MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 14, 1997

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Smith at 9:30 A.M. on January 14, 1997. The roll was called with the following Elected officials in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Jack McDonald, Councilmen Sam McLendon, Leslie Shaw, and Allen Wyett. Also in attendance were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager Dave Jakubiak, Town Attorney John Randolph, Director of Public Works Al Dusey, Town Engineer Jim Bowser, Fire Chief Vincent Elmore, Police Major Frank Croft, Recreation Director Russell Bitzer, Director of Planning, Building & Zoning Robert Moore, Planner/Project Coordinator Timothy Frank, Zoning Administrator Paul Castro, Chief Code Compliance Officer Brian House, Acting Finance Director Cheryl Somers, Purchasing Agent Charles Boggs, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Dr. Cromie of Royal Poinciana Chapel. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS

A. Retirement of Kenneth Wilson, Maintenance Worker, Recreation Department - 23 years and 6 months

Mayor Ilyinsky presented a watch to Mr. Wilson and recognized his many years of service to the Town.

IV. COMMENTS OF THE MAYOR

There were none.

V. APPROVAL OF THE AGENDA

The following changes were made to the Regular Agenda:

Defer item IX. A. Landmark Designation of 142 Seabreeze Avenue; Resolution No. 2-97, to February 11, 1997, Town Council Meeting.

Mr. McLendon made a motion to defer Resolution 2-97 to the February 11, 1997, Town Council Meeting; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Defer item XIV. B.2. Special Exception No. 43-96 - Sandsong Investments, Inc., 206 North Ocean Boulevard, to February 11, 1997, Town Council Meeting.

Mr. Wyett made a motion to defer Special Exception 43-96 to the February 11, 1997, Town Council Meeting; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Add item XI.A.4. Discussion of a Dedicated Funding Source for Coastal Projects.

Mr. Doney suggested that the Town Council discuss a Dedicated Funding Source for State financial assistance regarding Coastal projects, adding it as item XI.A.4.

Mr. Wyett made a motion to add item XI.A.4. Consideration of Dedicated Funding Source for State Financial Assistance Regarding Coastal Projects; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Add item XI.A.5. Discussion of Passenger Loading Zones.

Mr. Shaw suggested that discussion take place regarding passenger loading zones

Mr. McLendon made a motion to add Discussion of Passenger Loading Zones as item XI.A.5, under New Business;

PLEASE NOTE:

Due to a computer glitch, the minutes for the Town Council Meeting held on January 14, 1997 are printed on the attached 8 ½ x 11" sheets, to include the page numbers 6222 through 6243.

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Add item XI.A.5. Discussion of Passenger Loading Zones.

Mr. Shaw suggested that discussion take place regarding passenger loading zones

Mr. McLendon made a motion to add Discussion of Passenger Loading Zones as item XI.A.5, under New Business; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Add item XI.A.6 Discussion of Commercial Yard Trash fees.

Mr. Wyett suggested that Discussion of Commercial Yard Trash Fees be added to the Agenda.

Mr. McLendon made a motion to add this item as item XI.A.6; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Add item XI.A.7 Discussion of Beach Stairs.

In response to the suggestion of Mr. Wyett, Mr. Doney recommended that Discussion of Beach Stairs be added to the Agenda as item XI.A.7.

Mr. McLendon made a motion to add item XI.A.7 to the Agenda; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Mr. McLendon made a motion to approve the Agenda as amended; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

VI. COMMUNICATIONS FROM CITIZENS

Mr. Rodney Fink, Civic Association, requested the Town's assistance to establish a U.S. Post Office south of Sloan's Curve, mentioning two potential locations: the Bank Building at 2875 South Ocean, or the old Radio Station Building at 3000 South Ocean.

Mrs. Ann Herman wanted to know the reason the tent on the grounds at Mar-a-Lago continued to stay up?

Mr. Adrian Winterfield questioned if the Town had a written policy for the "wish list"; if the Police Department could dispose of funds without a counter signature; if the Police Department maintained a petty cash amount of $30,000; and why an item concerning a commission to study the Town's Charter was not on this agenda?

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF NOVEMBER 12 AND 20, 1996, AND DECEMBER 10, 1996

VIII. LICENSES AND PERMITS

A. Charitable Solicitations

1. Jewish Federation of Palm Beach County, Inc.; No. 22-97
2. Lourdes Foundation, Inc.; No. 135-97
3. Israel Tennis Centers Association, Inc.; No. 175-97
4. Healthy Mothers/Healthy Babies Coalition of Palm Beach County; No. 323-97
5. Best Buddies International, Inc.; No. 334-97
6. United Jewish Appeal; No. 346-97
7. International Children's Museum; No. 373-97

Other

- Failure to File Prior Results Form Within Prescribed Time; Paid $25.00 Fee

8. Albert Einstein College of Medicine of Yeshiva University; No. 10-97
9. Hadassah Angel of Mercy; No. 14-97
10. American Jewish Committee; No. 125-97
11. Alzheimers Association; No. 256-97

- Failure to Submit Audit With Application

12. Ballet Florida, Inc.; No. 156-97

Mrs. Pollitt explained that the Charitable Solicitation Application for Ballet Florida was on the Approved Agenda list with the notation that an audit had not been submitted with their application. Per her memorandum of January 8, 1997, the CPA for Ballet Florida had indicated that an audit would be completed by January 31, 1997, however, their event was scheduled for January 18, 1997. According to Ordinance the Town Manager had the authority to issue a permit subject to the recommendation of the Town Council. She noted that Ballet Florida had been a long time participant of charitable functions in the Town of Palm Beach.

Mr. Shaw suggested that permission for a second event held by Ballet Florida be withheld until such time as the audit was received. He made a motion to remove Item 12 from the Approved Agenda and consider it as a separate item; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

Mr. Shaw made a motion to approve the January 18, 1997 Ballet Florida charitable event, with approval of the March 9, 1997 event being subject to the receipt of the audit before approval was made; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

B. Beverage Licenses

1. Application for a New 2APS Alcoholic Beverage License by Mr. Steven Lovely for Mizner's Cafe, Inc., d/b/a Mizners at 14 Via Mizner

Mr. Wyett made a motion to approve the Approved Agenda; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

REGULAR AGENDA

IX. PUBLIC HEARINGS

A. Landmark Designation of 142 Seabreeze Avenue; Resolution No. 2-97 - Request for Deferral to February 11, 1997, per letter dated January 9, 1997, from Mr. Paul Thibadeau - DEFERRED

B. Request for Abandonment of a Portion of Right-of-Way at Ocean Terrace and West of North Lake Way; Resolution No. 4-97 (See Item XIV.B.3.)

Mr. Randolph read Resolution 4-97:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, VACATING AND ABANDONING A PORTION OF THE EXTENSION OF OCEAN TERRACE (FORMERLY ALBEE AVENUE) WEST OF NORTH LAKE WAY IN THE TOWN OF PALM BEACH, FLORIDA

Mr. Randolph explained that this Resolution was prepared for Town Council consideration as part of the agreement that had been entered into between the Town and the property owner, which contained other considerations, with the Resolution being one of them.

Town Engineer Jim Bowser stated that the agreement preserved the Lake Trail access and Town staff had followed the procedures outlined in Ordinance 19-93 for Abandonment of Rights of Ways and Easements within the Town. A number of comments had been received from residents urging that the trail be maintained. Staff recommended approval of Resolution 4-97.

Mrs. Smith stated that she had heard several comments from residents that the access would be too small, and questioned why it was not being left wider?

Mr. Bowser replied that the access was between 3-4', which was the usual standard for paths.

The easement was only a 6' wide in that location.

Mr. McLendon asked when the easement had been created?

Mr. Moore replied that it went back to the original plat as a walkway to the bike trail, which would have been in the 1920's. Research showed that the property owner had acquired title to it in 1935.

Mr. Wyett made a motion to approve Resolution 4-97 subject to the conditions set forth in the Agreement; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

C. Request by Klassy Koach Limousine for Certificate of Public Convenience and Necessity and Application for 12 Vehicle Permits Which Would Exceed Limit of 50 Permits per Section 10-320 of the Town Code

Mr. Doney referred the Town Council to Section 10-321 of the Town Code, reading the following excerpt:

> The Town Council in determining whether to grant additional permits shall make its decision based upon the following factors:
>
> 1. Public demand for taxi-cab and limousine service.
> 2. Whether the public has been adequately served by existing permitted taxi-cab and limousine service.
> 3. The effect on traffic congestion and safety of existing vehicular and pedestrian traffic.
> 4. The character, experience, and responsibility of the applicant.
> 5. Such other factors as the Council finds to be relevant.

In addition, each of the six existing holders of Certificates of Convenience and Public Necessity had been notified, who currently held the 50 permits for limousines within the Town.

Attorney John Marinelli, representing Klassy Koach Limousines, addressed the Town Council stating that Klassy Koach Limousines had been in existence since 1990 and the request for the increase of the number of permits included 5 vehicles which were Sedans, 3 vehicles which were mini buses. Since 8 of the 12 vehicles were Sedans or mini buses, they would not take up any more space than a regular vehicle. He respectfully requested consideration of the application.

Major Frank Croft of the Police Department addressed the Town Council referring to his memorandum of December 31, 1996 regarding the Klassy Koach application. He noted that parking was the biggest problem in Town, and he suggested that allowing the extra permits would impact severely the commercial district parking.

Mr. Shaw expressed that there was obviously a reason that the number of 50 permits was chosen as part of the Ordinance, and he questioned if the Ordinance itself needed to be changed, rather than granting additional permits. He suggested that the application be denied, since the limousine service was not being denied the right to come into the Town and could operate in the same manner in which they had always operated.

Mr. Marinelli responded that it was his understanding that the number of permits at 50 had been in existence for numerous years without change. He noted that Klassy Koach was not permitted from coming into the Town of Palm Beach, but *was* permitted from staying stationary within the Town limits. He pointed out that the permits were also assignable from one holder to another. He reiterated that 8 of the 12 vehicles were no larger than regular vehicles that were currently on the streets, and Klassy Koach had provided a number of letters from Palm Beach establishments requesting the services of Klassy Koach.

Mr. Art Weldon, owner of a limousine service on Worth Avenue addressed the Town Council, stating that he had appeared before the Town Council in 1991 to request more permits, which had been approved by the Town Council. Off-street parking was provided for his vehicles, and he noted that if everyone who came in put their permitted vehicles on the streets there would be no parking available at all. He urged that the application be denied.

In response to the query of Mrs. Smith, Mr. Weldon responded that he received about 7-8 calls during the week from restaurants for pick-ups.

Mr. Eugene O'Neil, Jr., president of Hotel Transportation Corporation, addressed the Town Council stating that his company serviced mainly the Breakers Hotel, along with others in the Town. He noted that vehicles from his company are kept off the streets and brought back to the Breakers parking lot when servicing customers.

Mr. McLendon asked what the permit entitled a limousine service?

Mr. O'Neil replied that the permit entitled vehicles to stay in the Town of Palm Beach awaiting a call for business.

