MINUTES OF THE TOWN COUNCIL MEETING HELD ON DECEMBER 14, 1999

I. CALL TO ORDER AND ROLL CALL

The meeting of the Town Council was called to order at 9:30 a.m., on Tuesday, December 14, 1999, by President Lesly Smith in the Town Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, Councilman Jack McDonald, Councilman Samuel McLendon, and Councilman Leslie Shaw. President Pro-Tem Wyett arrived at the meeting at 10:40 a.m. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Facility Maintenance Division Manager Joseph Ugi, Finance Director Jane Skittone, Fire-Rescue Chief Vincent Elmore, Human Resources Director William Crouse, Information Systems Manager Spencer Wilson, Police Chief Frank Croft, Assistant Police Chief Michael Reiter, Police Sergeant Ronald Frick, Planning, Zoning & Building Director Robert Moore, Planner/Projects Coordinator Timothy Frank, Zoning Administrator Paul Castro, Public Works Director Al Dusey, Recreation Director Russell Bitzer, Risk Coordinator Karen Temme Town, Engineer James Bowser, Town Clerk Mary Pollitt, and Deputy Town Clerk Susan Eichhorn.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of Robert D. Harvey, Retirement Board of Trustees - 1988 to 1999

Mayor Ilyinsky presented Mr. Harvey with a plaque in honor of his service on the Retirement Board of Trustees from 1988-1999.

IV. COMMENTS OF MAYOR PAUL R. ILYINSKY

Mayor Ilyinsky wished all a happy holiday season, and noted that this would be the last Town Council meeting of the Millennium!

V. COMMENTS BY STATE REPRESENTATIVE SHARON MERCHANT (DISTRICT 83), UNITED STATES REPRESENTATIVE MARK FOLEY (DISTRICT 16), AND MS. VICTORIA DUXBURY, DISTRICT MANAGER FOR UNITED STATES REPRESENTATIVE E. CLAY SHAW, JR. (DISTRICT 22)

Representative Sharon Merchant commented that Mr. Lewis had expressed concern regarding a matter that had come to his attention after the tort reform bill that had passed recently, as one of the provisions clarified that employees are presumed innocent in a civil action if a background check was done on the employee. She explained that a problem had been discovered in that the Florida Department of Law Enforcement (FDLE) was prohibited in giving any information on a person regarding any crime that happened anywhere except in Florida. Representative Foley had addressed part of the problem in requiring the FBI to release information on persons working with the elderly, children and disabled.

Mr. Scott Lewis submitted a packet with information regarding the bill, noting that many businesses in Palm Beach used the Police Department to fingerprint and conduct background checks on employees, and used that information in advertising. He suggested that the Town Council implement a resolution to support the FDLE, and support the County Commission Criminal Justice Commission. He noted that Representative Merchant would be working towards closing the loophole in the bill, as well as U.S. Representative Mark Foley. He suggested that Palm Beach require some sort of employer affidavit saying that the employer had done a fingerprint FDLE check and was satisfied with his employees, and also require a reference letter from Palm Beach residents.

Victoria Duxbury, District Manager for Congressman Clay Shaw, commented that Congressman Shaw had recently introduced a bill, HR 318, providing access by State and local authorities to information of the Department of Justice for purposes of conducting criminal background checks on Port employees and perspective employees. She explained that feedback had been received from the American Civil Liberties Union (ACLU), and there had been some controversy.

President Smith thanked all for their comments, stating that the Council would address the issue, which involved the security and safety of residents. After discussion, it was determined that the Town Council would consider it on the agenda for the January meeting, perhaps with a resolution being drafted.

Mr. Jesse Newman commented that an identification card had been compulsory years ago, however, it was now voluntary; he noted that many employers urge and pay for their employees to obtain a Palm Beach Identification Card, and that if an employee had a record he/she would not be interested in going to the Police Department. He stated that the Palm Beach Chamber of Commerce would support making identification cards compulsory.

Representative Merchant then gave an update on issues that were of interest to the Town Council in the next legislative session:

Everglades Funding: an important issue for all taxpayers, as there had not been any forward motion by the Florida Legislature to pay half of the cost, which approximated $4 billion. The Federal Government would also have to come up with half of the money. She would be announcing a plan today for funding the project at $100 million per year for ten years, by bonding and using documentary stamps to support those bonds, just as was done for other land conversation programs.

HMO's: the issue of treatment that is being denied by managed care or HMO. If damage was caused to a patient by being denied treatment, the bill before the legislature this year would allow the patient to sue the HMO.

Internet crimes: The legislature had been working on internet crimes, particularly those against children

A Special Legislative Session would take place January 5, 6, and 7, 2000, dealing with the electric chair as cruel and unusual punishment, with the concern that if it was found to be so, sentences may be overturned because it would then no longer be an option for execution. The Legislature intended to implement an opportunity for the condemned to chose the electric chair OR lethal injection. If the condemned neglected to chose, lethal injection would be used. The Governor had also inserted a separate issue, which would shorten the time for appeals to five years.

A Delegation Hearing would be conducted this afternoon at Florida Atlantic University in Boca Raton, at 3:00 p.m.

VI. APPROVAL OF THE AGENDA

WITHDRAW - Item XV.B.2. - Request by Worth Avenue Association Concerning Possible Locations for Municipal Restrooms to serve Worth Avenue - per letter dated December 13, 1999 from Mr. Schwalberg.

Motion made by Councilman McLendon, seconded by Councilman McDonald to withdraw Item XV.B. 2. from the Agenda. On roll call the motion carried 4/0, as President Pro-Tem Wyett had not yet arrived at the meeting.

DEFER - XV.B.4. - Request for Assistance by Hartman & Associates in Following the Water Budget Process in the City of West Palm Beach, per memorandum from Finance Director Skittone.

Motion made by Councilman Shaw, seconded by Councilman McLendon to defer Item XV.B.4. to the January 11, 2000, Town Council meeting. On roll call the motion carried 4/0, as President Pro-Tem Wyett had not yet arrived at the meeting.

WITHDRAW - Item XVII. A.1. - Appeal of the Architectural Commission's Decision of May 26, 1999, Concerning 740 Hi-Mount Road by Mr. Ronald K Kolins, per letter dated December 13, 1999, from Mr Kolins.

Motion made by Councilman McLendon, seconded by Councilman Shaw to withdraw Item XVII.A.1. from the Agenda. On roll call the motion carried 4/0, as President Pro-Tem Wyett had not yet arrived at the meeting.

DEFER - Item XVII.A.2. - Appeal of the Architectural Commission's Decision of September 22, 1999, Concerning 226 Merrain Road by Mr. J. Kenneth Brower, per letter from Mr Ronald K. Kolins, to the February 8, 2000, Town Council meeting.

Motion made by Councilman Shaw, seconded by Councilman McLendon to defer Item XVII. A. 2. To the

February 8, 2000, Town Council meeting. On roll call the motion carried 4/0, as President Pro-Tem Wyett had not yet arrived at the meeting.

MOVE - Item XVII. C. 13 (VARIANCE NO. 54-99 - Sunset Ave. Partners, LLC, 152 & 160 Sunset Ave.), and Item XVII. D. 1.[Request by Georgette Klinger, Inc., at 100 Worth Avenue, for an Extension of Time to Complete its Interior Finish Work During December 18, 1999, through January 3, 2000 (Excluding the Christmas and New Year Holidays)] to be heard immediately after Item XVII. C. 4, per letter from Mr. Ronald Kolins.

Attorney Kolins addressed the Town Council stating that he would be attending a hearing at 7:00 p.m. in the Town of Jupiter, and the items he had referred to in his letter were toward the end of the Agenda, and he would appreciate moving them so that all of his items could be heard together.

Councilman McDonald moved approval of moving the items as requested. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had not yet arrived at the meeting.

The Agenda was approved, as amended, through motion of Councilman McLendon, seconded by Councilman McDonald. On roll call the motion carried 4/0, as President Pro-Tem Wyett had not yet arrived at the meeting.

VII. COMMUNICATIONS FROM CITIZENS

There were none at this time.

APPROVED AGENDA

VIII. APPROVAL OF MINUTES OF OCTOBER 26, NOVEMBER 9, AND DECEMBER 1, 1999

IX. APPROVAL OF CHECK REGISTERS FOR NOVEMBER 1999

X. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF NOVEMBER 19, 1999

XI. CONTRACT AND AGREEMENT RENEWALS

A. Agreement Between the Town of Palm Beach and the School Board of Palm Beach County for Vocational Education Programs for the Town's Occupational Health Clinic per Memorandum dated December 1, 1999, from Director of Human Resources William Crouse

XII. OTHER

A. Request for Waiver of Recourse/Fiduciary Liability for the Board of Trustees of the Town's Retirement System per Memorandum dated November 16, 1999, from Risk Coordinator Karen Temme

The Approved Agenda was approved through motion of Councilman McDonald, seconded by Councilman Shaw. On roll call the motion carried 4/0, as President Pro-Tem Wyett had not yet arrived at the meeting.

