

MINUTES OF THE TOWN COUNCIL MEETING HELD ON DECEMBER 8, 1998

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order in the Town Council Chambers by President Lesly Smith at 9:30 A.M. on December 8, 1998. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Samuel McLendon, Councilmen Jack McDonald, Leslie Shaw, and Allen Wyett. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Chief Code Compliance Officer Brian House, Facilities Maintenance Division Manager Joseph Ugi, Finance Director James Demming, Fire-Rescue Chief Ken Elmore, Personnel Analyst Carla Kneipp, Planning, Zoning & Building Director Robert Moore, Planning, Zoning & Building Administrator Paul Castro, Planning, Zoning & Building Planner/Projects Coordinator Tim Frank, Police Chief Frank Croft, Public Works Director Al Dusey, Recreation Director Russell Bitzer, Risk Coordinator Karen Temme, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Rabbi Lenoid Feldman of Temple Emanu-El gave the invocation, and President Smith led the Pledge of Allegiance.

III. PRESENTATIONS

A. Recognition of Jay H. Rossbach, Jr., Golf Commission - From 1995 to 1998

The Mayor recognized Mr. Rossback for his years of service and presented him with a plaque.

B. Recognition of Max Schorr, Golf Commission - From 1994 to 1998

The Mayor recognized Mr. Schorr for his years of service and presented him with a plaque.

C. Recognition of Arlene Bruck-Thurman, Golf Commission - From 1996 to 1998

Ms. Bruck-Thurman did not attend the meeting.

IV. COMMENTS OF THE MAYOR

The Mayor mentioned there were several drop-off points, including the Palm Beach Police Department, for items going to the relief effort for victims of Hurricane Mitch.

The Mayor expressed his best wishes to everyone during the holiday season.

The Mayor commented that the list of scheduled meetings attached to this meeting's agenda was too long, and there were too many meetings.

The Mayor commented on the recent poisoning of cats and dogs at the Palm Beach Inlet as reported in the Palm Beach Daily News. He said this was a deplorable act against defenseless animals, especially in a Town like Palm Beach, and the perpetrators should be punished.

V. APPROVAL OF THE AGENDA

Mrs. Smith announced the review of First Union Capital Management Group Investment Services will be on the agenda for the December 11th meeting of the Finance & Taxation Committee

The following changes were made to the agenda:

DEFER Item XVI.B.4, Page 4, Determination of Issues to be Addressed at the Special Town Council Meeting on April

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16, 1999, at 9:30 a.m. to Review the Town Manager's Performance and Long Range Goals - to the January 12, 1999, Town Council meeting.

President Pro-Tem McLendon moved approval of deferral of Item XVI.B.4 to the January 12, 1999, Town Council Meeting. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

WITHDRAW Item XIX.B.1., page 6, Variance No. 30-98 - Arthur Levine, 355 North Lake Way.

President Pro-Tem McLendon moved approval of the withdrawal of Item XIX.B.1. from the Agenda. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

ADD Item XVII.C.6., page 5, Discuss Ownership of Land and Effects on Palm Beach From the Lake Worth Redevelopment Plan.

Councilman Shaw moved approval of the addition of Item XVII.C.6., Discuss Ownership of Land and Effects on Palm Beach From the Lake Worth Redevelopment Plan, to the Agenda. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

ADD Item XVII.C.7., page 5, Discuss Procedure for Landmark Designation.

Councilman Shaw moved approval of the addition of Item XVII.C.7., Discuss Procedure for Landmark Designation, to the Agenda. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Tanya Pierce and representatives of the Sunset area merchants expressed their disapproval of the removal of the eight parking places to allow installation of a new turn signal. They said businesses were affected because customers could not park. Some of the spaces are now loading zones for trucks used to service Chuck and Harold's. *(Mr. Dusey agreed to review the situation, including the number of parking spaces that were removed. The Police Department will investigate the trucks that park in the loading zones.)*

Caroline Bradner, Eden Road, reported there is a great amount of waste, including medical waste, on the beaches in her neighborhood.

David Barton, Town resident, said the Town does not have a satisfactory long-range planning Commission. He maintained that the Comprehensive Plan is farmed out to consultants, and the zoning is done out of context. Mr. Barton said the Elected Officials should do the initial part of a long-range plan, because it has to transcend any elected official's term. He urged formation of a long-range planning commission.

Mr. Barton mentioned that two members of the the Architectural Commission at its meeting held on November 18, 1998, said that the Commission could not exercise its Section 5-387 duties, dealing with scale and size of the house, because two members of the Town Council told them to "back off." He said the Architectural Commission was the only hope the Town has.

Director of Planning, Zoning & Building Robert Moore commented that he believed Mr. Barton had misinterpreted two statements by two members of the Architectural Commission that they had reviewed an alternative plan, however, he was not aware of any statements made by the Architectural Commission members that they had been asked to "back off" on any issue. He indicated that he would review the matter with Mr. Barton.

President Smith noted that the project Mr. Barton was referring to was not on the Agenda for discussion today, and Mr. Moore would meet with Mr. Barton to discuss the matter.

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF NOVEMBER 10, 1998

VIII. APPROVAL OF CHECK REGISTERS FOR NOVEMBER 1998

IX. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF NOVEMBER 20, 1998

X. LICENSES AND PERMITS

A. Charitable Solicitations

1. Intracoastal Health Foundation, Inc.; No. 35-99
2. Palm Beach Public School; No. 37-99
3. Palm Beach Day School; No. 130-99
4. Women's American ORT - Palm Beach Chapter; No. 167-99
5. The Salvation Army; No. 197-99
6. Bascom Palmer Eye Institute - Ann Bates Leach Eye Hospital; No. 213-99
7. Alzheimer's Association; No. 256-99
8. American Associates Ben Gurion University of the Negev; No. 277-99
9. The Jewish Arts Foundation; No. 299-99
10. Home Safe of Palm Beach County, Inc.; No. 403-99
11. American Council of the Blind; No. 452-99

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

12. Albert Einstein College of Medicine of Yeshiva University; No. 10-99

XI. CONTRACT AND AGREEMENT RENEWALS

- A. Authorization for Town Manager to Execute Agreement Between the Town and the American Heart Association Authorizing the Fire-Rescue Department to Conduct Basic Life Support Courses per Memorandum dated November 9, 1998, from Fire-Rescue Chief Elmore

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 23, 1998, from Risk Coordinator Temme

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

REGULAR AGENDA

XIII. LICENSES AND PERMITS

D. Charitable Solicitations

1. The Dreher Park Zoo/Zoological Society of the Palm Beaches; No. 233-99

Town Clerk Pollitt explained that the Charitable Solicitation from the Dreher Park Zoo/Zoological Society of the Palm Beaches, No. 233-99 was on the Regular Agenda because the event had already taken place and the application had been filed late.

Ms. Elizabeth Kehoe from Dreher Park addressed the Town Council, stating that the permit had been filed late, as she had not been familiar with the permitting process.

2. Palm Beach Par 3; No. 227-99

Director of Recreation Russell Bitzer commented that the 16th annual Golf Tournament was planned for Saturday, February 6th, and the beneficiaries had been approved to be the Rehabilitation Center for Children and Adults, and the Palm Beach Recreation Department.

President Pro-Tem McLendon expressed concern regarding the monies to be distributed to the Recreation Department and whether the monies would go toward the operating expenses of the Golf Course, as opposed to other items.

Councilman Shaw moved approval of the Golf Tournament event, with the recommended beneficiaries of the proceeds.

The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

XIV. PUBLIC HEARINGS

A. Landmark Designation of 140 Seaspray Avenue; Resolution No. 49-98

Planner/Projects Coordinator Tim Frank verified proof of publication, stating that staff had reviewed the project and found that it met the following criteria for designation: Criterion A: exemplifies or reflects the broad cultural, political, economic, or social history of the nation, state, county or town. Criterion C: embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship. It was also representative of the notable work of a master builder, designer, or architect, whose individual ability has been recognized or who influenced his age.

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

Historical Preservation Consultant Jane Day reported that the house was constructed of hollow clay tiles, covered with stucco, covered with a barrel tiled roof, with some very lovely details. This house was built and designed by E.B. Walton, Sr., who was a civil engineer and a graduate of Lehigh University and did some of the early design work for his firm before he went into other projects with the more well known architects in Town. A good biography of Mr. Walton had been provided by the Walton family.

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

Councilman McDonald moved approval of Resolution 49-98. The motion was seconded by Councilman Shaw.

Town Attorney Randolph read Resolution 49-98 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 16, ARTICLE 3, 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, KNOWN AS CHAPTER 16, ARTICLE 3, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

On roll call the motion carried unanimously.

E. De-designation of Historic/Specimen Sausage Tree and Designation of Two Replacement Historic/Specimen Trees Located at 333 Eden Road; Resolution No. 48-98

Public Works Director Al Dusey reported that a request had been received from the owner of the property at 333 Eden Road, Paul Whitman, through his attorney Ron Kolins, to move the specimen Sausage Tree. A horticulturist had been asked to evaluate the tree, and found the tree to be in decline. The tree would have a 50/50 chance of survival if moved. As an alternative, the consultant had been asked to look at the property for other trees of specimen quality, and he had found two. There were two other sausage trees in Town, which would be pursued for designation this season, and the recommendation was for removal of the sausage tree at 333 Eden Road, and designation of a Traveler's Tree and a Clustered Fishtail Palm on the property as substitutes.

Ms. Mimi Lambert addressed the Town Council, objecting to the de-designation of the historic/specimen Sausage Tree, displaying photographs of the tree in question.

Rinehart Reindler, 315 Eden Road, objected to the de-designation of the historic/specimen Sausage Tree, which he said fruited and blossomed each year. Claudia Reindler also objected to the designation.

Facilities Maintenance Division Manager Joseph Ugi reported that there was a Sausage Tree at the Four Arts Gardens, at 141 South County Road, and at 455 N. County Road that were recommended to be added to the historic/specimen tree list.

Mrs. Carol Olsner from the Garden Club objected to the de-designation of the tree.

Councilman Shaw asked why there was such a discrepancy between staff and the community?