Mr. Wyett noted that the only disadvantage for a limousine service without a permit in the

Town was the fact that they did not have the right to wait for clients.

Mr. O'Neil replied that it was his understanding that the service could not keep the vehicle on the Island without having business identified for that vehicle.

Mr. Doney stated that the ability to have the on Island availability was the distinguishing factor.

Mr. Shaw made a motion to deny the application of Klassy Koach Limousine; seconded by Mr. Wyett.

Mr. Randolph requested that the memorandum of Major Croft be made part of the record, and that the motion include the basis of denial--that there did not appear to be a need to increase the maximum number of permits above the 50 now available; that there did not appear to be an additional public demand for a taxi and limousine service; that it appeared that the public has been adequately served by existing permitted tax and limousine services; and that it appeared that there would be a detrimental effect upon traffic congestion and safety of existing vehicular and pedestrian traffic.

Mr. Shaw amended his motion to include the items delineated by Mr. Randolph. Mr. Wyett amended his second to include those items. On roll call, the motion carried unanimously.

X. OLD BUSINESS

A. Other

1. Consideration of Request for Amendment to Encroachment Easement at 190 South Ocean Boulevard, Estate of Johanna Johnson (Deferred from October 8, 1996, and December 10, 1996)

Mr. Randolph suggested that this item be removed from the Agenda, requesting the opportunity to contact the attorney for the property owner.

Mr. McDonald stated that he did not want to remove this item from Agenda, but preferred to resolve the issue, making a motion that it be deferred until later in the afternoon in order for the attorney to be contacted; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

2. Report from Mr. Rod Macon, Regional Manager, Florida Power & Light Company, Regarding FPL's Overhead Wiring System in the Town of Palm Beach

Public Works Director Al Dusey addressed the Town Council, stating that the Town Council had requested that FPL be contacted regarding overhead wiring in the Town, and the Fire Chief had supplied a list of incidents that had occurred with downed wires. Mr. Macon of FPL had reviewed the concerns, had prepared a memorandum dated January 7, 1997 and was present for discussion.

Mr. Rod Macon, Regional Manager of FPL, addressed the Town Council summarizing that some of the matters that were brought to the attention of FPL did, in fact need some attention and those items were being pursued. Other items had needed clarification, and he had met with presidents of two of the three business organizations in the Town. He recommended that quarterly meetings be held with Mr. Dusey and his staff, which had been agreed to. He offered to answer any questions from Council members.

In response to the question of Mrs. Smith regarding replacement of street lights, Mr. Macon explained that his data indicated that the average was 2.8 days from the time notification of the light being out was given.

Mrs. Smith noted that there had been a street light out on North Ocean Blvd., north of the Palm Beach County Club, for at least three or four weeks, as well as a light between Eden and Garden Roads that had been out for two weeks.

Mr. Macon replied that he would investigate these matters.

Mrs. Smith commented that she believed there should be a procedure whereby the Town was notified if FPL was unable to replace lights for some reason, or there was anticipation of putting in new poles, etc.

Mr. Wyett stated that he was interested in obtaining costs for north/south underground wiring in the Town.

Mr. Macon replied that several segments of Town would be looked at and a ballpark estimate would be prepared and provided to Mr. Dusey.

Mr. Shaw expressed interest in east/west underground wiring, especially in congested areas, and he asked what could be done about the three commercial areas in Town. In addition, he asked who designated street light installation?

Mr. Macon responded that the Town did, unless it was on a State road.

Mr. Macon noted that the estimates for underground wiring would require engineering time and effort, so samples would be provided from FPL in this regard, rather than a review of the entire areas involved. He suggested that the Director of Public Works could begin a dialogue with other companies that may be involved with underground wiring.

Mrs. Smith thanked Mr. Macon for his time and effort.

Mr. Dusey stated that Mr. Macon had done an extraordinary job in responding to Town concerns, opening up a new dialogue between FPL and the Town.

Mr. Doney asked if Chief Elmore had any additional comments in this regard?

Fire Chief Ken Elmore had no additional comments other than at least two FPL representatives had been in contact with him and were doing everything in an effort to resolve the problems.

Mr. Dean Tramantino, Account Manager, addressed the Town Council stating that he was the interface for the Town, and residents could contact the customer service line 24 hours a day. If there was a problem involving the Public Works Department he could be contacted.

3. Consideration of Water Supply Issues:

   a. Status Report on Proposed Water Franchise Agreement Negotiations with the City of West Palm Beach

Mrs. Smith stated that there had been no reply from the City of West Palm Beach, and requested that Mr. Randolph advise the Town Council of steps for litigation on the surcharge.

Mr. Randolph responded that he had asked Michael Wright when the Town could expect to hear back from the City regarding this issue, and he had been rather noncommittal saying that the Town could expect to hear something after the first of the year. In the event that the Town wished to proceed with litigation, Mr. Randolph could be advised and preparations would be made to file a complaint.

Mr. McLendon commented that the Water Committee had recommended taking legal steps, and believed that it was now time to do that.

Mrs. Smith remarked that at that time the City was quite receptive and was going to get back to the Town with an agreement, and that was one of the reasons that the Council did not move ahead at that time.

Mr. Wyett made a motion to approve the implementation of legal proceedings by the Town Attorney regarding the surcharge issue; seconded by Mr. McLendon.

Mr. McDonald clarified that the reason for the lawsuit was not because the City had not responded, but because of the belief that the surcharge had been enacted in a way that was not intended by the Statute.

Mr. Wyett incorporated that reason into his motion, which was accepted by the seconder of the motion, Mr. McLendon.

Mr. Randolph explained that there may be a requirement that the City be given notice of this action and an opportunity to meet with the Town prior to the filing of a lawsuit.

On roll call the motion carried unanimously.

b. Letter Dated December 18, 1996, from Mr. Samuel E. Poole, III, Executive Director, South Florida Water Management District, Regarding C-51 Canal

Public Works Director Al Dusey addressed the Town Council, stating that a reply to the Mayor's letter had been received from Mr. Poole on December 18, 1996, saying that the Town could have access to the water in the C-51 Canal, however, based on South Florida Water Management District (SFWMD) regulations the amount of water that the Town could have access to was about half of what was needed. In addition, there would have to be back up sources of water when it was not possible to draw from the C-51 Canal. Also, Mr. Dusey noted that there had been an application of the Town for a grant from SFWMD to study the shallow water aquifer, which had not been approved, with the reason being that permits would have to be in hand before a grant could be given.

Mr. Dusey recommended that the Town not continue to pursue the C-51 Canal proposal at this time because it did not appear reasonable financially, nor would it provide sufficient irrigation water. In addition, SFWMD wanted all municipalities to be involved with re-use water, however the cost of getting and treating water to the Town and installing a back up system for distribution was very large. Issues had been discussed of West Palm Beach helping the Town pay for that, as that would free up capacity at their potable water plant. Mr. Poole had indicated that an arbitrator could be provided to sit down with the City of West Palm Beach and the Town to discuss that issue. Mr. Dusey recommended that the Town Council not pursue the C-51 proposal, notify SFWMD that the permit application would be withdrawn, and that the Town not pursue the proposal on the re-use water at this point in time.

Mr. Wyett made a motion to approve the recommendations of Mr. Dusey; seconded by Mr. McLendon.

Mr. Shaw stated that there had been much effort expended towards the C-51 Canal issue, and he did not believe the Town should discontinue pursuing the C-51 Canal access issue.

Mr. McLendon suggested putting the issue on an inactive status.

Mr. Dusey stated that reapplication was not difficult, and SFWMD had indicated that they would not hold applications open forever--they either wanted to pursue it or drop it.

On roll call, the motion of Mr. Wyett was passed by a vote of 3/1, with Mr. Shaw casting a negative vote, and Mrs. Smith being temporarily out of the room and not present for the discussion.

Mr. Dusey noted that the second question was whether the Town would want to use a mediator as offered by SFWMD.

Mr. Moore pointed out several reasons for the use of a mediator: the Withdrawal Permit of West Palm Beach was controlled by SFWMD, and the Department of Community Affairs would be questioning the overall goal of 30% reduction and the Town use of a mediator would be used as a tool available to the Town to indicate efforts which have been made towards achieving that reduction.

Mr. Wyett made a motion to approve the mediation process; seconded by Mr. McLendon.

Mr. Dusey expressed concern over costs of maintenance and building expenses connected with the re-use system, commenting that even after mediation and an offer of funds from West Palm Beach, it was still possible that the Town could not complete the project.

Mrs. Smith suggested that it would be premature to consider any ramifications of arbitration at this time.

On roll call, the motion carried unanimously.

4. Consideration of Enforcement Procedure for Collection of Fines, Fees, and Other Monies Due to the Town

   a. Quarterly Update from Finance Department

Acting Finance Director, Cheryl Somers addressed the Town Council, referring to the

Quarterly Update of the Unpaid Assessments, Fees and Fines, noting that the amount due from Mr. Gilbertson was incorrectly reported as $525.00, and should have been $625.00, which had been paid on January 8, 1997.

Mr. Shaw made a motion to approve the Quarterly Report; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

b. Update by Town Attorney Regarding Garden City's Lien/Settlement Negotiations (Deferred from December 10, 1996)

Mr. Randolph stated that there had been an offer of $25,000 in full settlement of the claim, offered on the basis of the position that had been taken by the attorney for Garden City Company--the belief that the provisions of the order of the Code Enforcement Board had been met.

Attorney Lesly Evans, representing Garden City, addressed the Town Council, stating that in the initial order issued on May 18, 1995 the property owner was found guilty of violating Section 12-17 of the Town of Palm Beach Code of Ordinances, with compliance to begin within 15 days, and meaningful work be continued until such time as all violations were brought into compliance. On June 15, 1995 the property owner was fined $250 per day from June 15, 1995 to continue until work began on the property. Mr. Evans contended that work began on August 30, 1995, and the fine should be tabulated as of that date, which was 77 days at $250 per day for a total of $19,250. The offer of $25,000 was made in settlement.

Mr. Randolph noted that he had prepared a Complaint for Foreclosure in this regard, if it was decided not to settle the issue this morning.

Mr. McDonald made a motion to accept the offer of $25,000 in full settlement; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mrs. Somers reported that there were several other balances due on the Quarterly Report, and sought Council direction on the procedure to use for those items.

Mr. Randolph stated that he had been given direction to file suit on the Elizabeth Ward assessment, which was now in the name of Gerard Haryman, as well as the Elizabeth Ward sidewalk assessment.

Mrs. Somers, after conference with Town Manager and Town Attorney, announced that staff would meet, update records, then pursue collections on all items that had been authorized for collection by the Town Council.

Fire Chief Elmore addressed the Town Council on the status of the hazardous materials fine at 251 Tangier Avenue, indicating that a billing had been sent twice, however nothing had yet been received.

Mr. Randolph would look into this fine, as well as all pending assessments/fines, and refine the list as to what actions had been taken. In response to Mr. McDonald's query as to assessments being recorded as liens, Mr. Randolph explained that these were usually municipal liens, and when title companies called they were advised of such.

Mrs. Somers advised that the list of unpaid assessments, fees, and fines was maintained in the Finance Department and any title search requests were verified against the list.