REGULAR AGENDA

XIII. PUBLIC HEARINGS

A. De-designation of Historic/Specimen Fiddleleaf Fig Tree and Designation of Replacement Lancepod Tree at 1 Via Sunny; Resolution No. 39-99

Director of Public Works Al Dusey reported that a replacement tree of specimen quality had been provided for one that had been damaged through excessive pruning, and requested approval of the de-designation of the Fiddleleaf Fig Tree and designation of the replacement Lancepod Tree at 1 Via Sunny.

Town Attorney Randolph read Resolution No. 39-99 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DE-DESIGNATING THE FIDDLELEAF FIG TREE AT A PROPERTY ALREADY DEFINED AS 1 VIA SUNNY, LOCATED WITHIN THE TOWN OF PALM BEACH; PROVIDING FOR THE REMOVAL OF SAID TREE FROM THE LAND; DESIGNATING A LANCEPOD TREE AS A REPLACEMENT; PROVIDING THAT A COPY OF THIS RESOLUTION BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

Councilman Shaw moved approval of Resolution No. 39-99. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President Pro-Tem Wyett had not yet arrived at the meeting.

B. Historic/Specimen Tree Designations, De-Designations, and Property Changes; Resolution No. 35-99

Public Works Director Dusey explained that Resolution No. 35-99 established an up-to-date record as to the status of historic/specimen trees.

Town Attorney Randolph read Resolution No. 35-99 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, EXCLUDING CERTAIN ALREADY DESIGNATED HISTORIC OR SPECIMEN TREES; DESIGNATING CERTAIN SPECIMEN TREES; AND RE-DEFINING PROPERTY DESCRIPTIONS OF OTHER HISTORIC OR SPECIMEN TREES LOCATED ON PROPERTIES WITHIN THE TOWN OF PALM BEACH; PROVIDING FOR THE RECORDING OF SAID DESIGNATIONS AND DE-DESIGNATIONS AGAINST THE LAND UPON WHICH THE TREE OR TREES ARE LOCATED; PROVIDING THAT A COPY OF THIS RESOLUTION BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

Councilman McLendon moved approval of Resolution No. 35-99. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as President Pro-Tem Wyett had not yet arrived at the meeting.

C. De-designation of Six Historic/Specimen Trees at 20 Blossom Way

Public Works Director Dusey explained that there were five trees being considered for de-designation.

President Smith stated that she believed the trees were beautiful, and that there was not any devaluation of the property because of them.

Mrs. Ann Blades, of the Garden Club of Palm Beach, requested that the trees not be de-designated.

Councilman McDonald moved denial of the de-designation of the historic/specimen trees at 20 Blossom Way. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as President Pro-Tem Wyett had not yet arrived at the meeting.

D. Landmark Designation of 284 Monterey Road; Resolution No. 36-99

All those who would be addressing the landmark designations were administered the oath by the Town Clerk.

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

Planner/Project Coordinator Tim Frank reported that a letter acknowledging receipt of notice had been received from the attorney of the property owner. He explained that the property at 284 Monterey Road was found to meet the criteria for designation as a landmark in the Town of Palm Beach, in accordance with Ordinance No. 2-84.

Historic Preservation Consultant Jane Day reported that the residence at 284 Monterey Road was a Bermuda style residence, designed in 1941 by Marion Wyeth, and built by E.B. Walton. She then read the letter from Attorney Doyle Rogers, attorney for the property owner, into the record, which stated that the owner opposed having the home designated as a landmark, and requested denial by the Town Council.

Councilman Shaw moved acceptance of the report of the Landmark Commission. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President Pro-Tem Wyett had not yet arrived at the meeting.

Councilman McLendon commented that he was opposed to landmarking a property when the owner opposed the landmarking.

Mrs. Day commented that the premier examples of the Bermuda style were the Volk house, White Gables, on South County Road, and Major Alley by Howard Major, however, the Bermuda style was unrepresented in the inventory of landmarked houses, and once they were gone, they could not be replaced. She explained that the Landmark Commission would allow additions to a landmarked house, that were compatible with the house and architecture.

Councilman McDonald commented that he had read the minutes of the Landmark Commission, where the owner had commented that the house was set so far back on the lot that there was not room to add onto the back.

Mrs. Day replied that she had seen some additions added to the front of landmarked properties that would still be compatible with historic architecture; she added that the ordinance did not require owner consent, and when the first landmarks had been brought to the Town in 1979, everyone had objected, except for John Lennon and Yoko Ono.

President Smith suggested that a site plan of properties proposed for landmarking be included with the Landmark Report. She also noted that redevelopment of the north end of the Town was a zoning study item, and asked if Resolutions No. 36-99 and 37-99 could be put off until that study was completed?

Town Attorney Randolph responded that would require owner approval, and if they agreed to waive the time requirement contained in the ordinance, the matters could be postponed.

Mayor Ilyinsky commented that the house at 284 Monterey Road was one of his favorite styles of architecture, and thought it a classic example.

Councilman McDonald moved approval of the landmarking of 284 Monterey Road. The motion was seconded by Councilman Shaw.

Town Attorney Randolph read Resolution No. 36-99 by title:

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

Director of Planning, Zoning & Building Robert Moore commented that the landmark ordinance required action by the Town Council within 90 days, and suggested that, should the Town Council wish to defer action, there would be appropriate time to contact the owner for further discussion.

Councilman McDonald withdrew the motion to approve.

Councilman Shaw moved deferral of Resolution No. 36-99 to the January 11, 2000, Town Council meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President Pro-Tem Wyett had not yet arrived at the meeting.

Mr. Frank indicated he would contact the owners to suggest that they be in attendance at the January Town Council meeting.

E. Landmark Designation of 170 Seagate Road; Resolution No. 37-99

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

Planner/Projects Coordinator Tim Frank reported that proper notice had been served and received, and that the subject property at 170 Seagate Road had been found to meet the criteria for designation as a landmark in the Town of Palm Beach.

Historic Preservation Consultant Jane Day reported that 170 Seagate Road was a Bermuda style house designed by John Volk and built in 1945 by E. B. Walton. She indicated that the property owners were present to speak.

Mr. Jim Paine, representing James and Ruth Paine, objected to the landmarking of the residence, as there was a concern with the small size of the lot and small sized home, and the development of much larger homes in the immediate area. He suggested that the procedure be deferred until the study of the north end was completed, and also suggested that there be some special protection for one-story landmarked homes on small lots.

Councilman Shaw moved acceptance of the designation report. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Councilman Shaw then moved deferral of Resolution No. 37-99 until the north end study was completed. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

F. Landmark Designation of 311 Brazilian Avenue; Resolution No. 38-99

Ex-parte communication was declared by President Pro-Tem Wyett with Attorney Deziel, and by Councilman Shaw with Attorney Deziel.

Planner/Projects Coordinator Tim Frank reported that proper notice had been given on the property in question, and that the subject property at 311 Brazilian Avenue had been studied by the Landmark Preservation Commission and had been found to meet the criteria for landmark designation in the town of Palm Beach.

Historic Preservation Consultant Jane Day reported that the residence at 311 Brazilian Avenue was a Georgian Revival Style residence, originally constructed before 1924, and had been remodeled in 1935. The property was presently undergoing restoration, and the owner had requested landmark designation, and would be eligible for tax abatement.

Councilman Shaw moved acceptance of the designation report. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

President Pro-Tem Wyett commented that he had a written request from the owner of the property to defer Resolution No. 38-99 until the renovations to the property were completed. He then made a motion to defer Resolution No. 38-99 until the renovations were completed. The motion died for lack of a second.

Town Attorney Randolph read Resolution No. 38-99 by title:

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

Councilman Shaw moved approval of Resolution No. 38-99. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

XIV. OLD BUSINESS

A. Ordinances (Second Reading)

1. Ordinance No. 17-99 - Modifying Chapter 62 of the Town Code of Ordinances, "Marine Structures," Amending the Language as to the Regulation of Bulkheads, Groins, and Piers

Town Attorney Randolph read Ordinance No. 17-99 by title:

> AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 62, MARINE STRUCTURES IN THE TOWN OF PALM BEACH CODE OF ORDINANCES BY DELETING SECTION 62.1, AMENDING SECTION 62.4 BY REQUIRING OWNER CONSENT OF PERMITS FOR BULKHEADS, GROINS AND PIERS; BY AMENDING 62-37 BY DELETING THE LEGAL DESCRIPTION FOR THE BULKHEAD LINE AND USING THE MAP AND ADJACENT BULKHEADS AS REFERENCE; BY AMENDING SECTION 62-38 TO ADD LANGUAGE ON THE TITLE OF THE OFFICIAL BULKHEAD AND GROIN PLAT, BY ADDING REFERENCED SECTIONS OF THE CODE TO CLARIFY THE PROCEDURE FOR REQUESTING VARIANCES FROM ARTICLE II. BULKHEAD, SEAWALLS AND GROINS ON THE ATLANTIC OCEAN; BY DELETING LANGUAGE CONCERNING THE ISSUANCE OF PERMITS; BY AMENDING SECTION 62-74 BY ADDING LANGUAGE TO INCLUDE APPURTENANCES AS PART OF THE LANDING DOCK OR PIER STRUCTURE, TO ALLOW VARIANCES FOR PIERS AND LANDING DOCKS AND ASSOCIATED APPURTENANCES AND ADMINISTRATIVE WAIVERS