Mr. Dusey replied that the historic/specimen trees were inspected annually, and property owners were sent letters stating the conditions of the trees and any suggested maintenance. In the very near future, property owners would be contacted asking if they wished the Town to maintain the trees at the cost of the Town.

Councilman Shaw commented that it had been reported that the tree had been neglected for years, and he indicated that he believed it was the responsibility of the Town to resolve the issue of neglect in these cases.

Mr. Dusey commented that the existing Ordinance did not allow the Town to enter private property and maintain trees.

Attorney Ron Kolins, representing Whitman Builders, clarified that his client had only recently purchased the property, and any neglect that had caused problems with the tree had not been caused by his client. If the Town procedures in dealing with these issues were lacking then that was not the fault of his client, nor should it influence the decision made today. He maintained that the tree had been neglected, and was in great decline. It had been proposed by Town staff that the tree was no longer of specimen quality and that two other trees on the property could more or less be exchanged for that tree.

Facilities Maintenance Division Manager Joseph Ugi stated that the tree had declined and had lost its value as a specimen tree, but that did not necessarily mean that it would die in the next six months or year. If the tree was moved there was a 50% chance that it would not survive.

President Pro-Tem McLendon asked if the owner had been put on notice during the decline of the tree?

Mr. Ugi responded affirmatively; the proper maintenance had been suggested, however, the resident could not be forced to do the maintenance.

Councilman Shaw moved that the de-designation of the tree be denied, as there should be an attempt to save the tree, and bring it back to specimen quality. The motion was seconded by Councilman McDonald.

Attorney Kolins commented that it was unfair to his client to have the case judged on hypothetical facts, such as that the tree was perfectly healthy, and that the facts must be looked at as they existed.

Councilman McDonald suggested that the procedure for evaluating specimen trees may need modification.

Mr. Dusey replied that it had been considered not necessary in this case, however, from now on the requests would be brought before the Town Council with studies provided as to likelihood of survival. He indicated that a list of trees in decline would be put together.

On roll call the motion carried unanimously.

XV. COMMITTEE REPORTS

- A. Report of the Ordinances, Rules, and Standards Committee of November 17, 1998
(See Agenda Items XVII.A.1., 2., and 3.)

REPORT OF THE ORDINANCES, RULES, AND STANDARDS COMMITTEE MEETING HELD ON NOVEMBER 17, 1998

I. CALL TO ORDER AND ROLL CALL

A meeting of the Ordinances, Rules, and Standards Committee was called to order by Chairman Sam McLendon at 9:08 a.m. on Tuesday, November 17, 1998, in the Town Council Chambers. On roll call, Chairman McLendon and Committee Member Jack McDonald were found to be in attendance. Other Elected Officials attending the meeting were: Mayor Paul Ilyinsky; Councilman Leslie Shaw; and Councilman Allen Wyatt. Also attending for all or part of the meeting were: Town Manager Robert Doney; Assistant to the Town Manager David Jakubiak; Police Chief Frank Croft; Attorney John Randolph; Public Works Director Al Dusey; Chief Code Enforcement Officer Brian House; Director of Planning, Zoning, and Building Robert Moore; Zoning Administrator Paul Castro; Recreation Director Russell Bitzer; and Deputy Town Clerk Susan Eichhorn.

II. APPROVAL OF AGENDA

The agenda was approved as printed.

III. NEWSRACK ORDINANCE NO. 19-98 AND REGULATIONS OF NEWSRACK LOCATIONS (Additional backup materials to be provided from John C. Randolph.)

Mr. Jakubiak reported that Town staff met on September 24, 1998, and also met with members of the press on September 22, 1998. He said that representatives from the USA Today, the Palm Beach Post and the Palm Beach Daily News attended the September 22nd meeting. Mr. Jakubiak said all of the locations were discussed and, Attorney Randolph prepared a draft ordinance.

Attorney Randolph said he thought the best approach to an ordinance would be to designate specific sites and indicate what could be installed at those specific sites. He said some of the existing sites were deleted in the proposed ordinance, because they were duplicitous. Mr. Randolph referred to his letter dated November 9th with the attached fifteen page draft ordinance and reported an attempt was made in the ordinance to indicate what types of modules, newsracks, or enclosures would be acceptable in certain locations.

Mr. McDonald suggested a photographic board be made for each location to allow future tracking as changes occur for each particular location. These boards would also be available for the Mayor and Town Council as part of any discussion regarding newsracks or enclosures.

After discussing the specific sections of the draft ordinance, **THE COMMITTEE RECOMMENDED THAT ITEM (5) ON PAGE 11 OF THE DRAFT ORDINANCE BE AMENDED TO ELABORATE ON THE PROCESS WHICH WOULD BE INVOLVED IN ADDING ADDITIONAL NEWSRACK LOCATIONS.**

After hearing from several members of the media who suggested the newspapers would work with the Town if a workshop was scheduled to go over details in the proposed ordinance, **THE COMMITTEE RECOMMENDED A STAFF WORKSHOP BE SET FOR WEDNESDAY, DECEMBER 2, 1998, FROM 10:00 A.M. TO 12 NOON WITH MEMBERS OF THE MEDIA TO DISCUSS THE TERMS OF THE PROPOSED ORDINANCE AND PROPOSE ANY ALTERNATIVES TO THE PROPOSED ORDINANCE.** Mr. Randolph said a report from the staff workshop will be presented at the December 8, 1998, Town Council meeting.

Item VI. was heard next.

IV. AMENDING NOISE ORDINANCE NO. 15-98

This item was heard after Item VI.

Mr. House explained that the noise ordinance was back before the Committee because the present ordinance may not be restrictive enough and some of the zones may not be properly delineated. He proposed changes in the zones listed in the ordinance from geographical zones to residential zones, residential zones abutting commercial districts, and commercial districts. The decibel levels would be adjusted relative to the different zones with a maximum of 51.0 decibel level at the property line of the offended party in all districts.

After discussion of the numerical decibel values for the new zones, **THE COMMITTEE RECOMMENDED THE CHANGES, AS OUTLINED BY CHIEF CODE COMPLIANCE OFFICER HOUSE, BE INCORPORATED INTO THE NOISE ORDINANCE AND THE COMMENTS OF COUNCILMAN WYETT REGARDING THE PROTECTION OF RESIDENTS WHO LIVE IN ZONES NEXT TO COMMERCIAL ESTABLISHMENTS BE CONSIDERED BY THE MAYOR AND TOWN COUNCIL.**

V. ORDINANCE NO. 18-98 TO MERGE THE GOLF COMMISSION AND SEAVIEW PARK COMMISSION

Mr. Bitzer reported that the Seaview Park Commission, although they did not vote to merge the two groups, did not have a problem with the merger as long as there was equal representation on the new commission. Mr. Bitzer said he prepared a draft ordinance for the Committee's consideration, and the Committee reviewed the draft ordinance with Mr. Bitzer.

Mr. McLendon and Mr. McDonald agreed that the new Commission should serve in an advisory capacity with department heads having the responsibility for running the departments.

After discussing the merger of the two commissions, **THE COMMITTEE RECOMMENDED APPROVAL OF THE RECOMMENDATION TO APPROVE THE MERGER OF THE TWO COMMISSIONS AS PRESENTED TO THE COMMITTEE AND SEND THE ISSUE TO THE TOWN COUNCIL.** Mr. McDonald stated his recommendation was based on the approval to merge expressed by the Golf Commission and the Recreation Department.

Mr. McDonald noted that the corrections to the draft ordinance prepared by Mr. Bitzer would change the word "Board" to "Commission" and delete the section regarding preference being given wherever possible to Commission members in cases of vacancies. The section relating to advisory functions would be moved to a different location in the text.

VI. STUDY THE ISSUE OF OFFICIAL BULKHEAD AND PIERHEAD LINES IN LAKE WORTH WITHIN THE TOWN OF PALM BEACH

This item was heard after item III.

Mr. Moore said the reason this issue was before the O.R.S. Committee was that during the review of Chapter Six of the Code of Ordinances, Bulkheads, Pierheads, and Groins in addition to the Zoning Ordinance, there was ambiguity regarding the question of which ordinance should control waivers or variances. Mr. Moore said it was his department's opinion that there is a waiver or variance provision on the Atlantic Ocean side and that same provision should be included on the Lake side. Some areas in Town have the Pierhead line and the Bulkhead line overlapping each other and becoming one and the same line. Piers beyond that line are not permissible. Currently, marginal docks - 5 to 6 feet in width - are allowed which would violate this particular ordinance.

used to reinforce existing sea walls, have been received by the Building Department. Mr. Moore requested some form of administrative relief be granted in lieu of these issues repeatedly coming before the Town Council.

Mr. Randolph said the question was if an applicant had the right to appear before the Town Council to build west of the pierhead line. He said if the Town wanted to provide an opportunity for a resident to build west of the pierhead line, specific criteria should be provided which would allow the construction in the event that certain site triangles are met, no vision blockage of neighboring property owners would occur, and the structure would not be in excess of ten feet from the wall, etc. He said specific guidelines would allow the issuance of a permit without a quasi judicial hearing being held. Mr. Randolph added that the other alternative would be to allow for the construction by special exception or variance. He said that special criteria would be necessary for the granting of a special exception or variance. Mr. Randolph said if the Lake Worth and Atlantic Ocean sides were consistent, changes should be made for both.

After discussing the issues pertaining to possible ordinance changes, **THE COMMITTEE RECOMMENDED THIS ISSUE BE TABLED UNTIL A TIME TO BE DETERMINED LATER.**

Mr. Moore requested the issue of batter piles be considered by the Committee. He suggested this issue could be handled administratively.

After discussion, **THE COMMITTEE RECOMMENDED, THAT SUBJECT TO ADMINISTRATIVE REVIEW, IF A REPAIR CANNOT BE MADE WITHOUT THE USE OF BATTER PILES, THAT AUTHORIZATION BE GRANTED TO THE DIRECTOR OF PUBLIC WORKS (THE TOWN ENGINEER) TO VERIFY THE INFORMATION AND GRANT ADMINISTRATIVE APPROVAL (IF APPLICABLE).**

VII. ANY OTHER MATTERS

There were none.

