

MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 12, 1999

**I. CALL TO ORDER AND ROLL CALL**

The Town Council Meeting was called to order by President Lesly Smith at 9:30 A.M. on January 12, 1999, in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Samuel McLendon, Councilmen Jack McDonald, Leslie Shaw, and Allen Wyett. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Chief Code Compliance Officer Brian House, Finance Director James Demming, Fire-Rescue Chief Ken Elmore, Information Systems Manager Spencer Wilson, Information Systems Programmer/Analyst Jim Palmer, Planner/Projects Coordinator Tim Frank, Planning, Zoning & Building Director Robert Moore, Zoning Administrator Paul Castro, Police Chief Frank Croft, Public Works Director Al Dusey, Purchasing Agent Charles Boggs, Recreation Director Russ Bitzer, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

**II. INVOCATION AND PLEDGE OF ALLEGIANCE**

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

**III. PRESENTATIONS - None**

**IV. COMMENTS OF THE MAYOR**

Mayor Ilyinsky praised the donation of a \$130,000 MICU by Mr. Frank T. Maxwell.

The Mayor noted the large number of meetings on the Schedule of Meetings list attached to the Agenda for this meeting, and the implications that it has for the impact on the workload of the Town Clerk's Office and the Town's staff.

Mrs. Smith noted the Town Council would convene at 11:50 a.m. to allow the Mayor and Town Council time to attend the United Way luncheon and reconvene at 1:30 p.m. Mrs. Smith also pointed out that the last Town Council Meeting had broken the record for time, ending at 12:05 A.M., and that record would never be seen again. She requested that all presenters limit themselves to 10 minutes today, as well as the Council members

**V. APPROVAL OF THE AGENDA**

The following changes were made to the Agenda:

DEFER Item VII on the Approved Agenda, APPROVAL OF THE MINUTES OF DECEMBER 8, 1999, TO THE February 8, 1999, Town Council Meeting.

Councilman Shaw moved deferral of Item VII to the February 8, 1999, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

ADD Item XV. B. 4. - DISCUSSION OF PILES OF CUTTINGS THAT ARE PLACED ON THE RIGHTS-OF-WAY SOUTH OF PAR 3 TO HOWARD JOHNSON'S.

Councilman McDonald moved that Item XV.B.4. be added to the Agenda. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

ADD Item XV. B. 5. - CONSIDERATION OF POLICY TO CHARGE FOR RESEARCH BY THE TOWN ATTORNEY.

Councilman McDonald moved that Item XV.B.5. be added to the Agenda. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

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ADD Item XV. B. 6. - CONSIDERATION OF CREATING A CIVIC AWARD TO BE MADE BY THE TOWN COUNCIL.

Councilman McDonald moved that Item XV.B.6. be added to the Agenda. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

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

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

Ms. Ann Herman stated that the work on Woodbridge Road at South County was blocking off lanes of traffic and holding residents up. She questioned if the Town Council had authorized Florida Power & Light (FPL) to block traffic?

The Town Council directed that the Public Works Department and the Police Department work together to have FPL comply with the Council's decision to have two lanes of traffic open at all times.

Ms. Gilda Ellis Beane, 248 Park Avenue, complained about the drum beat emitting from 251 Sunrise that destroys the night time solitude of the residents in the area; the parking of late night patrons of 251 in near-by parking lots; and the overcrowding of the 251 space itself. She noted that forty-one police complaints have been filed in the last month.

**APPROVED AGENDA**

VII. APPROVAL OF MINUTES OF DECEMBER 8, 1998 - **Staff recommends deferral to February 9, 1999**

VIII. APPROVAL OF CHECK REGISTERS FOR DECEMBER 1998

IX. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF DECEMBER 18, 1998, WITH THE EXCEPTION OF ITEM B 84-98, 218 JAMAICA LANE (*See Item XVII.A.1. on Page 5*)

X. LICENSES AND PERMITS

A. Charitable Solicitations

1. Fraternal Order of Police Palm Beach Lodge #19; No. 79-99
2. Palm Beach Crime Watch, Inc.; No. 182-99
3. The American Ireland Fund; No. 260-99
4. The Auxiliary of Bethesda Memorial Hospital, Inc.; No. 290-99
5. United Jewish Appeal-Federation of Jewish Philanthropies of NY, Inc.; No. 346-99
6. School of the Arts Foundation, Inc.; No. 353-99
7. American Friends of the Israel Philharmonic Orchestra; No. 364-99
8. Youth & Family Foundation of Florida of the Florida Network of Youth & Family Services, Inc.; No. 427-99
9. Florida Philharmonic; No. 441-99
10. Child Care Resource & Referral, Inc.; No. 454-99
11. National Neuro Fibromatosis Foundation-Florida Chapter; No. 455-99
12. The Unicorn Children's Foundation; No. 456-99

Other - Results Form Filed Late and \$25 Late Fee Paid

13. The Lord's Place Auxiliary; No. 229-99

Other - Application Filed Late and \$25 Late Fee Paid

14. Voice for the Children, Inc.; No. 453-99

Other - Application Filed Late (\$25 Fee) & Results Form Filed Late (\$25 Fee)

15. The American Jewish Committee; No. 125-99

XI. OTHER

- A. Donation of Drinking Fountain by Mr. Ken Horowitz on Bicycle/Pedestrian Trail in North End of Town per Memorandum dated January 4, 1999, from Public Works Director Dusey

- B. Request for Special Appropriation to Upgrade Fuel Pump Intakes at the Par 3 Golf Course and North Fire-Rescue Station to meet Florida Department of Environmental Protection Requirements per Memorandum dated January 4, 1999, from Fire-Rescue Chief Elmore

The Approved Agenda was approved (with the exception of Item VII.) through motion of Councilman Wyett, seconded by Councilman McDonald. On roll call the motion carried unanimously.

### **REGULAR AGENDA**

#### **XII. LICENSES AND PERMITS**

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

- 1. American Red Cross - Palm Beach Chapter; No. 20-99

Town Clerk Pollitt explained that the American Red Cross had held an event on December 31, 1998, without first applying for a permit. A second event was planned for January 30, 1999. Mr. James McCann was available to provide an explanation.

Mr. McCann addressed the Town Council, stating that he would be certain to file a permit in the future.

- 2. New Hope Foundation, Inc.; No. 398-99

Town Clerk Pollitt explained that the New Hope Foundation had held an event on December 3, 1998, without submitting a permit. Mr. Mark Coppack was present to provide an explanation.

Mr. Coppack, Chief Professional Officer of New Hope Foundation, Inc., addressed the Town Council, stating that the fund raiser had been held for the past four years in Palm Beach, and the organization had believed the previous year's permit covered them. He apologized for the error, and gave assurance that it would not occur again.

Councilman McDonald moved approval of the Charitable Solicitation applications for the American Red Cross and New Hope Foundation, Inc. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

#### **XIII. COMMITTEE REPORTS**

- A. Report of the Finance and Taxation Committee Meeting of December 11, 1998

### **REPORT OF THE FINANCE AND TAXATION COMMITTEE MEETING HELD ON DECEMBER 11, 1998**

#### **I. CALL TO ORDER AND ROLL CALL**

The meeting of the Finance and Taxation Committee was called to order at 10:10 a.m. on December 11, 1998, in the Town Council Chambers by Town Council President Lesly Smith. Town Clerk Pollitt called the roll. Chairman Smith and Committee Member Leslie Shaw were present. Other Elected Officials attending for all or part of the meeting were Mayor Paul Ilyinsky, and Councilmen Sam McLendon and Allen Wyett. Also attending for all or part of the meeting were: Town Manager Robert Doney; Finance Director James Demming; Assistant Finance Director Cheryl Somers; Assistant Town Manager Peter Elwell; Public Works Director Albert Dusey; Personnel Director William Crouse; Fire-Rescue Chief Ken Elmore; Director of Planning, Zoning & Building Robert Moore; Recreation Director Russell Bitzer; Recreation Supervisor Alan Brown; Information Services Manager Spencer Wilson; and Town Clerk Mary Pollitt.

**II. APPROVAL OF AGENDA**

The Agenda was approved as presented.

**III. CONSIDERATION OF PRELIMINARY YEAR END FUND BALANCES FOR FISCAL YEAR 1998 ENDING SEPTEMBER 30, 1998 (BASED UPON TENTATIVE RESULTS OF TOWN AUDIT FOR FY98)**

Finance Director Demming reported that, based on preliminary numbers before the Audit was completed, the Undesignated General Fund Balance will have approximately \$8.3 million. He said the Town's policy is to retain approximately 15% or \$5.5 million to be used for emergency situations, etc. based on the FY99 approved budget of \$36 million. Mr. Demming said that \$2.8 million remained, over and above the 15% of the reserve amount. He pointed out the General Contingency Account of \$1.4 million, established in the FY99 Budget, was in addition to the \$8.3 million Account.

Mr. Demming reported that an undesignated amount of approximately \$500,000 remained in the Capital Improvement Fund based on the projects that have been closed out over the years and good interest earnings made within the fund. Mr. Demming recommended that the Committee take no action, but that the fund balance be considered during the FY2000 budget process. After Discussion, **THE COMMITTEE RECOMMENDED THAT THE FUND BALANCES SHOULD BE MAINTAINED AS INDICATED IN MR. DEMMING'S 12/8/98 MEMORANDUM.**

**IV. REVIEW OF FIRST UNION CAPITAL MANAGEMENT GROUP INVESTMENT SERVICES**

Gerald O'Leary, Vice President, First Union Capital Management Group, and George Prattos, Senior Vice President & Director of Fixed Income Portfolio Management, presented the report on investment strategies used for the Town of Palm Beach. Mr. Prattos reported that First Union out performed the State Board of Administration investments for FY98, and for FY98, the Net Value Added by First Union was \$10,588.96.

Mr. Prattos referred to a printout of investments for Limited Duration Government Composite versus a Merrill-Lynch 1-3 Treasury Index and the Florida SBA which showed annual returns of 8.0%, 8.0%, and 5.6% respectively. He said the Limited Duration Government Composite was a much better universe if the Town wished to enhance its returns versus running an Enhanced Money Market Account.

Mr. Prattos explained that the Town's current investment policy would not allow participation in a Limited Duration Universe. He said the current policy is customized and was constructed based on cash flows, but given the past three to five years experience, the Town never touches the money. He said the issue of cash flow would not be part of writing the investment policy. Mr. Prattos continued that if the Town wanted to write an investment policy that had a limited amount of risk, other than the Money Market Fund, would be simple with a maximum maturity of three years with a 100% investment limit on Treasuries and up to 80% in government sponsored enterprises such as Fannie Mae, Freddy Mac, Federal Home Loan Banks, and Federal Farm Credit. He added that the maximum exposure can be no more than 40% for specific issues, i.e. Freddy Mac with different maturities. He said the benchmark, the Merrill-Lynch one to three year Treasury, has a duration of approximately 1.7 years, and the portfolio manager can be directed not to deviate more than 120% of the benchmark in terms of duration or down 80%. Mr. Prattos said this is the standard in the industry.

Mr. Shaw commented that the Town is not in the investment business. He said the policy should be prudent, and the options should be considered in a very safe manner. Mr. Shaw said these are reserve funds set aside from ad valorem taxes from other revenues that come to the Town, and their purpose is not to be turned into an investment or growth fund. Conservatism outweighs the idea that a killing can be made.

After discussing the issues raised by Mr. Prattos, **THE COMMITTEE RECOMMENDED A NEW INVESTMENT POLICY BE DRAFTED WITH RECOMMENDED PERCENTAGES OF FUNDS THAT WOULD BE SHIFTED TO THIS TYPE OF PLAN AND GUIDELINES (BENCHMARKS) THAT WOULD BE USED FOR THE PLAN. THE DRAFT WOULD BE REVIEWED BY MR. DEMMING AND RETURNED TO A FUTURE FINANCE & TAXATION COMMITTEE MEETING.**

**V. CONSIDERATION OF INDEPENDENT EVALUATION OF TOWN'S FINANCIAL INFORMATION SYSTEM**

Mr. Demming said that since he was hired by the Town, he observed that many manual steps could be done through an enhanced computer system with enhanced programming. He suggested that the Town consider the concept of having an independent review of the Town's Financial Information System. A needs analysis should be conducted first to determine what is on the market that would be beneficial to the Town; thereafter, a cost estimate of proposed changes would be presented at the Finance & Taxation Committee meetings during the preparation of the FY2000 Budget.

Responding to Mr. Shaw's questions concerning the cost of a needs analysis, Mr. Demming said he had not

solicited anyone as of this date; however, he did talk to the GFOA which has a technical research arm not connected to any particular software vendor, and they indicated the cost would be approximately \$15,000 to \$20,000.

**THE COMMITTEE RECOMMENDED THAT MR. DEMMING PURSUE THE ANALYSIS AND, IF THE TOWN COUNCIL APPROVES THE RECOMMENDATION, RETURN TO THE FEBRUARY TOWN COUNCIL MEETING WITH THE COSTS.** Mr. Demming explained that this amount was not being requested for FY99 but would be part of the FY2000 budget process.

Mr. Wilson said he agreed with Mr. Demming that a needs analysis should be done, and it would work within his time frame to have a determined amount ready for inclusion into the FY2000 budget. Mr. Shaw said he would like to see the analysis prepared before the FY2000 budget process to allow the process to go forward in a timely manner.

#### VI. ANY OTHER MATTERS

Mr. Shaw mentioned that he would like to consider the appropriateness of extraordinary longevity pay for department heads. He added that he recommended that this should not be part of the process and compensation to department heads should be strictly within their compensation and evaluation programs and not included with the extraordinary longevity policy of the Town. Mr. Doney said a memorandum and backup would be prepared for the Finance and Taxation Committee meetings when the FY2000 Budget is prepared in May.

Mr. Wyett said he would like to recommend the consideration of a small, possibly three member, investment committee composed of members from the community. He said he thought additional approaches should be looked at to see if there were ways to decrease costs during the budget process. Mr. Wyett said the public was excluded from the budget process by the nature of the way people live in the Town of Palm Beach, and consideration should be given to move the budget process (to arrive at a preliminary budget) to May to allow for more participation by Town residents.

Mr. McLendon questioned how or if the fiscal year could be changed? Mr. Doney responded that Chapter 200 of the Florida Statutes determined that the fiscal year for all municipalities is October 1 to September 30.

#### VII. ADJOURNMENT

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

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Lesly S. Smith, Committee Chair

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Leslie A. Shaw, Committee Member

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President Smith, speaking as Chairman of the Finance & Taxation Committee, advised that the Committee had met on December 11, 1998, and the recommendations of the Committee were as follows:

- 1) The Fund Balances for FY98 should be maintained as indicated in the memorandum of Finance Director Demming, dated December 8, 1998.
- 2) A new investment policy be drafted with recommended percentages of funds that would be shifted to this type of plan and guidelines (Benchmarks) that would be used for the plan. The draft would be reviewed by Finance Director Demming and returned to a future Finance & Taxation Committee Meeting.
- 3) Finance Director Demming pursue the analysis of the evaluation of the Financial Information System in the Town, and if the Town Approves the recommendation, return to the February Town Council Meeting with costs.

Councilman Shaw moved approval of the Report of the Finance and Taxation Committee Meeting of December 11, 1998. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

#### XIV OLD BUSINESS

- A. Ordinances



**MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 12, 1999**

1. Ordinance No. 15-98 - Amendment to Noise Ordinance (*Deferred from December 8, 1998, for First Reading*)

Town Attorney Randolph read the amended title to Ordinance No. 15-98:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 42, ENVIRONMENT, AT ARTICLE V, NOISE, DIVISION 2, MEASURED CRITERIA, AMENDING SECTION 42-226, USE OF METER AUTHORIZED, AMENDING SECTION 42-227, GEOGRAPHIC SECTION, AMENDING SECTION 42-228, NON VEHICULAR NOISE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Discussion took place regarding noises from drums as pointed out earlier by Ms. Gilda Beane. Councilman Wyett suggested that the 251 Restaurant insulate their walls in an effort to diminish noise, as he had also received complaints of noise from residents. He suggested that the decibel level in residential areas abutting commercial areas should be considered more carefully.

Director of Planning, Zoning & Building Robert Moore stated that even though the Ordinance states that noise will be measured at the source of the noise, the reality was that the measure used to be taken from the property line of the offended person. It was now measured from the offending party, so the noise measurement would be taken at the property line of 251 Restaurant, for example, no longer at Ms. Beane's property line. He suggested that should be taken into consideration.

President Smith suggested reducing the decibel level in residential areas abutting commercial areas.

Mr. House explained that noise engineers had considered 65 a sustainable level.

Town Attorney Randolph advised that the decibel reading must be based on what was reasonable, and there may be some concerns of commercial property owners regarding lowering the decibel level, who now would have the noise measured from their property line as well.

President Smith pointed out that this was the fifth meeting where discussion had taken place regarding the Noise Ordinance, and there was still no agreement; she asked why the Ordinance was being changed if an enforceable level could not be found?

Mr. Moore explained that there had been disagreement amongst staff as to the interpretation of the existing Ordinance as to where the decibel level reading would be taken. The issue had been sent to the Ordinances, Rules, & Standards Committee for resolution; thus the amended Ordinance. He advised that the Ordinance could remain as it had been originally, if it could be determined that the decibel reading would be taken at the property line of the person being offended, rather than at the wall of the offending property.

Councilman McDonald suggested that this item be tabled, with direct instruction to the Building Department and Police Department to use the same criteria in measuring noise, pending any changes to the Ordinance.

Attorney Gary Brandenburg, representing Royal Poinciana South, addressed the Town Council, stating that he hoped that the Ordinance being considered would not raise the levels that were permissible within the Town. He suggested that there may be an enforcement problem in that traffic noise cannot be isolated from the beat of drums. He suggested that a competent noise expert be hired to review the Ordinance.

Attorney Bill Graham, representing a resident of the Biltmore Condominium, addressed the Town Council, stating that the current Ordinance allowed 64 decibels in the daytime in Zone 2, and 58 at night. The Ordinance being considered allowed 70 decibels in the daytime and 65 decibels at night. He urged the Town Council not to pass the proposed changed Ordinance.

Attorney Ron Kolins, representing the Biltmore Condominium, addressed the Town Council, urging that noise be measured at the property line of the noise maker. He also pointed out that the noise imposed by 251 on residents of Park Avenue had been a subject that had been before the Town Council a number of times, and currently negotiations were taking place as to a resolution among the various parties. He suggested that if 251 was considered part of the Condominium, perhaps the Condominium Association could be included in any noise issue.

Mrs. Gail Coniglio, owner of E.R. Bradley's, addressed the Town Council, stating that she was happy to have the Ordinance remain as it was. She commented that it was not fair to take a decibel level reading from the property line of the person emanating the noise.

Councilman McDonald moved that the issue be tabled. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

President Smith clarified that Chief Croft and Mr. House would continue to administer the present Ordinance, using common sense.

2. Ordinance No. 18-98 - Establishing a Recreation Advisory Commission (*Second Reading*)

Town Attorney read Ordinance No. 18-98 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RESCINDING ARTICLE I AND ARTICLE II OF CHAPTER 14 OF THE TOWN

CODE OF ORDINANCES RELATING TO PARKS AND RECREATION, THEREBY ELIMINATING THE SEAVIEW PARK COMMISSION AND THE GOLF COMMISSION, CREATING A NEW ARTICLE I, THEREBY CREATING A RECREATION ADVISORY COMMISSION; PROVIDING FOR APPOINTMENTS; PROVIDING FOR ALTERNATE MEMBERS; PROVIDING A REGISTERED VOTER REQUIREMENT; PROVIDING FOR A REMOVAL PROVISION; PROVIDING FOR TERMS; PROVIDING FOR RULES OF PROCEDURE; PROVIDING FOR ADVISORY CAPACITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Shaw moved approval of Ordinance No. 18-98, commenting that he was not in agreement with the form being used. The motion was seconded by President Pro-Tem McLendon.

Councilman Wyett expressed concern regarding the method of the Town Council recommendation of applicants for inclusion on the Recreation Advisory Commission.

President Smith commented that the Town Council would be required to consider qualifications in order to make a recommendation, and that every area of the Recreation program would be covered. The Ordinance for this particular commission was a very good one, so that the most highly qualified people representative of all sections and interests in the Town could be recommended. She noted that Councilman Shaw could work with Mr. Bitzer regarding the form for presentation at the February Town Council Meeting. She also clarified that the Seaview Park Commission and Golf Commission would stay through the April Town Council Meeting, when new appointments would be made.

Mr. Bitzer clarified that the commissions meet at the end of each month; therefore the Seaview Park Commission and Golf Commission would meet at the end of March, and as of April 1, 1999, the new Ordinance would take effect.

On roll call the motion carried unanimously.

3. Ordinance No. 19-98 - Amendment to Newsrack Ordinance (*Second Reading; Third Reading to be considered on 2/9/99*)

The Town Council approved the second reading of Ordinance No. 19-98 with a third reading scheduled for the February 8, 1999, Town Council meeting.

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 10, LICENSES AND BUSINESS REGULATIONS, AT ARTICLE VII, DIVISION 2, NEWSRACKS, PROVIDING FOR THE PLACEMENT OF MOVEABLE FIXTURES; PROVIDING FOR PURPOSE AND SCOPE; PROVIDING DEFINITIONS; PROVIDING FOR CERTIFICATE OF COMPLIANCE; PROVIDING FOR STANDARDS FOR MAINTENANCE AND INSTALLATION; PROVIDING FOR LOCATIONS; PROVIDING FOR PROHIBITIVE LOCATIONS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR ABANDONMENT; PROVIDING FOR ENFORCEMENT; PROVIDING FOR APPEALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph noted that the blackline copy provided to the Town Council underscored the changes recommended by the Town Council. The Ordinance had been put on first reading, subject to those changes, with the understanding that there would be a third reading with the changes included. He explained that the newspapers would be paying for the modular units and the newsracks, with the Town paying for the enclosures.