FOR BATTER PILE; BY ADDING SECTION 62-74 EXEMPTIONS, TO EXEMPT THE TOWN FROM THE PIER, AND LANDING DOCK REGULATIONS; AND, BY AMENDING SECTION 62-75 BY ADDING LANGUAGE TO SUBSECTION (c) TO ALLOW FOR WAIVERS ON PROJECTIONS AND AMEND SUBSECTION (h) LOCATION AND ALIGNMENT, TO PROVIDE A MAXIMUM DISTANCE FOR PIERS AND LANDING DOCKS FROM LAND AND THE U.S. PIERHEAD LINE AND TO ALSO PROVIDE A MINIMUM SIDE YARD SETBACK AND PROVISION PROHIBITING VESSELS THAT ARE DOCKED AT SAID STRUCTURES FROM ENCROACHING IN FRONT OF THE BULKHEAD OF ABUTTING PROPERTIES; PROVIDING FOR A PENALTY FOR A VIOLATION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREOF; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Shaw moved approval of Ordinance No. 17-99 on second reading. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

2. Ordinance No. 18-99 - Amendments to the Town Charter

Town Attorney Randolph read Ordinance No. 18-99 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF SAID TOWN AN AMENDED TOWN CHARTER; SAID AMENDED CHARTER TO PROVIDE AMENDMENTS TO SECTION 1.01 HISTORICAL EFFECTIVE DATE; SECTION 1.02 POWERS OF THE TOWN; SECTION 1.03 SALE OF PROPERTY - REFERENDUM REQUIRED; SECTION 3.01 TOWN COUNCIL COMPOSITION; SECTION 3.03 TOWN COUNCIL ELECTION AND TERMS; SECTION 3.05 MAYOR POWERS; SECTION 3.06 VACANCIES, FORFEITURE OF OFFICE. FILLING OF VACANCIES; SECTION 3.07 PROCEDURE; SECTION 3.08 COMPENSATION; SECTION 3.09 HOLDING OTHER OFFICE; SECTION 4.01 TOWN MANAGER; SECTION 4.02 QUALIFICATIONS, APPOINTMENT, REMOVAL, COMPENSATION, PERFORMANCE EVALUATION; SECTION 4.03 ACTING TOWN MANAGER; SECTION 4.04 POWERS AND DUTIES OF TOWN MANAGER; SECTION 5.04 FORM OF BALLOTS; SECTION 5.06 RECALL; SECTION 6.05 SCHEDULE; SECTION 7.01 ANNUAL BUDGET; SECTION 7.02 AUTHORITY TO BORROW, VALIDATION OF BONDS; SECTION 7.03 BOND ANTICIPATION NOTES; SECTION 7.04 APPLICABILITY OF SECTIONS 7.02 AND 7.03; PROVIDING AN EFFECTIVE DATE SHOULD THE AMENDED CHARTER BE APPROVED AT SUCH REFERENDUM ELECTION; PROVIDING A SEVERABILITY CLAUSE; SETTING FORTH THE FORM OF THE QUESITON TO BE VOTED UPON AT SUCH REFERENDUM ELECTION; AND FOR OTHER PURPOSES.

Town Attorney Randolph explained that the referendum would be held at the General Election on February 8, 2000.

Councilman Shaw moved approval of Ordinance No. 18-99 on second reading. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

A. Discussion of Establishing Severance Packages for Department Heads *(Referred to the Administrative and Personnel Committee on November 9, 1999)*

Councilman Shaw reported that, as Chairman of the Administrative and Personnel Committee, he had requested that Town Attorney Randolph provide some samples of severance packages for comparable communities, and until he had received same he moved that a meeting not be scheduled in this regard. President Pro-Tem Wyett seconded the motion. On roll call the motion carried unanimously.

B. Other

1. Royal Park Bridge Status Report by Public Works Director Dusey

Director of Public Works Al Dusey reported that he had met with Jeff Smith on December 2, 1999 to investigate possible reconfiguration of parking lots and facilities at the pump station on the west end of Royal Palm Way in order to create more landscaping space.

Ms. Gail McKenna, PCL Civil Constructors, addressed the Town Council, reporting that the bridge project was still on schedule to switch two lanes of traffic over to the temporary bridge next week, before the Christmas holidays. Work would continue through the holidays, and she requested that work be allowed for one-half day on Christmas Eve, and one-half day on New Year's Eve.

Councilman Shaw moved approval of the request to allow work on one-half day on Christmas Eve, and one-half day on New Year's Eve. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Smith

was temporarily out of the room.

2. Cable TV System Franchise Renewal Process with Comcast Cablevision of West Palm Beach, Inc. - Status Report by Assistant to the Town Manager Jakubiak

Assistant to the Town Manager David Jakubiak reported that discussions had taken place regarding the Cable Franchise Agreement and upgrading the system, with movement in a positive direction. He stated that he hoped to reach agreement in order to present it to the Town Council for consideration in the future.

3. Report by Digby Bridges, Marsh & Associates, P.A., Regarding Town of Palm Beach Program and Space Requirements for Additions and Renovations to Existing Town Hall, New Fire Station, and New Parking Garage *(Deferred from August 10, and November 9, 1999)*

Councilman Shaw commented that he had received a letter from the law firm of Arnstein & Lehr regarding the Gray Mobil, Inc. property, offering it for sale, and suggested that this would be an opportune time to consider the property.

A Special Town Council meeting was scheduled for Thursday, February 17, at 9:30 a.m. in the Town Council Chambers for the purpose of discussing all alternatives regarding the space requirements and renovation of the existing Town Hall, fire station, and new parking garage.

Town Engineer Bowser commented that staff and consultants would be prepared to explore all alternatives, including the Gray Mobil property, for discussion at the meeting in February.

4. Discussion of the Sale of Water Meters to the City of West Palm Beach *(Deferred from September 17, 1999)*

Town Engineer James Bowser reported that the City of West Palm Beach had not yet come to any definitive conclusions in this regard, and requested that this item be deferred to the January Town Council meeting.

President Pro-Tem Wyett moved deferral of the discussion of the sale of water meters to the City of West Palm Beach to the January Town Council agenda. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

5. Discussion of Issues Relating to Comprehensive Coastal Management Plan Update and Alternatives *(Deferred from December 1, 1999, Special Town Council Meeting)*

a. Funding Options

Public Works Director Dusey recalled that Mike Hole, of Salomon, Smith Barney had been asked to look at some additional funding options for the Comprehensive Coastal Management Plan (CCMP) and was present to discuss the information.

Mr. Mike Hole, Salomon Smith Barney, addressed the Town Council, distributing material for the review of the Town Council, explaining that this was a cash flow issue, where two large draws would be needed to meet the revised project: $18 million during the first year; $18 million during the third year. Commercial paper program: borrowing money as needed. Line of credit from a bank: similar vehicle. Bond issue: Details have been put together for you.

Mr. Hole explained that the actual costs of the program would be determined ultimately by the timing of expenditures (how the project would be paid for over the next three-five years); the timing of the receipt of other government monies; the tax base growth, future market conditions, and the actual cost of borrowing now.

President Smith commented that there were others interested in submitting funding proposals, and clarified that the Town Council was open to looking at all financing and funding possibilities.

Town Manager Doney clarified that the selection process regarding financial analysts would be similar to the Competitive Consultants Negotiation Act (CCNA) process, and that it should be noted, for the record, that Salomon Smith Barney had always provided the Town with excellent professional assistance.

Mr. Norton Rosenberg, 3170 South Ocean Blvd., addressed the Town Council, congratulating Mr. Hole for doing a fantastic job, and commented that he had contacted First National Bank regarding a financing program.

Mr. David Scaff, representing First Union Bank commented that the bank would like to be considered to be added to the team looking at financing alternatives.

President Pro-Tem Wyett expressed concern regarding the timing of the State funding available to the Town, and suggested that the Town Council meet as soon as possible in order to reach a conclusion.

Mr. Dusey explained that the reaches currently being worked on were Reaches 3, 4 and 7. The plan was to start design and permitting on Reaches 2, 5, and 8 to be done together next year, with construction two years later, and there had been indication from the State that monies could be available within the next fiscal year for design and permitting. He indicated that the most immediate need was for a source of funding for Reaches 3, 4, and 7, with construction projected to start in November 2000; currently work was being done on permitting and designing of those reaches, and in order to get in line with contractors the bidding process would need to begin in July or August. He noted that this type of work could only be done from April 1st to March 1st because of the turtle nesting season. He added that in the current budget he believed that there was an appropriation of $16 million, with $10 being the Town share, and the rest being funded up front.