Mr. McDonald explained that he was attempting to determine the status of the Code Enforcement Board fines in particular.

Mr. Randolph stated that normally the order was filed and became a lien against the property, however, he would follow up on those on the list to be certain that was being done.

Mr. McDonald requested that Mr. Doney confirm that policy with the Building Department.

5. Quarterly Update on Implementation of Recommendations in the Nowlen, Holt & Miner, P.A. Report

Mr. Doney indicated that there had been substantial significant progress made during the last quarter.

Acting Finance Director Cheryl Somers explained that her report of January 9, 1997 was broken down into three exhibits, and offered to respond to any questions.

Mr. Wyett commented that the use of credit cards at the Marina should be implemented on a more timely basis.

Mrs. Somers replied that the proper controls must be in place and procedures established.

Mrs. Smith suggested that the Town Manager be provided access to the vault in the Finance Department via a master key.

Mr. Doney agreed that would be done.

Mrs. Somers referred to Exhibit III and addressed each item individually. Town Council comments were as follows::

Petty Cash: Mr. Shaw suggested that consideration be given to another method of accounting with the Finance Department acting as the clearing house for petty cash with independent, isolated, separate transactions taking place--disbursements would indicate specific amounts for a specific department, making it easy to track the transaction--each department would keep its petty cash a separate entry.

In response to the comments of Mr. Shaw, Mark Veil, Town Auditor, addressed the Town Council. He noted that there was currently a proper audit trail to follow the incoming money, the money going to the bank and then the reimbursement. He noted that the approval process was the key, rather than the actual flow of the money, and the approval process relating to petty cash had been dealt with, although there were a variety of ways to handle the issue.

Expenditures: Mrs. Smith suggested that a separate motion be made for this item (Item 17-process to control Town's vendor list), as the action recommended by the Town Council at the August 13, 1996 meeting would now be changed. (Action at the August 13, 1996 Town Council meeting required Town Manager and Finance Director to approve any vendor addition. Town Staff and Town Auditor determined that this would be cumbersome and would hinder the efficiency of the function.)

Mr. McLendon made a motion that the recommendations of the Town Staff and Town Auditor be followed in regard to the process controlling the Town's vendor list; seconded by Mr. Wyett.

On roll call, the motion carried unanimously.

Payroll: Mr. Wyett suggested that more positive identification be required in lieu of payroll cards, such as using the handprint, etc. He reminded everyone that the Federal government would be requiring Social Security payments as direct deposits, and suggested that the Town follow the same procedure.

Mr. Doney replied that would be looked into, although some employees did not have readily available checking accounts, nor did they want checking accounts.

Data Processing: No comment from Town Council.

Parking Meter Collections: Assistant Town Manager Peter Elwell explained that the process of contacting other municipalities to survey their meter collection procedures had begun, and the Town Council would be updated on progress.

Mr. Shaw asked who would pay for a police officer to accompany individuals during the collection of parking meter receipts?

Mrs. Somers replied it would be charged to the parking fund.

Mr. Shaw suggested that this be readdressed because of the expense involved.

Mr. Doney explained that Parking Enforcement personnel were used for this duty, not sworn officers, and the work was performed outside of the normal work cycle.

Mrs. Smith suggested that the parking meter collection procedure be looked at again in May when the current contract expired.

Mr. Wyett made a motion to accept the report of Mrs. Somers, with the exception of item 17, which had already been taken care of. The motion was seconded by Mr. Shaw.

Mr. Doney asked that the motion be clarified to approve the recommendations, rather than accept the report of Mrs. Somers.

Mr. Wyett agreed to amend his motion to approve the recommendations of Mrs. Somers

On roll call, the motion carried unanimously.

6. Consideration of Authorization for the Town Manager to Modify Agreements with the Golf Pro/Manager and Tennis Pro/Manager (Deferred from December 10, 1996)

The next item considered was the Implementation of Nowlen, Holt & Miner Recommendation #20 - Reclassification of Certain Contract Positions as Town Employees.

Assistant Town Manager Peter Elwell addressed the Town Council concerning the Golf Pro Manager and Tennis Pro Manager positions, referring to his memorandum of January 9, 1997. He noted that today two actions were being requested from the Town Council: (1) Approve extension of the current terms of the "Management Agreement for the Operation of the Palm Beach Municipal

Golf Course" and the "Management Agreement for the Operation of the Seaview Tennis Courts" for the period from January 1 through September 30, 1997. (2) Defer further consideration of this matter to a future Town Council Meeting.

Mr. Shaw made a motion to approve the actions recommended by Mr. Elwell; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

7. Consideration of Proposed Settlement of Attorney Fees Regarding Lubavitch Center of the Palm Beaches, et al vs. Town of Palm Beach

Town Attorney Randolph recalled that the Town had taken the position that the amount of attorneys fees requested from the attorneys representing Lubavitch was excessive, and a brief had been filed with the Court stating that the fees were excessive, which the judge had agreed with--the amount of fees contained within the brief were adopted ($16,093) and awarded, as opposed to the approximately $35,000 requested. The order of the judge was appealed to the Federal District Court and was presently pending before that Court awaiting the filing of briefs by both sides. Mr. Randolph stated that he continued to believe that the amount requested was excessive, however, mediation had been held; the mediator had noted that the difference between the two parties was $21,000, and the conclusion had been that the plaintiff's attorneys would accept an additional $10,000 in full settlement of this cause. Mr. Randolph recommended that this be accepted, since the amount of money spent on attorney fees and eventual liability could be well in excess of $10,000.

Mr. Wyett made a motion that the settlement be approved ($16,093.64 + $10,000); seconded by Mr. McLendon.

Mr. Doney asked that the maker of the motion authorize that the funds come from the Undesignated Fund General Balance.

Mr. Wyett amended his motion to approve the settlement ($16,093.64 + $10,000) to include that the funds come from the Undesignated Fund General Balance. Mr. McLendon accepted that as part of his second.

Mrs. Smith commented that it was upsetting that the Town of Palm Beach was being held hostage on an issue where the legal fees were allowed to escalate on something that was a simple Town Council matter. She understood the recommendation of the Town Attorney, but declared that the Town of Palm Beach would not back down from litigation of any kind. She noted that many people had mentioned the willingness to support a legal defense fund for the Town of Palm Beach and recommended that this be considered.

Mr. Randolph agreed that he would look into setting that type of thing up, pending Council direction.

Adrian Winterfield addressed the Town Council, stating that, as he understood it, the mediator had done nothing but observe the difference between the amount awarded and the amount requested. There had not been indication that the mediator had made any suggestions. He questioned the Town making a counter offer, which could afford protection to the Town on appeal.

Mr. Shaw commented that he would feel more comfortable if the Town went through with the legal process, standing up for what it believed was correct. If the Town did not prevail, the additional dollars would be the cost of standing up for what was correct.

Mr. Wyett remarked that he was indignant over the Lubavitch claims, however, the Town Attorney had properly advised of the best practical approach.

Mr. McDonald stated that this was actually a dispute over attorney fees, and suggested that the recommendations of the Town Attorney be followed.

Mr. McLendon agreed that the recommendations of the Town Attorney should be followed.

On roll call the motion of Mr. Wyett carried 4/1, with Mr. Shaw casting a negative vote.

Mr. Randolph was given direction to look into the establishment of a legal defense fund for the Town of Palm Beach, and would report back to the Town Council at the February Town Council Meeting.

XI. NEW BUSINESS

A. Other

1. Consideration of Reports by Comp Com and Mid-State Communications Regarding Personal Communications Services and Cellular Wireless Facility Sitings

Assistant to the Town Manager, Dave Jakubiak, addressed the Town Council, stating that the two reports requested by the Town Council from Comp Comm, Inc., and Mid-State Communications had been received. He noted that the firm of Miller & Van Eaton, consultants to the Town, would be available via conference call with Mid-State and Comp Comm if so desired by the Town Council.

Mr. Wyett suggested that discussion take place before a conference call was made in order to avoid unnecessary expense.

Mr. McLendon agreed that the conference call was premature at the present time.

Mrs. Smith, Mr. McDonald, and Mr. Shaw agreed that the report should be heard and discussed.

Mr. Jakubiak continued with a brief summary: All Town facilities were reviewed, including municipal property within and not within the Town. The report identified those municipal sites that could be utilized, as well as sites that would not be feasible. Rough cost estimates were included. Mr. Jakubiak explained that the Telecommunications Act essentially prevented municipalities from putting in procedures that would preempt companies coming in and providing a service, thus the Town was in the process of developing a Zoning Ordinance in this regard in order to protect the Town in controlling sites or the process required for utilizing sites. The report included pictures of all sites. Today the request was for additional funding in the amount of $10,000, for a cost feasibility study to be completed if the Town Council elected to use municipal sites.

Mr. Shaw stated that the report was well done and concise, however, suggested that the municipal sites eliminated should be reconsidered in the future.

Mr. Wyett suggested that a feasibility study be delayed until the Town made a decision regarding owning and operating the towers.

Mrs. Smith noted that the indication at the Telecommunications conference in August was that various cities agreed that they would take the lead in wireless communications. Income could be raised for the Town and she believed that the amount for the feasibility study was not excessive as it would enable the Town to decide whether to go into the business or leave it to private enterprise.

Mr. Shaw concurred, and made a motion to approve the allocation of $10,000 from the Undesignated General Fund balance for a feasibility study to develop the actual costs involved in utilizing municipal property for future cellular and PCS facility sites; seconded by Mr. McDonald.

Mr. Wyett suggested that it should be decided whether the Town wanted to be in the business.

Mr. Shaw stated that he believed the Town should be in the business.

Mayor Ilyinsky commented that the advise at the Telecommunications conference had been for municipalities to get into the business, and suggested that $10,000 would not be excessive to find out more about the possibilities.

In response to Mr. Wyett, Mr. Jakubiak responded that specific costs would be ascertained for each site, i.e., wind load requirements, height requirements, strength requirements, etc.

Mr. Wyett responded that he was in favor of the Town being in the business, however, there were no specifications from communications companies as to what they needed on the top of the buildings, and it would be difficult to write specifications until it was known what type of equipment would be needed. He stated that the timing was his problem, and suggested that the Town Council pass a resolution that it desired to be in the business, and then talk to people who wanted to be on the proposed sites. Although he approved getting into the business, he cautioned that if there were no vendors for particular sites it would be useless to write specifications.

Mr. Jakubiak explained that there were four licenced providers at this time, and there was every indication that there would be four more. A detailed questionnaire had been sent to each provider, as directed by the Town Council, with specific information requested concerning available sites, and staff would continue to work with providers to secure information.

On roll call, the motion carried unanimously.

Mr. Doney stated that Mr. Ken Horowitz had offered his professional assistance to the Town, and would be glad to meet with the Town Council in further discussion.

Mrs. Smith commented that Mr. Horowitz had been very kind in extending his expertise to the Town.