VIII. ADJOURNMENT

The Committee meeting was adjourned at 12:40 p.m.

SAM MCLENDON, CHAIRMAN

JACK MCDONALD, COMMITTEE MEMBER

The report of the Ordinances, Rules, and Standards Committee of November 17, 1998, was considered and discussed with Agenda items XVII.A.1., 2., and 3.

XVI. OLD BUSINESS

A. Appointments

1. Landmarks Preservation Commission - One Alternate Member Term to Expire March 2000 (*Deferred from November 10, 1998*)

Councilman Wyett noted that Mrs. Hoffman had been on the ballot list for several years, and asked if it was legal to have her on the same commission as her husband?

Town Attorney Randolph replied that he did not believe that spouses should serve on the same commission, however, there was nothing in the ordinance that would preclude it to date.

Councilman Wyett commented that, as a courtesy to Mrs. Hoffman, she should be told that she could apply to another commission so that she could be considered in full light.

After voting, the Town Council appointed Ann Blades as an alternate member of the Landmarks Preservation Commission.

B. Other

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

MINUTES OF THE TOWN COUNCIL MEETING HELD ON DECEMBER 8, 1998

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

Director of Public Works Al Dusey reported on the status of the Royal Park Bridge, noting two items of concern: 1) the clearance on the bridge structure of 21'-25'; 2) the provisions of the Noise Ordinance against pile driving in the winter season.

Mr. Joseph Borello of the Florida Department of Transportation (FDOT) addressed the Town Council, reporting that clarification of the clearance height of the bridge as to how and where it was measured must be made. He advised that Jim Phillips would clarify the requirements for the permanent structure.

Mr. Jim Phillips, with E. C. Driver & Associates, addressed the Town Council, stating that the Resolution that was passed established a bridge clearance of 21'-25'. He explained that when the Coast Guard and engineers spoke of clearances, they were not referring to clearance at the center of the bridge, but at the fender system. The existing bridge had a clearance at the fender system of approximately 10', with clearance at the center of the bridge approximately 16', and a channel width of 90'. The new requirements for the intracoastal waterway were for a minimum vertical clearance of 21' at the fender system, and for a horizontal clearance of 125'. Currently on the new bridge the clearance at the fender was 21', with the clearance in the center of the bridge being approximately 27.5'.

Polly Earl, President of the Preservation Foundation, addressed the Town Council, commenting that she hoped at some point the Town would remember the fact that the area where the bridge approach hit land on the Palm Beach Island side was a landmarked historic district on Royal Palm Way.

Mario Echagarrua of E. C. Driver & Associates, commented that plans for the permanent bridge were approximately 16 months away, and he explained the proposed grades on an exhibit.

Mr. Borello then addressed the noise ordinance and the prohibition on pile driving, requesting clarification as to relief from the ordinance as it related to construction of the temporary bridge from January, 1999, through May, 1999.

Mr. Phillips summarized that the contractors would be excluded from doing the type of activities required to construct a bridge from January to May. Current plans were to let the contract in January, with the first priority of work being to demolish part of the existing bridge. That would involve activities which would exceed the limits of the current Noise Ordinance. In order to have the bridge opened by November, and to have the existing bridge partially demolished within the first three months of the contract, there would be a need to have some relief from the Noise Ordinance. The Noise Ordinance also addressed particular working hours during the winter months from 9:00 A.M. to 5:30 P.M., and the normal working hours for a contractor would be typically from 7:00 A.M. to 5-6:00 P.M., thus longer hours would also be needed so that the job could be completed more quickly. Another issue to be addressed was for work during off normal hours, at night, as there were several activities that would need to be completed at night, so that lane closures could be done at night. The proposed approach to these issues was the preparation of a work plan, with specific variances from the Noise Ordinance requested from the Town Council, including working hours, periods of time of the year, identification of specific off normal hours when lane closures would be necessary.

After discussion, Councilman Wyett moved approval of relief from the Noise Ordinance during the season as follows:

- * Monday through Friday 8:30 a.m. to 6:30 p.m.
- * Saturday 9:00 a.m. to 5:00 p.m.
(No pile driving or jack hammer noise-no variation from the noise ordinance on Saturdays)
- * No Sundays or Holidays

The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

The next update on the bridge progress was scheduled to be heard either at the January or February, 1999, Town Council Meeting.

2. Water Issues:

a. Status Report by Town Attorney and Town Staff

Mr. Randolph reported that the Town's staff met with two members of the staff of the City of West Palm Beach to discuss negotiations regarding the water issue. The staffs did not resolve the issue and the matter was referred to the joint meetings of the Town Council and the West Palm Beach City Commission scheduled for Thursday, December 10th, beginning at 1:00 p.m. in the West Palm Beach City Commission chambers.

b. Request by Hartman & Associates for Additional Funding for Negotiations with City of West Palm Beach for Purchasing Water System

Public Works Director Al Dusey reported that staff was recommending approval of an additional authorization of \$5000 to be paid to Hartman & Associates, Inc. in order to continue with negotiations regarding the purchase of the water distribution system from the City of West Palm Beach.

the General Fund Contingency. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

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

Town Attorney Randolph requested that this item be deferred, as there had not been a meeting held with AT & T.

Councilman Wyett moved deferral to the January 12, 1999, Town Council Meeting. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

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

This item was deferred to the January 12, 1998, Town Council Meeting earlier in the day.

XVII. NEW BUSINESS

A. Ordinances (First Reading)

1. Ordinance No. 15-98 - Amendment to Noise Ordinance (*See Agenda Item XV.A.*)

President Pro-Tem McLendon, speaking as Chairman of the Ordinances, Rules & Standards (ORS) Committee reported that the Noise Ordinance had been discussed at the ORS Meeting held on November 17, 1998. Chief Code Compliance Officer Brian House had done further investigation into noise levels and the Ordinance had now been revised to provide criteria for three districts of the Town, with day and night maximum levels of decibels. The allowable level would decrease by 3 units for each 20' measured away from the property line of the originator of the noise, and at no time would the decibels be greater than 51 at the property line of the person who had complained of being disturbed. The ORS Committee recommended that Ordinance No. 15-98 be approved by the Town Council.

Mr. House reported that the decibel level decreased by 6 DBA every 20' in an open area. He had recommended 3 DBA every 20' in areas that were not open areas. The decibel of 51 at the property line of the person being disturbed actually lowered the allowable decibels all throughout the Town.

Councilman Wyett remarked that he received several complaints each week concerning noise from the 251 Restaurant, and asked if the recommendations of Mr. House would resolve that problem?

Mr. House replied that the allowable decibels were being lowered in that area by 4 DBA, and the ordinance was written so that everyone was protected.

Councilman Wyett moved approval of Ordinance 15-98 on first reading. The motion was seconded by Councilman Shaw.

Town Attorney Randolph pointed out that the language in Category 2 in the Ordinance should read "commercial districts abutting residential districts."

Police Chief Frank Croft requested a clearly designated demarcated district map of the Town from the Planning, Zoning & Building Department.

Director of Planning, Zoning & Building Robert Moore agreed that he would supply such maps to the Police Department.

Police Chief Croft clarified that noise level readings would be measured at the source and at the complainant's property line, and questioned the measurements suggested to be taken at 20' intervals.

Mr. House replied that perhaps that section could be revised before second reading to indicate that the 20' increments would be from the property line of the offending party to the property line of the party being disturbed.

Town Attorney Randolph agreed, adding that he also would like to clarify the property line of the person being disturbed; if, for example the complaint came from a condominium the measurement would be taken from the building common property line

Town Attorney Randolph clarified that the amendments to Ordinance 15-98 would be as follows:

- 1) Language in Category 2 would be revised to read "commercial districts abutting residential districts" rather than the reverse.
- 2) The 20' increments shall be measured and calculated at the property line of the party being disturbed.
- 3) In the case of a condominium the property line would be the limits of the common property.

Director of Planning, Building & Zoning Moore requested that staff be given additional time to review the Ordinance.

Councilman Wyett moved that the first reading of Ordinance 15-98 be done at the January 12, 1999, Town Council Meeting. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

***** The meeting was adjourned at 12:30 P.M. for the luncheon break*****

***** The meeting was reconvened at 2:00 P.M.*****

2. Ordinance No. 18-98 - Establishing a Recreation Commission (*See Agenda Item XV.A.*)

President Pro-Tem McLendon explained that the Golf Commission and Seaview Park Commission would be combined into one Recreation Commission, and Ordinance No. 18-98 provided for the merge of the two commissions into one advisory commission entitled "Recreation Commission," composed of seven members, with three alternate members, with a stipulation on membership being that there be four different areas of speciality or interest; two would be persons affiliated with or with a special interest in the youth program, two affiliated with or with a special interest in the tennis program, two affiliated with or with a special interest in the golf program, and one from the adult program of the Recreation Department. Mr. McLendon then moved adoption of Ordinance No. 18-98.

President Smith pointed out that there was a typographical error at the bottom of page 2 with the word "minutes."

Councilman Shaw commented on the language "to the extent feasible" which preceded the membership requirements, and suggested that it should not be to the extent feasible, but should be a mandated requirement, and in the event of a vacancy it should be filled under that criteria.

President Pro-Tem McLendon commented that he preferred that the "to the extent feasible" language remain.

President Smith agreed with Councilman Shaw, as she believed the language should be specific.

Councilman Wyett commented that it was difficult to read resumes and determine who would be better for golf, tennis, etc. He advised that he had heard from members of the Golf Commission who had recently reconsidered the suggestion that one commission be formed from the two former commissions, and suggested that a consensus be taken to determine if the Ordinance should be considered.

Recreation Director Russ Bitzer commented that an application had been prepared for anyone applying for membership on the Recreation Commission. The draft Ordinance had been prepared to facilitate the concern of the Seaview Park Commission as to representation from the different recreational areas.

Councilman Shaw moved approval of Ordinance 18-98 with the conditions that the language "to the extent feasible" on page 2 be changed to read "there shall be," and the language added regarding vacancies include the statement that they would be filled by a representative of that program. The motion was seconded by President Pro-Tem McLendon.