Mayor Ilyinsky commented that he was concerned with going into a project like this which would last for years and had no ending, because mother nature would not end the onslaught on the beaches, and to use the amount of taxpayer money that would be necessary to even begin the project was absolutely outrageous without a referendum. He stated that he had been involved in many discussions regarding the project, and it seemed that the main problem bothering people was that there seemed to be no end to it, and that taxes would be increased. He stated that to spend the taxpayers' money without a referendum would be totally un-American, and that he could not conceive of spending this amount of money without talking to everyone in the Town; that he needed to know if the beach property would eventually be public or private and how much money a taxpayer would have to pay before a referendum was held.

Mr. Bill Guttman, Chairman of the Civic Association, commented that Mr. Cooley had been wrong in his letter to the editor of the "Shiney Sheet" when he observed that under the United States Constitution amendments must be put to a popular vote– Americans had no right to vote on amendments to the United States Constitution; nor on the size of the defense budget – the government is a representative government, not a direct democracy, and the founding fathers believed that direct democracy would lead to chaos. He stated that he knew little about the Erosion Control Line, however, he had understood Mr. Flood, from the State of Florida, had explained that property east of the mean high water mark would become public land if the State renourished the beaches, Reaches 2 through 8. The property west of the high water mark would remain private property; therefore the only way to get to the new public property would be to trespass on private property.

President Smith commented that there were a number of public access points to the beach throughout the north end of Town, and that the rights of the residents of the Town of Palm Beach were recognized.

In response to Mayor Ilyinsky, Mr. Guttman explained that the Civic Organization was against a referendum in this regard, because of the intensified emotions throughout the community, with so many accusations and propaganda, and the issues being so complex, that in the end, nobody could make a reasoned decision. In a representative type of government, such as that in Palm Beach, elected officials had an information advantage.

Mr. William Cooley, 233 Tradewind Drive, asked the amount of the Town share of the renourishment project as proposed by Public Works Director Dusey.

Mr. Dusey replied that the additional monies needed amounted to $21,300,000 to renourish Reach 2, 3, 4, 5, 7 and 8. The plan, as approved by the Town Council on December 1, 1999, was to keep Reaches 3, 4, and 7 renourished regularly as feeder beaches and the interval, at this point, was an eight year interval.

Mayor Ilyinsky commented that a beach could not stop a major hurricane, and it would be seawalls that would stop water from going across the Island.

In response to Mr. Cooley, Mr. Hole explained that when an issue for referendum for G.O. debt services was put on a ballot it was done as an unlimited full faith in credit, meaning that a limit on the millage was not stated, but that the full faith and credit of the Town would be pledged, and the Town would therefore be compelled, if the referendum passed, to levy whatever millage it would take to service the debt.

Mr. Alex Flamm commented that his comments were based upon three assumptions: 1) The Town Council considered the project as very important; 2) The Town Council had spent endless hours listening and reading on the subject; 3) Those supporting a referendum were extremely well-meaning, and were doing it because it was believed to be the fair thing to do. He suggested that if the two assumptions were correct, the public would have no way of acquiring the necessary knowledge and making an informed decision; nothing would be more unfair than to go to the electorate and ask them to make a decision on such an important project, knowing that the decision would be an uninformed decision.

Mrs. Nancy Douthit asked if the sand to be used in renourishment would be measured by amount, or by cost, and suggested limiting monies to each area, and getting as much beach as possible in the area.

Mr. Joel Martino commented that a petition had been signed by 1500 people regarding the project, and suggested that if they could understand the issues, the rest of the Town could understand them as well. He suggested that ocean front property owners be informed of the Erosion Control line issues.

Mr. Ambrose Monell suggested that democratic principles be adhered to, and that it would be prudent to give the electorate a chance to have their voices heard.

Mr. Gerald Levy, former member of the Shore Protection Board, commented that a referendum would defeat the whole program, and that he did not believe the public could comprehend the entire situation; the responsibility was with the Town Council.

Mrs. Eileen Curran commented that she was speaking on behalf of Mother Nature, and that the beach was a naturally wide sandy beach – the Federal Government had selfishly decided to construct inlets on the shoreline of the State of Florida, and those inlets were constructed for the purpose of financial gain, not in the interest of Mother Nature. These inlets were recognized as the cause of the alteration of the shoreline, cutting off the normal flow of sand. She urged the members of the Town Council and the Mayor to decide to give back to Mother Nature what had been taken away.

Mr. Dick Raffo commented that the Shore Protection Board had done a fantastic job, and he stated that the beaches had to be built back to where they had been, and urged Town Council action.

The Town Council determined that the next meeting to discuss the funding for the beach renourishment project (CCMP) would be held on Friday, January 14, 2000 at 10:30 a.m.

b. Potential Litigation Against the Federal Government Regarding Lake Worth Inlet

Town Attorney Randolph reported that a presentation had been made by Attorney Stouck regarding potential litigation against the Federal Government regarding the Lake Worth Inlet at the last Town Council meeting. Mr. Stouck had followed up with a letter outlining his thoughts in regard to such litigation, and it would now be the decision of the Town Council to decide to have any kind of background information prepared to allow a decision to be made as to whether or not to pursue litigation. The cost estimated by Attorney Stouck to prepare such information had been $35-$40,000.

President Pro-Tem Wyett commented that he did not believe the issue belonged before the Town, as it was a private matter for beach front owners.

Councilman McLendon disagreed, stating that the precedent set in the Port Canaveral case was reason to pursue litigation.

Town Attorney Randolph explained that the Town was a property owner of beach front property, and Attorney Stouck had suggested that the Town could be a leader in going forward with litigation as simply being one of the property owners. He noted that Attorney Stouck had pointed out the concern that if the beach restoration program was completed, and the situation with the placement of the Erosion Control Line was not worked out with the State, the Town may lose rights if it decided to pursue litigation in the future.

President Pro-Tem Wyett expressed concern regarding the Town losing the standing to obtain State funding as a result of timing. He explained that it would take a decision of the Town Council whether to have or not have a referendum and to proceed on how to fund the project, however, time was of the essence.

Mr. Dusey explained that the permitting and design process had begun on Reaches 3, 4, and 7, and that the Town was in the proposed State budget for the next fiscal year.

Councilman McDonald moved approval to retain legal counsel to prepare a memorandum of law providing legal options and alternatives, and determine the rights of the Town in terms of litigation against the Federal Government regarding damages caused by the Inlet; appropriation not to exceed $35,000 to be disbursed from the General Fund Contingency. President Smith passed the gavel to second the motion.

Mr. Guttman urged that the Town also determine the participation of shoreline property owners in such a lawsuit, as he understood that was almost a prerequisite in moving forward; in addition he urged exploration of the willingness of private shoreline property owners to enter into some sort of understanding with the Town that if there was a recovery it would go into some sort of common fund for shore protection.

Mr. Cooley commented that he agreed with Mr. Guttman, that if shoreline property owners participated, they should pay a pro-rata share. He noted that an important aspect of a recovery was the long term commitment of renourishment.

Councilman McDonald commented that the memorandum of law would need to be prepared before anyone could be asked to make a commitment to become a plaintiff in a lawsuit, so that all details could be provided.

Town Attorney Randolph advised that he believed there was strong potential of proving a taking to the property owners abutting the beaches in the Town of Palm Beach. With that information alone, property owners could be approached to determine their involvement. He added that he believed Attorney Stouck would go beyond a memorandum of law, and provide perhaps a first draft of a complaint; he would also indicate the potential costs to plaintiffs, and how he would propose those costs and fees be divided. He noted that he had no reason to believe that Attorney Stouck would suggest that the Town not go forward, and that the procedural aspects of the memorandum of law would be important facts to the Town and potential plaintiffs.

On roll call the motion of Councilman McDonald to retain legal counsel to prepare a memorandum of law providing legal options and alternatives, and determine the rights of the Town in terms of litigation against the Federal Government regarding damages caused by the Inlet; appropriation not to exceed $35,000 to be disbursed from the General Fund Contingency, carried

unanimously.

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****The meeting was adjourned at 1:15 p.m. for the luncheon recess****

****The meeting was reconvened at 2:55 p.m.

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XV. NEW BUSINESS

A Appointments

1. Code Enforcement Board - One Member Term to Expire April 2000 and One Member Term to Expire April 2002

After casting ballots, the Town Council appointed Mr. Max Schorr to fill the term expiring April 2000, and Mr. David J. Thomas to fill the term expiring April 2002.

2. Landmarks Preservation Commission - One Non-Resident Member Term to Expire March 2002

After casting ballots, the Town Council appointed Ms. Jacqueline Albarran deMendoza to fill the position with the term expiring March 2002.

3. Retirement General Employee Board of Trustees - One Citizen Member Term to Expire September 2000

After casting ballots, the Town Council appointed Mr. Robert Garvy to fill the term expiring September 2000.

4. Retirement Public Safety Board of Trustees - Two Citizen Member Terms to Expire December 2001; and Report on Two Employee Representatives

After casting ballots, the Town Council appointed Ms. Hermine Wiener and Mr. Frazier Wellmeier to fill the two citizen member terms to expire December 2001.