2. Discussion of Draft Wastewater Re-Use Agreement for Regional Sewage Treatment Plant with the City of West Palm Beach

Town Engineer Bowser addressed the Town Council, giving a brief outline of the Draft Wastewater Re-Use Agreement between the East Central Regional Wastewater Treatment Facility's Entities Board and the City of West Palm Beach: The Town shared in the ownership, operation, and maintenance of the Regional Sewage Treatment Plant, and the agreement allowed any entity the right to expand the facilities to meet the capacity, special treatment, or disposal requirements provided certain conditions were met. One of those conditions was that written notice be given, and a participatory agreement be prepared. The draft agreement was now prepared, and Mr. Bowser noted that the City would probably be building an 11 million gallon per day re-use module and recommended that they do their own treatment; if the City needed additional water over and above what they sent to the Plant they should come up with agreements with whatever provider they chose in order to gain that additional water. In this way the Town could protect its right to get to the water in the future, should it ever be necessary.

In response to the question of Mrs. Smith, Mr. Bowser advised that he had looked over the memorandum of Mr. McLendon on this subject, but had not had a chance to discuss it with him. He noted that Mr. McLendon had noted that each entity should own its own share of the reclaimed water, be free to sell it, use it, or dispose of it, and Mr. Bowser acknowledged that would be a strong point in the agreement.

Mr. Wyett asked what advantage there was to the Town participating at this time in relation to this particular agreement?

Mr. Bowser explained that technically the Town was not participating, other than being a member of the Board. The Inter-local Agreement demanded that the Town give a reasonable opportunity to an entity that wanted to do this at the Regional Plant. The City had a right to do this, so the Board must sign an agreement with the City.

Mr. McLendon stated that he did not believe that this should be a one-party deal--all of those who want to be part of the agreement should be allowed to do so.

Mr. Bowser responded that had been offered by the City of West Palm Beach.

Mr. McLendon replied that he was interested in the Town of Palm Beach being able to do whatever it decided to do with the water involved. He commented that he would like to retain some options--for example, if the City wanted 11 million gallons and the Town wanted 5 million gallons, it would certainly be less expensive to share 5/16 of a 16 million gallon plant then to build a separate 5 million plant.

Mr. Bowser indicated that the Town would have to decide (if the Town decided to go to re-use) whether to expand the existing City facility, which could be done by agreement, or the Town could put its own little corner at the plant.

Mr. Bowser reported that the draft agreement would be revised and discussed at future board meetings; he would speak to Mr. McLendon about the various points of concern in his memorandum. He explained that he would suggest that if the City wanted to use more than 11 million gallons that they contract with another entity to secure the use of that water by separate agreement. Any terms and conditions could be applied to the agreement.

Mr. McLendon asked Mr. Bowser to provide him with an update of capacities and flows on the sanitary sewage lines to the City of West Palm Beach.

3. Consideration of Appeal of the Town Engineer's Decision Regarding

Location of Sidewalk and Related Issues at 224 Sunrise Avenue by Mr. Eugene Lawrence

Eugene Lawrence of The Lawrence Group Architects, addressed the Town Council, stating that the initial foundation of the design of the building in question was to repeat a median/parkway strip in front of the building putting in Royal Palms that would match the Palms across the street. He exhibited photographs of the site in question. The Town Engineer had ruled that the sidewalk must be relocated and the parkway and trees in the Town right-of-way be eliminated. He requested the favorable consideration of the Town Council in allowing the planting of the trees.

Public Works Director Al Dusey stated that the right-of-way permit had been rejected for a number of reasons: one was that there was no right-of-way space to allow a parkway and a sidewalk to occur; it had been a Town Council policy that all streets be treated uniformly when landscaping was done. He noted that the Town Council could adopt a policy if so desired, to place Royal Palms in a parkway for the entire length, however, he was not sure how that could be achieved, unless it was done at Town expense. He believed that the property could obtain the same effect by moving the Palms closer to the structure, since there was 13' between the structure and the curb.

Mr. Lawrence stated that the proposed location of the Palms would now improve the building as well as the street. The trees were about 50' in height, and there was not enough room to get the head of the trees behind the sidewalk and in front of the building. Landscape architects had advised against this, since the trees sway.

In response to the query of the Mayor, Mr. Dusey explained that there would not be uniform treatment on the street. The property involved was Town property. All of the other trees on the street were maintained privately; and if it was decided to go along with this proposal, the Town should enter into an agreement that ran with the property regarding maintenance and liability.

Mrs. Smith noted that once a precedent was set the Town would not be able to turn down other requests.

Mr. Shaw expressed concern about the trees blocking driver vision.

Mr. Lawrence pointed out that vehicles would not be coming directly into the traffic flow.

Mrs. Smith suggested that perhaps something smaller than a Royal Palm could be considered.

Mr. Wyett noted that if Royal Palm trees were on the north side of the street, the south side of the street should also have that type of tree.

Mr. McDonald asked for clarification on the right-of-way issue, mentioning that currently the Town Council was in the process of determining charges and fees for the use of right-of-ways.

Mr. Dusey responded that issue had not been considered.

Mr. McDonald stated that the right-of-way usage issues must be resolved before approval of any uses of the right-of-way without charge.

Mr. Lawrence stressed that a decision must be made about the location of the sidewalk.

Mr. McLendon stated that he did not see a similarity between this situation and right-of-way usage, since those easement rights were for self-serving enterprise, and he considered this proposal as Town benefiting.

Mr. Wyett made a motion to approve the request to allow the five Royal Palm trees to be planted, with the provision that the owner maintain the trees and assume all liability; seconded by Mr. McLendon.

On roll call, the motion failed 2/3, with Mr. McDonald, Mr. Shaw, and Mrs. Smith casting negative votes; Mr. McLendon and Mr. Wyett casting affirmative votes.

4. Discussion of a Dedicated Funding Source for Coastal Projects

Mayor Ilyinsky stated that information had been presented at the Beaches and Shores Council Meeting, which Mr. Elwell would discuss.

Assistant Town Manager Elwell summarized the proposal for a dedicated funding source for coastal protection projects. Each year when the Department of Environmental Protection (DEP) staff approached the legislature the program would fight for dollars with everything else in the State budget. At times there had bee no dollars, at other times there had been a few million dollars, and on rare occasions full funding of the program had taken place. The Florida Shore & Beach Preservation Association believed that it had now hit upon the appropriate source to generate $25-30 million annually to provide a dedicated funding source--a cruise passenger surcharge--a more than 24-hour cruise would include a $5 per passenger surcharge; for the less than 24-hour cruise there would be a $1 per passenger charge. The estimate from the financial analysis had been the generation of approximately $27 million in the first year. One consideration was that the Port Association in Florida was intending to fight this, however, there would be further discussion in order to work that out.

Mr. Elwell offered to prepare a draft letter for Council consideration in this regard on Thursday at the Special Town Council Meeting regarding the Shore Protection report.

Mr. McLendon made a motion to authorize Mr. Elwell to draft a letter to be reviewed by the

Town Council at the January 16, 1997 meeting; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

5. Discussion of Passenger Loading Zones

Mr. Shaw stated that at the Town Council Meeting last month there had been discussion of confusion concerning passenger loading zones, and he had spent an hour with a Police Officer on a Saturday evening to get a first hand view of the passenger loading zone situation. He had summarized his observations and recommendations in a memorandum, and was asking that the Town Council consider making some changes now.

Major Croft stated that the memorandum of Mr. Shaw had merit, and suggested that each item be discussed in detail:

(Written recommendations of Mr. Shaw will be followed by comments from Police Department made at the Town Council Meeting)

- There are areas where the red is adjacent to the yellow. As a yellow space is legal parking after 6 P.M., there is confusion, why take one space and make it for day and another for night. Use the same space, marked as above, and the public will know that they can *never* park anytime, day or night.

Major Croft agreed that there was some confusion and the Police Department concurred with the suggestions of Mr. Shaw. Major Croft assured Mr. Shaw that there would be consistency.

- Red space must start as close to the corner as possible. Look at Chuck and Harold's. There is a yellow space, then a white space, then three red. At 6 P.M. the yellow becomes parking, the white is always used, and access to the red is impaired. Start the red after the yellow so cars can pull right in. That's what makes it work at Amici and Galaxy Grill. This problem exists at other locations, including Cocina, and needs to be addressed.

Major Croft explained that the problem was in the consistency of the color of the curb line, and steps would be taken to make them consistent. At Amici and Galaxy Grill the curbs were painted with the yellow curb, then an immediate red curb, with the red curb area used as a loading zone after 6 P.M., and this would be made consistent from restaurant to restaurant throughout the Town. There had already been some corrective action as some of the signs had not been placed at the correct angle.

- As indicated at the last meeting, the spaces at Cafe L'Europe are not working. No one uses the red spaces on the side street. Remove all diagonal parking north of the

Post Office spaces and make that the red zone. Cars will pull in (up) and the valets can then take the cars without blocking the road.

Major Croft stated that the Police Department agreed with the above paragraph. He personally had complaints from several restaurant owners, and he would work with them in trying to remove three spaces in front of the restaurant that were currently diagonal spaces, and make the area a red curb loading/unloading zone. He mentioned that it had been tried on Brazilian Avenue, however, it was unusual to have discharging of patrons on the side of a business establishment.

- Charlie's Crab is no problem as long as the lot is not full and the line is from the north. Once full, the valets direct people to park free at the meters on the street. (Strange how people will walk some distance when they need to.) The first two metered spaces at the south end should be eliminated so cars can get around. As there is not enough width to make a turning lane, request that DOT permit a striped median that will push the through traffic east allowing the turning cars a place to wait. The alternative would be to prohibit a left turn. If the valet stand were moved in and a covered walk provided then more cars would be on sight. Moving the stand in at Dempsey's would also help when the traffic backs up onto Cocoanut Row.

Major Croft recommended that the Town Engineer take a look at the width of the roadway there. He believed that the idea of a striped median may be the best alternative, and the least expensive solution to the problem. The way it was currently striped prohibited a left hand turn, however, there was no signage and people often made left turns. Each time there was a pause for a left hand turn the northbound traffic for Charlie's Crab backed up. Two, and perhaps three metered spaces would have to be removed in front of Charlie's Crab on the east side of South Ocean Blvd.

Mrs. Smith stated that she would not like to see the public parking spaces removed, and perhaps there could be another solution to the problem in this area.

Mr. Shaw commented that he had meant after the hour of 6 P.M.; to have metered parking allowed to a certain point, as he did not want to take it away during the daytime.

Major Croft replied that it would be up to the engineer to decide the width and length.

- The Town has a sign ordinance. Valet signs are no more than another sign that advertises the restaurant, in violation of our codes. These signs should be of a regulated size, say 2' x 3' that indicate "passenger loading" in a red <u>reflective</u> paint on a white background to match the signs on the poles. No names are to be permitted. I would not mandate, but would suggest that the Town's Public Works Department sell the signs to assure that they are all the same, using a base and pole system acceptable to the Police Department.

Major Croft agreed that the signs were a problem. There had been altercations between people parking cars and Police Officers. Signs were not wanted in the street, which was prohibited by State law as a traffic hazard and obstruction. He also agreed that there must be some sort of notice to patrons that the service of parking their cars is available to them, as most restaurants in Town provide such a service. He suggested that discussion take place with Mr. Randolph regarding any revision to the Sign Ordinance, however, the Police Department was in agreement that there needed to be some sort of regulation on signs.

Mrs. Smith suggested that the sign question could be sent to the Ordinance, Rules and Standards Committee.

Major Croft thanked Mr. Shaw for his recommendations.

Mr. Wyett stated that he had observed that there was a lack of understanding in Town about how to use passenger loading zone areas, and recommended that conditions be included on any signs displayed, such as no parking or double parking, pulling the cars to the curb, and pulling the cars forward to the first open space. He suggested that rules, regulations and fines be used and enforced to perhaps include removal of the loading zone if a restaurant did not run it correctly. He maintained that the restaurant should have the ultimate responsibility of running a proper loading zone.

Major Croft agreed with Mr. Wyett, stating that the Police Chief had the authority to regulate parking and could make recommendations if loading zones were not used properly.

Mrs. Smith pointed out that oftentimes stretch limousines pulled in and took up all spaces in the loading zone.

Major Croft expressed that many of these problems would not go away and were not solvable. Changes suggested by Mr. Shaw would be made unless directed otherwise.

Mr. Doney suggested that the Police Department recommend a proper uniform sign, rather than make it a committee item.

Major Croft explained that Mr. Randolph could assist in deciding whether the Sign Ordinance should be revised, and if revisions were necessary it could then go to ORS.

Mr. Randolph stated that he would look at the ordinance and return with suggestions.

6. Consideration of Proposed Commercial Yard Trash Rates

Mr. Wyett stated that he had discussed the Commercial Trash rate proposal with Mr. Dusey, and suggested that the Town Council must agree as to whether to impose commercial trash collection rates. At the last stage the Town Attorney had explained that the bottom tier of commercial trash users could be left out.

Mr. Dusey explained that at the October Town Council Meeting, the recommendation that the Town Attorney provide legal advice had been given. Now it could go back to the Town Council or to the Public Works Committee. He offered to have information available for the Town Council Meeting in February, and it was decided that this item would be placed on the February Agenda.

7. Report on the Status of the Beach Stairs

Mr. Dusey updated the Town Council on the status of stairs at El Pueblo/LaPuerta: Dry sand had been built up in that area allowing the stairs to be placed at LaPuerta, which were doing very well. The final stages of the design on the authorized concrete stairs was in process; permits would be necessary, and costs estimates would be submitted.

Mr. Wyett clarified that cost estimates would be submitted and the Town Council could then decide whether to add stairs to the El Pueblo beach access.

Mr. Dusey explained that LaPuerta had been done first, as there had been more sand at LaPuerta, and it was a safer area to place the stairs. Two cost options would be submitted at the February Town Council Meeting: concrete stairs, and wood stairs.

XII. COMMENTS OF THE TOWN COUNCIL MEMBERS

Mr. Wyett stated that there were areas in Town that had been identified as having very little revenue, and suggested that long-hour parking be established so that people could park there all day, which would utilize the meters as well as the parking spaces.

Mr. Wyett commented that trash procedures on North County Road should be taken under consideration in regard to trash being left in the street from the large estates.

Mr. McLendon proposed setting up a Water Committee meeting for January 30, 1997.

Mrs. Smith commented that since the status of negotiations with West Palm Beach was unresolved, it may be more appropriate to have a Special Town Council Meeting, suggesting that the Town Council wait to schedule a meeting.

Mr. McLendon asked the status of the Trash and Garbage questionnaire.

Mr. Dusey replied that it would be sent out this week.

Mr. McDonald commented on Town Council procedure during contested quasi-judicial hearings, nothing that his comments were not intended to be critical of incumbent Council persons, but of a Council procedure. He suggested that the conduct of Council persons during quasi-judicial become less quasi and more judicial. Because of the nature of these hearings and direction from the 1981 Connor vs. Town of Palm Beach, participants were required to be sworn in. The parties that appeared before the Town Council often had a great deal at stake, with Council decisions often having great economic impact. Noting that at times focus may be lost on the importance of these hearings to the applicants, Mr. McDonald urged a response to changing conditions resulting from greater Federal and State government intrusion into affairs, such as the Harris Act, and new legal causes of action for property owners. As quasi judges, Mr. McDonald recommended that the Town Council members be more judge-like in their actions, pointing out that if a judge appears more friendly to one attorney or addresses that attorney or architect on a first-name basis, or jokes with him, the other party could perceive this as a disadvantage and an issue of fairness. It was a general rule in most deliberative assemblies that the presiding officer not participate in a debate. If the Chairman gave the appearance of being a partisan the ability to control those on the opposite side of the question was often lost. Mr. McDonald maintained that the parties should not be allowed to be disrespectful or rude to each other (as happened many times during the Mar-a-Lago hearings) and every party attending these adversarial hearings should be made to feel that the Council shows no favoritism and requires (as pursuant to Jennings) due process, and a fair and level playing field in an arena for ladies and gentlemen, including attorneys.

XIII. APPROVAL OF THE WARRANT LIST AND FUND EXPENDITURES FOR DECEMBER 1996

Mr. Wyett made a motion to approve the Warrant List and Fund Expenditures for December 1996; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XIV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of December 17, 1996 - Minutes Available in Town Manager's Office

The major matters were:

Major Projects - Old Business:

B80-96 Application by Lodar, Inc., 107 Indian Road, for new construction of 5,584 square foot one story residence.

B81-96 Application by Mr. and Mrs. Sullivan, 246 Monterey Road, for 275 square foot addition to increase the size of kitchen. Remove some second story windows.

B85-96 Application by Frederick J. Keitel III, 230 Royal Palm Way, for renovation of building and style change.

Major Projects - New Business:

B88-96 Application by Felice Forman, 150 Canterbury Lane, for demolition of all structures on the property - deferred.

B89-96 Application by Wittmann Building Corp., 210 El Vedado Road, for two story Venetian style home - approved.

B90-96 Application by Mr. and Mrs. Paul Van Der Grift, 1300 North Ocean Way, for revised motor court and main entry, new tennis and pool pavilion, new connecting loggia, and expansion of second floor area.

Mr. Wyett made a motion to approve the Major Matters Previously Considered by the Architectural Commission at Its Meeting of December 17, 1996; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

B. Variances, Special Exceptions, and Site Plan Reviews

All those who would be speaking to the Variances, Special Exceptions, and Site Plan Reviews were sworn in by Town Clerk Pollitt.

Old Business

1. Amended Variance No. 47-96 - Alexis Kirk, 134 Chilean Avenue; located in the R-B Zoning District; to allow construction of a swimming pool providing an east side yard setback of 6.5' in lieu of 10' required, and providing 36% green space in lieu of 40% required. (Deferred from December 10, 1996)

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

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 14, 1997

Attorney Howard Weinstein, representing Alexis Kirk, addressed the Town Council, stating that the property was currently in the R-B Zoning District, and Mr. Kirk would like to construct a small swimming pool with the dimensions of 10' x 20'. He distributed some photographs of the area involved, noting that two variances would be required: an east side yard setback and a green space variance. He addressed the east side yard setback. The special condition of the property was that the back yard area was quite small (21-1/2' x 18-1/2'), and the pool would need to be 5' from the garage in order to maintain the structural integrity of the garage; the proposed pool would be 10' in width, thus a variance of 3.5' would be required to put in the pool as designed. The green space variance was required because the property currently had a substantial amount of coral concrete block, which had been in place since Mr. Kirk purchased the property in 1987. The current green space on the property was 15%, and the construction of the pool would require removal of a large amount of the coral block, bringing the green space up to 36% which was 4% less than current zoning requirements. He explained that the entire back yard would be site screened from both the neighbors and street, and there had been no objections from anyone. He requested that the Town Council approve variance 47-96.

Mr. Moore pointed out that the minimum dimension required by the Town was 3' with engineered shoring to protect the foundation. The pool could be moved closer to the building, reducing the amount of the variance request.

Mr. Wyett made a motion to approve Variance 47-96.

The motion died for lack of second.

Mr. McDonald asked Mr. Weinstein to address the hardship issue.

Mr. Weinstein explained that Mr. Kirk would like to have a pool in the small back yard, there was no other surrounding property that could be purchased, and the variance was needed to construct the pool as designed.

Mr. McDonald asked if the lot was different from every other lot on the street?

Mr. Weinstein replied that the size of the back yard area was different because the lot was very small, and the garage took up a substantial portion of the back yard of the property.

Sidney Kovnar, designer of the pool, pointed out that he did not recall a Town ordinance about how far a pool must be from a structure. The rule of thumb in the engineering business was to stay 1' away from the structure for every foot in depth. He recommended that the pool remain 5' away from the house.

Mr. Wyett made a motion to approve Variance 47-96. The motion died for lack of a second.

Mr. Kovnar suggested that the setback be made 7.5', with a combination of shoring and pool width designed to accommodate that.

Mr. Wyett made a motion to approve Variance 47-96 to include the suggestion of Mr. Kovnar. The motion died for lack of a second.

Mr. Kovnar stated that the hardship was the width of the property, at only 50', with the structures on the property taking up most of the space.

Mrs. Smith reminded Mr. Kovnar that the pool could be made smaller, closer to the building, requiring no variance at all.

Mr. Kovnar responded that there would be a structural problem created if the pool was moved closer to the building--it would be a shovel and wheel barrel excavation which could take several weeks, with the possibility of rain endangering the process.

Mr. Moore stated that this situation was unique, the lot was 50' wide, and pools had been approved before that were within 3' of a building. Mr. Moore gave his personal opinion that the pool could be moved to within 4' of the building and could be reduced 1' in width.

Mr. Shaw made a motion to approve Variance 47-96, with an 8.5' setback and the green space as proposed at 36%; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

2. Special Exception No. 43-96 - Sandsong Investments, Inc., 206 North Ocean Boulevard; located in the R-B Zoning District; to allow construction of a beach house. (Deferred from December 10, 1996) - **Request for Deferral per letter dated January 7, 1997, from Mr. Robert E. Deziel**

New Business

1. Variance No. 1-97 - Town of Palm Beach, 1330 North Lake Way; located in the R-B Zoning District; to allow installation of a 7' high fence in lieu of 4' maximum allowed within 25' of Lake Trail, per Section 5.45 of the Town Zoning Code. (See Item IX.B.)

Ex-parte communication was declared by Mayor Ilyinsky, Mr. McDonald, Mr. McLendon, Mr. Shaw, Mrs. Smith, and Mr. Wyett with Mr. Moore and Mr. Castro.

Director of Planning, Zoning and Building, Robert Moore, explained that this item was in conjunction with the abandonment of Ocean Terrace and the condition concerning the erection of a fence for the length of the property. Similar variances had been granted in the past, and Mr. Moore recommended approval by the Town Council.

Attorney James Brindell stated that the application addressed the issue competently, and this matter could be concluded with the granting of the variance.

Mr. McDonald made a motion to approve Variance 1-97, with site screening included, the fence maintained, and no vegetation overhanging the fence, as responsibilities of the property owner; seconded by Mr. Shaw. On roll call, the motion carried 4/1 with Mr. Wyett casting a negative vote.

Mr. Moore noted that the cost of the fence would be $4,000 and requested that be funded from the Undesignated Fund Balance, to be included in the motion.

Mr. McDonald accepted that and incorporated it by reference as part of his motion. Mr. Shaw agreed to include it with his second.

2. Variance No. 2-97 - Sidney P. Kriser, 1620 South Ocean Blvd.; located in the R-A Zoning District; to allow construction of an addition providing a 25' street side yard setback in lieu of 35' required.

Architect Gene Lawrence, representing Sidney P, Kriser, addressed the Town Council, stating that the property in question was on the corner of Seagrape Circle and South Ocean Blvd. There were only four properties that would be involved in total, and the Krisers were asking for a small addition to the master bedroom to add some wardrobe space.

Director of Planning, Zoning & Building Robert Moore stated that staff comments were as follows: Planner Timothy Frank - the application did not meet criteria for granting variances - no hardship; Building Department - double frontage lot, one story only; Town Manager - additional explanation requested on the hardship. He explained that as a double frontage lot there were two setbacks that must be met; in addition a letter from one of the neighbors within 200' commented that there should be a deed restriction stating that no application by this applicant or any applicant in the future would be granted to make this portion of encroachment two story.

Mr. Lawrence commented that the property in question also included a portion of land on the ocean which had no structures on it at all. In the application it had been noted that the applicant would condition approval of the request with the installation of a hedge of sufficient size to sight screen the addition to the private street, if the Council deemed it appropriate, and that would extend to the plate line, 8'. He considered that the hardship fell into two areas: the layout of the existing house and its current location on the property, and the inability to expand it; in addition it was a double frontage lot.

Mr. Moore explained that the setbacks required on a double frontage lot were more punitive than on a lot of the same size in a location that was not double frontage

Mr. Wyett made a motion to approve Variance 2-97, as proposed, with the conditions that there not be a second story, and site screening be provided, as well as the reduction of the width by 6", the hardship being that these were very elderly people; seconded by Mr. McLendon.

Mr. Moore explained that the second story prohibition would apply to the entire house.

On roll call the motion carried 3/2, with Mr. McLendon, Mrs. Smith, and Mr. Wyett casting affirmative votes; Mr. McDonald and Mr. Shaw casting negative votes.

5. Variance No. 3-97 - E. Townsend Wright, Jr., 332 Seaspray Avenue; located in the R-B Zoning District; to allow construction of an addition providing a rear yard setback of 5.8' in lieu of 10' required.

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

Townsend Wright, 332 Seaspray, addressed the Town Council, stating that the application was requesting an addition to the existing structure. A rear yard setback of 5.8" was requested in lieu of the 10' required. The proposed addition of approximately 300 sq. ft. would then line up with the existing rear portion of the house. He explained that the hardship was that the existing structure was non-conforming, and sat on the very rear portion of the property; the property directly behind was non-residential, and was a school playground. The noise from the playground was loud and the addition would provide a buffer zone.

Mr. Moore gave staff comments: expanding a nonconforming condition did not meet the variance criteria; the Town Manager wanted further explanation; the Building Department questioned why it could not be built elsewhere, as there was a large amount of room on the property.

Mr. Shaw suggested that the structure could perhaps be moved forward 4'.

Mr. Wright replied that as proposed it would line up nicely with the rear portion of the house.

Mayor Ilyinsky congratulated Mr. Wright on maintaining the house, rather than tearing it down.

Mr. McLendon made a motion to approve Variance 3-97; Mrs. Smith passed the gavel and seconded the motion. On roll call, the motion carried unanimously.

6. Variance No. 4-97 - Eugene Applebaum, 325 Via Linda; located in the R-B Zoning District; to allow construction of an arbor providing a 16' front yard setback in lieu of 30' required, and to allow driveway gates providing a 9' setback from street pavement in lieu of 18' required.

Mr. Wyett recused himself on the basis that this was a family issue.

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

Phil Irwin, of Worth Builders, addressed the Town Council, stating that the wording on the application should be corrected to read *from* "driveway" gates *to* "service" gates. He would first address the arbor, noting its location on the displayed site plan. He explained that the proposed setback was 16' from the property line in lieu of the required 30' setback. The road was on a cul-de-sac, which cut into the property line, which caused the request for the more extensive setback request. The arbor would go inside of the hedge and would not be seen by the public.

Mr. Irwin described the service gates, pointing out that they would provide access to the garden for servicing the property and garden area. The service gate area would not be a driveway, but was in a grassy, planted area. Anything less than a 9' gate would not allow movement of a truck for servicing.

Mr. Moore gave staff comments: Comprehensive Plan: the components of this plan could be designed in a manner which met code requirements; Town Engineer: service gates should meet Town code of 18' setback; Building Department: no objection to the trellis, however, a deed restriction should be required on the gates for no pavement and unity of title.

Mr. Irwin responded that there was unity of title presently; if the setback was done according to code, the unity and appearance of the garden would be destroyed.

Mr. Shaw noted that most properties with a service entrance seldom tried to make it look like a major entrance.

Mr. Irwin explained that arched trellis work would be installed over the gates, and the work was a continuation of the ornamental metal that had gone on the house.

Mr. Moore interjected that Mr. Applebaum was confined to a wheelchair and there were security concerns.

Mr. Shaw stated that at a recent zoning hearing, a decision had been made not to allow gates to come out in cul-de-sacs beyond the required setbacks.

Mr. Irwin replied that was for driveway gates, and this was not a driveway gate. He explained that the hardship associated with his request was that the resident needed to be able to service the garden to plant, maintain and protect.

Mr. Moore explained that the proposed service entrance was clearly not for vehicular use on a regular basis. He noted that mention had been made of a deed restriction that there never be pavement in the service entrance area, so as to prohibit it from becoming an operational driveway. The ordinance did consider entrance and service gates as the same, so the setback would be the same.

Mr. Irwin explained that the service entrance would provide him access to the property on an occasional use.

Mr. Moore pointed out that the design of the gates could be changed to afford a more practical solution to this matter.

In response to the request of Mr. McDonald, Mr. Irwin elaborated on the hardship: the original property was built four years ago, and the client had since bought the property in question and wanted to turn it into a garden. As originally designed, there had been only a small service pedestrian gate, and after the wall had been built it became necessary to get into the site. In order to have access he would need the service gate, as other avenues to access were blocked by either a residence, or a large tree.

Mr. Shaw made a motion to approve the arbor, on the condition that it would be completely surrounded by a hedge per the drawing submitted, with the hardship being the shape of the property in the area of the cul-de-sac; seconded by Mr. McLendon. On roll call, the motion carried 3/1, with Mr. McLendon, Mr. Shaw, and Mrs. Smith casting affirmative votes, Mr. McDonald casting a negative vote, and Mr. Wyett being recused.

Mr. Shaw made a motion to deny the service gates at a 9' setback in lieu of the 18' required; seconded by Mr. McDonald. On roll call, the motion carried 4/0, as Mr. Wyett had recused himself.

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7. Special Exception No. 1-97 with Site Plan Review - Four Seasons Resort, 2800 South Ocean Blvd.; located in the R-D(2) Zoning District; to allow construction of a wall around and a canvas canopy over the existing garbage compactor.

Ex-parte communication was declared by Mr. McDonald with Mr. Kal Druck.

Mr. Moore explained when the Four Seasons Resort had been built one of the operational problems was the use of a compactor on the north side of the building. Town staff had encouraged enclosure of a dumpster/compactor.

Thomas Wuebben, representing Four Seasons Resort, addressed the Town Council, distributing photographs of the property in question, stating that the neighbors to the north had requested the addressing of noise, as well as aesthetics, in the dumpster area. Currently there was an open dumpster/compactor, and he proposed a revision to the Special Exception application to include a hard top structure on the walls, (rather than a canvas canopy) as suggested by Town staff.

Mr. Moore gave staff comments: the Building Department requested consideration of sound proofing material with a hard construction roof, to include gates on the north side of the compactor, and that when the compactor was used that the gates be closed and opened afterwards in order to air out.

Mr. Kalman Druck, President of the Ambassador II Corporation, stated that he was very pleased that the application had been made, which he believed would alleviate the noise and aesthetic problems.

Mr. McDonald made a motion to approve Special Exception 1-97, incorporating the conditions specified by the Building Department; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

8. Special Exception No. 2-97 with Variances and Site Plan Review - Alex Art et Decor, Inc., 336 South County Road; located in the C-TS Zoning District; to allow a retail establishment to occupy 5,695 sq.ft. in lieu of 2,000 maximum permitted. A variance is requested to allow the expansion of a non-conforming building by enclosing a covered planter area and converting it into a display area. A six (6) parking space variance is also required to convert office space to retail space and to construct the display area.

Ex-parte communication was declared by Mr. Wyett with Mr. Broberg regarding the merits of the case; Mr. McLendon with Mr. Broberg relating to the application and his impression of the merits of his case; Mayor Ilyinsky with Mrs. Russo, the owner of the property, about the chances that the application would be approved; Mr. Shaw with Mr. Broberg to discuss the application and issues on behalf of his client, Mr. McDonald with Mr. Broberg in relation to additional information provided regarding the Special Exception application, as well as persuasion in support of it.

Attorney Peter Broberg, on behalf of the applicant, Alex Art et Decor, Inc., addressed the Town Council, stating that many years ago the building was a speciality grocery market, with the most recent use being as a trust company, which had been five years ago. The building had been laid out as office space, however the Town code no longer allowed office space on the first floor, so the building could not be used as an office space. The applicant was seeking to occupy the entire first floor, which was 5,480 sq. ft., which was in excess of the 2,000 sq. ft. limitation in the C-TS Zoning District, but the building design could accommodate only a single user tenant. Allowing the tenant to use the space as a single user would not violate any of the code violations because retail space was allowed in this district; the use would not affect the public; the use would not cause any substantial injury to the property values; the use was compatible with all the adjoining development; the use would not result in noise, odor, glare; there was adequate ingress and egress; the sign would comply with Town code; the refuse and service areas would not burden the public; the property would be Town serving. The applicant planned to sell antiques and fine rugs.

Mr. Broberg continued with the fill in variance: the hardship was the design of the building, which was required to be retail, however, it was set up as office. In order to be retail the storefront needed to be on the sidewalk as it was all up and down Worth Avenue. The parking variance was a minimal request, because the building not only had sufficient parking, but could accommodate three more parking spaces, and the hardship was that the design of the building, which was created at a time when the Zoning Code was different, and now the Zoning Code was such that it required more parking than was physically available. He pointed out that there was a formula for determining whether there was sufficient parking for retail establishments: .65 spaces used for every full time employee; .33 spaces for every part time employee--add those two together and double it for the amount needed for customer parking. Mr. Broberg assured that Council that there was plenty of parking in the building.

John Mandeville, owner of the establishment, addressed the Town Council, stating that fine rugs would be carried, with prices ranging from $2,000 - $150,000. In addition, there would be little rooms set up to display antique furniture.