President Smith asked Mr. Bitzer to comment on the discussion of the Town Golf Tournament, and if it had been the idea that if one Recreation Commission was formed that the Town would appoint a Golf Benefit Committee?

Mr. Bitzer responded that currently staff organized and conducted the Golf Tournament with the assistance of the Golf Commission and other volunteers, and the established procedure of a volunteer committee would be continued.

President Smith commented that the Golf Commission had been very successful in raising money through the Golf Tournament.

Mr. Bitzer replied that anyone could join the volunteer committee that already existed, and that the Seaview Park Commission had also assisted in raising funds for the event.

Councilman Shaw commented that the people who had helped put the Golf Tournament together deserved more than a mere thank-you, as they had been extremely instrumental. He urged that caution be used in taking the position that there was a volunteer committee in place, and if they wanted to jump on board, so be it.

Mr. Bitzer agreed, stating that he had said that all along, however, he did not want the Town Council to have the perception that if there was no longer a Golf Commission that the tournament would not be continued.

President Smith clarified that anyone interested in joining the new Recreation Commission would submit their resumes with their qualifications under the categories created in the ordinance.

Mr. Bitzer agreed, commenting that once the Ordinance was approved on second reading the former two commissions would no longer exist.

On roll call the motion carried 4/1, with Councilman Wyett casting a dissenting vote, commenting that the Town would be best served with two commissions.

Town Attorney Randolph read Ordinance 18-98 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RESCINDING ARTICLE ONE AND ARTICLE TWO OF CHAPTER 14 IN THE TOWN CODE OF ORDINANCES RELATING TO PARKS AND RECREATION; THEREBY ELIMINATING SEAVIEW PARK COMMISSION AND THE GOLF COMMISSION, CREATING A NEW ARTICLE ONE, THEREBY CREATING A RECREATION ADVISORY COMMISSION, PROVIDING FOR APPOINTMENTS, PROVIDING FOR ALTERNATE MEMBERS, PROVIDING A REGISTERED VOTER REQUIREMENT, PROVIDING FOR A REMOVAL PROVISION, PROVIDING FOR TERMS, PROVIDING FOR RULES OF PROCEDURE, PROVIDING FOR ADVISORY CAPACITY, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT, PROVIDING FOR CODIFICATION, PROVIDING AN EFFECTIVE DATE.

President Smith asked if it had been determined how often the Recreation Advisory Commission would meet?

Mr. Bitzer responded that the Ordinance addressed the meeting schedule and election of officers.

President Smith noted that the former Commissions had not been meeting in June, July, and August, and all of the other Commissions did so. She commented that there was a mandatory attendance requirement that no more than three meetings per year could be missed, and she would like to see the new Commission meet without leaving a three month gap in the summer months, as the other Commissions were not permitted to take three months off, and it should not be an option for this Commission; they could meeting every month just as every other Commission did.

Councilman McDonald noted that Town Attorney Randolph had pointed out that ARCOM and Landmarks had decision making authority, whereas the new Commission was an advisory Commission.

Mr. Bitzer responded that he would mention the comments of the Town Council when the new Commission set its schedule, but he believed that every other month would be sufficient.

Councilman Wyett commented that he saw no need for the new commission to meet 12 times per year.

Mr. Bitzer commented that when the number of meetings had been increased at one time there had been problems with attendance, and several people had dropped. He suggested that it may be a good idea to leave it to the members to discuss.

Councilman Shaw expressed that it may be suitable to have nine meetings per year, with at least one month hiatus.

Councilman Wyett stated that he believed the suggestion of Mr. Bitzer to leave it to the members to discuss would be sufficient.

Councilman Shaw suggested that the two commissions should remain as they currently were through February or March in order to give them an opportunity to come to conclusions on any issues being considered.

Mr. Bitzer noted that the first reading would in December, the second reading would be in January, and time would be needed to accept applications for consideration by the Town Council; therefore, March would be an appropriate time to dissolve the former commissions.

President Smith clarified that the two commissions would be sitting through March, and then there would be plenty of time for them to resolve any issues. She stated that resumes could come in the meantime and the Town Council could be ready to do it in April.

Councilman Shaw moved that consideration of Ordinance No. 18-98 be re-opened, so that the effective date of the Ordinance could be changed to April 1, 1999. Councilman McDonald seconded the motion. On roll call the motion carried unanimously.

Councilman Shaw moved approval of Ordinance No. 18-98 on first reading, with the changes indicated in his original motion ("to the extent feasible" be changed to "there shall be", and language under vacancies be added stating that they would be filled by a representative of that program), and the change of the effective date of April 1, 1999. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

The last item addressed by the ORS Committee was the study of the issue of official bulkhead and pierhead lines in Lake Worth within the Town of Palm Beach.

Mr. McLendon reported that the Committee had discussed this, depending a great deal upon input from staff. After discussion, Director of Planning, Zoning & Building Moore asked that his staff be allowed additional study to review the matter further, however, that regarding the matter of the repairs to existing bulkheads or parallel docks the use of batter piles be permitted subject to administrative review. The Committee had recommended that staff be granted administrative approval of the use of batter piles, with further study of the issue tabled.

Mr. Moore explained that staff would work with Town Attorney Randolph to set up criteria for waivers on the intracoastal side for pierhead and bulkhead lines.

President Pro-Tem McLendon moved approval of the recommendation of the ORS Committee. The motion was seconded by

Councilman Shaw. On roll call the motion carried unanimously.

3. Ordinance No. 19-98 - Amendment to Newsrack Ordinance (*See Agenda Item XV.A.*)

President Pro-Tem McLendon reported that a draft ordinance had been prepared, however, he did not recommend it be heard for first reading today, as further input from the Town Council was desired. It now seemed that every single location for a newsrack would have to be custom designed. The preliminary draft ordinance did that by location. Both modular and lattice type enclosures were being considered. Staff had prepared cost estimates of different types of units, amounting to approximately \$56,000. Mr. McLendon suggested that each council person give an opinion on the enclosures and modular units.

Councilman McDonald commented that he had already provided substantial input regarding the ordinance as a member of the ORS Committee.

Councilman Shaw commented that he preferred a modular system, as the lattice work could always be put around the exterior of a modular. He suggested going forward on first reading, with any revisions made later, as he did not want any further delays. He also suggested that the specific locations be included on a separate schedule, and that the ordinance outline the fact that there would be newsracks in districts or areas and not get into the specifics of exact locations.

Mayor Ilyinsky commented that he preferred the modular systems, and noted that a letter had been received from a resident about how slowly the process was going.

Councilman Wyett agreed with Councilman Shaw and Mayor Ilyinsky, and asked how a newspaper could be added to a unit?

Town Attorney Randolph replied that the Ordinance had a provision for adding newsracks through coming to the Town Council and having a hearing to determine whether there was a need for it. He explained that the Ordinance drafted had resulted from the ORS Committee Meeting. Subsequent to that meeting there had been a meeting held with representatives of the media and the vendors, and the unanimous consensus was that the Town ought to have a permit fee for each of the newsracks, which he suggested be added to the Ordinance. The subject regarding modular versus enclosure units was one that needed to be tempered by the thoughts of those who were in attendance at the meeting. The attorney representing the paid publications indicated that they would fight an ordinance that prescribed *only* modular units. The way the Ordinance was currently drafted was with enclosures in some places and modular units in areas where public safety indicated they should be placed. Mr. Randolph commented that there were some non-paid publications that felt it was unfair to allow the paid publications to go within enclosures, and require non-paid/free publications to go within modular units that they had to pay for, however, he did feel that the Ordinance as drafted (requiring free publications to buy their own modular units) would be sustained.

Mr. Dan Downey, representing the property owner at 335 South County Road, commented that the Post Office in that location was moving, and the consensus of the people at the workshop meeting had been that was no longer a good location from a marketing standpoint. He added that prospective tenants for the old Post Office space all asked if the newsrack enclosures could be eliminated. He requested that 335 South County Road be eliminated as a location for newsracks.

Councilman Wyett commented that he did not think the Town should be involved in buying and maintaining modular units. He made a motion that the location of 335 South County Road should be eliminated as a newsrack location, and that a Permit Fee to cover Town costs be included in the Ordinance. Councilman McDonald seconded the motion.

Town Attorney Randolph commented that the people who had attended the workshop meeting had been advised that the Town Council would be considering the draft Ordinance at the Town Council Meeting, and that the Ordinance would probably not go on first reading at the meeting because of comments and possible amendments. In addition to the permit fee being added, the number of units at each location would have to be added, as well as procedures relating to adding additional newsracks, elimination of 335 South County Road, the designations of modular units and the designations of newsrack enclosures.

President Pro-Tem McLendon expressed concern regarding who would be the focal point for implementing the designations of who would be in the units, and in which units.

Town Attorney Randolph replied that the paid publications in modular units would have one publication buying the modular unit, who would then charge the others for spaces. The same would apply for the free publication; one of them would buy the unit, and then sell spaces to others. He stated that he would be uncomfortable in seeing the Town attempt to regulate that type of arrangement.

Councilman Wyett withdrew his motion.

Town Attorney Randolph then clarified that the Ordinance would be re-drafted to include the following:

- * A Permit Fee across the board to all publications to be \$25.
- * The places designated for newsrack enclosure units and modular units would remain as stated in the current draft Ordinance, with the elimination of the location of 335 South County Road.
- * The moving (by approximately 10-12') of the location on the corner of Hibiscus and Peruvian for safety reasons.
- * The Town would not pay for the modular units. The free publications would pay for their own modular units.

* A section of the Ordinance regarding how newsracks were added so there would be a specific procedure to be followed. (It was determined that the Code Enforcement Officer would enforce the procedure, and any appeal of his decision would come before the Town Council).

* The exact number of paid and free publications that would be allowed at each location would be added to the Ordinance.

Town Manager Doney commented that fees are usually regulated by Resolution, and that could be incorporated in this instance as well, if so desired.

Mr. David Jones of the Civic Association addressed the Town Council. He commented that many residents would like modular units for both free and paid publications, and no one wanted enclosures, such as lattice work enclosures.

Town Attorney Randolph indicated he would follow the direction of the Town Council as clarified.

B. Resolutions

4. Resolution No. 47-98 - Opposing Possible Override of the Governor's Veto of HB 3075 Regarding Firefighters' and Police Officers' Pension Plans

Town Attorney Randolph read Resolution No. 47-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, OPPOSING THE FLORIDA LEGISLATURE'S OVERRIDE OF THE GOVERNOR'S VETO OF HB 3075.

Councilman Shaw moved approval of Resolution No. 47-98. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

C. Other

5. Request by Florida Power & Light Company to Work in Road Right-of-Way After December 1, 1998, Near Mar-a-Lago Club

Town Engineer James Bowser addressed the Town Council, reporting that a request had been received from Florida Power & Light to work in the road right-of-way to replace a failed feeder line that went across Mar-a-Lago. He gave a brief history of the line, noting that an agreement had been reached for putting the lines across the Mar-a-Lago property. The work would need to restrict a portion of A-1-A, however two lanes of traffic would be kept open at all times.

Mr. Rod Macon, of Florida Power & Light, addressed the Town Council, stating that the work needed to be done quickly, with great concern to service to residents between the Royal Palm Bridge and Southern Boulevard during the coming winter months. Normally there were four main feeders serving customers in this area, and because of the one failed feeder, the area was being serviced with only three. Arrangements had been worked out with Mar-a-Lago, and it was important to proceed immediately. The new underground line would be put along the southern border of Mar-a-Lago and the eastern border of Mar-a-Lago. There was an existing overhead line on the north side of Mar-a-Lago that would eventually be removed as a result of the newly installed underground cable.

Attorney Ray Royce, on behalf of the Mar-a-Lago Club, addressed the Town Council, stating that Mr. Blackman of the Mar-a-Lago Club and he had met with representatives of FP & L, and had given them an easement to work inside Mar-a-Lago, which would minimize the traffic inconvenience, and facilitate the project for the good of the Town.

Mr. Macon estimated that the period of work would entail up to 40 days, however, that period could probably be expedited.

President Smith expressed concern over the length of time that the road would be restricted to traffic.

Mr. Macon reiterated that 40 days was absolutely the worst case scenario, and if things went well it would probably be closer to 25 days. Trucks would not be on the curve, but would be set up north of the curve, and on the south side of the Mar-a-Lago property. It was the intention to always maintain two lanes of traffic. A flagman would be present, as well as a police officer, if that would be helpful. He would be willing to work out working hours as well. They would like to begin January 2, 1999. He explained that the connection points were in the road right-of-way, and he offered that if they were unable, at any time, to maintain two lanes of traffic, then they would shut down. A diagram of the property involved, with the intended set up of trucks was exhibited for review by the Town Council.

Councilman Shaw moved approval of the request of Florida Power & Light to work in the roadway near Mar-a-Lago with the following conditions:

- * Two lanes of traffic will be maintained in the northern part of the construction at all times.
- * Work in the southern portion of the area will be done on private property.

- * Working hours in the roadway will be from 10:00 A.M. to 2:00 P.M. Monday through Friday; 9:00 A.M. to 5:30 P.M. on Saturdays, with no work on Sundays and holidays, with no work on the weekends of Martin Luther King birthday holiday in January, and President's Day weekend holiday in February.
- * One flagman and one off duty policeman must be on duty at all times.
- * After two weeks the situation will be assessed to determine if additional policemen are needed, as suggested by Police Chief Croft.
- * Work will begin on January 2, 1999, and finish by March 1, 1999.

The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

1. Schedule Date and Time for a Special Town Council Meeting to Consider the Comprehensive Coastal Management Plan Update and the Shore Protection Board's Recommendations

Assistant Town Manager Peter Elwell reported that the Shore Protection Board and the Town Council had both been anticipating sharing the recommendations of the Shore Protection Board. At the most recent meeting of the Shore Protection Board there had been some discussion about the complexity of the proposed project, the significance of the decision that would be made, and the funding involved. The Board had recommended that a Special Town Council Meeting be scheduled for this purpose.

A Special Town Council Meeting was scheduled for Thursday, January 28, 1999, in the Town Council Chambers at 10:30 A.M.

2. Extraordinary Longevity Pay for December 1998

Town Manager Robert Doney stated that his memorandum of November 24, 1998, had been included in the back-up materials, and noted the 15 individuals who had more than 20 years of service who were being recommended for extraordinary longevity pay. The total amount of all increases was \$17,133.83. The total amount that had been budgeted for FY99 was \$16,480.00. He recommended that the extraordinary longevity pay be awarded to those individuals named.

Councilman Shaw moved approval of the extraordinary longevity pay in the amount of \$17, 133.83. The motion was seconded by Councilman Wyett.

Councilman Shaw commented that he believed department heads should not be a part of the program, since they were part of the executive management team and should not be part of the longevity pay system.

It was determined that this issue would be discussed at the pending Finance & Taxation Meetings.

On roll call the motion of approval carried unanimously.

3. Appointment of Town Voting Members to the Newly Established Strategic Airport Master Plan Committee

President Smith passed the gavel and moved that Assistant to the Town Manager David Jakubiak and the Mayor be appointed to the Strategic Airport Master Plan Committee. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

4. Request by Mr. & Mrs. Stanley Gaines Regarding Status of Leaman Lane

Town Attorney Randolph reported that a letter had been written from the office of Attorney Doyle Rogers indicating that the Leaman Lane property, which was adjacent to the client of Mr. Rogers, the Gaines property, had been platted and dedicated private from its inception, and they had asked for an opinion that it was indeed private. Mr. Randolph noted that the Gaines' had purchased all of the property abutting Leaman Lane, so that no one else would have an interest in the use of it other than themselves. He referred to the extensive memorandum that he had written to Attorney Rogers, which was included in the back-up material, and indicated that Leaman Lane, as a matter of law, was initially dedicated to private property owners, and was not dedicated to the public. There was a subsequent dedication that purported to grant a portion of Leaman Lane to the public, however, that dedication was not appropriate because the plat had dedicated it to the private property owners. Mr. Randolph added that the only thing that could change the legal opinion in regard to the ownership of the property would be any ultimate actions of the Town relating to the status of the property. In a past action, the Town had paved the lane, under the false conviction that the property was public. This has been done in reliance on an engineer who had relied

on the 1951 dedication, not having known that the 1929 dedication had given all of the private roads to the landowners. In addition, an abandonment of a portion of Leaman Lane had been done, which may have presumed that the Town had jurisdiction over it in order to abandon it. Thus, Mr. Randolph explained that he had indicated to Attorney Rogers that he could not give him an opinion that the property was private, and that a factual determination would be made before the Town Council.

Councilman Wyett made a motion to grant the petition of the Gaines family, including reimbursement of fees incurred by the Town, that the property was private, and that the Town had no interest in it. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

6. Discuss Ownership of Land and Effects on Palm Beach from the Lake Worth Redevelopment Plan.

Councilman Shaw reported that he had sent a note to Town Manager Doney on November 24, 1998, stating that he would appreciate some communication from the Town to the City of Lake Worth and to the owner of the property, reminding them that the Town had an interest in a strip of land that ran along the ocean and that the development of that property should conform with that fact.

Councilman McDonald commented that the Town did not own the land, and that he believed it was premature for the Town to take any action at this time.

After discussion, it was determined that no action would be taken at this time.

7. Discuss Procedure for Landmark Designation

Councilman Shaw referred to his memorandum of December 1, 1998, and moved that this item be put on the Agenda for the January 12, 1999, Town Council Meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

XVIII. COMMENTS OF THE TOWN COUNCIL MEMBERS

Mr. Shaw expressed his support for the family who recently lost their pet to the poisonings in the North end of the island.

Mrs. Smith added that she would like to see the people responsible for the act suffer the same fate as the helpless animals. She said it was a disgrace and to think it is happening in Palm Beach is unbelievable, although she experienced the same loss twenty years ago when someone poisoned two of her dogs.

XIX. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of the Architectural Commission's Decision of November 20, 1998, by Bay Hill Development, Inc., Regarding 321 Brazilian Avenue

All those who would be speaking under Development Reviews were administered the oath by Town Clerk Pollitt.

At this time Director of Planning, Building & Zoning Robert Moore commented that earlier in the day Mr. Barton had raised an issue regarding the Architectural Commission and an instruction from the Town Council. He noted that a review of the tapes of the meeting had been made, and he would be happy to explain what Mr. Barton had in mind at this time, if so desired by the Town Council.

President Smith commented that since Mr. Barton had questioned the integrity of two members of the Architectural Commission in a public forum, she would like to hear the explanation.

Mr. Moore continued that during the course of the presentation by Attorney Brindell, and the Architects Smith & Moore for Bayhill Development at 321 Brazilian Ave., two or three of the Architectural Commissioners had related that they felt that instructions had been given to them by the Town Council, which was in relation to the appeal that had been heard last month before the Town Council, regarding the size and mass of the structure. Mr. Moore explained that the instruction that Mr. Barton had been referring to was merely that belief and that he, himself, had advised that the Town Council had considered the mass, and the Architectural Commission should concern themselves with the architecture

Mr. Barton commented that he had not mentioned the integrity of anyone, but had said that they were limited by what they could do.

Attorney James Brindell, on behalf of Bayhill Development, addressed the Town Council, summarizing that the applicant had appeared before the Town Council on November 10, 1998 for a rear yard setback variance, which had been granted. Approval of the

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revised site plan also had taken place, the facade #2 had been approved, as well as the mass. When the applicant went back to the Architectural (ARCOM) Commission on November 20, 1998, there had been extensive discussion about the range of their decision making on the application; specifically with respect as to whether they could revisit the question of mass. There had been a question of whether the Town Council had directed ARCOM to approve the mass, and Director of Planning, Zoning, & Building had responded negatively, but that there was no more negotiation regarding the mass issue. Mr. Moore had been trying to be very technical in his answer, and had been attempting to help them understand that the mass issue had been discussed at the November 10, 1998 Town Council Meeting. Nevertheless, ARCOM voted to defer the project for further study, essentially because they did not think the mass was appropriate in relation to surrounding properties. Mr. Brindell maintained that some of them felt that the mass issue had been resolved, and aesthetic issues should be discussed; others did not think that was the result of the action of the Town Council taken on November 10, 1998, and wanted to continue deliberating with the applicant on the mass issue under the label of architectural. They therefore deferred the project. ARCOM did not get to the aesthetic details. Since that time the appeal before the Town Council had been filed. Since then, Mr. DeMarco had asked Architect Smith to determine if there were any further design changes he might make that could make the situation better from an appearance point of view.