B. Other

1. Request for Fireworks Display on December 31, 1999, at 1341 South Ocean Boulevard by Ms. Danabeth Zambelli

Fire-Rescue Chief Vincent Elmore reported that the request to conduct a fireworks display by Ms. Zambelli would be with the use of an off-shore barge, and that he would not oppose the request, with the condition that all insurance criteria were met. He indicated that he would forward a letter to Ms. Zambelli listing all requirements and criteria, which would accompany approval of the request.

Councilman McDonald moved approval of the request for a fireworks display on December 31, 1999, at 1341 South Ocean Boulevard by Ms. Danabeth Zambelli. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

2. Request by Worth Avenue Association Concerning Possible Locations for Municipal Restrooms to Serve Worth Avenue

This item was withdrawn earlier in the Agenda, under Item VI.. "Approval of the Agenda."

3. Acceptance of Donation to the Town for Lighting Improvement to Memorial Fountain

Public Works Director Al Dusey reported that the South County Road Association had approached the Town several months ago concerning lighting improvements at Memorial Fountain, a donation had been obtained, through the efforts of President Smith, for the Memorial Fountain lighting in the amount of $85,000.

President Smith commented that the donation of $85,000 was submitted from the Fortin Foundation; Mrs. Fortin had donated the clock on the south end of Town Hall, and would now donate the lighting on the north end of Town Hall.

4. Request for Assistance by Hartman & Associates in Following the Water Budget Process in the City of West Palm Beach - **Request for Deferral to January 11, 2000, per memorandum dated December 8, 1999, from Finance Director Skittone**

This item was deferred earlier in the Agenda, under item VI. "Approval of the Agenda."

5. Extraordinary Longevity Pay

Town Manager Robert Doney referred to his memorandum of November 29, 1999, regarding eligible employees recommended for extraordinary longevity pay as of December 1, 1999; the recommended employees were required to have 21-30 years of continuous service to the Town; 19 employees had been recommended for extraordinary longevity pay, and three department heads recommended under the "Gold Star Plan," for a total of $23, 544.03. The FY 2000 budget contained $20,600, which was an estimated dollar amount to fund the program, therefore, Mr. Doney recommended that the Town Council authorize the additional $2,944.03 from the General Fund Contingency Account.

Councilman Shaw moved approval of the extraordinary longevity pay and "Gold Star Plan" recommendations as presented by Town Manager Doney in the amount of $23,544.03, ($20,600 from the FY 2000 budget, and $2,944.03 authorized from the General Fund Contingency Account). The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

6. Landscaping Plans for Town-owned Property Located across from Phipps Ocean Park per Councilman McDonald

Councilman McDonald inquired as to the status of the landscaping plans for the Town-owned property located across from Phipps Ocean Park.

Public Works Director Al Dusey reported that the Reef Condominium had never executed the agreement to use the property, and there was no commitment beyond restoration of the grass area, as most of the work had been completed from the interior of the Reef property. As to the condition of the Palm trees in the area, Mr. Dusey responded that this was the first time he had heard that they were not healthy looking, and he would investigate the matter.

Councilman McDonald requested that the Town Council be informed when an agreement had been approved, but had never been executed.

7. Code Enforcement Board Issues Regarding Maintenance of Property, Cleanliness of Construction Sites, and Hurricane Preparation Plans for Construction Sites per Councilman McDonald

Councilman McDonald commented that there were three items he wished to discuss:

1. Owners of property that were not maintaining the property and could not be reached by the Code Enforcement Board.

Councilman McDonald suggested that the Town Council authorize Town Attorney Randolph to revise the appropriate ordinance, or pass a new ordinance, that would give the Town the right to cut the grass and trim branches, passing the expense on to the owner, prior to getting the proper owner to appear before the Code Enforcement Board.

Director of Planning, Zoning & Building Robert Moore requested that Councilman McDonald list the three items of concern, with staff reporting back at the next Town Council meeting.

2. Construction Sites.

Councilman McDonald inquired as to any current policies regarding the maintenance of construction sites during construction.

Mr. Moore responded that this was covered under the Nuisance Ordinance, as well as under the Building Code.

3. Hurricane Preparation Plans

Councilman McDonald inquired as to policies regarding requirements for builders or owners in terms of preparing property for hurricanes.

Mr. Moore responded that construction sites and/or owners were contacted upon hurricane watch conditions, and when a hurricane warning was issued they were required to secure the site, according to the Emergency Management Plan.

In response to President Pro-Tem Wyett, Mr. Moore indicated he would investigate the construction working hours in all parts of Town, just as there were regulated hours on Worth Avenue, and report back to the Town Council at the January Town Council meeting.

Councilman Shaw suggested that Mr. Moore also investigate some method of penalties for construction projects that went beyond the permitted time in both commercial and residential districts.

8. Schedule a Special Town Council Meeting on Wednesday, February 9, 2000, at 9:30 a.m. to Swear in Newly Elected Mayor and Town Council Members as a Result of the Town Election on February 8, 2000

Councilman McDonald moved approval of a Special Town Council Meeting on Wednesday, February 9, 2000, at 9:30 a.m. to swear in the newly elected Mayor and Town Council members as a result of the Town Election on February 8, 2000. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

Town Manager Doney requested that an item be added to the Agenda for the Special Town Council Meeting on February 9, 2000, to schedule a date, time, and place for an orientation meeting for any newly elected officials, prior to the March 2000 meeting.

9. Request for Waiver to Hours of Work by Florida Power & Light Company to Replace Two Subaqueous Cables South of the Royal Park Bridge

Councilman Shaw moved approval of the request for the waiver to hours of work by Florida Power & Light Company (7:00 a.m. - 6:00 p.m., seven days per week) to replace two subaqueous cables south of the Royal Park Bridge. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

10. Recommendation of Settlement of Claim for Maureen Kirschke vs. Town of Palm Beach, Case No. 98-8947 AH

Councilman Shaw moved approval of the settlement of claim for Maureen Kirschke vs. Town of Palm Beach. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

XVI. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman McDonald commented that the obstruction of traffic on South Ocean Blvd. was becoming more of a problem, and urged that the Building Department, Police Department, and Public Works Department become more sensitive to this issue.

President Smith commented that all would miss the Mayor tremendously, since he had announced his retirement from office; she invited him to attend the Town Council luncheons each month, and suggested that he be put on the Agenda for January to be named a landmark of the Town of Palm Beach!

Councilman Shaw wished all Happy Holidays.

Councilman McLendon suggested that the Town Council appoint a special negotiating team, to include Town Attorney Randolph, Public Works Director Dusey, and Mr. Cooley, to enter into discussions with the Army Corps of Engineers prior to any litigation, as proposed, regarding the Federal lawsuit concerning the Inlet.

XVII. DEVELOPMENT REVIEWS

Town Clerk Pollitt administered the oath to all those who would be speaking to the following issues.

A. Appeals

1. Appeal of the Architectural Commission's Decision of May 26, 1999, Concerning 740 Hi-Mount Road by Mr. Ronald K. Kolins *(Deferred from July 13, August 10, September 17, October 12, and November 9,1999)* - **Withdrawn per letter dated December 13, 1999, from Mr. Ronald K. Kollins**

This Agenda item was withdrawn earlier, under Item VI. "Approval of the Agenda."

2. Appeal of the Architectural Commission's Decision of September 22, 1999, Concerning 226 Merrain Road by Mr. J. Kenneth Brower *(Deferred from October 12, and November 9,1999)* - **Request for Deferral to February 8, 2000, per letter dated December 1, 1999, from Mr. Ronald K. Kolins**

This Agenda item was deferred earlier in the Agenda, under Item VI. "Approval of the Agenda."

B. Time Extensions - None

A. Variances, Special Exceptions, and Site Plan Reviews

Old Business - Major

1. AMENDED VARIANCE NO. 31-99 - Cecilia L. Farris, 319 El Vedado Rd.; located in the R-A Zoning District. To allow construction of a 10.5' enclosure wall at the generator in lieu of a 7' maximum height permitted. *(Deferred from September 17, October 12, and November 9,1999)*

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

Attorney James Brindell, representing the applicant, stated that this matter had been deferred so that the applicant could review the height issue and all available options. He referred to the memorandum from Mr. Teele, the professional electrical engineer on the project, explaining that the generator itself was approximately 6'4" in height, sitting atop a 32" fuel tank, which was on top of a 24" slab, which had already been lowered into the ground 18"; below that were utility lines, preventing the further lowering of the slab. He pointed out that reducing the size of the generator would not result in a lower generator cabinet height, and that the proposed location of the generator was the most logical place for it. Mr. Brindell noted that the height could be reduced by 1.4 feet if the muffler was placed inside the generator cabinet with an exhaust pipe

Director of Planning, Zoning & Building Robert Moore commented that staff had reviewed the amended application, and staff agreed that a hardship existed.

President Pro-Tem Wyett moved approval of Amended Variance No. 31-99. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

2. SITE PLAN REVIEW NO. 17-99 WITH SPECIAL EXCEPTION AND VARIANCES - The Palm Beach Day School, Inc., The Day School at 241 & 246 Seaview Avenue; located in the R-B Zoning District. To review the demolition of Cushman House for construction of a 15-space parking lot in lieu of previously approved 29 parking spaces which will remain green space. Variances requested are to provide a 10' front yard setback in lieu of 25' for required off-street parking, and to allow a 4' high hedge fronting the street along the parking lot on the south side of Seaview Avenue in lieu of 6' high hedge required. *(Deferred from September 17, and November 9, 1999)*

Ex-parte communication was declared by Councilman Shaw with Mr. List regarding

Attorney James Brindell, on behalf of the Palm Beach Day School, Inc., reported that the Site Plan been amended to delete the parking lot that had previously been approved for the field east of the main portion of the school. In an effort to compensate for that loss of parking, the Day School proposed that the property on the south side of Seaview, across from the main entrance to the school, (the Cushman House) be demolished. Neighbors had objected to that proposal. The matter had then been deferred, with the request that the applicant meet with the neighbors to determine a resolution.

Attorney Brindell stated that the neighbors had been met with on December 8, 1999, and they were not satisfied with the proposal to place the parking lot on the south side of Seaview, and the applicant would now present another option – angled parking along the tennis courts, which would provide 26 spaces, rather than the current parallel parking (currently providing 11 spaces), with the standard 17' aisle width. There would be an aisle width of only 15', however, at the very west end where there were three or four of the spaces immediately across the street from two of the parallel parking spaces that were required to be added on the north side of the street.

Zoning Administrator Paul Castro commented that the Cushman house was a landmarked house, which presented an obstacle to demolition as well. He stated that staff had not previously reviewed the current proposal for parking, and would need more time to review the application in this regard.

Mr. Roy Yeager, on behalf of the Homeowners's Association for Phipps Plaza and Phipps House Condominium Association, addressed the Town Council, stating that meetings had been held with the Day School, and that there was opposition to demolishing the Cushman House. He stated that the new parking proposal seemed quite acceptable.

Ms. Jane Brubacher addressed the Town Council, on behalf of the residents of the Phipps House Condominium, indicated opposition to the demolition of the Cushman House, and stated that she would prefer the parking to be further down the street.

President Pro-Tem Wyett moved deferral of Site Plan Review No. 17-99 to the January Town Council Meeting in order to allow staff review. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

3. <u>SPECIAL EXCEPTION NO. 32-99 WITH SITE PLAN REVIEW & VARIANCES</u> - 888 S. Ocean Blvd. L.C., 888 S. Ocean Blvd; located in the R-A & Beach Area Zoning Districts. To allow decking and driveway changes at the main house providing 40% landscaped open space in lieu of 45% required. *(Deferred from November 9, 1999)*

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

In response to President Smith, Mr. Moore, Director of Planning, Zoning & Building, explained that under normal circumstances, and in a house that was not landmarked, there was no regulation regarding color; the Architectural Commission would have that jurisdiction with a major remodel or a new house, however, the Town Council could impose any reasonable condition upon the applicant.

Attorney James Brindell, on behalf of Mr. Ramono, addressed the Town Council, stating that the house was at a major intersection, with 2,429 sq. ft., and the lot was 30% smaller than the current minimum Code requirement. He explained that the architect had tried to create as much outdoor living space as possible, and if more landscaped open space was provided the result would be that there would not be enough room for pool deck furniture; the architect had now provided a product called "grass pave," which would provide a strong sub-base, and would function like grass. The result was that the request could be reduced from a 40% coverage to a 43.5% coverage, which would require only a 1.5% variance.

Architect Spina referred to an architectural drawing of the area in question, explaining that the homeowner and guests could park along the road side of the driveway with the use of "grass pave," and more green area would be provided as well.

President Pro-Tem Wyett moved deferral of Special Exception No. 32-99 to a later time in the meeting in order to give Attorney Brindell the opportunity to confer with the applicant regarding the color of the house. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

At a later point in the meeting, Attorney Brindell reported that Architect Spina would address the earlier comments regarding Special Exception No. 32-99.

Architect Spina commented that the entire exterior of the house had been covered with styrofoam, since it was quite old and had needed extensive repair work, which enabled the work to be smoothed out; the finish on that was a lifetime finish of a yellow color, which would fade. The owner had commented that it had turned out brighter than he had anticipated, however, the finish was not a painted finish, but was a permanent finish. In addition, landscaping would soften the effect, and the owner would be willing to paint the wall surrounding the house a white color, which would eliminate half of the yellow building from street view. He explained that the finish of the structure could be re-painted, however, he likened it to buying a Corian kitchen counter, and then covering it with formica; the current finish was highly durable.

Councilman Shaw moved approval of a white wall and the installation of grass pave, with the suggestions of Architect Spina regarding softening the effect of the color of the house. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

4. <u>SPECIAL EXCEPTION NO. 34-99 WITH SITE PLAN REVIEW & VARIANCE</u> - Robert Wood, 321 & 323 S. Lake Dr.; located in the R-D(2) Zoning District. To allow construction of a 3-story, 2-family structure. Variances are requested to construct two swimming pools providing a street side yard of 10' in lieu of 15' required, and providing a side yard setback of 5' in lieu of 10' required. *(Deferred from November 9, 1999)*

Ex-parte communication was declared by Mayor Ilyinsky with residents in the apartment building to the north, and by Councilman

McDonald with Mr. Wood, who had commented on the property.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that the residents of Casa del Lago had expressed concerns with the application, and the Town Council had deferred the issue in order to give the applicant time to meet with the Casa del Lago residents, who now seemed to be satisfied. He explained that the project had been amended to be lowered 7', the mass reduced, one set of the garages had been situated to the rear, the request for variances had been dramatically reduced: no variance would be required for the pool on the east side, and a street side yard of 12 ½' in lieu of 15' was being requested.

Director of Planning, Zoning & Building gave the following staff comments: Comprehensive Plan: should demonstrate how request meets criteria for granting variance; no apparent hardship; Building Department: new plan omits variance on the west side; hardship should be addressed; Town Manager: concurs with comments of Mr. Frank and Mr. Moore.

Councilman McLendon moved approval of Special Exception No. 34-99 with Site Plan Review and Variance. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

New Business - Minor

5. VARIANCE NO. 51-99 - Scott & Nancy Sloane, 216 Bermuda Lane; located in the R-B Zoning District. To allow construction of a garage providing a 10' side yard setback in lieu of 12.5' required.

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

Director of Planning, Zoning & Building Robert Moore reported that staff had no objection to the variance request.

Councilman Shaw moved approval of Variance No. 51-99. The motion was seconded by Councilman McLendon.

Mr. Lindley Hoffman, 211 Bermuda Lane, directly north of the house of the applicant, commented that his swimming pool backed up to the proposed garage extension, and that he would like to be assured that there would be no increase in the height of the addition in the future.

Councilman Shaw amended his motion to approve Variance No. 51-99, contingent upon a deed restriction, indicating the fact that the applicant would not return for any further variance request in reference to the site, which would include the height, or any further infringement into the setback. The seconder of the motion accepted the amendments. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

6. VARIANCE NO. 52-99 - Lawrence Moens, 850 S. Ocean Blvd.; located in the R-A Zoning District. To allow roof modifications to a nonconforming (side yard) structure which will exceed the maximum 50% cubic volume allowed.

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

Director of Planning, Zoning & Building Robert Moore reported that in order for the applicant to complete renovations, the roof would need to be removed, which triggered the 50% rule. Staff had no objection, however, requested that a condition of approval be that there be resolution of a Code Enforcement Board order before the variance requests could be implemented.

Councilman Shaw moved approval of Variance No. 52-99, with the condition that the Code Enforcement Board issues be resolved before the variance requests could be implemented. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

Attorney Maura Ziska, on behalf of the applicant, commented that any code compliance issues would be resolved before a building permit would be issued, and the applicant had agreed to resolve them.

7. SITE PLAN REVIEW NO. 19-99 - Josh Mendelsohn, 215 Coral Lane; located in the R-B Zoning District. To allow construction of single family dwelling on a 90' wide lot in lieu of 100' required.

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

Director of Planning, Zoning & Building Robert Moore reported that there was one condition placed by the Public Works Department regarding hedging in the rear easement.

Attorney Jim Paine, on behalf of the applicant, commented that the applicant was aware of the condition and was in agreement.

Councilman McDonald moved approval of Site Plan Review No. 19-99, with the condition regarding hedging in the rear

easement. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

New Business - Major

8. VARIANCE NO. 46-99 - Gaylean Development Inc., 212 Via Palma; located in the R-A Zoning District. To allow construction of a gazebo providing a 10' street rear yard setback in lieu of 35' required.

Ex-parte communication was declared by Mayor Ilyinsky through the office of the Building Department.

Attorney Joel Koeppel addressed the Town Council, on behalf of the applicant, referring to an architectural drawing of the property in question, and noting that the property was bordered by three streets and the intracoastal waterway. He explained that the gazebo was proposed to be placed 10' west of the main structure, and that the hardship was that the applicant did not have access to the property, and there should not be a front set back requirement. The applicant had agreed to construct a fence along the property line, and another set of hedges that would run on the north of the fencing to obscure any view or interference with any of the adjoining property owners on Algoma Road.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: request seems reasonable; Building Department: unusual property conditions and double frontage lot exists; Town Manager: request additional information and justification for variance.

After discussion, Councilman Shaw moved approval of Variance No. 46-99, with the conditions that the gazebo be moved so that the north side of the gazebo lines up with the south side of the main residence, that the width of the gazebo would not exceed 20', and that the hedge to be installed be maintained at 15'; the hardship was that the property was bordered by three streets. The motion was seconded by Councilman McLendon.

Zoning Administrator Castro expressed concern regarding construction vehicle access to the proposed gazebo, and wanted to ensure that they would exit on Via Palma.

Councilman Shaw amended his motion to approve Variance No. 46-99, with the conditions that the gazebo be moved so that the north side of the gazebo lines up with the south side of the main residence, that the width of the gazebo would not exceed 20', that the hedge to be installed be maintained at 15;, and that construction vehicles exit on Via Palma only; the hardship was that the property was bordered by three streets. The seconder of the motion, Councilman McLendon, accepted the motion as amended. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

9. VARIANCE NO. 47-99 - Malachi Flanagan, 1287 N. Ocean Way; located in the R-B Zoning District. To allow construction of a trellis providing a 13' street side yard setback in lieu of 25' required.

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

Architect Ames Bennett addressed the Town Council, stating that the property in question was very narrow, 89' wide, with enough square footage to be in the R-B District as a bonafide property. The owner wished to install a trellis on the south side, as during the winter the sun was in the south, and the owner could then sit outside and enjoy the weather safely.

Director of Planning, Zoning & Building Robert Moore commented that staff did not see a hardship.

Mayor Ilyinsky commented that he did not believe the trellis would alter the way of life of the neighboring property owners, and that it would be harmless.

Councilman McLendon moved approval of Variance No. 47-99, with the hardship being the width of the lot, with a deed restriction that the hedge on the street remain in place at 8' and be allowed to grow to 10', and that the trellis not be roofed.. President Smith passed the gavel to second the motion. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

10. VARIANCE NO. 48-99 - Robert Crompton, 311 Pendleton Lane; located in the R-B Zoning District. To allow expansion of a non-conforming residence by the construction of a two-story addition providing a 10' side yard setback in lieu of 15' required and providing a building height of 23'10" in lieu of 22' maximum allowed.

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

President Smith declared a conflict of interest, as she was the affected neighbor.

Town Attorney Randolph explained that the applicant would need a 3/5 vote in order to pass, and noted that the applicant would have the opportunity to defer until there were more than three Town Council members voting.

Attorney Frank Lynch responded that he would go ahead with having Variance No. 48-99 heard today. He explained that Mr. Crompton was seeking to add a two-story addition to an existing single family residence, which would be approximately 1,000 sq. ft. Two variances would be required, a 10'side yard setback in lieu of 15' required, with the hardship being that the lot was only 95' wide; the height variance was being requested so that the existing elevation of the residence could be matched, which was the hardship.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: can be designed in a manner which either conforms to Code or had less of an impact; Building Department: lot is narrow; hardship must be addressed.

Attorney Lynch commented that the windows facing the neighbor to the north would be eliminated.

Councilman Shaw moved deferral of Variance No. 48-99, in order to give the applicant the opportunity to work on the design of the structure. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/0, as President Smith had declared a conflict of interest, and President Pro-Tem Wyett had left the meeting.

11. <u>VARIANCE NO. 49-99</u> - Claude & Melinda Trucks, 171 Dunbar Rd.; located in the R-B Zoning District. To allow construction of a swimming pool providing a 4' side yard setback, in lieu of 10' required. To allow the increase in height of an open terrace structure which currently provides a 4' side yard setback in lieu of 12.5' required.

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

Attorney James Brindell, on behalf of the applicant, stated that the property in question was situated on the corner of North County Road and Dunbar Road; in addition, the house itself was situated much to the eastern side of the property and not parallel to the property line; an alley area existed behind the house; consequently, the rear of the house was not useful as a family recreation space; North County Road was a very busy street; and the west was also not conducive space for family recreation space. The only space left for the proposed construction was a fairly small area on the east side of the house. Mr. Brindell displayed photos of the area, explaining that the request for a side yard setback would be 5', instead of 4'; in order to make the pool wider (from 8' to 13') a 6' setback was needed, rather than the 4' requested, with the Code requiring 10'.

Architect Jacquie Albarran, SKA Architects, explained that the existing structure contained a flat roof, and the plan was to use the same structure with a gabled roof, so that the space would be opened up in the center; the pool was 8' wide, and it was proposed to make it 12' x 24'.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: roof change is an aesthetic improvement; no hardship on pool location; Building Department: no hardship on pool; no objection to roof; Town Manager: concurs with above comments.

Zoning Administrator Castro asked how the new roof would affect the neighboring property, as there was a letter of objection from the adjacent neighbor?

Ms. Albarran replied that the hedging was very high, and that there was landscaping in place.
Attorney Brindell commented that he had not seen the letter, and that it had not been in the file when he reviewed it.

Councilman Shaw moved approval of the portion of the variance requesting the change in the roof line on the existing structure, with the hardship that the structure was already existing, and the request would result in an aesthetic improvement. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

Councilman Shaw then moved deferral of the variance request regarding the pool, in order to give the applicant time to consider alternatives, and meet with the objecting neighbor. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President pro-Tem Wyett had left the meeting.

Councilman Shaw proposed that the pool be moved to the northeast corner of the lot, which would not require a variance.

12. <u>VARIANCE NO. 50-99</u> - Jarrett & Judith Kling, 146 Seaspray Ave.; located in the R-B Zoning District. To allow construction of a one-story addition providing a 10.5' side yard setback in lieu of 15' required. To allow a second story addition providing a 27' front yard setback in lieu of 30' required.

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the house was a small house of 2,278 sq. ft., and the proposal was to add 420 sq. ft., for a family room and an additional bathroom area on the second floor. He displayed photographs of the area in question.

Architect Jacquie Albarran pointed out the proposed construction plans on architectural drawings.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: can be designed in a manner which conforms to Code; does not meet criteria for granting variances; Building Department: no objection to side yard; narrow lot; no hardship, however, in front yard with a second story addition over that entry; Town Manager: concurs with above comments.

Councilman Shaw moved approval of Variance No. 50-99, on the basis that the hardship in the front was that it was a fill in addition on the second floor, and in the rear it was an extension lining up with the existing structure. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

13. VARIANCE NO. 54-99 - Sunset Ave. Partners, LLC, 152 & 160 Sunset Ave.; located in the R-B Zoning District. To allow construction of a two-family dwelling, with garages less than 50% below grade (therefore not meeting the definition of basement), with two habitable floors above.

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

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that some time ago the Town Council had amended the definition of "basement" some time ago, and because of that amendment the applicant was compelled to have at least 50% of the garage, or any basement, below the grade of the land. The result would be an extra mass of the building, that would be exposed by following the current Code. The applicant was proposing an alternative, where there would be a minor, 2' portion of the building below grade, no dead space above the garage, and therefore a much less massive structure; the hardship was the current Code requirement.

Director of Planning, Zoning & Building Robert Moore commented that the garage floor could be lowered to meet the Code requirements, however, it would increase the mass. He explained that the request was an unusual request; staff comments had included the Town Manager asking for additional justification for the variance. Staff had no objection, since the mass would not be increased.

Councilman McLendon moved approval of Variance No. 54-99. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

14. SPECIAL EXCEPTION NO. 33-99 - Luca Inc., 218 Worth Ave.; located in the C-WA Zoning District. To allow a 2,525 sq. ft. retail occupancy (including a 1,309 sq. ft. accessory use on the second floor) in lieu of 2,000 sq. ft. maximum allowed.

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the space had been previously occupied and approved for use on both floors, and there was now a new occupant who wished to use the space in the same fashion. He noted that the Town serving documentation would be forthcoming at the end of the first year.

Director of Planning, Zoning & Building Robert Moore noted that the conditions originally placed on the occupant of the space had been removed, and that the Town serving documentation would be needed.

Councilman McLendon moved approval of Special Exception No. 33-99, with the conditions of the prior Special Exception being maintained. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

15. SPECIAL EXCEPTION NO. 36-99 with Site Plan Review & Variance - Palm Beach Country Club, 760 N. Ocean Blvd.; located in the R-A Zoning District. To allow renovation and expansion of the main clubhouse; lot exceeds four times the minimum lot size. To allow additions to be built at a point of measurement variance of 3.56' (17.06' NGVD in lieu of 13.5' NGVD required) for the measurement of the maximum building height and maximum overall building height.

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

Attorney Jacquie Miller, on behalf of the applicant, addressed the Town Council, stating that there would be extensive interior renovation, and the Country Club wished to enclose an open patio, and maintain the existing roof line, which would require a higher beam and roof level, in order to match the existing roof line.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: no objection to the roof variance; Town serving documentation had been submitted.