Mr. Moore gave staff comments: Fire Department: building should be sprinklered; Comprehensive Plan: intensity of use should not be increased because of off street parking shortage; Building Department: Town-serving must be addressed; Town Manager: Mr. Doney concurred with staff. Mr. Moore noted that the only use this building could have would be for retail, therefore the issue of the increase of intensity of use would not be applicable. He explained that staff did not have a problem with the fill-in portion of the Variance. Mr. Moore stressed the importance of the Town-serving issue. He pointed out that staff did disagree with the contention that the building could not be re-designed in order to operate with less than the 5,480 sq.ft.

Architect Steve Trezise addressed the Town Council, stating that the building had been added to a number of times over the years, and the southern portion of the building was separated by a load bearing wall, which was the former exterior wall. He did not believe that the building could be redesigned, as there would be no access to existing baths, nor access to the kitchen, and the reality of a 17' x 100' space with no exposure to the south side would be somewhat limited from a retail standpoint. The only possible way to re-design would be to take the existing bank of offices and remove them from the equation. He suggested that it would behoove the Town to approve the building as a single user building because it would result in a lower parking load.

In response to the questions of Mrs. Smith, Mr. Mandeville explained that the retail space was the best location for the display of his merchandise. He had a European investor backing him with merchandise that would be supplied to the showroom, and who would also be willing to do the renovations to the building.

Attorney Lisa Kaye, co-counsel representing Alex Art et Decor, Inc., addressed the Town Council in response to the questions of Mr. Shaw, explaining that Mrs. Russo would only lease the entire space to her client, who would only accept it on that basis.

Mr. Shaw mentioned that he would find it very difficult to approve the site plan as designed, because of the orientation of the shop not being towards the parking area, which he believed would cause parking problems.

Mr. Trezise responded that in order to orient the shop towards the parking area all of the gang baths, the mechanical space, and all of the most difficult construction pieces would have to be moved.

Mr. Wyett remarked that Town-serving could be reviewed every six months, and if the applicant could come up with a plan to restrict the use of part of the property for a period of six months, the space could be released if Town-serving could be proved within six months.

Mr. Trezise stated that the display area and entrance to the front, as well as access to the rear and the group baths must be retained, therefore the areas feasible to give up would be the employee lounge, storage areas, kitchen areas and the bank of offices. That would reduce the footage down to 3,483 sq.ft., which would still require a special exception. That would not allow realistic access to the space.

Mr. Broberg explained that the applicant would be willing to give up a portion of the property for a certain period of time, as suggested by Mr. Wyett.

Mr. Wyett pointed out that he would add some other conditions: the sprinkler system be installed, the Town-serving aspect, and the restrictions that there be no concessions, outside vendors or co-use.

Mr. Moore agreed that a reduction of square footage would be more in line with the Town-serving 2,000 sq.ft., but more importantly the intent of marketing, the creation of a business atmosphere that would be Town-serving should be considered.

Mr. Shaw stated that he felt very strongly that the shop would have to lend itself to consumer access from the parking area. He suggested that this item be deferred, and the applicant come back with a plan for a successful retail business in the Town of Palm Beach.

Mr. Moore read from the Town Code: The proposed use will not attract the principal portion of its customers from off island locations. *The applicant shall submit evidence satisfactory to the Town Council that not less than 50% of the customers of the proposed use will be Town persons.*

Mr. Broberg stated that banks do not present plans, but merely ask for six months to show Town-serving.

Mr. Moore responded that this was not a bank, but a retail sales application, and a first time applicant wanting in excess of 2,000 sq. ft. had to give evidence to the Town Council of how they intended to market their retail products to attract 50% of their customers from the Town of Palm Beach.

Mrs. Smith remarked that it was a very high profile application, because the request was for three times the allowed space.

Mr. Broberg agreed that the applicant would come back to the February Town Council Meeting.

Mr. Wyett made a motion to defer Special Exception 2-97 to the February Town Council Meeting; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

9. Special Exception No. 3-97 with Variance - Frank Coniglio, 262 Sunset Avenue; located in the C-TS Zoning District; to allow a two-story residence to continue residential use on the second floor, but with new commercial use on the first floor. A variance is requested to allow a five (5) parking space deficiency.

Attorney Mariano Garcia, on behalf of the property owners, addressed the Town Council, stating that this request concerned a 3,000 sq.ft. residence located in a C-TS Zoning District, and the property owners had a prospective tenant who would like to reside at this location and run his photography business using approximately 1,000 sq.ft. of the first floor. The unique circumstance of the structure was that it was a residence and the property owners could not put a commercial use to it unless this request was granted.

Mr. Sandy McPherson, photographer with John Haynsworth Photography, and prospective tenant, addressed the Town Council stated that the idea was to display photographs in a home environment, rather than in the current John Haynsworth studio in the Paramount Building. There was no studio photography planned, but all location photography.

Architect Pat Segraves addressed the Town Council, exhibiting the Site Plan of the building and explaining the commercial and residential portions. He explained that all Town codes and requirements would be followed.

Mr. Garcia stated that a parking variance had been requested because of the commercial use parking requirement, which would entail five additional spaces, and a tentative agreement was in process with a company located across the street. He pointed out that there was an unusual predicament in that the nature of Mr. McPherson's business did not require those spaces, and suggested that an application for consideration at the next Town Council meeting be made.

Mr. Moore gave staff comments: Police Department: the five additional parking spaces should be provided; Fire Department: fire sprinklers required for the building, as it would be a mixed use commercial/residential; Comprehensive Plan: should not be allowed without provision for all off street parking; Building Department: parking needs to be addressed; Town Manager: concurred with staff. Mr. Moore explained that discussion had taken place regarding the necessity for off site parking, which would require a Special Exception. If the matter was deferred an additional request for Special Exception would be filed and advertised.

Mr. McDonald asked if the entire building would be required to be sprinklered when it was designated mixed-use?

Mr. Moore replied that the Fire Department required that the entire building be sprinklered.

Mr. Randolph stated that he did not think it would be appropriate to decide on the parking this evening, as there were certain criteria for Special Exceptions. The Variance could be acted upon at this meeting, but that would essentially eliminate the parking based on the fact that the applicant said that the parking was not needed.

Mr. McDonald made a motion to defer Special Exception 3-97; seconded by Mr. McLendon.

Mr. Garcia explained that the mixed use and the parking were separate issues and asked if both issues would now be deferred?

Mr. Moore indicated that the Special Exception for the mixed use could be acted on by the Town Council tonight, and the portion of the application concerning the parking could be deferred until next month.

Mr. McDonald clarified that his motion would be to approve Special Exception 3-97 for mixed use (residential and commercial) by the same tenant, and defer the parking Variance until next month; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

10. Site Plan Review No. 1-97 with Variance - Frederick Keitel, 230 & 240 Royal Palm Way; located in the C-OPI Zoning District; to allow renovation of parking area, including some demolition of structures. A variance is requested to allow a modification to an existing structure by permitting the construction of a second floor roof tie-beam at a height of 30' in lieu of 25' maximum allowed.

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

Architect Pat Segraves addressed the Town Council, stating that Site Plan approval was being requested for an existing building to be renovated. He proposed that the existing building coverage would be reduced from 11,350 sq.ft. to 10,435 sq.ft.; existing landscape now totaled about 10% of the site, and the proposal would increase it to 17.5%.; the impervious area would be less by about 6%; the site currently had 70 parking spaces, and it was proposed to make all parking spaces meet Town code, as well as handicapped spaces; it was proposed to make all parking lot aisle widths standard; currently there was a power line running through the parking lot, and it was proposed to go underground with that service. The new parking lot would be landscaped and newly surfaced. It was also proposed to demolish a one story section of the building.

Zoning Administrator Paul Castro addressed the Town Council commenting that the renovated portion of the building would be required to be sprinklered at the time of Building Permit; the parking lot re-design would have to meet the water quality and storm water retention requirements of South Florida Water Management District (SFWMD). That was not demonstrated in the plans submitted at this time. Staff would also request a Unity of Title between both properties to ensure unification of the site so that the required parking in the rear was tied to both buildings together.

Mr. Segraves responded that there was already Unity of Title, and a preliminary drainage plan had been submitted.

Mr. Castro acknowledged that the plan had been submitted late, however, the Town Engineer had not had a chance to review it. He noted that the Unity of Title must be acceptable to the Town Council, and could only be severed by the Town Council.

Property owner, Frederick Keitel, asked if a Deed Restriction could be used rather than a Unity of Title?

Mr. Randolph replied that a Deed Restriction would do the same thing as a Unity of Title, however it should indicate that the title not be severed without the permission of the Town Council.

Mr. Shaw asked if there was a tenant for the building?

Mr. Keitel replied that there were proposed tenants, but there was not an actual tenant as of yet.

Architect Segraves next addressed the Variance, which was a tie-beam variance of 2 ft. The reason for the request was that the building was sandwiched between two four-story buildings, and did not have a sense of identity or height, and the entry section would be redesigned similar to other buildings in the area.

Mr. Shaw made a motion to approve Site Plan Review 1-97 on the basis that the variance was for 2'; seconded by Mr. Wyett. On roll call, the motion carried unanimously.

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At this time Item X. Old Business A. Other #1, was heard as it had been deferred earlier in the meeting.

X. OLD BUSINESS

A. Other

1. Consideration of Request for Amendment to Encroachment Easement at 190 South Ocean Boulevard, Estate of Johanna Johnson (Deferred from October 8, 1996, and December 10, 1996)

Attorney Robert Deziel, representing the applicant, addressed the Town Council. He apologized for the scheduling misunderstanding, explaining that he had only recently been retained. As he understood it, the property was subject to a Town lien concerning a code enforcement obligation, and his client had entered into a contract to buy the property. In reviewing the survey for the property it became apparent that there was an encroachment by the seawall on the north side of the property on the Town's property. At the closing of the property the legal description was not available, and apparently there had been an agreement to close the transaction, holding the recording of the encroachment agreement until the proper legal description could be obtained. Following the closing it became apparent that there was a mistake in the size of the encroachment, and additional consideration for the encroachment was now being requested by the Town. Mr. Deziel stated that he was present today to clear up the situation and acknowledge that a mistake had been made. He suggested that the Town reconsider the approval made to allow a .77' encroachment, turning that approval into the correct 3.3' encroachment.

Mrs. Smith asked Mr. Moore how the actual encroachment on the seawall had occurred?

Mr. Moore replied that the seawall had buckled and failed, creating the actual encroachment onto the Town property.

Mr. McDonald explained that the attorney for the applicant had been asked to come back to the Town Council with a proposal for compensation to the Town.

Mr. Deziel replied that his client was not interested in compensating the Town for the encroachment.

Mr. McDonald responded that he accepted that, and recommended that the Town then withdraw approval of *any* encroachment.

Mr. Deziel stated that he would like the members of the Town Council to understand that a mistake had been made by a third party.

Mrs. Smith asked the implications of the Town withdrawing its approval?

Mr. Randolph replied that he was not sure that approval of the encroachment easement could be withdrawn for the .77'. What was now being requested was an amendment to grant the encroachment easement for 3.3', because of a mistake. If the Town did not grant the encroachment for the difference between the .77' and the 3.3' there would simply continue to be an encroachment of this private wall on the public property for that difference. If the Town wanted to object to the encroachment and the property owner did not chose to remove it there may have to be a mandatory injunction to have it removed. The property owner had a problem because of the encroachment, which clouded the title, and the property owner would have to clear that in order to convey the property. If nothing was done, liability of the Town would continue for that portion of the wall encroaching on public property. If the Town granted the encroachment easement, there would be an indemnification from the property owner, whereby the property owner would agree to save, defend, and hold harmless the Town against any damage which would occur as a result of that wall being on Town property.

Mrs. Smith clarified that the applicant did not have clear title until the matter was resolved.

Mr. Randolph stated that it was an encroachment problem that would continue to be a problem for the owner unless it was resolved.

Mrs. Smith asked Mr. Moore if the owner had started work on the property?

Mr. Moore replied that work had started on the main property. There would be no Building Permit issued for the beach side of the road until there was a Unity of Title.

Mr. Deziel shared information from the original surveyor, addressed to Ms. Gammon-- "our firm carries errors and omissions insurance, however, we have a $15,000 deductible. Even if we have caused a monetary loss by your client, this would have to come out of my shallow pocket".

Mr. McDonald pointed out that the client had hired the surveyor, and it was unknown if there was a survey exception to the Title Policy. If there was not a survey exception for the encroachment then the applicant had a claim against the Title Company.

Mr. Deziel replied that there was a claim against the Title Company.

Mrs. Smith asked if the Title Company had been hired by Mr. Deziel's client, or First Union Bank as trustee?

Mr. Deziel responded that the company was hired by the seller on behalf of the purchaser. He proposed that the claim could perhaps be assigned under the Title Policy to the Town.

Mr. McDonald made a motion to deny the offer of Mr. Deziel. The motion died for lack of a second.

Mr. Deziel suggested that a Council member make a motion to amend the encroachment agreement to 3.3' under the rationale that without an agreement the Town would have no indemnity or insurance, and *with* the agreement the Town *would* have indemnity and insurance, as well as an agreement that the seawall would be rebuilt on the applicant's property.

Mr. Shaw made a motion to approve amending the encroachment agreement with the condition that a guaranteed survey be provided; seconded by Mr. Wyett.

Mrs. Smith expressed her concern over the Town being in the position of having any liability for any accident in that area, and suggested that in the future at closings this type of error not happen again.

Mr. Randolph stated that this was not an error on the Town's part--there was a letter from the sellers that there was a .77' encroachment, and an easement had been granted for that. The survey had shown .77', and everyone had agreed that the only thing remaining was a legal description describing the .77'. This type of problem could not be avoided in the future.

On roll call, the motion carried 4/1, with Mr. McDonald casting a negative vote.

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Returning to the current portion of the minutes, Site Plan Review 1-97, with Variance, Mr. Keitel returned to report the results of his phone call. He agreed that a Unity of Title would be appropriate.

Mr. Wyett made a motion to approve Site Plan Review 1-97 with the conditions that a sprinkler system be installed in the building, the water quality and retention in the parking lot be addressed, the tie beam variance be 2', and a Unity of Title be recorded; seconded by Mr. Shaw. On roll call, the motion carried unanimously.

11. Site Plan Review No. 2-97 - Skip Gozo, 127 Ocean View Road; located in the R-A Zoning District; to review proposed construction of a new residence.

Attorney Peter Broberg, on behalf of Skip Gozo, addressed the Town Council, referring to Section 5.11 of the Zoning Ordinance, which stated that a single family home could be constructed on any existing non-conforming lot in the R-A Zone...if the lot had less than the minimum area and/or dimension requirements, and in such case as if it was a platted lot, only a Site Plan Review was necessary, and if it was a non-platted lot it was necessary for there to be a Special Exception with a Site Plan Review. He noted that the lot in question was undersized and the requirement was that a Site Plan Review be brought before the Town Council. He explained that the Site Plan included lot coverage of 23% lot coverage (3,900 sq.ft.), the second floor was 16% lot coverage (2,900 sq.ft.); plate height would be 23', and the roof would be 33'. The dimensions were well below the maximum requirements in the R-A District. He explained that the applicant was sensitive to the concerns of the neighbors and the massing of the house.

Mr. Skip Gozo addressed the Town Council, explaining that he had purchased the land in September, and hired an architect to design a plan. Mr. Adler, a neighbor, had concerns with the project and the blocking of his view. In order to accommodate him and get the project underway, Mr. Gozo had met with the Adler attorney, who had mentioned Mr. Adler would support the project with certain conditions. Those conditions were met, and Mr. Adler requested that some other things be changed. Those changes were made, however, Mr. Adler still was not satisfied. The other residents on Ocean View Road believed that this project would enhance the values of their homes, and as long as Mrs. Christensen could get the view out of her one window she was happy. Mrs. Ravits would love to see a white roof, Bermuda style house, but had no problem with the two story.

Architect Mark Marsh addressed the Town Council, stating that the design reflected the concerns of all those parties who had input into the planning of the project. The square footage had not been maximized, and the style was classical.

Ex-parte communication was declared by Mr. Wyett with Mr. Broberg.

Mr. Castro commented that the balcony on the south side of the property extended further than the Code allowed, and the architect would address that. The Town Engineer commented that there should be no walls, gates, or any other structures or planting allowed in the easements, and that the bulkhead must be at or above 5.0 NGVD. The property was 25% smaller than that required by Town ordinance, and in proportion to what was being proposed the structure was a little larger than what had been approved on that block in the past.

Mrs. Smith and Mr. Wyett agreed that the house looked massive and overpowering on this site.

Mr. Wyett suggested that Mr. Broberg come back next month with an "A" and "B" plan, to include a smaller house.

Attorney Robert Deziel, representing Mr. and Mrs. Frederick R. Adler, 1520 South Ocean Blvd., addressed the Town Council, stating that he would be happy to come back if this item was deferred, however, he was not waiving the comments and input he would have with the application. He noted that this was an R-A sized project on an R-B sized lot, and none of the other homes on the street were Mediterranean or two story.

Mr. Shaw made a motion to defer Site Plan Review 2-97 until the February Town Council Meeting; seconded by Mr. McLendon.

Mr. Broberg asked if the Council had a problem with the style of the house being presented?

Mrs. Smith replied that the Council was not dealing with the style--that would go to the Architectural Commission. The main concern of the Council tonight was the size of the house on the property.

Mr. Moore noted that just because the Site Plan was reviewed and possibly approved by the Town Council, that would not mean it was a tool to be used at the Architectural Commission to gain approval of the architectural style.

Mrs. Smith clarified that the Town Council sitting tonight was not putting its stamp of approval on the architectural drawings that had been presented.

On roll call the motion to defer carried 4/0, as Mr. McDonald had left the meeting.

C. Other

1. Consideration of Request for Waiver to Sections 12-51 and 5-22 of the Town

Code of Ordinances, Hours of Construction Work, by Mr. Peter S. Broberg for Spa Thiera, 230 Worth Avenue (Deferred from December 10, 1996)

Attorney Peter Broberg, on behalf of Spa Thiera, addressed the Town Council, stating that agreement had been reached with objecting neighbors, and requested that construction be allowed until the end of March, 1997 from 6:00 A.M. to 10:00 A.M., and from 5:30 P.M. until as late as could be allowed.

Mr. Moore stated that there was an indemnification that any damage done, or any future damage that might be done would be rectified by the contractor. The hours of 6:00 - 10:00 A.M. may cause some problems, because of access to the construction site.

Mr. Burton Handelsman stated that very reliable contractors were used, and in the past material had been delivered at 5:30 A.M., took 15 minutes to unload, and the truck was then off the street prior to 7:00 A.M.--there would not be a truck or workman seen after that hour. He assured the Town Council that the current work would proceed in the same fashion.

Mr. Wyett suggested that construction be permitted from 5:30 A.M. - 9:30 A.M., with no trucks on the street after 7:30 A.M.; and from 6:00 P.M. - 11:00 P.M., with no parking on the street, and allow work 6 days a week.

Mr. Bill Pratt, with Seawood Builders of Deerfield Beach, contractor on the project, addressed the Town Council explained that all of the storefront work, demolition interior work, and air conditioning work had been completed. The remaining work would be confined withing the space--primarily drywall work, plumbing, mechanical, and electrical work. Construction would take approximately 10 weeks; until the end of March.

Mrs. Smith asked how long the estimation for the entire job had been?

Mr. Pratt replied that the same project in Boca Raton had taken approximately 12 weeks.

Mr. Handlesman stated that Spa Thiera was not based on a tourist season, but based on a home population, so losing the few months prior to May 1 would be a hardship for the client.

Mr. Wyett reiterated his motion: approval of the construction hours of 5:30 A.M. - 9:30 A.M., and from 6:00 P.M. - 11:00 P.M., until the work was finished, with no trucks on the street after 7:30 A.M., six days per week, no Sundays.

Mr. Shaw added that there would be no heavy duty work allowed.

Mr. Moore stipulated that there would be no jackhammers or carbide saws permitted during this period of time.

Mr. McLendon seconded the motion.

On roll call the motion resulted in a 2/2 vote with Mr. McLendon and Mr. Wyett voting in the affirmative, and Mr. Shaw and Mrs. Smith casting negative votes. (Mr. McDonald and Mayor Ilyinsky had left the meeting).

Mr. Shaw made a motion to defer this item until the Special Town Council Meeting on Thursday, January 16, 1997 when a full Council would be present; seconded by Mr. Wyett. On roll call, the motion carried 4/0, as Mr. McDonald and Mayor Ilyinsky were not present. Mrs. Smith noted that this would be the first item on the Agenda.

XV. ANY OTHER MATTERS

Mr. Randolph called attention to his letter of January 13, 1997, requesting approval to go forward with hiring Attorney John DeVault to assist in the Mar-A-Lago proceedings.

Mr. McLendon made a motion to approve hiring Attorney John DeVault, as recommended by Mr. Randolph; seconded by Mr. Shaw. On roll call, the motion carried 4/0, as Mr. McDonald and Mayor Ilyinsky were not present.

XVI. ADJOURNMENT

The meeting was adjourned at 9:50 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Sue Eichhorn
1-31-97

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Variance 4-97

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

LAST NAME—FIRST NAME—MIDDLE NAME: WYETT ALLEN S	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE: PALM BEACH TOWN COUNCIL
MAILING ADDRESS: 1145 No LAKE WAY	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☐ CITY Town ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY: PALM BEACH — COUNTY: PB	NAME OF POLITICAL SUBDIVISION: TOWN OF PALM BEACH
DATE ON WHICH VOTE OCCURRED: Jan 14 1997	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

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

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

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

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

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

ELECTED OFFICERS:

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

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

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

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

APPOINTED OFFICERS:

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

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

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

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

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

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Allen S Wyett, hereby disclose that on 1/14, 1997:

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

____ inured to my special private gain or loss;

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

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

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

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

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

Date Filed: 1/14/97

Signature: Allen S Wyett

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