Ex-parte communication was declared by Councilman Wyett with Architect Smith, Attorney Brindell, and Mr. DeMarco; by President Pro-Tem McLendon with Architect Smith, Attorney Brindell, and Mr. DeMarco; by Councilman Shaw with Mr. DeMarco; and by Councilman McDonald with Mr. DeMarco.

President Smith commented that she understood that there had been another plan shown to several members of ARCOM, and asked if that was correct?

Attorney Brindell replied that he believed that was an earlier plan before anything was ever filed.

Councilman McDonald asked Mr. Brindell why the project had been sent back to ARCOM?

Mr. Brindell replied that it had been sent back for consideration of aesthetic issues.

Councilman McDonald commented that he was very disappointed to see this project before the Town Council once again. He explained that the Town Council had tried to make it clear to ARCOM, and he had hoped they would resolve it and complete it. He stated that he thought it was clear that the Town Council had sent it back to ARCOM for aesthetic consideration.

President Smith asked Mr. Brindell why he and the applicant were before the Town Council once again?

Mr. Brindell responded that the reason ARCOM had deferred the issue was on the mass issue that the Town Council had already resolved, and just accepting the deferral in order to come back to ARCOM the next month did not seem appropriate.

President Smith replied that it was her feeling that the applicant had been deferred, and had not yet discussed the aesthetics; there had been a question of whether the second floor could be moved back. She noted that the footprint had been approved by the Town Council, and that the massing and other architectural details should have then been discussed at the ARCOM meeting.

Mr. Brindell responded that at the ARCOM meeting they could not get beyond the mass/size issue.

Mr. Moore commented that the issue that came before ARCOM in their deferral was for architectural reasons rather than for mass reasons, however, mass was the subject of discussion. Unfortunately, one of the revelations that had come out during the meeting was that there was an alternate plan that was shown to two members of ARCOM, but not to the other members. Therefore, a deferral was predicated also on all members having a chance to see that alternative plan, even though the architect and attorney made it clear that was not an alternative that the owner was interested in presenting. Mr. Moore requested that the Town Council tell the applicant today that the mass was approved, (sending it back to ARCOM for architectural reasons) or tell ARCOM that they could deal with mass on the second floor.

Mr. Brindell commented that discussion had taken place at a Town Council Meeting about whether ARCOM could look at the second floor. The motion made by Councilman Shaw had clarified that the footprint was set, however, the second floor was fair game. The applicant then went back to ARCOM, and come back to the Town Council on the variance for the 5' setback. He maintained that putting the second floor in play again would be going back to where things were two meetings ago.

President Smith recalled that the reason the applicant had come back last month was because the Town Council had said at the meeting two months ago that it would look favorably upon a variance to push the whole thing to the back of the property, and if the applicant went to ARCOM the plans could be reviewed by ARCOM and the applicant would be put on the Agenda for the next Town Council Meeting. As she understood it, the applicant had not gotten exactly what he wanted from ARCOM, and hoped to get it from the Town Council last month. She stated that she agreed with Councilman McDonald in that she was very disappointed to see the appeal come back to the Town Council again without going through more of the procedure at ARCOM.

Councilman Shaw explained that the intent of his motion at the last Town Council Meeting had been acceptance of the mass.

Councilman Wyett agreed with Councilman Shaw in that the intent of the motion had been to mandate the matter back to ARCOM for architectural review of aesthetics, and that the Town Council had approved a variance of 10' to move the house back to reduce the bulk.

Mr. John Schuler, Chairman of the Architectural Commission, addressed the Town Council, stating that this was an architectural problem. There were no significant changes in any concept of the design when the applicant had come back to ARCOM at the last meeting, and massiveness did have some bearing on architectural aspects of the house. There were design concepts that were shown to other members of ARCOM. One member said that this was a nice design concept. He, himself, had not seen it. He said that he was confident that if the applicant would come back and work with ARCOM the situation could be resolved. He noted that Architect Smith had said that he would take the deferment and come back that afternoon to ARCOM, and he did not come back to ARCOM that day.

Architect Smith responded that he did not believe that he said that he would be back at the meeting to present an alternative design, which had been presented to two ARCOM members at separate meetings some four months ago. Once Mr. DeMarco had reviewed them he had not approved them and the issue was a dead issue at that point.

Mr. Schuler commented that Mr. Smith did say that he would not guarantee that he would come back to the meeting. He also commented that moving the second floor back had been discussed, and that possibly would resolve the situation. Moving the front door back had also been discussed, however discussion regarding the second floor had not been held.

Mr. Lowry Bell, member of ARCOM, addressed the Town Council, stating that he wanted to make it clear to the Town Council that ARCOM did not rule out the size of the building, but approved the size of the building. It was the mass which was considered an architectural consideration. ARCOM had not told the applicant to reduce the size of the building, but was looking to improve the architectural feature of the mass. There seemed to be a lot of confusion between mass and size. When ARCOM had suggested changes, it had not been done to try to get the applicant to reduce the size of the building.

Mr. Franklyn DeMarco addressed the Town Council, stating that he had been at all of the meetings and wished to clarify the fact that ARCOM had been presented with four or five options, spending time and money to prepare them so that ARCOM could pick what they liked in doors and windows. They then got into a conversation about size and mass, and a few members wanted to look at the four or five options and put together a facade. They were overruled and the matter was deferred. Mr. DeMarco said that he was under the impression that the Town Council had chosen a size and a facade. When ARCOM had not given direction, Mr. DeMarco had suggested putting together a facade that would meet with approval and the requirements. He noted that Mr. Smith could exhibit that facade.

Mr. Smith exhibited an elevation of the building with a symmetrical facade for review of the Town Council.

Mr. Schuler commented that it was impossible for ARCOM to make comments on an elevation that the entire Commission had not even seen. There had been a very similar elevation presented before.

Mr. Moore explained that the elevation displayed by Mr. Smith was the one that Mr. McDonald had chosen and sent back to ARCOM.

Mr. Schuler commented that ARCOM was not arguing with the size of the house, however, the mass had an effect upon the architecture—the massiveness of the front door, the massiveness of any aspect of it could have a bearing on the architecture. He stated that ARCOM was willing to work to resolve the issue.

Councilman Shaw made a motion to send the issue back to ARCOM, with the understanding that mass would not be addressed by ARCOM; with the understanding that the project was as presented, with the FAR, the CCR, the footprint, the height, and all of the dimensions that had been outlined on the plan. President Pro-Tem McLendon seconded the motion.

Councilman Shaw clarified his motion, stating that where an architectural feature could change the visible effect of mass, he was not opposed to the architectural feature. He explained that he was not an architect, and was having a hard time separating the fact that there were architectural features that could affect the visible mass without ever changing the numbers. He explained that he was referring to mass “the numbers”, not mass the visible.

Mr. Bell commented that size should be considered as an absolute in this particular case, but mass did affect the appearance of the building, and ARCOM should not be instructed not to look at the mass, because the mass of the front of the building determined what it would look like architecturally.

President Smith clarified that the FAR and the CCR was not the same as mass, and if the footprint, FAR, CCR, and the size remained, the mass could be left to be dealt with by ARCOM architecturally.

Mr. Moore commented that the applicant was saying that he did not want to break up the facade, and wanted the Town Council to decide whether they had to break up that facade. That was what the issue had narrowed down to at this point.

Councilman Shaw clarified that he wanted his motion today to be the same motion that he had made last month. At this point, Town Clerk Pollitt read the motion made by Councilman Shaw today.

“Motion made by Mr. Shaw that the project will be returned to the Architectural Commission. Mass will not be addressed. All dimensions have been addressed; FAR, CCR, the footprint, the square footage. The architectural features can be addressed, but not the size.”

Councilman Shaw explained that he was referring to a numerical mass, which were the components that affect the CCR and the FAR. It was that mass that he was referring to. He was not talking about the visible effects of the mass, and this was what he thought he had approved at the last Town Council Meeting.

President Smith clarified that he had only approved the front; he had not approved the east side, and he thought he was just approving the size, and now he was saying that he was approving the size, but was not dealing with the mass, which did not make sense.

On roll call the motion of Councilman Shaw made at the meeting today, carried 4/1, with President Smith casting a dissenting vote.

Councilman Wyett commented that ARCOM had every right to look at size and mass, however, in the last year he believed that they had become obsessed with it, to the point that it was the first or second thing they looked at. He suggested that they needed to re-

balance, and look at everything. He asked that ARCOM consider a slight change, and allow the whole project to be looked at, including the mass, size, FAR, and everything, before a resident walks out of a meeting not exactly sure where he should go from there. He stated that he did not want attorneys to be encouraged to think that if ARCOM did not grant what they wanted, they could get it from the Town Council.

President Smith pointed out that Councilman Wyett was speaking as an individual, and not for the Town Council. She stated that she felt that the house could be worked on, and that the hands of ARCOM had been tied by eliminating architectural mass from the discussion, and she was very disappointed on that. She agreed that it was a very dangerous precedent to come to the Town Council for an architectural decision because the vote that was wanted was not received from ARCOM. She explained that many people had gone to ARCOM ten times, and then come back and said thank you, we have a much better project thanks to the input of the Commission.

B. Variances, Special Exceptions, and Site Plan Reviews

Old Business - Major

1. VARIANCE NO. 30-98 - Arthur Levine, 355 North Lake Way; located in the R-B Zoning District; to allow construction of a 2nd story addition with a 3.5' height variance on a non-conforming structure that provides an 8' side yard setback in lieu of 15' required. (*Deferred from July 14, August 11, and September 8, 1998*) - **Request for Withdrawal per letter dated November 16, 1998, from Mr. Ronald K. Kolins**

This item was withdrawn earlier in the meeting.

2. VARIANCE NO. 34-98 - Sydell Miller, 1415 South Ocean Blvd. (Also known as 1420 South Ocean Blvd.); located in the R-AA Zoning District; to allow construction of a front yard wall at a height of 9' above the crown of the road in lieu of 6' maximum allowed. (*Deferred from July 14, and October 13, 1998*)

Attorney Robert Deziel, representing Sydell Miller, requested that Variance No. 34-98 be withdrawn from the Agenda,

President Smith passed the gavel and made a motion to withdraw this item from the Agenda. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Shaw had temporarily left the room.

3. VARIANCE NO. 42-98 - Gay Cinque, 3 Golf Road; located in the R-A Zoning District; to allow construction of two garages providing a southwest side yard setback of 4.6' and a northwest side yard setback of .05' (less than one inch) in lieu of 15' required, and providing a rear yard setback of 5' in lieu of 15' required. (*Deferred from September 8, and November 10, 1998*)

Ex-parte communication was not declared and had not been held by any Council Member.

Attorney Ron Kolins, representing Gay Cinque, expressed that the request today came after a deferral by the Town Council, and the variance request had now changed in a way that he believed would satisfy the Town Council. The request was being reduced to a one-car garage, a side setback variance needed at 4.6'. He pointed out that the home in question was located in the R-A District, and according to Town Code, in that district, under Section 134-2179(b), garages were required. Therefore, he expressed that his client was not only entitled to a garage, but was required to have a two-car garage. He indicated that the addition of a garage would eliminate the nonconformity of no garage; in addition, he noted that lots in the R-A District were required to be 150' wide, and this lot was 74'6", and was a substantially undersized lot, which created a legal hardship, and complicated the efforts to locate an appropriate place for the garage. Mr. Kolins displayed a site plan of the proposed garage area, as well as a video showing cars moving on the street.

Zoning Administrator Paul Castro noted that he had received a phone call from a neighbor to the west concerned with the proposed garage.

Attorney Kolins pointed out that the neighbor had an objection when the garage was proposed at the rear of the house, but no objection when it was at the front of the house. He summarized that the hardship was the undersized lot, and the Code requirements for a garage. There were also personal hardships, as the owner was ill with asthma and cardiac conditions, and needed a way to exit the house without being exposed to the elements.

Zoning Administrator Paul Castro gave the following staff comments: Comprehensive Plan: the garage does not function architecturally; there is no hardship or unusual circumstances. Building Department: hardship must be addressed relating to variance request. Town Manager: concurs with staff comments.

After discussion, Councilman Wyett moved approval of Variance 42-98, to include the Deed Restriction on the hedge as requested by the neighbor. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/2, with Councilman Shaw

and President Smith casting dissenting votes.

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

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

Attorney Robert Deziel requested deferral of Variance No. 49-98 until the January 12, 1999, Town Council Meeting.

Councilman McDonald moved deferral of Variance No. 49-98 until the Town Council Meeting of January 12, 1999. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

5. VARIANCE NO. 52-98 - David Koch; 150 S. Ocean Blvd. (& formerly 140 S. Ocean Blvd prior to demolition); located in the R-B Zoning District; to allow construction of two second story additions, above existing first floor areas, to a height of 29' in lieu of 22' allowed with a roof height of 33' in lieu of 30' allowed. (*Deferred from November 10, 1998*)

Summary of Actions Taken by the Town Council Regarding Variance No. 52-98:

The Town Council approved the variance request with the condition a deed restriction be recorded to maintain the ocean view angle for the neighbors to the south as determined by Architects Jim Paine and Jeff Smith at the meeting. The entrance will remain on Barton Avenue, and all vehicular traffic will be eliminated on the south side of the residence. This was done through motion of Councilman Shaw, seconded by President Pro-Tem McLendon. On roll call the motion carried 3/2, with Councilman Shaw, President Pro-Tem McLendon, and President Smith casting affirmative votes; Councilman McDonald and Councilman Wyatt casting dissenting votes.

The following is a brief detail of discussion taking place:

Ex-parte communication was declared by Councilman Wyatt with Attorney Deziel; by President Pro-Tem McLendon via a meeting on site with Architect Smith and Attorney Deziel concerning the building and proposed work—in addition he had met the attorney and the owner of the house to the south regarding the affects of the proposed work; by Mayor Ilyinsky with Architect Smith and Attorney Deziel; by Councilman Shaw with Architect Smith, Attorney Deziel, Attorney Paine, Town staff, and construction workers; by Councilman McDonald with Attorney Deziel and Attorney Paine.

Attorney Robert Deziel addressed the Town Council, representing Mr. And Mrs. David Koch. He noted that last month a variance on this project had been presented to the Town Council, which had been deferred. The suggestions offered by members of the Town Council had been considered and Mr. Deziel specified that the overall height of the structure would be 3' higher than Town Code allowed, which would match the existing roof heights. He pointed out that the revisions to the variance area had been addressed, which Architect Smith would review in detail. Certain comments made by the neighbors had been addressed as well. He explained that the subject property consisted of more than 2 acres, even though it was in a Zoning District which allowed structures to be built on properties 1/8 the size of this project. That excess size imposed more restrictive zoning requirements on the property than the neighbors to the south, and other properties in the vicinity. Those zoning requirements included increased setbacks, reduced cubic content ratios, and lot coverage. The project currently had a 16% lot coverage, and a 3.3 cubic content ratio, which were extremely modest figures considering the size of the property and the Zoning District. He explained that by demolishing the existing home on the north side of the home the density had been reduced, the greenspace had been increased, as well as a reduction in the building area in excess of 4,000 sq. ft., and elimination of all of the hardscape along South Ocean Blvd. He asserted that there was substantial precedent regarding the variance request, such as Casa Apava, the Leonard Lauder residence, the Dudley Moore residence, the carriage house at 790 South County Road, the property owned by Herbert Feeney at 201 El Bravo, 450 Worth Avenue, 458 Worth Avenue, the home of Cathleen MacFarland, connecting the two landmarked structures, 319 Brazilian Ave., which had been restored with additions to increase the size by 50%, and 125 Via Delago.

Councilman Shaw commented that the Town Council had gone over the details last month, and understood what the variance request was, and it had been an architectural issue that needed to be resolved.

Architect Jeff Smith reviewed the model of the proposed structure with the Town Council, describing and reviewing the area in question.

Attorney Deziel then introduced Architectural Historian Dr. Curl, who gave a presentation to the Town Council regarding the historical/architectural aspects of the structure. He pointed out that the proposed changes in the house did not distract from the overall house.

Attorney Anthony J. Natale, representing Mr. And Mrs. Kosoy, questioned Dr. Curl regarding the structure as to architectural descriptions of the landmarked property, according to the Landmark Preservation report on the property. Mr. Natale explained that a witness had been presented to show that there was historical significance and compatibility with the proposed construction, and it was his position that Dr. Curl's opinion may be based on not what was actually landmarked. He wanted to question Dr. Curl to indicate what was landmarked, and if it was his opinion that the changes were consistent with the landmark designation.

Town Attorney Randolph commented that due process entitled Mr. Natale to cross examine any witnesses that were presented and put on any evidence that he felt was appropriate to prove his case. He pointed out that Dr. Curl had not seen the Landmark Report, nor did he know what some of the things in it were. Mr. Randolph suggested that on that basis perhaps the report could be submitted as evidence, and argument reserved based upon the report.

Attorney Natale responded that he would then cross-examine Dr. Curl without utilizing the landmark documents.

President Smith commented that the Town Council had also not seen the document. She explained that there had been other variances approved on this project, with the exception of the one section over the second floor on the southeast corner. A landmarked house was being renovated, and the plans exhibited today were showing the way it would appear when finished if the last variance was passed.

Councilman Shaw commented that any landmark issue would need to go before the Landmarks Commission, who would approve any changes to the structure. The Town Council was hearing the request only in order to approve a variance, which would allow the applicant, conceptually, to build something that would be 3' higher than allowed.

Town Attorney Randolph pointed out that the applicant had called in an expert that appeared to be aiming at the landmark aspect of the structure, and that was the reason the opposition was asking the questions.

Attorney Natale responded that if the testimony of Dr. Curl was stricken and removed as part of the record in this case, he would have no cross examination.

Attorney Deziel replied that he would be willing to strike the testimony of Dr. Curl from the record.

Attorney Natale clarified that the testimony was then considered stricken from the record, and would not be part of the decision making process today.

Attorney Deziel incorporated by reference the Variance Application that had been submitted, the correspondence he had submitted dated December 4, 1998, and stated that the hardship was as follows: "The hardship, which runs with the land, is the configuration of this structure and the existing height of the second story beam. At the time this residence was constructed, the proposed improvements would be allowed, and a variance would not be needed, however, because of a change in the Zoning Code requirements, the configuration of the structure, and the landmarked status of the structure, a variance was now required."

Attorney Natale maintained that there was no legal hardship as defined by all applicable Florida case law, and called as witness James Edward Kerr, Real Estate Appraiser, who summarized his knowledge and experience of appraising residences within Palm Beach. He explained that he had been hired to review the property in question and how it impacted the Kosoy property. In doing so, he had driven the neighborhood, surveyed the properties and looked for conformity. The other properties in the area were more compatible with each other, as the houses were on similarly sized lots, whereas the property in question was located on three lots. The sheer mass of the house and the additions, especially to the south end of the property, next to the Kosoy property, created the objections to the structure. He explained that the bedrooms in the Kosoy property were all on the north side of the house, and the views would be obstructed by the proposed additions on the subject property. Mr. Kerr stated that it was his opinion that there was a diminution of value of the Kosoy house as a result of a loss of amenities.

Attorney Deziel questioned Mr. Kerr as to lot dimension requirements in the zoning district, his opinion of conformity. He pointed out that even though the Kosoy property and Koch property were in the same Zoning District, they had different zoning requirements.

