, etc.

Councilman Shaw referred to the fact that there was no reference in the application to those residents who lived directly behind the building, and suggested that some consideration be given to those property owners, and that landscape buffering be considered.

Attorney Brindell noted that the last letter sent out to nearby property owners concerning landscaping meetings went to everyone who bordered the north and west ends of the north parcel.

President Smith requested that the proposed wall and landscaping on the north side of the west end of the west playing field, and any landscaping done on the east end of the new parking lot, and on the south side of the new east parking lot all go in prior to the work commencing on the additions to the school, in order to shield the neighbors on the north side from some of the activity.

Attorney Brindell commented that a construction schedule would be forthcoming.

Mr. Martin List, Palm Beach Day School, commented that one of the first things to be started was the parking lot on the east end, which was not a long time frame, perhaps 90-120 days. The existing current project would be completed approximately April 15, 1999.

Attorney Brindell commented that before the actual building permit could be acquired, a pre-construction meeting would be held to go through all logistical details of concern.

Mayor Ilyinsky commented that he was very proud of the way the project had worked out, and that he had never seen a greater neighbor to neighbor example since he had been on the Town Council, and the members of the Council had handled a very complex situation in a wonderful way. He thanked everyone.

VI. ANY OTHER MATTERS

There were none.

VII. ADJOURNMENT

The meeting was adjourned at 3:30 P.M. on March 10, 1999.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk