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ALLEY, MAASS, ROGERS & LINDSAY, P.A.

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September 9, 2019

BY E-MAIL

Madame Mayor and Members of the Town Council
Town Hall
Council Chambers - - Second Floor
360 South County Road
Palm Beach, Florida 33480

Re: "Rehearing" On Appeal Of Code
Enforcement Case # CE 19-265

Dear Madame Mayor and Council Members,

This firm serves as counsel to John and Margaret Thornton, the owners and present residents of 1236 South Ocean Boulevard in Palm Beach. This letter supplements our August 8, 2019 writing in opposition to the above-referenced appeal and is submitted specifically with respect to the "rehearing" scheduled for September 11, 2019 and in opposition to the letter of Amanda Q. Hand, Esq., dated September 6, 2019, ("Hand Letter"). In sum, as we demonstrate below, that rehearing should net the same result as the Town Council's initial August 14, 2019 proceeding ("August 14 Hearing") - - the complete denial of the subject appeal.

At the outset, we apologize for the late arrival of this paper, so close to the September 11 rehearing. However, 100 LC saw fit **not** to serve the Hand Letter upon the Thorntons at any time after its issuance. We first obtained a copy thereof from another source at approximately 10:25 a.m. today and have endeavored to file and serve (including upon counsel to 100 LC) this response as soon as possible.

Turning now to the facts and merits of the matter at hand, counsel to 100 Emerald Beach Way LC ("100 LC"), by email dated August 26, 2019, essentially complained to Town officials that the Town Council's denial of 100 LC's appeal at the August 14 Hearing was in error in light of correspondence counsel supposedly first received on August 16, 2016 pursuant to a Subpoena in the federal action 100 LC commenced earlier this year against the Town. In that email, counsel further contended that the newly-obtained materials disclosed the following:

... [T]he Thorntons did, in fact, apply for a hitting wall. The wall was, in fact, intended to be used as a hitting wall. The Thorntons, in fact, built a hitting wall. But rather than obtain the necessary special exception, they just shamelessly called it a “privacy wall” and left it to code enforcement to bring an action after it was built when someone complained, knowing full well that when code enforcement asked to inspect the property, they would refuse.

Email of Jeffrey C. Schneider, Esq., dated August 26, 2019, to K. Dominguez, et al., a copy of which is annexed as Exhibit A, (“Schneider Email”).

The Schneider Email also has alleged that with a single exception 100 LC did not see any of the documents received pursuant to the aforesaid Subpoena until August 16 and accused the Town of intentionally failing to produce some or all of them in response to prior public records requests. As is often the case, counsel to 100 LC was and is wrong, embarrassingly so. In fact, as the Town later made quite clear, by email of Kathleen Dominguez to Jeffrey C. Schneider, Esq., dated August 30, 2019, a copy of which is annexed as Exhibit B, “[t]he missing email correspondence (attached) was provided to your office on April 4, 2019 and again on April 10, 2019. ...” The bottom line is that the 100 LC counsel simply missed or ignored the emails claimed not to have been turned over before the August 14 Hearing. Remarkably, the Hand Letter regurgitates the canard about those emails and repeats the baseless contentions advanced by 100 LC - - and rejected by the Town Council - - on August 14. The “ruse” to which the Hand Letter so blithely refers is that shamelessly perpetrated by 100 LC and its counsel.

At their core, the arguments made in the Schneider Email and Hand Letter are deliberately, predictably, and fruitlessly misleading. So too, are the companion myths that the Thorntons actually applied for a permit for a “hitting wall” and were obliged to (and did not) obtain a special exception, and thus that the Town Council should have granted 100 LC’s appeal. To the contrary, the Town Council’s decision thereon was entirely correct for at least the following five reasons.

First, in actuality, there was and is no basis for any rehearing before the Town Council. 100 LC has for over five months possessed all the documents counsel has inaccurately averred that the Town held back. In fact, the Town long ago provided those documents to 100 LC, and counsel apparently flatly overlooked them. 100 LC should not be rewarded for its counsel’s incompetence.

Second, as reflected in the Transcript (“Tr.”) of the August 14 Hearing, in 2017 the Thorntons, through their architect Dustin Mizell, initially submitted plans supporting an application for a “hitting” or “rebound” wall. However, the Town staff rejected that proposal because a special exception would have been required for such a wall. As a result, no filing of those plans and that application was ever completed. *See* Tr. at 7-8. *See also id.* at 14. Otherwise put, as counsel to the Thorntons rightly represented to the Town Council at the August 14 Hearing, the Thorntons have never filed a formal application for a “rebound” or “hitting” wall. Nothing in the correspondence described in the Schneider Email or the Hand Letter undercuts or contradicts that fact.

Third, the actual application filed by the Thorntons was for a perimeter wall at the boundary of the driveway and a basketball and fitness area, not a hitting or rebound wall. *Id.* at 23-24. The

underlying history is straightforward. Several years ago, the Town asked the Thorntons to move their refuse area further away from South Ocean Boulevard than it had been. The Thorntons complied but were left with an unattractive and vacant concrete pad that they then decided to transform into a lovely basketball and fitness area for their children. In so doing, the Thorntons lowered the height of the wall by two feet to match the existing wall and installed a basketball hoop that remains in place today, copies of photos of which are annexed as Exhibit C. Notwithstanding, the above-referenced (merely) submitted plans and application, there never was and is not in existence now a hitting or rebound wall at the site. Properly therefore, ARCOM approved the application for the wall on July 14, 2017, and on October 6, 2017, the Town issued a building permit for it. *See id.* at 14-16.

Fourth, it is indisputable that 100 LC **appealed neither** ARCOM's decision to grant the application **nor** the Town's determination to issue a building permit. Thus, as professed at the August 14 Hearing and reiterated here, 100 LC has waived any appeal in those regards. *Id.* at 20-22.

Fifth and finally, there is **absolutely no evidence in the record** that the Thorntons have ever used or presently use the subject wall in a hitting or rebound capacity. *Id.* at 25. Try as it might to pull the wool over the Town Council's collective eyes and distract it from reality, 100 LC has no riposte to this dispositive and demonstrable fact. *See Ex. C.*

Therefore, for all of the reasons set forth in this letter and in the remainder of the record upon the instant appeal, the Town Council should neither reconsider nor change its ruling at the August 14 Hearing in any way and should persist in wholly denying that appeal.

We look forward to discussing relevant matters with Town Council at the September 11, 2019 "rehearing."

Respectfully,



M. Timothy Hanlon

cc: Mrs. Margaret B. Thornton
Mr. John L. Thornton
James J. McGuire, Esq.
Amanda Q. Hand, Esq.
Jeffrey C. Schneider, Esq.
(All by Email)

EXHIBIT "A"

Courtney Lyne

From: Tim Hanlon
Sent: Monday, September 9, 2019 4:15 PM
To: Courtney Lyne
Subject: FW: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing
Attachments: Hitting Wall corr AMRL.pdf

This email is Ex A.

M. Timothy Hanlon
Alley, Maass, Rogers & Lindsay P.A.
340 Royal Poinciana Way, Suite 321
Palm Beach, Florida 33480
Phone: (561) 659-1770
Fax: (561) 833-2261
Direct Fax: (561) 804-4617
tim.hanlon@amrl.com

From: Jeffrey C. Schneider <jcs@lklsg.com>
Sent: Monday, August 26, 2019 10:33 AM
To: kdominguez@townofpalmbeach.com; John "Skip" Randolph (jrandolph@jones-foster.com) <jrandolph@jones-foster.com>
Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Tim Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawclc.com>
Subject: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Dear Ms. Dominguez and Mr. Randolph:

I, along with Amanda Hand and Jezabel Lima, represent 100 Emerald Beach Way, LC.

On August 14, 2019, Town Council heard 100 Emerald Beach Way's appeal regarding an illegal hitting wall at 1236 South Ocean Boulevard. At that hearing, sworn representations were made by the Thorntons' counsel that there was no original application for a hitting wall and that the subject wall was never intended to be a hitting wall. These sworn representations were demonstrably false. Indeed, the attached correspondence – which was received by 100 Emerald Beachy Way on August 16, 2019 – demonstrates that Dustin Mizell submitted plans for "STAFF APPROVAL REQUEST" for a "hitting wall" at 1236 S Ocean Boulevard. John Lindgren specifically asked Mr. Mizell if this was for a "[t]ennis hitting wall?" Dustin Mizell responded unambiguously: "Correct." When John Lindgren told Mr. Mizell that it would require a special exception, and cited the statute, Mr. Mizell responded as follows:

This is disappointing because when we left the meeting you shared that this could be staff approved. Can we call it a privacy wall and courtyard? If the child hits some balls against the wall and someone hears it and calls the Town, isn't this a code compliance issue then?

In other words, the Thorntons did, in fact, apply for a hitting wall. The wall was, in fact, intended to be used as a hitting wall. The Thorntons, in fact, built a hitting wall. But rather than obtain the necessary special exception, they just shamelessly called it a "privacy wall" and left it to code enforcement to bring an action after it was built when someone complained, knowing full well that when code enforcement asked to inspect the property, they would refuse.

We received the attached correspondence on August 16, 2019 in response to a Federal subpoena to Alley, Mass, Rogers and Lindsey. With the exception of AMRL-00125, this is the first time that we have seen any of these emails, but the

attached emails are clearly within the scope of the numerous public records requests that have been made to the Town of Palm Beach, including the first request on January 10, 2019 for: "All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017." (PZB-23-2019) The correspondence between Dustin Mizell and John Lindgren even has "1236 S Ocean Boulevard" in the subject line of the emails and should have been produced.

Clearly, we have not received responsive records in response to the PZB-23-2019 request, which has already directly impacted the substantive and procedural due process rights of 100 Emerald Beach Way. Please accept this email as a renewed request and notice pursuant to Florida Statutes Section 119.12 that we intend to pursue this action in a court of competent jurisdiction and will seek attorneys' fees and costs.

Because 100 Emerald Beach Way, LC did not have the attached evidence at the hearing on August 14, 2019, and because there may be more missing documents that disprove the sworn representations made by the Thorntons' representative, 100 Emerald Beach Way, LC demands a rehearing on the hitting wall appeal for the next Town Council meeting. Please let me know the Town's response to the request.

Thank you.

Jeffrey C. Schneider, PA
Partner



LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
201 South Biscayne Boulevard
22nd Floor, Citigroup Center
Miami, FL 33131
305.403.8799 (direct)
305.403.8788 (main)
305.403.8789 (fax)

[vCard](#) | [Bio](#) | [Website](#)

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EXHIBIT "B"

Courtney Lyne

From: Tim Hanlon
Sent: Monday, September 9, 2019 4:15 PM
To: Courtney Lyne
Subject: FW: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing - Responsive Documents
Attachments: Hitting Wall corr AMRL.pdf

This email is Ex B.

M. Timothy Hanlon
Alley, Maass, Rogers & Lindsay P.A.
340 Royal Poinciana Way, Suite 321
Palm Beach, Florida 33480
Phone: (561) 659-1770
Fax: (561) 833-2261
Direct Fax: (561) 804-4617
tim.hanlon@amrl.com

From: Kathleen Dominguez <KDominguez@TownofPalmBeach.com>
Sent: Friday, August 30, 2019 10:40 AM
To: Jeffrey C. Schneider <jcs@lklsg.com>
Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Tim Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawclc.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; John (Skip) C. Randolph <JRandolph@jonesfoster.com>
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing - Responsive Documents

Dear Mr. Schneider,

I am contacting you regarding your renewed public records request for "All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017".

Set out below are the instructions for accessing the requested records:

1. Click on the following link: <https://palmbeachfl.justfoia.com/publicportal/home/track>. This hyperlink will direct you to the Town's online public records portal where you can access the responsive documents.
2. When you get to the portal page, enter the request Number: TC-272-2019 and security key: 880281 and click "track".
3. A compressed zip folder with the file name "*Responsive Documents*" will appear that contains the responsive documents for downloading. Please let me know if you have any trouble accessing the requested information.

In your letter below dated August 26, 2019, you brought to my attention that the attached correspondence was missing from the Town's response to a previous records request your office submitted on January 10, 2019, assigned as **PZB-23-2019**.

To address this, I researched similar records requests for email correspondence related to 1236 South Ocean Blvd and came across records request **TC-48-2019**, which was submitted by your office on March 20, 2019. When I compared the results and the search criteria used for both requests (TC-48-2019 and PZB-23-2019), I discovered two things:

- 1.) The keyword combination used for each search was different and therefore, produced different results.
- 2.) The missing email correspondence (attached) was provided to your office on April 4, 2019 and again on April 10, 2019 in response to records request **TC-48-2019**.

When staff conducted the search for PZB-23-2019 back in January, we used common keywords such as: (1236 South Ocean Boulevard) **OR** (1236 South) **OR** (1236) to broaden the search results. Unfortunately, the search parameters that were used did not produce the attached correspondence. But when the search was conducted for TC-48-2019, a different combination of keywords were used (based on the nature of the request) and the attached email correspondence between Dustin Mizell, John Lindgren, Paul Castro and Tim Hanlon from May 2017, was produced and provided to your office on April 4, 2019 and again on April 10, 2019.

I recall working with the Planning and Zoning staff to fulfill PZB-23-2019 and during that process, staff provided additional emails that did not appear in the search results. When the Town responded to PZB-23-2019, we responded out of good faith and made every effort to provide you with all the correspondence in our records to the best of our knowledge. However, despite our best efforts, our response to PZB-23-2019 was inconsistent when compared to similar requests from your office and for that I wish to sincerely apologize. I can tell you with 100% confidence that it was not intentional. We understand now that more keywords such as (1236 S Ocean **AND** 1236 South Ocean) are needed in our combinations to produce more results. I will work with staff to ensure that the proper keyword combinations are used in our search parameters in the future.

If you have any questions regarding the above information or if you wish to discuss this further, I can be reached directly at 561-227-6342.

Sincerely,
Kathleen Dominguez, CMC
Town Clerk

From: Kathleen Dominguez
Sent: Wednesday, August 28, 2019 12:06 PM
To: Jeffrey C. Schneider <jcs@lklsg.com>
Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawclc.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; 'Randolph, John C.' <JRandolph@jonesfoster.com>
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Dear Mr. Schneider,

The Town Clerk's Office is in receipt of your email dated August 26, 2019 and your renewed request for "***All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017.***" (PZB-23-2019)

The Town of Palm Beach takes all public records requests seriously and it is our policy to provide open and timely access to all of the Town's records in the spirit of the Florida Records Law.

Please be advised that the Town Clerk's Office, Planning, Zoning and Building Dept. and Code Enforcement staff have worked diligently and thoroughly on fulfilling the numerous records requests that we have received from your office. Staff will conduct a new search query in the same manner and procedure used to fulfill records request PZB-23-2019 and provide you with the results of the new search.

At the same time, I will compare the new search query results to the original search query results for PZB-23-2019 to find out **why** the email correspondence between Dustin Mizell, John Lindgren, Tim Hanlon and Paul Castro, **did not** appear in the original search results for PZB-23-2019.

I will also look at prior search queries conducted for similar records requests (for email correspondence related to 1236 South Ocean Way and 100 Emerald Beach Way) in order to identify and address any inconsistencies with the search methods and criteria used when responding to requests for voluminous email correspondence in order prevent this from happening again in the future.

On behalf of the Town of Palm Beach, I wish to apologize for any inconsistencies in our response, as they were not

intentional. I also wish to apologize for the inconvenience and impact this had on the due process rights of 100 Emerald Beach Way.

If you have any questions or additional concerns that you wish to discuss, please do not hesitate to contact me at 561-838-5416 or via email: kdominguez@townofpalmbeach.com.

Sincerely,

Kathleen Dominguez, CMC

Town Clerk
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480
561-838-5416

From: Randolph, John C. <JRandolph@jonesfoster.com>

Sent: Tuesday, August 27, 2019 2:39 PM

To: Jeffrey C. Schneider <jcs@lklsg.com>

Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>; Kathleen Dominguez <KDominguez@TownofPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>

Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Mr. Schneider,

In light of what you indicate, in your attached email of August 26th, is additional information you or Amanda did not have an opportunity to address on behalf of your client at the August 14th hearing regarding the appeal on the hitting wall, I have recommended, and it has been approved by Josh Martin, that your request for a rehearing on the hitting wall be granted. The rehearing has been scheduled to be heard at the Town Council meeting of September 11, 2019. The rehearing will be confined to presentations and arguments related to what you claim to be additional information that the Council did not have an opportunity to consider at its previous hearing.

If you and/or Mr. Hanlon wish to present written memoranda in regard to your respective positions on this matter, please file same with the Town Clerk no later than 5:00 p.m. on the Friday before the meeting, i.e., September 6, 2019.

Please do not hesitate to contact me if you have any comments or questions in regard to this matter.

Thank you.

John C. Randolph

Attorney
Jones Foster P.A.

561 650 0458 – D
561 650 5300 – F
561 659 3000 – O

jrandolph@jonesfoster.com

J O N E S F O S T E R

Flagler Center Tower
505 South Flagler Drive, Suite 1100
West Palm Beach, Florida 33401
jonesfoster.com

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From: Jeffrey C. Schneider <jcs@lklsg.com>
Sent: Monday, August 26, 2019 10:33 AM
To: kdominguez@townofpalmbeach.com; Randolph, John C. <JRandolph@jonesfoster.com>
Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>
Subject: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

This Message originated outside your organization.

Dear Ms. Dominguez and Mr. Randolph:

I, along with Amanda Hand and Jezabel Lima, represent 100 Emerald Beach Way, LC.

On August 14, 2019, Town Council heard 100 Emerald Beach Way's appeal regarding an illegal hitting wall at 1236 South Ocean Boulevard. At that hearing, sworn representations were made by the Thorntons' counsel that there was no original application for a hitting wall and that the subject wall was never intended to be a hitting wall. These sworn representations were demonstrably false. Indeed, the attached correspondence – which was received by 100 Emerald Beachy Way on August 16, 2019 – demonstrates that Dustin Mizell submitted plans for "STAFF APPROVAL REQUEST" for a "hitting wall" at 1236 S Ocean Boulevard. John Lindgren specifically asked Mr. Mizell if this was for a "[t]ennis hitting wall?" Dustin Mizell responded unambiguously: "Correct." When John Lindgren told Mr. Mizell that it would require a special exception, and cited the statute, Mr. Mizell responded as follows:

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We received the attached correspondence on August 16, 2019 in response to a Federal subpoena to Alley, Mass, Rogers and Lindsey. With the exception of AMRL-00125, this is the first time that we have seen any of these emails, but the attached emails are clearly within the scope of the numerous public records requests that have been made to the Town of Palm Beach, including the first request on January 10, 2019 for: "All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017." (PZB-23-2019) The correspondence between Dustin Mizell and John Lindgren even has "1236 S Ocean Boulevard" in the subject line of the emails and should have been produced.

Clearly, we have not received responsive records in response to the PZB-23-2019 request, which has already directly impacted the substantive and procedural due process rights of 100 Emerald Beach Way. Please accept this email as a renewed request and notice pursuant to Florida Statutes Section 119.12 that we intend to pursue this action in a court of competent jurisdiction and will seek attorneys' fees and costs.

Because 100 Emerald Beach Way, LC did not have the attached evidence at the hearing on August 14, 2019, and because there may be more missing documents that disprove the sworn representations made by the Thorntons' representative, 100 Emerald Beach Way, LC demands a rehearing on the hitting wall appeal for the next Town Council meeting. Please let me know the Town's response to the request.

Thank you.

Jeffrey C. Schneider, PA
Partner



LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
201 South Biscayne Boulevard
22nd Floor, Citigroup Center
Miami, FL 33131
305.403.8799 (direct)
305.403.8788 (main)
305.403.8789 (fax)

[vCard](#) | [Bio](#) | [Website](#)

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EXHIBIT "C"



Amanda Quirke

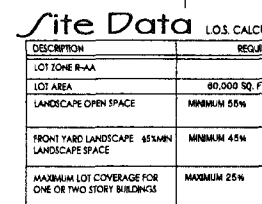
From: Dustin Mizell <dustin@environmentdesigngroup.com>
Sent: Friday, April 21, 2017 12:54 PM
To: 'John Lindgren'
Subject: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST
Attachments: 1236 S Ocean Boulevard STAFF APPROVAL 4-21-17.pdf

John,
For your review.
Thank you for your help.
Have a great weekend.

Sincerely,
Dustin M. Mizell, MLA-RLA#6666784
LEED® AP

www.EnvironmentDesignGroup.com
The Paramount Building
139 North County Road - Suite 20-B
Palm Beach, Florida 33480
ph: 561.832.4600
m: 561.313.4424

God Bless



2017

Memorandum
The following activities are recommendations for members to the Leadership Council. They are not products of this Council. The following are the activities that have been recommended by the Leadership Council to the Board of Directors. The following are the activities that have been recommended by the Board of Directors to the Leadership Council. The following are the activities that have been recommended by the Leadership Council to the Board of Directors.

2017

Recommendations
The following are the activities that have been recommended by the Leadership Council to the Board of Directors. The following are the activities that have been recommended by the Board of Directors to the Leadership Council. The following are the activities that have been recommended by the Leadership Council to the Board of Directors.

48 HOURS BEFORE DEPARTURE
CALL TOLL FREE
1-800-432-1770
REQUIREMENT: ONE CALL
OF 1-800-432-1770

Site Plan
SCALE

Amanda Quirke

From: Kathleen Dominguez <KDominguez@TownofPalmBeach.com>
Sent: Thursday, September 5, 2019 1:09 PM
To: Amanda Quirke; Jeffrey C. Schneider
Cc: Jezabel Lima; Joshua Martin; John (Skip) C. Randolph
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing - Responsive Documents

Dear Ms. Quirke,

I thought the May 4th correspondence was provided to you previously but after further review, I see that it wasn't. I am sorry about that.

For some reason, I am not able to produce that correspondence even after performing multiple search queries. I am going to consult with our IT department to find out why that correspondence is not appearing after I applied different search methods and criteria.

I will be back in touch with you as soon as possible. I am sorry for the delay and any inconvenience this has caused you.

Thank you for your patience.

Sincerely,
Kathleen Dominguez

From: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>
Sent: Thursday, September 05, 2019 11:08 AM
To: Kathleen Dominguez <KDominguez@TownofPalmBeach.com>; Jeffrey C. Schneider <jcs@lklsg.com>
Cc: Jezabel Lima <jl@lklsg.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; John (Skip) C. Randolph <JRandolph@jonesfoster.com>; Amanda Quirke <AQuirke@Lehtinen-Schultz.com>
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing - Responsive Documents

Ms. Dominguez,

I didn't locate any of the emails that are on the pdf attachment, except AMRL 125. Please let me know. Thanks for your assistance.

Amanda Quirke Hand

Of Counsel

Board Certified in City, County, and Local Government Law

Lehtinen Schultz | Attorneys

Lehtinen Schultz Riedi de la Fuente

Sabadell Financial Center, 1111 Brickell Avenue, Suite 2200, Miami, FL 33131

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www.Lehtinen-Schultz.com

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From: Kathleen Dominguez <KDominguez@TownofPalmBeach.com>
Sent: Thursday, September 5, 2019 9:44 AM
To: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jeffrey C. Schneider <jcs@lklsg.com>
Cc: Jezabel Lima <jl@lklsg.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; John (Skip) C. Randolph <JRandolph@jonesfoster.com>
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing - Responsive Documents

Dear Ms. Quirke Hand,

I am sorry about my late reply. Town offices were closed on Tuesday due to Hurricane Dorian and Wednesday was a busy day as we were getting the office up and running back to normal.

Just so we are clear, are you only referring to the emails dated May 4, 2017?

From: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>
Sent: Monday, September 02, 2019 9:10 PM
To: Kathleen Dominguez <KDominguez@TownofPalmBeach.com>; Jeffrey C. Schneider <jcs@lklsg.com>
Cc: Jezabel Lima <jl@lklsg.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; John (Skip) C. Randolph <JRandolph@jonesfoster.com>; Amanda Quirke <AQuirke@Lehtinen-Schultz.com>
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing - Responsive Documents

Kathleen,

Thank you for your response. Although we acknowledged in our previous correspondence that AMRL-125 was previously produced by the Town, we have not located the attached May 4 emails in any of the correspondence folders produced in response to TC-48-2019- not for Castro, Lindgren, nor Elliott. Please advise where we may locate the May 4 emails set forth in the attachment within the response to TC-48-2019.

We will review TC-272-2019. However, we do not waive any Chapter 119 objections or claims, and we specifically reserve all rights and remedies for damages, equitable, and any other relief available at law or in equity.

Amanda Quirke Hand

Of Counsel

Board Certified in City, County, and Local Government Law

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From: Kathleen Dominguez <KDominguez@TownofPalmBeach.com>
Sent: Friday, August 30, 2019 10:40 AM
To: Jeffrey C. Schneider <jcs@lklsg.com>
Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; John (Skip) C. Randolph <JRandolph@jonesfoster.com>
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing - Responsive Documents

Dear Mr. Schneider,

I am contacting you regarding your renewed public records request for "All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017".

Set out below are the instructions for accessing the requested records:

1. Click on the following link: <https://palmbeachfl.justfoia.com/publicportal/home/track>. This hyperlink will direct you to the Town's online public records portal where you can access the responsive documents.
2. When you get to the portal page, enter the request Number: ~~TC-272-2019~~ and security key: ~~380281~~ and click "track".
3. A compressed zip folder with the file name "*Responsive Documents*" will appear that contains the responsive documents for downloading. Please let me know if you have any trouble accessing the requested information.

In your letter below dated August 26, 2019, you brought to my attention that the attached correspondence was missing from the Town's response to a previous records request your office submitted on January 10, 2019, assigned as **PZB-23-2019**.

To address this, I researched similar records requests for email correspondence related to 1236 South Ocean Blvd and came across records request **TC-48-2019**, which was submitted by your office on March 20, 2019. When I compared the results and the search criteria used for both requests (TC-48-2019 and PZB-23-2019), I discovered two things:

- 1.) The keyword combination used for each search was different and therefore, produced different results.
- 2.) The missing email correspondence (attached) was provided to your office on April 4, 2019 and again on April 10, 2019 in response to records request **TC-48-2019**.

When staff conducted the search for PZB-23-2019 back in January, we used common keywords such as: (1236 South Ocean Boulevard) **OR** (1236 South) **OR** (1236) to broaden the search results. Unfortunately, the search parameters that were used did not produce the attached correspondence. But when the search was conducted for TC-48-2019, a different combination of keywords were used (based on the nature of the request) and the attached email correspondence between Dustin Mizell, John Lindgren, Paul Castro and Tim Hanlon from May 2017, was produced and provided to your office on April 4, 2019 and again on April 10, 2019.

I recall working with the Planning and Zoning staff to fulfill PZB-23-2019 and during that process, staff provided additional emails that did not appear in the search results. When the Town responded to PZB-23-2019, we responded out of good faith and made every effort to provide you with all the correspondence in our records to the best of our knowledge. However, despite our best efforts, our response to PZB-23-2019 was inconsistent when compared to similar requests from your office and for that I wish to sincerely apologize. I can tell you with 100% confidence that it was not intentional. We understand now that more keywords such as (1236 S Ocean **AND** 1236 South Ocean) are needed in our combinations to produce more results. I will work with staff to ensure that the proper keyword combinations are used in our search parameters in the future.

If you have any questions regarding the above information or if you wish to discuss this further, I can be reached directly at 561-227-6342.

Sincerely,
Kathleen Dominguez, CMC
Town Clerk

From: Kathleen Dominguez
Sent: Wednesday, August 28, 2019 12:06 PM
To: Jeffrey C. Schneider <jcs@lkls.com>
Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lkls.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcl.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; 'Randolph, John C.' <JRandolph@jonesfoster.com>
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Dear Mr. Schneider,

The Town Clerk's Office is in receipt of your email dated August 26, 2019 and your renewed request for "***All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017.***" (PZB-23-2019)

The Town of Palm Beach takes all public records requests seriously and it is our policy to provide open and timely access to all of the Town's records in the spirit of the Florida Records Law.

Please be advised that the Town Clerk's Office, Planning, Zoning and Building Dept. and Code Enforcement staff have worked diligently and thoroughly on fulfilling the numerous records requests that we have received from your office. Staff will conduct a new search query in the same manner and procedure used to fulfill records request PZB-23-2019 and provide you with the results of the new search.

At the same time, I will compare the new search query results to the original search query results for PZB-23-2019 to find out **why** the email correspondence between Dustin Mizell, John Lindgren, Tim Hanlon and Paul Castro, **did not** appear in the original search results for PZB-23-2019.

I will also look at prior search queries conducted for similar records requests (for email correspondence related to 1236 South Ocean Way and 100 Emerald Beach Way) in order to identify and address any inconsistencies with the search methods and criteria used when responding to requests for voluminous email correspondence in order prevent this from happening again in the future.

On behalf of the Town of Palm Beach, I wish to apologize for any inconsistencies in our response, as they were not intentional. I also wish to apologize for the inconvenience and impact this had on the due process rights of 100 Emerald Beach Way.

If you have any questions or additional concerns that you wish to discuss, please do not hesitate to contact me at 561-838-5416 or via email: kdominguez@townofpalmbeach.com.

Sincerely,

Kathleen Dominguez, CMC

Town Clerk
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480
561-838-5416

From: Randolph, John C. <JRandolph@jonesfoster.com>

Sent: Tuesday, August 27, 2019 2:39 PM

To: Jeffrey C. Schneider <jcs@lklsg.com>

Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>; Kathleen Dominguez <KDominguez@TownofPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>

Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Mr. Schneider,

In light of what you indicate, in your attached email of August 26th, is additional information you or Amanda did not have an opportunity to address on behalf of your client at the August 14th hearing regarding the appeal on the hitting wall, I have recommended, and it has been approved by Josh Martin, that your request for a rehearing on the hitting wall be granted. The rehearing has been scheduled to be heard at the Town Council meeting of September 11, 2019. The rehearing will be confined to presentations and arguments related to

what you claim to be additional information that the Council did not have an opportunity to consider at its previous hearing.

If you and/or Mr. Hanlon wish to present written memoranda in regard to your respective positions on this matter, please file same with the Town Clerk no later than 5:00 p.m. on the Friday before the meeting, i.e., September 6, 2019.

Please do not hesitate to contact me if you have any comments or questions in regard to this matter.

Thank you.

John C. Randolph

Attorney
Jones Foster P.A.

561 650 0458 – D
561 650 5300 – F
561 659 3000 – O

jrandolph@jonesfoster.com

JONES FOSTER

Flagler Center Tower
505 South Flagler Drive, Suite 1100
West Palm Beach, Florida 33401
jonesfoster.com

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From: Jeffrey C. Schneider <jcs@klsg.com>
Sent: Monday, August 26, 2019 10:33 AM
To: kdominguez@townofpalmbeach.com; Randolph, John C. <JRandolph@jonesfoster.com>
Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@klsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>
Subject: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

This Message originated outside your organization.

Dear Ms. Dominguez and Mr. Randolph:

I, along with Amanda Hand and Jezabel Lima, represent 100 Emerald Beach Way, LC.

On August 14, 2019, Town Council heard 100 Emerald Beach Way's appeal regarding an illegal hitting wall at 1236 South Ocean Boulevard. At that hearing, sworn representations were made by the Thorntons' counsel that there was no original application for a hitting wall and that the subject wall was never intended to be a hitting wall. These sworn representations were demonstrably false. Indeed, the attached correspondence – which was received by 100 Emerald Beachy Way on August 16, 2019 – demonstrates that Dustin Mizell submitted plans for "STAFF APPROVAL REQUEST" for a "hitting wall" at 1236 S Ocean Boulevard. John Lindgren specifically asked Mr. Mizell if this was for a "[t]ennis hitting wall?" Dustin Mizell responded unambiguously: "Correct." When John Lindgren told Mr. Mizell that it would require a special exception, and cited the statute, Mr. Mizell responded as follows:

This is disappointing because when we left the meeting you shared that this could be staff approved. Can we call it a privacy wall and courtyard? If the child hits some balls against the wall and someone hears it and calls the Town, isn't this a code compliance issue then?

In other words, the Thorntons did, in fact, apply for a hitting wall. The wall was, in fact, intended to be used as a hitting wall. The Thorntons, in fact, built a hitting wall. But rather than obtain the necessary special exception, they just shamelessly called it a "privacy wall" and left it to code enforcement to bring an action after it was built when someone complained, knowing full well that when code enforcement asked to inspect the property, they would refuse.

We received the attached correspondence on August 16, 2019 in response to a Federal subpoena to Alley, Mass, Rogers and Lindsey. With the exception of AMRL-00125, this is the first time that we have seen any of these emails, but the attached emails are clearly within the scope of the numerous public records requests that have been made to the Town of Palm Beach, including the first request on January 10, 2019 for: "All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017." (PZB-23-2019) The correspondence between Dustin Mizell and John Lindgren even has "1236 S Ocean Boulevard" in the subject line of the emails and should have been produced.

Clearly, we have not received responsive records in response to the PZB-23-2019 request, which has already directly impacted the substantive and procedural due process rights of 100 Emerald Beach Way. Please accept this email as a renewed request and notice pursuant to Florida Statutes Section 119.12 that we intend to pursue this action in a court of competent jurisdiction and will seek attorneys' fees and costs.

Because 100 Emerald Beach Way, LC did not have the attached evidence at the hearing on August 14, 2019, and because there may be more missing documents that disprove the sworn representations made by the Thorntons' representative, 100 Emerald Beach Way, LC demands a rehearing on the hitting wall appeal for the next Town Council meeting. Please let me know the Town's response to the request.

Thank you.

Jeffrey C. Schneider, PA
Partner



LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
201 South Biscayne Boulevard
22nd Floor, Citigroup Center
Miami, FL 33131
305.403.8799 (direct)
305.403.8788 (main)
305.403.8789 (fax)

[vCard](#) | [Bio](#) | [Website](#)

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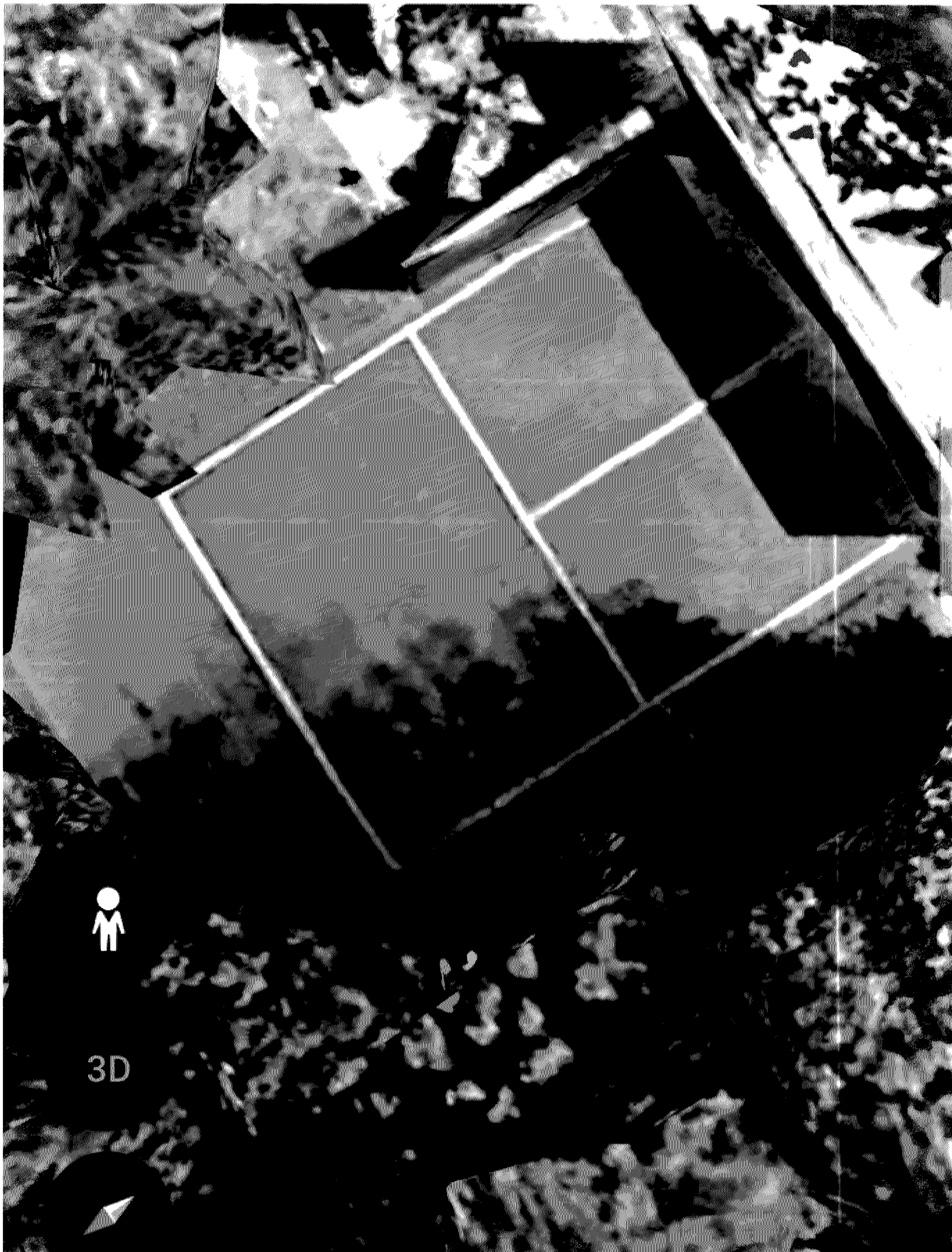


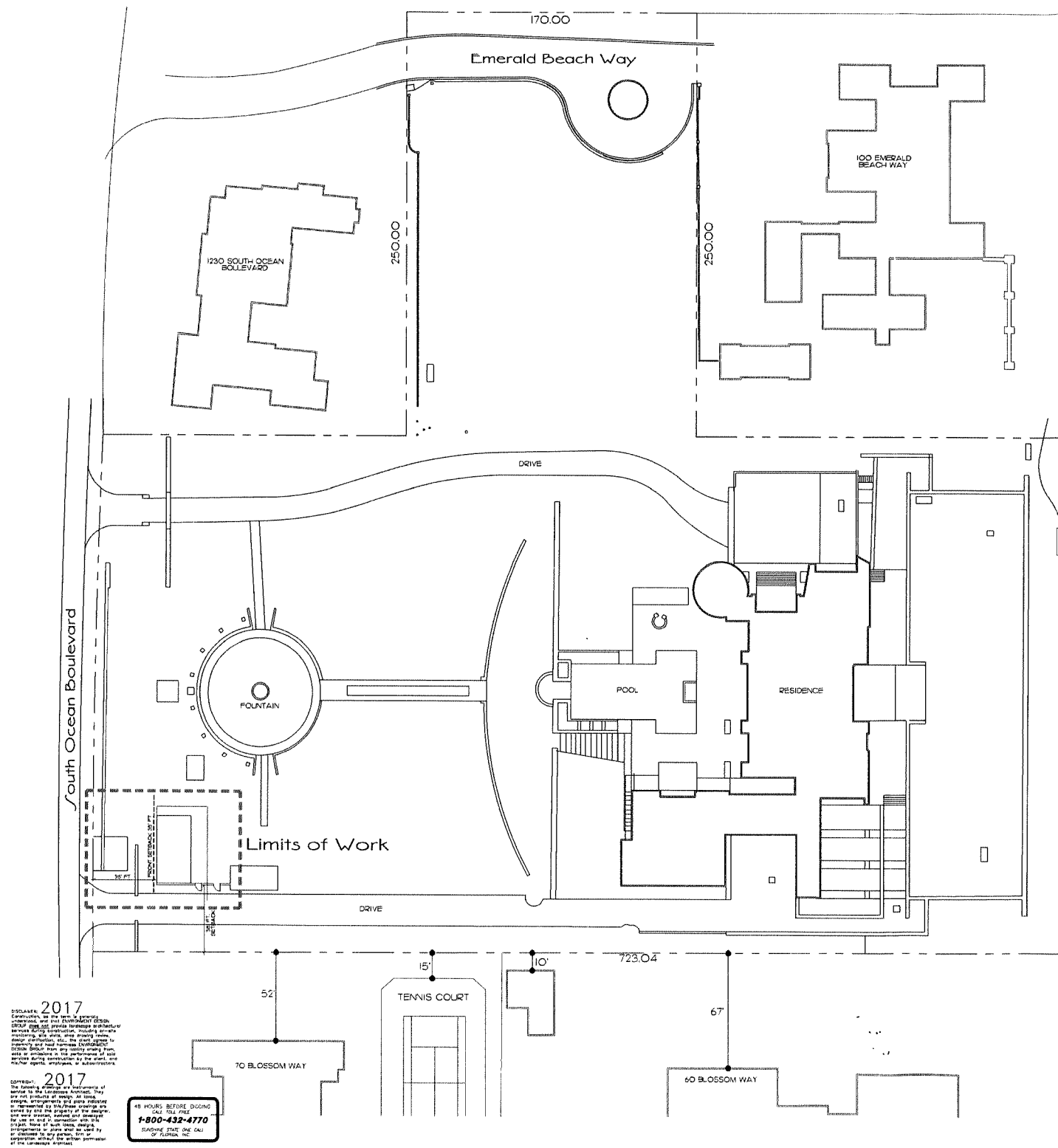
2D





3D





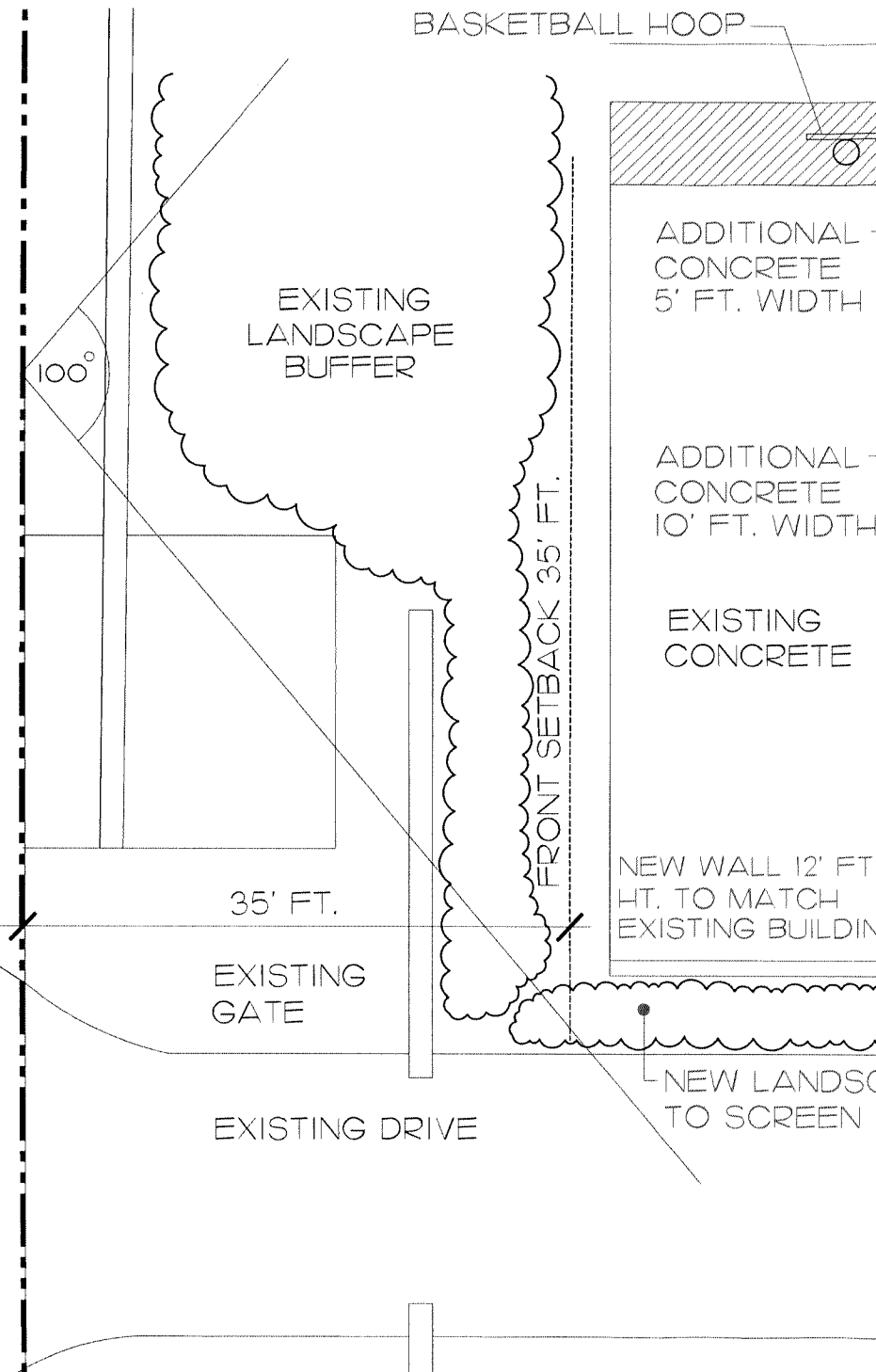
South Ocean Boulevard

Site Plan

2017
 Copyright: The following drawings are instruments of service to the landscape architect. They are not products of design. All plans, designs, arrangements and plans indicated or represented by this drawing are owned by and the property of the designer, and were created, conceived and developed for use on and in connection with this project. None of such plans, designs, arrangements or plans shall be used by or disclosed to any person, firm or corporation without the written permission of the Landscape Architect.

2017
 Disclaimer: Construction, as the term is generally understood, is the construction of a building or structure. This drawing is a conceptual design, and is not intended to be used for construction. It is the client's responsibility to obtain all necessary permits, approvals, and design information, etc., the client agrees to indemnify and hold the landscape architect harmless from any liability arising from, acts or omissions in the performance of such services during construction by the client, and his/her agents, employees, or subcontractors.

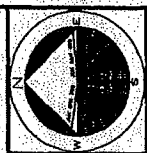
48 HOURS BEFORE DOING
 CALL 1-800-432-4770
 ANYTIME AFTER THE 48 HOURS BEFORE DOING
 OR FLORIDA, INC.



PROJECT: Private Residence
 LOCATION: 1236 South Ocean Boulevard, Palm Beach, FL 33480
 DATE: 08/24/2017
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 PROJECT NO: 17-0000
 SHEET NO: 11



Private Residence
 1236 South Ocean Boulevard
 Palm Beach



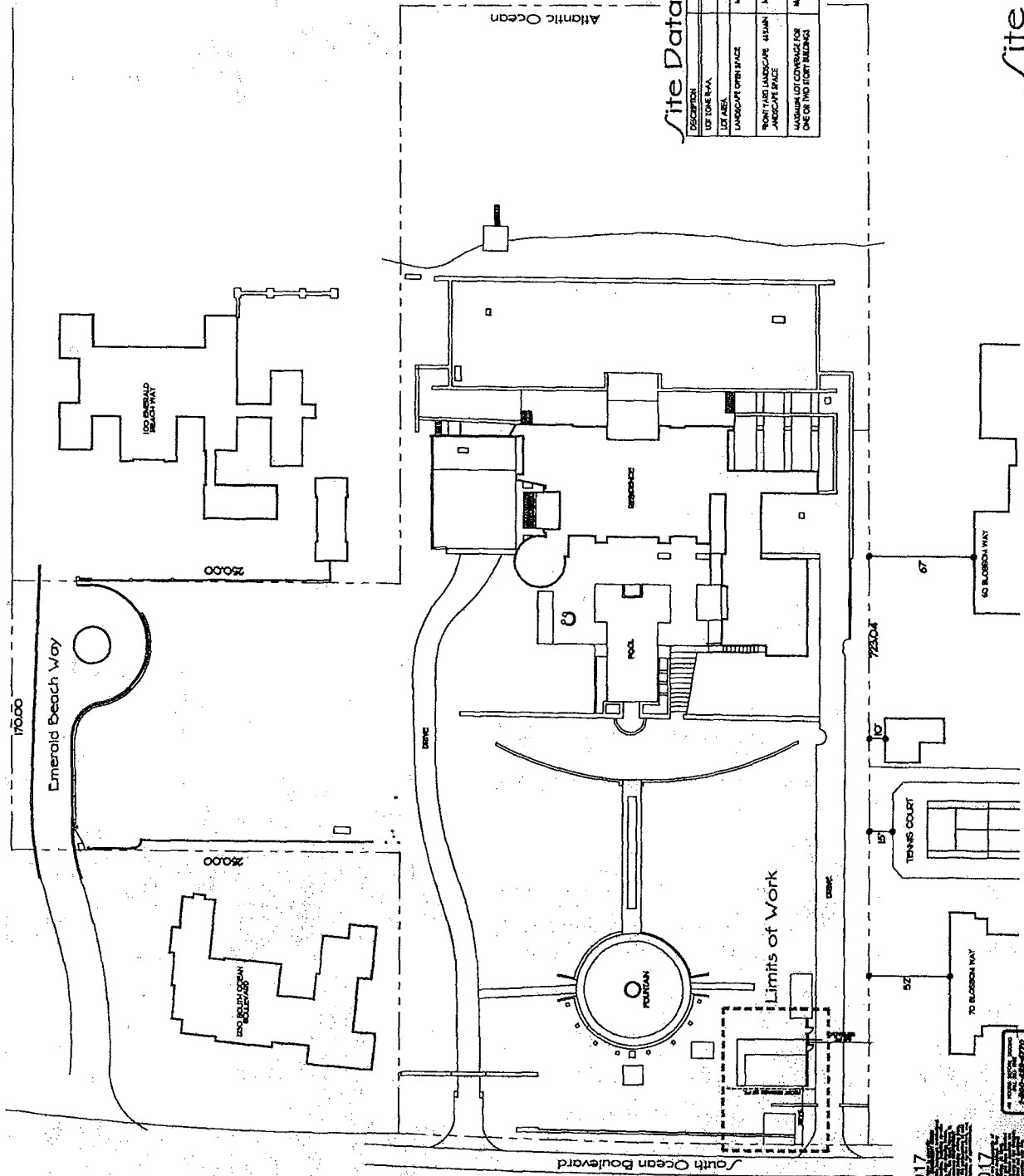
JOB NUMBER: 17-0000
 DATE: 08/24/2017
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]

SHEET 11

Site Plan
 SCALE IN FEET: 0' 50' 60' 90'

Site Data

DESCRIPTION	REQUIRED	PROPOSED
LOT AREA	65,000 SQ. FT. MINIMUM	65,000 SQ. FT. PROPOSED
LANDSCAPE OPEN SPACE	MINIMUM 25%	25% PROPOSED
MINIMUM LANDSCAPE OPEN SPACE	MINIMUM 45%	45% PROPOSED
MINIMUM LOT COVERAGE FOR ONE OR TWO STORY BUILDING	MINIMUM 15%	15% PROPOSED



2017
 2017
 2017

August 14, 2019

TOWN OF PALM BEACH

TOWN COUNCIL MEETING

Town Hall
Council Chambers-Second Floor
360 South County Road
Palm Beach, Florida 33480

AUGUST 14, 2019

APPEAL RE: 1236 S. OCEAN BOULEVARD
HITTING WALL

BOARD MEMBERS

Gail L. Coniglio, Mayor
Danielle H. Moore, President
Margaret A. Zeidman, President Pro Tem
Julie Araskog, Member
Lew Crampton, Member

ALSO PRESENT

Josh Martin, Planning, Zoning and Building Director
Paul Castro, Zoning Administrator
Ben Alma, Code Enforcement
John Randolph, Esq., Jones Foster
Amanda Quirke-Hand, Esq., Lehtinen Schultz
M. Timothy Hand, Esq., Alley Maass

Stenographically reported by:
Lisa Higbee, RPR, RMR

Page 2 1 ***** 2 PRESIDENT MOORE: Anyway, all right. 3 Ladies and gentlemen, should we move on to the 4 second appeal, or do we need a quick two-minute 5 break? 6 MAYOR CONIGLIO: Keep going. 7 MS. ARASKOG: Keep going, please. 8 PRESIDENT MOORE: Keep going. Mr. Randolph 9 just stepped out for a second. 10 Next item, 1236 South Ocean Boulevard, the 11 appeal based on a wall. 12 Ex-parte? Jules. 13 MS. ARASKOG: On a wall? 14 MAYOR CONIGLIO: The hitting wall. 15 MS. ARASKOG: Only staff. 16 MR. CRAMPTON: None. 17 MAYOR CONIGLIO: Only staff. 18 PRESIDENT MOORE: None. 19 MS. ZEIDMAN: Staff and our town attorney, 20 Mr. Randolph. 21 PRESIDENT MOORE: Mr. Martin, please. 22 MR. MARTIN: Yes, so with -- in this 23 instance, on this case, I am -- I am going to give 24 you some -- just some information regarding the 25 background of what this is and where it is located	Page 4 1 to the tennis court, but, actually, it's -- it's 2 -- the structure that's being discussed today is 3 here on the property of 1236 South Ocean 4 Boulevard, so I just want to make that 5 clarification. 6 MS. ARASKOG: Is that where the green is? 7 Could you point it out again? 8 MR. MARTIN: Right here. 9 MS. ARASKOG: Okay, the green. 10 MR. MARTIN: So I just want to make sure, 11 because there's been a lot of confusion as to 12 where the location of this discussed structure is 13 on these properties. So I want to give you that 14 for the record just so that everyone's on the same 15 page, and, if either party, you know, disagrees 16 with that location of where we're discussing this 17 item today, I'll leave it to them to make the 18 statements. 19 PRESIDENT MOORE: Can I just ask a 20 question? Josh, could you zoom it out just a 21 little more. I just want to make sure -- 22 MR. MARTIN: It's -- 23 PRESIDENT MOORE: I know. Just pull it -- 24 or pull it down. Pull it down, up. 25 MR. MARTIN: Down.
Page 3 1 and those types of things. 2 This is a code enforcement matter, and I 3 think Mr. Alma and Mr. Moriarty are here today to 4 answer any questions and the appeal, I believe, of 5 the decision of the code enforcement officer that 6 closed the case on the hitting wall complaint. So 7 I just want to give a little bit of background in 8 terms of what we're -- what we're discussing today 9 as opposed to the hitting wall, and then I'm also 10 going to address my comments on the record with 11 regards to my comments to code enforcement 12 regarding the hitting wall. 13 So just bear with me for a second. Let me 14 grab it. 15 PRESIDENT MOORE: Can I see the whole 16 thing? 17 MR. MARTIN: Yes. Sorry. 18 PRESIDENT MOORE: Thank you. 19 MR. MARTIN: This was -- This was an 20 exhibit that was submitted for the property by 21 Ms. Hand, and I just want to -- there's been a lot 22 of confusion as to where the location of the 23 hitting wall, if it is a hitting wall or not a 24 hitting wall, where the location is and what it -- 25 A lot of people have thought that it's appurtenant	Page 5 1 PRESIDENT MOORE: There. Okay, I just -- 2 So the house that -- 3 MR. MARTIN: The Thorntons live here. 4 PRESIDENT MOORE: Yes, thank you. I just 5 -- I'm sorry, I want to make sure I have... 6 MR. MARTIN: And Emerald Beach Way is 7 essentially off -- 8 PRESIDENT MOORE: There. 9 MR. MARTIN: Yes. 10 PRESIDENT MOORE: And 100 Emerald Beach Way 11 is up there some. Okay. 12 MR. MARTIN: (Indicating) 13 PRESIDENT MOORE: Okay. Thank you. I just 14 needed a quick orientation. 15 MR. MARTIN: I think that's south because 16 there's been a lot of -- there's been a lot of 17 questions. 18 PRESIDENT MOORE: Of direction, okay. 19 Thank you. 20 MR. MARTIN: And so this case was brought 21 up, and I'll let code enforcement speak to their 22 finding and if they visited the site to look at 23 this and how they discussed that with the property 24 owners and what have you. But, in the backup, 25 there is a statement that I made to code

Page 6 1 enforcement that said this is not being used as a 2 hitting wall. I was responding quickly in the 3 midst of doing 10 other things, and I went back 4 and clarified that, that I don't know what the use 5 of it is. I haven't put my eyes on it, per se, 6 but the thing is that -- that it was not permitted 7 as a hitting wall. And, if you look at the permit 8 that's in the backup, there's a condition that it 9 shall not be used as a hitting wall. And I said, 10 "So you should continue to proceed with the case." 11 And I believe they did proceed with the case, and 12 I'll let the code enforcement officers, you know, 13 speak to what they found or who they interviewed 14 on the property or what have you, and so that's 15 all of the information that I have. 16 There's no staff recommendation in this 17 because I don't think this is a planning, zoning, 18 building issue. This is actually a code 19 enforcement issue. 20 PRESIDENT MOORE: Okay, and just so -- I 21 just have two quick questions on the board. 22 MAYOR CONIGLIO: Josh, you said that the 23 permit, whatever that was, specifically said it 24 can't be a hitting wall. 25 MR. MARTIN: That's correct.	Page 8 1 issued or when reviewed for zoning by our staff, 2 there's a stipulation it could not be used as a 3 hitting or rebound wall because that requires 4 council approval, special exception. 5 MAYOR CONIGLIO: Is there a basketball 6 court there? 7 MR. CASTRO: I don't know. 8 MAYOR CONIGLIO: Is there a basketball net 9 there? 10 MR. CASTRO: I don't know if there is a 11 basketball court there. I know that, when it 12 originally came in with a permit, there was a 13 basketball goal shown on the plan. 14 MAYOR CONIGLIO: Okay, thank you. 15 MS. ARASKOG: And I have got a question. 16 PRESIDENT MOORE: Okay, Maggie's got her 17 light on. 18 MS. ZEIDMAN: So, I mean, that's the 19 question, what you just asked, Gail, because what 20 -- after the first request was made and they 21 wanted it to be a hitting wall, and, as you said, 22 that would be a special exception, then they 23 changed it to -- it was changed to a basketball, 24 slash, service area, and code enforcement has been 25 there. So I'd actually like to know, is there a
Page 7 1 MAYOR CONIGLIO: What was it permitted for? 2 MR. MARTIN: It's permitted for -- Paul, do 3 you want to speak to that? 4 MR. CASTRO: Yes. It was permitted as a 5 perimeter wall to a basketball court. 6 MAYOR CONIGLIO: Perimeter wall. 7 MR. CASTRO: Correct. 8 MAYOR CONIGLIO: And is there a -- 9 MR. CASTRO: That's my recollection. I was 10 not involved in the permitting or the review of 11 that permit. 12 MAYOR CONIGLIO: Does that potential 13 permitting wall have a size? 14 MR. CASTRO: So it's my understanding, no, 15 because it's out of the front setback area at 16 certain locations. So, when it originally came 17 in, it came in as a rebound or hitting wall. It 18 was rejected and said that you needed -- This is 19 my recollection -- that you needed a special 20 exception in order to have a rebound wall at that 21 location. 22 The landscape architect wrote back and said 23 it's not going to be used as a rebound wall; it's 24 a perimeter wall to the basketball court, I 25 believe, and, therefore, when the permit was	Page 9 1 basketball court there? Is there a basketball, 2 you know, hoop there, and have you seen it? Can 3 they answer that question? 4 PRESIDENT MOORE: Okay, so let's -- 5 MR. RANDOLPH: Can you guys answer that? 6 MR. CASTRO: I don't know whether it's 7 there or not. I've been told it's not there. 8 I've been told there is not a goal there. 9 MAYOR CONIGLIO: Ben. Ben. 10 MR. ALMA: Good afternoon. Ben Alma, code 11 enforcement. We have no idea. 12 MAYOR CONIGLIO: You have no idea? 13 MR. ALMA: We do not. We have asked for 14 permission to enter the property. Counsel has 15 denied us. 16 PRESIDENT MOORE: What? 17 MS. ARASKOG: Counsel denied them -- 18 MR. ALMA: Attorney Critton has said we 19 cannot enter the property. 20 MS. ZEIDMAN: Okay, thank you, Ben. 21 PRESIDENT MOORE: Okay. 22 MS. ARASKOG: I have another question for 23 Paul. 24 MS. ZEIDMAN: My question is -- 25 PRESIDENT MOORE: Okay, Julie.

Page 10 1 MS. ARASKOG: Yes, Paul, so they only 2 asked, interestingly enough, to have this wall in 3 that one place and not surrounding the -- what was 4 purported to be a basketball court? 5 MR. CASTRO: Wherever it was permitted at. 6 I'm -- I'm not real familiar with that permit. 7 MS. ARASKOG: Okay, so you wouldn't know if 8 it's normal to put up -- 9 MR. CASTRO: Well, we have walls go up all 10 over town that are over seven feet in height as 11 long as they're out of the setbacks. The code 12 says that you can have a wall up to 14 feet tall, 13 in this case 25 feet because it's the large estate 14 district, provided you're out of the front 15 setback. 16 MS. ARASKOG: Okay, I -- 17 MR. CASTRO: So we've had situations in the 18 past where people have put in walls that are 19 higher. 20 MS. ARASKOG: On basketball courts? 21 MR. CASTRO: No. It could be on a 22 driveway, the retaining wall. 23 MS. ARASKOG: That was my question. 24 PRESIDENT MOORE: But you can put up a 25 wall?	Page 12 1 about here. In 2017, the applicant came in for a 2 hitting wall. Then their agent says -- wrote an 3 email to John Lindgren: "We met with Logan Tree 4 (phonetic) to deal with the new program change in 5 this project. This will no longer be a hitting 6 wall. It will be a basketball/service area. 7 Logan said that we do not need a special exception 8 anymore due to the removal of the hitting wall 9 application." So they then constructed what was 10 approved by the permit. 11 Let's see if we can zoom out here. 12 Okay, it was the same drawing that was 13 submitted before that email that was submitted by 14 the applicant's agent. It's for a 14-foot wall 15 adjacent to a concrete pad. They subsequently 16 built this 14-foot wall with a nice, big concrete 17 footer and striped it as a tennis court. 18 So, at this point, you have a wall, a 19 14-foot wall, attached to a striped tennis court 20 that I don't know what else it could be used for 21 other than a hitting wall. If it walks like a 22 duck and it quacks like a duck... 23 That concludes my presentation unless... 24 PRESIDENT MOORE: Okay. I guess I'm not 25 really sure that it's striped as a tennis court.
Page 11 1 MR. CASTRO: Correct. 2 PRESIDENT MOORE: Julie, does that cover 3 your question? 4 MS. ARASKOG: Yes. 5 PRESIDENT MOORE: Mr. Crampton. 6 MR. CRAMPTON: What is the evidence that it 7 is a hitting wall? 8 MS. ARASKOG: Skip has something you -- 9 MR. RANDOLPH: Well, I think you should 10 here Amanda Hand's argument first because there's 11 been some question as to whether it's -- whether 12 it's being used as a hitting wall, and I don't 13 think that's an issue for you today. 14 The issue relates to exactly what you've 15 been discussing, and, as I understand Amanda's 16 argument, that it was related to the permitting 17 that she's talking about, not to the use. 18 PRESIDENT MOORE: Okay, go ahead. Amanda, 19 go ahead, and then Mr. Hanlon will have -- and 20 we'll go back to our 15 minutes, okay? 21 MS. QUIRKE-HAND: Good afternoon. Amanda 22 Quirke-Hand, offices at 1111 Brickell Avenue, on 23 behalf of appellant, 100 Emerald Beach Way. 24 As you can see, and as confirmed by 25 Mr. Martin, this is the area that we're talking	Page 13 1 It could be a basketball court for all I know. 2 Mr. Crampton. 3 MR. HANLON: May I present now? 4 PRESIDENT MOORE: Oh, sorry, Tim. 5 MR. HANLON: It's okay. 6 PRESIDENT MOORE: I saw the light on the 7 board and moved on. 8 MR. HANLON: Good afternoon. M. Timothy 9 Hanlon on behalf of Mr. and Mrs. Thornton, the 10 owners of 1236 South Ocean Boulevard. 11 First, I'd like to submit my letter dated 12 August 8th, which I submitted -- or, filed with 13 the town last week. I just want to make sure it's 14 part of the record. 15 MR. RANDOLPH: For the record, your 16 ex-parte communications related to both of these 17 appeals as I understand it. 18 MAYOR CONIGLIO: We had ex-parte. 19 MR. RANDOLPH: I know. I've just been 20 asked if we did ex-parte. I told them, yes, you 21 did it for both of these appeals. 22 PRESIDENT MOORE: We did. 23 MAYOR CONIGLIO: Separately. 24 PRESIDENT MOORE: We did it. We did 25 separately. You had stepped out.

Page 14 1 MS. ZEIDMAN: For each appeal, we did it 2 separately. 3 MS. ARASKOG: We already went through 4 ex-parte. 5 MR. RANDOLPH: Oh, when I was in the 6 bathroom? 7 PRESIDENT MOORE: Yes. 8 MAYOR CONIGLIO: Yes. 9 MR. RANDOLPH: I'm sorry. They didn't hear 10 it apparently. 11 PRESIDENT MOORE: Okay. Mr. Hanlon. 12 MR. HANLON: Thank you. History of the 13 wall is significant here. A couple of years ago, 14 Roger Bullea (phonetic) of the town requested that 15 the Thorntons move their refuse area further away 16 from South Ocean Boulevard to enhance the safety 17 of the town employees while removing rubbish. 18 After the Thorntons did so, they were left 19 with a blank, unattached concrete pad, not very 20 pretty. They contemplated a tennis rebound wall, 21 but decided otherwise after learning that a 22 special exception would be required. The 23 Thorntons then decided to lower the proposed 24 height of the wall from 14 to 12 feet and change 25 the use to a fitness area and a basketball area.	Page 16 1 rebound or backboard purposes or, as Mrs. Hand 2 calls it, a tennis hitting wall. Also, notably, 3 it is significant to note that no documents 4 submitted by Mrs. Hand -- and that includes her 5 July 2nd appeal letter, her July 16th email and 6 approximately 60-plus pages of emails -- includes 7 any allegation or evidence that the wall has been 8 used as a tennis ball backboard or a rebound wall. 9 On the contrary, Mrs. Thornton and Alberto Douman 10 (phonetic), the property manager for 1236, both 11 submitted sworn declarations confirming that the 12 wall had never been used as a so-called hitting 13 wall. 14 It is our position that Officer Moriarty, 15 the town staff and the code enforcement officers 16 performed their jobs on this issue exactly as 17 required. That is, Mrs. Hand filed a complaint, 18 which they investigated. They discovered that the 19 complaint had no factual basis, so they properly 20 dismissed the case. 21 While we don't believe that the Thorntons 22 are required to submit evidence as to a contrary 23 use, we are happy to explain that the concrete 24 area next to the wall is used for special fitness 25 and agility drills for high-performance athletes
Page 15 1 There was then, since it's been built, and always 2 has been a temporary basketball hoop right in the 3 middle of the court, and I did submit that -- or, 4 did state in my evidence submitted that it was 5 used for basketball purposes. 6 On July 14th, 2017, the architectural 7 commission approved the wall, and, on October 6th, 8 2017, a building permit for the wall was issued. 9 Notably, now we hear that the ARCOM approval 10 and/or the building permit were not proper. No 11 appeal of either the ARCOM decision or the 12 building permit were filed within the required 13 filing time frame. I don't know how you can 14 complain about it now, almost two years later. 15 The wall was built shortly thereafter. It 16 was painted with paint remaining from the tennis 17 court that they had built around the same time in 18 an effort to improve the aesthetics. It is also 19 important to note that the wall is several hundred 20 feet away from the Jacobs' residence and from the 21 one tennis court built by the Thorntons. I think 22 I measured it out on PAPA as 450 feet from the 23 Jacobs' residence, separated from large -- by 24 large, thick foliage. 25 The wall has never been used for tennis	Page 17 1 which are best performed on a hard surface and 2 also used by the entire Thornton family for 3 playing basketball. I think Paul Castro just 4 testified that the wall can be used for any 5 purposes as long as it's not used for a so-called 6 hitting wall, and there is no evidence of that. 7 So, in summary, the Thorntons obtained both 8 ARCOM approval and a building permit for the wall, 9 and neither the approval nor the permit were 10 appealed. Further, the Thorntons have never used 11 the wall as a so-called hitting wall or any other 12 use which would require a special exception. 13 Last, the appellant has produced no 14 evidence which established that the wall is a 15 hitting wall or ever has been used as a hitting 16 wall. As such, Officer Moriarty's dismissal for 17 Code Enforcement Case #19-365 was proper, and we 18 respectfully request that you dismiss the appeal. 19 I'll remain available to answer any 20 questions. Thank you. 21 PRESIDENT MOORE: Mrs. Araskog. 22 MR. RANDOLPH: Didn't you want to allow -- 23 PRESIDENT MOORE: Amanda, go ahead. 24 MS. ARASKOG: Amanda, do you want to rebut 25 first?

Page 18 1 MS. QUIRKE-HAND: Kelly, can you put this 2 up, please? I just wanted to put it up because it 3 is a little bit more clear on the computer version 4 that it is, in fact, striped as a tennis court. 5 I don't think I have anything else other 6 than to say that planning and zoning specifically 7 put a condition on the permit that it's not going 8 to be a hitting wall. There is nothing else that 9 a 14-foot wall attached to a tennis court can be 10 used for. Thank you. 11 MAYOR CONIGLIO: I'm sorry, Amanda, I don't 12 -- How do you make it clearer, that picture? 13 MS. ARASKOG: Yeah, can you -- can you blow 14 it up for us? 15 MAYOR CONIGLIO: It looks like a green blob 16 to me. 17 MS. ARASKOG: In one of our emails, it was 18 -- Oh, there you go. 19 PRESIDENT MOORE: Julie, you have a 20 question? 21 MR. HANLON: And, just quickly to rebuttal, 22 the height of the wall was reduced to 12 feet 23 because it's not being used as a tennis hitting 24 wall, and the wall is very important to 25 basketball, so, when you shoot it or pass it and	Page 20 1 manager call us, and the property manager said it 2 was not being used as a hitting wall. We had no 3 reason to disbelieve him. 4 MR. RANDOLPH: And let me just say here 5 that the evidence relating to whether it's being 6 used as a hitting wall is irrelevant to the 7 argument that's being made today as I understand 8 it. Her argument is the fact that it was 9 permitted in this location means it's a hitting 10 wall, whether it was used as one or not. So, I 11 mean, if you're going to go into the use, then, 12 you know, she's asked could she have an 13 opportunity to cross-examine the witnesses who 14 made the statements that it's not used as a 15 hitting wall. 16 I don't see how the use is relevant to what 17 you're discussing today because her argument is 18 that the mere fact that you permitted it in this 19 location makes it a permitting wall -- a hitting 20 wall and nothing else, correct? 21 MS. ARASKOG: That's your only argument? 22 MS. QUIRKE-HAND: Correct, that 13 -- that 23 134.1759 prohibits the construction -- 24 PRESIDENT MOORE: Wait, wait, wait. 25 MS. QUIRKE-HAND: -- prohibits the
Page 19 1 it gets past you, it hits the wall and comes back. 2 There is a very important use for that wall. 3 MS. ARASKOG: I don't see a basketball 4 ring. 5 PRESIDENT MOORE: It would be in that -- 6 MR. HANLON: The far end in the shadow, 7 opposite the wall. 8 MS. ARASKOG: Am I up, Donnie? 9 PRESIDENT MOORE: Actually, Julie, you are. 10 I'm going to make a pit stop. 11 MS. ARASKOG: I just want to know why you 12 wouldn't let them take a picture. I mean, if you 13 could have -- 14 MR. HANLON: I'm not aware of that. I 15 certainly did not do it. I know Mr. McGuire is 16 here, co-counsel. He never said no. I can't 17 speak to what Mr. Critton did, but -- 18 MS. ARASKOG: May I please speak to 19 Moriarty or to Ben, either one, whoever could 20 answer that question as to why or the fact that 21 you were prohibited. 22 MR. ALMA: Ben Alma. We -- Mr. Moriarty 23 did it. He called, and Mr. Critton, who is, or 24 maybe was at the time, counsel for the Thorntons, 25 he said no. However, he did have the property	Page 21 1 construction itself without a special exception. 2 MS. ZEIDMAN: Could you repeat that? I 3 didn't -- I was distracted. 4 MS. QUIRKE-HAND: 134.1759 prohibits the 5 construction itself without the special exception 6 approval. 7 MS. ZEIDMAN: That's if it's a hitting 8 wall. 9 MS. QUIRKE-HAND: Right. 10 PRESIDENT MOORE: Okay. Julie, did you ask 11 your question while I was excused? 12 MS. ARASKOG: Well, I'd like to get a 13 clarification on this because now I'm a little 14 confused as to what the appeal is. 15 So, in other words, all you're appealing is 16 the fact that it should have had a special 17 exception, that, if I were to find that I don't 18 really know what it was or what it was when it was 19 built, then use makes no difference? Is what 20 you're telling me, Skip? Is that we don't need to 21 look at use? We just need to look at -- 22 MR. RANDOLPH: Use makes no difference in 23 regard to the argument that's being made here 24 today. It was important to code enforcement at 25 the time to hear whether or not it was being used

Page 22 1 as a hitting wall, and, as a result of what they 2 learned from the property manager or whoever it 3 was that they spoke to, they heard it wasn't being 4 used as a hitting wall, so they dropped the case. 5 My position would be maybe that should have 6 been something that code enforcement should have 7 looked at if there was evidence that it was being 8 -- If somebody had evidence that it was being used 9 as a hitting wall, then it should have gone to 10 code enforcement as opposed to code enforcement 11 simply relying upon the testimony of the property 12 owner. 13 MS. ARASKOG: I agree. 14 MR. RANDOLPH: But that's why I'm saying 15 that the use in this particular argument isn't 16 important because her argument is that the simple 17 granting of the permit in this location makes it 18 -- based upon what she's presented, makes it a 19 hitting wall. 20 MS. ARASKOG: Okay, may I ask him a 21 question? 22 MR. HANLON: Sure. 23 MS. ARASKOG: So, Tim, your argument is 24 that you were asked -- Tell me about the refuse 25 again -- that you were asked -- the town asked --	Page 24 1 apply for it. We changed -- The actual 2 application was not for a tennis backboard or 3 rebound wall. 4 PRESIDENT MOORE: Julie. 5 MS. ARASKOG: No, that's it. 6 PRESIDENT MOORE: Are you done? I just 7 want to make sure you're good before I move on. 8 MS. ARASKOG: Thank you. 9 PRESIDENT MOORE: Maggie. 10 MS. ZEIDMAN: Thank you, Donnie. So, if 11 it's not -- What's the purpose of that perimeter 12 wall? 13 MR. HANLON: Primarily for basketball and 14 fitness. Mr. and Mrs. Thornton's son is a very 15 nationally-ranked, highly-competitive tennis 16 player. So there are drills that he's supposed to 17 do only on hard court surfaces. So that's one of 18 the uses. 19 The other use is that, all the children are 20 grown, teenagers or older, but use the -- use the 21 court for basketball purposes, and that's why the 22 wall is needed. But I think that Mr. Castro has 23 testified already that, as long as it's not 24 applied for or used as a hitting wall, then it's 25 permitted because it's not within any of the
Page 23 1 MR. HANLON: It was the refuse pick-up area 2 originally. There's a concrete pad there. And I 3 guess part of it was, because of proximity to 4 South Ocean, the town asked the Thorntons to move 5 that, which they did, moved it away to the left of 6 the pad there. So they wanted to use -- employ 7 the concrete pad for basketball and fitness, and 8 they use it. 9 I think Paul told you that they can use it 10 for any purpose as long as it's not a hitting 11 wall. 12 MS. ARASKOG: So I guess the question, to 13 go to the question we're really dealing with, why 14 do you feel that no special exception was needed? 15 I think that's really the question here, not what 16 it's being used for. That's code. Tell me -- 17 Tell me -- 18 MR. HANLON: Because we didn't apply for a 19 tennis hitting wall. We applied for a backboard. 20 MS. ARASKOG: Right. That's what I'm 21 asking. 22 MS. QUIRKE-HAND: They did apply for it 23 initially. That was what was applied for 24 initially. 25 MR. HANLON: We asked about it. We didn't	Page 25 1 setbacks. So I don't know -- 2 MS. ZEIDMAN: Well, Tim, when you get back 3 to making that statement, though, see, we're not 4 clear about that, because there's been an 5 allegation here that it is being used as a hitting 6 wall. 7 MR. HANLON: There's no evidence. 8 MR. RANDOLPH: No, there's been no 9 allegation it's being used as a hitting wall. 10 MR. HANLON: None, zero. 11 MR. RANDOLPH: The appellant is not making 12 an allegation -- 13 MS. ZEIDMAN: The appellant is not. 14 MR. HANLON: Nor is the town. Nor did the 15 town find any evidence of it. I'm dumbfounded by 16 this. 17 MS. ZEIDMAN: I understand that the town 18 did not find evidence. 19 PRESIDENT MOORE: Okay. Maggie, are you 20 good? Can I go on? 21 MS. ZEIDMAN: No. The wall does not seem 22 to go all the way over; is that correct? What I'm 23 seeing -- What we see, which is very -- it's not 24 very clear -- we see a shadow of a wall, and we 25 see the top of the wall. Does it stop where the

Page 26 1 lines are of the court? Does the wall stop there? 2 MS. ARASKOG: You can see, Maggie, if 3 you -- 4 MR. HANLON: It doesn't exceed the 5 boundaries. 6 MS. ZEIDMAN: It does not exceed the 7 boundaries. There's a wall on the other side? 8 PRESIDENT MOORE: No. 9 MS. ZEIDMAN: Okay, so, Tim -- 10 MRS. THORNTON: It's a continuation of the 11 driveway or the wall. 12 MS. ZEIDMAN: That's what I'm trying to 13 find out. So that wall continues; is that 14 correct? 15 MRS. THORNTON: There's a break in it where 16 we keep our garbage cans. 17 MS. ARASKOG: Can someone say that on the 18 mic, because I couldn't hear it. 19 PRESIDENT MOORE: So my understanding is 20 this wall continues. There's a break in the wall 21 for the trash cans, and then it continues where I 22 believe I see a building. 23 MR. HANLON: Correct. 24 PRESIDENT MOORE: Okay. 25 MS. ZEIDMAN: Okay, that's very important.	Page 28 1 to code enforcement, and maybe they make them 2 remove it, but, at this point in time, the 3 question is did they need a special exception in 4 order to build what they are saying and they 5 proposed to be -- to not be a hitting wall but to 6 be a basketball something -- 7 MR. CRAMPTON: Wall, right. 8 MS. ARASKOG: -- wall, and that's what 9 we're looking at today. Could this be that? 10 Sure. Could they be doing drills there in my 11 opinion? Could they be doing drills? I wish I 12 had a picture that showed whether they had a 13 basketball thing or not -- 14 MR. CRAMPTON: Hoop. 15 MS. ARASKOG: -- hoop or not, and the only 16 reason it would have helped to have them on the 17 property is we could have seen a picture of that. 18 Then it would be, like, no question whatsoever. 19 But, for me, I would make a motion that the 20 appeal is denied because I don't think that this 21 needed a special exception in its form. It would 22 have been sent to code, and they would have been 23 forced to remove it if, in fact, they were 24 causing -- they were -- 25 MS. ZEIDMAN: I would second your motion.
Page 27 1 Thank you. That's the end of my questions. 2 PRESIDENT MOORE: Are you good, Maggie? 3 MS. ZEIDMAN: I am very good with that. 4 PRESIDENT MOORE: Mr. Crampton and then 5 Mrs. Araskog. 6 MR. CRAMPTON: Well, to me, the appeal is 7 about a hitting wall, not a wall, and, in fact, 8 there was a specific provision by ARCOM not to do 9 a hitting wall, and these folks lowered the height 10 of the wall by, what, two feet, from 14 to 11 12 feet. 12 Now, if there's evidence that they're using 13 it as a hitting wall, I'd like to hear it because 14 other than -- if there isn't, if it's not a 15 hitting wall -- and I'm distinguishing between a 16 hitting wall and a wall -- then I think these 17 people have a perfect right to be victorious in 18 this situation. 19 PRESIDENT MOORE: Mrs. Araskog. 20 MS. ARASKOG: Opinion-wise, I think this is 21 a code enforcement issue. I think that a special 22 exception was not necessary in the beginning 23 because it wasn't evident that it was a hitting 24 wall. However, if evidence comes before us that 25 it is being used as a hitting wall, then it goes	Page 29 1 PRESIDENT MOORE: Go ahead, Julie, make the 2 motion. 3 MS. ARASKOG: I already did. 4 PRESIDENT MOORE: Oh, you made the motion, 5 then Ms. Zeidman seconded it. 6 Okay, there's a motion and a second on the 7 floor. 8 THE CLERK: Ms. Araskog. 9 MS. ARASKOG: Yes. 10 THE CLERK: Ms. Zeidman. 11 MS. ZEIDMAN: Yes. 12 THE CLERK: Mr. Crampton. 13 MR. CRAMPTON: Aye. 14 THE CLERK: Ms. Moore. 15 PRESIDENT MOORE: Yes. 16 MR. HANLON: Thank you. 17 MS. ARASKOG: Thank you. 18 * * * * * 19 20 21 22 23 24 25

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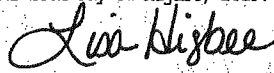
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STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Lisa Higbee, Court Reporter, certify
that I was authorized to and did stenographically
report the foregoing proceedings and that the
transcript is a true and complete record of my
stenographic notes.

Dated this 26th day of August, 2019.



Lisa Higbee, RPR, RMR

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Kelly Churney

From: Antonette Fabrizi on behalf of Town Council
Sent: Wednesday, September 11, 2019 8:36 AM
To: Gail Coniglio; Danielle Hickox Moore; Margaret Zeidman; Bobbie Lindsay; Julie Araskog; Lew Crampton
Cc: Joshua Martin; Wayne Bergman; Paul Castro; Kelly Churney
Subject: FW: Town of Palm Beach | Wadia Associates

From: Carla Felter <carla@brintzgalleries.com>
Sent: Tuesday, September 10, 2019 5:10 PM
To: Town Council <TCouncil@TownofPalmBeach.com>
Subject: Town of Palm Beach | Wadia Associates

Members of the Town Council:

We { 375 Gallery } were asked to send a letter regarding the retail business (formerly Pastry Heaven) converting to a retail office space for Wadia Associates.

Please call with any questions – 860 878 1053.

Best,

Carla

Carla M Felter
375 Gallery
375 S County Rd
Palm Beach, FL 33480
www.375Gallery.com
E: carla@brintzgalleries.com
M: 860 878 1053

John Lindgren

From: Dustin Mizell <dustin@environmentdesigngroup.com>
Sent: Tuesday, June 27, 2017 10:21 AM
To: John Lindgren
Cc: Logan Elliott
Subject: 1236 S. Ocean ARCOM Staff Approval Request 6-27-17
Attachments: 1236 S Ocean Boulevard ARCOM STAFF APPROVAL REQUEST L1.pdf; 1236 S Ocean Boulevard ARCOM STAFF APPROVAL REQUEST L2.pdf

John,

We met with Logan to review the new program change in this project.

This will no longer be a hitting wall & it will be a basketball / service area.

Logan said that we do not need a special exception anymore due to the removal of the hitting wall application .

Thank you for your review.

Hope you are enjoying vacation!

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

LEED® AP

www.EnvironmentDesignGroup.com

The Paramount Building

139 North County Road - Suite 20-B

Palm Beach, Florida 33480

ph: 561.832.4600

m: 561.313.4424

God Bless

Sheet
3 of 3
JL

LAW OFFICES
ALLEY, MAASS, ROGERS & LINDSAY, P.A.

340 ROYAL POINCIANA WAY, SUITE 321
POST OFFICE BOX 431
PALM BEACH, FLORIDA 33480-0431
(561) 659-1770
FACSIMILE (561) 833-2261
WWW.AMRL.COM

RAYMOND C. ALLEY (1893-1975)
HAROLD G. MAASS (1923-2006)
DOYLE ROGERS (1928-2016)
KAREN S. MARX (1964-1994)

1331 SE OCEAN BOULEVARD
STUART, FLORIDA 34996
P (772) 287-4404
F (772) 287-4044

ALAN LINDSAY
DAVID H. BAKER
WILLIAM W. ATTERBURY III
LOUIS L. HAMBY III
ROBB R. MAASS
M. TIMOTHY HANLON
WARREN D. HAYES, SR.
STUART J. HAFT
CAROL S. WAXLER
CATHERINE KENT
BRUCE A. McALLISTER
DAVID R. MAASS
CHRISTINE BIALCZAK
WARREN D. HAYES, JR.
NICOLE K. MAASS
LAURA B. KNOLL

September 9, 2019

BY E-MAIL

Madame Mayor and Members of the Town Council
Town Hall
Council Chambers - - Second Floor
360 South County Road
Palm Beach, Florida 33480

Re: "Rehearing" On Appeal Of Code
Enforcement Case # CE 19-265

Dear Madame Mayor and Council Members,

This firm serves as counsel to John and Margaret Thornton, the owners and present residents of 1236 South Ocean Boulevard in Palm Beach. This letter supplements our August 8, 2019 writing in opposition to the above-referenced appeal and is submitted specifically with respect to the "rehearing" scheduled for September 11, 2019 and in opposition to the letter of Amanda Q. Hand, Esq., dated September 6, 2019, ("Hand Letter"). In sum, as we demonstrate below, that rehearing should net the same result as the Town Council's initial August 14, 2019 proceeding ("August 14 Hearing") - - the complete denial of the subject appeal.

At the outset, we apologize for the late arrival of this paper, so close to the September 11 rehearing. However, 100 LC saw fit **not** to serve the Hand Letter upon the Thorntons at any time after its issuance. We first obtained a copy thereof from another source at approximately 10:25 a.m. today and have endeavored to file and serve (including upon counsel to 100 LC) this response as soon as possible.

Turning now to the facts and merits of the matter at hand, counsel to 100 Emerald Beach Way LC ("100 LC"), by email dated August 26, 2019, essentially complained to Town officials that the Town Council's denial of 100 LC's appeal at the August 14 Hearing was in error in light of correspondence counsel supposedly first received on August 16, 2016 pursuant to a Subpoena in the federal action 100 LC commenced earlier this year against the Town. In that email, counsel further contended that the newly-obtained materials disclosed the following:

... [T]he Thorntons did, in fact, apply for a hitting wall. The wall was, in fact, intended to be used as a hitting wall. The Thorntons, in fact, built a hitting wall. But rather than obtain the necessary special exception, they just shamelessly called it a “privacy wall” and left it to code enforcement to bring an action after it was built when someone complained, knowing full well that when code enforcement asked to inspect the property, they would refuse.

Email of Jeffrey C. Schneider, Esq., dated August 26, 2019, to K. Dominguez, et al., a copy of which is annexed as Exhibit A, (“Schneider Email”).

The Schneider Email also has alleged that with a single exception 100 LC did not see any of the documents received pursuant to the aforesaid Subpoena until August 16 and accused the Town of intentionally failing to produce some or all of them in response to prior public records requests. As is often the case, counsel to 100 LC was and is wrong, embarrassingly so. In fact, as the Town later made quite clear, by email of Kathleen Dominguez to Jeffrey C. Schneider, Esq., dated August 30, 2019, a copy of which is annexed as Exhibit B, “[t]he missing email correspondence (attached) was provided to your office on April 4, 2019 and again on April 10, 2019. ...” The bottom line is that the 100 LC counsel simply missed or ignored the emails claimed not to have been turned over before the August 14 Hearing. Remarkably, the Hand Letter regurgitates the canard about those emails and repeats the baseless contentions advanced by 100 LC - - and rejected by the Town Council - - on August 14. The “ruse” to which the Hand Letter so blithely refers is that shamelessly perpetrated by 100 LC and its counsel.

At their core, the arguments made in the Schneider Email and Hand Letter are deliberately, predictably, and fruitlessly misleading. So too, are the companion myths that the Thorntons actually applied for a permit for a “hitting wall” and were obliged to (and did not) obtain a special exception, and thus that the Town Council should have granted 100 LC’s appeal. To the contrary, the Town Council’s decision thereon was entirely correct for at least the following five reasons.

First, in actuality, there was and is no basis for any rehearing before the Town Council. 100 LC has for over five months possessed all the documents counsel has inaccurately averred that the Town held back. In fact, the Town long ago provided those documents to 100 LC, and counsel apparently flatly overlooked them. 100 LC should not be rewarded for its counsel’s incompetence.

Second, as reflected in the Transcript (“Tr.”) of the August 14 Hearing, in 2017 the Thorntons, through their architect Dustin Mizell, initially submitted plans supporting an application for a “hitting” or “rebound” wall. However, the Town staff rejected that proposal because a special exception would have been required for such a wall. As a result, no filing of those plans and that application was ever completed. *See* Tr. at 7-8. *See also id.* at 14. Otherwise put, as counsel to the Thorntons rightly represented to the Town Council at the August 14 Hearing, the Thorntons have never filed a formal application for a “rebound” or “hitting” wall. Nothing in the correspondence described in the Schneider Email or the Hand Letter undercuts or contradicts that fact.

Third, the actual application filed by the Thorntons was for a perimeter wall at the boundary of the driveway and a basketball and fitness area, not a hitting or rebound wall. *Id.* at 23-24. The

underlying history is straightforward. Several years ago, the Town asked the Thorntons to move their refuse area further away from South Ocean Boulevard than it had been. The Thorntons complied but were left with an unattractive and vacant concrete pad that they then decided to transform into a lovely basketball and fitness area for their children. In so doing, the Thorntons lowered the height of the wall by two feet to match the existing wall and installed a basketball hoop that remains in place today, copies of photos of which are annexed as Exhibit C. Notwithstanding, the above-referenced (merely) submitted plans and application, there never was and is not in existence now a hitting or rebound wall at the site. Properly therefore, ARCOM approved the application for the wall on July 14, 2017, and on October 6, 2017, the Town issued a building permit for it. *See id.* at 14-16.

Fourth, it is indisputable that 100 LC **appealed neither** ARCOM's decision to grant the application **nor** the Town's determination to issue a building permit. Thus, as professed at the August 14 Hearing and reiterated here, 100 LC has waived any appeal in those regards. *Id.* at 20-22.

Fifth and finally, there is **absolutely no evidence in the record** that the Thorntons have ever used or presently use the subject wall in a hitting or rebound capacity. *Id.* at 25. Try as it might to pull the wool over the Town Council's collective eyes and distract it from reality, 100 LC has no riposte to this dispositive and demonstrable fact. *See Ex. C.*

Therefore, for all of the reasons set forth in this letter and in the remainder of the record upon the instant appeal, the Town Council should neither reconsider nor change its ruling at the August 14 Hearing in any way and should persist in wholly denying that appeal.

We look forward to discussing relevant matters with Town Council at the September 11, 2019 "rehearing."

Respectfully,

A handwritten signature in black ink, appearing to read 'M. Timothy Hanlon', with a stylized flourish at the end.

M. Timothy Hanlon

cc: Mrs. Margaret B. Thornton
Mr. John L. Thornton
James J. McGuire, Esq.
Amanda Q. Hand, Esq.
Jeffrey C. Schneider, Esq.
(All by Email)

Courtney Lyne

From: Tim Hanlon
Sent: Monday, September 9, 2019 4:15 PM
To: Courtney Lyne
Subject: FW: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing
Attachments: Hitting Wall corr AMRL.pdf

This email is Ex A.

M. Timothy Hanlon
Alley, Maass, Rogers & Lindsay P.A.
340 Royal Poinciana Way, Suite 321
Palm Beach, Florida 33480
Phone: (561) 659-1770
Fax: (561) 833-2261
Direct Fax: (561) 804-4617
tim.hanlon@amrl.com

From: Jeffrey C. Schneider <jcs@lklsg.com>
Sent: Monday, August 26, 2019 10:33 AM
To: kdominguez@townofpalmbeach.com; John "Skip" Randolph (jrandolph@jones-foster.com) <jrandolph@jones-foster.com>
Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Tim Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>
Subject: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Dear Ms. Dominguez and Mr. Randolph:

I, along with Amanda Hand and Jezabel Lima, represent 100 Emerald Beach Way, LC.

On August 14, 2019, Town Council heard 100 Emerald Beach Way's appeal regarding an illegal hitting wall at 1236 South Ocean Boulevard. At that hearing, sworn representations were made by the Thorntons' counsel that there was no original application for a hitting wall and that the subject wall was never intended to be a hitting wall. These sworn representations were demonstrably false. Indeed, the attached correspondence – which was received by 100 Emerald Beachy Way on August 16, 2019 – demonstrates that Dustin Mizell submitted plans for "STAFF APPROVAL REQUEST" for a "hitting wall" at 1236 S Ocean Boulevard. John Lindgren specifically asked Mr. Mizell if this was for a "[t]ennis hitting wall?" Dustin Mizell responded unambiguously: "Correct." When John Lindgren told Mr. Mizell that it would require a special exception, and cited the statute, Mr. Mizell responded as follows:

This is disappointing because when we left the meeting you shared that this could be staff approved. Can we call it a privacy wall and courtyard? If the child hits some balls against the wall and someone hears it and calls the Town, isn't this a code compliance issue then?

In other words, the Thorntons did, in fact, apply for a hitting wall. The wall was, in fact, intended to be used as a hitting wall. The Thorntons, in fact, built a hitting wall. But rather than obtain the necessary special exception, they just shamelessly called it a "privacy wall" and left it to code enforcement to bring an action after it was built when someone complained, knowing full well that when code enforcement asked to inspect the property, they would refuse.

We received the attached correspondence on August 16, 2019 in response to a Federal subpoena to Alley, Mass, Rogers and Lindsey. With the exception of AMRL-00125, this is the first time that we have seen any of these emails, but the

attached emails are clearly within the scope of the numerous public records requests that have been made to the Town of Palm Beach, including the first request on January 10, 2019 for: "All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017." (PZB-23-2019) The correspondence between Dustin Mizell and John Lindgren even has "1236 S Ocean Boulevard" in the subject line of the emails and should have been produced.

Clearly, we have not received responsive records in response to the PZB-23-2019 request, which has already directly impacted the substantive and procedural due process rights of 100 Emerald Beach Way. Please accept this email as a renewed request and notice pursuant to Florida Statutes Section 119.12 that we intend to pursue this action in a court of competent jurisdiction and will seek attorneys' fees and costs.

Because 100 Emerald Beach Way, LC did not have the attached evidence at the hearing on August 14, 2019, and because there may be more missing documents that disprove the sworn representations made by the Thorntons' representative, 100 Emerald Beach Way, LC demands a rehearing on the hitting wall appeal for the next Town Council meeting. Please let me know the Town's response to the request.

Thank you.

Jeffrey C. Schneider, PA
Partner



LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
201 South Biscayne Boulevard
22nd Floor, Citigroup Center
Miami, FL 33131
305.403.8799 (direct)
305.403.8788 (main)
305.403.8789 (fax)

[vCard](#) | **[Bio](#)** | **[Website](#)**

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EXHIBIT "B"

Courtney Lyne

From: Tim Hanlon
Sent: Monday, September 9, 2019 4:15 PM
To: Courtney Lyne
Subject: FW: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing - Responsive Documents
Attachments: Hitting Wall corr AMRL.pdf

This email is Ex B.

M. Timothy Hanlon
Alley, Maass, Rogers & Lindsay P.A.
340 Royal Poinciana Way, Suite 321
Palm Beach, Florida 33480
Phone: (561) 659-1770
Fax: (561) 833-2261
Direct Fax: (561) 804-4617
tim.hanlon@amrl.com

From: Kathleen Dominguez <KDominguez@TownofPalmBeach.com>
Sent: Friday, August 30, 2019 10:40 AM
To: Jeffrey C. Schneider <jcs@lklsg.com>
Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Tim Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; John (Skip) C. Randolph <JRandolph@jonesfoster.com>
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing - Responsive Documents

Dear Mr. Schneider,

I am contacting you regarding your renewed public records request for "All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017".

Set out below are the instructions for accessing the requested records:

1. Click on the following link: <https://palmbeachfl.justfoia.com/publicportal/home/track>. This hyperlink will direct you to the Town's online public records portal where you can access the responsive documents.
2. When you get to the portal page, enter the request Number: TC-272-2019 and security key: 880281 and click "track".
3. A compressed zip folder with the file name "*Responsive Documents*" will appear that contains the responsive documents for downloading. Please let me know if you have any trouble accessing the requested information.

In your letter below dated August 26, 2019, you brought to my attention that the attached correspondence was missing from the Town's response to a previous records request your office submitted on January 10, 2019, assigned as **PZB-23-2019**.

To address this, I researched similar records requests for email correspondence related to 1236 South Ocean Blvd and came across records request **TC-48-2019**, which was submitted by your office on March 20, 2019. When I compared the results and the search criteria used for both requests (TC-48-2019 and PZB-23-2019), I discovered two things:

- 1.) The keyword combination used for each search was different and therefore, produced different results.
- 2.) The missing email correspondence (attached) was provided to your office on April 4, 2019 and again on April 10, 2019 in response to records request **TC-48-2019**.

When staff conducted the search for PZB-23-2019 back in January, we used common keywords such as: (1236 South Ocean Boulevard) OR (1236 South) OR (1236) to broaden the search results. Unfortunately, the search parameters that were used did not produce the attached correspondence. But when the search was conducted for TC-48-2019, a different combination of keywords were used (based on the nature of the request) and the attached email correspondence between Dustin Mizell, John Lindgren, Paul Castro and Tim Hanlon from May 2017, was produced and provided to your office on April 4, 2019 and again on April 10, 2019.

I recall working with the Planning and Zoning staff to fulfill PZB-23-2019 and during that process, staff provided additional emails that did not appear in the search results. When the Town responded to PZB-23-2019, we responded out of good faith and made every effort to provide you with all the correspondence in our records to the best of our knowledge. However, despite our best efforts, our response to PZB-23-2019 was inconsistent when compared to similar requests from your office and for that I wish to sincerely apologize. I can tell you with 100% confidence that it was not intentional. We understand now that more keywords such as (1236 S Ocean AND 1236 South Ocean) are needed in our combinations to produce more results. I will work with staff to ensure that the proper keyword combinations are used in our search parameters in the future.

If you have any questions regarding the above information or if you wish to discuss this further, I can be reached directly at 561-227-6342.

Sincerely,
Kathleen Dominguez, CMC
Town Clerk

From: Kathleen Dominguez
Sent: Wednesday, August 28, 2019 12:06 PM
To: Jeffrey C. Schneider <jcs@lklsg.com>
Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawclc.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; 'Randolph, John C.' <JRandolph@jonesfoster.com>
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Dear Mr. Schneider,

The Town Clerk's Office is in receipt of your email dated August 26, 2019 and your renewed request for "*All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017.*" (PZB-23-2019)

The Town of Palm Beach takes all public records requests seriously and it is our policy to provide open and timely access to all of the Town's records in the spirit of the Florida Records Law.

Please be advised that the Town Clerk's Office, Planning, Zoning and Building Dept. and Code Enforcement staff have worked diligently and thoroughly on fulfilling the numerous records requests that we have received from your office. Staff will conduct a new search query in the same manner and procedure used to fulfill records request PZB-23-2019 and provide you with the results of the new search.

At the same time, I will compare the new search query results to the original search query results for PZB-23-2019 to find out **why** the email correspondence between Dustin Mizell, John Lindgren, Tim Hanlon and Paul Castro, **did not** appear in the original search results for PZB-23-2019.

I will also look at prior search queries conducted for similar records requests (for email correspondence related to 1236 South Ocean Way and 100 Emerald Beach Way) in order to identify and address any inconsistencies with the search methods and criteria used when responding to requests for voluminous email correspondence in order prevent this from happening again in the future.

On behalf of the Town of Palm Beach, I wish to apologize for any inconsistencies in our response, as they were not

intentional. I also wish to apologize for the inconvenience and impact this had on the due process rights of 100 Emerald Beach Way.

If you have any questions or additional concerns that you wish to discuss, please do not hesitate to contact me at 561-838-5416 or via email: kdominguez@townofpalmbeach.com.

Sincerely,

Kathleen Dominguez, CMC

Town Clerk
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480
561-838-5416

From: Randolph, John C. <JRandolph@jonesfoster.com>

Sent: Tuesday, August 27, 2019 2:39 PM

To: Jeffrey C. Schneider <jcs@lklsg.com>

Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>; Kathleen Dominguez <KDominguez@TownofPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>

Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Mr. Schneider,

In light of what you indicate, in your attached email of August 26th, is additional information you or Amanda did not have an opportunity to address on behalf of your client at the August 14th hearing regarding the appeal on the hitting wall, I have recommended, and it has been approved by Josh Martin, that your request for a rehearing on the hitting wall be granted. The rehearing has been scheduled to be heard at the Town Council meeting of September 11, 2019. The rehearing will be confined to presentations and arguments related to what you claim to be additional information that the Council did not have an opportunity to consider at its previous hearing.

If you and/or Mr. Hanlon wish to present written memoranda in regard to your respective positions on this matter, please file same with the Town Clerk no later than 5:00 p.m. on the Friday before the meeting, i.e., September 6, 2019.

Please do not hesitate to contact me if you have any comments or questions in regard to this matter.

Thank you.

John C. Randolph

Attorney
Jones Foster P.A.

561 650 0458 – D
561 650 5300 – F
561 659 3000 – O

jrandolph@jonesfoster.com

J O N E S F O S T E R

Flagler Center Tower
505 South Flagler Drive, Suite 1100
West Palm Beach, Florida 33401
jonesfoster.com

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From: Jeffrey C. Schneider <jcs@lklsg.com>
Sent: Monday, August 26, 2019 10:33 AM
To: kdominguez@townofpalmbeach.com; Randolph, John C. <JRandolph@jonesfoster.com>
Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>
Subject: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

This Message originated outside your organization.

Dear Ms. Dominguez and Mr. Randolph:

I, along with Amanda Hand and Jezabel Lima, represent 100 Emerald Beach Way, LC.

On August 14, 2019, Town Council heard 100 Emerald Beach Way's appeal regarding an illegal hitting wall at 1236 South Ocean Boulevard. At that hearing, sworn representations were made by the Thorntons' counsel that there was no original application for a hitting wall and that the subject wall was never intended to be a hitting wall. These sworn representations were demonstrably false. Indeed, the attached correspondence – which was received by 100 Emerald Beachy Way on August 16, 2019 – demonstrates that Dustin Mizell submitted plans for "STAFF APPROVAL REQUEST" for a "hitting wall" at 1236 S Ocean Boulevard. John Lindgren specifically asked Mr. Mizell if this was for a "[t]ennis hitting wall?" Dustin Mizell responded unambiguously: "Correct." When John Lindgren told Mr. Mizell that it would require a special exception, and cited the statute, Mr. Mizell responded as follows:

This is disappointing because when we left the meeting you shared that this could be staff approved. Can we call it a privacy wall and courtyard? If the child hits some balls against the wall and someone hears it and calls the Town, isn't this a code compliance issue then?

In other words, the Thorntons did, in fact, apply for a hitting wall. The wall was, in fact, intended to be used as a hitting wall. The Thorntons, in fact, built a hitting wall. But rather than obtain the necessary special exception, they just shamelessly called it a "privacy wall" and left it to code enforcement to bring an action after it was built when someone complained, knowing full well that when code enforcement asked to inspect the property, they would refuse.

We received the attached correspondence on August 16, 2019 in response to a Federal subpoena to Alley, Mass, Rogers and Lindsey. With the exception of AMRL-00125, this is the first time that we have seen any of these emails, but the attached emails are clearly within the scope of the numerous public records requests that have been made to the Town of Palm Beach, including the first request on January 10, 2019 for: "All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017." (PZB-23-2019) The correspondence between Dustin Mizell and John Lindgren even has "1236 S Ocean Boulevard" in the subject line of the emails and should have been produced.

Clearly, we have not received responsive records in response to the PZB-23-2019 request, which has already directly impacted the substantive and procedural due process rights of 100 Emerald Beach Way. Please accept this email as a renewed request and notice pursuant to Florida Statutes Section 119.12 that we intend to pursue this action in a court of competent jurisdiction and will seek attorneys' fees and costs.

Because 100 Emerald Beach Way, LC did not have the attached evidence at the hearing on August 14, 2019, and because there may be more missing documents that disprove the sworn representations made by the Thorntons' representative, 100 Emerald Beach Way, LC demands a rehearing on the hitting wall appeal for the next Town Council meeting. Please let me know the Town's response to the request.

Thank you.

Jeffrey C. Schneider, PA
Partner



LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
201 South Biscayne Boulevard
22nd Floor, Citigroup Center
Miami, FL 33131
305.403.8799 (direct)
305.403.8788 (main)
305.403.8789 (fax)

[vCard](#) | [Bio](#) | [Website](#)

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Please be advised that under Florida law, e-mails and e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact the Town of Palm Beach by phone at (561) 838-5400, or in writing: 360 S. County RD, Palm Beach, FL 33480.

EXHIBIT "C"



From: [Joshua Martin](#)
To: [Wayne Bergman](#); [Kelly Churney](#)
Cc: [Jay Boodheshwar](#); [Joshua Martin](#)
Subject: Fw: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing
Date: Tuesday, September 10, 2019 9:30:18 AM

FYI

**Josh Martin, AICP, CNU-A
Director**

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6401
Mobile: 843-247-2057

From: Jeffrey C. Schneider <jcs@lkls.com>
Sent: Tuesday, September 10, 2019 8:18 AM
To: John (Skip) C. Randolph; Amanda Quirke
Cc: Jezabel Lima; Mark Timothy Hanlon; James J. McGuire; Robert D. Critton Jr.; Kathleen Dominguez; Joshua Martin
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Skip:

Your August 27 email required the parties to submit memoranda by the same deadline, which gave neither side the advantage of responding to the other side's submission. 100 Emerald Beach Way complied with that deadline. The Thorntons did not. If the Town was going to give the Thorntons an extension, the Town should have advised 100 Emerald Beach Way of the new deadline applicable to both sides. Instead, the Town granted only the Thorntons an extension, and did not even advise 100 Emerald Beach Way, which gave the Thorntons the opportunity of responding to 100 Emerald Beach Way's memorandum, which is unfair and inconsistent with your August 27 email.

When exactly did the Thorntons request the extension, because when Amanda asked you and Josh yesterday if the Thorntons filed anything, you did not mention the extension? Please send us the Thorntons' request for an extension, which the Thorntons saw fit not to copy us on, and please send us your response. Many thanks.

Jeff

Jeffrey C. Schneider, PA
Partner



LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP
201 South Biscayne Boulevard
22nd Floor, Citigroup Center
Miami, FL 33131
305.403.8799 (direct)
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305.403.8789 (fax)

[vCard](#) | [Bio](#) | [Website](#)

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From: Randolph, John C. <JRandolph@jonesfoster.com>

Sent: Tuesday, September 10, 2019 7:20 AM

To: Amanda Quirke <AQuirke@lehtinen-schultz.com>

Cc: Jeffrey C. Schneider <jcs@lkls.com>; Jezabel Lima <jl@lkls.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcl.com>; kdominguez@townofpalmbeach.com; Joshua Martin <jmartin@townofpalmbeach.com>

Subject: Re: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

They called last week and asked for an extension until 5:00 p. m. Monday. The extension was granted. The memo will be distributed along with yours to the Mayor and Town Council. If you feel prejudiced in any way you can request that the Council defer your rehearing to a subsequent date.

Sent from my iPhone

On Sep 9, 2019, at 5:47 PM, Amanda Quirke <AQuirke@lehtinen-schultz.com> wrote:

This Message originated outside your organization.

Mr. Randolph,

We are in receipt of the Thornton's "response" filed today at 4:39 pm. However, it is untimely as you previously advised all counsel to file written memoranda on or before 5:00 pm on September 6. Therefore, the September 9 memorandum submitted by the Thorntons' counsel should not be distributed in advance of the September 11 meeting.

Thank you for your consideration.

Amanda Quirke Hand

Of Counsel

Board Certified in City, County, and Local Government Law

Lehtinen Schultz | Attorneys

Lehtinen Schultz Riedi de la Fuente

Sabadell Financial Center, 1111 Brickell Avenue, Suite 2200, Miami, FL 33131

Direct: 305.733.2800 Fax: 305.356.5720

www.Lehtinen-Schultz.com

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From: Randolph, John C. <JRandolph@jonesfoster.com>

Sent: Tuesday, August 27, 2019 2:39 PM

To: Jeffrey C. Schneider <jcs@lklsg.com>

Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>;

Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire

<jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>;

kdominguez@townofpalmbeach.com; Joshua Martin

<jmartin@TownOfPalmBeach.com>

Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Mr. Schneider,

In light of what you indicate, in your attached email of August 26th, is additional information you or Amanda did not have an opportunity to address on behalf of your client at the August 14th hearing regarding the appeal on the hitting wall, I have recommended, and it has been approved by Josh Martin, that your request for a rehearing on the hitting wall be granted. The rehearing has been scheduled to be heard at the Town Council meeting of September 11, 2019. The rehearing will be confined to presentations and arguments related to what

you claim to be additional information that the Council did not have an opportunity to consider at its previous hearing.

If you and/or Mr. Hanlon wish to present written memoranda in regard to your respective positions on this matter, please file same with the Town Clerk no later than 5:00 p.m. on the Friday before the meeting, i.e., September 6, 2019.

Please do not hesitate to contact me if you have any comments or questions in regard to this matter.

Thank you.

John C. Randolph

Attorney
Jones Foster P.A.

561 650 0458 – D
561 650 5300 – F
561 659 3000 – O

jrandolph@jonesfoster.com

<image001.png>

Flagler Center Tower
505 South Flagler Drive, Suite 1100
West Palm Beach, Florida 33401
jonesfoster.com

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From: Jeffrey C. Schneider <jcs@klsg.com>

Sent: Monday, August 26, 2019 10:33 AM

To: kdominguez@townofpalmbeach.com; Randolph, John C.

<JRandolph@jonesfoster.com>

Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@klsg.com>;

Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire

<jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawclc.com>

Subject: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

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Dear Ms. Dominguez and Mr. Randolph:

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Clearly, we have not received responsive records in response to the PZB-23-2019 request, which has already directly impacted the substantive and procedural due process rights of 100 Emerald Beach Way. Please accept this email as a renewed request and notice pursuant to Florida Statutes Section 119.12 that we intend to pursue this action in a court of competent jurisdiction and will seek attorneys' fees and costs.

Because 100 Emerald Beach Way, LC did not have the attached evidence at the hearing

on August 14, 2019, and because there may be more missing documents that disprove the sworn representations made by the Thorntons' representative, 100 Emerald Beach Way, LC demands a rehearing on the hitting wall appeal for the next Town Council meeting. Please let me know the Town's response to the request.

Thank you.

Jeffrey C. Schneider, PA

Partner

<image002.gif>

LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP

201 South Biscayne Boulevard

22nd Floor, Citigroup Center

Miami, FL 33131

305.403.8799 (direct)

305.403.8788 (main)

305.403.8789 (fax)

vCard | Bio | Website

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From: [Joshua Martin](#)
To: [Wayne Bergman](#)
Cc: [Kelly Churney](#); [Joshua Martin](#); [Jay Boodheshwar](#)
Subject: Fw: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing
Date: Tuesday, September 10, 2019 5:25:27 AM
Attachments: [image001.png](#)

FYI

**Josh Martin, AICP, CNU-A
Director**

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6401
Mobile: 843-247-2057

From: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>
Sent: Monday, September 9, 2019 5:47 PM
To: John (Skip) C. Randolph; Jeffrey C. Schneider
Cc: Jezabel Lima; Mark Timothy Hanlon; James J. McGuire; Robert D. Critton Jr.; Kathleen Dominguez; Joshua Martin; Amanda Quirke
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Mr. Randolph,

We are in receipt of the Thornton's "response" filed today at 4:39 pm. However, it is untimely as you previously advised all counsel to file written memoranda on or before 5:00 pm on September 6. Therefore, the September 9 memorandum submitted by the Thorntons' counsel should not be distributed in advance of the September 11 meeting.

Thank you for your consideration.

Amanda Quirke Hand

Of Counsel

Board Certified in City, County, and Local Government Law

Lehtinen Schultz | Attorneys

Lehtinen Schultz Riedi de la Fuente

Sabadell Financial Center, 1111 Brickell Avenue, Suite 2200, Miami, FL 33131

Direct: 305.733.2800 Fax: 305.356.5720

www.Lehtinen-Schultz.com

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From: Randolph, John C. <JRandolph@jonesfoster.com>

Sent: Tuesday, August 27, 2019 2:39 PM

To: Jeffrey C. Schneider <jcs@lklsg.com>

Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>; kdominguez@townofpalmbeach.com; Joshua Martin <jmartin@TownOfPalmBeach.com>

Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Mr. Schneider,

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If you and/or Mr. Hanlon wish to present written memoranda in regard to your respective positions on this matter, please file same with the Town Clerk no later than 5:00 p.m. on the Friday before the meeting, i.e., September 6, 2019.

Please do not hesitate to contact me if you have any comments or questions in regard to this matter.

Thank you.

John C. Randolph

Attorney
Jones Foster P.A.

561 650 0458 – D
561 650 5300 – F
561 659 3000 – O

jrandolph@jonesfoster.com

J O N E S F O S T E R

Flagler Center Tower

505 South Flagler Drive, Suite 1100
West Palm Beach, Florida 33401
jonesfoster.com

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From: Jeffrey C. Schneider <jcs@klsg.com>

Sent: Monday, August 26, 2019 10:33 AM

To: kdominguez@townofpalmbeach.com; Randolph, John C. <JRandolph@jonesfoster.com>

Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@klsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>

Subject: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

This Message originated outside your organization.

Dear Ms. Dominguez and Mr. Randolph:

I, along with Amanda Hand and Jezabel Lima, represent 100 Emerald Beach Way, LC.

On August 14, 2019, Town Council heard 100 Emerald Beach Way's appeal regarding an illegal hitting wall at 1236 South Ocean Boulevard. At that hearing, sworn representations were made by the Thorntons' counsel that there was no original application for a hitting wall and that the subject wall was never intended to be a hitting wall. These sworn representations were demonstrably false. Indeed, the attached correspondence – which was received by 100 Emerald Beachy Way on August 16, 2019 – demonstrates that Dustin Mizell submitted plans for "STAFF APPROVAL REQUEST" for a "hitting wall" at 1236 S Ocean Boulevard. John Lindgren specifically asked Mr. Mizell if this was for a "[t]ennis hitting wall?" Dustin Mizell responded unambiguously: "Correct." When John Lindgren told Mr. Mizell that it would require a special exception, and cited the statute, Mr. Mizell responded as follows:

This is disappointing because when we left the meeting you shared that this could be staff approved. Can we call it a privacy wall and courtyard? If the child hits some balls against the wall and someone hears it and calls the Town, isn't this a code compliance issue then?

In other words, the Thorntons did, in fact, apply for a hitting wall. The wall was, in fact, intended to be used as a hitting wall. The Thorntons, in fact, built a hitting wall. But rather than obtain the necessary special exception, they just shamelessly called it a "privacy wall" and left it to code enforcement to bring an action after it was built when someone complained, knowing full well that when code enforcement asked to inspect the property, they would refuse.

We received the attached correspondence on August 16, 2019 in response to a Federal subpoena to

Alley, Mass, Rogers and Lindsey. With the exception of AMRL-00125, this is the first time that we have seen any of these emails, but the attached emails are clearly within the scope of the numerous public records requests that have been made to the Town of Palm Beach, including the first request on January 10, 2019 for: "All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017." (PZB-23-2019) The correspondence between Dustin Mizell and John Lindgren even has "1236 S Ocean Boulevard" in the subject line of the emails and should have been produced.

Clearly, we have not received responsive records in response to the PZB-23-2019 request, which has already directly impacted the substantive and procedural due process rights of 100 Emerald Beach Way. Please accept this email as a renewed request and notice pursuant to Florida Statutes Section 119.12 that we intend to pursue this action in a court of competent jurisdiction and will seek attorneys' fees and costs.

Because 100 Emerald Beach Way, LC did not have the attached evidence at the hearing on August 14, 2019, and because there may be more missing documents that disprove the sworn representations made by the Thorntons' representative, 100 Emerald Beach Way, LC demands a rehearing on the hitting wall appeal for the next Town Council meeting. Please let me know the Town's response to the request.

Thank you.

Jeffrey C. Schneider, PA

Partner



LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP

201 South Biscayne Boulevard

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JAMES K. GREEN, P.A.

LAWYERS

JAMES K. GREEN
NINA M. ZOLLO
ANNE F. O'BERRY
NANCY F. UDELL, OF COUNSEL

SUITE 1650, ESPERANTE'
222 LAKEVIEW AVENUE
WEST PALM BEACH,
FLORIDA 33401
561.659.2029
FACSIMILE 561.655.1357

September 5, 2019

By Hand Delivery and Via Email to kchurney@townofpalmbeach.com

Mayor Gail L. Coniglio
Honorable Danielle H. Moore, President
Honorable Margaret Zeidman, President *Pro Tem*
Honorable Bobbie Lindsay, Council Member
Honorable Lew Crampton, Council Member

Re: Applicants' Response to Administrative Appeal of Determination and Decision
by the Director of Zoning that the Proposed "Guest House and Pavilion for the
Main House at 1480 North Ocean Boulevard" located at 1485 Via Manana is a
Stand Alone Residence that Does Not Require a Unity of Title

Dear Mayor and Honorable Town Councilmembers:

I represent Jason and Josephine Kalisman, the applicants for 1485 Via Manana (the "Applicants"). The Applicants seek to build a stand-alone residence at 1485 Via Manana that will also serve as a guest house for relatives and guests at their home at 1480 North Ocean Boulevard.

Paul Castro, AICP, Town of Palm Beach Zoning Administrator, determined that the proposed guest house and pavilion for the main house at 1480 North Ocean Boulevard located at 1485 Via Manana is *designed* as a stand-alone residence that does not require a unity of title. He did so because the proposed residence met all the building setbacks, height, overall height, setbacks, lot coverage, building volume and mass, and landscape open space required for a stand-alone residence.

Ms. Araskog, who lives across the *cul-de-sac*, disagrees with Mr. Castro's determination and appeals. The Applicants do not challenge her standing to bring this appeal.

This is the Applicants' Response.

I. INTRODUCTION

A reading of the Appeal to Town Council dated August 21, 2019 ("Appeal") would lead the Town Council to believe that Town law requires unity of title for two stand-alone homes on

separate parcels that seek to complement each other. Appeal at pp. 1-6. Nothing could be further from the truth. Ms. Araskog's invitation to use this appeal to, in effect, impose an unwritten unity of title law on stand-alone residences should be rejected.

Ms. Araskog devotes the vast majority of her appeal to discussion of matters properly for ARCOM to decide. The issue as to whether the proposed residence is excessively similar to the home at 1480 North Ocean Boulevard is a matter for ARCOM, and not properly before the Town Council on this appeal. The issue of how the property is actually used is an issue for Code Enforcement, and not properly before the Town Council. The issue of whether Town should revise its ordinances to prohibit residents from housing relatives who are guests or guests at nearby, stand-alone residences is not properly a matter for this appeal.

II. REQUEST FOR RECUSAL OR DISQUALIFICATION

Appellant is Julie Araskog, a member of this council. She is reported to have announced that she will recuse herself from consideration of this appeal. Palm Beach Daily News, "*Proposed house draws opposition*," 8/25/19. ("Araskog will recuse herself from that discussion, she said.") If she refuses, the Kalismans respectfully request the opportunity to be heard as to why she should be disqualified.

III. THE ZONING ADMINISTRATOR ACTED PROPERLY

A. Standard of Review

The standard of review is substantial deference to the Zoning Administrator's decision. Under the "deference doctrine" which has been widely recognized, the Council should grant substantial deference to an agency's special expertise in interpreting a statute or rule within its jurisdiction or regulatory responsibility. *Raffield v. State*, 565 So.2d 704, 706 (Fla. 1990) (the interpretation of administrative officers with special expertise, who are charged to administer a law, are entitled to judicial deference and will be given great weight in the courts of Florida); *Sans Souci v. Div. of Fla. Land Sales and Condominiums, Dept. of Bus. Regulation*, 421 So.2d 623, 626 (Fla. 1st DCA 1982) (statutory construction "for which the Division, given its regulatory responsibility over condominiums, has special expertise"); *Williams v. State, Dep't of Mgmt. Serv.*, 647 So.2d 317, 323 (Fla. 1st DCA 1994) (an agency is entitled to deference when interpreting statutes within its area of administration, especially when involving expertise or issues of public policy); *Cagle v. St. Johns County Sch. Dist.*, 939 So.2d 1085, 1089 (Fla. 5th DCA 2006); *Brown v. State, Comm'n On Ethics*, 969 So.2d 553, 557 (Fla. 1st DCA 2007); 48A Fla.Jur.2d, Statutes, § 164. Under federal law, this principle is known as "*Chevron* deference." See *State v. Sun Gardens Citrus, LLP*, 780 So.2d 922, 925 (Fla. 2d DCA 2001) (citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)).

Agency expertise arises where the statute or rule at issue involves policy considerations for which an agency has been entrusted special responsibility. *Health Options, Inc. v. Agency for Health Care Admin*, 889 So.2d 849, 851 n.2 (Fla. 1st DCA 2005); *see Profl Reactor Operator Soc'y v. NRC*, 939 F.2d 1047, 1051 (D.C. Cir. 1991)(no deference to agency interpretations of statutes outside agency's particular expertise and special charge to administer).

B. Town Law

The laws and regulations of the Town are set forth in its Code of Ordinances (the "Code" or "Town Code").

The Zoning Administrator, Paul Castro, AICP, is responsible for determining that the proposed home is designed as a stand-alone residence in terms of building setbacks, height, overall height, setbacks, lot coverage, building volume and mass, and landscape open space.

Determining setbacks, height, overall height, setbacks, lot coverage, building volume and mass, and landscape open space is clearly within Mr. Castro's special expertise.

Here Mr. Castro properly determined that the proposed residence is designed as a stand-alone residence in terms of building setbacks, height, overall height, setbacks, lot coverage, building volume and mass, and landscape open space. His determination is entitled to substantial deference.

Nothing in the Town Code, including the ARCOM ordinance, or state or federal law, requires unity of title for stand-alone residences that are not accessory uses. This is a stand-alone residence, and not an accessory use, because it meets all building setbacks, height, overall height, setbacks, lot coverage, building volume and mass, and landscape open space requirements.

Under the Appellant's view, any time a family buys an adjacent residence for relatives who are guests or non-family guests, that adjacent stand-alone residence becomes an accessory use. That is not the law.

In addition, the Appellant misreads and misquotes Section 134-2 of the Code for the definition of "Family." That section provides:

"Family means an individual; or two or more persons related by legal adoption, blood, or a licit marriage; or a group of not more than three persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling."

(emphasis on original semicolons added). It contains three separate provisions: 1) “an individual”; 2) “two or more persons related...” and 3) “a group of no more than three persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling.” These provisions are separated by three semicolons. That means that each provision is an independent clause.

The Appellant, however, cherry-picks Section 134-2 of the Code for the definition of “Family” to mean “an individual[,] or two or more persons related [...] or a group of no more than three persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling” by deleting the semicolons and substituting commas. Appeal at p. 5. (emphasis on commas substituted by Appellant for semicolons deleted by Applicant).

The only clause that contains the language “living together as a single housekeeping unit in a dwelling” is the third, which applies to “a group of no more than three unrelated people.” That language does not apply to the antecedent clauses. *McLeod v. Nagle*, 48 F.2d 189, 191 (9th Cir.1931) (“A semicolon is used to show that what follows is grammatically independent, though related in thought.”). It is generally understood that limitations or qualifications in one independent clause do not apply to other independent clauses. *Id.* at 191 (noting that independent clauses have coordinate value and must be read separately). This construction also is consistent with the rule of the last antecedent, a rule of construction that holds that a limiting clause is usually read as modifying only the noun or phrase that it immediately follows. *Barnhart v. Thomas*, 540 U.S. 20, 25 (2003).

Thus, nothing in the Code prevents “two or more persons related by legal adoption, blood, or a licit marriage” from living next door to or across the street from parents, siblings or children in a stand-alone dwelling. Moreover, nothing in the Code prohibits guests who are visiting families. Therefore, the argument that “there is no evidence whatsoever that the Applicants and their family intend to live ‘together as a single housekeeping unit’ in the proposed Guest House when they are already identified as living together in the Main House,” Appeal at pp. 5-6, must be rejected.

C. Substantial Deference to the Zoning Administrator’s Special Expertise in Interpreting Town Code Requires Affirmance

The Zoning Administrator acted in accordance with Town Code when he determined that the proposed guest house and pavilion for the main house at 1480 North Ocean Boulevard located at 1485 Via Manana is a stand-alone residence that does not require a unity of title.¹ Mr. Castro

¹ There were numerous letters attached to this Appeal. While “citizen *testimony* in a zoning matter is perfectly permissible and constitutes substantial competent evidence, so long as it is fact-based. ... [m]ere generalized statements of opposition are to be disregarded....” *Metropolitan Dade County v. Blumenthal*, 675 So. 2d 598, 607 (Fla. 3d DCA 1996) (on rehearing *en banc*)

properly determined that the proposed residence is designed as a stand-alone residence in terms of building setbacks, height, overall height, setbacks, lot coverage, building volume and mass, and landscape open space. His determination is entitled to substantial deference.

IV. TOWN COUNCIL'S OBLIGATION TO AFFIRM

Since the Town Council's role is limited to a review for possible administrative mistakes, and there were none, it should affirm the Zoning Administrator's decision. It owes substantial deference to the Zoning Administrator's determination.

V. CONCLUSION

The Town Council must affirm the Zoning Administrator's decision. The proposed, stand-alone residence, after full ARCOM review, will enhance this north end neighborhood.

Very truly yours,

/s/ James K. Green

Ccs: John Eubanks, Jr., Esq.
John C. Randolph, Esq.

(citing *City of Apopka v. Orange County*, 299 So. 2d 657, 659 (Fla. 4th DCA 1974)). Furthermore, most arguments made against the application were not supported by any evidence. Boiled down, aside from the misplaced legal arguments advanced by Ms. Araskog, the letters and public comments in opposition represent nothing more than thinly veiled subjective preferences of a couple neighbors and two well-respected architects who not arbiters of the law.

Florida law is clear that public land use decisions are not popularity contests. *City of Apopka v. Orange County*, 299 So. 2d at 659 ("it was not the function of the [City Commission] to hold a plebiscite on the [conditional use] application"); *Conetta v. City of Sarasota*, 400 So. 2d 1051, 1053 (Fla. 2d DCA 1981) ("a popularity poll of the neighborhood" was an improper basis for denial). In *City of Apopka*, the Fourth District Court of Appeal explained that the purpose of a public hearing before a city commission or zoning board is not to conduct an opinion poll, but instead to allow the public to present facts from which the Board may make a decision. 299 So. 2d at 659. "The Board should base their determination upon facts which they find to have been established, instead of upon the wishes of persons who appear for or against the granting of the application." *Id.* (citation omitted).

The Law Offices of
BRETON, LYNCH, EUBANKS & SUAREZ-MURIAS, P.A.

Peter L. Breton
Francis X. J. Lynch
John R. Eubanks, Jr.
Marta M. Suarez-Murias
Robert J. Sniffen – Of Counsel
Jack Schramm Cox, Chartered – Of Counsel

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West Palm Beach, FL 33401-4005
Phone: (561) 721-4000
Facsimile: (561) 721-4001

September 7, 2019

Via Email

Josh Martin, Director
Planning, Zoning and Building Department
Town of Palm Beach
c/o Wayne Bergman
360 South County Road
Palm Beach, FL 33480

Re: Motion to Strike Purported “Applicant’s Response” to Administrative Appeal of Determination and Decision by the Director of Zoning that the Proposed “Guest House and Pavilion for the Main House at 1480 North Ocean Boulevard” located at 1485 Via Manana is a Stand Alone Residence that Does Not Require a Unity of Title

Dear Mr. Bergman:

As you are aware, our office represents the Appellant in this matter, Julie Araskog, the owner of the real property located at 1490 Via Manana. In that capacity, please accept this letter as her Motion to Strike the purported “Applicant’s Response” to Ms. Araskog’s Administrative Appeal. That “Response” was provided to our office after 7 p.m. on September 5, 2019 by James K. Green on behalf of Josephine and Jason Kalisman, the applicants for a proposed “Guest House and Pavilion for the Main House at 1480 North Ocean Boulevard.” (“Applicants”).

As you are aware, under Section 134-142 of the Town Code, an Administrative Appeal to the Town Council may be taken by “any *person aggrieved* or by any officer, board or bureau of the town affected *by any decision of an administrative official* under any section of this chapter.” (emphasis added). As such, it is clear that pursuant to the Town Code, the only parties to any such Administrative Appeal consist of the aggrieved Appellant and the Town. There is no provision whatsoever in the Town Code for any third party to be a party to, or to participate in the Administrative Appeal. This restriction includes the Applicants, given that the underlying determination by Mr. Castro on appeal was in favor of the Applicants.

Under Section 134-143 of the Town Code, “the director of planning, zoning and building shall examine such appeal and make a recommendation thereon, and shall forward such recommendation to town council, together with all documents, plans, and/or other materials *that constitute the record of the action that is being appealed.*” (emphasis added) As such, the record on Appeal consists of the determination being challenged, the Administrative Appeal and the Exhibits attached thereto, along with any recommendation by the Director of Planning, Zoning and Building. This record is thereafter forwarded to the Town Council. No other documents can

be considered as part of the Appeal after the record has been transmitted. Thus, the Town Code does not provide for any third party, including the Applicants, to add any new documents or arguments to the record. Nor should there be any ex-parte communication by or on behalf of either of the parties, or by a third party, as the Appeal must be based strictly upon the record and the arguments of the parties, which, again, does not include the Applicants.

While the language of the Town Code is clear, our office and our client together, called Mr. Randolph as the Town attorney on August 26, 2019 to confirm its unambiguous language. Mr. Randolph's interpretation of the Town Code provisions regarding an Administrative Appeal was as follows:

1. The parties to the Appeal are Julie Araskog and the Town. The Applicant is not a party. As such, the arguments will be made by Mr. Castro and counsel for Julie Araskog.
2. The Record before the Town Council consists of Mr. Castro's determination, the Administrative Appeal, and the Exhibits attached thereto. No other items can be added to the Record.
3. There should be no "ex-parte" communication by or on behalf of either of the parties, or by any third party (including the Applicant) since the Appeal is based solely upon the Record and the argument of the parties.

During the conversation with Mr. Randolph, Ms. Araskog specifically asked if legal memoranda and arguments could be presented by the Applicants as both sides of the dispute recently presented by 100 Emerald Beach Way LLC had been permitted to participate. Mr. Randolph's response was that the situation at 100 Emerald Way was different, and that in the present case only the Town and Ms. Araskog were the parties permitted to participate in this Appeal.

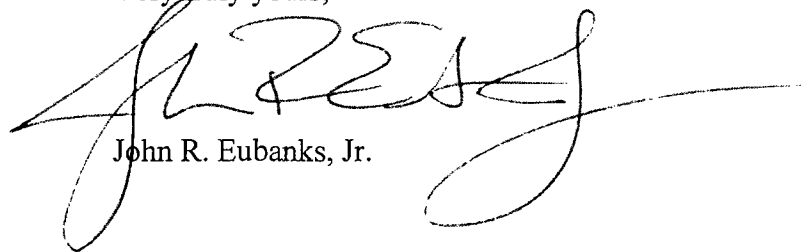
This conversation and confirmation was memorialized and confirmed via an e-mail to Mr. Randolph, on which Mr. Martin, Mr. Castro, Julie Araskog and others were copied, dated August 26, 2019. On its face the e-mail reflects it was sent at 2:58 p.m. A copy of the e-mail to Mr. Randolph is attached hereto as Exhibit "A." A review of our office's e-mails shows the e-mail was sent to all parties. Ms. Araskog has further confirmed that the e-mail was received by her, a copy of which is attached as Exhibit "B." At no time did Mr. Randolph, or any of the other parties to the e-mail, dispute or make any changes to the terms thereof.

Despite both the clear and unambiguous language of the Town Code, and the confirming interpretation of the same by Mr. Randolph, on or about September 6, 2019, the Town Staff, accepted, filed, and distributed to the Mayor and Town Council the purported "Applicant's Response" to Ms. Araskog's Appeal over her objection. In doing so, the Town violated its own Code. Under the circumstances, the purported "Applicant's Response" is irretrievably prejudicial to my client and must be stricken from the Record, and the Mayor and Town Council members must be instructed that they may not consider, much less rely upon or use in any manner, the contents thereof in their consideration of and deliberation on the Appeal.

Josh Martin, c/o Wayne Bergman
September 7, 2019
Page 3

Thank you for your prompt attention to this matter in light of the fact that the Administrative Appeal is set to be heard on Wednesday, September 11, 2019.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. R. Eubanks, Jr.", with a long horizontal flourish extending to the right.

John R. Eubanks, Jr.

cc: Julie Araskog
Ronald Kolins, Esquire
John Randolph, Esquire
Kirk Blouin, Town Manager
Mayor and Town Council
Jay Boodheshwar, Asst. Town Manager
Josh Martin, Planning, Zoning and Building Manager
John Lindgren, Planning Manager
Kelley Churney, Administrative Specialist
Town Clerk, Town of Palm Beach

John Eubanks

From: John Eubanks
Sent: Monday, August 26, 2019 2:58 PM
To: John (Skip) C. Randolph; Julie Araskog (juliearaskog@aol.com)
Cc: Joshua Martin; Paul Castro; JLindgren@TownofPalmBeach.com
Subject: Appeal from Administrative Determination - 1485 Via Manana - Hearing Procedure

Skip:

As a follow up to our conversation just after noon, this will confirm that:

1. The parties to the Appeal are Julie Araskog and the Town. The Applicant is not a party. As such, the arguments will be made by Mr. Castro and counsel for Julie Araskog.
2. The Record before the Town Council consists of Mr. Castro's determination, the Administrative Appeal, and the Exhibits attached thereto. No other items can be added to the Record.
3. There should be no "ex-parte" communication by or on behalf of either of the parties, or by any third party (including the Applicant) since the Appeal is based solely upon the Record and the argument of the parties.

Thank you.

John R. Eubanks, Jr.
Breton, Lynch, Eubanks & Suarez-Murias, P.A.
605 N. Olive Avenue, 2d Floor
West Palm Beach, FL 33401
Telephone: 561-721-4000
Facsimile: 561-721-4001
Direct Dial: 561-721-4002
Email: jeubanks@blesmlaw.com

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John Eubanks

From: Julie Araskog <juliearaskog@aol.com>
Sent: Saturday, September 07, 2019 9:45 AM
To: John Eubanks
Subject: Fwd: Appeal from Administrative Determination - 1485 Via Manana - Hearing Procedure

I received this too.

Sent from my iPhone

Begin forwarded message:

From: John Eubanks <jeubanks@blesmlaw.com>
Date: August 26, 2019 at 2:58:20 PM EDT
To: "John (Skip) C. Randolph" <JRandolph@jonesfoster.com>, "Julie Araskog (juliearaskog@aol.com)" <juliearaskog@aol.com>
Cc: Joshua Martin <jmartin@TownOfPalmBeach.com>, Paul Castro <PCastro@TownofPalmBeach.com>, "JLindgren@TownofPalmBeach.com" <JLindgren@TownofPalmBeach.com>
Subject: Appeal from Administrative Determination - 1485 Via Manana - Hearing Procedure

Skip:

As a follow up to our conversation just after noon, this will confirm that:

1. The parties to the Appeal are Julie Araskog and the Town. The Applicant is not a party. As such, the arguments will be made by Mr. Castro and counsel for Julie Araskog.
2. The Record before the Town Council consists of Mr. Castro's determination, the Administrative Appeal, and the Exhibits attached thereto. No other items can be added to the Record.
3. There should be no "ex-parte" communication by or on behalf of either of the parties, or by any third party (including the Applicant) since the Appeal is based solely upon the Record and the argument of the parties.

Thank you.

John R. Eubanks, Jr.
Breton, Lynch, Eubanks & Suarez-Murias, P.A.
605 N. Olive Avenue, 2d Floor
West Palm Beach, FL 33401
Telephone: 561-721-4000
Facsimile: 561-721-4001
Direct Dial: 561-721-4002
Email: jeubanks@blesmlaw.com

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(including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

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From: [John Eubanks](#)
To: [John \(Skip\) C. Randolph](#)
Cc: [Kelly Churney](#)
Subject: RE: Applicants' Response to Administrative Appeal of Determination and Decision by the Director of Zoning that the Proposed "Guest House and Pavilion for the Main House at 1480 North Ocean Boulevard" located at 1485 Via Manana is a Stand Alone Residence
Date: Friday, September 06, 2019 10:18:07 AM
Attachments: [Appeal from Administrative Determination - 1485 Via Manana - Hearing Procedure.msg](#)

Dear Skip:

I received the below e-mail and attachment from James K. Green that was sent to Kelly Churney and you last evening purporting to provide an "Applicant's Response" to my client's Administrative Appeal. Clearly, I object to the distribution of either the e-mail and/or the attached "Response" to the Town Council, staff and/or any other third party or otherwise including such document in the Record in this matter.

As I confirmed with you via phone call and e-mail on August 26, 2019 (a copy of which is attached), "The parties to the Appeal are Julie Araskog and the Town. ***The Applicant is not a party.***" As a result, "The Record before the Town Council consist of Mr. Castro's determination, the Administrative Appeal and the Exhibits attached thereto. ***No other items can be added to the Record.***"

Therefore, any attempt by the Applicant, Mr. Green or Staff or anyone else to add the "Response" to the Record, much less review, consider, or rely upon the purported "Response" would be outside the scope of the Appeal, would prejudice my client, and be grounds for reversal of any adverse decision.

As a result, I trust that you advise Kelly Churney and Staff that the purported "Applicant's Response" is not to be placed in the Record (or removed if already placed therein) or distributed in any manner.

John R. Eubanks, Jr.

Breton, Lynch, Eubanks & Suarez-Murias, P.A.

605 N. Olive Avenue, 2d Floor

West Palm Beach, FL 33401

Telephone: 561-721-4000

Facsimile: 561-721-4001

Direct Dial: 561-721-4002

Email: jeubanks@blesmlaw.com

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recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect at 561-721-4000. Thank you.

From: James K. Green [mailto:jkg@jameskgreenlaw.com]

Sent: Thursday, September 05, 2019 7:03 PM

To: kchurney@townofpalmbeach.com

Cc: John Eubanks <jeubanks@blesmlaw.com>; Randolph, John C. <JRandolph@jonesfoster.com>

Subject: Applicants' Response to Administrative Appeal of Determination and Decision by the Director of Zoning that the Proposed "Guest House and Pavilion for the Main House at 1480 North Ocean Boulevard" located at 1485 Via Manana is a Stand Alone Residence t

Dear Mayor and Honorable Town Councilmembers:

I represent Jason and Josephine Kalisman, the applicants for 1485 Via Manana (the "Applicants"). The Applicants seek to build a stand-alone residence at 1485 Via Manana that will also serve as a guest house for relatives and guests at their home at 1480 North Ocean Boulevard.

Paul Castro, AICP, Town of Palm Beach Zoning Administrator, determined that the proposed guest house and pavilion for the main house at 1480 North Ocean Boulevard located at 1485 Via Manana is *designed* as a stand-alone residence that does not require a unity of title. He did so because the proposed residence met all the building setbacks, height, overall height, setbacks, lot coverage, building volume and mass, and landscape open space required for a stand-alone residence.

Ms. Araskog, who lives across the *cul-de-sac*, disagrees with Mr. Castro's determination and appeals. The Applicants do not challenge her standing to bring this appeal.

Applicants' Response is attached hereto.

James K. Green, Esq.
JAMES K. GREEN, P.A.
Suite 1650, Esperantè
222 Lakeview Ave.
West Palm Beach, FL 33401
Telephone: 561-659-2029
Facsimile: 561-655-1357
Email: jkg@jameskgreenlaw.com
jameskgreenlaw.com

 Please consider the environment before printing this e-mail.

From: John Eubanks
To: John (Skip) C. Randolph; Julie Araskog (juliearaskog@aol.com)
Cc: Joshua Martin; Paul Castro; John Lindgren
Subject: Appeal from Administrative Determination - 1485 Via Manana - Hearing Procedure

Skip:

As a follow up to our conversation just after noon, this will confirm that:

1. The parties to the Appeal are Julie Araskog and the Town. The Applicant is not a party. As such, the arguments will be made by Mr. Castro and counsel for Julie Araskog.
2. The Record before the Town Council consists of Mr. Castro's determination, the Administrative Appeal, and the Exhibits attached thereto. No other items can be added to the Record.
3. There should be no "ex-parte" communication by or on behalf of either of the parties, or by any third party (including the Applicant) since the Appeal is based solely upon the Record and the argument of the parties.

Thank you.

John R. Eubanks, Jr.
Breton, Lynch, Eubanks & Suarez-Murias, P.A.
605 N. Olive Avenue, 2d Floor
West Palm Beach, FL 33401
Telephone: 561-721-4000
Facsimile: 561-721-4001
Direct Dial: 561-721-4002
Email: jeubanks@blesmlaw.com

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

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The Law Offices of
BRETON, LYNCH, EUBANKS & SUAREZ-MURIAS, P.A.

Peter L. Breton
Francis X. J. Lynch
John R. Eubanks, Jr.
Marta M. Suarez-Murias
Robert J. Sniffen – Of Counsel
Jack Schramm Cox, Chartered – Of Counsel

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Sender's Direct Line: (561) 721-4002
E-Mail: jeubanks@blesmlaw.com

605 North Olive Avenue, 2nd Floor
West Palm Beach, FL 33401-4005
Phone: (561) 721-4000
Facsimile: (561) 721-4001

September 10, 2019

Via Hand Delivery

Mayor and Town Council
(except Julie Araskog)
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: Reply to Purported “Applicants’ Response” to Administrative Appeal

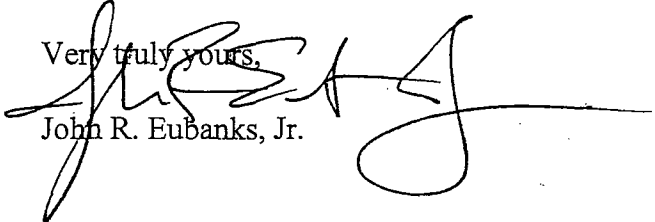
Dear Mayor and Town Council:

Attached please find a copy of the Appellant’s Reply to the “Applicants’ Response” submitted by Mr. Green after hours on September 5, 2019. While I apologize for the delay, unfortunately it was the result of unforeseen circumstances.

As you are aware, upon receiving Mr. Green’s “Applicants’ Response” on Friday, our office filed a Motion to Strike the “Applicants’ Response” on Saturday, September 7, 2019 based upon not only the clear language of the Town Code, but also a conversation, and confirming e-mail to Skip Randolph that the parties to the Appeal did not include the Applicant, the Applicant would not be permitted to speak at the hearing, no other document could be part of the Record before the Town Council for its determination, and a limitation on ex-parte communications.

Yesterday afternoon, however, we received an e-mail from Mr. Randolph essentially reversing his prior confirmed position, less than two days before the upcoming hearing. As such, we are providing the Reply to you as quickly as possible in the hope you will find sufficient time to review this critical document.

Very truly yours,


John R. Eubanks, Jr.

cc: **Via Email**

Julie Araskog
Ronald Kolins, Esquire
John Randolph, Esquire
Kirk Blouin, Town Manager
Josh Martin, Planning and Building Manager
c/o Wayne Bergman
Kelley Churney, Administrative Assistant
Town Clerk, Town of Palm Beach

The Law Offices of
BRETON, LYNCH, EUBANKS & SUAREZ-MURIAS, P.A.

Peter L. Breton
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Marta M. Suarez-Murias
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Jack Schramm Cox, Chartered – Of Counsel

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605 North Olive Avenue, 2nd Floor
West Palm Beach, FL 33401-4005
Phone: (561) 721-4000
Facsimile: (561) 721-4001

September 10, 2019

**Via Email and Hand Delivery To Mayor
and Council (Except Julie Araskog)**

Josh Martin, Director c/o Wayne Bergman
Planning, Zoning and Building Department
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

**Re: Reply to Purported “Applicants’ Response” to Administrative Appeal of
Determination and Decision by the Director of Zoning that the Proposed “Guest
House and Pavilion for the Main House at 1480 North Ocean Boulevard” located at
1485 Via Manana is a Stand Alone Residence that Does Not Require a Unity of Title**

Dear Mr. Bergman:

As you know, our office represents the Appellant in this matter, Julie Araskog, the owner of the real property located at 1490 Via Manana. In that capacity, please accept this letter as Ms. Araskog’s Reply to the purported “Applicants’ Response” to Ms. Araskog’s Appeal filed by James K. Green on behalf of Josephine and Jason Kalisman, the applicants for a proposed “Guest House and Pavilion for the Main House at 1480 North Ocean Boulevard.” (“Applicants”).

I. Uninformed Introduction

A review of the purported “Introduction” by the Applicants demonstrates a significant lack of knowledge regarding the underlying issues, facts, and law in this matter. For example, the arguments by Mr. Green that the Appeal is an attempt to find that the “Town law requires unity of title for *two stand-alone homes* on separate parcels that seek to complement each other” and that Ms. Araskog is attempting to “impose an unwritten unity of title law on *stand-alone residences*¹ should be rejected,” constitutes blatant misstatements of the basis of the Appeal. (emphasis added)

Instead, as detailed further within Ms. Araskog’s Appeal, every piece of evidence in this matter, from the Application, to the Notice to Surrounding Neighbors, to the e-mails sent to

¹ Mr. Green’s entire “Applicants’ Response” is based upon the repeated argument that the “guest house and pavilion” is a permitted “*stand alone home*” which does not need a unity of title. While this language reflects the nomenclature used within Mr. Castro’s determination that the house was “designed to stand on its own,” nowhere is the term “stand alone home” to be found in the Town Code, much less as a criteria for construction in the RB low density residential district. As such, the entire “Applicants’ Response” is based upon meeting a standard which does not exist.

ARCOM Members, to the comments by ARCOM Members, the testimony under oath by the Kalismans' architect, and the Affidavits of Jeff Smith and Gene Pandula demonstrate that far from being either a "stand-alone residence" or even a "single-family dwelling," the house was designed and intended by the Kalismans to serve as an accessory structure in the form of a guest house and pavilion to be subservient to the Kalismans' main house at 1480 N. Ocean Boulevard. As such, under the Town Code, the proposed two (2) story 3,500 sq. ft. accessory structure on an adjoining lot requires a unity of title in the RB district as a matter of law.

Similarly, Mr. Green's argument that Ms. Araskog "devotes the *vast majority of the appeal* to discussions of matters ... as to whether the proposed residence is excessively similar to the home at 1480 North Ocean" is a further misrepresentation of the Record. Instead, the only reference to the issue of similarity can be found in one sentence on page 6 of the Appeal and the footnote thereunder, which refers to a letter written by Ms. Araskog to ARCOM members in anticipation of its meeting held prior to this appeal being filed.

II. Request for Recusal or Disqualification

Next, Mr. Green raises the red herring issue of the recusal or disqualification of Ms. Araskog. Despite the fact that Mr. Green admits that Ms. Araskog has publicly indicated that she will recuse herself in the consideration of her Appeal, the Applicants indicate that "if she refuses, the Kalismans respectfully request the opportunity to be heard as to why she should be disqualified." Such a statement can only be seen as an unnecessary attempt to distract the Council, as well as an uncalled for attempt to question Ms. Araskog's character, by suggesting that she might not follow through with her clearly stated intent.

III. Improper Standard of Review and No Town Law Cited by Applicants

A. Standard of Review

In an apparent attempt to flood the Town Council with case law, Mr. Green indicates that the standard of review in this matter is "substantial deference to the Zoning Administrator's decision." As such, Mr. Green cites a long litany of cases purportedly under the "deference doctrine" which he sates is "widely recognized." The case law cited, however, is nothing more than an amalgam of cases in which certain state and federal "departments" (i.e. Dept. of Business Regulation, Div. of Land Sales and Condominium, Dept. of Mgmt. Services, EPA etc.) were entitled to have deference in an interpretation of areas of regulatory compliance, which require its expertise. In arguing that such case law constitutes the proper "standard of review," Mr. Green is conflating the "standard of review" on appeal with the potential deference afforded in the event of an ambiguity, and ignoring the case specific principles controlling this Appeal.

The standard of review is the scope of what the Town Council can consider in this case in making its determination. In this case the standard of review is the *de novo* consideration of whether Mr. Castro's determination was correct. In doing so, the Council is allowed to make its own determination based upon all of the facts, information, and affidavits contained in the Record and the arguments thereof.

More importantly, the case law is clear that any of “deference” in interpretation by Staff can only be considered if there is an ambiguity in the language of the Town Code. Where the language of a statute, code or ordinance is clear and unambiguous and conveys a clear and definite meaning, as it is and does here, there is no occasion to resort to the rules of statutory construction, and therefore there can be no deference to Mr. Castro’s interpretation. The code provision must be given its plain and obvious meaning. *See, e.g. Conservation All. of St. Lucie County, Inc. v. Fla. Dep’t of Envtl. Prot.*, 144 So. 3d 622, 624 (Fla. 4th DCA, 2014) (“If the language is clear and unambiguous, there is no need to resort to the rules of statutory construction; ‘the statute must be given its plain and obvious meaning.’”); *Rinker Materials Corp. v. North Miami*, 286 So. 2d 562, 563 (Fla. 1973) (courts...must give a statute [or here ordinance] the plain and ordinary meaning or the words employed by the legislative body”); *Rose v. Town of Hillsboro Beach*, 216 So. 2d 258 (Fla. 4th DCA 1968) (municipal ordinances are subject to the same rules of construction as are state statutes); *City of Miami Beach v. Royal Castle System, Inc.*, 126 So. 2d 595, 597 (Fla. 3d DCA 1961) (“Where the provisions of a zoning ordinance, as to the uses of property which are permitted or which are prohibited in certain districts, are expressed in common words of every day use, without enlargement, restriction or definition, they are to be interpreted and enforced accordingly.”).

In the present case the terms of Town Code states clearly and unambiguously that only a “single-family dwelling” which is “***designed and used exclusively*** for residential purposes ***by one family***” is a permitted use in the RB district. The overwhelming evidence in the Record, however, is that admittedly the “Guest House and Pavilion for Main House at 1480 North Ocean Boulevard” is neither a “stand-alone home” nor “single-family dwelling” by definition. There is simply no need for any interpretation by the Town Staff, much less any “deference” to any such interpretation. As such, the case law cited by Mr. Green is wholly inapplicable.

Furthermore, the applicable case law requires that a governmental entity must strictly enforce the exact wording of its statutes, ordinances and code provisions in order to promote consistency in the application of the law. *See, Bd. of Cnty. Comm’rs of Brevard Cnty. v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993) (local governments and agencies must strictly adhere to town development and zoning codes); *Town of Longboat Key v. Islandside Prop. Owners Coalition, LLC.*, 95 So. 1037, 1042 (Fla. 2d DCA 2012); (“[T]he City is bound by the express terms of its own ordinance...if the City desires a different meaning for its ordinance in the future, it may amend, modify or change the same by legislative process.”); *Miami Dade County v. Omnipotent Holdings, Inc.*, 863 So. 2d 375, 376 (Fla. 3d DCA 2003) (“Neither a quasi-judicial body nor a reviewing court is permitted to add to or detract from these criteria (the local regulations) when making its assigned determination.”). Stated differently, in enforcing its ordinances the Town must strictly adhere to the exact terms of its Code and cannot merely ignore, overlook or add to its Code provisions in order to obtain a desired outcome.

As such, any attempt to confirm Mr. Castro’s determination because the structure “is designed to stand on its own,” and/or is a “stand-alone residence in terms of building setbacks, height, overall height, set backs, lot coverages, building volume and mass and landscape open space” as suggested by Mr. Greene would create reversible error as such language is not included

in the Town Code. Similarly, any failure to enforce the exact the provisions of the Town Code by ignoring or overlooking essential terms of the Town Code (such as the definition of single-family as “*designed* .. for the *exclusive use of one family*) in order to approve Mr. Castro’s determination would be grounds for reversal upon appeal.

On top of all of the above, there can be no deference to Mr. Castro’s determination as to whether the “guest house and pavilion for the main house” is a permitted use, as he is not an architect. A single-family dwelling must be “*designed* to be used *exclusively* by one family.” While Mr. Castro is a certified planner, he is not an architect with the credentials to determine whether the “guest house” was “*designed*” to meet such standards. As such, even if there were any ambiguity in the Town Code, which there is not, there is no basis to give Mr. Castro any credence, much less deference, to his interpretation in the field of “design.”

By contrast Mr. Smith and Mr. Pandula are well-respected architects practicing in the Town. Mr. Smith has been an architect for over 30 years, during which time he chaired both ARCOM and the Landmarks Preservation Commission. Mr. Pandula, who has also been an architect for over 30 years, and served on as well as chaired the Landmarks Preservation Commission. In the expert opinions set forth in their Affidavits, the proposed “guest house and pavilion” does not meet the standards of a single-family dwelling, but instead is (at best) an accessory structure which is required to have a unity of title.

B. Town Law

Curiously, in the “Town Law” portion of the Applicant’s “Response” nowhere is there any actual reference or citation whatsoever to any section of the Town Code. Instead, the entire basis of the “Town Law” section of the “Response” is the contention that that the “guest house and pavilion” are “a stand-alone residence in terms of building, setbacks, height, overall height, setbacks, lot coverage, building volume and mass, and landscape open space.” Why, because Mr. Castro said so. But nowhere in the Town Code does the above description or definition appear. Instead, the actual language of the Town Code on its face demonstrates that Mr. Castro’s interpretation is erroneous.

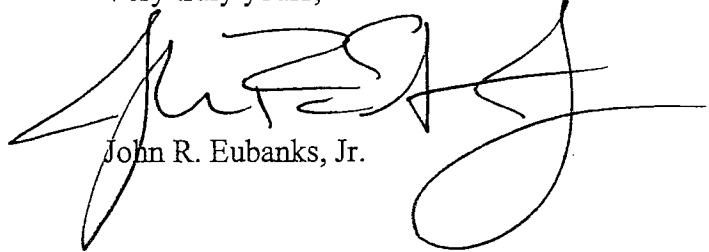
Under Section 134-886 of the Code, the purpose of the RB low density residential district “is to *provide for low density single-family residential use, as that term is defined in section 134-2*” as detailed above. Thereafter, Section 134-887 of the Code clearly demonstrates that a single-family dwelling is the only permitted residential use in the RB district. At the same time, the table in Section 134-891(b)(1) reflects that a 20,000 + s.f. lot and a unity of title is needed for a two story accessory structure such as the “guest house and pavilion.” This requirement is consistent with the definition of an accessory structure under Section 134-2 that an “*Accessory use or building or structure means a subordinate use or structure customarily incident to the principal use or structure located on the lot or located on a contiguous lot when a unity of title has been provided.*” (emphasis added). In the present case, the intention of the Kalismans was clearly to create a two story “guest house and pavilion for the main residence” which was designed to mirror and “interface” with the main house on the contiguous lot at 1480 North Ocean Boulevard, without

the protections for the neighbors of a unity of title. As such, Mr. Castro's determination was wrong, and a unity of title is required.

Finally, regardless of Mr. Green's long interpretation of the grammar of the semi-colon on pages 3 and 4 of the Applicant's "Response" regarding the definition of "family," the simple fact remains that to be permitted in the RB district, a single-family dwelling must be "designed and ***used exclusively*** for residential purposes ***by one family***." One family, however, cannot ***exclusively*** use each of the "main house" at 1480 North Ocean Drive and the guest house at 1485 Via Manana at the same time. Moreover, by definition a "guest house" is one used for hospitality for those outside of the family. The American Heritage Dictionary definition of a "guest" as "one who is a recipient of hospitality ***at the home or table of another***." *The American Heritage Dictionary of the English Language*, 5th Edition. As such, the proposed "***guest house*** and pavilion for 1480 North Ocean Boulevard" is not designed for the exclusive use of "one family," but for the guests of the main house. Therefore, it is an accessory structure which requires a unity of title.

In light of all of the above, the Town Council cannot merely overlook or disregard the clear and unambiguous terms of the Town Code, which demonstrate that the Applicant wants the best of both worlds by having a structure which would essentially mirror the existing Main House in style while providing an open guest house and pavilion thereto, without the restrictions of a unity of title. Therefore, Mr. Castro's Determination, must be reversed.

Very truly yours,

A handwritten signature in black ink, appearing to read "John R. Eubanks, Jr.", with a long horizontal flourish extending to the right.

John R. Eubanks, Jr.

cc: Julie Araskog
Ronald Kolins, Esquire
John Randolph, Esquire
Kirk Blouin, Town Manager
Mayor and Town Council (with exception of Julie Araskog)
Jay Boodheshwar, Asst. Town Manager
Josh Martin, Planning, Zoning and Building Manager
John Lindgren, Planning Manager
Kelley Churney, Administrative Specialist
Town Clerk, Town of Palm Beach

Paul Castro

From: Joshua Martin
Sent: Wednesday, September 04, 2019 1:06 PM
To: Wayne Bergman; Paul Castro
Cc: Joshua Martin
Subject: Fw: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing - Responsive Documents
Attachments: Hitting Wall corr AMRL.pdf

**Josh Martin, AICP, CNU-A
Director**

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Office: 561-227-6401
Mobile: 843-247-2057

From: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>
Sent: Monday, September 2, 2019 9:09 PM
To: Kathleen Dominguez; Jeffrey C. Schneider
Cc: Jezabel Lima; Joshua Martin; John (Skip) C. Randolph; Amanda Quirke
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing - Responsive Documents

Kathleen,

Thank you for your response. Although we acknowledged in our previous correspondence that AMRL-125 was previously produced by the Town, we have not located the attached May 4 emails in any of the correspondence folders produced in response to TC-48-2019- not for Castro, Lindgren, nor Elliott. Please advise where we may locate the May 4 emails set forth in the attachment within the response to TC-48-2019.

We will review TC-272-2019. However, we do not waive any Chapter 119 objections or claims, and we specifically reserve all rights and remedies for damages, equitable, and any other relief available at law or in equity.

Amanda Quirke Hand

Of Counsel

Lehtinen Schultz & Attorneys

Lehtinen Schultz Riedi de la Fuente

Sabadell Financial Center, 1111 Brickell Avenue, Suite 2200, Miami, FL 33131

Direct: 305.733.2800 Fax: 305.356.5720

www.Lehtinen-Schultz.com

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From: Kathleen Dominguez <KDominguez@TownofPalmBeach.com>

Sent: Friday, August 30, 2019 10:40 AM

To: Jeffrey C. Schneider <jcs@lklsg.com>

Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; John (Skip) C. Randolph <JRandolph@jonesfoster.com>

Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing - Responsive Documents

Dear Mr. Schneider,

I am contacting you regarding your renewed public records request for "All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017".

Set out below are the instructions for accessing the requested records:

1. Click on the following link: <https://palmbeachfl.justfoia.com/publicportal/home/track>. This hyperlink will direct you to the Town's online public records portal where you can access the responsive documents.
2. When you get to the portal page, enter the request Number: TC-272-2019 and security key: **880281** and click "track".
3. A compressed zip folder with the file name "*Responsive Documents*" will appear that contains the responsive documents for downloading. Please let me know if you have any trouble accessing the requested information.

In your letter below dated August 26, 2019, you brought to my attention that the attached correspondence was missing from the Town's response to a previous records request your office submitted on January 10, 2019, assigned as **PZB-23-2019**.

To address this, I researched similar records requests for email correspondence related to 1236 South Ocean Blvd and came across records request **TC-48-2019**, which was submitted by your office on March 20, 2019. When I compared the results and the search criteria used for both requests (TC-48-2019 and PZB-23-2019), I discovered two things:

1.) The keyword combination used for each search was different and therefore, produced different results.

2.) The missing email correspondence (attached) was provided to your office on April 4, 2019 and again on April 10, 2019 in response to records request **TC-48-2019**.

When staff conducted the search for PZB-23-2019 back in January, we used common keywords such as: (1236 South Ocean Boulevard) **OR** (1236 South) **OR** (1236) to broaden the search results. Unfortunately, the search parameters that were used did not produce the attached correspondence. But when the search was conducted for TC-48-2019, a different combination of keywords were used (based on the nature of the request) and the attached email correspondence between Dustin Mizell, John Lindgren, Paul Castro and Tim Hanlon from May 2017, was produced and provided to your office on April 4, 2019 and again on April 10, 2019.

I recall working with the Planning and Zoning staff to fulfill PZB-23-2019 and during that process, staff provided additional emails that did not appear in the search results. When the Town responded to PZB-23-2019, we responded out of good faith and made every effort to provide you with all the correspondence in our records to the best of our knowledge. However, despite our best efforts, our response to PZB-23-2019 was inconsistent when compared to similar requests from your office and for that I wish to sincerely apologize. I can tell you with 100% confidence that it was not intentional. We understand now that more keywords such as (1236 S Ocean **AND** 1236 South Ocean) are needed in our combinations to produce more results. I will work with staff to ensure that the proper keyword combinations are used in our search parameters in the future.

If you have any questions regarding the above information or if you wish to discuss this further, I can be reached directly at 561-227-6342.

Sincerely,

Kathleen Dominguez, CMC
Town Clerk

From: Kathleen Dominguez
Sent: Wednesday, August 28, 2019 12:06 PM
To: Jeffrey C. Schneider <jcs@lklsg.com>
Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>; 'Randolph, John C.' <JRandolph@jonesfoster.com>
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Dear Mr. Schneider,

The Town Clerk's Office is in receipt of your email dated August 26, 2019 and your renewed request for "***All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017.***" (PZB-23-2019)

The Town of Palm Beach takes all public records requests seriously and it is our policy to provide open and timely access to all of the Town's records in the spirit of the Florida Records Law.

Please be advised that the Town Clerk's Office, Planning, Zoning and Building Dept. and Code Enforcement staff have worked diligently and thoroughly on fulfilling the numerous records requests that we have received from your office.

Staff will conduct a new search query in the same manner and procedure used to fulfill records request PZB-23-2019 and provide you with the results of the new search.

At the same time, I will compare the new search query results to the original search query results for PZB-23-2019 to find out **why** the email correspondence between Dustin Mizell, John Lindgren, Tim Hanlon and Paul Castro, **did not** appear in the original search results for PZB-23-2019.

I will also look at prior search queries conducted for similar records requests (for email correspondence related to 1236 South Ocean Way and 100 Emerald Beach Way) in order to identify and address any inconsistencies with the search methods and criteria used when responding to requests for voluminous email correspondence in order prevent this from happening again in the future.

On behalf of the Town of Palm Beach, I wish to apologize for any inconsistencies in our response, as they were not intentional. I also wish to apologize for the inconvenience and impact this had on the due process rights of 100 Emerald Beach Way.

If you have any questions or additional concerns that you wish to discuss, please do not hesitate to contact me at 561-838-5416 or via email: kdominguez@townofpalmbeach.com.

Sincerely,

Kathleen Dominguez, CMC

Town Clerk
Town of Palm Beach

360 South County Road
Palm Beach, FL 33480
561-838-5416

From: Randolph, John C. <JRandolph@jonesfoster.com>

Sent: Tuesday, August 27, 2019 2:39 PM

To: Jeffrey C. Schneider <jcs@lklsg.com>

Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@lklsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>; Kathleen Dominguez <KDominguez@TownofPalmBeach.com>; Joshua Martin <jmartin@TownOfPalmBeach.com>
Subject: RE: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

Mr. Schneider,

In light of what you indicate, in your attached email of August 26th, is additional information you or Amanda did not have an opportunity to address on behalf of your client at the August 14th hearing regarding the appeal on the hitting wall, I have recommended, and it has been approved by Josh Martin, that your request for a rehearing on the hitting wall be granted. The rehearing has been scheduled to be heard at the Town Council meeting of September 11, 2019. The rehearing will be confined to presentations and arguments related to what you claim to be additional information that the Council did not have an opportunity to consider at its previous hearing.

If you and/or Mr. Hanlon wish to present written memoranda in regard to your respective positions on this matter, please file same with the Town Clerk no later than 5:00 p.m. on the Friday before the meeting, i.e., September 6, 2019.

Please do not hesitate to contact me if you have any comments or questions in regard to this matter.

Thank you.

John C. Randolph

Attorney

Jones Foster P.A.

561 650 0458 – D

561 650 5300 – F

561 659 3000 – O

jrandolph@jonesfoster.com

JONES FOSTER

Flagler Center Tower

505 South Flagler Drive, Suite 1100

West Palm Beach, Florida 33401

jonesfoster.com

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From: Jeffrey C. Schneider <jcs@klsg.com>

Sent: Monday, August 26, 2019 10:33 AM

To: kdominguez@townofpalmbeach.com; Randolph, John C. <JRandolph@jonesfoster.com>

Cc: Amanda Quirke <AQuirke@Lehtinen-Schultz.com>; Jezabel Lima <jl@klsg.com>; Mark Timothy Hanlon <tim.hanlon@amrl.com>; James J. McGuire <jmcguire@bartonesq.com>; Robert D. Critton Jr. <RCritton@lawcllc.com>

Subject: Notice Pursuant to Florida Statutes 119.112 and Demand for Rehearing

This Message originated outside your organization.

Dear Ms. Dominguez and Mr. Randolph:

I, along with Amanda Hand and Jezabel Lima, represent 100 Emerald Beach Way, LC.

On August 14, 2019, Town Council heard 100 Emerald Beach Way's appeal regarding an illegal hitting wall at 1236 South Ocean Boulevard. At that hearing, sworn representations were made by the Thorntons' counsel that there was no original application for a hitting wall and that the subject wall was never intended to be a hitting wall. These sworn representations were demonstrably false. Indeed, the attached correspondence – which was received by 100 Emerald Beachy Way on August 16, 2019 – demonstrates that Dustin Mizell submitted plans for "STAFF APPROVAL REQUEST" for a "hitting wall" at 1236 S Ocean Boulevard. John Lindgren specifically asked Mr. Mizell if this was for a "[t]ennis hitting wall?" Dustin Mizell responded unambiguously: "Correct." When John Lindgren told Mr. Mizell that it would require a special exception, and cited the statute, Mr. Mizell responded as follows:

This is disappointing because when we left the meeting you shared that this could be staff approved. Can we call it a privacy wall and courtyard? If the child hits some balls against the wall and someone hears it and calls the Town, isn't this a code compliance issue then?

In other words, the Thorntons did, in fact, apply for a hitting wall. The wall was, in fact, intended to be used as a hitting wall. The Thorntons, in fact, built a hitting wall. But rather than obtain the necessary special exception, they just shamelessly called it a "privacy wall" and left it to code enforcement to bring an action after it was built when someone complained, knowing full well that when code enforcement asked to inspect the property, they would refuse.

We received the attached correspondence on August 16, 2019 in response to a Federal subpoena to Alley, Mass, Rogers and Lindsey. With the exception of AMRL-00125, this is the first time that we have seen any of these emails, but the attached emails are clearly within the scope of the numerous public records requests that have been made to the Town of Palm Beach, including the first request on January 10, 2019 for: "All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017." (PZB-23-2019) The correspondence between Dustin Mizell and John Lindgren even has "1236 S Ocean Boulevard" in the subject line of the emails and should have been produced.

Clearly, we have not received responsive records in response to the PZB-23-2019 request, which has already directly impacted the substantive and procedural due process rights of 100 Emerald Beach Way. Please accept this email as a renewed request and notice pursuant to Florida Statutes Section 119.12 that we intend to pursue this action in a court of competent jurisdiction and will seek attorneys' fees and costs.

Because 100 Emerald Beach Way, LC did not have the attached evidence at the hearing on August 14, 2019, and because there may be more missing documents that disprove the sworn representations made by the Thorntons' representative, 100 Emerald Beach Way, LC demands a rehearing on the hitting wall appeal for the next Town Council meeting. Please let me know the Town's response to the request.

Thank you.

Jeffrey C. Schneider, PA

Partner

IKLSG

LEVINE KELLOGG LEHMAN SCHNEIDER + GROSSMAN LLP

201 South Biscayne Boulevard

22nd Floor, Citigroup Center

Miami, FL 33131

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September 6, 2019

**VIA HAND DELIVERY AND
ELECTRONIC MAIL**

John "Skip" Randolph, Esq.
Town Attorney
[Jrandolph@jonesfoster.com](mailto:jrandolph@jonesfoster.com)

Mr. Josh Martin
Director, Planning, Building and Zoning
Department
360 S. County Rd.
Palm Beach, FL 33480
jmartin@townofpalmbeach.com

Mr. Paul Castro
Zoning Administrator
pcastro@townofpalmbeach.com

Officer Ben Alma
Balma@palmbeachpolice.com

Office John Moriarty
jmoriarty@palmbeachpolice.com

Re: Rehearing: Illegal Hitting Wall

Dear Messrs. Randolph, Martin, Castro, Alma, and Moriarty:

This Firm represents 100 Emerald Beach Way LC ("100 EBW"). This is a supplement to 100 EBW's July 2, 2019 appeal pursuant to Town of Palm Beach Code Section 134-141, *et. seq.*, regarding the illegal tennis hitting wall at 1236 South Ocean Boulevard. The issue, quite simply, is whether John and Margaret Thornton built a tennis hitting wall without obtaining the requisite special exception. The evidence is clear that they did, except they called it a "privacy wall" to avoid obtaining the special exception. This was an obvious ruse. 100 EBW's appeal should be granted.

Amanda Hand filed a complaint with the Town based on aerials that demonstrated that a hitting wall was constructed and attached to a striped tennis court. The Town thereafter closed the code

compliance case (19-365) based on nothing more than a statement by Alberto Dumit, the Thorntons' property manager, in which he claimed: "the wall in question has not and is not being used as a hitting or rebound wall."¹ 100 EBW filed an administrative appeal, which was heard by Town Council on August 14, 2019. The Town Council denied the appeal, because the Thorntons' counsel denied that the wall was being used as a hitting wall. Even if this statement were true, which is highly doubtful, the current use of the wall is of no moment. The issue is whether or not they built a tennis hitting wall. Again, as demonstrated below, they did, with the Town's knowledge.

Two days *after* the August 14, 2019 Town Council hearing, counsel for 100 EBW received emails produced by the Thorntons' counsel, Timothy Hanlon, pursuant to a Federal subpoena. These emails were *not* produced by the Town in response to 100 EBW's many public records requests.² These emails were not produced until *after* the August 14 hearing.

The missing emails confirmed what 100 EBW has been saying all along – that the Thorntons applied for a tennis hitting wall and built a tennis hitting wall. The missing emails confirm that the Thorntons, with the Town's knowledge, agreed to change the name of the wall to "privacy wall" after learning that a special exception was needed, and agreed to suffer the consequences of the Town initiating a code enforcement proceeding when they were caught afterwards. Well, that happened, and when it did, the Thorntons denied the Town permission to enter the property and, as stated above, the code enforcement proceeding was dismissed. The Thorntons are making a mockery of this proceeding. As demonstrated below, the Town knew all along what was happening. Enough is enough.

Town Council has agreed to rehear this item on September 11, 2019 in light of the missing emails that the Town did not previously produce. The appeal should be granted because (a) the Thorntons requested "staff approval" to build a tennis hitting wall; (b) The Thorntons were told that **construction** of a hitting wall was prohibited by 134-1759(d) and required a special exception; (c) in response, the Thorntons said they would call it a "privacy wall" and, thereafter, a "basketball/service area" and suffer the consequences of a code enforcement proceeding; and (d) the ruse was confirmed in emails that were produced to 100 EBW *after* the August 14 hearing.

A. The Construction of a Hitting Wall is Expressly Prohibited without a Special Exception

Section 134-1759(d) is absolutely clear:

The **construction** of any facility involving the use of a ball backboard or rebound wall in any district of the town shall be subject to an application for special exception as specified in section 134-227 through section 134-233. (Emphasis supplied)

¹ CE 19-365 case notes.

² Public Records Request January 10, 2019 for: "All documents and correspondence related to 1236 South Ocean Boulevard since May, 2017." (PZB-23-2019)

B. The Thorntons Applied for a Hitting Wall

At the August 14, 2019 hearing, the Thorntons' counsel referred to the wall as a "so-called" hitting wall.³ The Thorntons' counsel denied that the Thorntons even applied for a hitting wall. This was untrue.

On April 21, 2017, Mr. Mizell sent John Lindgren an email entitled "1236 S Ocean Boulevard STAFF APPROVAL REQUEST" and attached plans for a tennis hitting wall. (p. 3-4)⁴ The missing emails make this clear. Here is a summary of the email chain:

May 4, 2017 email chain re: "1236 S Ocean Boulevard STAFF APPROVAL REQUEST"

3:11 pm: Lindgren asks Mizell "I need to know what the concrete pad is for." (p. 3)

3:38 pm: Mizell sends a revised drawing of the tennis hitting wall. "The concrete paving is just to extend the existing concrete paving to match up with the new (w)all/ hitting wall." (p. 3-5)

3:43 pm: Lindgren to Mizell: "**Tennis hitting wall?**" (p. 7)

3:50 pm: Mizell to Lindgren: "**Correct.** When we were in your office (client and I) we reviewed the code and couldn't find any restrictions for this." (p. 6-7)

3:55 pm: Lindgren to Mizell "I know we talked about the wall, but I thought this was for some kind of play area for the kids, not a hitting wall for tennis. **A hitting wall requires special exception approval from Town Council. Here's the code section: Sec. 134-1759...the construction of any facility involving the use of a ball backboard or rebound wall or structure in any district of the town...shall be subject to an application for special exception.**" (p. 6)

4:40 pm: Mizell to Lindgren: "This is disappointing because when we left the meeting you shared that this could be staff approved. **Can we call it a privacy wall and courtyard? If the child hits some balls against the wall and someone hears it and calls the Town, isn't this a code compliance issue then?**" (p. 10)

4:55 pm: Lindgren to Mizell "You'll need to discuss this with Paul regarding kids just throwing a ball against the wall. For the two new tennis courts, yes you will need Town Council approval for those as well." (p. 14)

In other words, the Thorntons submitted plans for a tennis hitting wall. The Thorntons were specifically asked if the plans were for a "tennis hitting wall." The unambiguous answer was "correct." The Thorntons were then told that a special exception was needed, in response to which the Thorntons asked: "Can we call it a privacy wall and courtyard?" The Thorntons went on to suggest that they

³ Transcript at 17.

⁴ All page references are to the emails in the attached pdf.

would just suffer the consequences later when a code enforcement charge is brought after they are caught: “If the child hits some balls against the wall and someone hears it and calls the Town, isn’t this a code compliance issue then?”

Then, again, the day after this exchange, Paul Castro – to whom Lindgren referred the question of whether the “changing the name” ruse would be sufficient – confirmed again that a special exception was needed:

May 5, 2017 email chain

11:14 am: Hanlon to Castro: “John Lindgren just advised Dustin Mizell to set up a meeting with you to discuss zoning approvals needed for a proposed wall and tennis courts.” (p. 22)

11:56 am: Castro to Lindgren: **“This is not permitted without a special exception approval by the Town Council pursuant to 134-1759(a)”** (p. 19)

And then the ruse ...

June 8 email chain re: “Thornton Tennis Hitting Wall ...”

On June 8, 2017, Hanlon confirms a meeting with Logan Elliott for June 19 at 9:30 am **“Re: Thornton Tennis Hitting Wall...”** (p. 24) After the meeting on June 19, Mizell follows up with Lindgren and Elliott to add a basketball hoop on the plans to avoid a special exception:

“We met with Logan to review the new program change in this project. This will no longer be a hitting wall & it will be a basketball/service area. Logan said that we do not need a special exception anymore due to the removal of the hitting wall application.” (p. 26-28)

C. The Thorntons Build the Hitting Wall

As planned, the aerials attached clearly show that the tennis hitting wall was, in fact, built. The site plan was not modified, except to draw on a basketball hoop on the other side of the concrete pad. **As you can plainly see from the aerial, and as was discussed at the August 14, 2019 hearing, there is no basketball hoop.** Mr. Hanlon testified that the basketball hoop is “in the far end in the shadow, opposite the wall,” but “the wall is very important to basketball, so, when you shoot it or pass it and it gets past you, it hits the wall and comes back.” Transcript at 18-19. The wall that is “very important” to basketball is on the opposite side of the supposed hoop to which the player shoots the ball?

Mr. Hanlon also testified that the court was used for agility drills for high performance athletes. Transcript at 16-17. It should be noted that the tennis hitting wall was applied for and constructed at the same time as the Tennis Court Complex – a full-sized hard court that must be more than sufficient for the *alleged* agility drills. (p. 1-2)

D. The Thorntons Deny Code Enforcement Permission to Inspect the Hitting Wall

Again, the email to the Town that hatched the plan bears repeating:

Email at May 4, 2017, 4:40 pm, Mizell to Lindgren: **“This is disappointing because when we left the meeting you shared that this could be staff approved. Can we call it a privacy wall and courtyard? If the child hits some balls against the wall and someone hears it and calls the Town, isn’t this a code compliance issue then?”**

So, the Thorntons applied for a tennis hitting wall. They admitted it was a tennis hitting wall when asked the specific question. When they were told they needed a special exception, they suggested calling it a “privacy wall” instead and assumed the risk of dealing with the code enforcement charge afterwards. And, then, when that code enforcement charge was brought, and the Town asked for permission to enter the property and inspect the tennis hitting wall, “Attorney Critton said we cannot enter the property.” Transcript at 9. The Town then dismissed the code enforcement charge.

With all due respect, the Thorntons are making a mockery of this proceeding. This is a ruse. And the Town was aware of the ruse every step of the way. Section 134-1759(d) prohibits the construction of a hitting wall. The Thorntons applied for one and simply changed the name of it to avoid the special exception. The Thorntons told the Town they were doing this (**“Can we call it a privacy wall and courtyard?”**). The Thorntons told the Town they would use it as a hitting wall and then deal with the code enforcement charge afterwards (**“If the child hits some balls against the wall and someone hears it and calls the Town, isn’t this a code compliance issue then?”**). When that code enforcement charge was eventually brought, the Thorntons denied the Town access to its property and showed up at the Town Council hearing and denied everything. The Thorntons’ counsel referred to the wall as a “so-called” hitting wall and falsely denied that the Thorntons ever applied for a tennis hitting wall. Mr. Hanlon himself called it the “Thornton Tennis Hitting Wall” in correspondence with the Town. Mrs. Thornton herself swore that the hitting wall was not being used as a hitting wall. Additional emails had to be obtained – **ones that the Town did not produce** – to reveal the entire ruse.

Section 134-1759(d) prohibits the **construction** of the hitting wall. The appeal should be granted. The Thorntons should be ordered to apply for a special exception or remove the tennis hitting wall.

Thank you for your consideration of this issue.

LEHTINEN SCHULTZ PLLC

By: /s/ Amanda Quirke Hand
Amanda Quirke Hand, P.A.

From: Dustin Mizell
To: Kelly Churney; John Lindgren
Subject: RE: 1236 S. Ocean Boulevard ARCOM Number
Date: Thursday, May 04, 2017 1:20:22 PM

Thank you for your quick response.
Have a great weekend.

Sincerely,
Dustin M. Mizell, MLA-RLA#6666784
LEED® AP

www.EnvironmentDesignGroup.com
The Paramount Building
139 North County Road - Suite 20-B
Palm Beach, Florida 33480
ph: 561.832.4600
m: 561.313.4424

God Bless

From: Kelly Churney [mailto:KChurney@TownofPalmBeach.com]
Sent: Thursday, May 04, 2017 1:17 PM
To: Dustin Mizell <dustin@environmentdesigngroup.com>; John Lindgren <JLindgren@TownofPalmBeach.com>
Subject: RE: 1236 S. Ocean Boulevard ARCOM Number

Good afternoon Dustin,

Please use B-046-2017 for the project.

Thanks,

Kelly Churney
Office Assistant III

Town of Palm Beach
Planning, Zoning & Building
360 S. County Rd.
Palm Beach, FL 33480
561-227-6408
561-835-4621 (fax)
www.townofpalmbeach.com

From: Dustin Mizell [mailto:dustin@environmentdesigngroup.com]
Sent: Thursday, May 04, 2017 12:41 PM
To: John Lindgren <JLindgren@TownofPalmBeach.com>; Kelly Churney <KChurney@TownofPalmBeach.com>

Subject: 1236 S. Ocean Boulevard ARCOM Number

Please provide us an ARCOM Number for this project – MAJOR PROJECT
Submitting on May 24

Description:

Addition of two tennis courts. One court will be a Hard Court and the other a Grass Court.
Additional landscaping will be provided to buffer the courts accordingly.

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

LEED® AP

www.EnvironmentDesignGroup.com

The Paramount Building

139 North County Road - Suite 20-B

Palm Beach, Florida 33480

ph: 561.832.4600

m: 561.313.4424

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From: Dustin Mizell
To: John Lindgren
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST
Date: Thursday, May 04, 2017 3:38:05 PM
Attachments: 1236 S Ocean STAFF APPROVAL 5-4-17.pdf

Revised drawing with setback dimension included.

The concrete paving is just to extend the existing concrete paving to match up with the new all / hitting wall.

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

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Palm Beach, Florida 33480

ph: 561.832.4600

m: 561.313.4424

God Bless

From: John Lindgren [mailto:JLindgren@TownofPalmBeach.com]
Sent: Thursday, May 04, 2017 3:11 PM
To: Dustin Mizell <dustin@environmentdesigngroup.com>
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Dustin,

I forgot to get back to you on this one. I need to know what the concrete pad is for. Also, can you provide the south side yard setback for the wall? Code requires 30 feet.

John

John Lindgren, AICP
Planning Administrator

Town of Palm Beach

Planning, Zoning & Building Department

360 S. County Road

Palm Beach, FL 33480

Phone: 561-227-6414

www.townofpalmbeach.com

From: Dustin Mizell [mailto:dustin@environmentdesigngroup.com]
Sent: Friday, April 21, 2017 12:54 PM
To: John Lindgren <JLindgren@TownofPalmBeach.com>
Subject: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

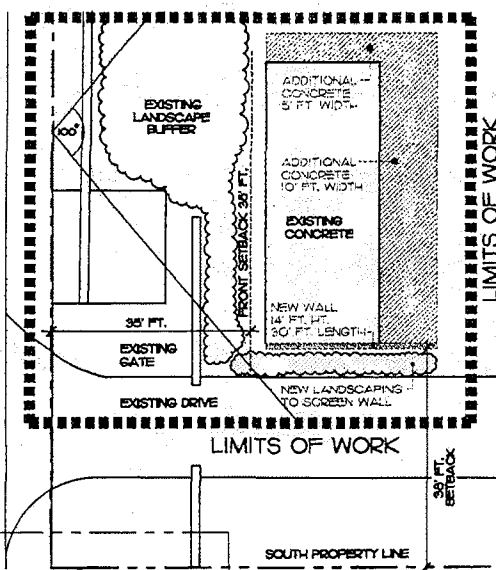
John,
For your review.
Thank you for your help.
Have a great weekend.

Sincerely,
Dustin M. Mizell, MLA-RLA#6666784
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LOS CALCULATIONS		
DESCRIPTION	REQUIRED	PROPOSED
LOT ZONE B-A-A		
LOT AREA	80,000 SQ. FT. MINIMUM	880,480 SQ. FT.
LANDSCAPE OPEN SPACE	MINIMUM 55% 143,253 SQ. FT.	70 % 154,940 SQ. FT. PROPOSED
FRONT YARD LANDSCAPE (65' MIN)	MINIMUM 45% 4,983 SQ. FT.	80% 8,615 SQ. FT. PROPOSED
MAXIMUM LOT COVERAGE FOR ONE OR TWO STORY BUILDINGS	MAXIMUM 85% 68,116 SQ. FT.	0.5% 14,239 SQ. FT. PROPOSED

Site Plan

SCALE IN FEET 0' 30' 60' 90'

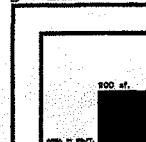


Private Residence
1236 South Ocean Boulevard
Palm Beach



JOB NUMBER: 17018-00 LA
DRAWN BY: JOHN M. MERRILL
DATE: 04.21.2017
REVISIONS: 05.04.2017

SHEET 11



From: John Lindgren
To: Dustin Mizell
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST
Date: Thursday, May 04, 2017 3:55:00 PM

I know. We talked about the wall, but I thought this was for some kind of play area for the kids; not a hitting wall for tennis. A hitting wall requires special exception approval from Town Council. Here's the code section:

Sec. 134-1759. - Tennis, shuffleboard and racquetball courts.

(a) Tennis courts or shuffleboard courts and similar accessory uses, not to be enclosed by a structure, may be constructed within yard areas, except the required front yard, required street side yard or required street rear yard as prescribed by this chapter. However, any walls or fences shall conform with sections 134-791, 134-792, 134-841, 134-842, 134-891, 134-892, 134-946, 134-947, 134-1001, 134-1002, 134-1056, 134-1057, 134-1110, 134-1160, 134-1210, 134-1260, 134-1305 and 134-1726, and **the construction of any facility involving the use of a ball backboard or rebound wall or structure in any district of the town and the construction of any tennis court, shuffleboard court or similar use upon any structure in the town shall be subject to an application for special exception.** Racquetball courts shall be considered unenclosed accessory structures and may be constructed, provided the court complies with all open yard requirements for the principal structure to which it is accessory and the racquetball court shall be subject to an application for special exception.

John Lindgren, AICP
Planning Administrator

Town of Palm Beach
Planning, Zoning & Building Department
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6414
www.townofpalmbeach.com

From: Dustin Mizell [mailto:dustin@environmentdesigngroup.com]
Sent: Thursday, May 04, 2017 3:50 PM
To: John Lindgren <JLindgren@TownofPalmBeach.com>
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Correct

When we were in your office (client and I) we reviewed the code and couldn't find any restrictions for this.

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

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www.EnvironmentDesignGroup.com

The Paramount Building

139 North County Road - Suite 20-B

Palm Beach, Florida 33480

ph: 561.832.4600

m: 561.313.4424

God Bless

From: John Lindgren [<mailto:JLindgren@TownofPalmBeach.com>]

Sent: Thursday, May 04, 2017 3:43 PM

To: Dustin Mizell <dustin@environmentdesigngroup.com>

Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Tennis hitting wall?

John Lindgren, AICP
Planning Administrator

Town of Palm Beach

Planning, Zoning & Building Department

360 S. County Road

Palm Beach, FL 33480

Phone: 561-227-6414

www.townofpalmbeach.com

From: Dustin Mizell [<mailto:dustin@environmentdesigngroup.com>]

Sent: Thursday, May 04, 2017 3:38 PM

To: John Lindgren <JLindgren@TownofPalmBeach.com>

Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Revised drawing with setback dimension included.

The concrete paving is just to extend the existing concrete paving to match up with the new all / hitting wall.

Sincerely,

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**John Lindgren, AICP
Planning Administrator**

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From: Dustin Mizell [<mailto:dustin@environmentdesigngroup.com>]
Sent: Friday, April 21, 2017 12:54 PM
To: John Lindgren <JLindgren@TownofPalmBeach.com>
Subject: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

John,
For your review.
Thank you for your help.
Have a great weekend.

Sincerely,
Dustin M. Mizell, MLA-RLA#6666784
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From: Dustin Mizell
To: John Lindgren
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST
Date: Thursday, May 04, 2017 4:40:10 PM

This is disappointing because when we left the meeting you shared that this could be staff approved. Can we call it a privacy wall and courtyard?

If the child hits some balls against the wall and someone hears it and calls the Town, isn't this a code compliance issue then?

It is for the child – a mixed-play area not just hitting his tennis ball.

Question – the addition of the 2 new tennis courts, which I applied for an ARCOM # already, do they have to go to Town Council as well as per this section?

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

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(a) Tennis courts or shuffleboard courts and similar accessory uses, not to be enclosed by a structure, may be constructed within yard areas, except the required front yard, required street side yard or required street rear yard as prescribed by this chapter. However, any walls or fences shall conform with sections 134-791, 134-792, 134-841, 134-842, 134-891, 134-892, 134-946, 134-947, 134-1001, 134-1002, 134-1056, 134-1057, 134-1110, 134-1160, 134-1210, 134-1260, 134-1305 and 134-1726, and **the construction of any facility involving the use of a ball backboard or rebound wall or structure in any**

district of the town and the construction of any tennis court, shuffleboard court or similar use upon any structure in the town shall be subject to an application for special exception. Racquetball courts shall be considered unenclosed accessory structures and may be constructed, provided the court complies with all open yard requirements for the principal structure to which it is accessory and the racquetball court shall be subject to an application for special exception.

**John Lindgren, AICP
Planning Administrator**

Town of Palm Beach
Planning, Zoning & Building Department
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6414
www.townofpalmbeach.com

From: Dustin Mizell [<mailto:dustin@environmentdesigngroup.com>]
Sent: Thursday, May 04, 2017 3:50 PM
To: John Lindgren <JLindgren@TownofPalmBeach.com>
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Correct

When we were in your office (client and I) we reviewed the code and couldn't find any restrictions for this.

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784
LEED® AP

www.EnvironmentDesignGroup.com
The Paramount Building
139 North County Road - Suite 20-B
Palm Beach, Florida 33480
ph: 561.832.4600
m: 561.313.4424

God Bless

From: John Lindgren [<mailto:JLindgren@TownofPalmBeach.com>]
Sent: Thursday, May 04, 2017 3:43 PM
To: Dustin Mizell <dustin@environmentdesigngroup.com>
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Tennis hitting wall?

John Lindgren, AICP
Planning Administrator

Town of Palm Beach
Planning, Zoning & Building Department
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6414
www.townofpalmbeach.com

From: Dustin Mizell [<mailto:dustin@environmentdesigngroup.com>]
Sent: Thursday, May 04, 2017 3:38 PM
To: John Lindgren <JLindgren@TownofPalmBeach.com>
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Revised drawing with setback dimension included.
The concrete paving is just to extend the existing concrete paving to match up with the new all / hitting wall.

Sincerely,
Dustin M. Mizell, MLA-RLA#6666784
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God Bless

From: John Lindgren [<mailto:JLindgren@TownofPalmBeach.com>]
Sent: Thursday, May 04, 2017 3:11 PM
To: Dustin Mizell <dustin@environmentdesigngroup.com>
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Dustin,
I forgot to get back to you on this one. I need to know what the concrete pad is for. Also, can you provide the south side yard setback for the wall? Code requires 30 feet.
John

John Lindgren, AICP
Planning Administrator

Town of Palm Beach
Planning, Zoning & Building Department
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6414
www.townofpalmbeach.com

From: Dustin Mizell [<mailto:dustin@environmentdesigngroup.com>]

Sent: Friday, April 21, 2017 12:54 PM

To: John Lindgren <JLindgren@TownofPalmBeach.com>

Subject: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

John,

For your review.

Thank you for your help.

Have a great weekend.

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

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From: John Lindgren
To: Dustin Mizell
Cc: Paul Castro; Logan Elliott
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST
Date: Thursday, May 04, 2017 4:55:00 PM

Dustin,

You'll need to discuss this with Paul regarding kids just throwing a ball against the wall. For the two new tennis courts, yes you will need Town Council approval for those as well. You will also need to go over this with Paul.

John

John Lindgren, AICP
Planning Administrator

Town of Palm Beach
Planning, Zoning & Building Department
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6414
www.townofpalmbeach.com

From: Dustin Mizell [mailto:dustin@environmentdesigngroup.com]
Sent: Thursday, May 04, 2017 4:40 PM
To: John Lindgren <JLindgren@TownofPalmBeach.com>
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

This is disappointing because when we left the meeting you shared that this could be staff approved. Can we call it a privacy wall and courtyard?

If the child hits some balls against the wall and someone hears it and calls the Town, isn't this a code compliance issue then?

It is for the child – a mixed-play area not just hitting his tennis ball.

Question – the addition of the 2 new tennis courts, which I applied for an ARCOM # already, do they have to go to Town Council as well as per this section?

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

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Palm Beach, Florida 33480
ph: 561.832.4600
m: 561.313.4424

God Bless

From: John Lindgren [mailto:JLindgren@TownofPalmBeach.com]

Sent: Thursday, May 04, 2017 3:55 PM

To: Dustin Mizell <dustin@environmentdesigngroup.com>

Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

I know. We talked about the wall, but I thought this was for some kind of play area for the kids; not a hitting wall for tennis. A hitting wall requires special exception approval from Town Council. Here's the code section:

Sec. 134-1759. - Tennis, shuffleboard and racquetball courts.

(a) Tennis courts or shuffleboard courts and similar accessory uses, not to be enclosed by a structure, may be constructed within yard areas, except the required front yard, required street side yard or required street rear yard as prescribed by this chapter. However, any walls or fences shall conform with sections 134-791, 134-792, 134-841, 134-842, 134-891, 134-892, 134-946, 134-947, 134-1001, 134-1002, 134-1056, 134-1057, 134-1110, 134-1160, 134-1210, 134-1260, 134-1305 and 134-1726, and **the construction of any facility involving the use of a ball backboard or rebound wall or structure in any district of the town and the construction of any tennis court, shuffleboard court or similar use upon any structure in the town shall be subject to an application for special exception.** Racquetball courts shall be considered unenclosed accessory structures and may be constructed, provided the court complies with all open yard requirements for the principal structure to which it is accessory and the racquetball court shall be subject to an application for special exception.

**John Lindgren, AICP
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From: Dustin Mizell [mailto:dustin@environmentdesigngroup.com]

Sent: Thursday, May 04, 2017 3:50 PM

To: John Lindgren <JLindgren@TownofPalmBeach.com>

Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Correct

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Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

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God Bless

From: John Lindgren [<mailto:JLindgren@TownofPalmBeach.com>]

Sent: Thursday, May 04, 2017 3:43 PM

To: Dustin Mizell <dustin@environmentdesigngroup.com>

Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Tennis hitting wall?

John Lindgren, AICP
Planning Administrator

Town of Palm Beach

Planning, Zoning & Building Department

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From: Dustin Mizell [<mailto:dustin@environmentdesigngroup.com>]

Sent: Thursday, May 04, 2017 3:38 PM

To: John Lindgren <JLindgren@TownofPalmBeach.com>

Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Revised drawing with setback dimension included.

The concrete paving is just to extend the existing concrete paving to match up with the new all / hitting wall.

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

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God Bless

From: John Lindgren [<mailto:JLindgren@TownofPalmBeach.com>]

Sent: Thursday, May 04, 2017 3:11 PM

To: Dustin Mizell <dustin@environmentdesigngroup.com>

Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Dustin,

I forgot to get back to you on this one. I need to know what the concrete pad is for. Also, can you provide the south side yard setback for the wall? Code requires 30 feet.

John

John Lindgren, AICP
Planning Administrator

Town of Palm Beach

Planning, Zoning & Building Department

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Palm Beach, FL 33480

Phone: 561-227-6414

www.townofpalmbeach.com

From: Dustin Mizell [<mailto:dustin@environmentdesigngroup.com>]

Sent: Friday, April 21, 2017 12:54 PM

To: John Lindgren <JLindgren@TownofPalmBeach.com>

Subject: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

John,

For your review.

Thank you for your help.

Have a great weekend.

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

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From: Paul Castro
To: John Lindgren
Cc: Dustin Mizell; Logan Elliott
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST
Date: Friday, May 05, 2017 11:56:49 AM

John,

This is not permitted without a special exception approval by the Town Council pursuant to Sec. 134-1759(a).

Paul

From: John Lindgren
Sent: Thursday, May 04, 2017 3:45 PM
To: Paul Castro <PCastro@TownofPalmBeach.com>; Logan Elliott <LElliott@TownofPalmBeach.com>
Subject: FW: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Paul,

Can't find anything in the code on a tennis hitting wall. The wall and pad (some of pad already existing) are out of the setbacks. The area is completely screened with vegetation (very thick). Is this permitted. If so, do they need anything else? Fence around the whole thing (other than where the wall is)?

John

John Lindgren, AICP
Planning Administrator

Town of Palm Beach
Planning, Zoning & Building Department
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6414
www.townofpalmbeach.com

From: Dustin Mizell [<mailto:dustin@environmentdesigngroup.com>]
Sent: Thursday, May 04, 2017 3:38 PM
To: John Lindgren <JLindgren@TownofPalmBeach.com>
Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Revised drawing with setback dimension included.

The concrete paving is just to extend the existing concrete paving to match up with the new all / hitting wall.

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

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Palm Beach, Florida 33480

ph: 561.832.4600

m: 561.313.4424

God Bless

From: John Lindgren [<mailto:JLindgren@TownofPalmBeach.com>]

Sent: Thursday, May 04, 2017 3:11 PM

To: Dustin Mizell <dustin@environmentdesigngroup.com>

Subject: RE: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

Dustin,

I forgot to get back to you on this one. I need to know what the concrete pad is for. Also, can you provide the south side yard setback for the wall? Code requires 30 feet.

John

**John Lindgren, AICP
Planning Administrator**

Town of Palm Beach

Planning, Zoning & Building Department

360 S. County Road

Palm Beach, FL 33480

Phone: 561-227-6414

www.townofpalmbeach.com

From: Dustin Mizell [<mailto:dustin@environmentdesigngroup.com>]

Sent: Friday, April 21, 2017 12:54 PM

To: John Lindgren <JLindgren@TownofPalmBeach.com>

Subject: 1236 S Ocean Boulevard STAFF APPROVAL REQUEST

John,

For your review.

Thank you for your help.

Have a great weekend.

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

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From: [Tim Hanlon](#)
To: [Paul Castro](#)
Subject: RE: 1236 South Ocean Boulevard and 200 Emerald Beach Way
Date: Friday, May 05, 2017 1:51:23 PM

Thanks Paul.

10, 10:30, 11, 1:30, 2:00, 2:30 or 3?

Tim

M. Timothy Hanlon
Alley, Maass, Rogers & Lindsay P.A.
340 Royal Poinciana Way, Suite 321
Palm Beach, Florida 33480
Phone: (561) 659-1770
Fax: (561) 833-2261
tim.hanlon@amrl.com

From: Paul Castro [<mailto:PCastro@TownofPalmBeach.com>]
Sent: Friday, May 05, 2017 12:06 PM
To: Tim Hanlon
Subject: RE: 1236 South Ocean Boulevard and 200 Emerald Beach Way

Tim,

The following Monday. Send me some time on the 15th and I will confirm one.

Regards,

Paul

From: Tim Hanlon [<mailto:tim.hanlon@amrl.com>]
Sent: Friday, May 05, 2017 11:14 AM
To: Paul Castro <PCastro@TownofPalmBeach.com>
Subject: 1236 South Ocean Boulevard and 200 Emerald Beach Way

Hi Paul. John Lindgren just advised Dustin Mizell to set up a meeting with you to discuss zoning approvals needed for a proposed wall and tennis courts.

Are you available next week after the Town Council meetings? Dustin and I could meet Thursday, Friday or the following Monday.

Thanks, Tim

M. Timothy Hanlon
Alley, Maass, Rogers & Lindsay P.A.
340 Royal Poinciana Way, Suite 321

Palm Beach, Florida 33480
Phone: (561) 659-1770
Fax: (561) 833-2261
tim.hanlon@amrl.com

From: Paul Castro [<mailto:PCastro@TownofPalmBeach.com>]
Sent: Thursday, December 22, 2016 8:28 AM
To: Tim Hanlon
Cc: Veronica Close; John Page
Subject: Unity of Title Agreement for 1236 South Ocean Boulevard and 200 Emerald Beach Way

Tim,

Please provide surveys of the properties your client wants to join by unity of title. I need to review the existing conditions. In the future, that will be a requirement except for the unity of condominiums. I will be out of the office until January 5th so this may not be completed until January.

Thank you,

Paul

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From: Tim Hanlon
To: Logan Elliott; Paul Castro
Subject: RE: Thornton Tennis Hitting Wall 1236 S. Ocean/200 Emerald Beach Way
Date: Thursday, June 08, 2017 11:29:21 AM

Great. Yes Logan. 9:30 is good.

Thanks to both of you.

Tim

M. Timothy Hanlon
Alley, Maass, Rogers & Lindsay P.A.
340 Royal Poinciana Way, Suite 321
Palm Beach, Florida 33480
Phone: (561) 659-1770
Fax: (561) 833-2261
tim.hanlon@amrl.com

From: Logan Elliott [<mailto:LElliott@TownofPalmBeach.com>]
Sent: Thursday, June 08, 2017 11:14 AM
To: Paul Castro; Tim Hanlon
Subject: RE: Thornton Tennis Hitting Wall 1236 S. Ocean/200 Emerald Beach Way

I am available the 19th. I also am familiar with this project. Does 9:30am work for you?

Logan Elliott
Zoning Technician

Town of Palm Beach
Planning, Zoning, Building
360 S. County Road
Palm Beach, FL 33480
Phone: 561-227-6409
www.townofpalmbeach.com

From: Paul Castro
Sent: Thursday, June 08, 2017 11:10 AM
To: Tim Hanlon <tim.hanlon@amrl.com>
Cc: Logan Elliott <LElliott@TownofPalmBeach.com>
Subject: RE: Thornton Tennis Hitting Wall 1236 S. Ocean/200 Emerald Beach Way

Tim,

I have no time on the 19th. You will have to meet with Logan Elliott.

Regards,

Paul

From: Tim Hanlon [<mailto:tim.hanlon@amrl.com>]
Sent: Wednesday, June 07, 2017 6:16 PM
To: Paul Castro <PCastro@TownofPalmBeach.com>
Subject: Thornton Tennis Hitting Wall 1236 S. Ocean/200 Emerald Beach Way

Hi Paul. The meeting on 6/16 is perfect for two of the applications, but Dustin Mizell will be out of town and he is the architect for the Thornton project.

Do you have any time on 6/19 when he returns? Any time is ok with us.

Thanks, Tim

M. Timothy Hanlon
Alley, Maass, Rogers & Lindsay P.A.
340 Royal Poinciana Way, Suite 321
Palm Beach, Florida 33480
Phone: (561) 659-1770
Fax: (561) 833-2261
tim.hanlon@amrl.com

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From: Dustin Mizell
To: John Lindgren
Cc: Logan Elliott
Subject: 1236 S. Ocean ARCOM Staff Approval Request 6-27-17
Date: Tuesday, June 27, 2017 10:21:25 AM
Attachments: 1236 S Ocean Boulevard ARCOM STAFF APPROVAL REQUEST L1.pdf
1236 S Ocean Boulevard ARCOM STAFF APPROVAL REQUEST L2.pdf

John,

We met with Logan to review the new program change in this project.

This will no longer be a hitting wall & it will be a basketball / service area.

Logan said that we do not need a special exception anymore due to the removal of the hitting wall application .

Thank you for your review.

Hope you are enjoying vacation!

Sincerely,

Dustin M. Mizell, MLA-RLA#6666784

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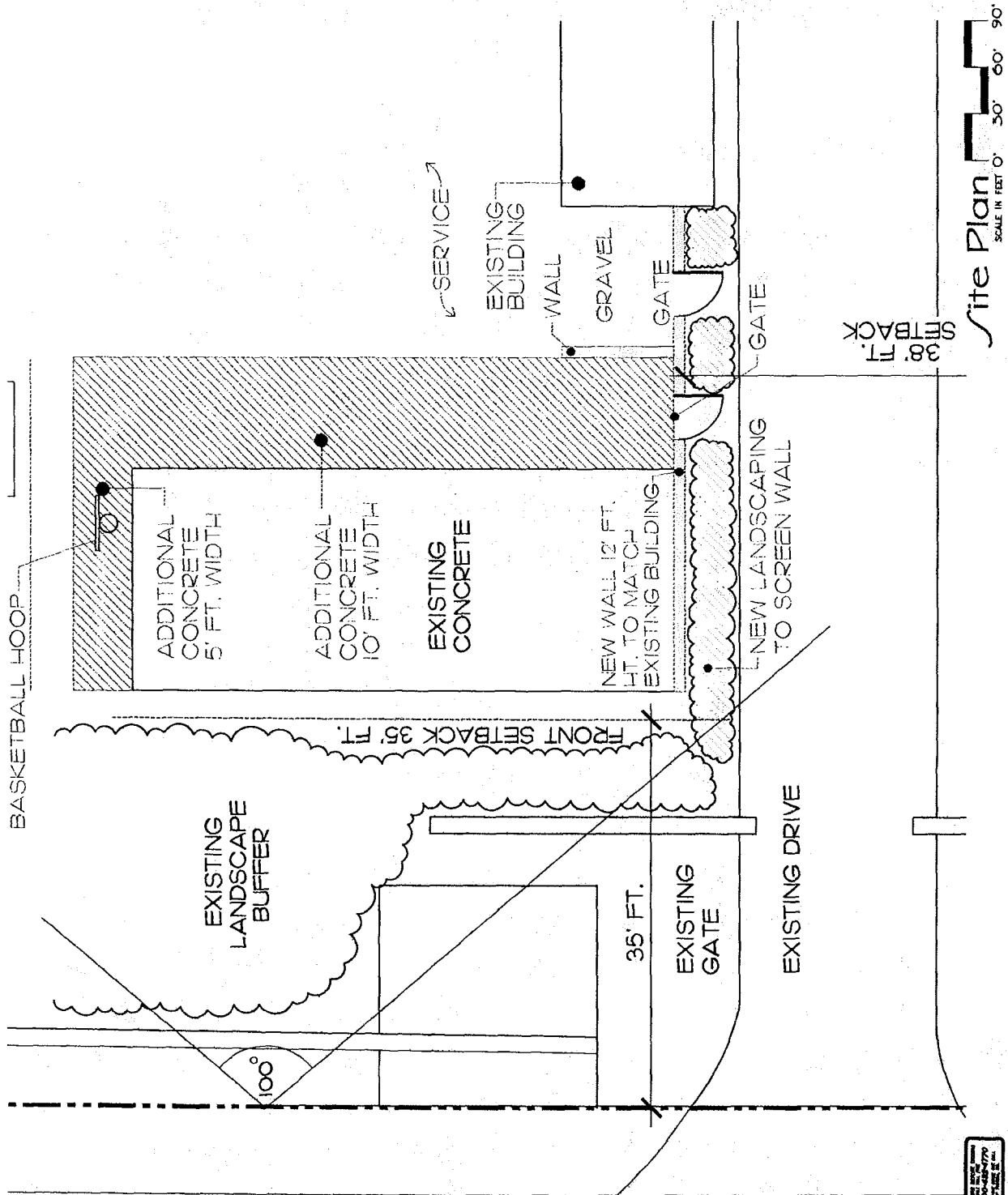
God Bless

South Ocean Boulevard

Site Plan

2017

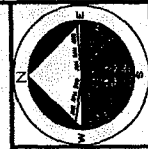
2017



LANDSCAPE DESIGN GROUP
3815 W. 10th St.
P.O. Box 1000
Tulsa, OK 74101
Tel: 918.438.7770
Fax: 918.438.7771
www.landscapedesigngroup.com



Private Residence
1236 South Ocean Boulevard
Palm Beach
FL 33480
04.23.2017



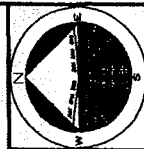
FOR HANDLING ONLY
DATE: 04.23.2017
BY: 04.23.2017

SHEET L2

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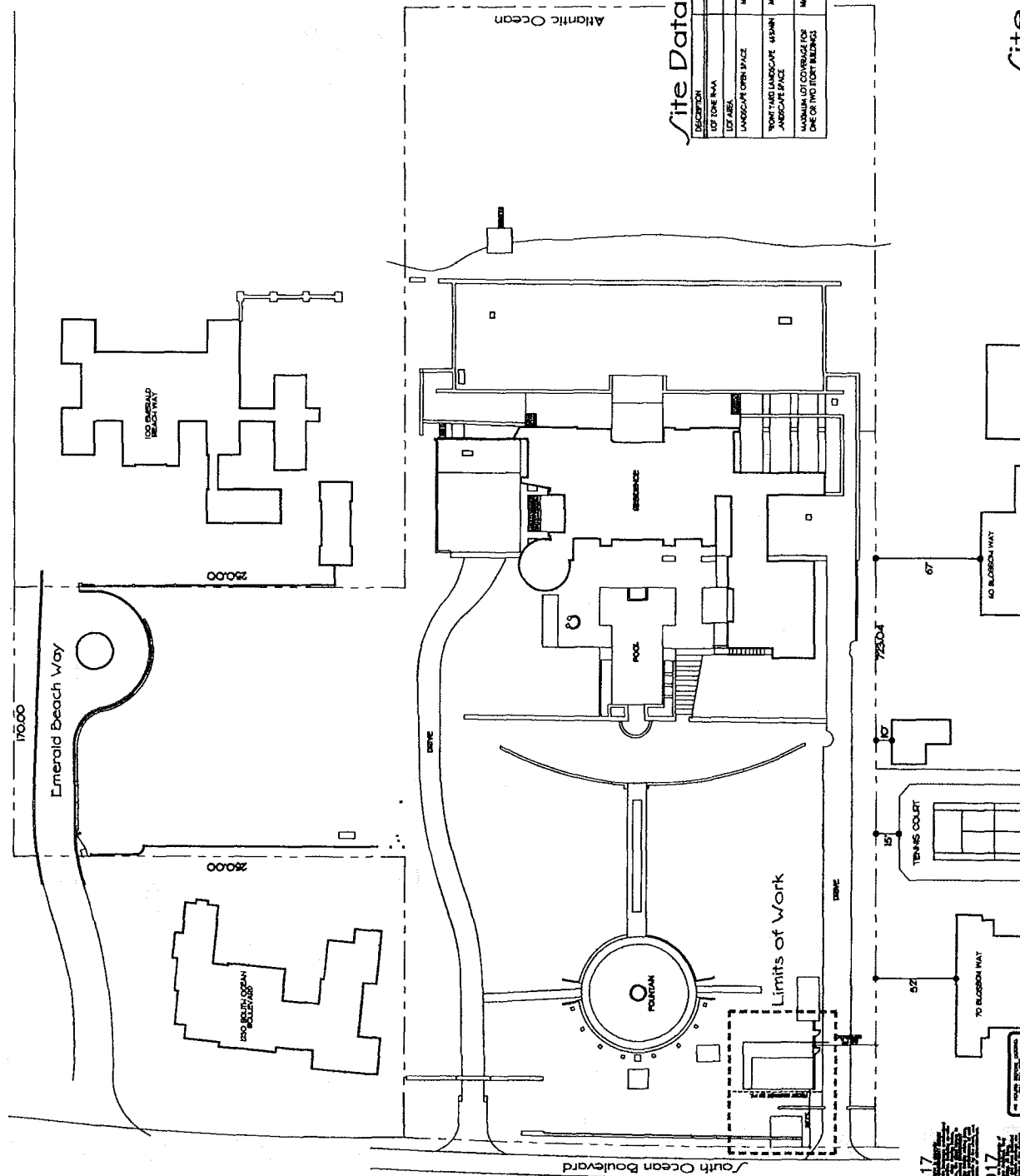
Private Residence
 1236 South Ocean Boulevard
 Palm Beach



SHEET 11
 DATE 01/11/2017
 DRAWN BY [Name]
 CHECKED BY [Name]
 EXTENSION 01/11/2017

Site Data LOS CALCULATIONS

DESCRIPTION	REQUIRED	PROPOSED
LOT AREA	60,000 SQ. FT. MINIMUM	280,480 SQ. FT.
LANDSCAPE OPEN SPACE	MINIMUM 55%	154,364 SQ. FT. PROPOSED
WORKING LANDSCAPE	MINIMUM 45%	8,815 SQ. FT. PROPOSED
MAXIMUM LOT COVERAGE FOR ONE OR TWO STORY BUILDINGS	MAXIMUM 20%	14,330 SQ. FT. PROPOSED



Site Plan
 SCALE IN FEET 0' 30' 60' 90'

2017
 2017
 2017

August 14, 2019

TOWN OF PALM BEACH

TOWN COUNCIL MEETING

Town Hall
Council Chambers-Second Floor
360 South County Road
Palm Beach, Florida 33480

AUGUST 14, 2019

APPEAL RE: 1236 S. OCEAN BOULEVARD
HITTING WALL

BOARD MEMBERS

Gail L. Coniglio, Mayor
Danielle H. Moore, President
Margaret A. Zeidman, President Pro Tem
Julie Araskog, Member
Lew Crampton, Member

ALSO PRESENT

Josh Martin, Planning, Zoning and Building Director
Paul Castro, Zoning Administrator
Ben Alma, Code Enforcement
John Randolph, Esq., Jones Foster
Amanda Quirke-Hand, Esq., Lehtinen Schultz
M. Timothy Hand, Esq., Alley Maass

Stenographically reported by:
Lisa Higbee, RPR, RMR

Page 2 1 * * * * * 2 PRESIDENT MOORE: Anyway, all right. 3 Ladies and gentlemen, should we move on to the 4 second appeal, or do we need a quick two-minute 5 break? 6 MAYOR CONIGLIO: Keep going. 7 MS. ARASKOG: Keep going, please. 8 PRESIDENT MOORE: Keep going. Mr. Randolph 9 just stepped out for a second. 10 Next item, 1236 South Ocean Boulevard, the 11 appeal based on a wall. 12 Ex-parte? Jules. 13 MS. ARASKOG: On a wall? 14 MAYOR CONIGLIO: The hitting wall. 15 MS. ARASKOG: Only staff. 16 MR. CRAMPTON: None. 17 MAYOR CONIGLIO: Only staff. 18 PRESIDENT MOORE: None. 19 MS. ZEIDMAN: Staff and our town attorney, 20 Mr. Randolph. 21 PRESIDENT MOORE: Mr. Martin, please. 22 MR. MARTIN: Yes, so with -- in this 23 instance, on this case, I am -- I am going to give 24 you some -- just some information regarding the 25 background of what this is and where it is located	Page 4 1 to the tennis court, but, actually, it's -- it's 2 -- the structure that's being discussed today is 3 here on the property of 1236 South Ocean 4 Boulevard, so I just want to make that 5 clarification. 6 MS. ARASKOG: Is that where the green is? 7 Could you point it out again? 8 MR. MARTIN: Right here. 9 MS. ARASKOG: Okay, the green. 10 MR. MARTIN: So I just want to make sure, 11 because there's been a lot of confusion as to 12 where the location of this discussed structure is 13 on these properties. So I want to give you that 14 for the record just so that everyone's on the same 15 page, and, if either party, you know, disagrees 16 with that location of where we're discussing this 17 item today, I'll leave it to them to make the 18 statements. 19 PRESIDENT MOORE: Can I just ask a 20 question? Josh, could you zoom it out just a 21 little more. I just want to make sure -- 22 MR. MARTIN: It's -- 23 PRESIDENT MOORE: I know. Just pull it -- 24 or pull it down. Pull it down, up. 25 MR. MARTIN: Down.
Page 3 1 and those types of things. 2 This is a code enforcement matter, and I 3 think Mr. Alma and Mr. Moriarty are here today to 4 answer any questions and the appeal, I believe, of 5 the decision of the code enforcement officer that 6 closed the case on the hitting wall complaint. So 7 I just want to give a little bit of background in 8 terms of what we're -- what we're discussing today 9 as opposed to the hitting wall, and then I'm also 10 going to address my comments on the record with 11 regards to my comments to code enforcement 12 regarding the hitting wall. 13 So just bear with me for a second. Let me 14 grab it. 15 PRESIDENT MOORE: Can I see the whole 16 thing? 17 MR. MARTIN: Yes. Sorry. 18 PRESIDENT MOORE: Thank you. 19 MR. MARTIN: This was -- This was an 20 exhibit that was submitted for the property by 21 Ms. Hand, and I just want to -- there's been a lot 22 of confusion as to where the location of the 23 hitting wall, if it is a hitting wall or not a 24 hitting wall, where the location is and what it -- 25 A lot of people have thought that it's appurtenant	Page 5 1 PRESIDENT MOORE: There. Okay, I just -- 2 So the house that -- 3 MR. MARTIN: The Thorntons live here. 4 PRESIDENT MOORE: Yes, thank you. I just 5 -- I'm sorry, I want to make sure I have... 6 MR. MARTIN: And Emerald Beach Way is 7 essentially off -- 8 PRESIDENT MOORE: There. 9 MR. MARTIN: Yes. 10 PRESIDENT MOORE: And 100 Emerald Beach Way 11 is up there some. Okay. 12 MR. MARTIN: (Indicating) 13 PRESIDENT MOORE: Okay. Thank you. I just 14 needed a quick orientation. 15 MR. MARTIN: I think that's south because 16 there's been a lot of -- there's been a lot of 17 questions. 18 PRESIDENT MOORE: Of direction, okay. 19 Thank you. 20 MR. MARTIN: And so this case was brought 21 up, and I'll let code enforcement speak to their 22 finding and if they visited the site to look at 23 this and how they discussed that with the property 24 owners and what have you. But, in the backup, 25 there is a statement that I made to code

Page 6 1 enforcement that said this is not being used as a 2 hitting wall. I was responding quickly in the 3 midst of doing 10 other things, and I went back 4 and clarified that, that I don't know what the use 5 of it is. I haven't put my eyes on it, per se, 6 but the thing is that -- that it was not permitted 7 as a hitting wall. And, if you look at the permit 8 that's in the backup, there's a condition that it 9 shall not be used as a hitting wall. And I said, 10 "So you should continue to proceed with the case." 11 And I believe they did proceed with the case, and 12 I'll let the code enforcement officers, you know, 13 speak to what they found or who they interviewed 14 on the property or what have you, and so that's 15 all of the information that I have. 16 There's no staff recommendation in this 17 because I don't think this is a planning, zoning, 18 building issue. This is actually a code 19 enforcement issue. 20 PRESIDENT MOORE: Okay, and just so -- I 21 just have two quick questions on the board. 22 MAYOR CONIGLIO: Josh, you said that the 23 permit, whatever that was, specifically said it 24 can't be a hitting wall. 25 MR. MARTIN: That's correct.	Page 8 1 issued or when reviewed for zoning by our staff, 2 there's a stipulation it could not be used as a 3 hitting or rebound wall because that requires 4 council approval, special exception. 5 MAYOR CONIGLIO: Is there a basketball 6 court there? 7 MR. CASTRO: I don't know. 8 MAYOR CONIGLIO: Is there a basketball net 9 there? 10 MR. CASTRO: I don't know if there is a 11 basketball court there. I know that, when it 12 originally came in with a permit, there was a 13 basketball goal shown on the plan. 14 MAYOR CONIGLIO: Okay, thank you. 15 MS. ARASKOG: And I have got a question. 16 PRESIDENT MOORE: Okay, Maggie's got her 17 light on. 18 MS. ZEIDMAN: So, I mean, that's the 19 question, what you just asked, Gail, because what 20 -- after the first request was made and they 21 wanted it to be a hitting wall, and, as you said, 22 that would be a special exception, then they 23 changed it to -- it was changed to a basketball, 24 slash, service area, and code enforcement has been 25 there. So I'd actually like to know, is there a
Page 7 1 MAYOR CONIGLIO: What was it permitted for? 2 MR. MARTIN: It's permitted for -- Paul, do 3 you want to speak to that? 4 MR. CASTRO: Yes. It was permitted as a 5 perimeter wall to a basketball court. 6 MAYOR CONIGLIO: Perimeter wall. 7 MR. CASTRO: Correct. 8 MAYOR CONIGLIO: And is there a -- 9 MR. CASTRO: That's my recollection. I was 10 not involved in the permitting or the review of 11 that permit. 12 MAYOR CONIGLIO: Does that potential 13 permitting wall have a size? 14 MR. CASTRO: So it's my understanding, no, 15 because it's out of the front setback area at 16 certain locations. So, when it originally came 17 in, it came in as a rebound or hitting wall. It 18 was rejected and said that you needed -- This is 19 my recollection -- that you needed a special 20 exception in order to have a rebound wall at that 21 location. 22 The landscape architect wrote back and said 23 it's not going to be used as a rebound wall; it's 24 a perimeter wall to the basketball court, I 25 believe, and, therefore, when the permit was	Page 9 1 basketball court there? Is there a basketball, 2 you know, hoop there, and have you seen it? Can 3 they answer that question? 4 PRESIDENT MOORE: Okay, so let's -- 5 MR. RANDOLPH: Can you guys answer that? 6 MR. CASTRO: I don't know whether it's 7 there or not. I've been told it's not there. 8 I've been told there is not a goal there. 9 MAYOR CONIGLIO: Ben. Ben. 10 MR. ALMA: Good afternoon. Ben Alma, code 11 enforcement. We have no idea. 12 MAYOR CONIGLIO: You have no idea? 13 MR. ALMA: We do not. We have asked for 14 permission to enter the property. Counsel has 15 denied us. 16 PRESIDENT MOORE: What? 17 MS. ARASKOG: Counsel denied them -- 18 MR. ALMA: Attorney Critton has said we 19 cannot enter the property. 20 MS. ZEIDMAN: Okay, thank you, Ben. 21 PRESIDENT MOORE: Okay. 22 MS. ARASKOG: I have another question for 23 Paul. 24 MS. ZEIDMAN: My question is -- 25 PRESIDENT MOORE: Okay, Julie.

Page 10 1 MS. ARASKOG: Yes, Paul, so they only 2 asked, interestingly enough, to have this wall in 3 that one place and not surrounding the -- what was 4 purported to be a basketball court? 5 MR. CASTRO: Wherever it was permitted at. 6 I'm -- I'm not real familiar with that permit. 7 MS. ARASKOG: Okay, so you wouldn't know if 8 it's normal to put up -- 9 MR. CASTRO: Well, we have walls go up all 10 over town that are over seven feet in height as 11 long as they're out of the setbacks. The code 12 says that you can have a wall up to 14 feet tall, 13 in this case 25 feet because it's the large estate 14 district, provided you're out of the front 15 setback. 16 MS. ARASKOG: Okay, I -- 17 MR. CASTRO: So we've had situations in the 18 past where people have put in walls that are 19 higher. 20 MS. ARASKOG: On basketball courts? 21 MR. CASTRO: No. It could be on a 22 driveway, the retaining wall. 23 MS. ARASKOG: That was my question. 24 PRESIDENT MOORE: But you can put up a 25 wall?	Page 12 1 about here. In 2017, the applicant came in for a 2 hitting wall. Then their agent says -- wrote an 3 email to John Lindgren: "We met with Logan Tree 4 (phonetic) to deal with the new program change in 5 this project. This will no longer be a hitting 6 wall. It will be a basketball/service area. 7 Logan said that we do not need a special exception 8 anymore due to the removal of the hitting wall 9 application." So they then constructed what was 10 approved by the permit. 11 Let's see if we can zoom out here. 12 Okay, it was the same drawing that was 13 submitted before that email that was submitted by 14 the applicant's agent. It's for a 14-foot wall 15 adjacent to a concrete pad. They subsequently 16 built this 14-foot wall with a nice, big concrete 17 footer and striped it as a tennis court. 18 So, at this point, you have a wall, a 19 14-foot wall, attached to a striped tennis court 20 that I don't know what else it could be used for 21 other than a hitting wall. If it walks like a 22 duck and it quacks like a duck... 23 That concludes my presentation unless... 24 PRESIDENT MOORE: Okay. I guess I'm not 25 really sure that it's striped as a tennis court.
Page 11 1 MR. CASTRO: Correct. 2 PRESIDENT MOORE: Julie, does that cover 3 your question? 4 MS. ARASKOG: Yes. 5 PRESIDENT MOORE: Mr. Crampton. 6 MR. CRAMPTON: What is the evidence that it 7 is a hitting wall? 8 MS. ARASKOG: Skip has something you -- 9 MR. RANDOLPH: Well, I think you should 10 here Amanda Hand's argument first because there's 11 been some question as to whether it's -- whether 12 it's being used as a hitting wall, and I don't 13 think that's an issue for you today. 14 The issue relates to exactly what you've 15 been discussing, and, as I understand Amanda's 16 argument, that it was related to the permitting 17 that she's talking about, not to the use. 18 PRESIDENT MOORE: Okay, go ahead. Amanda, 19 go ahead, and then Mr. Hanlon will have -- and 20 we'll go back to our 15 minutes, okay? 21 MS. QUIRKE-HAND: Good afternoon. Amanda 22 Quirke-Hand, offices at 1111 Brickell Avenue, on 23 behalf of appellant, 100 Emerald Beach Way. 24 As you can see, and as confirmed by 25 Mr. Martin, this is the area that we're talking	Page 13 1 It could be a basketball court for all I know. 2 Mr. Crampton. 3 MR. HANLON: May I present now? 4 PRESIDENT MOORE: Oh, sorry, Tim. 5 MR. HANLON: It's okay. 6 PRESIDENT MOORE: I saw the light on the 7 board and moved on. 8 MR. HANLON: Good afternoon. M. Timothy 9 Hanlon on behalf of Mr. and Mrs. Thornton, the 10 owners of 1236 South Ocean Boulevard. 11 First, I'd like to submit my letter dated 12 August 8th, which I submitted -- or, filed with 13 the town last week. I just want to make sure it's 14 part of the record. 15 MR. RANDOLPH: For the record, your 16 ex-parte communications related to both of these 17 appeals as I understand it. 18 MAYOR CONIGLIO: We had ex-parte. 19 MR. RANDOLPH: I know. I've just been 20 asked if we did ex-parte. I told them, yes, you 21 did it for both of these appeals. 22 PRESIDENT MOORE: We did. 23 MAYOR CONIGLIO: Separately. 24 PRESIDENT MOORE: We did it. We did 25 separately. You had stepped out.

Page 14 1 MS. ZEIDMAN: For each appeal, we did it 2 separately. 3 MS. ARASKOG: We already went through 4 ex-parte. 5 MR. RANDOLPH: Oh, when I was in the 6 bathroom? 7 PRESIDENT MOORE: Yes. 8 MAYOR CONIGLIO: Yes. 9 MR. RANDOLPH: I'm sorry. They didn't hear 10 it apparently. 11 PRESIDENT MOORE: Okay. Mr. Hanlon. 12 MR. HANLON: Thank you. History of the 13 wall is significant here. A couple of years ago, 14 Roger Bullea (phonetic) of the town requested that 15 the Thorntons move their refuse area further away 16 from South Ocean Boulevard to enhance the safety 17 of the town employees while removing rubbish. 18 After the Thorntons did so, they were left 19 with a blank, unattached concrete pad, not very 20 pretty. They contemplated a tennis rebound wall, 21 but decided otherwise after learning that a 22 special exception would be required. The 23 Thorntons then decided to lower the proposed 24 height of the wall from 14 to 12 feet and change 25 the use to a fitness area and a basketball area.	Page 16 1 rebound or backboard purposes or, as Mrs. Hand 2 calls it, a tennis hitting wall. Also, notably, 3 it is significant to note that no documents 4 submitted by Mrs. Hand -- and that includes her 5 July 2nd appeal letter, her July 16th email and 6 approximately 60-plus pages of emails -- includes 7 any allegation or evidence that the wall has been 8 used as a tennis ball backboard or a rebound wall. 9 On the contrary, Mrs. Thornton and Alberto Douman 10 (phonetic), the property manager for 1236, both 11 submitted sworn declarations confirming that the 12 wall had never been used as a so-called hitting 13 wall. 14 It is our position that Officer Moriarty, 15 the town staff and the code enforcement officers 16 performed their jobs on this issue exactly as 17 required. That is, Mrs. Hand filed a complaint, 18 which they investigated. They discovered that the 19 complaint had no factual basis, so they properly 20 dismissed the case. 21 While we don't believe that the Thorntons 22 are required to submit evidence as to a contrary 23 use, we are happy to explain that the concrete 24 area next to the wall is used for special fitness 25 and agility drills for high-performance athletes
Page 15 1 There was then, since it's been built, and always 2 has been a temporary basketball hoop right in the 3 middle of the court, and I did submit that -- or, 4 did state in my evidence submitted that it was 5 used for basketball purposes. 6 On July 14th, 2017, the architectural 7 commission approved the wall, and, on October 6th, 8 2017, a building permit for the wall was issued. 9 Notably, now we hear that the ARCOM approval 10 and/or the building permit were not proper. No 11 appeal of either the ARCOM decision or the 12 building permit were filed within the required 13 filing time frame. I don't know how you can 14 complain about it now, almost two years later. 15 The wall was built shortly thereafter. It 16 was painted with paint remaining from the tennis 17 court that they had built around the same time in 18 an effort to improve the aesthetics. It is also 19 important to note that the wall is several hundred 20 feet away from the Jacobs' residence and from the 21 one tennis court built by the Thorntons. I think 22 I measured it out on PAPA as 450 feet from the 23 Jacobs' residence, separated from large -- by 24 large, thick foliage. 25 The wall has never been used for tennis	Page 17 1 which are best performed on a hard surface and 2 also used by the entire Thornton family for 3 playing basketball. I think Paul Castro just 4 testified that the wall can be used for any 5 purposes as long as it's not used for a so-called 6 hitting wall, and there is no evidence of that. 7 So, in summary, the Thorntons obtained both 8 ARCOM approval and a building permit for the wall, 9 and neither the approval nor the permit were 10 appealed. Further, the Thorntons have never used 11 the wall as a so-called hitting wall or any other 12 use which would require a special exception. 13 Last, the appellant has produced no 14 evidence which established that the wall is a 15 hitting wall or ever has been used as a hitting 16 wall. As such, Officer Moriarty's dismissal for 17 Code Enforcement Case #19-365 was proper, and we 18 respectfully request that you dismiss the appeal. 19 I'll remain available to answer any 20 questions. Thank you. 21 PRESIDENT MOORE: Mrs. Araskog. 22 MR. RANDOLPH: Didn't you want to allow -- 23 PRESIDENT MOORE: Amanda, go ahead. 24 MS. ARASKOG: Amanda, do you want to rebut 25 first?

Page 18 1 MS. QUIRKE-HAND: Kelly, can you put this 2 up, please? I just wanted to put it up because it 3 is a little bit more clear on the computer version 4 that it is, in fact, striped as a tennis court. 5 I don't think I have anything else other 6 than to say that planning and zoning specifically 7 put a condition on the permit that it's not going 8 to be a hitting wall. There is nothing else that 9 a 14-foot wall attached to a tennis court can be 10 used for. Thank you. 11 MAYOR CONIGLIO: I'm sorry, Amanda, I don't 12 -- How do you make it clearer, that picture? 13 MS. ARASKOG: Yeah, can you -- can you blow 14 it up for us? 15 MAYOR CONIGLIO: It looks like a green blob 16 to me. 17 MS. ARASKOG: In one of our emails, it was 18 -- Oh, there you go. 19 PRESIDENT MOORE: Julie, you have a 20 question? 21 MR. HANLON: And, just quickly to rebuttal, 22 the height of the wall was reduced to 12 feet 23 because it's not being used as a tennis hitting 24 wall, and the wall is very important to 25 basketball, so, when you shoot it or pass it and	Page 20 1 manager call us, and the property manager said it 2 was not being used as a hitting wall. We had no 3 reason to disbelieve him. 4 MR. RANDOLPH: And let me just say here 5 that the evidence relating to whether it's being 6 used as a hitting wall is irrelevant to the 7 argument that's being made today as I understand 8 it. Her argument is the fact that it was 9 permitted in this location means it's a hitting 10 wall, whether it was used as one or not. So, I 11 mean, if you're going to go into the use, then, 12 you know, she's asked could she have an 13 opportunity to cross-examine the witnesses who 14 made the statements that it's not used as a 15 hitting wall. 16 I don't see how the use is relevant to what 17 you're discussing today because her argument is 18 that the mere fact that you permitted it in this 19 location makes it a permitting wall -- a hitting 20 wall and nothing else, correct? 21 MS. ARASKOG: That's your only argument? 22 MS. QUIRKE-HAND: Correct, that 13 -- that 23 134.1759 prohibits the construction -- 24 PRESIDENT MOORE: Wait, wait, wait. 25 MS. QUIRKE-HAND: -- prohibits the
Page 19 1 it gets past you, it hits the wall and comes back. 2 There is a very important use for that wall. 3 MS. ARASKOG: I don't see a basketball 4 ring. 5 PRESIDENT MOORE: It would be in that -- 6 MR. HANLON: The far end in the shadow, 7 opposite the wall. 8 MS. ARASKOG: Am I up, Donnie? 9 PRESIDENT MOORE: Actually, Julie, you are. 10 I'm going to make a pit stop. 11 MS. ARASKOG: I just want to know why you 12 wouldn't let them take a picture. I mean, if you 13 could have -- 14 MR. HANLON: I'm not aware of that. I 15 certainly did not do it. I know Mr. McGuire is 16 here, co-counsel. He never said no. I can't 17 speak to what Mr. Critton did, but -- 18 MS. ARASKOG: May I please speak to 19 Moriarty or to Ben, either one, whoever could 20 answer that question as to why or the fact that 21 you were prohibited. 22 MR. ALMA: Ben Alma. We -- Mr. Moriarty 23 did it. He called, and Mr. Critton, who is, or 24 maybe was at the time, counsel for the Thorntons, 25 he said no. However, he did have the property	Page 21 1 construction itself without a special exception. 2 MS. ZEIDMAN: Could you repeat that? I 3 didn't -- I was distracted. 4 MS. QUIRKE-HAND: 134.1759 prohibits the 5 construction itself without the special exception 6 approval. 7 MS. ZEIDMAN: That's if it's a hitting 8 wall. 9 MS. QUIRKE-HAND: Right. 10 PRESIDENT MOORE: Okay. Julie, did you ask 11 your question while I was excused? 12 MS. ARASKOG: Well, I'd like to get a 13 clarification on this because now I'm a little 14 confused as to what the appeal is. 15 So, in other words, all you're appealing is 16 the fact that it should have had a special 17 exception, that, if I were to find that I don't 18 really know what it was or what it was when it was 19 built, then use makes no difference? Is what 20 you're telling me, Skip? Is that we don't need to 21 look at use? We just need to look at -- 22 MR. RANDOLPH: Use makes no difference in 23 regard to the argument that's being made here 24 today. It was important to code enforcement at 25 the time to hear whether or not it was being used

Page 22 1 as a hitting wall, and, as a result of what they 2 learned from the property manager or whoever it 3 was that they spoke to, they heard it wasn't being 4 used as a hitting wall, so they dropped the case. 5 My position would be maybe that should have 6 been something that code enforcement should have 7 looked at if there was evidence that it was being 8 -- If somebody had evidence that it was being used 9 as a hitting wall, then it should have gone to 10 code enforcement as opposed to code enforcement 11 simply relying upon the testimony of the property 12 owner. 13 MS. ARASKOG: I agree. 14 MR. RANDOLPH: But that's why I'm saying 15 that the use in this particular argument isn't 16 important because her argument is that the simple 17 granting of the permit in this location makes it 18 -- based upon what she's presented, makes it a 19 hitting wall. 20 MS. ARASKOG: Okay, may I ask him a 21 question? 22 MR. HANLON: Sure. 23 MS. ARASKOG: So, Tim, your argument is 24 that you were asked -- Tell me about the refuse 25 again -- that you were asked -- the town asked --	Page 24 1 apply for it. We changed -- The actual 2 application was not for a tennis backboard or 3 rebound wall. 4 PRESIDENT MOORE: Julie. 5 MS. ARASKOG: No, that's it. 6 PRESIDENT MOORE: Are you done? I just 7 want to make sure you're good before I move on. 8 MS. ARASKOG: Thank you. 9 PRESIDENT MOORE: Maggie. 10 MS. ZEIDMAN: Thank you, Donnie. So, if 11 it's not -- What's the purpose of that perimeter 12 wall? 13 MR. HANLON: Primarily for basketball and 14 fitness. Mr. and Mrs. Thornton's son is a very 15 nationally-ranked, highly-competitive tennis 16 player. So there are drills that he's supposed to 17 do only on hard court surfaces. So that's one of 18 the uses. 19 The other use is that, all the children are 20 grown, teenagers or older, but use the -- use the 21 court for basketball purposes, and that's why the 22 wall is needed. But I think that Mr. Castro has 23 testified already that, as long as it's not 24 applied for or used as a hitting wall, then it's 25 permitted because it's not within any of the
Page 23 1 MR. HANLON: It was the refuse pick-up area 2 originally. There's a concrete pad there. And I 3 guess part of it was, because of proximity to 4 South Ocean, the town asked the Thorntons to move 5 that, which they did, moved it away to the left of 6 the pad there. So they wanted to use -- employ 7 the concrete pad for basketball and fitness, and 8 they use it. 9 I think Paul told you that they can use it 10 for any purpose as long as it's not a hitting 11 wall. 12 MS. ARASKOG: So I guess the question, to 13 go to the question we're really dealing with, why 14 do you feel that no special exception was needed? 15 I think that's really the question here, not what 16 it's being used for. That's code. Tell me -- 17 Tell me -- 18 MR. HANLON: Because we didn't apply for a 19 tennis hitting wall. We applied for a backboard. 20 MS. ARASKOG: Right. That's what I'm 21 asking. 22 MS. QUIRKE-HAND: They did apply for it 23 initially. That was what was applied for 24 initially. 25 MR. HANLON: We asked about it. We didn't	Page 25 1 setbacks. So I don't know -- 2 MS. ZEIDMAN: Well, Tim, when you get back 3 to making that statement, though, see, we're not 4 clear about that, because there's been an 5 allegation here that it is being used as a hitting 6 wall. 7 MR. HANLON: There's no evidence. 8 MR. RANDOLPH: No, there's been no 9 allegation it's being used as a hitting wall. 10 MR. HANLON: None, zero. 11 MR. RANDOLPH: The appellant is not making 12 an allegation -- 13 MS. ZEIDMAN: The appellant is not. 14 MR. HANLON: Nor is the town. Nor did the 15 town find any evidence of it. I'm dumbfounded by 16 this. 17 MS. ZEIDMAN: I understand that the town 18 did not find evidence. 19 PRESIDENT MOORE: Okay. Maggie, are you 20 good? Can I go on? 21 MS. ZEIDMAN: No. The wall does not seem 22 to go all the way over; is that correct? What I'm 23 seeing -- What we see, which is very -- it's not 24 very clear -- we see a shadow of a wall, and we 25 see the top of the wall. Does it stop where the

Page 26 1 lines are of the court? Does the wall stop there? 2 MS. ARASKOG: You can see, Maggie, if 3 you -- 4 MR. HANLON: It doesn't exceed the 5 boundaries. 6 MS. ZEIDMAN: It does not exceed the 7 boundaries. There's a wall on the other side? 8 PRESIDENT MOORE: No. 9 MS. ZEIDMAN: Okay, so, Tim -- 10 MRS. THORNTON: It's a continuation of the 11 driveway or the wall. 12 MS. ZEIDMAN: That's what I'm trying to 13 find out. So that wall continues; is that 14 correct? 15 MRS. THORNTON: There's a break in it where 16 we keep our garbage cans. 17 MS. ARASKOG: Can someone say that on the 18 mic, because I couldn't hear it. 19 PRESIDENT MOORE: So my understanding is 20 this wall continues. There's a break in the wall 21 for the trash cans, and then it continues where I 22 believe I see a building. 23 MR. HANLON: Correct. 24 PRESIDENT MOORE: Okay. 25 MS. ZEIDMAN: Okay, that's very important.	Page 28 1 to code enforcement, and maybe they make them 2 remove it, but, at this point in time, the 3 question is did they need a special exception in 4 order to build what they are saying and they 5 proposed to be -- to not be a hitting wall but to 6 be a basketball something -- 7 MR. CRAMPTON: Wall, right. 8 MS. ARASKOG: -- wall, and that's what 9 we're looking at today. Could this be that? 10 Sure. Could they be doing drills there in my 11 opinion? Could they be doing drills? I wish I 12 had a picture that showed whether they had a 13 basketball thing or not -- 14 MR. CRAMPTON: Hoop. 15 MS. ARASKOG: -- hoop or not, and the only 16 reason it would have helped to have them on the 17 property is we could have seen a picture of that. 18 Then it would be, like, no question whatsoever. 19 But, for me, I would make a motion that the 20 appeal is denied because I don't think that this 21 needed a special exception in its form. It would 22 have been sent to code, and they would have been 23 forced to remove it if, in fact, they were 24 causing -- they were -- 25 MS. ZEIDMAN: I would second your motion.
Page 27 1 Thank you. That's the end of my questions. 2 PRESIDENT MOORE: Are you good, Maggie? 3 MS. ZEIDMAN: I am very good with that. 4 PRESIDENT MOORE: Mr. Crampton and then 5 Mrs. Araskog. 6 MR. CRAMPTON: Well, to me, the appeal is 7 about a hitting wall, not a wall, and, in fact, 8 there was a specific provision by ARCOM not to do 9 a hitting wall, and these folks lowered the height 10 of the wall by, what, two feet, from 14 to 11 12 feet. 12 Now, if there's evidence that they're using 13 it as a hitting wall, I'd like to hear it because 14 other than -- if there isn't, if it's not a 15 hitting wall -- and I'm distinguishing between a 16 hitting wall and a wall -- then I think these 17 people have a perfect right to be victorious in 18 this situation. 19 PRESIDENT MOORE: Mrs. Araskog. 20 MS. ARASKOG: Opinion-wise, I think this is 21 a code enforcement issue. I think that a special 22 exception was not necessary in the beginning 23 because it wasn't evident that it was a hitting 24 wall. However, if evidence comes before us that 25 it is being used as a hitting wall, then it goes	Page 29 1 PRESIDENT MOORE: Go ahead, Julie, make the 2 motion. 3 MS. ARASKOG: I already did. 4 PRESIDENT MOORE: Oh, you made the motion, 5 then Ms. Zeidman seconded it. 6 Okay, there's a motion and a second on the 7 floor. 8 THE CLERK: Ms. Araskog. 9 MS. ARASKOG: Yes. 10 THE CLERK: Ms. Zeidman. 11 MS. ZEIDMAN: Yes. 12 THE CLERK: Mr. Crampton. 13 MR. CRAMPTON: Aye. 14 THE CLERK: Ms. Moore. 15 PRESIDENT MOORE: Yes. 16 MR. HANLON: Thank you. 17 MS. ARASKOG: Thank you. 18 * * * * * 19 20 21 22 23 24 25

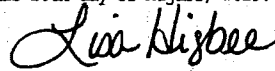
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STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Lisa Higbee, Court Reporter, certify
that I was authorized to and did stenographically
report the foregoing proceedings and that the
transcript is a true and complete record of my
stenographic notes.

Dated this 26th day of August, 2019.



Lisa Higbee, RPR, RMR

	2nd	Amanda	19:3,8,11,18	16:19
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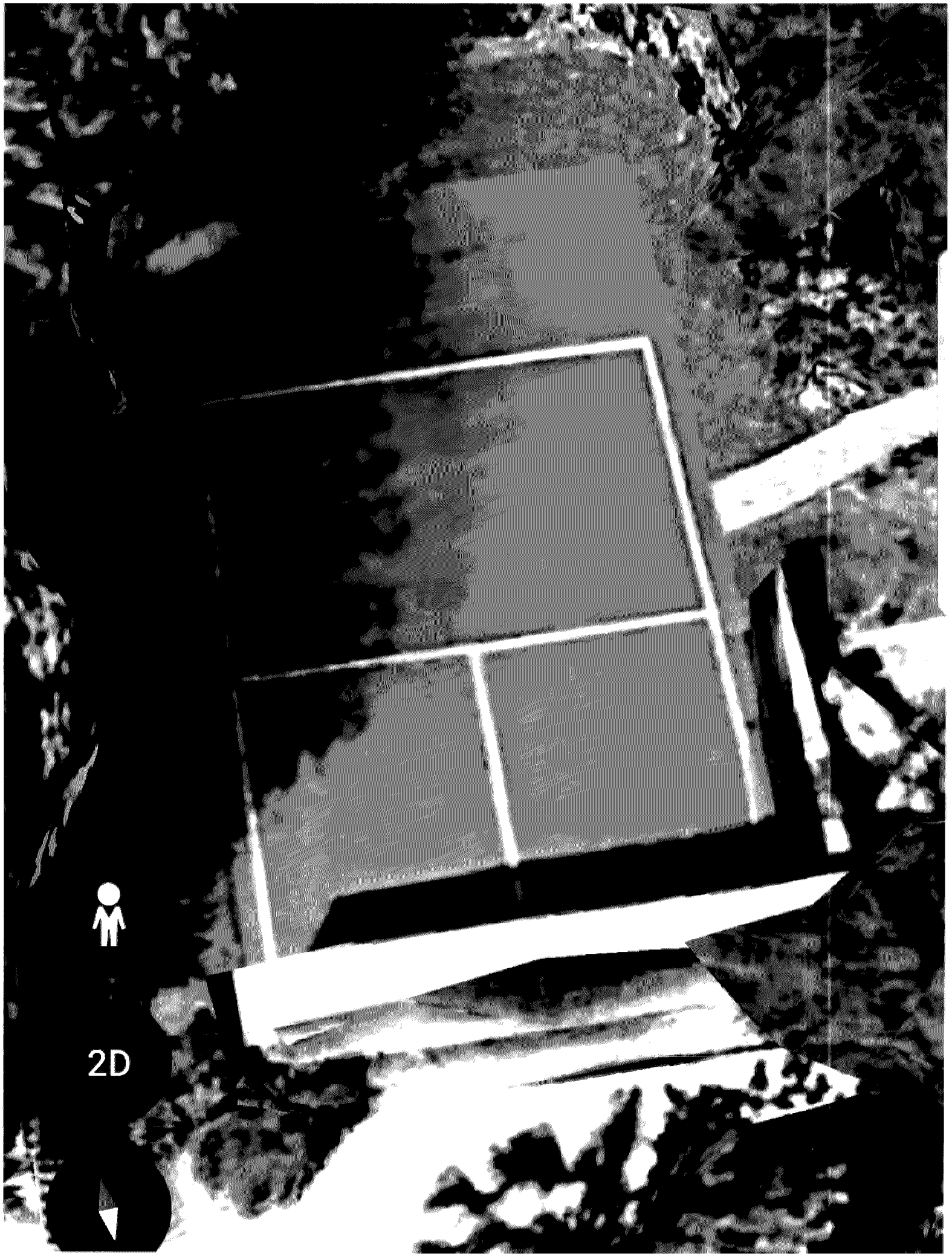
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3D





2D



From: [Antonette Fabrizi](#) on behalf of [Town Council](#)
To: [Gail Coniglio](#); [Danielle Hickox Moore](#); [Margaret Zeidman](#); [Bobbie Lindsay](#); [Julie Araskog](#); [Lew Crampton](#)
Cc: [Joshua Martin](#); [Wayne Bergman](#); [Paul Castro](#); [Kelly Churney](#); [Public Comment](#)
Subject: FW: Sea street historic redistributing
Date: Monday, September 09, 2019 9:29:45 AM

-----Original Message-----

From: Polly Wulsin <pollywulsin@gmail.com>
Sent: Sunday, September 08, 2019 9:08 PM
To: Town Council <TCouncil@TownofPalmBeach.com>
Subject: Sea street historic redistributing

I am a concerned property owner at 425 Seabreeze Avenue. As I have just heard about a meeting on September 11 and will not be in town I felt I should write you my position on this. An "historic district" will severely lower our prices....and many of the houses are below the flood plain, old and not aesthetically interestingly. As I have said before as property owners we should have the right with proper restrictions as to size, aesthetics and flood laws to rebuild or tear down. I was quite shocked that the time to voice our concerns falls so quickly without proper notice for us to plan our schedules. Also it comes at a time of year when few of us are in town. Please do not let this happen to us neighbors and Palm Beach residents.

Polly Wulsin

Sent from my iPhone

From: [Antonette Fabrizi](#) on behalf of [Town Council](#)
To: [Joshua Martin](#); [Wayne Bergman](#); [Paul Castro](#)
Cc: [Kelly Churney](#); [Public Comment](#)
Subject: FW: Sea Street Historic District Consideration - Path Forward
Date: Monday, September 09, 2019 9:28:02 AM

From: Eric Leiner <ericl@metallix.com>
Sent: Sunday, September 08, 2019 11:34 AM
To: Gail Coniglio <GConiglio@TownofPalmBeach.com>; Danielle Hickox Moore <DMoore@TownofPalmBeach.com>; Julie Araskog <jaraskog@TownOfPalmBeach.com>; lcrampton@sfscececenter.org; Margaret Zeidman <MZeidman@TownofPalmBeach.com>; Bobbie Lindsay <BLindsay@TownofPalmBeach.com>; Town Council <TCouncil@TownofPalmBeach.com>
Subject: Fwd: Sea Street Historic District Consideration - Path Forward

Dear Mayor and Town Council,

I concur with my neighbor Jay Serzan opinion and oppose designating the Sea Streets as a historic district.

Addition information: Of the 59 houses remaining on the recommend preservation list, only 2 are on the Sea Streets.

Thank you for considering my position,

Eric Leiner

159 Seaspray Ave

Sent from my iPad

Begin forwarded message:

From: "Jay Serzan" <jayserzan@comcast.net>
Date: September 8, 2019 at 10:52:51 AM EDT
To: <jayserzan@comcast.net>
Subject: FW: Sea Street Historic District Consideration - Path Forward

FYI.....email I sent to Town Council today.

From: Jay Serzan [<mailto:jayserzan@comcast.net>]
Sent: Sunday, September 08, 2019 10:43 AM
To: 'mayor@townofpalmbeach.com'; 'dmoore@townofpalmbeach.com'; 'Bobbie Lindsay'; 'Margaret Zeidman'; 'lcrampton@townofpalmbeach.com'; 'jaraskog@townofpalmbeach.com'
Cc: 'kblouin@townofpalmbeach.com'; 'towncouncil@townofpalmbeach.com'
Subject: Sea Street Historic District Consideration - Path Forward

Hello Mayor Coniglio and Council Members,

First, I want to express my appreciation for all that you do help keep Palm Beach the wonderful place that it is. Thank you!

I write today to offer some thoughts and information as you review Agenda Item XI.B. (Sea Street Historic District Consideration - Path Forward), scheduled for this Wednesday, September 11th.

I am opposed to the concept of districting in this case because it is being used to throw a Historic District blanket over the Sea Streets in an attempt to accomplish what **zoning** could do.

That being said, I am not opposed to individually landmarking those properties of **significant** architectural and historic merit.

The roadmap for determining those significant properties is the Historic Sites Survey which was last updated in 2010 by Jane Day, the former historic consultant for the Town.

The report contains the following observations which I have quoted. The **emphasis** is mine.

"Continue to designate historic properties..... Work on a site-by-site basis unless strong neighborhood support, with a majority of consenting homeowners, is brought forward....." (p. 30)

"In the Town of Palm Beach establishing Local Historic Districts has always been controversial. Although in many cities and towns creating districts has imposed architectural control for otherwise noncontributing structures, this has not been necessary in the Town of Palm Beach. In Palm Beach, construction and alteration on non-historic buildings is reviewed by the Architectural Commission." (p. 24)

".....a review of the preservation movement in Palm Beach suggests that the site-by-site method will have more concrete results. Past efforts to designate Worth Avenue, Golfview Road, and Pendleton Avenue as districts resulted in recommendations by the Town Council to proceed on an individual basis. Also, by working on a site-by-site basis buildings are more thoroughly documented making their protection more defensible in the future." (p. 25)

At the end of the report there is a list of 90 properties that are listed as "potentially eligible for a local register." (pp. 37-51).

While these 90 properties are Ms. Day's recommendations of what I have to assume are the properties she felt were the most significant, I understand that the Landmarks Commission can select any property to consider for landmarking.

However, I want to point out the current status of the 90 properties since 2010.

- 19 have been Landmarked
- 8 have been demolished
- 3 were considered but not recommended
- 1 was removed from the list

That leaves 59 properties available to be considered for individual landmark designation.

The question in my mind is why are we placing buildings of less significance into a district when there are more important buildings to consider?

Lastly, the 2009 Landmark Manual, also prepared by Ms. Day, says on page 6:

“Not all old structures are worthy of landmark status.” and
“A historic district is intended to protect an area highly concentrated with **significant** structures.”

In closing, I have to ask if forced districting will help or hurt the preservation program?

Thank you again. I appreciate your time and consideration.

Best regards,

Jay Serzan

From: [Antonette Fabrizi](#) on behalf of [Town Council](#)
To: [Joshua Martin](#); [Wayne Bergman](#); [Paul Castro](#)
Cc: [Kelly Churney](#); [Public Comment](#)
Subject: FW: Sea Street Historic District Consideration - Path Forward
Date: Monday, September 09, 2019 9:28:06 AM
Attachments: [2010 Historic Sites Survey.pdf](#)
[Changes in 2010 List of 90.docx](#)
[Landmarks Manual p. 6.pdf](#)

From: Jay Serzan <jayserzan@comcast.net>
Sent: Sunday, September 08, 2019 10:43 AM
To: Gail Coniglio <GConiglio@TownofPalmBeach.com>; Danielle Hickox Moore <DMoore@TownofPalmBeach.com>; Bobbie Lindsay <BLindsay@TownofPalmBeach.com>; Margaret Zeidman <MZeidman@TownofPalmBeach.com>; Lew Crampton <lcrampton@TownOfPalmBeach.com>; Julie Araskog <jaraskog@TownOfPalmBeach.com>
Cc: Kirk Blouin <KBlouin@TownofPalmBeach.com>; Town Council <TCouncil@TownofPalmBeach.com>
Subject: Sea Street Historic District Consideration - Path Forward

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Pendleton Avenue as districts resulted in recommendations by the Town Council to proceed on an individual basis. Also, by working on a **site-by-site basis buildings are more thoroughly documented making their protection more defensible in the future.**" (p. 25)

At the end of the report there is a list of 90 properties that are listed as "potentially eligible for a local register." (pp. 37-51).

While these 90 properties are Ms. Day's recommendations of what I have to assume are the properties she felt were the most significant, I understand that the Landmarks Commission can select any property to consider for landmarking.

However, I want to point out the current status of the 90 properties since 2010 (attached).

- 19 have been Landmarked
- 8 have been demolished
- 3 were considered but not recommended
- 1 was removed from the list

That leaves 59 properties available to be considered for individual landmark designation.

The question in my mind is why are we placing buildings of less significance into a district when there are more important buildings to consider?

Lastly, the 2009 Landmark Manual, also prepared by Ms. Day, says on page 6 (attached):

"Not all old structures are worthy of landmark status." and

"A historic district is intended to protect an area highly concentrated with **significant** structures."

In closing, I have to ask if forced districting will help or hurt the preservation program?

Thank you again. I appreciate your time and consideration.

Best regards,

Jay Serzan

TOWN OF PALM BEACH, FLORIDA

2010 HISTORIC SITES SURVEY



Prepared For
The Town of Palm Beach, Florida
Research Atlantica, Inc.
December 2010

TOWN OF PALM BEACH, FLORIDA 2010 HISTORIC SITES SURVEY

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The Town of Palm Beach supported this project by funding a special contract with long time historic preservation consultants Research Atlantica, Inc. to perform the work. Special thanks should be given to Mayor Jack McDonald, and Town Council members: David A. Rosow, Town Council President, Gail Coniglio, President Pro Tem, William J. Diamond, Richard M. Kleid and Robert N. Wildrick. Town Manager, Peter B. Elwell, and Director of the Planning, Zoning & Building Department, John Page, gave the project their full support. The help of John C. Lindgren, Planning Administrator, and Cindy Delp, Office Manager, was invaluable. Veronica Close, Paul Castro, Jeffrey Taylor, Kathleen Rudderaman, Jackie Kervi, and David Donta answered questions and lent a hand whenever asked.

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We would also like to thank the staff at the Florida Division of Historical Resources, Florida Department of State. Their leadership, suggestions and support help all of us in Florida who work for historic preservation.

Without the citizens and property owners of the Town of Palm Beach none of this survey could have been completed. They permitted photographs and site inspections, and answered questions to the best of their knowledge. An historic sites survey is a working tool and as such is never complete. Forms and recommendations should be updated as new information becomes available. It is the hope of the staff of Research Atlantica, Inc. that this survey will be the basis for future historic preservation planning in the Town of Palm Beach and will help the citizens recognize the important place their community holds in South Florida history.



The Palm Beach Hotel and St. Edward's Church, date unknown

INTRODUCTION

The Purpose of Historic Preservation

Increasingly in South Florida, historic and cultural resources are threatened by destruction due to rapid growth in population and ensuing development. Resources are links with the past, they make communities unique, giving them a "sense of place," and provide a source of pride. More importantly, historic resources allow for the education of present and future generations of their place and time in the continuum of the human experience and societal development. The purpose of historic preservation is not to halt growth or change, because it is recognized that both are needed to keep a community alive. The purpose of historic preservation is to integrate the past with the present and the future.

What Are Historic Resources?

Historic resources as defined in Chapter 267 of the Florida Statutes are:

"any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archaeological value. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitation, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, and culture of the state." (s.267.021(3), F.S. 1986)

Historic resources are the non-renewable visible remains of the past. Once they are lost, they can never be replaced. The preservation and maintenance of historic resources results in a community's sense of stewardship for present and future generations. The analysis and interpretation of historic resources are not undertaken just to understand the past, but to give a community a sense of its unique place in history.

The National Register of Historic Places and the Florida Site File Inventory

Historic resources are defined in a national context by the **National Register of Historic Places** which is maintained by the National Park Service, under the Department of the Interior. The criteria used by the National Register to determine historical significance can also be used as a guideline for local determination and listing. The criteria for listing on the National Register are:

1. A property is associated with events which have made a significant contribution to the broad patterns of history; or
2. A property is associated with the lives of persons significant in the past;
3. A property is significant if it embodies the distinctive characteristics of a type, period, or method of construction, for example, it represents the work of a master, or if it possesses high artistic values, or if it represents a significant and distinguishable entity whose components may lack individual distinction, such as a district; or
4. A property which yields, or may be likely to yield, information important in prehistory or history.

The Florida Department of State, Division of Historical Resources utilizes the national criteria but is less restrictive about what is included in the Florida Master Site File. The Florida Master Site File (FMSF) inventory is maintained by the Florida Department of State, Division of Historical Resources and is utilized as a first source information bank for local preservation planning. The general procedure for generating an inventory is to record all resources which are fifty years or older. However, a site does not necessarily have to be fifty years old if an important person or event is associated with the resource, nor does it have to be historically or architecturally significant for recording. All sites, buildings, structures and objects, no matter how insignificant they may seem, should be recorded on a FMSF form to have a comprehensive inventory of historic resources in a community.

Historic site surveys are important because they are the first step in establishing a community's historic preservation program. Surveys are conducted to develop an inventory of historic resources in a community, and are used as the foundation for preservation planning. Surveys identify styles of architecture, dates of construction, and condition of historic resources. When available, surveys identify past and present owners and their place in a community's history. Surveys, therefore, build awareness in a community of the scope and significance of their cultural resources.

Several types of historic resources can be recorded on the FMSF such as buildings, engineering structures, objects, landscapes, and archaeological sites. In the present survey of the Town of Palm Beach buildings and other architectural features such as fountains, entrance piers, and walls were recorded. Each site's physical characteristics and historic significance are recorded in a systematic way on a Florida Master Site File form. With few exceptions, a site needs to be fifty years or older to warrant recording. Each site is assigned its own identification number by the Division of Historical Resources, Florida Department of State. The site's location is indicated on a map and a photograph is taken. The forms, maps, and photographs are then sent to the Division of Historical Resources for processing. The forms become part of a state wide informational data base and are cross referenced into the state's computerized Geographical Information System. Recording sites on the FMSF does not in any way provide protection for a site or impose any restrictions. Surveys are strictly a means by which a community can inventory their historic resources.

Survey Method

An historic sites survey is a systematic and detailed recording of historic resources. Surveys may be either thematic in scope or geographic. Examples of thematic surveys would record only those resources of a predetermined type (i.e. all Mediterranean Revival Architecture within a predetermined area). A geographic survey, when properly conducted is comprehensive for the area surveyed and includes all historic resources within the area. In the case of Palm Beach, Florida, a geographic survey was conducted using the town's boundaries and every effort was made to be comprehensive in respect to the built environment in that area. The survey area within the town's limits includes an irregular shaped area bordered on the west by Lake Worth and on the east by the Atlantic Ocean. The north end of the island is terminated by a man made channel, the Lake Worth Inlet. The south end of the survey area was at the Town's southern boundary.

The method of conducting an historic sites survey is logical and consists of three important steps. First the historic literature is examined to determine the period of development for the town and the pioneer families involved in this development. Past surveys are reviewed so that comparisons can be made between the past and present condition of historic resources. In the Town of Palm Beach, four past surveys were completed. In 1981, the first "Historic Survey of Palm Beach" was conducted by Landmarks Planning Incorporated. This survey recorded 861 buildings and man made landscape

features. The Historic Palm Beach County Preservation Board updated the original survey in 1988. Although the second survey only extended north to Country Club Road, the Board looked at properties that were built prior to 1947. Research Atlantica, Inc. performed the third and fourth surveys in 1997 and 2004, extending the boundaries of the survey north to the Lake Worth Inlet. The 1997 survey identified 1151 sites built before 1947. In 2004, 1129 sites were recorded that were built before 1955. Since that time updating the survey has been incorporated as a requirement in the Historic Preservation Element of the Town's Comprehensive Plan. It is hoped that an update of the survey will be made every five years.

The second step in an historic site survey is the field work. Windshield and pedestrian surveys were conducted to determine what additional structures from the history of Palm Beach were still intact. Site data was recorded, photographs were taken and confirmation of building dates was attempted by interviewing property owners and by reviewing the records available in the Town of Palm Beach Planning, Zoning & Building Department. This basic information was then recorded on Florida Master Site File forms. Maps were also gathered for every form so that all properties could be easily found by interested parties. All information was entered on the computer by Sandra Norman, Ph.D. on the required State of Florida computer program. All forms will be sent to Tallahassee in both digital and hard copies as required.

Final analysis of the properties was completed and recommendations were made for future action at a regularly scheduled Landmarks Commission meeting on December 16, 2010. The newly identified sites will be reviewed the Landmarks Commission in an effort to identify possible new local landmarks. Final reports are available to the public through the Planning, Zoning & Building Department of the Town of Palm Beach, Florida.

THE GROWTH AND DEVELOPMENT OF THE TOWN OF PALM BEACH

A CHRONOLOGICAL OVERVIEW

The topographical area which encompasses the Town of Palm Beach is known as the Atlantic Coastal Ridge. This geographical term is used to describe a narrow ridge that extends along the eastern coast of the United States from Georgia to the southern portion of Dade County. Palm Beach is located within the coastal low lands portion of the ridge where the rock formation is known as the Anastasia Formation. Formed approximately 100,000 years ago, Anastasia is porous bedrock composed of coquina and is known as a fair to good aquifer. The Atlantic Coastal Ridge, considered the youngest rock formation in the United States, is also called the rim of the Everglades.¹

Prior to the sixteenth century discovery of Florida by Spanish explorers, the area around today's Palm Beach was inhabited by Native Americans. Nomadic hunters roamed throughout Florida for 10,000 years before European settlement began. Although the specific Indian group that lived in this area is unknown it is believed that they were either the Jaega or Ais Indians.² These semi-nomadic Indians were hunters and gatherers who settled near streams, inlets and coastal areas where fish and game were plentiful. By the late 1700s all of the native population had died from either European diseases, warfare or slavery.³

Spanish exploration and settlement of Florida began in 1513 with Ponce de Leon. Other sixteenth century Spanish explorers included Panfilo de Narvaez and Hernando de Soto. While no definitive references have been made to the Palm Beach area, it is quite possible that Spanish ships returning to Spain laden with New World treasures sailed past Palm Beach where Gulf Stream currents are close to shore. Frequent hurricanes were responsible for the wrecks of numerous treasure ships which in turn have given Palm Beach County its nickname as the "Gold Coast" or "Treasure Coast".

Ownership of Florida changed frequently. Spain, Great Britain and France wrestled for control of the peninsula from the late 1500s through the early 1800s. By 1814 the United States gained control and the Adams-Onís Treaty of 1819 solidified the American position.

Exploration and Early Settlement

Because of Lake Worth's remote location and the difficulty of transportation, settlement of the area today known as Palm Beach did not occur until the last half of the nineteenth century. General Worth, whose name was given to the lake camped on the island at the end of the Second Seminole War in 1841 "but left the place unknown and unnamed."⁴

¹John Edward Hoffmeister, Land from the Sea: The Geologic Story of South Florida, (Coral Gables: 1974), 21.

²Interview with Robert Carr, Dade County Archaeologist, Miami, FL, 8 April 1996.

³Joan E. Gill and Beth R. Read, eds., Born of the Sun, (Hollywood, Florida: Florida Bicentennial Commemorative Journal, Inc., 1975) 41.

⁴"Pioneer Life," Palm Beach Life, 15, March, 1932.

The first evidence of settlement on Palm Beach Island occurred under the Armed Occupation Act. This legislation offered 160 acres to settlers who would live in and defend the area in response to a still threatening Indian presence. Three men stacked claims: James H. Russell, John S. Hutchinson, and William W. Loring.⁵ Other early settlers who lived in the area include a fugitive named Lang who was murdered in 1870, William Lanehart, M. B. Lyman and H.F. Hammon.⁶

The first families to move to today's Palm Beach arrived in 1876. The original intent of the move was "to colonize and seek that flowery land where Ponce de Leon so faithfully sought the fabled spring of eternal youth"⁷ and to improve the health of the family's patriarch, Moore W. Dimick, who suffered from incipient tuberculosis. Dimick brought his wife, Parthenia, sons, Elisha "Cap" Newton and Franklin L. Dimick with their spouses, and daughter Marion (Mrs. Albert) Geer and family. The David Brown family also accompanied the group.⁸

The early settlers purchased land for \$1.00 an acre in sections that went from Lake Worth to the Atlantic Ocean. The island was a jungle of foliage with a fresh water slew in the center. The pioneers built their homes on the lake front. All did not go well, however during the first season. Marion Geer wrote:

A place was quickly cleared for our first house, which was completed in three weeks. A hurricane, soon after our arrival, scattered our goods hither and yon - table, stove, chairs and bureau were blown about and dropped far and near, which was not in accordance with our ideas of the gentle zephyrs we had been told fanned the cheeks of those who live in this favored region.⁹

Despite the hardships, however, the group persevered. Each family had a small sailboat. They grew bananas, tomatoes, sweet potatoes and other produce. They tried to plant sugar cane, but the harvest was too salty. Pineapples were too labor intensive. To supplement what they could grow, the men fished and hunted for venison, wild turkeys and turtles. Life was simple and the settlement was remote but this small band of settlers was determined to see the area grow and expand.¹⁰

One of the improvements that enhanced the island was the planting of coconut palms which occurred quite by accident. In 1878, the 175-ton brig Providencia, on its way from Trinidad to Spain wrecked on the reef with twenty thousand coconuts aboard. Salvaged from the wreck by Will Lanehart and H.F. Hammon, the coconuts were sold to the settlers for \$2.50 per hundred. The Dimicks bought one

⁵United State House of Representative. Document #70, "Actual Settlements in Florida, Under Armed Occupation Law." (Washington D.C.: 28th Congress, 1st Session, 1843) p. 42.

⁶"Pioneer Reminiscences," Palm Beach Life. 15 March, 1932, pp.22-23.

⁷Marion Dimick Geer, The Lake Worth Historian. 1896. n.p.

⁸Susan J. Oldfather, Elisha Newton Dimick and His Influence on the Development of Palm Beach. (Boca Raton, Florida: Florida Atlantic University, Thesis, 1989) pp. 11-15.

⁹Geer, op.cit.

¹⁰Ibid. and "Days of Early Settlement on Lake Recalled." 15 January, 1937, On file at the Historical Society of Palm Beach County.

thousand. Later Lanehart wrote, "they seemed like a Godsend to the people."¹¹ It has also been noted, however, that the Providencia also carried a cargo of "aqua dente," a Cuban rum, and the settlers had a lively party.¹²

In 1880 conditions on the shore of Lake Worth were still tenuous. Frank Dimick became discouraged and sold his land to brothers Edmund and John Brelsford before moving to North Carolina. In an effort to bring in extra income, E.N. "Cap" Dimick and his wife Ella added eight rooms to their house and took in "first class boarders" in their newly formed "Coconut Grove Hotel."¹³

The Brelsford brothers built a house and began a number of business enterprises. Realizing the need for improved transportation, they built a thirty ton schooner called the "Bessie B" that sailed between Jacksonville and Palm Beach. When the natural inlet closed between Lake Worth and the Ocean, the Brelsforbs organized a group of pioneers to solve the problem. In 1937, R.K. Brown remembered:

Once the inlet connecting Lake Worth with the Ocean was closed, hindering transportation and fishing. Thereupon the pioneers organized and dug a new inlet, about a mile north of the former inlet...Having no machinery, and but one mule, we were forced to do the work by hand. We succeeded, however, in opening a cut over four hundred feet long, eight feet wide, and nearly twenty feet deep in one part.¹⁴

By 1884 the Brelsforbs had opened a store that was advertised in The Tropical Sun as "Breslford Brothers, dealers in General Merchandise."¹⁵ It was in this store in 1887 that the first Post Office was established and Palm Beach got its name. Although the name applied for was originally "Palm City," that name was already in use so it was decided that "Palm Beach" should be used.

The 1880s also brought the beginnings of a continuous stream of winter visitors to Palm Beach and sowed the seeds for the area's first real estate boom. C.I. Cragin, a wealthy soap manufacturer from Philadelphia, was the first out-of-towner to build a house on the lake front.¹⁶ In 1886, Denver businessman Robert McCormick bought a lake-to-ocean front tract from Albert Geer for \$10,000 and built McCormick Cottage. The house was constructed in the Shingle style with building materials shipped from the north. It was reported to have cost \$30,000. Restored by the Preservation Foundation of Palm Beach in 1984 and adapted to Sunday school use by the Royal Poinciana Chapel

¹¹Jan Tuckwood and Eliot Kleinberg. Pioneers in Paradise. (Marietta, Georgia: Longstreet Press, 1994) p. 21.

¹²Oldfather, p. 19.

¹³Ibid. 21.

¹⁴"Days of Early Settlement on Lake Recalled."

¹⁵"Business Advertisers on Lake Worth in 1891," Tropical Sun, 26 February, 1937. n.p.

¹⁶"Pioneer Reminiscences," p. 22.

in 2009, the house is the oldest standing house in Palm Beach and is now called Sea Gull Cottage.¹⁷

As visitors started to arrive in greater number, E.N. "Cap" Dimick added more rooms to the Coconut Grove House. Eventually he added fifty rooms in the twelve years of the hotel's operation. The two and a half story wood frame structure faced Lake Worth and had wrap-around porches. There was a cistern and outdoor plumbing. Because maid service was not provided, guests brought their own servants. Rooms including meals were \$2.00 per day or \$10.00 per week. The public was warned that "snakes, bears, alligators and wildcats lurked in the woods and swampy areas."¹⁸ Despite the warning, the hotel had 238 guest from January to March 1892 and "when the rooms filled tents were used" for the overflow.¹⁹

As the economy improved, the pioneers added the institutions that were needed to improve daily life in a growing community. In 1886, Palm Beach residents built the first public school in what was then Dade County. The county gave them \$200 for supplies and the local men provided the labor. The school opened in March with twelve students and a sixteen year old teacher named Hattie Gale.²⁰

Bethesda-by-The-Sea was the first church in Palm Beach. Organized in 1889 by the Rev. Joseph N. Mulford from Troy, New York, the first sanctuary was constructed of wood for \$600. It seated one hundred people, but because it was the only house of worship on the Lake, there was often a crowd. One contemporary wrote:

The Church was generally filled and sometimes when there was no room for everyone in the Church, part of the congregation sat on the grass outside listening to the service through the open windows. Naturally all denominations came to service. As in those days all transportation was by water...it was a beautiful sight to see the Lake dotted here and there with sails and all finally assembling at the church pier.²¹

The beginnings of the real estate boom in Palm Beach started in 1892. Charles J. Clarke who first saw the island aboard his yacht Alma originally bought two and a half acres of land for \$800. Then Henry M. Flagler, who had also visited the area by boat, received a charter from the State of Florida to build a railroad south to Miami. Rumors of Flagler's arrival caused prices to rise. In March of 1893 Clarke purchased a second property, the Dimick hotel, and twenty acres from ocean to lake for \$49,000. The Tropical Sun reported:

During the past ten days there have been the liveliest times in real estate that were ever experienced in the Palm Beach and Lake Worth region C.J. Clarke's purchase of the Coconut Grove hotel property from Captain E.N. Dimick gave rise to much speculation among the old guests, who are much

¹⁷ "Sea Gull Cottage, The Oldest House in Palm Beach." Brochure by the Preservation Foundation of Palm Beach.

¹⁸Oldfather, p. 24.

¹⁹Ibid. 28.

²⁰Tuckwood and Kleinberg. p. 27.

²¹Kathryn E. Hall, M.A. "The Pictorial History of The Episcopal Church of Bethesda-By-The-Sea." (Palm Beach, Florida: 1986) p. 5.

attached to the beauties of the place. In growth and possibilities the spot has no equal, and Mr. Clarke is to be congratulated on his rare possession.²²

Flagler also bought up local sites including the McCormick Cottage with ten acres for \$75,000, and four hundred feet of lake frontage from the Brelsford brothers for \$50,000. When Flagler attended a reception given by local citizens in March his agents asked that the Palm Beachers contribute \$30,000 to bring the railroad to Palm Beach. With great enthusiasm they raised the money and the railroad was on its way.²³

The Flagler Era

With the coming of the railroad real estate had risen from \$1.00 per acre to over \$7500 per acre. Pioneer E.N. "Cap" Dimick had served a term in the Florida House of Representatives and in 1896 would be elected to the Florida State Senate. C.J. Clarke built a Mission style home on the lake after the Cocoanut Grove House burnt in a fire started by a Flagler worker. On May 1, 1893 the Dade County Bank was opened with "Cap" Dimick as President. On the same day, Flagler started construction of the Royal Poinciana Hotel.²⁴

The Royal Poinciana Hotel took nine months to complete and opened in February, 1894 two months before the railroad came through to the west side of Lake Worth. The hotel was the largest wooden structure in the world with 1150 rooms. It had six stories with two additional attic dormer floors. A contemporary guest wrote to a friend in 1903:

Really, my dear, you can't imagine anything so huge as this hotel. Mama has gotten lost two or three times in its halls, but there is always someone patrolling the corridors to see that everything is in order. At night they say these men make the rounds on bicycles!²⁵

Novelist Henry James visited the hotel at the turn of the century and wrote:

You had to be financially more or less at your ease to enjoy the privileges of the Royal Poinciana at all; enjoy them through their extended range of saloons and galleries, fields of high publicity all; pursue them from dining halls to music rooms, to ballrooms, to card rooms, to writing rooms, to a succession of places of convenience and refreshment.²⁶

Activities included bathing on the beach at the small ocean front Palm Beach Inn, golf, tea at the Cocoanut Grove and a daily concert in the hotel rotunda. Visitors traveled in wheelchairs known as "Afromobiles," pedaled by black hotel workers and enjoyed the biggest part of the year on

²²"First Real Estate Boom Here Started in Spring of 1893," Tropical Sun, 19 March, 1937.

²³Oldfather, p. 45.

²⁴Ibid. 45-48.

²⁵"Letters From an Old Scrapbook,": The Palm Beach Sun, 2 March, 1951.

²⁶James R. Knott, Palm Beach Revisited. (Palm Beach, 1987) pp. 16-17.

Washington's Birthday. By 1901, Flagler expanded the Palm Beach Inn to nearly double its size and renamed it the Breakers.²⁷



The Cottage Colony, north of the Breakers Hotel, unknown date

Also in 1901 Henry M. Flagler built a private residence in Palm Beach for his own use. Called "Whitehall" the house was a wedding present to Flagler's third wife, Mary Lily Kenan. The architects for the house were John M. Carrere and Thomas Hastings, who also designed buildings for Flagler in St. Augustine and later designed the New York Public Library. Situated on a six acre lake front site, the NeoClassical mansion cost \$2,500,00 to build and \$1,500,000 to furnish. On March 30, 1902, the New York Herald published a picture of the house and called it the "Taj Mahal of North America."²⁸

In 1895, George Lainhart and "Cap" Dimick supervised the building of the Royal Poinciana Chapel, a nondenominational church that served the guests of the hotel. The Florida East Coast Hotel Co. supported E.B. Webb as the seasonal pastor. Belle Dimick's marriage to Thomas Reese was the first wedding in the chapel.²⁹

Another early institution that contributed to the growth and glamour of Palm Beach was Bradley's Beach Club. The stage was set for this type of establishment in 1894 when "Cap" Dimick helped Flagler push through the county commission a law that allowed the sale of liquor. Then in 1895,

²⁷Ibid. 16-19 and 40-43.

²⁸"Whitehall, The Henry Morrison Flagler Museum," (Palm Beach: 1988).

²⁹Oldfather, p. 51. and Whitehall, The Henry Morrison Flagler Museum.

Edward R. and John Bradley arrived in Palm Beach aboard a commercial schooner. The brothers already ran a casino in St. Augustine called the Bacchus Club and in 1899 opened a similar establishment in Palm Beach. At first there was strong opposition, but Bradley's operated as a private club and Florida residents were not allowed in. E.R. Bradley's honesty, political favors and charitable donations also helped keep the casino open. The club was located on the present site of Bradley Park on Lake Trail just north of the original railroad bridge. Despite the fact that gambling was illegal Bradley's Beach Club remained open until 1946. When Bradley died in 1946, Joseph Kennedy remarked, "Palm Beach has lost its zipperoo."³⁰

The political atmosphere was also changing in Palm Beach. Palm Beach County was created out of massive Dade County in July, 1909 with West Palm Beach as the county seat. The Town of Palm Beach incorporated in 1911 with thirty-four of the thirty-five eligible voters voting in favor. E.N. "Cap" Dimick was elected Mayor and the first Town Council included William Fremd, Dr. John W. Doe, Enoch Root, and J.B. Donnelly. John P. McKenna was chosen as Town Clerk.³¹

The early real estate development of Palm Beach consisted of the subdivision of jungles and agricultural property for the sale of lots and home sites to winter visitors. J.R. and E.R. Bradley's "Floral Park" was the first. Bradley announced plans for his development in 1910. The project consisted of 230 fifty foot lots laid out along Sunset Avenue from the lake to the ocean. Bradley filled in the marsh in the center of the island and cleared out what remained of the "Styx," the neighborhood of black hotel workers and their families. He hired a Mexican born realtor from California, Lewis Henry Green, to promote the project and auction off the lots. Green offered prizes for potential buyers like rugs, pianos and china and sold out the project within a few hours on February 19, 1912.³²

At first "Cap" Dimick wasn't as lucky with his "Royal Park" development, which he marketed through his newly formed Palm Beach Improvement Company. Dimick's land consisted of 150 acres from just north of today's Royal Palm Boulevard south to today's Worth Avenue. It spanned the island from lake to ocean. The problem, however, with the "Royal Park" tract was it's remote location. Flagler's railroad bridge was the only means to transport materials and customers across the lake and it was well to the north. Swamp, alligators and tropical jungle all had to be eliminated. The southwest section of the land was so swampy that a dredge had to dig a half million yards of fill from Lake Worth. Besides the physical obstacles, the competition from Bradley's "Floral Park" also slowed sales.

Dimick, however, solved these problems and eventually made "Royal Park" a success. The Lake Worth Bridge Company was formed in 1910, secured a permit from the county and completed the Royal Park Bridge on October 1, 1911. This allowed out of town buyers to drive to the site. Next, because of "Floral Park's" success, Dimick hired Lewis Green, the auctioneer, to sell his project as well. Again Green offered prizes and set up an auction at the foot of the new bridge in 1913. Hundreds of people attended and lots sold for \$375. Among the buyers was Paris Singer, of the Singer sewing fortune. Dimick also improved the area with landscaping, roads, street lamps, water mains, sewers, electricity and telephone lines. A place was set aside for a shopping area in the center of the development but this eventually became the location of Town Hall. By 1918, Royal Park was

³⁰ Knott, pp.75-87 and Oldfather, p. 51-52.

³¹ Oldfather, 69.

³² Oldfather, 74-75.

completed.³³

As the United States headed into World War I the euphoria of the early development of Palm Beach slowed but did not stop. A local headline read, "Building Goes Forward in Palm Beach Past Season Despite War."³⁴ The article went on to say:

The war brought people of great wealth to Palm Beach who had never been here before. The common comment among them is, "I did not know America had a place of so wonderful a climate. It surpasses the Mediterranean Riviera. You say they will go abroad after the war. But they are the very ones who have built the magnificent homes in Palm Beach."³⁵

Another more middle class type of buyer was also interested in Palm Beach and Oscar A. Jose, an Indianapolis developer, catered to this market. Jose's City Builders Realty Co. set up an office in West Palm Beach, offered free boat rides to the island and promoted "Poinciana Park.." Advertised as "most ideally located," Poinciana Park's developer encouraged buyers not just to speculate on their land purchases but to build and spend the winter. Brochures promised a location close to the hotels, a private bathing beach and a private school so that families could bring the children south for the season. City Builders Realty Co. also promised:

No business property will be permitted in the addition and no cheap structures will be permitted on any lot in the addition. Every house will have to set back a certain distance from the street line.³⁶

For those who needed to finance their purchase terms were available: "10% down, 10% on signing contract. Balance monthly, quarterly or semi-annually."³⁷ If you did not want to buy, homes were also available for lease, "furnished complete from lace curtains to kitchen utensils, brand new."³⁸

Even with the increased housing starts visitors still came to the hotels during the season but attention turned to the war. Palm Beach Life reported that "the great war in Europe which has occasioned the sacrifice of so many lives and so much suffering, has been the basic cause for most of the charity functions."³⁹ Funds were raised for The American Ambulance Fund and soldiers blinded in battle.⁴⁰

³³Ibid. 71-77.

³⁴"Building Goes Forward in Palm Beach Past Season Despite War," Palm Beach Post, 19 January, 1919.

³⁵Ibid.

³⁶"Take a Free Boat Ride to the Real Estate Auction at Poinciana Park," Tropical Sun, 20 February, 1915.

³⁷Ibid.

³⁸"Poinciana Park, Palm Beach," Tropical Sun, 24 January, 1916.

³⁹Cora E. Morlan, "Among the Palms," Palm Beach Life, 20 March, 1917.

⁴⁰Ibid.

Addison Mizner and The Florida Land Boom

In 1918 before the end of World War I, Addison Mizner, an established New York architect who was born in California and studied in Spain, accepted an invitation from Paris Singer to recuperate from a leg injury in Palm Beach. Singer, who had bought a lot in Dimick's "Royal Park" had built a small bungalow on Peruvian Avenue. As Mizner's health improved his boredom turned into creativity and he transformed Singer's bungalow into a Chinese villa. The conversion was a success but Singer looked forward to a larger project. Having already established two hospitals in France, Paris Singer decided to build a convalescent home in Palm Beach for service men returning from the war. The buildings were completed but before the opening of the club house in January, 1919, the "Touchstone Convalescent Club" had been transformed into the exclusive "Everglades Club."⁴¹

For Palm Beach the building of the Everglades Club was an important milestone. The Club itself moved the social scene away from Flagler's Hotels and Bradley's casino into an exclusive private realm. The Mediterranean Revival style architecture introduced by Addison Mizner with the Everglades Club was "the first major building in South Florida in the Spanish style"⁴² and it changed South Florida architecture forever. Commissions for Mizner to build private homes in this style poured in. On a technical level the Everglades Club also proved that even without skilled European craftsmen, the style could be built with hollow clay tile construction, stucco and cast cement details. Mizner even opened a business, called Mizner Industries, to manufacture the tiles needed for the Spanish style roofs and to produce instant antiques to furnish the huge Mediterranean Revival style mansions.⁴³

At the end of World War I, only two architects had offices in Palm Beach, Addison Mizner and August Geiger. Geiger, however, closed his Palm Beach office in 1920 and moved to Boca Raton.

During the 1920s other great twentieth century architects settled in Palm Beach to take advantage of the building boom. Maurice Fatio, who was born in Geneva, Switzerland, formed a partnership with William A. Treanor in New York in 1921. Fatio moved to Florida in 1925, established a Palm Beach office in Phipps Plaza and practiced in the Town until his death in 1943.

In 1925, Austrian born John L. Volk came to Palm Beach by way of Key West and Miami. Volk had made some money speculating with Miami's "Boom and Binder Boys" (the real estate community) and stated, "All seemed too good and easy and could not last, I took my profits and left for Palm Beach."⁴⁴ Volk formed the partnership of Craig, Stevens and Volk, and successfully built five houses in the Northwood Subdivision of West Palm Beach. With an office in the Daily News Building, Volk was full of optimism but this proved to be short lived. In June of 1926 the Palm Beach Bank

⁴¹Donald Curl, Mizner's Florida, American Resort Architecture. (Cambridge, Massachusetts: The MIT Press, 1984) pp. 38-60.

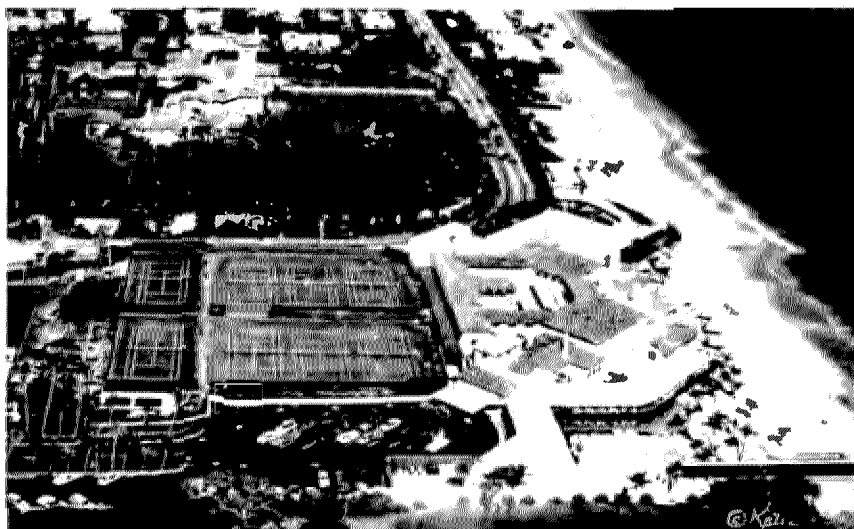
⁴²Ibid. p. 60. It should be noted that although the Everglades Club was the first large building complex in South Florida to be built in the Mediterranean Revival style, a private residence in a similar style was built for James Deering in Miami in 1914. "Vizcaya" was designed by F. Burrall Hoffman and concentrated on Italian details. Carrere & Hastings had also used a Spanish theme in the Ponce de Leon Hotel in St. Augustine.

⁴³Ibid.

⁴⁴John L. Volk, "Questions, how to start my book," Notes in the private collection of Jane Volk, Palm Beach, Florida.

and Trust closed causing a run on area banks. After a banking moratorium eleven Palm Beach County banks went under. Volk noted, "I had money in three banks, all closed. No Money. Had \$5.00. Gave Bill Gray (his contractor) \$3.00 and \$2.00 for a bottle of gin."⁴⁵ Despite the slow start, however, John Volk survived the recession and established a career that changed the face of Palm Beach. By completing over one thousand commissions before his death in 1984, Volk was the most prolific of the great Palm Beach architects. His longevity attested to his ability to adapt to both fashion and economics without sacrificing style.

One of the great houses of Palm Beach and the nation was built in 1925 for Marjorie Merriweather Post and her husband Edward F. Hutton. Called "Mar-A-Lago" because of its sea to lake site, the house was started by Marion Sims Wyeth (who later denied responsibility for it) and completed by Joseph Urban, a Viennese architect who had worked for Florenz Ziegfeld designing stage sets. Urban took the prevailing Mediterranean Revival style of the Town and added Moorish details with a theatrical flair to the overall design. Both the exterior and interior of the house were elaborate with rows of Egyptian rams' heads under the eaves, a two story living room with a gold leaf ceiling and a dining room that was adapted from the Chigi Palace in Rome to name just some of the appointments. But Mar-A-Lago was more than a grand house. It "gave added prominence to Mrs. Post and helped produce the island's grandest grand dame."⁴⁶



The Bath and Tennis Club with Mar-a-Lago to the North

In 1926, Urban received a commission to design the Bath and Tennis Club south of Mar-A-Lago. Organized by Anthony Biddle, the Club would protect the Hutton's house from unwanted private development in the area. Similar in feel to Mar-A-Lago the Bath and Tennis Club opened to the beach and became one of Palm Beach's most exclusive clubs. After the 1949 hurricane, John L. Volk rebuilt much of the structure.⁴⁷

⁴⁵Ibid.

⁴⁶Donald W. Curl. "Joseph Urban's Palm Beach Architecture," The Florida Historical Quarterly, Volume LXXI, Number 4, April 1993, pp. 445-445. Quote page 457.

⁴⁷Ibid.

The Florida banking crisis was one of the reasons that real estate development changed in Palm Beach at the end of the 1920s. In the nine years before the 1929 stock market crash, over 5500 banks closed nation wide. "Florida's boom was the greatest speculative frenzy in history....The linkage between bankers, promoters and politics led to the reckless expansion of the economy which inflated real estate values to irrational levels."⁴⁸

Addison Mizner fared poorly during the days of the real estate bust having invested his money in the failed Boca Raton project south of Palm Beach. The Mediterranean Revival style also lost favor as the economy suffered. Smaller houses and less expensive construction replaced the great mansions of the early boom. In September, 1928 a terrible hurricane that brought tides of 11.2 feet and caused \$11 million dollars worth of damage ushered in the nationwide Depression of 1929.

Depression/New Deal Era

Although the frenzy of development and the real estate boom slowed with the Great Depression, nothing stopped in Palm Beach as it did in other communities. Palm Beach residents also saw the need for planning and architectural control as a way to keep their community beautiful and livable. The Art Jury, initiated in the 1928, was charged with safeguarding the town's architecture:

To the visitor here there is always an air of serenity. Back of that exterior there is constantly at work brains and brawn that go to create this unique and most individual of all resort communities... this serenity upon the surface made possible by most able co-operation and co-ordination of every chap who has a home here and the executive working force of that sentiment is particularly manifested in this Art Jury, created for the express purpose of protecting property owners and the beauty of Palm Beach.⁴⁹

Early members of the jury included architects, Addison Mizner, Marion Sims Wyeth, and Maurice Fatio, engineer Halpin Smith and landscape architect, Charles Perrochet. The approval of the Art Jury was essential for any new project and jurors had the right to enforce compulsory changes in plans. Although sometimes criticized, most citizens and the press approved of the Art Jury's controls:

The world goes on and some may criticize the strict supervision Palm Beach residents maintain over their chosen winter haven of pleasure and enjoyment, but they of the colony sit serenely by and smile, content in the knowledge that radical ideas may come and go, but conservatism, as always, will remain supreme here just so long as the Art Jury continues to function.⁵⁰

Another important and early planning effort was sponsored by the Garden Club of Palm Beach. On April 8, 1929 the Club hired Bennett, Parson & Frost, Consulting Architects of Chicago to devise

⁴⁸Raymond B. Vickers, Panic in Paradise, (Tuscaloosa, Alabama: 1994) p. 17.

⁴⁹"Art Jury Safeguards Property Owners in Palm Beach Against Unartistic Building Erections." Palm Beach Daily News. On file at the Historical Society of Palm Beach County.

⁵⁰Ibid.

a Plan for the Town of Palm Beach. Presented in book form, the plan was approved by the Town Council on December 19, 1929. The plan provided for a public bath, public gardens, a system of trails and walkways, public buildings and the improvement of the street system. Although not all of the projects were carried out, the Plan of Palm Beach was an important document that set the stage for future planning activities within the Town.⁵¹

Newspaper articles of the time period also stressed beautification projects and city improvements. In 1930, wooden light poles on North Palm Beach Avenue were replaced with steel and a new sewer outlet was built. North Palm Beach Avenue (County Road) was widened from Wells Road to the Country Club at property owners' expense in exchange for the evacuation of the old Ocean Boulevard.⁵²

Building activity picked up in Palm Beach as the 1930s wore on. By 1937 the press was reporting that "Resort Building Activities Already Top 1936 Record in Construction of 66 Homes."⁵³ Development was still driven by a handful of builders such as E.B. Walton and Arnold Construction Company. Even the well known architects like Volk, Fatio and Wyeth often designed houses on speculation. The press also reported the "general tendency towards the smaller, simpler homes," and noted that building centered toward the Inlet Subdivision, Pendleton Avenue, Coconut Grove and North Lake Trail.⁵⁴

Housing styles changed as well. The large Mediterranean houses of the 1920s gave way to British Colonial, Bermuda, Georgian and Monterey styles. Dining rooms became smaller as the buffet replaced the large dinner party. Servants areas were reduced and the garage became an important and necessary feature of every home.

The Society of the Four Arts, a non-profit organization dedicated to promoting interest in art, literature, drama and music, was incorporated in 1936 by Maud Howe Elliot. At first the group moved into a vacant store provided by Col. E.R. Bradley in a building known as the Embassy Club that had been designed by Addison Mizner. The first art exhibit sponsored by the Society was a display of fifty Old Masters owned by members. Highlighting the exhibit was Rembrandt's "Aristotle Contemplating the Bust of Homer."

In 1938 Maurice Fatio completed a new Society of the Four Arts Building with murals in the front loggia by Albert Herter. In 1947, when the Society was able to purchase the Embassy Club and the adjoining land after Bradley's death, architect John Volk convinced the membership to renovate rather than demolish the old building. Volk's adaption was masterful. He enclosed the courtyard and added a 718 seat theater, a gallery and boardroom. Later Marion Sims Wyeth redesigned Fatio's building for a library and the Ravensky building (another 1924 Mizner commercial design) was added to the complex in 1993 as a children's library and administration offices.⁵⁵

⁵¹Bennett, Parson & Frost, The Plan of Palm Beach (Palm Beach: 1930).

⁵²"1930 Saw Drastic Changes in Layout of Town Beautiful," Palm Beach Post, 1 January, 1931.

⁵³"Resort Building Activities Already Top 1936 Record in Construction of 66 Homes." Post-Times, 5 December, 1937.

⁵⁴Ibid.

⁵⁵"Four Arts Plaza," Designation Report, Town of Palm Beach, 1995.

In 1937, a new Post Office was built at 95 North County Road. Decorated with murals depicting life in early Florida, the building was placed on the National Register of Historic Places in 1983. In 1938, the Flagler Memorial Bridge replaced the old railroad bridge.

World War II

The 1940s brought the War years and a new kind of living for Palm Beach residents. Local newspapers reported that, "War work is uppermost and this resort has turned the full power of its vast resources both of wealth and talent for war relief measures and civilian defense."⁵⁶ Palm Beach cut down its social calendar like the rest of the nation as the sacrifices of the war hit home. Parties were scaled down and some of Palm Beaches most famous hostesses changed their life styles, at least for the time being.⁵⁷ Small parties and at home entertaining became the trend.

A group called "Volunteers for Victory" was formed at the home of Mrs. Henry Rea. With headquarters at the Paramount Theater on North County Road, the group aimed to have "one wartime organization which combines and coordinates all activities for the comfort, entertainment and morale of the American forces."⁵⁸ A "Relaxation" committee arranged for entertainment for the troops and about two hundred and fifty women knitted garments for the soldiers.⁵⁹ In 1943, a Soldiers' Canteen was opened on the corner of Worth Avenue and County Road, and a Bath House was opened on the beach.⁶⁰ Other activities for servicemen included Sunday night buffet-dances at the Society of the Four Arts and weekly informal dinners at the Everglades Club.⁶¹ The Bath and Tennis Club held a Christmas day party for the RAF cadets stationed in Clewiston in 1941.⁶² Private citizens also opened their hearts to the troops stationed in South Florida and entertained them in some of the town's grandest mansions. Society matron, Mrs. Edward T. Stotesbury opened "El Mirasol" for swimming parties and other casual recreational events leaving the estate open all summer for the use of the servicemen. When thanking their hostess one soldier was reported to remark, "You're...you're such a grand person, I'd like to kiss you!" And he did.⁶³ Mrs. Frederick E. Guest turned "Villa Artemis"

⁵⁶Helen Van Hoy Smith, "War Work Takes Place of Parties At Palm Beach." Miami News, 6 December, 1942. N.P.

⁵⁷The Palm Beach Daily News reported that in 1943 Mrs. Stotesbury could only open one section of "El Mirasol." (April 3, 1943, n.p.)

⁵⁸"Volunteers for Victory Again Enlarge Quarters." Palm Beach Daily News. 1 January, 1942. n.p.

⁵⁹Ibid.

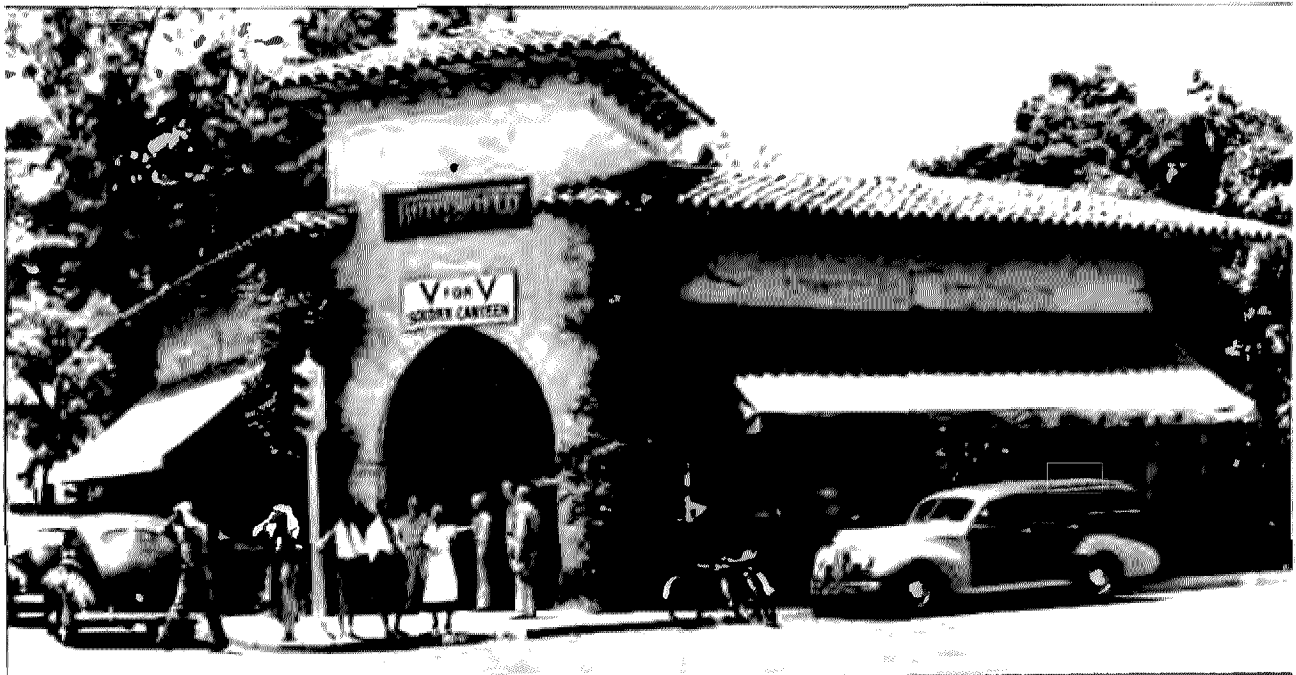
⁶⁰"Volunteers for Victory in Second Season." Palm Beach Daily News, 8 January, 1943, n.p.

⁶¹Emilie Keyes Evans, "Soldier Thanks Mrs. Stotesbury - With a Kiss." Palm Beach Daily News, 12 January, 1943. n.p. "U.S. Soldiers Guest At Everglades Informal." Palm Beach Daily News, 13 January, 1942.

⁶²"Palm Beachers Will Entertain Soldiers." Palm Beach Daily News. 24 December, 1941. n.p.

⁶³Evans.

over to the Navy as a convalescent home.⁶⁴



In 1943, a Soldiers' Canteen was opened on the corner of Worth Avenue and County Road

During the War total blackouts were ordered by the United States military all along the Atlantic Ocean coast. Horse and dog patrols kept watch on the beaches which were off-limits at night and partially limited in the day. A pass and identification were required to cross the bridges to Palm Beach. Curfews were set at twelve o'clock a.m. except on Saturday night when they were extended to one-thirty a.m. Civilians who volunteered as coastal patrol and aircraft spotters recounted evenings when they could hear German submarines surface to charge their batteries. Allied ships became the targets of German U-boats. During one four month period sixteen ships were torpedoed between Cape Canaveral and Boca Raton.⁶⁵

The Town Council under Mayor James M. Owens, Jr. appointed a committee to carry out civilian defense work. Funds were allocated for two town operated first-aid stations. James F. Riley of the Bessemer Company donated office space for the air raid warden headquarters at 244 South County Road.⁶⁶ In December 1942, the famed resort hotel, The Breakers, was turned over to the War Department to be used as the Ream General (Army) Hospital.⁶⁷

⁶⁴"Doing Bit for Defense." n.d. on file at the Historical Society of Palm Beach County.

⁶⁵ Tuckman and Kleinberg, pp. 140-148.

⁶⁶"Town Council Names Group to Consider Defence Money." Palm Beach Daily News. 7 January, 1942. n.p.

⁶⁷"The Way We Were," Palm Beach Daily News. 6 May, 1994. n.p.

All of the war efforts had a positive effect on the growth and development of Palm Beach. The Town had opened its doors to thousands of men and women from around the country and set the stage for a post war building boom. In its last issue of the 1943-44 season the Palm Beach Daily News reported, "Much property has changed hands and a general real estate "boom" indicates that in the period of postwar construction, Palm Beach will be a growing and flourishing colony."⁶⁸

The Modern Era

Palm Beach did flourish after World War II and housing styles again changed. Many of the large estates of the 1920s were torn down and subdivided to make room for a more casual life style and new development. In 1947, the Stotesbury Estate "El Mirasol" was torn down. The furnishings were auctioned off. Emerald Lane and Coral Lane sprang up where the grounds of the great house had been. On the southern end of the Island King's Road appeared through what once had been the James P. Donahue estate in 1949. Wings of the original house were cut into individual housing units. The pattern was repeated all over Palm Beach.⁶⁹ In the place of the Mediterranean Revival mansions, ranch style houses filled the new streets.

In an effort to protect the historic resources in the Town a movement developed to establish a Landmarks Preservation Ordinance. The movement gained strength in 1974 with the publication of Barbara Hoffstot's book, Landmark Architecture of Palm Beach. It was not enough, however, for preservation to be a movement by private citizens and concerned individuals. In order to designate buildings and regulate their condition, it was essential that the local government be involved. In 1978, the Town Council of Palm Beach created the first Landmarks Preservation Ordinance. In 1979, that ordinance was passed. Original members of the Landmark Commission included John L. Volk, Barbara Hoffstot, historian Judge James Knott, Philip Hulitar, Paul Maddock, Jr., and LeBaron Willard.⁷⁰ Today, thirty-one years later, the Town of Palm Beach is still in the forefront of preservation designating historic properties and acting within the framework of the ordinance for their protection. In 1994, the Town received the Florida Trust Award for Historic Preservation becoming the first municipality to receive such recognition. As the Town of Palm Beach celebrates its Centennial in 2011, two hundred and sixty-eight structures, districts and historic vistas have been designated as local landmarks and protected for the future.

⁶⁸"War-Time Palm Beach." Palm Beach Daily News. 9 April, 1944.

⁶⁹Gilbert M. Thompson, "El Mirasol," Brochure, 1991 and "King's Road Now Traverses A Once Famous Living Room," Palm Beach Daily News, 6 February, 1956. See also "Lagamar Designation Report, Town of Palm Beach.

⁷⁰Ellen Koteff, "Commission to Protect Landmarks, Palm Beach Daily News, 26 October, 1978.

ARCHITECTURAL DESCRIPTION OF SITES IN THE TOWN OF PALM BEACH

Domestic Architecture

A review of domestic architecture in the Town of Palm Beach Historic Sites Survey revealed examples of every major twentieth century architectural style. From the elegance of the Mediterranean Revival to the simple forms of the Frame Vernacular and Bungalow styles, Palm Beach is a text book for architectural study. Many of these styles are typical of other sites in South Florida, but in few other cities are the examples so numerous or so well maintained. Besides style, the inventory also represents most time periods of the Town's history so that the built environment of the area reflects everything from the turn of the century through World War II and the 1950s. Another important way to classify Palm Beach architecture is by architect. The architects of Palm Beach shaped the Town's growth and fabric. Representations of their work, in a variety of styles, are important examples not only of individual careers but as milestones in the development of the Town of Palm Beach.

Frame Vernacular

Wood frame vernacular buildings represent the most typical method of construction used by pioneers in South Florida. Vernacular architecture is ordinary architecture. It does not adhere to a particular school of design. The builder's experience coupled with local materials creates a useful and practical building. In many surveys Frame Vernacular buildings are the most prevalent style in an historic area. Because of intensive development and an affluent life style this is not true in Palm Beach. The areas of wood frame houses were for the most part destroyed to make way for other more academic styles.

Mission Style

Inspired by 18th century Spanish Mission churches, the Mission style had its beginnings in California during the 1880s. In Florida the style reached its peak in popularity during the 1920s. The Mission style is noted for its simplicity. The most prominent feature of this style is a curved parapet at the roof line. The roofs are traditionally flat, with interest given to an occasional secondary roof feature such as a dormer or sloping porch. Sometimes there is a bell tower. Exterior walls are generally block or wood frame which is covered with smooth or rough cast stucco. Arched openings are common. Windows are either double hung sash or casement. Porches are a prominent feature. Scuppers are also frequently found below the roof line.

Mediterranean Revival

The Mediterranean Revival style of architecture was inspired by European structures that were built around the basin of the Mediterranean Sea. Themes were borrowed from Spanish, Italian, North African and Moorish examples. This style was very popular in California and Florida during the 1920s. It adapted well to Florida's warm climate and Spanish heritage. The style is expressed with applied ornamentation, carved decorations, twisted columns, balustrades, and ceramic tile. Exterior walls are stuccoed in a light color. Low pitched terra cotta tile roofs, either gabled or hipped, are typical. Windows and doors are arched and include a variety of shapes such as semi-circular, pointed, ogee or segmented. This is an extremely important style in Palm Beach architecture and variations range from large beach front mansions by well known

architects to smaller version by unknown builders. It was brought to the Town by Addison Mizner and Paris Singer in 1919.

Bungalow

The Bungalow became an architectural style at the turn of the 20th century through the Arts and Crafts Movement. This movement advocated the pre-industrial ideas of craftsmanship, simplicity, honest expression of materials, and harmony with nature. It became the most popular style of home in middle class suburbs throughout the 1920s and 1930s. The typical bungalow is modest in scale, one or one and a half stories in high, with a low pitch gable roof, a large front porch, and a simple floor plan. Few of these buildings have registered architects and many were built from mail-order kits.

Georgian Revival

The Georgian style of architecture is one of the most long-lived in American history. It dominated the English colonies of the 18th century. Variations on the style were popular throughout the Caribbean and were adapted in revival form in South Florida. Examples sometimes have broken pediments and paired, triple or bay windows.

British Colonial

Sometimes called the Bermuda style, this West Indian adaptation of Georgian architecture features pedimented dormers, quoins and a hip roof. Wood shutters and "welcoming arm" walls lead to the front door. It was popularized in Palm Beach by the works of Howard Major and John L. Volk.

Colonial Revival

The Colonial Revival style of architecture was popular throughout the United States from about 1885 to 1995. Based on Georgian and Adam prototypes from the northeastern states, the style features symmetrical facades with an accentuated front door. Pediments are common, as are double hung sash windows and decorative shutters.

Art Deco

Art Deco derives its name from the "Exposition Internationale des Arts Decoratifs et Industriels Moderne" held in Paris in 1925. It was this century's first popular style to break from tradition. Essentially, it was a style of applied decoration using abstracted natural forms, geometric patterns, industrial symbols, and historical motifs sculpted in bas-relief. Massing was either symmetrical or asymmetrical, exteriors were smooth painted stucco or natural stone. The roof was flat with towers and vertical projections. Windows varied in size and shape, but were often continuous around corners. Glass block and circular windows were common.

Minimal Traditional

This simple style of housing was popular immediately preceding and after World War II. It is usually one story in scale with a low pitched roof and a minimum of details. Often there is a front facing gable.

Ranch

The ranch style house gained popularity in the 1940s to become the dominate style of architecture throughout the country during the 1950s and 1960s. Based on Spanish Colonial precedents, this style is horizontal in feel with a low pitched roof and a prominent garage. Much of the housing at the north end of Palm Beach island was designed in this style.

Monterey

The Monterey style is an eclectic style of architecture that was popular throughout the United States from 1925 to 1955. Adapted from the Spanish Colonial architecture of Northern California, Monterey adds English Colonial and Creole French design details to the prototype. The most distinguishing characteristic of the style is the second-story balcony which is usually cantilevered and covered by the principal roof.

Neoclassical Revival

NeoClassical Revival structures were one of the most dominant types of domestic buildings in the United States during the first half of the twentieth century. Distinguished by a prominent front porch supported with classical columns, symmetrical facades and double hung sash windows, the front facade often resembles a classical Greek or Roman temple. The Regency style of architecture is a subset of this type.

Commercial Architecture

The commercial sections of the Town of Palm Beach are One-Part and Two-Part Commercial Blocks in the center of the Island. While many of the original buildings have been demolished or altered, enough remain to present a picture of the early commercial history of the town. The One-Part Commercial Block was developed during the mid-nineteenth century and became common in small towns and cities all over the United States. Individual buildings are grouped together so that the facades are unified in function. These buildings are constructed of either masonry or wood frame. Windows are used for display. Entries are frequently recessed. Design details vary according to the style of the building. On the whole the small scale of the commercial sections of the town are pedestrian friendly.

One of the most important commercial areas in the Town is Worth Avenue. There are seven "Vias" along the street some of them connected by courtyards. These areas combine public walkways, commercial space and private residences to produce a unique old world charm.

Phipps Plaza is another important statement in commercial design. The Plaza started as a development venture financed by well know Palm Beach businessman John S. Phipps in 1924. Originally called Circle Plaza, the project is an important statement in urban design. Instead of the usual linear or grid system, Phipps Plaza is built around an elliptical shaped green space. Commercial and residential environments coexist in a good example of workable urban planning. Phipps Plaza was Palm Beach's first Historic District.

RECOMMENDATIONS

Once a survey is completed and an overview of a town's history is recorded, it is important to use the information that has been gathered in the planning and decision making process. Historic resources are irreplaceable. It is imperative that government move quickly and carefully into the implementation stage of historic preservation.

Historic preservation, however, will not be successful if implemented strictly by government action and control. Citizen and community support is vital. Workshops should be set up for interested property owners and convincing arguments for historic preservation need to be made both to supporters of the preservation movement and their opponents.

Basically there are three main reasons to pursue historic preservation in any community.

Tradition - Maintaining a community's sense of time and place within the development of an area or region is important for citizens of all ages. South Florida in particular had been criticized as a transient community with much of its population coming from different countries and regions of the United States. Promoting the unique history of the Town of Palm Beach, through the remaining built environment, helps establish a basis of tradition for the future development of the town. Pioneer families have their for bearers recognized, school children better understand local history and the naming of streets, parks and schools, and newcomers immediately become aware of the community's roots, through its historic structures.

Aesthetics - Maintaining historic structures and developing plans for restoration and adaptive reuse make a neighborhood more livable, while continuing to build on the traditions of a community. By implementing design guidelines and beautification programs, such as the recent revitalization of Worth Avenue, owner and tenant pride is increased. Distinct properties that merit listing on the National Register of Historic Places also contribute to this effort. These special properties become a focus for civic pride and an anchor to hold together neighborhoods. The restoration of Town Hall, a National Register listed property, is a good example of this effort.

Economics - One important reason to pursue historic preservation in the Town of Palm Beach is economic. Contrary to some thought, preservation is not anti-development. In our profit minded society, it is clear that people need economic incentives to restore and rehabilitate historic structures. At this time, Federal tax law does allow some benefit for rehabilitation of eligible commercial structures. This is a direct economic incentive to the owner/developer. On a local level, the Town of Palm Beach and Palm Beach County Tax Abatement programs allow owners who rehabilitate historic properties the ability to recoup a portion of their investment by a reduction of the increase in their property taxes for a ten year time period. This benefit is tied to the property and may be transferred with any transfer of ownership.

Results and Recommendations for the Town of Palm Beach

Architectural Survey

This report, with its accompanying Florida Site File Forms updates the 2004 Palm Beach Historic Building Survey. In total, 1129 previously listed sites were reviewed. Of the 1129 sites reviewed 50 have either been demolished or are so severely altered that they no longer retain their architectural integrity. In addition to reviewing the old site, 259 new sites are being added to the Site File. These include buildings that were built before 1960 and some outstanding examples of buildings that are less than fifty years old. In total, after the new buildings are reviewed by the State of Florida, there will be 1338 Historic Resources listed for the Town of Palm Beach.

These Florida Site File forms should be retained by the Planning, Zoning, and Building Department of the Town of Palm Beach. They should be updated as more information becomes available and used as a basis for decision making concerning historic preservation for the town. Notations should be made on the forms when any of these structures are altered or destroyed. Structures should be added to the inventory as necessary and the survey should be updated every five to seven years.

Recognition of Historic Properties

After completing a survey, the next step in historic preservation is the formal recognition and protection of Historic Properties.

THE NATIONAL REGISTER OF HISTORIC PLACES: On a Federal level recognition is given through the National Register of Historic Places. The criteria for listing a property in the National Register of Historic Places are listed at the beginning of this report. The Register is maintained by the Department of the Interior and listing is essentially honorary. It provides no protection for properties and does not restrict a property owners' ability to alter the structure in any way. The only exception to this rule is if federal funds or activities are directed to the property. If this is the case, a review process is required before federal funds can be used.

One concrete benefit of listing an income producing property on the National Register or including it in a National Register District is the Tax Rehabilitation Credit offered by the Federal government. Residential structures do not qualify for this program but any building listed on the National Register is automatically considered a certified historic structure.

Nominating a property to the National Register can be done in a number of formats. The first and most common is the individual nomination. Historic Districts can also be nominated with defined boundaries and a common history. And finally, multiple property nominations cover scattered resources that have a common history, pre-history or architecture.

National Register Nomination forms may be completed either by a property owner or a consultant. These forms require a history, legal and geographical description, historic context and architectural analysis. Photographs and maps are also required. Footnotes are a must. Libraries, local historical societies, the County Courthouse, probate records, tax rolls and building permits should all be consulted. Newspapers contemporary to the construction date can also be read for more information. The finished form is sent to the State Historic Preservation

Officer, Bureau of History Preservation, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250 (800-847-7278) for review. While in Tallahassee the nomination is reviewed by the National Register Review Board, whose members are appointed by the Secretary of State. If the nomination is passed it is forwarded to the Department of the Interior for a final determination on eligibility. Both State and Federal Grant money is available to help defray the cost of a National Register nomination.

At the present time, thirteen properties from the Town of Palm Beach have been listed in the National Register. Two of those properties have been demolished.

- | | |
|--|------------|
| * Bingham Blossom House - 1250 South Ocean Boulevard | demolished |
| * Breakers Hotel | |
| * Brelsford House - 1 South Lake Trail | demolished |
| * Whitehall | |
| * Mar-a-Lago | |
| * Palm Beach Daily News - 204 Brazilian Avenue | |
| * Paramount Theater | |
| * U.S. Post Office - 95 North County Road | |
| * Via Mizner | |
| * Chesterfield Hotel - 363 Cocconut Row | |
| * Warden House - 112 Seminole Avenue | |
| * Town Hall - 360 South County Road | |
| * Palm Beach Hotel - 235 Sunrise Avenue | |

Local Recognition

In the Town of Palm Beach, the process for local recognition and protection was established with the passage of the Landmarks Ordinance in 1979. With a successful preservation program in place the Town has designated 268 local landmarks and vistas as of December 2010.

Districts

Two types of districts may be developed under a local Historic Preservation Ordinance.

LOCAL ORDINANCE CERTIFIED: A local district that is certified must be created by ordinance or state statute, and must meet the criteria of the National Register. The enabling legislation must be endorsed by the SHPO and certified by the Keeper of the National Register. Historic structures within this district are not eligible for grant monies, but income producing properties are eligible for federal tax incentives.

LOCAL ORDINANCE: Historic districts may be created by local ordinance and be entirely under the jurisdiction of the local government. The local government may establish their own architectural review procedures and zoning laws. Privately owned properties are not eligible for grant monies or federal tax incentives. Property owned by a not-for-profit organization or governmental agencies may apply for monies administered by the Division of Historical Resources.

In the Town of Palm Beach establishing Local Historic Districts has always been controversial. Although in many cities and towns creating districts has imposed architectural control for otherwise noncontributing structures, this has not been necessary in the Town of Palm Beach. In Palm Beach, construction and alteration of non historic buildings is reviewed by the

Architectural Commission. This Architectural Commission is the legacy of the Art Jury that was established in 1928.

In 1988, the Palm Beach Historic Building Survey suggested that there were "two strategies" for designation:

- (a) site-by-site, that will result in a patchwork quilt of designated properties in the Town;
- or
- (b) districts, that will result in entire commercial blocks or residential neighborhoods that are designated and protected in the Town,

Although the previous surveys have not been specific about which method was preferable, a review of the preservation movement in Palm Beach suggests that the site-by-site method will have more concrete results. Past efforts to designate Worth Avenue, Golfview Road, and Pendleton Avenue as districts resulted in recommendations by the Town Council to proceed on an individual basis. Also, by working on a site-by-site basis buildings are more thoroughly documented making their protection more defensible in the future.

Using Preservation Incentives

There are a variety of legal instruments and financial incentives available to assist local governments and citizens in their historic preservation efforts. Some are already provided by federal and state law, others need to be adopted by local agencies. As has already been noted, economic incentives are often the most powerful in promoting historic preservation.

Federal Incentives

REHABILITATION TAX CREDITS: Federal tax credits for the expenses incurred in the rehabilitation of an income producing historic structure have been present for a decade. Present law (1986 Tax Reform Act) provides for a twenty percent credit for certified historic structures and a ten percent credit for structures more than fifty years old that do not meet listing criteria in the National Register or contribute to an NR District. These are the Federal Tax Incentives already referred to in this report. In order to qualify, income producing structures must be listed on the National Register or be part of a National Register Historic District.

HISTORIC PRESERVATION FUND: Authorized under the 1966 National Historic Preservation Act, this fund was established by the federal government to finance historic preservation activity throughout the nation. The annual appropriation from the United States Congress finances each states's Historic Preservation Office and the National Trust for Historic Preservation.

COMMUNITY DEVELOPMENT FUNDS: Rehabilitation of historic structures is a qualified expenditure for Community Development Block Grants (CDBG) or similar federally backed funding sources for the rehabilitation of low and moderate income housing. This program was established in 1974 and is one of the Federal government's principle vehicles for providing assistance to local and state governments for community revitalization and improvement. The program has the primary objective of developing viable urban communities by providing decent housing and a suitable living environment.

State of Florida Incentives

AD VALOREM TAX RELIEF: The State of Florida permits counties and cities to offer property tax abatement to property owners the are either individually listed or are in historic districts. This program was been adopted by the Town of Palm Beach in 1997. It is also in place in Palm Beach County. Since the program was adapted in Palm Beach, thirty-two projects have been completed.

CERTIFIED LOCAL GOVERNMENT PROGRAM (CLG): The 1980 amendments to the Historic Preservation Act of 1966 established a means by which local governments could create an Architectural Review Commission. This Commission is empowered to enforce the municipality's preservation ordinances, to conduct historic site surveys and to review and approve all National Register nominations. The Commission must include as members: professionals in architecture, architectural history and history. The State Historic Preservation Office will work closely with the Certified Local Government and will provide technical assistance to the Commission. The CLG is eligible for matching grants from the State Historic Preservation Office to carry out their duties. The money comes from a source of funds that equals at least ten percent of the money each state receives from the Historic Preservation Fund. The Town of Palm Beach is part of this program.