Mr. David Jones suggested that enclosures were not the answer, and that the modular units were more desirable, per a poll taken of citizens. He asked if there had been any meetings with the newspapers to get their opinions?

President Smith replied that Town Attorney Randolph conducted all negotiations with newspapers, and the individual members of the Town Council were not in the position to make separate deals with each newspaper.

Dr. Harry Horowich congratulated The Town Council, Town Staff, and Mr. David Jakubiak in particular, for the excellent work that had been accomplished in this regard to date. He agreed that the enclosures lack certain aesthetic qualities. He suggested that he would like to have some mechanism for gradual replacement of the enclosures with modular units, and that the existing enclosures be painted green to match the modular units.

Town Attorney Randolph noted that the attorney representing several of the paid publications had advised that there would be objection to an ordinance requiring modular units throughout the Town. Modular units could be required at certain locations within the Town, however, the indication was that there would be a challenge to an ordinance which would require modular units throughout the Town.

Councilman Shaw moved approval of Ordinance No. 19-98 on second reading. The motion was seconded by President Pro-Tem



**MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 12, 1999**

McLendon. On roll call the motion carried unanimously.

**B. Other**

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

The Town Council approved the extension of working hours from 7:00 a.m. to 7:00 p.m. for seven to eight days to allow work on the bridge lanes. A status report will be given at the February 8, 1999, Town Council meeting.

Public Works Director Al Dusey announced that Dave Waley of PCL Contractors was present to respond to questions, as well as Mario Echagarrua of E.C. Driver, the designer of the bridge.

Mr. Echagarrua addressed the Town Council, stating that the contract had been awarded to PCL Contractors, and work would begin on January 19, 1999.

Mr. Dave Waley of PCL Civil Constructors, addressed the Town Council, stating that the process was evolving and fluid. He noted that all new bridge construction would be done to the south side, and the influence on traffic would not begin until May 1999. Construction would be done in several sequences, with a full four lanes working in both directions one year from now. The goal was to have that finished by the end of November 1999. The contract would then extend to three years of operation, which would allow four way traffic. Mr. Waley requested extended work hours past the midnight time period when night shift construction began next week; he requested the hours of 7:00 P.M. until 7:00 A.M. the following morning, which would create fewer problems for the community.

Councilman Wyett moved approval of the hours of 7:00 P.M. to 7:00 A.M. for seven to eight days. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

President Smith clarified that Mr. Waley would return to the Town Council in February for an update report.

Mayor Ilyinsky commented that he had heard compliments from the Town Staff on the quality of cooperation received from the contractors, designers, and FDOT. He thanked them all very much on behalf of the Town.

**2. Water Issues - Request by Hartman & Associates for Additional Funding for Negotiations**

The Town Council approved:

The request for additional funds for Hartman & Associates as outlined in Jim Bowser's memorandum dated January 4, 1999, to Robert J. Doney via Al Dusey. The amount was \$5,000 from the General Fund Contingency;

Negotiations should be carried on simultaneously with Palm Beach County for the purchase of water;

Approve funding, not to exceed \$20,000 from the General Fund Contingency, to have Mr. Hartman prepare a proposal for the water distribution system.

Town Engineer James Bowser addressed the Town Council, stating that Hartman & Associates had reached the limits on negotiation authorizations, and requested that another \$5,000 be added to the funding.

Mr. Bowser reported that there were ongoing negotiations with both the City of West Palm Beach, and with Palm Beach County. Staff had not been authorized to pursue a parallel track, and were awaiting the negotiations with the City of West Palm Beach.

Councilman Wyett made a motion to approve the requested funding in the amount of an additional \$5,000 from the General Fund Contingency, and that a simultaneous track be followed, because all alternatives should be known in conducting negotiations with West Palm Beach. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Mr. Dusey commented that the offer from the County was more attractive because in the costs they were proposing that the Town obtain equity ownership in the capacity and the actual infrastructure. That also made the proposal more expensive but it was also more valuable to the Town.

After discussion, President Pro-Tem McLendon moved approval of authorizing an estimate from Hartman & Associates for costs to replace the current water system so that the Town Council would know whether the cost to put a whole new pipe system in would be close to the cost of purchasing the system in addition to making the necessary upgrades. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Public Works Director Dusey estimated that a "not to exceed" amount to be authorized for Hartman & Associates would be



\$20,000. If total costs came to more than that, additional funding could be requested at the February Town Council Meeting. Mr. Dusey explained that the preparation of the proposal would have no charge, however, a consultant was only requested to do a proposal if there was actual interest in pursuing a project. The base amount of \$20,000 would allow proceeding with the actual study.

President Pro-Tem McLendon accepted the amendment to the motion, as did the seconder of the motion, Councilman McDonald, with the provision that Mr. Hartman appear at the February Town Council Meeting. The motion was re-opened and upon roll call passed unanimously as amended.

President Pro-Tem McLendon commented that he and Public Works Director Al Dusey would meet with representatives of the Palm Beach Country Club to look at space where a possible reverse osmosis plant could be located. He explained that it would fit in very nicely when the storage tank at Country Club Drive and North Lake Way was acquired.

Councilman Wyett suggested that discussion should be held concerning what the Town was expecting from the meeting with West Palm Beach in regard to water issues. He explained that the negotiator, President Smith, had not been given any indication by the Town Council of what they would like to see happen. It was determined that discussion regarding this matter would take place later in the meeting, after the luncheon break. *(This discussion took place immediately following Item. XIV. B.5.)*

3. Authorization to Purchase a Building Site on Northeast Corner of Seminole Avenue and Bradley Place from L'Ermitage for the D-12 Storm Water Pump Station

Town Engineer James Bowser reported that Town Staff had proceeded with the conceptual design of the D-12 System, with the original proposal to put the building at the west end of Everglade Avenue, which had met with opposition from L'Ermitage and Villa Plati. The Town Council then directed staff to find an alternate site, and one proposed site was the northeast corner of Seminole and Bradley, which was owned by L'Ermitage. The L'Ermitage was willing to sell a parcel of the land of 750 sq. ft. for \$37,500. There had not been an appraisal done on the property, although review had indicated that \$50 per square foot was appropriate, however, any agreement would be contingent upon an appraisal being made. Mr. Bowser stated that staff recommended that the offer of L'Ermitage be accepted at \$50 per square foot, subject to an appraisal.

President Smith asked if L'Ermitage or Villa Plati were both in favor of the new plans?

Town Engineer Bowser replied that to the best of his knowledge Villa Plati nor L'Ermitage had no objection. Richard Britt, of L'Ermitage was present to respond to any questions today.

Councilman Shaw commented that he was sorry that there was not a more giving spirit on the part of L'Ermitage, and that he was surprised that Villa Plati, who were one of the great benefactors of the project was not contributing something to it themselves. Mr. Shaw moved approval, commenting that he did so in light of the gain to all residents in the area. The motion was seconded by President Pro-Tem McLendon.

Councilman Wyett commented that he was disappointed in the position of L'Ermitage, primarily because they had objected to the original location, which he stated was one-hundred per cent right, however, he objected to the costs to the Town to satisfy a justifiable concern about the aesthetics of their property. He considered it more justifiable to lease the property for \$1 for 99 years, as they were one of the major beneficiaries, and he did not see why the Town was picking up additional costs.

In response to the query of Councilman McDonald, Town Engineer Bowser explained that the benefit to the Town to accept the offer of L'Ermitage was that a building would not be erected on Everglade Avenue, and challenges may result from adjacent property owners. The Town was trying to work with adjacent property owners to solve the drainage problem in the area. The pump station would be screened, and appear to be one of the L'Ermitage buildings, and would blend in nicely with the community. He noted that a permit would be required from the South Florida Water Management District, and staff recommended that the property be obtained in order to proceed conceptually.

Mr. Richard Britt, General Manager of L'Ermitage, addressed the Town Council, stating that several board meetings had been held regarding this matter, and it was the consensus that L'Ermitage did benefit from the pump station as well as every other property within the immediate area, such as The Biltmore, The Park Regency, The Palm Beach Hotel, Villa Plati. He noted that none of these properties were making a contribution, and the L'Ermitage believed it was a fair exchange.

Councilman Wyett responded that the L'Ermitage, or any other building, should not be getting a windfall from this project. He suggested that the land could be leased for 99 years for a fee of \$1.00. He commented that he believed the other condominiums in the area should help offset some of the expenses.

Mr. Britt replied that the Town would be saving a considerable amount of consolidating the two initially proposed pump stations into the one single pump station. He stated that he was not in a position to respond to the \$37,500, as the Board of Directors would have to act in that regard.

Mr. Bowser explained that the original long range Public Works plan was to build two storm water pump stations, and staff recommended that it be consolidated into one larger station, at a \$750,000 savings. He further explained that staff recommended the manner of proceeding, and would get an appraisal, then returning to the Town Council with a contract. Staff did not want to go through the whole contracting and spend money on an appraisal if there was significant objection to spending \$37,500 for the property. Staff was present today to say that if the Town Council agreed in concept with the framework of the agreement, the money would then be spent on the appraisal and return to the Town Council with a contract with the final price.

President Smith clarified that the approval was a conceptual approval, not approval of the contract.

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Councilman Shaw, as the maker of the motion, clarified that he understood approval was conceptual.

On roll call the motion carried unanimously.

4. Status Report of Renewal of Agreement with AT&T for Intercontinental Cable Crossing (*Deferred from August 11, September 8, November 10, and December 8, 1998*)

Town Attorney Randolph reported that negotiations were ongoing, and no conclusion had been made. He requested that the Town Council allow this item to be brought back before the Town Council when there was a recommendation to be made.

Councilman Wyett made a motion to defer this matter to a time uncertain. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

5. Determination of Issues to be Addressed at the Special Town Council Meeting on April 16, 1999, at 9:30 A.M. to Review the Town Manager's Performance and Long Range Goals (*Deferred from November 10, and December 8, 1998*)

President Smith commented that she had asked, at the November meeting, that Council members put in requests or forms for additional information at the December meeting on what they might like to have included at this meeting on April 16<sup>th</sup> on Town Manager's Review. Nothing had come in for the December meeting, as everyone had been very busy, and she had asked again in December that comments be turned in for the January meeting, and to date there were no additional issues. She noted that it had come to her attention that comments had been made indicating that the Town Council would not be addressing the review procedure, until September 2000, and that was not the case. The Town Council was moving ahead, and would have a meeting on this on the April 16<sup>th</sup>, followed by the Long Range Goal Meeting, and would determine at that time, what the review procedure would be for the Town Manager.

President Pro-Tem McLendon recalled that Mr. McDonald had made the original suggestion about the Long Range Planning Meeting, and the Long Range Planning Meeting was set, and then as a result of the Charter Review people coming to Town, it was decided that at the same time the Town Council could establish the criteria for evaluating the Town Manager's situation. He assumed that the Long Range Planning Meeting was still the focal point, but that there would also be a workshop on the Town Manager review.

President Smith responded that the actual Town Manager review was to be treated as a Special Town Council Meeting, and the Long Range Planning Workshop was something that had been discussed, and Mr. McDonald agreed, would be a workshop where discussion would take place about goals and procedures. She clarified that all information would be received prior to the April meeting. Dr. Larry Gross would speak to the entire Town Council, rather than only the Charter Commission.

Councilman Wyett commented that he had looked at the list provided by Mr. Doney with six people on it. He suggested that the Town Council ought to get some experienced people in who actually have gone through the procedure in cities or towns close to the same size, etc. He indicated that standards for this type of procedure should be set up for now and in the future, and people should be invited who have grown through this procedure.

President Smith responded that she concurred, and that one thing that had come out of the meeting at the Florida League of Cities, when the Town Managers and their Mayors spoke on this subject, was that obviously it was a very, very difficult and personal issue to do a public evaluation of a Town Manager, and they were all very careful in what they said. They all agreed it was a difficult procedure, and they all agreed there was no easy way to do it without taking it personally, and for that reason, the Councils themselves said that they wrestled with it, and attempted to come up with the most simplistic and easy way to do it. Experts could come in to give information, and the Town Council could then decide on the procedure.

Town Manager Doney commented that he had talked to Robert Weisman, the Palm Beach County Administrator, Donna Dreska, the City Manager of Boca Raton, Tom Bradford, the Village Manager of Tequesta, and Dr. Larry Gross, and that there was no right or wrong answer. It was purely up to the governing body in the community as to which type of evaluation system was used.

President Smith commented that City Managers or Mayors could be asked to submit something in writing, rather than asking them to appear personally.

President McLendon asked if it was possible, for Mr. Doney to contact the people who gave presentations at the Florida League of Cities?

Mr. Doney responded that a copy of the transcript of that meeting had been acquired, and it was being transcribed currently by Town staff, which could be made available by the next Town Council meeting. In addition, he had information from Boca Raton, Tequesta, and Palm Beach County, which he would also make available.

Councilman Wyett noted that the Civic Association letter of December 4<sup>th</sup> indicated names of some City Managers who could be asked for opinions, and asked Mr. Doney to contact them to obtain their thoughts in writing.

At this time, Councilman Wyett commented on the water issue. He suggested that when negotiations were conducted, some

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compromises would no doubt be suggested by the City of West Palm Beach, and that the City should be informed that if they were not going to be competitive, the Town was not interested in further discussion.

Councilman Shaw questioned if it was possible for the Town Council to meet in an attorney/client meeting regarding this matter?

Town Attorney Randolph advised that he was hesitant to call a closed door session for the purposes of attempting to negotiate the matter of the purchase of the West Palm Beach water system. The purpose of a closed door session was when the attorney needed advice in regard to whether to settle a lawsuit. There may well come a time during the negotiations that a closed door session would be necessary, and it would be premature to have a closed door session at this time. Staff would provide President Smith with all of the information available in regard to the matter, and she would go with the appropriate representative of the Town to discuss the matter and bring back any options to the Town Council.

President Pro-Tem McLendon commented that he believed the City should be asked to make the best offer they could, and then the Town Council could make a decision.

Councilman Wyett commented that the water issue was divided into two parts: Did the Town want to own its own distribution system so that it could be repaired and maintained to Palm Beach standards? He stated that he believed this was the most important issue of the whole water discussion. The pipes had been deteriorating, and regardless of where the Town got water, or the price paid for the water, the Town must own its distribution system so that succeeding generations would own it and keep it in good repair. He suggested that the Town Council take the stand that it should not be up in the air as to whether the Town demands to own its own system.

Councilman McDonald commented that it may be necessary to have a meeting where the settlement of this matter was discussed at an attorney/client meeting, and made a motion to do so. Councilman Wyett seconded the motion.

Councilman McLendon recalled that one of the terms of filing the arbitration lawsuit required the negotiation between the two parties.

Town Attorney Randolph explained that before filing the lawsuit, the Town was required to meet with the City to discuss the matter, and that meeting had occurred, which then allowed the Town to file a lawsuit, which was now pending. He explained that the way the provision of the Statute allowing a closed door session was invoked was when the attorney advised that he needed advice in regard to a settlement proposal.

Councilman McDonald withdrew the motion.

President Smith commented that she would be meeting with Mayor Graham prior to the February 9, 1999, Town Council Meeting. There would be a joint meeting with West Palm Beach in the Town Council Chambers on February 11, 1999, at 2:00 P.M. She concluded that she would be reporting to the Town Council at the February 9, 1999, at which time a closed session could be set with Attorney Randolph before the Town Council met with the City of West Palm Beach on February 11, 1999.

Town Attorney Randolph commented that he would need advice at some point as to what should be done regarding the pending lawsuits. He suggested that a closed session meeting could be scheduled for the date of February 10, 1999, if necessary, tentatively at 4:00 P.M., at the Special Town Council Meeting to be held on January 28, 1999.

1. Review of Proposed Internet Web Page for the Town

Assistant Town Manager Peter Elwell reported that the web page was prepared, and two things were being requested from the Town Council today: 1) grant approval for the web page to be published to the Internet; 2) give input about the particular page relating to elected officials. Mr. Elwell recognized the work done by the Information Systems office in this regard, as well as the input of each individual Town department. Councilman Shaw made a motion to approve the Internet Web Page for the Town. The motion was seconded by Councilman McDonald.

Councilman McDonald encouraged the Planning, Building & Zoning Department to move ahead to get things on the system.

In response to the query of President Pro-Tem McLendon concerning subject recall regarding Council minutes, Spencer Wilson, Information Systems Manager, responded that there was software available that could address that situation.

Councilman McDonald suggested that the Committees chaired by the Town Council members could be added to the web page.

President Smith noted that Zoning Administrator Castro should be listed on the page dealing with the Planning, Zoning & Building Department, as well as the name of Brian House, Chief Code Compliance Officer.

On roll call the motion carried unanimously.

XV NEW BUSINESS

**MINUTES OF THE TOWN COUNCIL MEETING HELD ON JANUARY 12, 1999**

A. Resolutions

1. Resolution No. 1-99 - Tax Abatement for Landmark Property at 260 Pendleton Avenue

Director of Planning, Zoning & Building Robert Moore pointed out that the original memorandum to the Town Council, dated January 11, 1999, was incorrect, as it used the original sections of the Town Code of Ordinances. That had now been corrected.

Town Attorney Randolph read Resolution No. 1-99 by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING AD VALOREM TAX EXEMPTIONS FOR THE PROPERTY HEREINAFTER DESCRIBED AND STATING THAT SUBJECT PROPERTY MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 31-93, ALSO KNOWN AS CHAPTER 16 ARTICLE 3, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM RELATING TO LANDMARKS PRESERVATION, ENTITLED TAX EXEMPTIONS FOR HISTORIC PROPERTIES.

Councilman Shaw moved approval of Resolution No. 1-99. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Resolution No. 2-99 - Tax Abatement for Landmark Property at 137 Root Trail

Town Attorney Randolph read Resolution No. 2-99 by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING AD VALOREM TAX EXEMPTIONS FOR THE PROPERTY HEREINAFTER DESCRIBED, AND STATING THE SUBJECT PROPERTY MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 31-93, ALSO KNOWN AS CHAPTER 16, ARTICLE 3, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, RELATING TO LANDMARK PRESERVATION, ENTITLED TAX EXEMPTIONS FOR HISTORIC PROPERTIES.

Councilman Shaw moved approval of Resolution No. 2-99. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously..

B. Other

1. Appeal by Comcast Cablevision, Inc. of \$500 Fine for Violation of Town Ordinance No. 7-96 - Cable Customer Service Standards

Assistant to the Town Manager David Jakubiak addressed the Town Council, reporting that a fine was being assessed to Comcast Cablevision, Inc., for the violation of certain standards of the Customer Service Standard Ordinance. He explained that the standards violated included telephone availability, and service outages.

Albert Mendez, 250 Everglade Avenue, addressed the Town Council, stating that he had experienced a significant disruption in cable television service on November 29<sup>th</sup>. He advised that he had attempted to contact Comcast, however the line was constantly busy. He then tried again on November 30<sup>th</sup> and December 1<sup>st</sup>, with the same results. He eventually called the Town of Palm Beach with his complaint. Someone from Comcast then called, apologized, and sent a technician to restore service.

Mr. Schorr addressed the Town Council, stating that he objected to the inability to reach anyone at Comcast, as a caller was continuously put on hold. On the occasion of December 2, his wife had tried all morning to reach Comcast. He had then tried again in the late afternoon, and finally he had called the Town of Palm Beach to obtain another phone number for Comcast. He spoke to one of the repair consultants, who attempted to instruct him how to repair his television picture, promising to call back, which never happened. The following day he had called again, and the same person had no recollection of speaking with him whatsoever.

Mr. Obernauer addressed the Town Council, stating that his wife had arranged her day to watch some programs, as she had the flu, and at 9:00 A.M. there was no television. Upon attempting to reach Comcast, the lines were busy, however, he finally was able to report the cable system outage. In the late afternoon he had then called the Town offices, as well as the Palm Beach Daily News.

Mrs. Diane Christie, Director of System Development for Comcast Cable, addressed the Town Council and explained Comcast has not had normal operation since a new billing system went into effect in December, 1998. Since the new system was installed, Ms. Christie said she contacted all of the twenty municipalities involved with Comcast and explained the situation. She said the General Manager had put on a twenty second spot apologizing for the inconveniences during this time. She said she personally had been handling the complaints and expected the situation to last another 30 days.

Mrs. Christie explained that the Comcast employees have worked extended hours and they are not operating under normal conditions. She said that all collection offers have been suspended during this time. She offered to address all outage issues and was surprised that Palm Beach had outages during this time. As far as she knew, the Breakers construction was the only cause for the outages.

She noted that she had let every municipality know that she was available personally to respond to any complaints from customers.

President Smith said she thought the circumstances were extraordinary during the month of December and the fine should be waived.

Mrs. Christie advised that credits were not automatically issued, and a credit is issued for outages of 24 hours or more, which must be requested.

Mr. Randolph said he understood these operating conditions were within the control of the company, and the ordinance was intended to not have fines for operating conditions that were not under the control of Comcast.

Councilman Shaw made a motion that the \$500 fine be waived since the fines were around a common element that is being corrected. Any residents who have been charged during this time have their bills reviewed. Mr. Wyett seconded the motion. On roll call the motion carried unanimously.

2. Comprehensive Coastal Management Plan Update - Request for Additional Funding for Development of Public Education Program

Mr. Dusey explained that at the December 28, 1998, meeting the Shore Protection Board found it necessary to schedule one more meeting to complete their deliberations regarding the alternative financing and development of a public education program for the Comprehensive Coastal Management Plan. Each of the consultants that would be presented had indicated that the extra meeting had not been included in the original proposal and additional monies would be needed, which would amount to approximately \$1,100. The Shore Protection Board had requested that Town Staff request authorization of same from the Town Council to be funded from the Coastal Protection Reserves.

Councilman Wyett made a motion to approve the request. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as Councilman McDonald was temporarily out of the room.

3. Discussion of Procedure for Landmark Designations

Councilman Shaw commented that he believed that any change made in a landmarked property should first go to the Landmarks Commission for conditional approval, and then be deferred one month so that the Town Council can act on the proposed change.

Director of Planning, Zoning & Building Robert Moore commented that the suggestion of Councilman Shaw could be done, however, it would cause the applicant to make another trip to the Landmarks Commission.

Councilman Shaw withdraw his suggestion.

4. South end Trash Piles...south of the Golf Course...to Howard Johnson's

Councilman McDonald made a motion to place the issue of yard trash cutting piles in the south end, primarily south of the Par 3 Golf Course, on the Town Council Agenda for February. Councilman Wyett seconded the motion. On roll call the motion carried unanimously.

5. Consideration of Policy to Charge for Research by the Town Attorney

Councilman McDonald suggested that a Town policy be established when the Town Attorney undertook research for an applicant at their request that it be done at their expense, moving that this issue be added to the February Town Council Agenda. The motion was seconded by Councilman Wyett.

Councilman Wyett commented that legal costs to the Town as the result of actions by applicants should also be evaluated.

On roll call the motion carried unanimously.

6. Consideration of Creating a Civic Award to be made by the Town Council.

Councilman McDonald moved that an item be added to the February Town Council Meeting regarding creating a Civic Award to



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be made by the Town Council. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

**XVI COMMENTS OF THE TOWN COUNCIL MEMBERS**

Councilman Wyett commented that the last Town Council meeting had ended at 12:07 a.m., and he believed that the majority of the cause was the attorneys involved in development review applications. He urged that this not happen again.

President Pro-Tem McLendon agreed with Councilman Wyett.

Councilman Shaw commented that he had received a few phone calls relating to the operating hours of the Four Arts Library, suggesting that perhaps they could reconsider their hours of operation, taking into consideration evening and Saturday hours.

Councilman McDonald commented that he believed the Town Council granted too many variances, and that attorneys receive astonishing fees to bring requests before the Town Council, and the more variances are granted the more will come before the Council.

President Smith reminded all that the applicants coming forward under Development Review had been informed that presentations will be 10 minutes each. Attorneys had been informed that if a quasi-judicial procedure was anticipated, a special meeting would be set.

**XVII DEVELOPMENT REVIEWS**

At this time Town Clerk Pollitt administered the oath to all those who would be speaking under Development Reviews.

**A. Appeals**

Director of Planning, Zoning & Building Robert Moore explained that Mr. Barton had indicated that, due to the complexity of this issue, he would need a maximum of 20 minutes for his presentation. Attorney Paine had indicated that he would be very brief.

Attorney Natale, on behalf of Mr. Kosoy, commented that he understood the representatives for Mr. Koch had a number of witnesses present, and that the hearing thus would be quasi-judicial in nature and would take at last 1-1 ½ hours.

Councilman Shaw suggested that this item be put at the end of the Agenda for today, and if the meeting needed to be continued, it go on to January 19, 1999.

Attorney Deziel indicated that he had no witnesses, other than professionals that the Town Council could question if desired.

Attorney Natale responded that his presentation could then be finished in one-half hour, however, if the other side was going to proffer testimony there may be a need for cross examination.

Councilman Wyett moved that this issue be put to the end of the meeting so that all others would not have to sit through it and wait. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as Councilman McDonald was temporarily out of the room.

Attorney Ron Kolins commented that the remarks made today were the first that he had heard concerning time limits for the applications being heard today. He clarified that he did not know how long he would have to take today.

Councilman Wyett withdrew his recommendation to move this issue to the end of the meeting, and moved that the item be heard immediately.

1. Appeal of the Architectural Commission's Approval on December 18, 1998, Regarding Application B 84-98, 218 Jamaica Lane by Mr. William Weeks of 210 Jamaica Lane and Mr. David Barton of 216 Jamaica Lane

Mr. David Barton addressed the Town Council, clarifying that his presentation would be made, those wishing to speak against the appeal would make a response, and he would then have a rebuttal time.

Mr. Barton continued with his presentation, recognizing the presence of a court reporter engaged for the verbatim recording of the appeal. He expressed his regrets at having to make this appeal, as neighbors were pitted against each other and the Town Council, stating that the matter of overbuilding in the north end of Town was a serious matter that deserved serious attention.

President Smith clarified that the minutes and audio tapes of the Architectural Commission (ARCOM) would be entered into the record.



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Mr. Barton explained that he would solely present the appeal of all protesting neighbors, per the request not to overtax the time constraints of the Town Council Agenda; he also understood that ARCOM would have a sole presenter for its response.

Town Attorney Randolph commented that the appellant should not feel restrained from presenting the case in any manner deemed suitable. The only reason the Town Council had asked for a estimate of the length of time involved was in order to make a determination as to whether this case would be heard today or at a subsequent time within the 30-day requirement. The Town Council was not telling the appellant to keep the presentation short for purposes of limiting the presentation, and if the appellant believed the case should be presented at a subsequent meeting he was free to do so.

Mr. Barton gave assurance that the presentation would not go into an hour or four hours.

Mr. Barton continued, stating that the appeal was not one conducted by one disgruntled neighbor, but was a major appeal of protesting neighborhood families, who were opposed to the application. He read their names into the record:

Bill and Anne Manson, 291 Jamaica Lane  
Carol and Phil Ives, 237 Jamaica Lane  
Peggy and Hugh Whitehouse, 268 Jamaica Lane  
Constance McCarthy, 205 Jamaica Lane  
Cynthia and Jeff Hamlin, 277 Jamaica Lane  
Robin and Bill Weeks, 210 Jamaica Lane  
Gertrude Cupper, 253 Jamaica Lane  
Debbie and Mark Agresti, 214 Jamaica Lane  
Sidney Roberts, 265 Jamaica Lane  
Marjory O'Neill, 204 Jamaica Lane  
Carol and David Barton, 216 Jamaica Lane

Director of Planning, Zoning, & Building Robert Moore noted that letters of objections from the above named persons were entered into the ARCOM record.

Mr. Barton explained that he and the protesting neighbors believed ARCOM was unique and very much needed in Palm Beach, and they were not advocating any change in the ARCOM duties; the appeal was merely citing what was perceived as a lapse in judgement on the part of ARCOM, citing that they erred in approving a non-complying application, did not meet its regulatory responsibilities, erred by inattention to the blockbusting implications, and was erratic and inconsistent in arriving at their approval of B84-98. He noted that a Jamaica Lane pattern book had been prepared, and a cluster site plan had been prepared for the review of the Town Council. He also submitted Exhibits A-L, which were as follows:

The Jamaica Lane Pattern Book  
The Daily News Cartoon Impact Area Poster  
A Representative Model of the Blockbuster House  
The Application For ARCOM Review  
The Daily News Editorial on Flexible Zoning  
Article IV, District Regulations, Section 4.10  
The Daily News Letter to the Editor from Mr. Weeks and Mr. Barton  
Other Daily News Article on Overbuilding in the North End (6 or 8 articles)  
Town Ordinance Section 5.387, subsections d, f, and g  
Site Cluster Plan  
Thoughts on Zoning in the North End, Written by David Barton for the November Zoning Workshops  
Letter to ARCOM Signed by the Protesting Neighbors

Mr. Barton explained that the appeal was to seek reversal of Application B84-98, which was too dissimilar to the neighborhood and would be a blockbuster if permitted to proceed, opening floodgates of irreversible neighborhood change. Mr. Barton recited a chronology of the application to point out what he maintained was erratic and inconsistent performance by ARCOM. Protesting neighbors had then announced that they would appeal the bizarre and inconsistent decision made by ARCOM, and the neglect of ARCOM in requiring compliance by applicant to Section 5.387(d)(f)(g). Mr. Barton asserted that ARCOM erred in not requiring the applicant to comply with the too dissimilar law; the applicant had the burden to demonstrate compliance, and this had not been done, which was another error by ARCOM. The impact of blockbusting was vigorously pointed out repeatedly by protesting neighbors. Mr. Barton then referred to the cluster site plan and addressed several points:

1. It as the only house significantly larger, over 200% larger, in square feet than the adjacent houses. Mr. Barton pointed out that none of the applicant's numbers were verified.
2. Throughout the application the applicant consistently confused Bahama Lane with Tradewind Drive, further skewing comparative figures.
3. The only house without a traditional Jamaica lane backyard. The garage was in back of the house. The front and side of the rear elevations were now facing the neighbors, with the chimney facing the street.

Mr. Barton discussed design features, the fact that the house was the only two-story house in the cluster group, that it was the only house unable to disappear into its own landscaping, that the applicant had never submitted the ARCOM required landscaping plan, and that the blockbuster house would open the floodgates for others. He also commented that the house would also adversely affect the neighborhood tax base.



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Mr. Barton summarized that the homeowners had purchased and improved their Jamaica Lane properties in keeping with the guidelines and criteria called for by ARCOM, and were rightly indignant and outraged asking why they should now suffer the consequences of the tear down speculators not being required to meet the same standards. He asserted that ARCOM erred in not considering and debating the impact of blockbusting on Jamaica Lane, which was a major error. Mr. Barton requested that the Town Council reverse the approval of ARCOM on December 18, 1998, on application B84-98.

At this time Mr. Moore pointed out that one letter had been received in support of the ARCOM decision from Mr. Thomas X. Parker, 215 Jamaica Lane.

Attorney Ron Kolins, representing the applicant, whose home was approved by ARCOM. He explained that the architect had changed the house in terms of size, shape, and how the house fit stylistically into the street, according to recommendations made by ARCOM. There finally came a point in time when ARCOM believed the project was suitable. Mr. Kolins asserted that it would be impossible to make conclusions that would result in a reversal of the ARCOM decision of approval. He maintained that ARCOM had adhered to the very standards that Mr. Barton had included in his presentation. He noted that when the house was initially presented to ARCOM in June by an architect other than Mr. Pandula, it was 4,478 square feet and was rejected by ARCOM. Mr. Kolins read from the minutes of that meeting to indicate why that house was rejected, which included neighborhood style. Mr. Pandula had redesigned the house over the next several months, and it had finally met with ARCOM approval.

Attorney Kolins rejected the characterization of the house as a blockbuster, and noted that he had counted 27 houses on the street, 8 of which were two story. He exhibited pictures of those houses for the review of the Town Council. In addition, the average square footage of any house within the 200 foot radius was 3,507 square feet; Mr. Kolins then indicated that the house in question was larger, however, it was not excessively larger.

At this time, President Smith asked for ex-parte communications that may have taken place in this regard, and there was no ex-parte communication declared by any Council Member.

Architect Gene Pandula exhibited the site plan for the house in question, explaining the size, setbacks, angle of vision, commenting that by every measurable, traditional standard used by ARCOM the house had been visually reduced in apparent mass. He explained that the concept used for the entire project was to replace a two-story mass on the site where the old two-story mass was, however bringing the building into conformity with its side yard setbacks. The mass had been down stepped on the front of the building. The original proposal had a circular drive that was now taken away in favor of additional green space. The square footage was now 4,290 square feet, which was a floor area ratio of .38; the cubic content ratio was 3.83 out of an allowable 4.5.

Attorney Kolins summarized that ARCOM had acted with a great sensitivity to the neighborhood, acted consistently with their criteria, acted reasonably, and there was no basis to overturn their decision. He requested that Exhibits presented by the applicant be entered into the record (Exhibits A-G).

Mr. Barton responded that applicants play a game with ARCOM, coming in with a high number, knowing that they would be knocked back. He maintained that the inconsistencies were not minor, and the numbers were not correct and were misrepresented. He indicated that there was a neglect in addressing blockbusting, which he defined that when a house of this size was put in the homeowner to the west was already so disgusted that the house was put up for sale. He questioned why the neighbors would be protesting if there was harmony? He stated that the house was being built by a speculative builder, who would not live in the house. He referred to the five specific incidents where there was noncompliance to the law. He concluded that by upholding the approval of ARCOM, the Town Council would do nothing but further the war in the north end.

Councilman McDonald asked Town Attorney Randolph what distance or radius was considered when a decision was made by ARCOM as to a structure being harmonious and not being excessively dissimilar?

Mr Randolph responded that the distance was 200 feet in regard to excessively dissimilar; as far as harmony, the standard was land in the general area, the Comprehensive Plan in the Town, and with precise plans adopted to the Comprehensive Plan.

President Smith asked Mr. Moore how the plans for the new house worked in with the Comprehensive Plan?

Mr. Moore responded that they were below the criteria in the Zoning Ordinance, and that a house of approximately 5,000 square feet could be built on the property.

Councilman Shaw made a motion to uphold the decision of the Architectural Commission. The motion was seconded by Councilman Wyett.

Mayor Ilyinsky commented that he believed that beauty was in the eye of the beholder, and that he supported the decision of the Town Council. He remarked that he did not see how anyone could build a house today that would not affect the neighborhood a little one way or the other. He noted that he admired the courage of Mr. Barton in expressing his opinion, however, disagreed with some of the things that were said, although he would be terribly sad to see Jamaica Lane disappear and become one of huge houses, etc.

Councilman Shaw expanded on his motion, remarking that he did not believe the property was excessively dissimilar according to the radius criteria, and that ARCOM had considered the impact on the neighborhood, and that a proposed house that would go on a lot that already had a two-story structure that was within 200 feet of similar structures would be considered blockbusting.

Councilman McDonald commented that he believed ARCOM had made a reasonable decision based on what they saw and heard, however, he was casting a dissenting vote.

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

2. Appeal of the Landmarks Preservation Commission's Decision of December 16, 1998, Regarding 140/150 South Ocean Boulevard by Mr. and Mrs. David Kosoy

Mr. Wyett made a motion, seconded by Mr. Shaw, to move this item to the end of the meeting. The motion carried unanimously.

1. Variances, Special Exceptions, and Site Plan Reviews

Old Business - Major

1. SPECIAL EXCEPTION NO. 32-97 - Worth Avenue Associates, Acquario Restaurant, 150 Worth Avenue, Unit 234; located in the C-WA Zoning District; to allow modification to Special Exception No. 31-96 to increase seating from 158 to 198; to allow deletion of condition No. 3, which required the bar to close at 11:30 p.m.; and to allow deletion of condition No. 4, requiring dinner to be ordered by 11:00 p.m. (*Condition of Approval at the October 14, 1997, Town Council Meeting was to return one year to review the approved hours of operation.*)

Attorney Jim Brindell, on behalf of the applicant, addressed the Town Council, correcting the Agenda item in that the increase in seats was not being requested today. He explained that in October of 1997 extended hours of operation had been approved for a one year trial, with the bar closing at 2:00 A.M., and dinner not be ordered after 1:00 A.M. Today the applicant was requesting that be made permanent, rather than on a one-year trial basis.

Zoning Administrator Paul Castro reported that staff had only two occasions over the past year when the restaurant owner had to be contacted relative to the operation, concerning the use. There had been no complaints from surrounding neighbors relative to the extended hours.

Mr. Scheiniger, owner of Acquario, addressed the Town Council, stating that the restaurant closed at 11:00 P.M. sometimes, and sometimes at 12:00 A.M., depending on the patrons.

Councilman Shaw suggested that many restaurants in Town closed earlier on Sunday through Wednesday evenings, and stayed opened later on Thursday through Saturday evenings, and in order to be standardized, he suggested that the same hours of closing be applied to Acquario. Mr. Shaw then proposed that the restaurant be opened Sunday through Wednesday for dinner until 12:00 A.M., with the bar closing at 1:00 A.M., and be opened on Thursday through Saturday for dinner until 1:00 A.M., with the bar closing at 2:00 A.M.

Director of Planning, Building & Zoning Robert Moore noted that he would not go on the record to say that all restaurant hours in Town were totally standard.

Councilman Shaw then moved the Acquario be opened Sunday through Wednesday dinner be served until 11:30 P.M., and the bar be closed at 12:30 A.M.; Thursday through Saturday dinner be served until 1:00 A.M., and the bar be closed at 2:00 A.M. The motion died for lack of a second.

Mayor Ilyinsky commented that the applicant had not offended anyone with the current hours, and suggested that the request was relatively simple.

Councilman Wyett noted that the Galaxy Grille proposal included additional rights on the holidays, and suggested that each restaurant that came up for review be given the same consistency.

Attorney Brindell commented that perhaps standardized hours should be instituted for all restaurants, so that patrons would not have to remember each restaurant's hours individually.

Councilman McDonald moved approval of Special Exception 32-97. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/2, with Councilman McDonald, President Pro-Tem McLendon and President Smith casting affirmative votes; Councilman Shaw and Councilman Wyett casting dissenting votes as they preferred standardized hours.

2. VARIANCE NO. 49-98 - George Merck, 1197 N. Lake Way; located in the R-B Zoning District; to allow construction of a new residence using a point of measurement beginning at 9' NGVD in lieu of 7.5' maximum allowed. (*Deferred from November 10, and December 8, 1998*)

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

Attorney Robert Deziel, representing George Merck, addressed the Town Council, apologizing for the two deferrals, and requesting that the application be withdrawn at this time.

Councilman McDonald made a motion to approve withdrawal of Variance No. 49-98. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

3. SPECIAL EXCEPTION NO. 34-98 - Houston's Restaurant, 340 Royal Poinciana Way #336; located in the C-PC Zoning District; to allow a restaurant to occupy the former Au-Bar nightclub space. The restaurant will continue with the approved (SE4-95) 164 seats. (*Deferred from December 8, 1998*)

At this time Town Clerk Pollitt administered the oath to all those who had not previously been sworn.

Ex-parte communication was declared by Mayor Ilyinsky with Mr. Horowitz and Councilman McDonald with Mr. Horowitz (expressing approval of Houston's Restaurant), Councilman Shaw with Sidney Spiegel (in support of the application), Gail Coniglio (who was concerned that all restaurants be treated equally), Attorney Brindell, Gerald Goldsmith, and Sidney Cole (he explained that Mr. Goldsmith and Mr. Cole were both tenants in Royal Poinciana Plaza and had expressed concern over parking issues). President Pro-Tem McLendon declared ex-parte communication with Attorney Brindell, Mr. Dempsey, and Gail Coniglio. Councilman Wyett declared ex-parte communication with Attorney Brindell, Gail Coniglio (expressing concern regarding live music other than the piano, no dancing, and no entertainment; she was happy to accept the new restaurant into the Town), and Attorney Rogers on behalf of the owner of the Plaza.

Attorney Brindell reported that the key question today was the Town-serving requirement. The space in question was essentially grandfathered, with a change in the operator. The space had been occupied by a restaurant, bar, or nightclub, either open to the public or private for 20 years or more. Since the last Town Council meeting, a Town-serving statement, from Mr. Ledbetter, dated December 30, 1998, had been submitted to Director of Planning, Zoning & Building Robert Moore, copy to be provided to each Council Member. Mr. Brindell labeled this document as Exhibit 1 and provided a copy to the Clerk for the record. Mr. Brindell labeled the market analysis prepared by Goodkin Consulting as Exhibit 2. Mr. Brindell labeled a parking report done by DKS Associates as Exhibit 3, which addressed two different days of parking analysis—December 1, 1998, and January 6, 1999. Mr. Brindell labeled a layout of the parking, and various building units at the Royal Poinciana Plaza as Exhibit 4, also indicating valet parking areas.

Attorney Brindell continued that the proposal was to re-open and operate an existing restaurant space, with no request to increase the number of seats or the square footage. The previous nightclub operation approved for the former Au-Bar would be relinquished by Houston's, thereby reducing late night noise impact on Town residents, eliminate the attraction to off-Island visitors, and reduce the current level of annoyance by such establishments in the general neighborhood. Houston's was proposing a reduced set of hours of operation, from 11:00 A.M. to 11:00 P.M. Sunday through Thursday; 11:00 A.M. to 1:00 A.M. on Fridays and Saturdays. The restaurant would be operated as "The Palm Beach Grill," and would not be advertised on radio, television, or regional newspapers. Media advertising would be limited to Town serving publications, such as The Palm Beach Daily News and Island hotel magazines. Marketing would be aimed at Town persons, rather than at regional patrons by word of mouth, participation in civic and charitable organizations, personal contact with Island hotels and businesses, and occasional advertising in Island publications. The bar that was proposed would have only 8-12 seats, thereby again discouraging a late night bar crowd in addition to the modest hours. The restaurant would operate under the Town specific name rather than under the Houston's moniker, thereby avoiding the image of multiple stores as presented by other Town serving operations in Town, such as Bice and Charley's Crab. There was no request being sought for a particular corporate exterior color, no particular building form, no particular signage or lighting, allowing the appearance to be unique to Palm Beach. The restaurant would be a family oriented restaurant. The parking analysis, and testimony from the operator of the valet parking operation at the Royal Poinciana Plaza had been provided to the Town to the effect that adequate parking exists at the Plaza to accommodate the restaurant operation. Mr. Brindell noted that this particular location within the Royal Poinciana Plaza was at the least used corner of the Plaza, with the most excess parking. Reservations would be taken for dinner and lunch. Valet parking would be provided at lunch and/or dinner, if that was determined necessary. A state of the art odor control system would be installed. Refuse would be collected and retained within the restaurant overnight, thereby eliminating outside odor impacts and rodent attraction. The restaurant would participate in Town charitable and civic organizations. The methods to collect data addressing Town serving criteria would include records of reservations, credit card purchases, check payments, and customer surveys. The marketing report provided by Goodkin Consultants indicated that local Palm Beach residents were projected to account for approximately 46% of the total patronage for the first year. Local hotel guests were projected to account for approximately 24% of the patronage, and day trip visitors were expected to account for approximately 30%. The DKS Associates conducted an additional parking survey on January 6, 1999 which showed that the site contained approximately 745 parking spaces at peak hour (12:00 - 1:00 P.M.), with approximately 160 unoccupied spaces, with no valet operation in use. The conclusion was that there was sufficient existing parking. There were an additional 75 valet parking spaces north of the theater in the Plaza. There would be a consolidated valet operation at lunch and/or dinner. Mr. Brindell requested approval of the application today.

Director of Planning, Zoning & Building Robert Moore commented that a market study had been provided, a parking analysis study had been provided, and the Town serving evidence was before the Town Council.

Attorney Howard Rudolph, representing 264 The Grill, commented that he objected to the fact that the marketing analysis had been received on January 11, 1999, and he had just received a copy without the opportunity to study it, and/or contact another consultant to verify any information contained therein. He noted that Town code, under Section 134-229(12), said that such a survey shall include a description of the types of information used and the methodology employed to arrive at the conclusion, which he commented he did not believe were met in the marketing report submitted. Mr. Rudolph maintained that the burden of proving Town serving had thus not been met, and simply submitting a marketing report was not evidence. Mr. Rudolph commented that he believed parking would be a significant problem, and was not consistent with the marketing report. He noted that the opportunity to study the reports could expose other inconsistencies that may warrant further consideration of other issues. He noted that when the theater in the Plaza was in session the Club in the area did not have lunch, and he did not know if Houston's would be willing to make the same concession or not. He suggested that this matter be deferred for another month to allow people who had concerns, and to give an opportunity for review of the data submitted.

Mr. George Dempsey addressed the Town Council, expressing concern regarding the application, taking exception to the fact that there was adequate parking. He explained that he had gone through the parking lot two times during the week, and there had only been four empty spaces in the northeast corner on one day when Dempsey's was closed, Au-Bar space was not occupied, and there was no theater. He maintained that it would be difficult for emergency vehicles and the police department to get into the parking lot and to attempt to keep traffic moving within the Plaza. He noted that the Poinciana Club had conceded not to open on Wednesday matinee days during the season because of the congestion, and he hoped that Houston's would have that restriction as well. He questioned if there had been

input from the Fire and Police Departments regarding this matter? He mentioned that 2,600 new or additional restaurant seats had been granted by the Town Council since 1996, and he believed that had strained the capacity of the Town—that was why there had been four failures within the last six months, which he did not think was good for the image of the Town; the additional competition would add additional burden on the existing restaurants. He suggested deferral until the Fire and Police Departments could be heard.

Director of Planning, Zoning & Building Robert Moore commented that the remarks of Mr. Dempsey were very on point, and he noted that the space was not a new space that would be occupied by a new restaurant. It was a replacement restaurant in a space already occupied by a restaurant, and was here today for Town serving review only. He noted that he had indicated last month that the matter could be addressed as to parking, the volume of business, etc., could be appropriate as part of the Town serving determination. He explained that the Police Department had indicated last month that they had no objection to this, and there had been no backing out of traffic onto Royal Poinciana Way, and any internal management would have to be dealt with by the Plaza and Mr. Spiegel had indicated that valet operations would be in place. He noted that the Fire Department had expressed concern only with seating, and indicated that getting emergency vehicles into the Plaza was not a problem.

President Smith commented that she had concern with the daytime parking, and requested that Mr. Spiegel address the situation.

Mr. Sidney Spiegel addressed the Town Council, stating that he would submit background information on Royal Poinciana Plaza, which he believed would be relevant to any decision made by the Town Council. The Plaza had been built in the 1950's, with many retailers, and Schraft's Restaurant operating the space in discussion. During the '60's and 70's the retailers flourished and operated in competition with Worth Avenue. In the late '70's Worth Avenue prevailed and one by one the Royal Poinciana Plaza retailers closed. It was at this time that he had come upon the scene, and recognized that a major change in the concept of the Plaza was necessary. He then turned the Plaza into stores and offices providing a variety of services for Town residents. Included in the tenant mix were banks, brokers, realtors, private and public corporations, florists, hair salons, pet shops, and many other service oriented businesses. He noted that the Plaza operated under the Town serving requirements of the Town, and it was important for the Town Council to understand that. The space in question had been a restaurant facility for over 25 years. He noted that the northwest area of the Plaza had the most available parking spaces and was the least used section. The restaurant would not open until 11:00 A.M., and most tenants would arrive well before that time. The only problem would be at the noon hour. He submitted a survey taken for the past 10 days, showed an average of 116 spaces per day in the area that would be attributed to the Houston space.

He maintained that the Town needed a reputable restaurant, providing high quality food at mid-range prices. He noted that two tenants had expressed concern about Houston's going into the Plaza; one was Sidney Cole, who had 10 employees, and was located on the easterly section of the Plaza; the other was J.F. Hotels, who were located in the northeast corner of the Plaza. As the owner of the Plaza, Mr. Spiegel stated that it was his intention to ensure that all criteria sought by the Town would be met.

President Smith asked what tenants of the Royal Poinciana Plaza were currently being serviced by the valet service?

Mr. Spiegel replied that the Poinciana Club was being serviced, B.S. Babor, and Edward's Beauty Salon.

President Smith asked why clients of those tenants were told that they could not use the valet service, which was happening there currently?

Mr. Spiegel replied that it will not happen.

President Smith asked who the valets were blocking off when the valets come and put in the red cones in to block off the spaces for self-parking vehicles?

Mr. Spiegel explained that the valet people take things into their own hands and use the cones improperly and put the cones in spaces to hold the spaces for themselves in order to better themselves financially.

President Smith remarked that was where the major problem was and that was what was causing parking problems there.

Mr. Spiegel replied that was an area that he, as management, would completely straighten out, because that should not occur, and the valets should not hold the spaces for themselves. He explained that there were three types of parking on the premises: employee parking, who are asked to park on the perimeters of the premises; valet area parking, and random parking by individuals who chose not to have valet parking. He stated that they would continue to have random parking.

Councilman Wyett noted that he had observed that the perimeter of the parking lot was always empty, and he did not know how successful the employee parking there had been. He asked what would be done to solve any parking problem that may come up in the Plaza?

Mr. Spiegel replied that management had the ability to control the parking and would enforce the parking rules.

Attorney Brindell commented that some of the discussion had to do with Mr. Spiegel and the overall operation, and some of it had to do with the proposal for The Palm Beach Grill. He offered that The Palm Beach Grill would be willing not to have lunch on those days when there was a matinee at the theater.

President Smith clarified that there had been a valet parking plan from Mr. Spiegel when the Poinciana Club was approved, detailing where everyone was going to park and where the four valet stations would be for valet parking throughout the whole Plaza. The same valet promise had now been made to Houston's, however, a parking plan was needed in the form of more than a vocal assurance.

Mr. Spiegel responded that a valet plan had been agreed upon when the Poinciana Club was approved, however, there had not been enough cars to deal with, since the impact of the Poinciana Club was not nearly what anyone anticipated, and the whole system was not necessary.

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Councilman Wyett pointed out that if the Poinciana Club became a popular luncheon restaurant, and The Palm Beach Grill was successful, and there were other impacts on the area, asking Mr. Spiegel what could be done to alleviate the parking problems?

Mr. Spiegel replied that he would enforce the rules and regulations.

Councilman Wyett suggested that Mr. Spiegel may want to forbid employees of any restaurant from parking in the area, or decals could possibly be used.

Mr. Spiegel responded that with strict rules and making sure that the job was done the parking would be kept in proper shape.

Councilman Wyett stated that he wanted to have some assurance that if residents come to the Town Council and complain about parking in the area that there would be some plan to address the issue.

Mr. Spiegel replied that he had inquired about building a parking garage in the area, which would be comparable and compatible with any requirements.

Mr. Moore commented that in September 1995, Mr. Spiegel had appeared before the Town Council and asked for a rearrangement in the parking in order to address some of the problems Mr. Dempsey had with his restaurant. That was when the parking lot had been reconfigured to allow for the valet on the south side of the parking lot. There were some conditions placed at that time which were as follows:

1) Tenant and owner parking shall be limited and controlled to the use of the Poinciana Plaza's furthest north row of parking spaces along Royal Poinciana Way.

Mr. Moore asked Mr. Spiegel if he had instituted that requirement?

Mr. Spiegel replied negatively.

Mr. Moore continued:

2) Valet parking service shall be controlled by the Plaza management as a unified parking plan for the Plaza.

He asked Mr. Spiegel if that had gone into effect?

Mr. Spiegel replied it had to some degree, but not totally.

Mr. Moore continued:

3) There shall be no assigned parking spaces in the Poinciana Plaza. Those existing in assigned parking spaces that have been provided by the Plaza to specific tenants and customers shall be discontinued as those leases expire.

Mr. Moore asked Mr. Spiegel if that had occurred?

Mr. Spiegel replied affirmatively.

Mr. Moore asked if the coning off of spaces was for specific tenants?

Mr. Robert Spiegel replied that those tenants had reserved spaces prior to the document being originated.

Mr. Moore replied that was the understanding that had been agreed to in 1995.

Mr. Robert Spiegel replied that any new leases after that document was approved had designated [parking] and if a tenant had a reserved space in a lease prior to that document it had continued. He explained that no new leases had any reserved spaces at this time. If a lease was extended or amended, the reserved space would continue.

Mr. Moore replied that the intent of the agreement in 1995 was that those spaces would be removed, because they sit vacant quite a bit during the day, including lunch time.

Mr. Moore continued:

4) The north entrance to the Plaza from Royal Poinciana Way shall be reconstructed concurrently with the improvements to the other areas of the parking lot, and shall be landscaped and provided a more aesthetic appearance.

He asked Mr. Spiegel if that had been done?

Mr. Spiegel replied affirmatively.

Mr. Moore summarized that those were the conditions of approval to have re-done the parking lot. It was clear that there may be some internal management problems, and Mr. Spiegel may be willing to address those in an effort to alleviate any parking problem.

President Smith commented that a new tenant was entitled to know the problems associated with the parking lot, and whether Mr. Spiegel was going to address them before they started business.



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Attorney Brindell replied that a commitment had been made to Houston's in their lease about the parking area.

Mr. Byers addressed the Town Council, stating that no one was more concerned about parking than Houston's, and they were fully prepared to hold the landlord responsible for the parking to be provided. Houston's had committed to Mr. Spiegel that employee parking would be put in a spot that was nonintrusive for other tenants, and they were committed under the lease to police that area, and enforce it among the employees.

Councilman Wyett asked if the employees could be bused if there was a parking problem?

Mr. Byers replied that he did not know.

Councilman Wyett replied that it was the job of the Town Council to protect the Town, and parking was a problem in Town. He noted that he had not heard from Mr. Spiegel exactly what his plans were; the intent of the agreement in 1995 had been to wipe out all preference parking, and he suggested that all of those parking spaces be wiped out now, or upon any renewal or expansion of the lease.

Mr. Spiegel admitted that they had been remiss in that area in regard to eliminating those allocated parking spaces.

Mr. Robert Spiegel stated that the 75 existing self-parking spaces could be monitored by a valet, which would enable stack parking, and creating well over 100 spaces. That area would be redesigned to handle approximately 125-150 stack park spaces. That would be done prior to the opening of Houston's.

Councilman Shaw referred to the marketing report indicating that he found the figures of the turn over of three times per seat very low to be a successful business. He suggested that double that number may be more appropriate.

Mr. Byers replied that it was an estimate, and given the limitations on the hours, they were looking at two turns at dinner, and a turn at lunch.

Councilman Wyett commented that the business would lose money at that rate.

Attorney Brindell commented that the figures were conservative from a market analysis point of view, and there was no expectation to have every seat occupied fully each sitting.

Councilman Shaw explained that numbers may make sense as they related to Town serving, however, he was questioning whether those numbers would make sense if the number of people was increased. He pointed out that he had no basis for his thinking, however, he was not comfortable looking at the numbers, and possibly he did not understand the restaurant business as to how many people were needed to walk in the door of a 6,000 square foot restaurant with 164 seats. He stated that he was concerned that as that number started to increase where would the people come from? He commented that he believed that the extra people may come from outside of the Town serving area, which would skew the figures. He asked what would be done if Houston's was not Town serving a year from now?

Attorney Brindell replied that Houston's had tried to show the Town Council things they were trying to do to tailor the operation to the Town. The space had been occupied by a restaurant for over 20 years, the applicant was not asking to increase the space or the seats, which was very important. In addition, they would not be advertising to attract a regional trade. If they wanted a regional trade they would have located on the other side of the intracoastal.

Attorney Brindell suggested that Mr. Spiegel could agree to designate a prime valet site for The Palm Beach Grill, and if employee parking became a problem, an offsite place could be located for the employees.

President Smith clarified that Mr. Robert Spiegel had agreed that Area 2 would be re-striped for the parking of up to 120 spaces prior to Houston's opening, and suggested that may be included in the contract.

Attorney Brindell replied that he would imagine that the Town Council would put that in some approval that would condition the opening upon that.

President Smith asked Mr. Moore what other conditions the Building Department would recommend for approval of the application?

Mr. Moore replied that the parking should be addressed, elimination of the nightclub license, and the grease trap noted by the Public Works Department.

Gail Coniglio commented that she understood that the site had a long history of use as a nightclub and/or restaurant space, and asked when the question of how many restaurants could be added to the Town would be considered. She stated that she was puzzled by the representation of Houston's that they will fill an unmet need for a fine, mid-range priced menu. She referred to the menu from the Boca Raton Houston's restaurant, and quoted several prices from the menu. She stated that she did not believe that Houston's had proven the Town serving requirement, nor addressed the lack of parking.

Attorney Rudolph commented that the Town Code required that 50% or more of the patrons for Houston's would have to come from the Town of Palm Beach, and submitting a marketing report was not evidence, nor was the appropriate date provided. He maintained that it would be a miscarriage of justice for the Town Council to approve the applicant without having the date required by the Code.

Councilman Shaw moved approval of Special Exception No. 34-98, with the following conditions, subject to the issues that had been brought forward, which were as follows:

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- \* Addition of the grease trap required for compliance with existing Town Code, noted by the Public Works Department.
- \* Agreement of Mr. Spiegel that they would have not less than 120 stackable spaces in valet area No. 2, that would then be used primarily, if not exclusively, for the restaurant.
- \* The restaurant would not be open for lunch on the days that the theater held matinees.
- \* valet parking to be provided both at lunch and dinner
- \* Poinciana Plaza management will return for a modification of the site Plan approval of 1995 to deal with the 120 spaces, with a review of the conditions of the Site Plan approval of 1995. Mr. Spiegel would be responsible for that, and it would be added to the Agenda for March 1999.
- \* CPA Statement should be a sworn statement, and very specific as to what data it was based upon. The Town would have the right to audit the material used to substantiate the statement.
- \* In the event there was a parking problem the restaurant would voluntarily bus their employees.
- \* The contents of the letter from Joseph B. Ledbetter, Senior Executive Vice President, Houston's, dated December 30, 1998 outlining a number of issues (1-20) relating to the Town serving nature, and quoted below:
  - "1. No request is sought to create new restaurant space in the Town. The proposal is to re-open and operate an existing restaurant space formerly occupied by Au Bar and several other restaurant operations, including Schraffs.
  2. No request is sought to increase the number of seats in or the square footage of the Au Bar space.
  3. The proposed space previously has been determined by the Town to support several town-serving restaurants.
  4. The nightclub operation approved for the Au Bar space will be relinquished, thereby reducing the late night noise impacts on Town residents by eliminating an attraction to off-Island visitors and reducing the current level of annoyance by such establishments in the general neighborhood.
  5. Hours of operation are proposed (i.e., 11:00 a.m. to 11:00 p.m. Sunday through Thursday and 11:00 a.m. to 1:00 a.m. Friday and Saturday) which do not accommodate late night bar patrons thereby reducing the late night noise impacts on Town residents and eliminating a late night attraction to off-Island visitors.
  6. The restaurant will not advertise on radio, television, or regional newspapers. Media advertising will be limited to Town-serving publications such as the Palm Beach Daily News and Island hotel magazines. Marketing will be aimed at Town's persons, rather than at regional patrons, by word of mouth, participation in civic and charitable organizations, personal contact with Island hotels and businesses, and occasional advertising in Island publications.
  1. The bar will have only 8 to 12 seats.
  2. The restaurant will operate under a Town specific name (e.g., the Palm Beach Grill) rather than the Houston's name, thereby avoiding the image of multiple stores as presented by other operations in the Town such as Bice and Charley's Crab.
  3. No request is sought for a particular corporate exterior color, building form, signage, or lighting.
  4. Moderately priced cuisine will be provided to attract and retain the Town's residents and their families, as well as persons employed in the Town.
  5. On average, less than 17% of Houston's revenues come from the sale of alcohol at its restaurants.
  6. A parking analysis and testimony from the operator of the valet parking at the Royal Poinciana Plaza have been provided to the town to the effect that adequate parking exists at the Plaza to accommodate the restaurant operations.
  7. Reservations will be taken for dinner.
  8. Valet parking at lunch and/or dinner will be provided if determined necessary b the Town.
  9. A state-of-the-art odor control system will be installed in order to be as good of a neighbor as possible.
  10. Refuse will be collected and retained within the restaurant overnight thereby eliminating outside odor impacts and rodent attraction.
  11. The restaurant will participate in Town charitable and civic organizations.
  12. Strong quality control of food and service will be provided based upon 22 years of experience with 30 restaurants.



13. Adequate capital will be provided to ensure financial staying-power.
14. Methods to collect data addressing town-serving criteria will include records of reservations, credit card purchases, check payments, and customer surveys to determine whether customers reside in the Town, are guests at hotels in Town, or are employed in the Town."

President Smith passed the gavel and seconded the motion.

Councilman McDonald commented that he would like to attach some conditions relating to Town serving:

CPA Statement should be a sworn statement, and very specific as to what data it was based upon. The Town would have the right to audit the material used to substantiate the statement. *(This item was added to list of conditions above).*

Attorney Brindell estimated that the restaurant would like to open in July/August 1999.

Councilman Wyett added a condition that in the event there was a parking problem the restaurant would voluntarily bus their employees. *(This item was added to list of conditions above).*

On roll call the motion carried 4/1, with President Pro-Tem McLendon casting a dissenting vote, commenting that he was not in agreement with the parking availability issues.

President Smith reminded Mr. Spiegel that he was expected to return to the Town Council in March to address the parking reconfiguration, and clarified that if the parking was not reconfigured, Houston's would not receive their approval, their Certificate of Occupancy.

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#### New Business - Major

1. SPECIAL EXCEPTION NO. 2-99 - The Gazebo Flower Shop, Palm Beach Hotel, Inc., 230 Sunrise Ave.; located in the C-TS Zoning District; to allow a 2,375 sq.ft. flower shop occupancy thereby exceeding the 2,000 sq.ft. limit.

Attorney Roger Stanton, representing Michael Tse, the owner of the Gazebo Flower Shop, addressed the Town Council, stating that Mr. Tse was currently operating the Gazebo Flower Shop in the Royal Poinciana Plaza, and would be moving to 230 Sunrise Ave. The operation was Town serving, with an affidavit submitted stating such.

Councilman McDonald moved approval of Special Exception No. 2-99. The motion was seconded by Councilman Shaw.

Councilman Wyett urged the landlord to give attention to the dumpster situation in the area.

On roll call the motion carried 4/0, as President Pro-Tem McLendon had temporarily left the room.

2. SITE PLAN REVIEW NO. 1-99 with Variances - Edward D. Ltd., Co., 530 S. Ocean Blvd; located in the R-A Zoning District; to allow construction of residence on a 100' wide lot in lieu of 125' minimum required. Variances requested are 1) height variance of 1' at the proposed 26' high entry roof, and 2) height variance at retaining wall allowing 9' above the lowest grade in lieu of 7' maximum allowed.

Attorney Ron Kolins, representing the applicant, addressed the Town Council stating that the lot at 530 S. Ocean Blvd. was in the R-A Zoning District, which normally required 125' wide lots, and this one was a 100' platted lot. All code criteria was met regarding the site plan. A variance for wall height was also being requested. Mr. Kolins pointed out that there was no provision in the Code at all for a retaining wall, which would not be seen and was for the purpose of holding earth back, which was needed so that the earth could be held back near the below-grade garages on the side of the house. The variance related to the entry feature of the house was being requested in order to allow the bottom part of the eave of the entry feature to be just at and above the top of the fascia, which was not allowed by Town Code, which would require the entry feature to be 1' lower. The request was being made because the house was built three feet higher than the crown of the road, so the angle of view to the house was looking up. If the entry feature was lower it would look too squat and would encroach on the windows and doors.

Councilman Shaw moved approval of the site plan for Special Exception 1-99. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Councilman Shaw moved denial of the variance for the entry feature. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/1, with President Pro-Tem McLendon casting a dissenting vote.