Councilman Shaw moved approval of Special Exception No. 36-99, with the hardship being the lay of the land, and that it was a continuation of the existing building line. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

16. SPECIAL EXCEPTION NO. 37-99 with Site Plan Review - Dialostar S.A., 247 Jungle Rd.; located in the R-A Zoning District. To allow construction of a residence on a lot providing 100' width in lieu of 125' required, and providing 18,125 sq.ft. total area in lieu of 20,000 sq.ft. required.

Ex-parte communication was declared by Mayor Ilyinsky, with Mr. Miller, who lived across the street from 247 Jungle Rd.; by Councilman Shaw with Attorney Broberg; by Councilman McLendon with a phone call from Attorney Broberg.

Attorney Peter Broberg, on behalf of the applicant, addressed the Town Council, stating that the lot was undersized, and that if the lot was a platted lot, the request would have been merely a Site Plan Review request.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: there was no objection from staff.

Councilman Shaw moved approval of Special Exception No. 37-99. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

Town Attorney Randolph clarified that the Town Council was merely approving the site of the house, and the Architectural Commission would deal with the square footage.

17. SPECIAL EXCEPTION NO. 38-99 - Three Sisters of Palm Beach, Inc., commonly known as C. Orrico, 336 S. County Rd; located in the C-TS Zoning District. To allow retail occupancy expansion from 3,999 sq.ft. to 5,105 sq.ft. in lieu of 2,000 sq.ft. maximum allowed.

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

Attorney Greg Kino addressed the Town Council, stating that C. Orrico had been tremendously successful in its current location, and wished to expand 1,100 sq. ft., which had previously been occupied by an office tenant. The Town-serving documentation had been provided.

Director of Planning, Zoning & Building Robert Moore reported that staff had no objections; fire sprinkler expansion would be required in the new area.

Councilman Shaw moved approval of Special Exception 38-99. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

18. FLOOD VARIANCE NO. 3-99 - Yaakov Elkon, 251 Jungle Rd.; located in the R-A Zoning District. To allow construction of improvements which exceed 50% of the value of the house with a 7.3' NGVD base floor elevation in lieu of the 7.5' minimum required by Town Code.

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

Attorney Maura Ziska, on behalf of the applicant, stated that the current residence had a finished floor of 7.35', and the hardship was that the owner purchased the house and was renovating it; if the owner had to raise the floors it would involve replacing all of the doors and it would be very costly and burdensome. There had been no previous flooding problems.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Town Engineer: the property should be brought up to current regulations regarding landscaping, drainage easement, and infrastructure improvements.

Attorney Ziska replied that she had discussed the matter with Town Engineer Bowser, and has agreed that the applicant would meet all current drainage requirements, and would enter into a Hold Harmless Agreement with the Town.

Councilman Shaw moved approval of Flood Variance No. 3-99, with the conditions that the applicant meet all drainage requirements, and enter into a Hold Harmless Agreement with the Town. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

D. OTHER

1. Request by Georgette Klinger, Inc., at 100 Worth Avenue, for an Extension of Time to Complete its Interior Finish Work During December 18, 1999, through January 3, 2000 (Excluding the Christmas and New Year Holidays)

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

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, stating that the request for extension of time was being made because the space leased needed interior renovations, which had been ongoing. They were approximately 30-40 days from completion, with mainly finish work being needed, such as carpeting, electric plates, etc.; the work would not be noisy or dirty, and would be totally contained within the structure. He noted that both Martin Schwalberg and John Moss were in support of the time extension request, and that it was extremely important for the business to be opened in order to recuperate the clientele that they had been unable to serve during the time they had been closed.

Councilman McDonald moved approval of the request by Georgette Klinger, Inc., at 100 Worth Avenue, for an extension of time to complete interior finish work during December 18, 1999, through January 3, 2000. The motion was seconded by Councilman Shaw.

Director of Planning, Zoning & Building Robert Moore commented that Code required that all work on Worth Avenue cease on November 15, 1999, and in an effort to assist the applicant, he had made the decision to allow them to continue working until December 18, 1999, in order to allow them to take advantage of the same time frame that was extended to Neiman Marcus. The applicant was now appealing for a time extension in order to compete the project in a timely fashion; staff had no objection, and believed that specific dates and hours should be part of any approval, as well as a date of completion.

Attorney Kolins indicated that the work could be completed by January 31, 2000.

In response to the query of Councilman Shaw, Mr. Dave Gruber, representative of the owner, commented that the exterior doors had not yet been installed in the store front.

Councilman McDonald amended his motion to approve the request by Georgette Klinger, Inc., for an extension of time to complete interior finish work, to allow work to continue from 8:00 a.m. to 8:00 p.m., until January 15, 2000, excluding Sundays, holidays, and the day before Christmas and the day before New Year's; exterior doors would be installed so that the entire green plywood construction structure would be removed by Christmas, and no construction vehicles would be parked on Worth Avenue. Councilman Shaw, the seconder of the motion accepted the amendments to the motion. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting at 4:20 p.m.

2. Status Report of the Mitigation Plan Outlined in the Town's Letter dated November 25, 1998, for FH of Palm Beach, Inc. commonly known as C-15 and C-16 of the Palm Beach Hotel, 251 Sunrise Avenue *(Deferred from April 13, June 8, and August 10, 1999)*

Mr. Allen Heise, representing 251 Restaurant, reported that construction had been completed on a sound containment room on the northwest corner of the property, and it had been tested by a sound engineer and Town officials. He requested that the demolition order be lifted, that the restaurant be allowed to operate under the original use, and that the police officers scheduled three nights per week, twelve months per year, be reduced from May 1st to November 1st to Saturday nights only on a trial basis, or at any other time that there would be a larger event scheduled. He explained that the crowd was very seasonal and the restaurant was not very busy during the summer.

Director of Planning, Zoning & Building Robert Moore commented that one of the conditions of approval be that the sound engineer used by Mr. Heise have the plan reviewed by a sound engineer named by one of the neighbors, Mrs. Beane. That had occurred, the permits had been issued, and the building permit had been issued.

Chief Code Compliance Officer Brian House commented that he had spoken to the sound engineer, and had gone to the site this morning; the speakers were turned on to the highest degree, and there was no noise heard or felt outside of the building.

Assistant Police Chief Reiter commented that the most recent complaint had been received on December 4, 1999, and 9 noise complaints had been investigated during the month of November, all of which had resulted in the officer not detecting any noise in violation of any ordinance. He stated that he understood from the officers scheduled at 251 that there was no need for an officer during week nights, however, there were some occasions when week night evenings could be very busy, and he suggested that holiday weekends be considered if any change was made in the placement of officers.

Fire-Rescue Chief Vincent Elmore reported that last season had been much better than the previous season with overcrowding, and so far this year there had not been an overcrowding problem.

After discussion concerning other construction projects in the area, such as the major roof repairs of the Palm Beach Hotel, and the effect on Park Avenue, Mr. Moore agreed that he would provide a memorandum to the Town Council advising them when the roofing project would be finished, as well as other construction projects in the area.

After further discussion, Councilman McDonald moved approval of the removal of the restrictions imposed on 251, pending good behavior, and to leave the police officer situation to the discretion of the Police Department. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as President Pro-Tem Wyett had left the meeting.

Town Attorney Randolph advised that Attorney Royce had requested on behalf of his clients that the sign prohibiting commercial traffic from Park Avenue be removed because he felt that it was not appropriate to prohibit commercial traffic serving commercial establishments when commercial traffic could be used for private residences on Park Avenue. He noted that it had been indicated a year ago that the Town would consider removing the sign, and Mr. Royce was requesting that some action be taken. Mr. Randolph noted that a petition had been sent to the Police Chief from the residents of Park Avenue asking that Park Avenue not be used for commercial deliveries which should be made on the commercially zoned Sunrise Avenue.

After discussion, it was determined that Town Attorney Randolph would review the commercial delivery parking sign, confirm specific times that could be noted on the sign, and report back to the Town Council at the January Town Council Meeting.

XVIII. ANY OTHER MATTERS

3. Discussion of Longevity Pay for Town Manager

After discussion, Councilman Shaw moved approval of authorizing the Town Manager to accept longevity, extraordinary longevity, and everything regarding payroll that he was entitled to on an annual basis. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0 as President Pro-Tem Wyett had left the meeting.

XIX. ADJOURNMENT

The meeting was adjourned at 7:00 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk

Variance 48-99

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

LAST NAME—FIRST NAME—MIDDLE NAME Smith, Lesly S.	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Town Council
MAILING ADDRESS 300 Chapel Hill Road	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY: Palm Beach COUNTY: Palm Beach	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED 12/14/99	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

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

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

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

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

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

ELECTED OFFICERS:

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

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

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

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

APPOINTED OFFICERS:

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

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

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

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

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

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Lesly Smith, hereby disclose that on December 14, 1999:

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

____ inured to my special private gain or loss;

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

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

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

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

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

this variance could negatively impact on the value of my real estate.

Dec. 14, 1999

Date Filed

Lesly S. Smith

Signature

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