LEGISLATIVE SUPPORT: The State of Florida is currently one of the largest investors in historic preservation in the nation. In 1983, a Historic Preservation Trust Fund was established as a depository for legislated funds. Grants are reviewed by the Florida Historic Preservation Advisory Council (HPAC), awarded by the Secretary of State, and administered by the Division of Historical Resources, Department of State. In two annual grant cycles, funding is provided for acquisition and development, survey and planning, educational programs, and the Main Street program. Some of the funds are distributed through a 50/50 match of in-kind services and cash. Once a year, Special Category funds are available for large scale restoration projects. Units of government and registered non-profit organizations are eligible to apply. Future grant cycles include:

Federal and State Grant Cycles

HISTORIC PRESERVATION GRANTS-IN-AID SMALL MATCHING GRANTS

- Authority:** Section 267.0612 and 267.0617, Florida Statutes.
Chapter 1A-35, Florida Administrative Code.
- Purpose:** To assist and encourage the identification, excavation, protection, rehabilitation, and public knowledge of historic and archaeological properties in Florida and to encourage historic preservation in Florida's smaller cities through the Main Street Program.
- Eligibility:** Departments or agencies of the State (including state universities), units of county, municipal, or other local governments; not-for-profit corporations, institutes, organizations, and other non-profit entities. There is one grant cycle annually: Solicitations begin October 1 and ends

December 15. Applications must be received or postmarked by the deadline.

Criteria: All applications are evaluated using criteria relating to the site, grantee, and public benefit. These include historic significance, endangerment, appropriateness of work, local cost share, educational potential, economic impact, public use or other public good. The maximum matching grant award is \$40,000; however, most grant awards range from \$5,000 to \$25,000.

Review Process: All grant applications are evaluated on a competitive basis by the Historic Preservation Advisory Council in public meetings. Projects are ranked in priority order with a recommended level of funding for each application. Grants are awarded by the Secretary of State, based on the recommendations of the Historic Preservation Advisory Council. The members of the Historic Preservation Advisory Council are appointed by the Secretary of State.

Local Match: 50% of project costs which may include cash, allowable in-kind and donated services and allowable donated materials.

Contact: For additional information and grant applications contact:
Grants and Education Section
Bureau of Historic Preservation
(904) 487-2333 or Toll Free at 1-800-847-PAST.

HISTORIC PRESERVATION AND HISTORICAL MUSEUMS
GRANTS-IN-AID
SPECIAL CATEGORY GRANTS

Authority: Section 267.0612 and 267.0617, Florida Statutes.
Chapter 1A-35, Florida Administrative Code.

Purpose: To assist major restoration of historic structures, major archaeological excavations, and major museum exhibit projects involving the development and presentation of exhibitions and educational materials on the history of the human occupation of Florida.

Eligibility: Departments or agencies of the State (including state universities); units of county, municipal, or other local governments; not-for-profit corporations, institutions, organizations, and other non-profit entities. . Applications must be received or post-marked by August 31.

Criteria: All applications are evaluated using criteria relating to the site, grant, and public benefit. These include historic significance, endangerment, appropriateness of work, local cost share, educational potential, economic impact, public use or other public good. The majority of the Special Category grant awards are in the \$50,00 to \$350,000 range.

Review Process: All grant applications are evaluated on a competitive basis by the Historic Preservation Advisory Council in a public meeting held in the Fall, and ranked in priority order with a recommended level of funding for each recommended project. Council recommendations are submitted to the Secretary of State for approval. The approved list is submitted for legislative consideration as part of the Department of State's annual budget request. The twelve members of the Historic Preservation Advisory Council are appointed by the Secretary of State.

Availability of Funds: Funds are available after July 1 of the year in which the funds are appropriated by the Legislature.

Funding Source: State General Revenue Fund.

Contact: For additional information and grant applications contact
Grants and Education Section
Bureau of Historic Preservation
(904) 487-2333

Local Government Incentives

In most cases, the incentives and legal instruments available to local governments and citizens are tools utilized in real estate and tax law. Some of these incentives may be in place, others need to be considered for future action. All of these concepts, however, have been successful in other areas.

EASEMENTS: An easement is a restriction placed against the future development of a property. In historic preservation, an easement can be placed with a non-profit organization that is qualified to maintain it over a period of time. Tax advantages are available for some easements. Federal law permits, for example, the donation of a facade easement for the purposes of preserving the exterior integrity of a qualified historic building. Scenic or open space easements are used to preserve archaeological sites.

RESTRICTIVE COVENANTS: Restrictive covenants are prohibitions against particular uses of a property. A covenant attached to a deed, for example, might prohibit subdivision of the property or demolition of a structure.

PURCHASE OF DEVELOPMENT RIGHTS: This device, equivalent to an easement, involves the acquisition of certain rights to a property. The value of the development right is defined as the difference between the property's market value and its useful value.

TRANSFER OF DEVELOPMENT RIGHTS: This legal instrument is utilized to protect historic resources, such as archaeological sites, by permitting the right to develop a property to be transferred to another location, sparing the original property from destruction or alteration.

REVOLVING FUND: A revolving fund, normally administered by a non-profit or governmental agency, establishes a monetary basis on which property can be bought, improved, maintained, and sold. Revolving fund monies are subsequently returned and reused. The funds act to create a new economic and social force in the community.

INTEREST-FREE LOAN PROGRAM: A tool of Community Redevelopment, this program assists the property owner in obtaining interest free loans for periods of up to five years for certain improvements on the exterior of buildings. For example, loans may be up to \$7,500 for single family homes, or \$15,000 for income producing property, and may be applied to permit fees, roof repair, painting, landscaping, or other exterior restorations. A local bank participates in the project, and the work done is in accordance with design guidelines for the site or historic district.

BOOTSTRAP PROGRAM: This program is a grant awarded by a city to property owners for the same type of restorations as the interest free program, except that there is no pay back required. The grants are usually a smaller award, and some can be a 50/50 match. To begin the program, specific restorations can be designated, such as painting, landscaping and roofing.

PERMIT FEE WAIVER: A municipality can create the means by which permit fees for restoration work on certified historic properties, either individual or within a designated district, can be waived.

ZONING AND BUILDING CODE RELIEF: Historic rehabilitation projects may be considered for exemption from certain zoning code regulations or building codes, provided life and safety are not threatened. This relief should be reviewed on an individual basis.

Educational Programs

One of the greatest benefits of historic preservation are the countless educational opportunities created for schools, community, and the visiting public. Historic preservation is a tool in the classroom used to teach many subjects including urban studies, math, and science. Communities benefit through the knowledge and appreciation for their past, and the field of heritage tourism is extremely important to the State of Florida.

DESIGN GUIDELINES: In order for a preservation program to be successful, the community needs technical assistance in restoration projects. For this reason, Design Guidelines need to be updated. The guidelines would serve as a resource manual for property owners to understand the type of building they have, and what kinds of windows, doors, roofs, and fixtures that are needed to restore their building back to its original condition. The guidelines would contain instructions for restoration, types of materials to use and descriptions of architectural styles, plus a list of resources available to owners.

IMMEDIATE ACTION PLAN

1. Continue to designate historic properties under Chapter 54 of the Code of Ordinances of the Town of Palm Beach (Historic Preservation Ordinance). Work on a site-by-site basis unless strong neighborhood support, with a majority of consenting home owners, is brought forward to the Landmarks Commission.
2. Lobby State Legislature to encourage funding of the 2011 Special Category Grants list. The Town applied for \$350,000 for the restoration of Addison Mizner's Memorial Fountain and was ranked 13 out of a field of 57 applicants.
3. Pass an Archaeological Ordinance to protect prehistoric archaeological sites so that control of these sites remains in local jurisdiction.
4. Plan to update the Historic Sites Survey and reevaluate goals for the Landmarks program every five to seven years.
5. Assist local property owners who wish to apply for the National Register of Historic Properties or participate in the Town and County Tax Abatement programs.

REGULATION OF HISTORIC RESOURCES

In response to a growing demand to protect historic resources, various federal, state and local historic preservation laws and regulations have been promulgated. An awareness of the applicable laws and regulations is critical to effective public participation and to development of an effective plan. There are more than 40 federal laws and 20 state laws with historic preservation elements. The following are limited to those laws which are of interest to local government comprehensive planning efforts.

Federal Laws

NATIONAL HISTORIC PRESERVATION ACT OF 1966: The nation's primary historic preservation legislation with respect to activities affecting state and local governments. This act declares a national policy of historic preservation and establishes the Advisory Council on Historic Preservation. It provides for an expanded National Register program established in the office of the State Historic Preservation Officer (SHPO). In Florida the position of the SHPO is established within the Department of State, Division of Historic Resources and is occupied by the Chief of the Bureau of Historic Preservation. SECTION 106 of this act requires that all projects which are federally funded or require a federal license or permit take into account the potential impact of the project upon archaeological sites, historic structures and other historic resources listed or eligible on the **National Register of Historic Places**. The Advisory Council reviews the actions under Section 106 and encourages the various agencies to consider measures that will protect historic properties.

DEPARTMENT OF TRANSPORTATION ACT OF 1966: This act mandates a national policy that special efforts be made to preserve historic sites. The Secretary of Transportation cannot approve any program or project which requires use of any land from historical or archaeological sites for national, state or local significance unless there are no feasible alternatives.

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969: This act established a national policy for the protection and enhancement of the environment including the preservation of important historical, cultural and natural aspects of national heritage.

COASTAL ZONE MANAGEMENT ACT OF 1972: This act encourages states to undertake comprehensive planning and management for wise utilization of the land and water resources of the coastal zones. Full consideration should be given to ecological, cultural, historic and aesthetic values.

State Laws

FLORIDA HISTORICAL RESOURCES ACT, CHAPTER 267: Florida Statute, 267 is Florida's primary historic preservation legislation. Florida's policy concerning historic resources is stated in s.267.061(1), F.S.1986:

- (a) The rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations. The destruction of these nonrenewable historical resources will engender a

significant loss to the state's quality of life, economy, and cultural environment.

In addition, s.267.061(1) also requires the state to:

3. Contribute to the preservation of non state-owned historic resources and to give encouragement to organizations and individuals undertaking preservation by private means.
6. Assist local governments to expand and accelerate their historic preservation programs and activities.

Subsection 267.061(2), F.S. 1986, requires that each state agency of the executive branch must consider the impact of any undertaking on the state's historic properties that are included in, or eligible for inclusion in the National Register of Historic Places. Subsection 267.061(3), F.S.1986 establishes and gives the Division of Historical Resources of the Department of State the responsibility for the care and protection of Florida's historic resources.

OUTDOOR RECREATION AND CONSERVATION, CHAPTER 375: Section 375.021 establishes an Outdoor Recreation Advisory Committee. The director of the Division of Historical Resources of the Department of State is a statutory member. This act also gives the Department of Natural Resources the right to acquire land and identifies "historical and archaeological sites" among the types of land that may be acquired.

FLORIDA ENVIRONMENTAL LAND AND WATER MANAGEMENT ACT OF 1972, CHAPTER 380, F.S.: Section 380.05 addresses Areas of Critical State Concern. An area that contains significant historical resources that would be adversely impacted by public or private development may be designated as an area of critical state concern. Section 380.06 addresses the Development of Regional Impact (DRIs). This section states that historic preservation is to be considered in the evaluation and approval process of developments.

OFFENSES CONCERNING DEAD BODIES AND GRAVES, CHAPTER 872: This legislation protects prehistoric and historic burial sites either marked or unmarked. It is considered a felony to knowingly remove, injure or disturb the contents of a tomb or grave.

LOCAL GOVERNMENT COMPREHENSIVE PLANNING AND LAND DEVELOPMENT REGULATION ACT, CHAPTER 163: This act originated in 1975, was amended in 1985 and 1986 and mandates all local governments to prepare and adopt comprehensive plans. The act requires local governments to address historic preservation concerns in at least two elements; Future Land Use and Housing, and a third Coastal Element for local governments in those regions. The act also provides for the creation of an optional separate element for historic preservation. In addition, the local government Comprehensive Plan must be consistent with the State Comprehensive Plan. The Department of Community Affairs, Division of Resource Planning and Management is the functional agency assigned to oversee local government comprehensive planning. Chapter 9J-5, F.A.C. contains the Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance.

A summary of the minimal requirements for historic preservation in local government planning are as follows:

Future Land Use: The plan states that "the land use maps or map series shall generally identify and depict historic district boundaries and shall designate historically significant properties meriting protection." Also required are objectives and policies concerning the identification, designation and protection of historic resources.

Housing: Minimal requirements are "standards, plans, and principles" for the "identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement." Subchapter 9J-5.010(1)(g), F.A.C. also requires "an inventory of historically significant housing listed on the Florida Site File, **National Register of Historic Places** or designated as historically significant by or in accordance with a local ordinance, and shall include their generalized locations."

Coastal: All coastal municipalities must have a provision for the "preservation, including sensitive adaptive use of historic and archaeological resources" and must show historic preservation areas on the land use and inventory map.

STATE COMPREHENSIVE PLAN, CHAPTER 187, F.S.: One of the goals addressed in s.187.201(18) Cultural and Historical Resources in the state's comprehensive plan is to "increase access to historical and cultural resources and programs and encourage the development of cultural programs of national excellence." Historic preservation is also addressed in Housing s.187.201(5)(b), and in tourism s.187.201(23)(b). The policy in Housing is to recycle older homes to increase the supply of housing. Tourism policy (b) promotes "awareness of historic places and cultural and historic activities."

EAST COAST FLORIDA REGIONAL PLAN, CHAPTER 186, F.S.: As mandated by the State Comprehensive Plan, Florida's eleven regions must prepare comprehensive regional plans. Preservation concerns are addressed in two policy clusters, numbers 61 and 62. Regional Issue 61: Access to Cultural and Historical Resources encourages protection, preservation, and increased public awareness of the region's significant historic, archaeological, architectural, and cultural resources. The Development of Historical and Cultural Programs are addressed in Regional Issue 62 which states "provisions for ensuring the development of adequate, accessible and fiscally sound historical and cultural facilities and programs in the region, while encouraging the development of historical and cultural programs of national excellence."

ADMINISTRATION OF HISTORIC PRESERVATION

There are several public and private organizations now in place on the federal, state and local levels whose responsibility is to implement and administer historic preservation programs.

Public Organizations

Federal Government

NATIONAL PARK SERVICE: The nation's principal preservation agency. It is responsible for the national park system as well as administering the **National Register of Historic Places**.

NATIONAL REGISTER OF HISTORIC PLACES: A list of those buildings, structures and sites that have historical importance to the local community, the State and to the Nation. This is an honorary recognition that places no restriction on private property owners. Only actions that involve federal monies must be reviewed for their potential impact on buildings on or eligible for National Register listing. The National Register is administered by the State Historic Preservation Officer in each state.

State of Florida

STATE HISTORIC PRESERVATION OFFICE: This is the agency charged with administering each state's historic preservation program. It employs professionals who have specialized skills in Archaeology, Architecture, and History. They review and process all National Register nominations and review all Federal actions involving historic sites to insure compliance with The Historic Preservation Act of 1966. The state Historic Preservation Officer also conducts historic site surveys and works with private property owners who are rehabilitating income producing properties under the Investment Tax Credit Act. In Florida, the State Historic Preservation Office is in the Department of State, Division of Historical Resources. The Division is also responsible for administering federal and state grant funds for historic preservation. The office is located in Tallahassee, (904) 487-2333.

Private Organizations

There are several not-for-profit organizations at the federal, state and local level which provide various types of services to preservation interests. In Palm Beach, The Preservation Foundation of Palm Beach and the John L. Volk Foundations are good resources for research and educational opportunities. The Historical Society of Palm Beach County also has a strong collection of historical material for review.

Federal

NATIONAL TRUST FOR HISTORIC PRESERVATION: The National Trust for Historic Preservation was chartered by Congress in 1949 and serves as the principle national lobbying group for preservation concerns. The National Trust provides assistance, advice, and some funding to private organizations for historic preservation activities, and produces educational and informational journals and technical

publications. The National Trust maintains several historic properties, and conducts an annual fall conference to share expertise.

NATIONAL ALLIANCE OF PRESERVATION COMMISSIONS: A network of landmarks, historic districts, and boards of architectural review in the United States providing members with information through newsletters, conferences, seminars and an annual meeting held in conjunction with the National Trust conference.

State

FLORIDA TRUST FOR HISTORIC PRESERVATION: Organized in 1979, the Florida Trust is the state equivalent of the National Trust and provides information and assistance to individuals and organizations, and assists the Department of State in fulfilling its historic preservation responsibilities. The Florida Trust is empowered to serve as a recipient for charitable donations that serve preservation purposes. It may be reached at (904) 224-8128.

“POTENTIALLY ELIGIBLE FOR A LOCAL REGISTER”

What Does this Mean?

When conducting an Historic Sites Survey, one of the documents that is completed is the “Historic Structure Form.” This form provides general information, mapping data, a physical description of the property being assessed, and a brief history of the site. In a field entitled “Surveyor’s Evaluation of the Site,” the person recording the information must judge the potential for listing each building on the local register. In the case of the Town of Palm Beach, that local register is governed by Chapter 54 of the Code of Ordinances of the Town of Palm Beach (Historic Preservation Ordinance) which outlines the criteria for designation of historic structures and districts, and states that at least one criterion must be met to justify the designation.

Making a judgement on a site’s probability for landmarking during a field survey is often difficult. Because Historic Structure Forms are recorded from the public right of way, walls, gates, and landscaping sometimes block a clear view of the subject property. It is also important to consider a property’s potential for landmarking in the context of a community’s history or as an example of a particular architect’s work. Not all of this can be determined in the field. What can be seen is *potential*.

When the Landmarks Commission decides that a property on the Florida Master Site File (their planning tool) may, in fact, be potentially eligible for the local register, they may vote to put it “Under Consideration.” This action triggers more research and the completion of a full designation report with the property’s history, architectural analysis and a justification of how the subject property meets the criteria for landmarking. Two public hearings are scheduled. First the Landmarks Commission hears a presentation from both the Historic Preservation Consultant and the property owners or their experts. At this time the Commission votes to either recommend the property to the Town Council for designation or votes against designation. If the Landmarks Commission recommends designation, the Town Council hears the item at a regularly scheduled meeting and makes the final decision on whether or not to landmark the property. If it is landmarked, a Resolution is passed and this action is recorded in the Palm Beach County Court House. The property is then listed on the **Existing Designated Landmarks** list and all future alterations and repairs come before the Landmarks Commission rather than the Architectural Review Commission.

It should be noted that calling a property “potentially eligible for a local register” does nothing to its legal status. The Historic Sites Survey and Florida Master Site File Forms are just planning tools that are required by the Town’s Comprehensive Plan and help the Landmarks Commissioners make more informed decisions. The **Existing Designated Landmarks** list is available to the public at the Planning, Zoning and Building Department.

Photographs and addresses on the following pages represent 90 properties that are included in the 2010 Historic Sites Survey that were listed as “potentially eligible for a local register.”



Oceanic Cottage, Flagler Drive, @1900



Seaside Cottage, Flagler Drive@1900



Seaspray Cottage, Flagler Drive@1900



209 Banyan, Maurice Fatio, 1934



124 Brazilian, Marion Sims Wyeth, 1923



333 Brazilian, Howard Chilton, 1948



337 Brazilian, Unknown Architect, 1924



167 Clarendon, Howard Major, 1935



177 Clarendon, Unknown Architect, 1929



320 Island Road, Maurice Fatio, 1928



Island Drive, Maurice Fatio, 1939



350 Island Road, Maurice Fatio, 1940



670 Island Drive, Gustav Maass, 1940



130 Chilian Avenue, John Volk, 1928



220 Jungle Road, Maurice Fatio, 1934



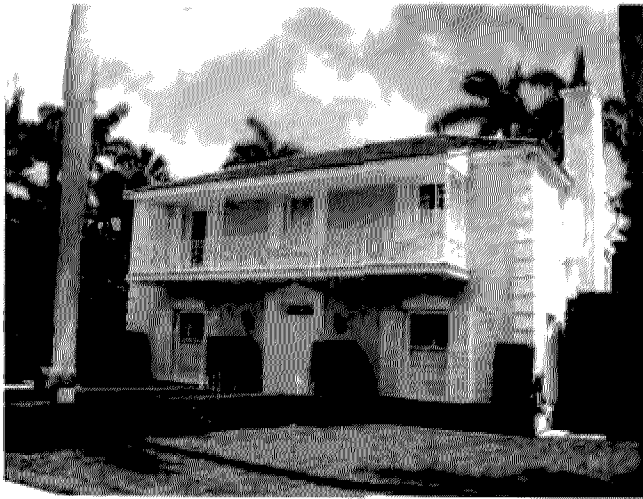
240 Jungle Road, Maurice Fatio, 1929



254 Jungle Road, Maurice Fatio, 1935



320 El Vedado, Clarence Mack, 1940



209 Sanford Avenue , Howard Chilton, 1945



210 Sanford Avenue, Howard Chilton, 1941



235 Sanford Avenue, Wyeth and King, 1940



261 Sanford Avenue, Howard Chilton, 1945



272 Sanford Avenue, Howard Chilton, 1942



130 El Brillo, Unknown Architect, 1928



200 El Brillo, Unknown Architect, 1929



201 El Brillo, Maurice Fatio, 1929



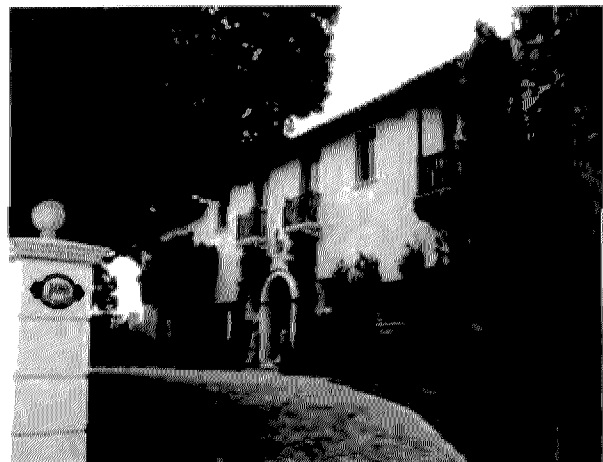
218 El Brillo, Gustav Maass, 1950



234 El Brillo, Howard Major, 1940



343 El Brillo, Unknown Architect, 1928



100 El Bravo, Marion Sims Wyeth, 1922



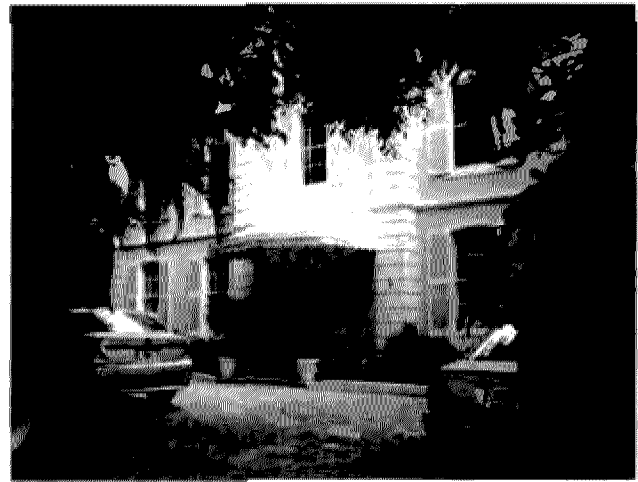
215 El Bravo, Howard Major, 1940



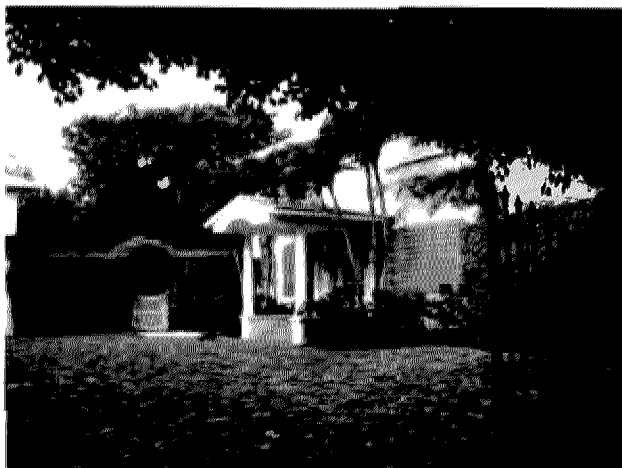
221 El Bravo, Volk & Maass, 1933



237 El Bravo, Marion Sims Wyeth, 1920



251 El Bravo, John L. Volk, 1945



144 Everglades Ave, Unknown Architect, 1910



222 Everglades Ave, Unknown Architect, 1927



127 Dunbar, Cooper Lightbown, 1922



159 Dunbar, John L. Volk, 1938



260 Dunbar, John L. Volk, 1936



267 Dunbar, Bruce Kitchell, 1936



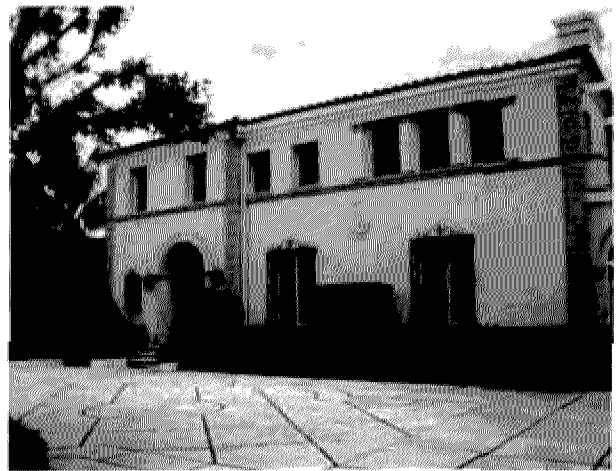
236 Dunbar, Unknown , 1924



17 Middle Road, Maurice Fatio, 1934



28 Middle Road, Unknown Architect, 1926



141 Barton Ave, Unknown Architect, 1930



229 Barton Ave, John L. Volk 1935



300 Barton Ave, Volk & Maass, 1933



327 Barton Ave, E.B. Walton, 1924



334 Barton Ave, Gustav Maass, 1936



135 Seminole, Unknown Architect, 1910



1070 So Ocean Blvd, Belford Shoumate, 1952



272 Wells Road, Unknown Architect, 1928



220 Via Bellaria, Maurice Fatio, 1929



261 Via Bellaria, John L. Volk, 1937



125 Via Del Lago, Marion Sims Wyeth, 1928



4 Via Vizcaya, Maurice Fatio, 1934



130 Coconut Row, John L. Volk, 1937



256 So Ocean Blvd, Volk & Maass, 1929



345 Seaspray, Gustav Maass, 1937



415 Seaspray, E.B. Walton, 1930



216 Garden Rd, Maurice Fatio, 1936



120 Clarke Ave., Unknown



726 High Mount, Maurice Fatio, 1938



323 Ridgeview, John L. Volk, 1940



300 Clarke Ave, John L. Volk, 1936



260 So Ocean, Addison Mizner, 1923



1047 So Ocean, John Volk, 1935



475 North County, Maurice Fatio, 1937



218 Merrain, Gustav Maass, 1938



315 Tangier, John L. Volk, 1939



241 Tangier, Howard Major, 1936



125 Root Trail, Unknown Architect @ 1900



126 Root Trail, Unknown Architect @ 1900



1950 So Ocean Blvd., Volk & Maass, 1934



656 No County, Burrell Hoffman, 1924



854 So County Rd , Howard Major, 1936



1545 No Ocean Way, Wyeth & King, 1937



501 No Lake Way, John L. Volk, 1939



333 Pendleton Lane, John L. Volk, 1940



303 Pendleton Lane, John L.Volk, 1937



306 Pendleton Lane, John L. Volk, 1939



311 Pendleton Lane, John L. Volk, 1938



315 Pendleton Lane, John L.Volk, 1939



322 Pendleton Lane, John L.olk, 1940



345 Pendleton Lane, John L.Volk, 1940



324 Barton, John L. Volk, 1939



1510 No Ocean Blvd, Unknown, 1926



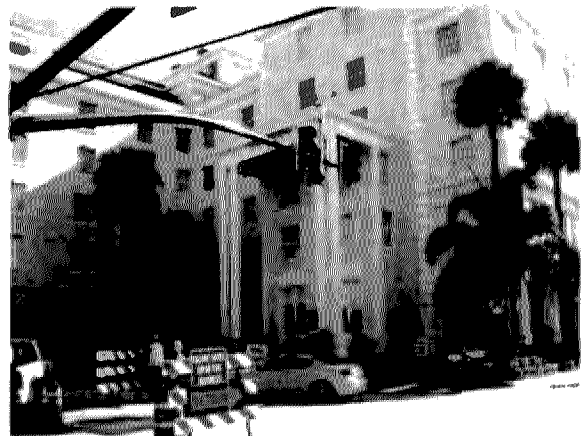
173 Royal Poinciana Way, Unknown, @1900



10 Tarpon Island, Howard Major, 1937



400 South Ocean, Edward Durell Stone, 1962



The Colony Hotel, 1946, Simeson & Holley

Severely Altered and Demolished Sites

The following list includes properties that have been demolished since the last historic sites survey in 2004. Also included are sites that have been so completely altered that the building no longer has its architectural integrity. There are a total of 50 sites that have been destroyed since the 2004 survey.

8PB04283	1 Pelican Way, John L. Volk, 1936
8PB04445	439 Worth Avenue, Unknown Architect, 1919
8PB07833	1695 North Ocean Way, John L. Volk, 1937
8PB04266	516 South Ocean Boulevard, John L. Volk, 1938
8PB04276	1902 South Ocean Boulevard, Unknown Architect, 1930
8PB07828	1473 North Ocean Boulevard, Unknown Architect, 1937
8PB07836	1100 North Lake Way, Treanor and Fatio, 1936 - this building was removed in 1993 and mistakenly carried on the Site File
8PB07837	1141 North Lake Way, John L. Volk, 1936
8PB09417	1191 North Lake Way, Treanor & Fatio, 1936
8PB07835	1255 North Lake Way, Volk & Maass, 1935
8PB07900	242 Kenlyn Road, Kemp Caler, 1949
8PB07875	236 Esplanade Way, Draper Babcock, 1945
8PB09389	120 Seagate Road, Belford Shoumate, 1945, altered beyond recognition
8PB04208	210 Emerald Lane, John L. Volk, 1941
8PB12848	271 Orange Grove Road, Draper Babcock, 1952
8PB04408	254 Tangier Avenue, Treanor & Fatio, 1936
8PB12871	216 Colonial Lane, Paul Kohler, Jr. 1946
8PB12894	125 Dolphin Road, Howard Chilton, 1950
8PB07873	271 La Puerta Way, John Lawson, 1940
8PB07891	203 La Puerta Way, Draper Babcock, 1947
8PB09377	231 Nightingale Trail, Votaw, 1947
8PB09379	115 Nightingale Trail, Gerard Pitt, 1948
8PB04348	237 Seabreeze Avenue, Volk & Maass, 1934
8PB06706	218 Seabreeze Avenue, City Builders Realty, 1919
8PB04346	228 Seabreeze Avenue, Gustav Maass, 1930
8PB06707	225 Seabreeze Avenue, Unknown Architect, 1919
8PB04392	429 Seaview Avenue, O.T. Graham, 1946
8PB04393	439 Seaview Avenue, Sherman Childs, 1937
8PB04425	9 Via Vizcaya, Treanor & Fatio, 1934
8PB04428	235 Via Vizcaya, Treanor & Fatio, 1936
8PB06835	204 Via Del Mar, Treanor & Fatio, 1928
8PB06842	242 Wells Road, Unknown Architect, 1928
8PB07862	318 Caribbean Road, Henry Harding, 1940
8PB04397	224 Seminole Avenue, Belford Shoumate, 1946
8PB06491	158 Dunbar Road, Unknown Architect, 1925 - altered beyond recognition
8PB04185	167 Dunbar Road, John L. Volk, 1938
8PB06573	171 Royal Poinciana Way, Unknown Architect, 1910
8PB06575	177-179 Royal Poinciana Way, Unknown architect, unknown date
8PB09453	101 El Bravo Way, Unknown Architect, 1923
8PB12858	240 Sanford Avenue, Howard Chilton, 1950
8PB04234	241 Jungle Road, Clarence Mack, 1936
8PB09427	333 Peruvian Avenue, Unknown Architect, 1940
8PB09432	240 Park Avenue, Unknown Architect, 1920s
8PB04119	215 Brazilian Avenue, Plaza Inn

8PB04127	416 Brazilian Avenue, Marion Sims Wyeth, 1935
8PB06400	319 Chilean Avenue, Unknown Architect, 1924
8PB04083	235 Atlantic Avenue, Unknown Architect, 1910
8PB06432	134 Cocoanut Row, L.P. Clarke, 1930
8PB04145	45 Cocoanut Row, Unknown Architect, @1900
8PB06435	308 Cocoanut Row, E.B. Walton, 1924



The Oasis Club, 147 Royal Poinciana Way, Maurice Fatio, Architect

The Oasis Club was designed by Maurice Fatio for Colonel E.R. Bradley in 1928. This photograph was taken by Eugene Pandula in the mid 1970s. The building was demolished before it could be landmarked. In its place is a new duplex.

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Town of Palm Beach: Planning, Zoning & Building - Plat Maps

Landmarks Manual p. 6

Saturday, September 07, 2019

3:08 PM



Figure 4. Addison Mizner, *El Mirasol*, 1919. Palm Beach, FL.



Figure 5. Maurice Fatio, *El Mirasol* arch, 1930. Palm Beach, FL.

Since the 1970s the Town's zoning ordinances have controlled usage, density, height, setbacks, parking, landscaping and new construction. It did not, however, prevent the trend toward demolition and subsequent subdivision of the grand Palm Beach estates that began to occur in the late 1960s. The Stotesbury estate, *El Mirasol*, was Addison Mizner's first grand residential project on the ocean (Figure 4). Today the mansion is gone and the lot has been subdivided. All that remains of a once glorified past is an arch, now believed to be the design of Maurice Fatio (Figure 5).

To combat the loss of the Town's historic resources, the Town Council adopted a Landmarks Preservation Ordinance in 1979. The purpose of this ordinance was to study and protect Palm Beach's most significant architectural achievements, ensuring that the heritage of Palm Beach would not be lost. The Landmarks Preservation Ordinance directs the appointment by the Town Council of a Landmarks Preservation Commission (LPC) to identify significant structures, subject them to a set of



Figure 6. 4 *El Bravo Way*, original date ca. 1930s with addition 1990s.

objective criteria, and designate the most worthy as Historic Landmarks of the Town of Palm Beach. Not all old structures are worthy of landmark status. A building must have an important historical association; it must be an outstanding example of architectural design, or it must be a significant work of a notable architect or master craftsman (the four criteria can be found in the Palm Beach Code, Chapter 54, Historic Preservation, Sec. 54-162).

The Landmark Preservation Commission is comprised of seven members, six of whom must be Town residents, who are appointed by the Town Council. If the Commissioners determine that a building is worthy of study, the property will be proposed for designation, it will be studied by staff, and later discussed at a subsequent public hearing. At this public hearing, the Commission will vote on whether or not to recommend to the Town Council that the building be designated a landmark of the Town of Palm Beach. The Landmarks Commission's recommendation must be ratified by the Town Council in order to be effectuated.

The Commission has a similar process for determining historic districts or historically scenic areas. A historic district is intended to protect an area highly concentrated with significant structures. However, not all buildings within the boundaries of the district need necessarily fulfill the criteria for individual designation.

UPDATE ON 90 PROPERTIES REFERENCED IN THE 2010 HISTORIC SITES SURVEY

DEMOLISHED (8)

333 Brazilian Avenue
320 Island Road
670 Island Drive
254 Jungle Road
209 Sanford Avenue
327 Barton Avenue
323 Ridgeview Drive
173 Royal Poinciana Way

LANDMARKED (19)

177 Clarendon Avenue
330 Island Road
130 Chilean Avenue
130 El Brillo Way
200 El Brillo Way
201 El Brillo Way
234 El Brillo Way
234 El Brillo Way
127 Dunbar Road
17 Middle Road
1070 S Ocean Blvd.
220 Via Bellaria
125 Via Del Lago
256 S Ocean Blvd.
120 Clarke Avenue
1047 S Ocean Blvd.
315 Tangier Avenue
125 Root Trail
400 S Ocean Blvd.

CONSIDERED BUT NOT RECOMMENDED (3)

222 Everglade Avenue
475 N County Road
120 Clarke Avenue

REMOVED FROM LIST (1)

726 Hi Mount Road

AVAILABLE TO BE CONSIDERED FOR LANDMARK DESIGNATION (59)

Karen Berger

735 HI Mount Road
Palm Beach, FL 33480
917-545-2064

August 25, 2019

To Whom it may concern:

The Palm Group has for over 20 years, been an integral resource in keeping my home safe, secure, maintained and consistently monitored.

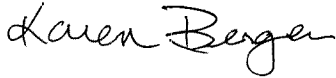
Their presence on the island is something that I and the other home owners have been looking forward to for quite some time.

As a "town serving" company, I'm sure you will determine that they are qualified and a an important business to have here.

It is reassuring to know that the Palm Group is now close and available with an easily accessible office on the island.

The Palm Group should be welcomed as an addition to our Beautiful Palm Beach Island.

Sincerely,

A handwritten signature in black ink that reads "Karen Berger". The signature is written in a cursive, flowing style.

Karen Berger

From: [Antonette Fabrizi](#) on behalf of [Town Council](#)
To: [Joshua Martin](#); [Wayne Bergman](#); [Paul Castro](#)
Cc: [Kelly Churney](#); [Public Comment](#)
Subject: FW: Please Note Our Strong Opposition to the Current and Any Future Initiative to Make the Sea Streets an Historic District
Date: Monday, September 09, 2019 9:28:14 AM

From: Tradestrategies <tradestrategies@aol.com>

Sent: Sunday, September 08, 2019 1:33 PM

To: mayor@townofpambeach.com; Danielle Hickox Moore <DMoore@TownofPalmBeach.com>; BobbieLindsay@aol.com.MargaretZeidman@aol.com; Lew Crampton

<lcrampton@TownOfPalmBeach.com>; Julie Araskog <jaraskog@TownOfPalmBeach.com>; Kirk Blouin <KBlouin@TownofPalmBeach.com>; Town Council <TCouncil@TownofPalmBeach.com>

Subject: Please Note Our Strong Opposition to the Current and Any Future Initiative to Make the Sea Streets an Historic District

Members of the Town Council:

We are Patricia and Michael Hertzberg, resident owners of 129 Seaspray Avenue. While we are supporters of rational and logical Preservation efforts in Palm Beach we are in absolute and total opposition to the current initiative and "path forward" to make the Sea Streets an Historic District. In this regard, we fully endorse the recent opposition letters filed with you from our neighbors Carol and Frank LeCates, Jay Serzan and Stephen Greenwald.

It is so highly dubious that the legal criteria for historic district designation can be met in order for the Sea Streets to be designated as a Historic District and so draconian that it seems a total waste of taxpayer money and Town resources to take the steps suggested by the Preservation Commission. If the Preservation Commission is concerned with instructing the town's residents and educating the community it would make more sense to have a town wide symposium rather than to single out any particular part of the town with a suggestion that is both arbitrary and premature. Moreover, the manner in which this juncture has been reached is simply repugnant--done without any notice whatsoever to residents. This also raises a serious legal issue for both the Preservation Commission and the Town Council to consider as it relates to the Florida Sunshine statutes.

For these reasons and for the divisive nature this proposed action will cause we hope the Town Council will look for other ways and means to promote legitimate open and inclusive preservation efforts.

Thank you for your attention.

Best regards.

Michael and Patricia Hertzberg

From: [Antonette Fabrizi](#) on behalf of Town Council
To: [Danielle Hickox Moore](#); [Margaret Zeidman](#); [Bobbie Lindsay](#); [Julie Araskog](#); [Lew Crampton](#)
Cc: [Joshua Martin](#); [Wayne Bergman](#); [Paul Castro](#); [Kelly Churney](#); [Public Comment](#)
Subject: FW: Sea Streets Historic District
Date: Monday, September 09, 2019 9:30:35 AM

From: Keith Jones <falconeri@aol.com>
Sent: Monday, September 09, 2019 7:30 AM
To: Gail Coniglio <GConiglio@TownofPalmBeach.com>; Town Council
<TCouncil@TownofPalmBeach.com>
Subject: Sea Streets Historic District

Dear Mayor and Council:

For the many reasons carefully set forth by Carol LeCates, Jay Serzan, Steven Jeffrey Greenwald, and others, we strongly oppose the designation of the Sea Streets as an historic district.

Keith & Renata Jones
139 Seabreeze Avenue

The Law Offices of
BRETON, LYNCH, EUBANKS & SUAREZ-MURIAS, P.A.

Peter L. Breton
Francis X. J. Lynch
John R. Eubanks, Jr.
Marta M. Suarez-Murias
Robert J. Sniffen – Of Counsel
Jack Schramm Cox, Chartered – Of Counsel

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Facsimile: (561) 721-4001

September 6, 2019

Mayor Coniglio
Members of Town Council
Town Staff
Town of Palm Beach
360 South County Road
Palm Beach, FL 33480

Re: Zoning Application #Z-19-00213
224 South Ocean Boulevard

Dear Madame Mayor, Members of Town Council and Town Staff:

Please be advised that I represent Wayne and Pam Garrison, the owners of that property located at 212 South Ocean Boulevard, immediately to the north, across Seaspray Avenue, from the property for which this above-referenced Zoning application is filed. The Garrisons have commissioned their own architect to prepare visuals of the impact of this application on their property and the streetscape in general of Seaspray Avenue as it currently exists. The first four attachments are photographs of current streetscape; attachments 5, 6 and 7 are our architect's rendering of what this application proposes.

As you are aware, this application includes a request to consider a variance that would place a new two (2) car garage on the subject property with a setback of six feet (6.0') from the property line, twelve feet (12.0') feet closer to the property line than permitted by code.

The Garrisons object to this request as it is not consistent with the setbacks for properties with a street frontage along Seaspray Avenue.

There are twenty-one (21) homes with street frontage on Seaspray Avenue. Of those twenty-one (21) homes, two (2) have garages with setbacks from the front property line approximately equal to the setbacks from their respective front doors to the property line. Significantly more of those homes have garages at the rear of the property accessed from Seaspray Avenue, set back from the street further than the house itself. Several houses appear to be without garages. The house immediately to the west of the subject property does not appear to have a garage. That property was severed from the subject property in June, 1975 (see the eighth attachment to this email) and both houses have existed without garages for over forty-four (44) years.

The current variance application, in Exhibit D, Item 3 states "many of the neighborhood properties have non-conforming setbacks". As it relates to a front yard setback, a walk by view of the 100 block of Seaspray Avenue did not indicate any obvious non-conforming front yard setbacks and there appears no structure built within six feet (6.0') of the property line, as requested by the applicant. This statement by the applicant in this application does not accurately reflect the present status of front yard setbacks along Seaspray Avenue.

This is the second request for a variance from the requirements of Section 134-1576 of the code, which requires the required street side yard setback for a one-story garage in the R-B district to be at least 18 feet. Variance 4-2017 was granted by town council at its January 11, 2017 meeting, allowing a setback of 13.3 feet for a one story garage with a total square footage of 446 square feet. A copy of the letter from Paul Castro confirming said approval is the ninth attachment to this email. The approval associated with Variance 4-2017 expired on January 12, 2018 without being implemented or an extension sought by this property owner. Had the owner wanted to extend that approval beyond that one year, the owner could have easily done so by requesting an extension from town council. As you are aware, town council tends to routinely grant such extension requests. This particular property owner saw fit not to seek an extension of this approval and now files a new application. As a result, this is a new application and no precedent of prior approval should be afforded this application.

While town council saw fit to grant Variance 4-2017, this application is very different from the application for which the variance was granted. The tenth attachment to this email is an aerial view of the subject property, outlined in red, obtained from the Palm Beach County Property Appraiser's website. The Garrisons' property is noted at the top of the page at the northwest corner of the intersection of South Ocean Boulevard and Seaspray Avenue. Please note the driveway access for the subject property from Seaspray Avenue. It is this driveway that was eliminated at the request of this owner /applicant at the June 28, 2017 ARCOM meeting pursuant to application number A-033-2017. This ARCOM approval was granted while the Variance still could have been implemented. At the ARCOM meeting, it was noted that the significant mature hedge that shielded the subject property from view along both South Ocean Boulevard and Seaspray Avenue had been removed (see attachment 11, which was a part of the Variance 4-2017 application package). For the audio of the June 28, 2017 ARCOM meeting, please click on the following link:

http://townofpalmbeach.granicus.com/MediaPlayer.php?view_id=5&clip_id=1877

The discussion of this request can be found at 08:01:49-08:12:08

Among the critical differences from Variance 4-2017 to the approval sought by the current application are as follow:

1. The setback approved was 13.3 feet; here the setback sought is 6.0 feet, less than half that approved by Variance 4-2017, indicating that the current request seeks a much more significant variance than that previously approved.
2. The size of the garage approved (446 square feet) is approximately the same as that sought (440 square feet), yet this applicant seeks a far greater setback variance and a two car garage.
3. The approved garage opened on all sides to provide a Porte cochere effect (see attachment 12); the proposed garage has a simple garage door.
4. The approved garage used an existing driveway entrance (see attachment 13); the proposed garage requires a new driveway entrance.
5. As to the approved garage, Councilman Pucillo included among his considerations for approval:
 - a. No letters from neighbors objecting,
 - b. The existing huge hedge (approximately 10 to 11 feet) stays unaltered,