Councilman Shaw moved denial of the side retaining wall at a height of 9' above the lowest grade in lieu of 7'. The motion died for

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lack of a second.

Mr. Richard McCarthy, 520 South Ocean Blvd., addressed the Town Council, regarding the 9' wall being requested, which was 3' from his lot line. He expressed concern with a garage that would be cut 9-10' below his grade. In regard to the 100' frontage, he commented that he believed that was a self-inflicted variance.

Councilman McDonald explained that had not been a variance, but a site plan approval.

Mr. McCarthy continued that as a direct neighbor he was very concerned with the development of the lot.

Attorney Kolins responded that the side retaining wall was needed to retain the land. He explained that variances were granted on a regular basis, if there was a good reason not to force an applicant not to live within the requirements of the Town Code because it created some kind of a hardship. He maintained that the side loading rear garage was being built away from the front of the house, out of the way and in the rear, and the only way to do that was to have the 9' wall to hold back the earth. He commented that it would seem that the next door neighbor would be pleased with the garage hidden away. He noted once again that the Town Code did not address this situation, as there was no provision or preclusion to a retaining wall of any height whatsoever.

Councilman Shaw commented that he understood the reason the 9' wall was needed was because there was a 9' high garage. If the garage height was raised so that it would only establish a 7' height that would take 1 ½ ' off of the variance request, and a 6" grade on the driveway from the wall to the entrance to the garage would make up the rest of the 2' variance request.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Could be designed to meet Code; Town Engineer: Storm water retention may require walls on north/south/west property lines outside the easement; driveways must be 6' from property line; Building Department: Basement entry could be redesigned to meet Code; Town Manager: concurs with staff. Mr. Moore commented that the 9' ceiling in the basement seemed to be the reason for the request for the 2' variance on the side wall. He suggested that the basement ceiling height could be lowered.

Attorney Kolins commented that the project had required a Department of Environmental Protection (DEP) permit because of the Coastal Construction Line issue, and his client had been carrying the property for many months. He explained that the garage was essentially 7' high; although 9' were shown on the plan because it was 9' to the top of the support for the floor above it, which is about 16" wide, and between that 16" and the room needed to roll up the garage door was the 2' being requested. The garage could not be lowered and still have room for the floor above and the ability to roll up the door. He noted that it was his understanding that these requests had been commonly granted elsewhere in the Town, and it would not impose on anyone else. In regard to the concerns of Mr. McCarthy, Attorney Kolins pointed out that a drainage plan was part of the permit requirement.

Councilman Shaw moved denial of the 9' wall variance request. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote.

*(At this time Item XVII. Development Reviews. A. Appeals, 2 was discussed)*

2. Appeal of the Landmarks Preservation Commission's Decision of December 16, 1998, Regarding 140/150 South Ocean Boulevard by Mr. and Mrs. David Kosoy

Town Attorney Randolph commented that when a person filed an appeal from the Landmarks Commission, the work is abated until the appeal has been decided, pursuant to the Town Code.

Councilman Shaw commented that he understood that a hearing would have to be held within 30 days of the filing of an appeal, and moved that the hearing be scheduled in conjunction with the meeting to be held on January 19, 1999, and that the present meeting be carried over until that time.

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At this time Attorney Kolins referred to Special Exception 1-99, which had been discussed earlier in the meeting, requesting that the 9' wall variance request that had been denied could be reconsidered for deferral.

Councilman Shaw moved deferral of the portion of Special Exception 1-99 dealing with the 9' wall variance. The motion was seconded by Councilman McDonald, and carried unanimously.

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The meeting was adjourned for dinner, to be reconvened at 9:00 P.M.

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XVII. DEVELOPMENT REVIEWS

A. Appeals

2. Appeal of the Landmarks Preservation Commission's Decision of December 16, 1998, Regarding 140/150 South Ocean Boulevard by Mr. and Mrs. David Kosoy

Ex-parte communication was not declared by any Council Member. President Pro-Tem McLendon had left the meeting.

Attorney Natale addressed the Town Council, stating that it was the position of the appellant that the goal to preserve and protect landmarks, and yet allow progress, was inconsistent with the designs that had been presented; Town standards and Federal standards indicated both legal and aesthetic guidelines. The documents relating to landmark designation (The Florida Master Site File; The Architectural Analysis; The Architectural History) compared to what was proposed by the applicant was inconsistent with the landscape provisions as set forth by the Town, as well as by the Federal government. Attorney Natale requested that the entire package presented be added to the record as evidence.

Attorney Natale questioned Attorney and Architect James Paine, representing Mr. and Mrs. David Kosoy, asking him to tell the Town Council what provisions of the landmark designation were applicable to making a determination in this regard?

PAINE: In terms of the designation in Section 16.38, that would be © and (d), one reason that this was designated as a landmark was © that this structure embodies distinguishing characteristics of an architectural type, or is a specimen inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship. This certainly does represent the Mediterranean Revival style as it was developed in the 1920's in Palm Beach. It is an inherently valuable specimen. Standard (d) states it is representative of the whole notable work of a master builder, designer, or architect who is individual ability has been recognized, or who influenced his age. This building was originally designed by Addison Mizner. This portion of the building. Within the decade of the 1920's it was--an addition was built by Joseph Urban. Both are notable architects of the time.

SHAW: Which part of the building did you point to?

PAINE: The south side was Urban's addition. Mizner's original building was in this area, although this part of it was altered with Urban's addition.

SHAW: That's the north part and the center?

PAINE: Yes sir. The north part is part of the Mizner original. The middle was altered with Urban's addition, and the south was added with Urban's addition.

NATALE: Did you have an opportunity to review the official file of the Town archives as it relates to the Florida Master Site Filing for this landmark?

PAINE: Yes.

NATALE: And based on your knowledge as a lawyer and as an architect, could you tell the Council what is the significance of that document, and if you know how that document would have been prepared and why.

PAINE: I believe that this document is the landmark designation and it describes the unique features of the house and the reasons why it was landmarked, with some minor elaborations as to the importance of the individual structure.

NATALE: Is there anything in there that you think is particularly significant to point out as far as what was actually landmarked, that when it was landmarked what was articulated as the unique features of this structure?

PAINE: On the second page of the Florida Master Site Plan file under Plan Type the words appear irregular, irregular--that I believe refers to the irregular plan and the irregular elevation of the building.

NATALE: Could you show that to members of the Council as to what would be the irregular?

PAINE: Well the elevation is irregular in that this portion does not match this portion on the north. The south does not match the north. As designed and landmarked the elevation is asymmetrical, but still balanced, and is irregular is noted.

SMITH: Mr. Paine, you're referring to the Florida Master Site File? Is that part of the package?

PAINE: Yes it is.

SMITH: And where on that is it referring to irregular?

PAINE: The second page.

SMITH: On Plan Type?

PAINE: Yes.

SMITH: Plan Type: irregular, and then where is the rest of it?

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PAINE: It has two words, irregular, and irregular.

SMITH: I know that. I saw that. Where is the rest of the irregular that you're talking about?

PAINE: I don't see. There is no rest that I'm talking about.

SMITH: I'm sorry. I thought you said irregular in three different places.

NATALE: There is irregular in two places. Irregular as to the exterior as far as being asymmetrical, and then irregular as far as the actual floor plan.

SMITH: I'm looking at the line that says Plan Type irregular; irregular. But it's not any other place?

PAINE: No. Those are the only two references and the only two places that word appears.

NATALE: Is there also another indication as to the number of stories?

PAINE: Yes. On—a little further down on the same chart it says number of stories, 2, then there is a number sign 1. I believe this refers to the fact that the house is both a two-story in some portions and a one-story in others, which is apparent in this photograph of the front facade.

SMITH: Right. But there's no way, really, code with us to tell us what that actually means. It could be 2 + 1 meaning 3, right? I mean, do you have a code?

PAINE: It could.

NATALE: I have no code for this. This would be part of his testimony as an architect; that is how he would interpret what it means.

SMITH: All right. Two-stories with the one-story sections.

PAINE: That's how I would read that. But I acknowledge that it could be interpreted—

NATALE: That would be our position. That is what they are referring to. And that as far as porches, where it sets out there— is there anything in there which is of significance as it relates to the applicant?

PAINE: Yes. Under the category, porches, on the same chart, the words appear second floor balustrade terrace at south end.

NATALE: Could you point to that sir?

PAINE: Yes. I think that clearly indicates this feature of the house.

SMITH: And the miniature balcony refers to the center section? Do you know? Stucco over entrance, second floor miniature balcony, stucco over entrance? That's not the middle part?

PAINE: I would agree with you that that refers to this balcony over the entrance.

SMITH: Okay. And then the second floor balustrade terrace is the south end?

PAINE: I believe so.

SMITH: All right. Thank you.

NATALE: When you looked through the records, did you find any architectural histories or architectural analysis for El Sarmiento, which was contained in the same file?

PAINE: Yes.

NATALE: And is that in the package of material that we gave to the Town Council?

PAINE: Yes.

NATALE: Is there anything in the architectural description that you think is significant to be pointed out to the Council as far as what was landmarked and why would it be landmarked?

PAINE: In the second paragraph, about half way down of the architectural description, the words appears — as the mass of the building steps back — I think they were referring to the stepping back of the mass here — the one-story mass stepping back to the two-story mass, both beyond to the west and adjacent to the north.

SMITH: I hate to bother you Mr. Paine, but where are you reading from now? Where are you now?

NATALE: We are reading from the architectural description of the report that accompanied the landmark.

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SMITH: I have something that says architectural description continued. I don't have a first page. I have a blank page that says architectural designation and then I have architectural description continued, without a first page. Is there a first page?

PAINE: There is a first page. The copy center evidently missed copying that first page.

SMITH: Go ahead. That's okay. Just tell me what it is. I mean, I couldn't find it.

PAINE: Those words do appear. There is a reference to the mass of the building as it steps back.

NATALE: On the next page which I believe you do have, which is architectural description continued--

SMITH: Right. Starting with balconies with wrought iron railings?

NATALE: Right.

SMITH: Yes, I do have that.

PAINE: Further down, third full paragraph, which starts, as it was mentioned, the last sentence of that paragraph, we believe, is a direct reference to this feature of the house, which is the open deck and balustrade and it says - an added attraction is the balustrade at the second level terrace, which echoes the balustrade below at grade, thus adding another visual element to the whole. I believe the balustrade and grade to which they refer is this, and the second level terrace is this deck with a balustrade.

NATALE: If you could now turn to the section which says, architectural significance, is there any particular portion that is in that document, which is in the record of this hearing, and also within the Town's file as it relates to El Sarmiento, which you think are significant?.

PAINE: Yes. There is a reference to the obvious quality of the structure both in design and construction in the fourth paragraph, which begins, the significance of this structure, and further down there is a sentence, this thread of architectural significant buildings spaces vistas and views along south Ocean Boulevard. Should be viewed as a major element of urban design, and each element should be recognized for the role it plays as a part of the whole. I believe there they're referring to the entire street scape from Royal Palm Way up to Barton. There is a combination of homes there that are an important part of the Town, and I believe that paragraph emphasizes the important role that this structure plays in that combination of homes.

NATALE: Does it also set forth that the structure is not a massive rectangle as the front elevation indicates, on that same page?

PAINE: Yes, that is set forth in the second paragraph, and I think that statement speaks for itself that the structure is not a massive rectangle. There is a step down, a break in the mass of the building.

NATALE: And on the last paragraph does the document say that there El Sarmiento is a showpiece and it is one of Palm Beach's great houses?

PAINE: Yes, it does.

NATALE: Now, obviously in taking all of that into consideration, could you now--and you obviously know what the plan is, correct? The Koch plan, correct?

PAINE: Yes. I am familiar with the plan and I think the Council is as well.

NATALE: Could you please talk about what particular Town standards you believe are inconsistent with the plan as proposed by the applicant, and what Federal standards are in opposite to the plan as proposed by the applicant?

PAINE: Yes. I'll begin with the Town standards. 16.41-criteria for issuance of certificate of appropriateness - the section (b) for exterior alterations, and also section (a) for new construction. The criteria set forth in (a) above is applicable to exterior alterations and for new construction, so I believe these criteria are indeed appropriate as the criteria that this design should be reviewed under. Number One: the second sentence, the height, the gross volume, the proportion between width and height of the facades, the proportions and relationships between doors and windows, the rhythm of (unintelligible) to voids created by openings in the facades, and it goes on into materials, which is not as relevant, but the important words are the rhythm of solids to voids created by openings in the facade. I think we've got a rhythm created here, and the fact that there is not a mass in this area is part of that rhythm, and the fact that this deck that creates that rhythm is noted in the landmark designation conspicuously indicates that the deck is a unique feature in space and an important consideration that was intended to be preserved. Number two says: existing rhythm created by existing building mass and space between them should be preserved. Those two work together. I think this is part of the existing rhythm created by the building masses. It's not a symmetrical block, it's a higher block with yet a higher central portion, and then a lower block, then a round element to the south.

SHAW: Mr. Natale, would you mind if I asked a question?

NATALE: Not at all. Go ahead. Absolutely.

SHAW: I apologize that you've finished your train of thought before I lose mine. You're saying the word facade. Does it say front facade?

PAINE: Let me read carefully. It does not say front facade.



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- NATALE: It says front elevation. The structure is not a massive rectangle as the front elevation indicates.
- SHAW: I'm just questioning the statement about the openness of the facade—could it not be construed that means the courtyard facade with its open areas and archways, as depicted even within your own picture that is in the packet, versus, you know, you're directing everything as though everything is specifically referring to that balcony, and is that your interpretation, that everything in that document only refers to the balcony.
- PAINE: Let me address that. When I was referring to the landmark designation, which specifically refers to this house, I was looking in the document for specific reference to this balcony. I think we found it. Now I'm reading the Town's criteria, and I believe when they say the height of the facades their main concerns are with facades that are visible from the street. I believe it could be interpreted to apply to any facade on the house, as the law appears here in the Town's documents, but it's my belief that our Landmarks Commission is concerned mostly with what's viewable from the road.
- SMITH: Well, Mr. Moore, or Mr. Frank, if we could ask for clarification on this. When the Landmarks Commission reviews a house for landmarking do they only review the front facade?
- FRANK: No ma'am. They're concerned with all of the facades on the building and any interior courtyards.
- SMITH: Right. Because it does say here that the feeling given is massive and formal, however, the structure is not a massive rectangle as the front elevation indicates. The rear elevation wraps (unintelligible) much smaller scale. So, I think the question about facades that Mr. Shaw raised is a very viable point. They don't specify the front, so they could be talking in general.
- PAINE: I don't disagree.
- SMITH: It's an interpretation. I think that's why we're here tonight, on interpretation.
- NATALE: To be quite frank, I think a lot of this is going to be interpretational and what the whole purpose of our presentation is to show what we believe is a logical as well as architecturally an historical interpretation, which is consistent with the materials and the technology and the time when this building was first constructed and then later the additions were made.
- WYETT: I don't think that we can try to interpret front from back. The records shows from way back that the whole house was landmarked. There is no conversation about landmarking one section or another, which sometimes is done. The description is not a rectangle. It's not a rectangle from any side, so I think it's immaterial when we try to define what was intended. What was intended was to landmark the house, and to give a general description of why.
- NATALE: Exactly, and that's why we're saying that when you make it a rectangle, because it doesn't look like a rectangle from any angle. When you do make it a rectangle, which is what the applicants are trying to do, make it a symmetrical facade, even though there's that minor setback, what you're doing is really ignoring what the significant part of the original designation for the structure. That's exactly our point.
- WYETT: I think, quoting you, if I understood you correctly, as to the mass, the house is somewhat set back on that side of the building.
- NATALE: That's correct, yes. So in other words—
- WYETT: So it must be referring to that part of the structure.
- NATALE: Exactly, and I think if you look at that part of the structure, it's set back and then you have the round rotunda, which is even somewhat setback, and then you have that porch or patio area on the second floor. Now, that area would be consistent with allowing the prevailing winds to help ventilate back in the '20's when they didn't have AC. It would also allow for the cross ventilation to come in from all sides to allow for the light. Closing off the front, really, it is our position, destroys the architectural history of it, because part of what you're trying to preserve in a landmark is not only what it looked like, but why it looked that way, and why it was designed with that particular feature.
- SMITH: I'm sure when you finish you're going to put up the actual site and outline of the house on the site. It's easier to work from then a photograph, which is only one dimensional.
- PAINE: We could do that at any point in the presentation.
- WYETT: I just wanted to clarify another reason I believe we're talking about the southern section of the building is I heard you tell us that the open balustrade echoes one on the ground. Well, there's only one place I can see where the balustrade on the ground is and it's only in the front section running across the property. So there's enough reference points to believe that they were talking about the property as it exists and the reason for it is up to you guys to argue with.
- NATALE: That is in essence our position. What we were trying to do here is to illustrate in as many ways and as many points as we can based on foundational documents, the fact that this is what was landmarked. This is what they thought was significant, and as a result, if we look at the landmark criteria for changes the particular design really is in opposite of all of that.
- PAINE: Mrs. Smith, I'm not sure you can read that from there.
- SMITH: I can, thank you.
- PAINE: That is the site plan that depicts both structures. Our client's and the applicant's. There is a specific reference in the Town's



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criteria number four: a new street facade should blend directionally with other buildings with what which it is visually related. And I think that clearly refers to the street elevation and indicates that it should be consistent with the street scape which is something that we've talked about, and something that is referenced in the landmark designation documents that we reviewed earlier. Finally, the last section is Number Two, under (b): exterior alterations shall not affect the architectural quality or historical character of the building, and I think in our analysis that falls back to some of what Mr. Natale was referring to in that this building as it stands represents the architecture of the time, and there were technological limits as to what could be built, and there were reasons why cross ventilation and light were very important, and I think when you apply the current technology, with air conditioning and advanced electrical lighting, you begin to affect the architectural and historical character of the building and you take what reflects the architecture of the time and you modernize it and you change it, and the intent, I believe, is to preserve it as much as possible.

NATALE: If you could direct your attention to the Federal standards. You may want to look at the larger board here.

PAINE: Yes. You can read them off the larger boards. There are ten Federal standards, but the ones that are most important I believe are standards two, nine and ten, and to a degree number four, although I'll leave that for last. Number two: the historic character of a property shall be retained and preserved. The removal of historic materials or the alteration of features and spaces that characterize the property shall be avoided. I think if you look back at the designation documents there is substantial evidence that this is the feature and space that most characterizes this property. It's mentioned more than any other individual feature of the structure, and it's certainly not being preserved under the current design. The standards indicate that the destruction of such a feature should be avoided, and it is in this case not being avoided; it's being taken away. The Federal Standard Number Nine states: new additions, exterior alterations, or related new construction shall not destroy the historic materials that characterize the property. We don't take exception to that part of the new design in that the materials are well related. The new work shall be differentiated from the old and shall be compatible with the massing, size, and scale. I think the problems that this application has are with massing, size, and scale. Massing is a very sensitive issue with the Town at this time. This application certainly significantly increases the mass and creates a symmetrical situation in both roof line application and the basic mass of the structure.

MOORE: Excuse me, Mr. Paine, just one question if I might. What is the relevancy of the Federal Standards? The Town does not use those in its Landmarks Ordinance. I mean, can you tell us why we're going through this?

PAINE: I don't know the—I know that the Federal Standards appear in the Town's Landmark Manual and that they are Federally mandated standards. Now if they are of no—

MOORE: They don't appear in the Ordinance is what I'm stating to you. There is no—

SMITH: Did the Federal Landmark Standards come up at the Landmark Commission?

FRANK: No.

SMITH: So then perhaps they're not relevant in this appeal. Perhaps what you're saying is that they should have been used, but they weren't.

PAINE: I don't believe that that's accurate. I'm not sure that's true, Mr. Frank, that they did not come up.

FRANK: They did not come up. We have our own Ordinance, and you might have found them in the Landmarks Manual, but the Landmarks Manual is basically an informational document that goes to our residents that tells them all kinds of programs that are available and so forth, but the Commission reviewing things under this particular Ordinance, under the Town's Ordinance, we specifically do not have the Federal Standards in there, and there's a reason for them not being in there.

PAINE: Okay. Well, my statement really had to do with whether or not they came up, which to me means were they discussed at the meeting.

FRANK: I don't recall that they were. They might have been. You might have me there. I don't recall it.

SMITH: I mean, is this a trick question, Mr. — that you know they were discussed—

PAINE: It's not a trick question.

NATALE: No it isn't. I believe we have a transcript and I believe that they were in fact discussed. If what we're saying is that as — as whether or not they are legally binding to be followed by the Landmark Commission or yourself, and you're saying that they are not part of your Code so they are not, so be it, however, I do think that when we're talking about such a historical place as Palm Beach, and we're talking about structures that have national ranking and national stature, that it would do us wise to at least see what the national criteria are for landmarking, because it also can relate to, I believe, the tax abatement issues, as to whether or not—I think from the Federal perspective — whether or not they would qualify.

SMITH: But we're not getting into that. With all due respect, Mr. Natale, I'm letting you say everything. These were not part of the approval process at the Landmark Commission, as I understand it. They are not part of our Ordinance, and perhaps they should be, and at a future time will be, but we're not dealing with the tax abatement issue here either.

NATALE: I understand that. What I am basically trying to say though, that they are criteria established by the Federal Government as it relates to landmarking and that they may be of some relevance or some persuasive authority in making and guiding your decisions.

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SMITH: Right. At a later time, but not on this project, since they were not incorporated in the decision on this project at the Landmarks Commission, even though we may have wished they would be. Mr. Frank?

FRANK: Mrs. Day is just nodding to me that they were brought up at the meeting, and we were merely asking the question why they thought this was relevant?

PAINE: I think Mr. Natale's answer that while they may not be legally binding, but they may be persuasive is our answer.

SMITH: Maybe they were persuasive at the meeting, and the Landmarks Commission felt that the application before them met the Federal Landmarks Standards, and that's why they approved it.

NATALE: I'm assuming that's very much what they did, however, we are saying in presenting to you that –

SMITH: Sure. I'm just trying to give you the other side of it, because you brought it up, so maybe they felt it did comply – I don't know, I wasn't at the Landmarks meeting.

NATALE: I'm sort of assuming that would be what their position is. Mr. Paine is there anything else that you wish to say as far as your analysis of the Florida Master Site file, the documentation that describe the architectural history and the architectural description of El Sarmiento as it relates to the Town standards?

PAINE: No. Just in summary that the designation documents, I believe, single out the deck as a significant feature, and the Town's standards do ask that massing and significant features be preserved, and I don't feel that the current application preserves that feature. That's just a summary of our position.

NATALE: And we would submit that, I guess in three ways – one, the structure itself as landmarked is basically being destroyed in the significant factors that were originally landmarked. Two: that that has an effect on the entire urban design as it was set forth in these documents; the particular way that it proceeds from the beginning of the street to the end; the sort of – the view that you have; and then I think third: is that for the City itself it's interesting that, at least according to the plans that are – the site plan which is attached, it appears that across the street is a public park, and that what we have is – at least according to the plans here, it says that it's a public park – and that what we have here is a major I think landmark of your Town, which is looking on to a public park, which means that it gives it an even sort of a more of a public awareness that people could be in the public park, could see this front, and that it really needs to be showcased more as historically significant and preserved and it can still be protected, and the people can have whatever progress they need in order to develop a structure for their needs, but they don't have to destroy that which was most particularly articulated by the people who originally landmarked it.

SMITH: I'm not looking at the plat. Are you referring to Clarke Avenue beach?

NATALE: I'm referring to – if we look in the packet –

SMITH: Oh, the Clarke Avenue beach, okay, all right.

NATALE: Yes. I guess what they –

SHAW: Clarke Avenue beach is all that's out there. That's not a public park, but that –

NATALE: Well, it's articulated in here as a public park.

SMITH: It's the Clarke Avenue beach – whatever it is, I didn't know what it was. Okay.

NATALE: Whatever it is I'm just reading how it's designated here. I'm sure if I would have said beach then someone –

SMITH: If you had said Clarke Avenue beach we all would have nodded our heads in agreement.

NATALE: It would have been easier, but then it wouldn't have been comporting with what this says – public park. I think that the only other thing. I don't have any more questions. Jim, is there anything else?

PAINE: No.

NATALE: The only other thing is that, if I may –

SHAW: I have a question when you're finished.

NATALE: Okay, I'm finished with Mr. Paine. So, if there's any questions that relate to him.

SMITH: All right. Mr. Moore, do you have any comments? Or do you want to hear public comments, or Council comments, or Mr. Frank, or Mrs. Day?

MOORE: Mrs. Day is here to speak eventually to this, but I think we may want to hear both sides of it, but I'm still – and I apologize, maybe it's the time of the evening – what specifically are you objecting to in your appeal that you want the Council to be aware of that the Commission erred? Have you identified where the Commission erred here?

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PAINE: In the application of the Town Ordinance.

MOORE: Do you mean just broadly on everything that they did, they erred?

PAINE: In terms of interpreting the statements as to massing, and as that relates to the in-fill addition.

SMITH: And are you talking about the building in the back? Have you gotten to that?

MOORE: They haven't even gotten to that yet.

NATALE: No.

SMITH: Are we going to get to that? I mean, before you finish with Mr. Paine are you going to get to that, or – I mean, you did object to that too, and that has not been heard by the Council, so I think I would think that you would not finish with Mr. Paine until you discussed that, since we don't what the objections are to that.

SHAW: I'd like to ask Mr. Paine a question about the front. I'm looking at the report that you've given us, and I guess the part – correct me if I'm wrong, and I'll use Mr. Moore's excuse, it's late – part of this report that I guess I think I need to concern myself with is the portion that says Architectural Significance. The rest of it is merely historical description. If there had been anything – whatever it was that was done to the building or the style of the building regardless of merit, would have been indicated in the prior section where we're missing a page, which is in the description. So the fact that the description references a terrace is merely because there was a terrace. Had there been a turret, had there been a tower, it would have referenced the tower and described it. I don't have the wisdom to go back and look over the shoulders and find out what someone in the past was going to say, but I'm not sure that there is anything in this report that is indicating the architectural significance of the terrace – at least I don't see it here. Nor do I see or feel that you've said anything that would have swayed their opinion had it not been there. There are numerous houses along the Ocean of similar size that have symmetrical facades, that have been landmarked. There are those that have very different approaches, so there is nothing uniform in the landmark process that says it is landmarked because it is irregular in its facade.

SMITH: All right. Mr. Natale, are you going to answer that?

NATALE: Yes. Absolutely. Any shape, size of building can be landmarked.

SHAW: Do you also agree that it can be changed?

NATALE: I also agree that it can be changed, however, in making the decision in changing it you need to look at what was it that was landmarked? What was it at the time that they saw that they were landmarking and they were describing? That's what you see in the photograph, and I think if you look at the Florida Master Site file, and I think you can ask your counsel as far as what's the significance of that document, if you look at that and you read that in conjunction with the architectural significance, and I think you read it in conjunction with the architectural description, you are really getting – and I'm not trying to split hairs here – I'm saying if you look at the whole picture as to what these people said was significant, why it was significant, and what was significant about it, they were earmarking these things not so people would think we're talking about another house.

SHAW: But there's nothing in the significance that says the word "balcony." So, if it was so significant – then, as I'm saying, you tell me on the page, not the description – granted they described the house appropriately, taking what was there.

NATALE: I would say plan type.

SHAW: No, I'm looking at the Architectural Significance as you've given it to me.

SMITH: Are you on the Florida Master Site file?

SHAW: No, I'm on the written description that's in –

SMITH: All right. And could you give me the date of the written description, since none of this is dated? What is the date of the Florida Master Site file? What's the date on that?

PAINE: While he's looking for that, the report is dated –

FRANK: It should be 1979 or thereabouts.

SMITH: On the Master Site file?

FRANK: That's when the study was done.

SMITH: Because it appears that they didn't think that the south part with the balustrade and everything was important enough to mention Mr. Urban. They only mentioned Mr. Mizner. Or, Mrs. Day, am I reading it wrong?

DAY: I don't know if I should step in now and clear this up or not.

FRANK: Well, I think you can add to it.

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SMITH: I think this might be a good time, since the Council needs input here, since we're really not going.

DAY: There's a lot of confusion hee.

SMITH: All right. Mrs. Day, perhaps you can clear up some of the confusion. Since you, and if you will state your qualifications, Mrs. Day, and the fact that you are the adviser to the Landmarks. Obviously the Landmarks Commission went over all of this, so there's no point in our going over it again if you can clarify this for us, please.

DAY: My name is Jane Day. I'm the president of Research Atlantica, and I'm the historic preservation consultant to the Town of Palm Beach. I've held that position since 1992, and the Master Site file form that these gentlemen keep referring to as one of the designating documents really does not do that. As I know it, this was done long before my tenure in the Town. It was done in the last '70's. It was a firm hired by Barbara Hoffstot when landmarking was just in its infancy in Palm Beach, and Walter Kidney from Landmarks Planning, Inc., and Allegheny Square West in Pittsburgh, Pennsylvania, and his firm, did that survey. My firm updated that survey in 1997. The reason that the original Florida Master Site file form is in the report is because it was written long before I was here, and long before we did the update on it. But a Master Site file form in no way designates anything. Instead, it is a planning tool to be used by Building & Planning Departments, and to inventory sites for the State of Florida. These forms are then computerized at the State level, so if anyone wants to type out Addison Mizner in the architecture file, it will spit out the addresses of all the Addison Mizner properties all over the State of Florida. This is merely a description and is something that is meant to be changed as changes happen to the building. So that when we updated the form on 4-19-97, and that was in the new survey that you accepted, it's a much simpler form, but it's noted as an update, rather than the original one; if it had been a new site we would have marked original on it. Basically, the information is the same on it, but again, it's just a description of the property. It in no way says what are the most important architectural features. It in no way says anything but a legal, and giving very basic information, so that a Planning Department can say, oh, we have this many Addison Mizner's left, or we seem to have a cluster of buildings in this section of Town, so they can go on to the designation property.

RANDOLPH: Mrs. Day, before she leaves. Could we before she leaves give a brief history of your education and your background?

DAY: Yes. I have an undergraduate degree from Goucher College in Art History in Maryland, and I have a master's degree from Florida Atlantic University in Boca Raton, Florida, with honors, and I have been doing historic preservation consulting since 1989. I just finished a survey for the town of Key West that has the largest district in the State of Florida, and I've done historic preservation work throughout the State and in the Bahamas.

SMITH: And Mrs. Day, during the time you've been employed by the Town, you've been the consultant to the Landmarks Commission through all of their designation procedures? And the hearings, including this one, on the changes to El Sarmiento?

DAY: Yes I have. Yes. I was at that meeting.

SMITH: Thank you. Mr. Frank?

FRANK: Mrs. Smith, I believe it's relevant to add, and the Commission should understand too, that the Florida Master Site file forms, and right underneath them it says it's a site inventory form, those forms are done not only for landmarked houses, but they're done for every structure in Town. We have inventory forms on landmarks and unlandmarked property throughout Town, so the fact that this form appears doesn't mean that it has any historic significance whatsoever.

SMITH: Right. And we did see many of these forms and go through this additional information when we had the hearing on this house at the last meeting, before you went to Landmarks, and are now back appealing, not the Town Council decision, but the Landmarks' decision.

NATALE: At the last meeting it was expressly said that there was nothing going to talk about the architecture. So, that's why obviously we're here. It is our position, and I understand that there is an opposing position, but it seems to me logical that when we look at all of the documents that are contained in the records of the Town as it relates to this structure, as to saying what is the historical significance, what is the architectural significance, and we look at all of them, one may be able to make an argument that well, none of them are relevant to anything. Well, they were certainly put there for a reason, and they were certainly put there and they were articulated in their descriptions, and what the significance is for a reason. And I think that it is at best inappropriate to ignore them in their totality when you're talking about are we really preserving the historical integrity of a structure which, at least at the time, was recognized to be extremely unique, and extremely significant, and that as a result it would appear that the use of those superlatives would cause one to say that maybe this is something that we need to look at a little more carefully before. The only other thing that I think that I would - as far as would want to proffer - is that it was interesting to note that prior to commencing it was - there was a young lady who I believe is still present, who is able to look at this, and we said what's the difference between symmetrical and asymmetrical, and she was able to say that. And we said well, what do you think this building would look like if you made it the same on both sides? And she said, a warehouse.

SMITH: Really? And Mr Natale, I seem to remember that when you were talking about the use of a landmarked building, and I appreciate the expertise of Ms. Michele Klein, but when we were talking but the use of a landmarked building not too many years ago, you said we must bring these buildings in to the 21<sup>st</sup> century, and recognize they must be updated for the use of today, and that was another Joseph Urban building, Mar-a-Lago. Now, I didn't agree with you then, but this time I think this building should be moved into the 21<sup>st</sup> century. Ms. Day happened to mention Barbara Hoffstot, who was a very, very close friend of mine, and who really was the leader of the landmark preservation movement in Palm Beach. She was one of the founders of Preservation Foundation and brought Mr. Ziegler down from Pittsburgh, and she wrote the book on landmark, and that was back in like, 1973, I believe, and one of the things that Barbara most felt was most criminal and most heartbreaking to her was that people would come in and attempt to tear down landmarked houses instead of updating and

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rejuvenating. She said anything can be done with a great old house, and she would be a big proponent of this addition on the second floor with the young viable family coming in. As far as Clarke Avenue beach is concerned, this house is covered by a 15' seagrape hedge. I can drive by that hedge, and until they put in a construction entrance, you couldn't see the house from the road. I happen to know the house, I was a friend of the Arongos. But, you couldn't see it, and I think it's giving new life to an old lady, and I think that this is not a bad project. But, I'm willing to listen why you shouldn't do the part in the back.

NATALE: I understand, and if I may. As far as the Mar-a-Lago, what we were recommending there was not any architectural changes. In fact one of the things everyone agreed to was that house was, or estate, or whatever – I guess calling it a house is sort of an insult –and I don't mean that, but –

SMITH: Well, it was a house. In those days it was a house. It's a great house.

NATALE: But it was meticulously preserved, and everyone said that. What we were arguing there was just for an increase in the usage of it.

SMITH: I thought it wasn't being meticulously preserved. I thought that was one of the arguments – that the house was being abandoned and practically torn down, and as far as the architecture was concerned, somebody said Joseph Urban should have been shot. But that's when Mrs. Post used him. But, I think that Mar-a-Lago has been sprinkled and air conditioned and parts of it have been glassed in and parts of it have been glassed in and it's been brought very, very well into the 21<sup>st</sup> century, and it's a true showplace – probably the showplace of the Town, and I think that could happen to this house, under the same circumstances.

NATALE: Very well. I think that the – as far as Jim, is there anything you want to say about the back portion, that would be the south –

SMITH: You have to talk to use about the back because we don't know anything about that. And you want to show us a photograph of what the back looks like now, and you're going to do that?

PAINE: We don't have photographs of the back. We do have a plan that shows the proposed addition in the back. The Kosoys have a courtyard in this area. They have some views from their second floor here that would be interrupted by the second story addition. They – this was not discussed in our Council meeting previously because it does meet the Codes, but as an addition to a landmarked structure it was discussed at the Landmark Meeting. The basic position was that the openness and the views to the north that this courtyard currently enjoys will be eliminated by this addition. There was some concern by the Landmarks Commission –

SMITH: How big is the addition, and how many stories? I mean, I don't want to do your presentation for you, but you've got to tell us what it is you're talking about.

PAINE: It's a two-story addition. It links two non conforming two-story masses. And it in essence creates one large building. These two elements are very close.

SMITH: How big is the addition, please? Are you sure we don't have any pictures to show us? You're just showing us a teeny, tiny drawing. I really can't work from that.

PAINE: Okay, well –

NATALE: I think that's all that we have as far as – we don't have any photographs of that area.

SMITH: It's hard for us to approve – what I'm looking at is a teeny, tiny L-shaped thing on a black and white drawing. I don't know how big it is. I don't know if it's 10 feet or 100 feet or one-story or two-stories.

WYETT: Well, we have the architect here, why doesn't he tell us?

SMITH: Well, but I don't think that it's up to the architect to tell us. I think they're appealing the decision, so this is your presentation on the appeal, I believe.

McDONALD: Well, ya, that's true, except if we were to approve the – I mean to uphold the Landmarks Decision, we'd obviously still have to know what was supposed to go there, so –

SMITH: Yes. We have to see it. I'm not saying deny or uphold. I'm saying that you are appealing their approval. You have to show us what you want us to deny. That's part of your presentation, I think. Mr. Moore?

MOORE: And maybe this goes to what they're trying to say, Mr. Paine, but again, I've got to ask you under the format that you're appealing here tonight, what is the alleged inconsistency and nonconformity with the procedures or criteria set forth in the article that you're saying the Landmarks Commission erred on for this addition in the rear? What section? Now, you told us all of it for the other, so is it all of it for this one too, or –?

PAINE: No sir, it's not as much. Let me look back. Under Section 16.41 (a) for new construction, these criteria apply both to exterior alterations and new construction, number two: existing rhythm created by existing building masses and space between them should be preserved. This is some space between two existing masses that's being filled in to the detriment of our client, and that's in a nutshell, and I'm trying to be brief, but at the same time I don't want to fail to provide information that the Council needs.



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SMITH: No, I think you have to give it to us.

PAINE: Under the Town Code, that's our position Mr. Moore. Mrs. Smith, if I can provide any additional information I will, and I apologize that I don't have more graphics to depict the situation here at the courtyard.

WYETT: Well, I think I understand the fact that it's going to be a two-story building with a clay barreled roof, and having compatible windows with what's there, but I don't find – I understand your last position of connecting separate buildings – but, as far as view goes, you only have the view you pay for. The fact that the adjacent parties had a better view because of current conditions, I don't think is material. It's the same thing as somebody coming in here and saying a new house is going up and I can't see 190 degree angles.

PAINE: I respect our position.

SMITH: We just had that Mr. Wyett. You were here. We had that. We don't want a two-story house next to us.

PAINE: I respect your position, and I want to state briefly that our client's overall objection was to both this addition and this addition and the cumulative effect. And thus, both of the additions that were focused towards the south side of the lot close to our client's house came under scrutiny by our client and they were addressed really together at the Landmarks Meeting. The main problem that our clients' have is with the in-fill addition over the deck, and that's the one we've spent most of our time discussing, but they're both of concern.

McDONALD: Mr. Paine, this may help your case, I don't know, but it would seem to me as though you would be referring to number two of the Code, basically exterior alterations shall not effect the architectural quality or historical character of the building, and I think that would answer Mr. Moore' question as to what are you saying Landmarks didn't do properly in issuing their certificate of appropriateness, and that would seem to be where it might stem from. I'm not telling you that –

PAINE: I agree that's a general statement, but it's supportable.

SMITH: You're saying that the Landmarks Commission did not take into account the historic character of this property?

PAINE: I would add number two to the list of reasons under our objections to the second part of the addition. I would add number two.

WYETT: To the front section too – if that be true.

PAINE: That really applies to all and both. I believe that's a more general statement, but from a position of supporting an argument it's a good one to include.

SMITH: And is this the same argument you made before the Landmarks Commission, Mr. Paine?

PAINE: The one before the Landmarks Commission was a little more lengthy, and we addressed alternative designs, and –

SMITH: But basically the same?

PAINE: We tried to cut out some of it.

SMITH: And if I could ask, just as an aside, how long were you before the Landmarks Commission? I want to make sure they didn't give you short shrift.

PAINE: I would not indicate that they did. We were there, I'd say, approaching two hours – well over an hour.

SMITH: Okay. Two hours there, two hours here. Okay.

WYETT: Let me see if I understand this correctly. It's your contention, if I understood what you said to me at the beginning of the technicalities of the Statutes, that they – Landmarks failed to take into consideration the historical character of the building, and that the addition proposed, as good looking as it is, changes the nature of the building, and possibly makes it unrecognizable.

PAINE: I would agree with that statement.

WYETT: You know, that's to be debated here in the Council. I think that's really what you're saying to me in a nutshell. The question is, and I picked that up when you supplied us with the north side of the building. The original presentation of Mr. Smith just about duplicate this. On the south side he found Council objection, and made a balcony – small short balcony around it – maybe six feet, I think, or eight feet, I don't know what is was, but the visual way he did it or achieves partial restoration of the balcony still made it look more like this side of the house.

PAINE: Well, we agree with that position.

SMITH: With the balustrade. Right? There's a balustrade?

WYETT: Yes. Very little, I think.



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PAINE: We still have the same roof line and the same basic mass that echoes the north side. That's true.

SMITH: Can I just ask, is there – because I haven't seen the new plan – you didn't put it up – is there a balustrade on the proposal for the in-fill, to use your word, on the second floor?

PAINE: I believe there is now.

SMITH: And is there still a balustrade on the ground floor?

PAINE: Yes, ma'am.

SMITH: All right. So then one of the things you were concerned about, balustrade on the first floor, and balustrade on the second floor, is actually still in place?

PAINE: Partially.

SMITH: Well, an idea of a balustrade, not the same thing, but there's balustrade first and balustrade second, basically?

PAINE: Yes.

SMITH: Yes. All right. Thank you.

WYETT: There is a published book, and I tried to get a copy for this meeting, however, it's out of print. I own one, but I can't find it. It's available, and quite a few architects have it, and it features this house as the outstanding home in Palm Beach for historical preservation, and it's almost identical on that glossy paper cover – it's a pretty large book – it's about 18" by 15", and it features it and shows it. I assume what you selling to me is that we wouldn't recognize the book to the house after it's all done.

PAINE: Well, in terms of the front elevation, most significantly, yes. I believe I agree with that statement. But I've been trying to frame our argument to match the language in the Ordinance. But unrecognizable does not appear and I don't want to be overly dramatic, but I wouldn't argue the point with you Mr. Wyett.

WYETT: Well, I'm not trying to make brownie points here, but I'm just trying to understand just what this appeal is all about, because I think it's been a long time, certainly not in the last four years, but a long time before we've had an appeal of Landmarks, and we – it has to take pretty strong landmark here at Council to upset a Landmark decision.

PAINE: I recognize that precedent.

SMITH: You may be the first.

NATALE: If I may just make some – I don't know if there are questions –

SMITH: Oh, I'm sure there's going to be a little something.

NATALE: I'm sure there is. So, I guess it would be –

SMITH: Yes. No, I'm not being humorous, but you said that you would probably take an hour. Mr. Deziel said 3 minutes. I have an idea Mr. Deziel's going to take more than 3 minutes.

NATALE: I think that – I guess Mr. Paine would be available for cross examination, is that correct.

SMITH: Sure. But since you're the appellant, Mr. Natale, you get to go last.

NATALE: I understand, but I've finished with my questions of him.

SMITH: All right. Do you have any other witnesses, Mr. Natale?

NATALE: No other witnesses.

SMITH: All right. You're not calling Ms. Klein?

NATALE: No, I just proffer her testimony, although I think she would verify that she did say it looked like a warehouse.

SMITH: Well, I must say she stays awake longer than a lot of other people sitting in the audience at these meetings.

RANDOLPH: But, Mr. Natale, you're not resting now, you're just offering Mr. Paine for questioning.

NATALE: That's correct. I'm not resting. I'm just offering Mr. Paine.

SMITH: Right. He said that. I said he would come back and make the close.

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- RANDOLPH: Well, there's a distinction there. He does have the right to come back and make a close, but I'm just trying to say that he has not finished his first part of the case yet. He's just offering Mr. Paine for questions.
- DEZIEL: Mr. Randolph, would it be appropriate if I asked any questions that I have of Mr. Paine during my presentation?
- RANDOLPH: You can, but the normal procedure is when a person has been asked questions on direct for you to go ahead and cross, and then let Mr. Natale finish his case, and then you put your case on.
- SMITH: We are going to finish this by 11:00 P.M. The gavel goes down at 11:00 P.M.
- DEZIEL: I'd like to defer. Because I want to do mine in 3 minutes, and so I'll keep it all together.
- MOORE: Or before.
- SMITH: Well, certainly before, but definitely 11:00 P.M., no matter who is in mid-sentence.
- NATALE: As an attorney I've often learned that it's very helpful when the fact finders can tell you sort of where they see the issues and how we can directly address them. I think that it is clear that we have set forth one of the legal underpinnings in what we thing are the deficiencies in the Landmark and I think our basis is clearly on the documents on looking at the photographs as to why the proposal just really doesn't fit within the landmark criteria for the structure, and I think that Councilman Wyett, you've articulated probably better than I can. The only thing that I would like to say in looking at this particular proposal, and I said before you can preserve and you protect the integrity of this structure, and allow for progress, and to take this grand old lady and make her young and vibrant and flashy again. However, you don't have to destroy her appearances or the historical significance as to the dress and the manner of the times in which she was born. I am reminded of the words of Shakespeare, it was basically I think in King John when he said – you know, "to gild refined gold, to paint the Lilly, to add another hue into the rainbow, all with tapered light to seek out heaven's eye, to garnish is a wasteful and ridiculous excess." We are here about preserving integrity, historical significance, not only in beauty to the eye, but into the significance of the material, the times, it's so nice, it's really beautiful, you all know it, and these people can have an raise their family in a very beautiful house and a historical house, without trying to guild the Lilly. Thank you.
- SMITH: Thank you Mr. Natale. Mr. Deziel?
- DEZIEL: For the record, my name is Robert Deziel, and I represent Mr. and Mrs. –
- SMITH: I made a remark, Mr. Natale, about the people in Palm Beach – they guild the Lilly on a weekly basis, but I was talking on a personal basis, not to homes.
- ILYINSKY: Face lifts, she means.
- SMITH: I meant face lifts absolutely. Go ahead.
- DEZIEL: Okay. I represent Mr. and Mrs. David Koch, who are the owners of the property at 140-150 South Ocean Blvd., and the first thing I want to do is thank all of you for the dedication you've given in coming back here and hearing this case this evening. The second point I'd like to make is to me, and I mean this seriously, it is so disappointing that all of us had to come back here at 9:00 and hear the garbage that we've listened to for the last one hour. And the fact that their clients have to hear – I think it's great that we have a young woman in the audience and has a chance to witness something like this, but the fact that we're hearing Shakespeare, and the architectural opinion of that young woman, and the fact that at no time whatsoever did the appellants come even close to prevailing on the issues they pointed out in their letter, and in fact, half of me tells me that I should just rest my case, because I think it's so clear that they haven't even come close. All they did this evening was, number one, go through a document, and Mr. Wyett and Mr. Shaw really picked up on this, that described the characteristics of this structure, and then it was Mr Natale that used the word "architectural significance" and we used the word "significance" so many times. Well, I looked at the sheet he referred to architectural significance – other than the title, the word "significance" is only referred to one time, and here's what it says: the significance of this structure is derived from the obvious quality of both design and construction from the physical relationship and associations which the structure shares with the fabric of Palm Beach. All that tells us, and I think we all know how a house gets landmarked in Palm Beach. It's a beautiful structure and we want it to be here forever. And then the report goes to tell us what the structure consisted of, but as with all landmarks in Town, they change, and these people would have you believe that you look at a report to where it's a fill in the blank as to what the characteristics are, and those blanks have to stay filled in with the words that were filled in the day it was designated a landmark. That was what they would have you believe. What I'd like to do, and this is basically the summary of my presentation today, is just ask Mr. Paine a couple of questions about his qualifications to give opinions today.
- WYETT: Whoa, whoa, whoa. You did that to us last month, and it went on and on. This is not a court of law. This is a hearing.
- SMITH: Yes it is, Mr. Wyett. It is a court of law. It's quasi –
- DEZIEL: Mr. Wyett, if this Council wants to acknowledge that he's not qualified to give the opinions that he gave, I'll rest and I have nothing to say, but we brought the premier architectural –
- ILYINSKY: Robert, I love, you, but is he any less qualified than you are?
- DEZIEL: Pardon me?

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ILYINSKY: Is he less qualified than you are? Are you an architect?

DEZIEL: Mayor, I'm not opining on the merits of this case. I brought six professionals with me. I'm not comparing my qualifications with his. I'm comparing –

RANDOLPH: Let me interrupt. He's got the right to do it.

DEZIEL: Mayor, the only point I'm trying to make is that we have Dr. Curl –

SMITH: We're not trying to stop the process, and we realize it is quasi-judicial, and we realize there is litigation in this case. We've got a court reporter. We are not denying you the opportunity to question Mr. Paine. Go ahead, Mr. Deziel.

DEZIEL: I'll keep it simple. Here's what I'm going to do. I'm just going to recite the professionals and the qualifications that they have that have presented the case on our behalf to the Landmarks Commission. Number one: Dr. Curl, who is the preeminent authority in Addison Mizner history and in his architecture; was a project consultant with us. Don Kino, who has a master's in historic preservation presented the case to the Landmarks Commission. Jeff Smith collaborated in the design and was the lead design professional. In addition the Landmarks Commission that has at least four architectural professionals that have been trained and practiced architectural historic preservation made the decision to grant the approval. You've heard about the qualifications of your professional, Ms. Jane Day, today, who also at the Landmarks Commission, I believe, this evening, if she hasn't already said it, stated that the project as presented met all the criteria of the Town of Palm Beach. In addition, Gene Pandula, who has been practicing in the Town for over 20 years, presided as the Chairman when this case was heard by the Architectural Commission and in his opinion as the Chairman of the Commission at the time, the case met all the criteria. I know you want to go home. If you have any questions for anybody on our team, we're happy to answer them, but –

SMITH: All right. Mr. Deziel, do you have any questions for Mr. Paine?

DEZIEL: No.

RANDOLPH: Mr. Deziel. You said, and you believe she stated tonight, and I don't think she did in referring to –

DEZIEL: No. I didn't say that. I said –

RANDOLPH: No, no, wait, I'm –

SMITH: I think we should hear from Ms. Day.

RANDOLPH: You indicated in your presentation that you thought that Mrs. Day said tonight that the project met the criteria of the Ordinance. She did not. You might want to follow up on that.

DEZIEL: Okay. Thank you. The only witness I will call is Ms. Jane Day, the Town's historic preservation consultant. I'm not going to reiterate –

SMITH: If you give her the microphone please, Mr. Deziel. And then you can discuss the testimony before the Landmarks Commission.

DEZIEL: Would you state your full name for the record, please?

SMITH: Robert, would you take the portable mic, Robert? Thanks.

DAY: My name is Jane Day, and I'm the Landmark Preservation Consultant to the Town of Palm Beach, and I was at the Landmark hearing last month when this was approved by the Landmarks Commission.

DEZIEL: Did you give testimony to Landmarks Preservation Commission hearing when this project was discussed?

DAY: Yes, I did.

DEZIEL: Did your testimony include an opinion that the project as presented met the criteria for approval for the modifications as presented?

DAY: I haven't reviewed my testimony because I thought that Dr. Curl was going to be here to testify to this, but as I recall, I did say that I approved of the project as I recall looking at all of the documents, both with Town staff and at the Landmarks Commission. I approved of them and feel that they meet the criteria of the Town of Palm Beach. Furthermore, because it was brought up earlier in this meeting about the Department of the Interior standards, that was brought up in the Landmarks Commission and I believe that I stated that it met the criteria of the Secretary of the Interior, which is another standard that we go by that is above and beyond, really, our Town ordinance. I would just really like to say to you, number ten of that criteria that says new additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future the essential form and integrity of the historic property and its environment would be unimpaired. If these additions were taken away down the line, they are leaving intact both the Addison Mizner portion and the Joseph Urban addition to the structure, and the house would be like it was in the 1920's, but with the updates that the family needs to live in it now, and that was the essence of my testimony at the Landmarks meeting.

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DEZIEL: Okay, thank you. The only point of clarification I would like to make is to help Mr. Frank out. At the Landmarks Commission, the standards were discussed, but we had the same issue occur there. They were brought up by the appellants, and it was pointed out to them that they were irrelevant at that hearing also. So that's how they came up and were dealt with at that hearing, just to let you know. That's all I have to present.

NATALE: Madam President, I just have one or two quick questions for Ms. Day, and I'm not going to be long.

SMITH: Take your time, Mr. Natale, we're not rushing you.

NATALE: Ms. Day, would you agree that when it comes to the type of landmark decisions that we're talking about, the aesthetic interpretation is something which really enters into the decision?

DAY: Yes.

NATALE: And would you also agree, and I'd like to show you the, if I can, the photograph of the house El Sarmiento, as it presently exists.

DAY: I've seen the photograph. I know what it looks like.

NATALE: Okay. Given what it looks like, if it was maintained, that is, as it's presently seen here, right?

DAY: Um-hm.

NATALE: Do you believe that it is possible that there could be an addition placed on this structure that would provide for the additional living space that would not in any way impede or destroy the front facade?

DAY: I think that as I understand that it happened, the property owner went for a variance, then that application came back to Landmarks, and my Landmarks Commission approved unanimously the aesthetics that the property owner and the architect wanted to do. Are there other design solutions? Absolutely, for all of these houses, but I don't think that that's, in my opinion, what the problem is here. What you're asking me is if they put that addition on does it destroy the architectural integrity – I don't believe that it does.

NATALE: We'll get to that point. What I'm asking you is that you would agree then that this could be maintained, correct?

DAY: Oh, it's absolutely possible to maintain this.

NATALE: And you would agree that the irregular facade that we have on the front, and the fact that we have the ventilation and the light of the original design by Urban and Mizner, that that is historically significant and architecturally significant?

DAY: Well, I think that there are two things here. You could take the house back to Mizner's original and remove the Urban design, because the Urban design, that extension to the south, changed the way the light was originally let into the house by Addison Mizner. So I think you're nitpicking at that.

NATALE: Well, what I'm getting at – I don't mean to say nitpicking, because we're talking about back in 1927, I believe, when this was put on. And I think that's what the documents show. I'm not trying to nitpick here, what I'm just trying to say is that part of the historical significance of these old structures is that they were designed in order to be consistent with the climate here and the technology that they had, or the limitations in the technology, and that as far as keeping a landmark as something that people could see and say why was it designed, why does it look like that, well you can say that the reason why it's designed and look like that is because back then they didn't have air conditioning, back then they didn't have a lot of the technological things we have now, so that's why they designed it, that's why they had the cross ventilation. And all I'm asking you is if it were maintained this way, there wouldn't be anything that would inconsistent about maintaining it as the landmark code and the landmark provisions provide.

DAY: No, they could maintain it that way.

NATALE: And there's nothing which cries out that this needs to be changed in order to maintain the architectural integrity of it, is there?

DAY: Would you repeat that?

NATALE: There is nothing which cries out which says in order to maintain the historical significance and architectural integrity of this structure, you must put this addition over here, is there?

DAY: No.

NATALE: No further questions, thank you.

SMITH: All right. But, by the same token, Ms. Day, is there any reason to say that the architectural integrity would be destroyed if you did put the addition on?

DAY: No.

SMITH: No. Thank you.

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McDONALD: I have a few questions of Ms. Day. You've testified that there could be alternative design solutions to this. Were any other solutions offered to the Landmarks when this was considered?

DAY: Yes, and they rejected them in favor of this plan that they approved.

McDONALD: Thank you.

SMITH: Other questions, Mr McDonald:

McDONALD: No, thanks.

WYETT: It seems that the issue is not whether you can make a change, but where. The owner would like to have it in front, obviously for ocean views, an putting it in another location, which is often done in landmarked homes in the back, where there is almost never any contention, is where they don't want the thing to be, but from which rules does maintenance of the architectural integrity of the original landmarking were allowing what I call a major change, because I don't think the house will ever look the same, and putting it where the owner wants it. So, it's a question of property rights versus landmark rights versus whatever have you, and I think you can probably make a good case either way, and I think you've done a good job of that. This is probably one of the most significant houses in Palm Beach. Let me refer you to a couple of changes. Recently, about three or four years ago, I think, what was then known as the Woolworth Building, Woolworth/Donahue Building, which is now the Paxton Estate, a very nice addition went up and they copied everything from the adjacent structure, and after they finished and put the landscaping in and a year went by, you couldn't tell that wasn't part of the original building. It didn't change it. It enhanced it. Somebody tell me if I'm right or wrong, but just from recollection I remember reading in the Shiney Sheet many years ago that Mr. Bob Montgomery made a lot of changes to the property he has on South Ocean Boulevard, and you de-landmarked the house. Tell me if I'm right or wrong about that.

DAY: I don't remember that.

FRANK: That's correct.

WYETT: And because he had made enough changes that Landmarks felt that it was no longer a landmarked house. Today I don't think he'd get away with it. I think we'd probably make him rip off everything he did, but somehow Landmarks was more amicable than they might be today. And then the Kennedy house which came up for landmarking, we said, and it's almost moving on five years now, it's got a year or two to go, through the changes that Landmarks approves and five years we'll look at the house and see if you want to landmark it again, and the Castles did a wonderful job of creating the Mizner look, or the Urban look, or whoever designed that house, and vastly improved it. I don't know whether we're improving this house. I don't know whether making it symmetrical identifies what was originally intended. There is evidence that that Urban section of the building was significant to the total landmarking. It's tied together in testimony back and forth, and if it was, and I still haven't made up my mind whether it is or it isn't, I read from our planning, page 16-41, 16-42, as provided: exterior alterations shall not affect the architectural quality or the historical character of the building.

DAY: Well, maybe I should define that word "irregular" a little bit, and how it's applied in the Florida Master Site file form, although I told you earlier that's basically a planning document, and it's descriptive. The building would still be listed as irregular to update even with this addition on it, because looking at the overall footprint of the building, which is the U-shape, and the porte cochere that's coming out and the additions of the wings on the back, so it would still be classified under the State description of these things, which are very narrow, because they're trying to computerize them in very narrow, so many spots, to this computer form. It would be called irregular. If I'm looking for a regular house, I'm looking for a square, a rectangle, something that doesn't have any bumps and grinds out on any of the facade, and this house would still be, in my mind, irregular, even with those additions.

WYETT: Do you find any old Mizner type homes or Urban homes, you know, any of the famous group, that were perfectly square or rectangular?

DAY: No, but if you look on Pendleton Avenue you'll find a few that were, and they were done by some of our major architects. It's just a different form of architecture.

WYETT: No, I was referring to this particular group, and it's a large historic home.

DAY: No, most of the Mediterranean—

SMITH: Well, the Wrightsman house was certainly absolutely flat and rectangular on the ocean. That house happened to be torn down before it was landmarked, but it was absolutely flat on the east facade, extending for about 300', and it was a truly wonderful house, and it was torn down. I don't want to interrupt you, Mr Wyett, but I think while Ms Day is speaking, since we have to remind ourselves that this is an appeal of the Landmarks Commission decision, I think we should have in the record the names of the Landmarks Commissioners and their qualifications, because we're talking about a very qualified group, more qualified perhaps in the landmark procedure, than the Town Council. So I'd like a list of the Landmarks Commission members to be entered into the record too, please.

WYETT: And their backgrounds.

SMITH: And their backgrounds.

DAY: I can't do that off the top of my head.



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SMITH: No, I'm just asking that it be entered, because we have to remember Ms. Day is not a witness for the prosecution or anybody, she is a consultant to the Town's Landmarks Commission and she does stay impartial during her presentations. She never takes a position.

DAY: And lots of time I disagree in the landmarks about these additions.

SMITH: And lots of time we put you under the gun, Ms. Day, and we disagree with you. This was a case that in the case of the variance we did not disagree, and Landmarks Commission did not disagree, so I think it should all be entered into the record.

WYETT: I just also want to read from the Secretary of Interior's standards, as long as they were sometimes used in reference to landmark. Item two: the historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize that property shall be avoided. And you've got some elements there of change and alteration. The balustrade as put on with columns above it to support the roof on the plan that's not in front of us, but I remember it very vividly is a change. Right there. I mean, I don't want to be reversed on this. So you understand where I'm coming from. We have not identified with this particular – if it's a Council issue, whether we did the proper variance, but is this – I want to know from the attorney, is this appealable if – again?

RANDOLPH: Oh sure, this could go to Circuit Court.

SMITH: Everything is appealable.

WYETT: Right. So I don't want to make any obvious errors to have the Town to incur a defense position if those errors would make us lose the case.

DAY: Well, my understanding is the balustrade is basically being kept the way it is now, and just the facade of the upstairs addition is being moved back to keep that feature, and that's–

WYETT: You had the balustrade. You had the roof coming out to the balustrade, and what's supporting the roof, if not columns on top of the balustrade, or in between it?

DEZIEL: The balustrades are in between the columns. My Wyett can I tell you something? There's going to be a lot of changes on this property, like other landmarked homes that we have in Town, and I'd like to ask Mr. Randolph a question, because I'd really like to get us to focus on the real issue here, and that is that the issue here is not whether or not we can make changes, and I'm asking this as a question. Isn't the issue whether or not the changes meet the criteria set forth in the landmark code provision?

RANDOLPH: Correct.

DEZIEL: Okay. So if that's the case the discussion shouldn't be on the changes whatsoever. The issue is do those changes meet the criteria of the code, okay? I might be wrong, but I have not heard one scintilla of evidence or a statement from the Council that we didn't meet the requirements of the code. I mean, to me, if we didn't meet the requirements of the code the conversation would be surrounded about the quality of the changes. They'd be bringing samples of materials and say we're not matching the existing landmark quality. They would be bringing drawings and say that we're not meshing with the existing. That's not the case. They haven't even talked about the details or the quality.

WYETT: But on 16-42, it states, item two: exterior alterations shall not affect the architectural quality, or (I emphasize) historical character of the building.

DEZIEL: Okay, Mr Wyett, I haven't heard. Okay, break them apart. I think there's two issues there, right?

WYETT: Well, it's really one.

DEZIEL: Okay, architectural quality, is that the first one?

WYETT: No, but the real issue there is the historical character.

DEZIEL: Okay. Let me help you there, if this helps at all. Number one, the architectural quality, I don't think we've heard one piece of conversation about that, that the quality of the architecture. We've heard somebody say they don't like masses and open space, and they've been very vague and I don't think there's been any detailed conversation whatsoever. As for the architectural character–

McDONALD: Historical character.

DEZIEL: I'm sorry, Mr. McDonald. It states right in this report that the appellant submitted, and it talks about architectural significance, and I'm presuming that character and significance are interchangeable, and if they are not, straighten me out, but this house wasn't landmarked because it had that deck up there. This house wasn't landmarked because it had some balustrades. You've got to be kidding me if you would even think that you would propose that. This house was landmarked, and let me quote the report verbatim: "The significance of the structure is derived from the obvious quality of both design and construction, from the physical relationship and associations which the structure shares with the fabric of Palm Beach." Mr. Wyett, you know, as well as I do, that landmarking a home, you look at the quality of the architecture, and it's of such a standard that it's something we want to keep around for a long time. We don't walk around and say, like Mr Shaw said, I like the turrets, so let's landmark it; I like the balcony so let's landmark it – that's not what happens.



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- WYETT: Having sat through a number of these things, it's always the architectural significance of the building. We only have one, two, or three examples, and they should be preserved, and that's applying to a house that you renovated and –
- DEZIEL: Mr. Wyett, are you proposing that this house was landmarked because of a deck?
- WYETT: No, I'm saying that the deck is included, perhaps.
- DEZIEL: No. If you read the report, the deck is listed as a characteristic. It also talks about other characteristics. It says there's balustrades. This is simply an objective description of the building materials and layout that existed at the time it was landmarked.
- WYETT: Let me put it a different way. At the time – landmarking is roughly 20 years ago — is that correct? '79 - current or a little older?
- DEZIEL: I take your statement for a fact.
- WYETT: I'm just taking it from the conversation tonight. There are many houses of equal quality that were never landmarked before they got torn down. You mentioned the Wrightsman house, which caused a big uproar in this Town, and we changed a lot of rules and regulations so you couldn't knock something down so fast, but in the course of choosing houses, and landmarks is not physically limited to a certain number, but they certainly wouldn't bring up 50 at one time, so this house was chosen early to be landmarked, to be among the most significant houses they wanted to protect and save first. It wasn't put in the Wrightsman category – we'll get to it later. So, there is evidence in my mind that the total image of the house was important, and that this house was so different than all the other houses that that had to enter into it, and I'm only surmising this I don't know this.
- DEZIEL: I know, but I think you're interjecting something that doesn't exist on the record. I understand that that's your opinion and your entitled to it, but that's not in the report. That's not in the report at all.
- SMITH: You got to the Landmarks book, I'm not correcting you, Mr Wyett, but we dealt with this for a long, long time. There were hundreds of houses that they looked at in Town, and this was one of them. The Wrightsman house missed; several others were picked to be landmarked, and the owners vigorously objected, and they were not landmarked. This owner did not, along with the Phillips house on South Ocean Boulevard, and the McDougall house on South Ocean Boulevard, and all the properties in Bingham and Blossom and Casa Apava, which we added thousands and thousands of feet to as we let them modify that. And Casa Apava looks visibly different today. This house is very prominent on its site because it's a big house sitting right there on the corner. Estee Lauder's house was named to be landmarked, and the lawyers' were in here for three months protesting that, and it was not landmarked. So, they finally agreed to it, and then they did the house next door. But, we went through protests on this, but this was not honestly picked as one of the three prime examples. It was maybe one of the hundred houses – the Dodge Estate up by me, Placa Riento, – what was the other estate – Valley O'Brien's – you know, we had a lot of houses here, and this house happily has remained and fortunately has a new owner. Mr. Arongo didn't do a lot to it. I don't know who added the trellis to the end of the balcony there, but I think that's hideous. Certainly nobody landmarked that. It must of been somebody's maid. And, but –
- WYETT: Careful, maids are hard to find.
- SMITH: Ya, I know it's hard to find. Somebody's live in maid. You can't find a live in today. But this house is before us with what I really have said, I feel is not a big, massive thing. We're not adding three wings to it, and the changes that they don't need our permission for are approved, like a whole new entrance, which is going to make it better. The entrance is on the side, the service entrance is going to be on the rear. I think it's being made into a very viable, livable house, which hopefully will be lived in for a long time by a family with children, which I think is nice, and I think that the beam height was the hardship. I said that all along, and I feel even though the balustrade is staying and the lower balustrade there's going to be a room above it, I don't feel it's destroying the architectural integrity of the house. Mr. Natale?
- NATALE: This is clearly something which I think that people will have a differing opinion on, and I think this is one of those areas where you need to look at what is the intent of landmarking, what was the totality of the intent as to what was going on, and what makes it in fact significant. I think that your own manual basically says on the Mediterranean Revival that asymmetrical facades are excellent examples, the Everglades Club, Via Mizner, and Phipps Plaza. I think that where you're at, to be quite frank, is the following: you've heard what the – basically our position is, and why we think it doesn't meet the criteria, because we think historically and architecturally it does violate that, and it violates the provisions that are set forth in the code that says that you shouldn't do it. To be quite frank, I think that, you know, that what has been said by both sides is – I think clearly airs the issue, and it's really time for you all to decide and to make your vote, and I don't want to sound presumptuous by trying to push your vote, but I think that's really what it is.
- SMITH: We're going to hear from Mr. McDonald and Mrs. Shaw, but we're going back still to your appealing that the Landmarks Commission made a mistake. It's not whether or not this house should have been landmarked.
- NATALE: Absolutely. I think no doubt in – I think that they made a very serious mistake.
- MCDONALD: I have one question of Mr. Deziel. Actually I just wanted him to read that report again, and then I have a couple of questions of Mrs. Day. Would you read that again, Mr. Deziel? When it was landmarked, you read, I think, a couple of sentences on why it was landmarked.
- DEZIEL: The significance of this structure is derived from the obvious quality of both design and construction, from the physical

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relationship and associations which the structure shares with the fabric of Palm Beach, and then it reads on – it talks about the frontage of the house, and so on. And if I could point out, I think I made a mistake to Mr. Wyett, this is the page that talks about the architectural significance – I may be missing it, but I don't see any reference to a deck or balustrades in there whatsoever. I see that global, sort of statement that talks about the quality of the architecture.

McDONALD: Okay. What I was looking for was the design, because obviously that was one of the things, that whoever landmarked it thought the design was important. Mrs. Day on the Secretary of the Interior Standards, number two, which we've been discussing, there's a statement there that says alterations in features and spaces that characterize the property shall be avoided, and in the law shall not means must. Mrs. Day –

SMITH: Mr. McDonald, I've got to tell you, I can't hear you.

McDONALD: I'm sorry.

DEZIEL: Mr. McDonald. Can I have some commentary. Those provisions don't even apply to what we're talking about.

RANDOLPH: No, he's asking a question of Mrs. Day right now.

McDONALD: Yes. She discussed them in her testimony, so I'm just asking.

DEZIEL: Only because they were brought up by the appellant.

RANDOLPH: Well, that's argument. He can ask these questions and get answers.

McDONALD: Do you need me to repeat that, Mrs. Day, or did you hear that.

DAY: No, I've got it here in front of me.

McDONALD: I'm just. In your opinion, since that guideline states that it shall be avoided, why would the Landmarks Commission ignore that particular direction?

SMITH: You're asking her to guess?

McDONALD: No, no, she's testified to this, and she's the expert. She's testifying as an expert, so I'm asking her a question based on her testimony.

DAY: I can't testify to what was going on in the Landmarks Commissioners minds when they did that. They were told that the Department of the Interior Standards would apply in this case, because the property owner may go forward for a tax abatement project, which must be announced prior to any of these big renovations. They have to look at it on a double standard, part ordinance, and Department of Interior. So that it may or may not qualify later on down the line. I believe that this statement – I've seen it used other times before – it doesn't never to, it says should be avoided. Sometimes it's impossible to avoid removing certain portions of the building, and I believe that in this case you're talking about removing negative space from the property. They decided that it was okay to do the fill-in in those negative spaces between the two service areas to the rear, and to the southeast corner of the property because they understood the presentation as Mr. Kino gave it about how that was livable for the family. He talked about the master suite that was going to be there, and that sort of thing, and the Landmarks Commissioners decided that that was okay and met these standards. They are subjective in many different ways and can be interpreted in many different ways.

McDONALD: Okay, so you don't know whether the Commission generally does interpret this as shall, meaning must?

DAY: No, they do not. I have yet to see since 1992 any musts in a landmark commission. I think that the flexibility of our ordinance and how this group of commissioners approach every project is its strength.

SMITH: Wait, Mr Wyett, everybody else is going to speak too.

ILYINSKY: Ms. Day, I'm just going to ask. I'm going to be the devil's advocate for a minute, and I don't want the lawyers to jump and down, that I'm not giving away the way I'm going to go if I do have to vote, but as you know, I live in Maurice Fatio's original house, which is very landmarked. Now the Landmarks Commission is telling me that I don't have to go anywhere; that I can just change the entire looks of that house so that one of my children will come back ten years from now, and say Dad, this isn't the house you originally bought!

DAY: No, I think that the Landmarks Commission is telling – and I can't recall your house at the moment –

ILYINSKY: It's a little bigger than this one, but not much actually. No –

SMITH: In his dreams.

DAY: In my opinion, I think that these additions do not take away from the integrity of this architecture. I think that they could be removed down the line and one of the strengths of the Town of Palm Beach is not only the flexibility within this ordinance and the way it is interpreted, but also that our Building Department is very good about retaining the plans. It is one of the few places that I've worked in Florida that I can go back and on a microfiche pull up an original plan, so that, yes, you could, with a good contemporary architect, go back to any of these original designs, and make it a true restoration, rather than a

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rehabilitation, and I think that that's what this is doing here – this is rehabilitating a structure for 1999, and it's –

ILYINSKY: Would that be true of the outside? Notre Dame? Buckingham Palace? The Whitehouse?

DAY: Well, yes, I think that you can add to those buildings, and in fact, in the National Gallery there is a wonderful (unintelligible) addition to it that works quite well that's totally different architecture, but the Department of the Interior standards were maintained because you can differentiate from the original neoclassical design and the new 20<sup>th</sup> century design, and the public reads it that way. Yes, I think that – I like to say when I lecture, building is a verb as well as a noun. You've got to make this stuff work.

McDONALD: My second question, Mrs. Day, I did say I had two questions. My second question is number five on the Interior standards, which is distinctive features, and it would be my opinion that as you look at this house from the landmarking standpoint at the time it was landmarked that you looked at it and you saw what you would consider distinctive features, and you said okay, we're going to landmark it based on the distinctive features that it has, and number five says that they shall be preserved – those distinctive features. So, I'm – how what was that reconciled at the Landmarks hearing?

DAY: Well, I think that the distinctive features are being preserved. The front facade is staying as it is, they're adding another addition to it that could later be removed; they're keeping the arched windows and the fenestration on the first floor.

McDONALD: Let's specifically deal with the second floor – the southeast portion.

(At this time a short break was taken)

I think that what you're saying– actually your answer to both of my questions is that this process is dramatically subjective. Is that an accurate statement?

DAY: Yes.

McDONALD: So that any reasonable person can agree or not agree on this, and I think that we rarely get to become involved with the architectural part of it. We're usually dealing with a hardship.

DAY: This is my first appeal, I believe, since I came to work here in '92.

SMITH: This is the first appeal that I know of, from Landmarks.

McDONALD: So this is our rare opportunity to get involved with the architectural part of it, and so my feeling, and this is my opinion, and since it's so subjective, my opinion basically is it was landmarked the way that it looks, and it doesn't mean you can never make changes, but basically we loved this building, we landmarked it that way, and my feeling is that anything that you would do to change the exterior east facade would not be in keeping with what the intent was, in my opinion, so that's it.

DAY: Well, I think that that's kind of dangerous, because I think that we have a process that has been adopted by the Town of Palm Beach, where your experts sit on a Landmarks Commission, and with some advice from staff, they make these decisions as they see all of the evidence presented, and I believe that the attorneys already did say tonight that they presented double this amount of evidence, and someone from Mr. Smith's office also presented how the plan worked internally, so that the decision making could be done by those Landmark Commissioners.

McDONALD: I don't disagree, but what we've all agreed on now is that it's very subjective, and I believe, as the past owner of two historic buildings in this country, that my subjective value is just as good as anyone on the Landmarks Commission.

DAY: Well, and see that's right, but let me just make one more point, that brings me back to number ten of the Department standards, that says that if it is an addition that can be removed in the future, you have served the process by letting the house live and breathe, and it still could be taken back if a purist buys it down the road, and wants to restore it. You are not removing large wings of this house.

McDONALD: Is that a correct statement– See, I don't know – I know what the changes are going to look like, but from a structural standpoint I don't know if these changes –

DAY: Oh no, they're not taking things away, they are adding things to.

McDONALD: No, but the part above that. Is there any structural changes being made when they add this room onto the second floor?

DAY: I'm not an architect, so I don't know, but I think that the intent of the architecture as I recall it from the Landmarks Commission was to save the Joseph Urban ballroom, to keep the height of the room the same way, and to leave that so that it would always be intact, and still add on living space for the present owners.

McDONALD: All right. So you're saying that structurally this could be returned to its purist.

DAY: Anybody. Because we have the plans. You could go back to this. If a Mizner purist came and got permission from the Town he could take off the Urban ballroom, which Landmarks may or may not give at some future date?

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McDONALD: Well, but the Urban ballroom was there when it was landmarked, so I'm not saying take it back to Mizner, when it was landmarked was what it was.

DAY: Well, right, but all I'm saying to you is someone may want to do that a hundred years from now, because we re-look at things.

WYETT: Let's not speculate on a hundred years from today.

SMITH: All right. If I could stop.

McDONALD: I'm finished. Thank you.

SMITH: We don't want to spend the last ten minutes arguing a point because --

SHAW: I can do mine in five, because I know we have to be out of here. What concerns me, Mr. Natale, in your application, or I guess it's your objection to this, is that there were eight items that were brought forward to Landmarks, two of them, in addition to this fill-in addition, I think are substantive to the landmark feature. I think that the new entrance loggia and motorcourt is a major structure and change in the way the property is received and used. I think the enclosure of the existing pool loggia drastically alters the interior courtyards, and yet the only thing you're objecting to are those items that seem to be visible to a neighbor who is objecting. So the purity of your objection to the sanctity and preservation of the landmarked structure seems to be biased, and that I find a flaw in the point of an objection, and with every one of these points, carefully detailed by Landmarks, and they went through them point by point without looking at who gained and who lost, but purely on the preservation of the property, that I don't think is --

NATALE: Councilman, let me respond. We are not taking a purist like can't change anything, no way, no how. We all know that would be a foolish position to take, and it isn't even a proper legal position to take. So the fact that what we are complaining about. We are complaining about what we think are the most significant, the most dramatic, and sure there are changes and there are other changes that are being made, and we don't object to those. I don't think that that diminishes the fact that the most important thing when we have a photograph of this building, and we hallmark this as one of the great buildings that we have here, that is the image that's portrayed. That is what has been presented for years, and that's what we want to preserve. We're not taking a selective approach. We're saying this is the most significant. If I was taking a purist approach, then you would be attacking me for saying, my God, Mr. Natale, you're saying under no way, no how, nothing can be done to change? Absolutely not, sir. We are saying this is the most significant. This is the most dramatic, and this is the most devastating to the historical and architectural significance of the structure.

SHAW: I think when you change the front entrance of a house from one side to another and re-orient the entire way the house is perceived by entering and leaving the house, that, to me, is a major change, and I don't think that because your client, who feels that they are being damaged by this from some viewpoint or some other issues, whatever they may be, that the only issues that you're picking on are those that they actually see, and so, I just don't feel that this is the appropriate way. I think it's a biased appeal, and I feel that due process has been done tonight. I think due process was done through the Landmark process and in the hearings. We've got copies of the minutes of everything that was said, and I feel that what they did was correct, and what I'm obviously leading up to is a motion to affirm the decision of Landmarks on the eight points regardless of the fact you only picked a few, that they followed the letter of the code; they followed the philosophy of the code, and the spirit of that code, and I feel that what they did was correct.

SMITH: All right, is there a second?

WYETT: Mrs. Smith, can I just make a comment?

SMITH: No, not until I pass the gavel and second the motion and make the statement that I have a feeling the whole argument here tonight was that Landmarks did not look into the architectural integrity of the house and the historical integrity of this house, however, if the proposal was to demolish the southeast wing of the house, I don't think your clients would be here objecting. I think they would be ecstatic.

NATALE: Disagree.

SMITH: You may disagree, but their whole thing has been to the view -- or view of the ocean, I mean, that's really what we heard at the last meeting.

NATALE: That's why we're talking about two separate issues here, and we made it clear at the last meeting we're talking two separate issues here, and I really think that if we had come in here and said we object to everything, I don't think that would change anyone's opinion.

SMITH: But that's not part of the record, Mr. Natale. We're here hearing the appeal of Landmarks, and we understand you didn't object to everything, just to these two. Mr. Wyett?

WYETT: I have to go back to Jane Day's statement where she talks about the intent of the words "shall be avoided" and she says that doesn't mandate anything, and she disagrees that "shall" is interchangeable with will or must, so I'm going to quote you the Ten Commandments: Thou shall not kill. Shall. Thou will honor your mother and father. And then you go on and on. So, I think the terms are interchangeable, and that shouldn't be part of an argument here. The height of this ballroom, whether we allow the second story or don't, is not going to be changed. No Landmark Commission in the nation would allow a magnificent ballroom of this nature to be changed. So, it's not a matter of saying lower the height of the ballroom to get the 7' we're missing. What it really comes down to is whether we think Landmarks took all things into consideration, including

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whether or not this addition the family claims they need, and which I don't debate, is proper in the front, which would change somewhat the nature of the house, or better located to the rear as most significant changes to landmarks have been as far as I've noticed. Where I've seen them on the front, they didn't change the character of the house one iota. But, there is question. I assume regardless of the decision we have here, the loser is going to appeal this, and this may need to go to a higher level, but I also want to remind anybody who doesn't think you have the right to appeal is there is no provision in landmarking saying thou shall not appeal. Thank you.

SMITH: It's in the Ordinance any interested party can appeal, which is the reason that you're here tonight. All right. Mr. Moore, is there anything you want to add?

MOORE: Only to remind the Town Council, and I can pretty well see where this is going, but that the criteria that the Landmarks Commission actually uses to grant a certificate of appropriateness does not include the standards of the Federal Government. It's used only for tax abatement, and it is not part of the criteria found that they used. So, I wanted that made very clear on the record.

SMITH: Right. We're not involved in the tax abatement procedure tonight. We're merely hearing the appeal.

FRANK: And the Landmarks Commission did not make any rulings on that.

SMITH: Right.

McDONALD: Then I have a point of clarification, because apparently that issue was argued at Landmarks?

MOORE: It was argued by the opponents, Mr. Natale – argued that point as not meeting those standards, but it is not a requirement that the Commission review these plans per that standard, if, in fact, a certificate of appropriateness is to be granted. The only issue and the only place that those standards come into play is if this particular applicant wanted to apply for a tax credit.

McDONALD: Well, did the applicant make any mention of wanting to do that?

MOORE: Yes.

RANDOLPH: Yes, and that's the reason these came into play, so that was –

FRANK: But the point is there's going to be a process later on where there's going to be a review to see if it meets those standards or not, but that wasn't the point of this hearing.

McDONALD: Yes, but it was considered.

MOORE: They announce it at this meeting, and perhaps we didn't make that clear, and I apologize for that. They are compelled to announce their intentions to file for – at the time they're applying for a certificate of appropriateness. Under the Statutes that allow for the tax abatement program, they are required – the rules state they must announce it. Whether they actually comply with that and are entitled to it are two different items. They are looked at by us later on to see if they meet those standards as far as the building permits are concerned, and then, of course, it goes to the Tax Assessor. You had two of those cases today. So, I want you to please be aware that their actual standards for criteria for the Landmarks Commission as far as their actions under the ordinance there is absolutely no mention of those standards.

McDONALD: I understand that, but I think at the same time what you're saying is that it was before the Commission. There was testimony regarding it, and I don't know if they considered it or not, and how would you know, unless there was an opinion where they said we didn't consider it.

MOORE: I just wanted you to be sure that when you're basing your opinions here today on the judgement of six to one, when they voted six to one to pass the certificate of appropriateness, that you realized that the criteria that they were using was not – they were not compelled to use those standards.

McDONALD: No. I understand they weren't compelled, and Mrs. Day said it was unanimous, I thought. Is it 6/1 or 7. I thought she said it was unanimous.

DEZIEL: There were two different votes. The southeast corner was unanimous, and the other one was not.

McDONALD: Okay, thank you.

WYETT: Mr Randolph, if evidence is entered into the discussion, such as the Federal Regulations, does that allow us to look at that as well, inasmuch as the Federal Regulations influence ours, or are mentioned in our proceedings?

RANDOLPH: You can certainly give consideration to the fact that those were talked about at the meeting, but what you've got to make a determination on is whether or not the Landmarks Commission acted appropriately under its criteria in granting a certificate of appropriateness.

WYETT: Well, I very much understand that.

RANDOLPH: So you would apply the criteria set forth in your code under certificate of appropriateness in making your determination.



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WYETT: Jack has basically put his finger on it. It's very subjective as to whether Landmarks considered all of these things, because their decision is subjective. It's not a commission of experts, because they have two or three very fine, very highly qualified architects on there, but the rest of the people are just working people like myself, who just have an opinion.

SMITH: There's no mention in the minutes as they are written about any application for tax abatement.

DEZIEL: No. Mrs. Smith, you're correct. We concluded with the presentation, Mr. McDonald, and when we concluded, I think, and I'll ask Mr. Randolph if this is the procedure. When you conclude with the presentation, I think you reserve the right that as you proceed with your project you may ask for the tax abatement, but down the road, as you proceed and request for that tax abatement at that time you prove that you meet the Federal Standards.

RANDOLPH: I think this may be the one, and somebody can correct me if I'm wrong, where Jane Day got up towards the end of the meeting, and said that the applicant needs to announce whether or not they're going for tax abatement, and that was announced towards the end of the meeting.

DEZIEL: You're correct. The applicant reserved the right to go for the tax abatement.

SMITH: It is on page 7. It says that at this point Mr. Kino stated for the record the applicant plans to pursue tax abatement for any of the appropriate changes. Mrs. Day stated as such the project should be reviewed, etc. But it was not reviewed.

McDONALD: Okay. So it is in the minutes.

SMITH: It is in the minutes.

DEZIEL: I think it's clear that the application of the Federal Standards --

SMITH: That's it, Mr. Deziel, I'm calling the question. Mr. Elwell?

ELWELL: Mr. Shaw?

SHAW: Yes.

ELWELL: Mrs. Smith?

SMITH: Yes.

ELWELL: Mr. McDonald?

McDONALD: I don't think the Landmarks decision regarding exterior alterations met the Palm Beach Code, Section 16-41 (b)(2) because I don't think it took into consideration the historic character of the building, so I'm going to vote no.

ELWELL: Mr. Wyett?

WYETT: I vote with Jack.

SMITH: He votes no.

ILYINSKY: I believe that it did take into considerations of ARCOM, and I think this is one of those times where you wish you didn't have to vote sincerely, because you admire the people who made the presentations, and I do think there are some issues that are in doubt here, and I'm certainly going to go out of my way to find out about landmarking, because if it's so easy to do that, I might as well remove the designation from my house. But I will certainly vote on this particular case. I'll vote yes.

SMITH: Thank you.

MOORE: You did mean Landmarks, not ARCOM, when you said --

ILYINSKY: I beg your pardon, Landmarks.

SMITH: Landmarks. Thank you.

\*\*\*\*End of verbatim transcript\*\*\*\*