As discussion concerning this item was very extensive, a complete Verbatim Transcript of the Proceedings is available in the Office of the Town Clerk and is attached hereto.

6. SPECIAL EXCEPTION NO. 29-98 - 2875 South Ocean Corp., 2875 South Ocean Blvd.; located in the C-TS Zoning District; to allow a financial use on the 1st floor; said space (820 sq.ft.) does not have direct street frontage or direct access to a sidewalk fronting a street. (*Deferred from October 13, and November 10, 1998*)

Attorney Peter Broberg addressed the Town Council, stating that a brokerage firm was located on the second floor of the First National Bank Building, occupying approximately 600 sq. ft., and desired to move to the first floor to occupy approximately 820 sq. ft. Early in the year a brokerage firm could not occupy space in a C-TS Zone, because they were not a permitted use, but were a special exception use. The firm had not been Town-serving, because they were brand new in Town. The Town Council then granted a zoning change in February, and the applicant had moved into the second floor. They now wished to move to the first floor, and Mr. Broberg submitted the Town-serving documentation proving that the applicant was more than 50% Town serving, according to the Code.

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

Zoning Administrator Paul Castro commented that staff comments were related to the Town-serving aspect of the application. The application had been before the Town Council in a different form in January for the second floor, and at that time a variance from the Town-serving requirement had been requested. Staff did not understand how they were now Town serving.

Attorney Broberg replied that things change; they had been new in Town and were a branch of a Boston brokerage firm, and they had no way to differentiate clientele from the Boston office into the Palm Beach office. The calculations had been made through the Boston office supplying all their clients to the CPA, which was 316 names, 159 of which had Palm Beach addresses. The CPA had then taken a random sampling of the 159 to make sure that they matched with the 33480 zip code, and the addresses on the list, and gave the opinion as presented today.

Councilman Shaw moved approval of Special Exception 29-98. The motion was seconded by Councilman Wyett.

Zoning Administrator Paul Castro suggested that a condition related to demonstrating Town-serving each year at the time of renewal of the Occupational License be added to the motion.

Councilman Shaw accepted that condition as part of the motion.

On roll call the motion carried unanimously.

New Business - Major

7. VARIANCE NO. 56-98 - Giovana Stephenson, 227 Angler Ave.; located in the R-B Zoning District; to allow reconstruction and additions onto the nonconforming residence, retaining a portion of the 1950s structure that sits at 10.16' from the east side yard property line and 8.28' from the rear yard property line. This also requires a variance to allow an angle of vision of 136.1 degrees in lieu of 116 maximum allowed.

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

Mr. Harrison Robertson, 124 Seagate Road, addressed the Town Council, stating that he believed the application could be disposed of, as he did not believe it was in proper form as required by Town code.

Director of Planning, Zoning & Building Robert Moore responded that staff believed the application had been filed properly.

Mr. Robertson responded that Section 10.40 of the Zoning Code required that the application be made by the owner of the fee simple, and this application had been signed by the lawyer.

President Smith noted that the lawyer was entitled to sign the application if he was the agent of the owner on this particular application.

Mr. Robertson replied that he was an agent of the owner if there was a Power of Attorney executed by the owner and filed in public records. He asked if there was such a Power of Attorney?

Zoning Administrator Paul Castro explained that when the applications came in there had not been a signature from the owner, however, the application of record did have a signature from the fee simple property owner. He further explained that the notices had gone out without the name of the fee simple property owner on it, and he believed proper due notice had been accomplished.

Mr. Robertson agreed that proper due notice was given, but of an application that was not in proper form.

Mr. Castro replied that the application is in proper form.

President Smith suggested that Mr. Castro show Mr. Robertson the paper that he had that had the correct and legal signature, as the Building Department believed they do have a proper application before them.

Mr. Robertson replied "I yield."

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that there was a close question as to whether 50% or more of the value of the structures will be exceeded by the proposed improvements. He exhibited photographs of the area in question. He noted that an angle of vision variance had been requested, but after conferring with Town staff it had been determined that was not needed; thus that portion of the request would be withdrawn.

Mr. Brindell then addressed the remaining two variances, both of which related to the existing structures.

Zoning Administrator Paul Castro gave the following staff comments: Comprehensive Plan: House can be designed to conform to Code. The variance request is excessive. He explained that this was based on the assumption that there was no wall in between the garage and the house itself. Building Department: Staff has no objection to side yard variance for the garage. Applicant needs to demonstrate hardship for the rear yard when they take off the roof of the existing house, or if they take off more than 50% of the cubic

volume.

Councilman Wyett made a motion to defer Variance No. 56-98, until more information could be gathered. Since two members of the Town Council had been out of the room for the initial presentation, Attorney Brindell was requested to make another short presentation of the project, so that all five Council Members would be available to vote on any motion made.

After further discussion, Zoning Administrator Paul Castro clarified that the applicant would not need a variance at all if not more than 50% of the volume of the house itself was being taken off.

Mr. Anthony Solo, the applicant, clarified that the 50% rule applied to actual construction improvements, and that 50% of the roof would not be torn off, but more than 50% of the current value would be expended to remodel the house.

Director of Planning, Zoning & Building Robert Moore asked the applicant, Mr. Solo, if he was removing more than 50% of the roof in the plans for remodeling?

Mr. Solo replied negatively.

Mr. Moore responded that if the applicant was not taking away more than 50% by volume than a variance was not needed, and it was determined that no action would be required by the Town Council, as there was no variance required in this instance.

8. VARIANCE NO. 57-98 - David Mack, 232 Phipps Plaza; located in the R-C Zoning District; to allow construction of an addition providing a 4.5' street side yard setback in lieu of 25' required and 49% lot coverage in lieu of 45% existing and 35% maximum allowed. To allow construction of a swimming pool providing a front yard setback of 12' in lieu of 25' required, and a 10' street side yard setback in lieu of 25' required.

Ex-parte communication was declared by Councilman Shaw with David Mack; by Councilman Wyett with David Mack and Attorney Doyle Rogers.

Attorney James Brindell addressed the Town Council, stating that David Mack was the sole beneficiary trustee of the Trust in this instance. Mr. Kochman was the trustee, and Mr. Mack was the sole beneficial owner in that Trust.

Councilman Shaw responded that Mr. Mack had told him he was not the owner of the property.

Councilman Wyett asked where Mr. Swanson was involved in this project?

Attorney Brindell responded that he would be renovating the house.

Councilman Wyett replied that he thought Mr. Swanson had a financial interest.

Attorney Brindell responded that he supposed he did in the renovating of the house.

President Smith asked if he had points in the development deal?

Attorney Brindell replied that Mr. Swanson and Mr. Mack may have some other arrangement with regard to the redevelopment and renovation sale of the house, but the owner of the house is the Trust with Mr. Mack as the sole beneficial owner in that Trust. He stated that Mr. Swanson did not "own the property," and Mr. Bridgeman did not own it anymore either.

Attorney Brindell noted that the applicant had appeared before the Town Council in October, requesting a variance to take the existing garage and re-convert it to living space, which is what it originally had been. Mr. Brindell pointed out that the Town Council had felt that the two car garage requirement was something that could not be varied from, even though he also pointed out that in Phipps Plaza there were almost no garages. The property in question was originally a seven-unit apartment house, but over the years became a single family home. The garage that had been living space had been converted to garage space. The applicant was present today to request building another garage so that the current garage space could be reincorporated back into the house. Mr. Brindell noted that in November of 1957 there had been a variance granted for a porch, as well as an octagonal pool, but neither had ever been built. Approval had been granted in 1993 for a reflecting pool, a spa, and a fountain. The fountain is currently there. Mr. Brindell explained that the house was in an historic district on a small lot, with ground floor living space being very narrow, needing to be made more functional in order to retain the historic quality of the house and to continue making it livable.

Councilman Wyett moved approval of Variance No. 57-98.

Mr. Brindell explained that the hardship was the fact that the lot was very small and narrow; the objective was to retain the house in the historic district; the objective was also to make the house more livable.

Zoning Administrator Paul Castro gave the following staff comments: Comprehensive Plan: The request is excessive. The setback variance for the garage can be decreased through the reduction of the interior square footage, and the pool can be modified to conform to the Code. Town Engineer: No additional encroachments allowed within the 5' utility easement. Building Department: No objection within

the historic district, and because of the odd shape of the lot as it relates to the road there is a hardship. Town Manager: Concurs with Town Engineer and Comprehensive Plan comments, and requests that the applicant should be asked to provide additional justification for the two variances.

At this point all those who had not yet taken the oath were administered the oath by Town Clerk Pollitt.

Architect Jackie Albarran deMendoza presented a plan of the proposed renovations.

Councilman Wyett commented that he believed that the granting of the variance would not injure anyone else, the architect had done a good job with what she had to work with, and the more livable Phipps Plaza was made the better.

President Pro-Tem McLendon seconded the motion for approval.

Councilman Shaw commented that he had spoken with Mr. Mack, and indicated that he thought that the garage was excessive, and that to ask for a 4' setback was too much, and that it needed to be reduced. Mr. Mack had agreed that was something that probably could be done, however, he was not present. Councilman Shaw thus asked the maker of the motion to withdraw the motion and request a deferral of the variance.

Director of Planning, Zoning & Building Robert Moore explained that the issue could be reconsidered if the owner did not accept any conditions placed on approval of the variance request.

Councilman Wyett amended his motion to be approval with the conditions that the garage be moved back 5', and the pool reduced somewhat.

President Smith expressed concern that every applicant would have to be given the same consideration, rather than taking a deferral with the caveat that the applicant could come back.

Councilman Wyett amended his motion to approve the street side yard setback at 9.5', and reduce the pool by 5' in its length from the nearest lot line for a total of 14' from the street. President Pro-Tem McLendon seconded the motion. On roll call the motion carried unanimously.

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

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

Attorney James Brindell, on behalf of Houston's Restaurant, addressed the Town Council, requesting approval of Houston's Restaurant as a new operator in the space formerly occupied by Au-Bar. He explained that Houston's was a national restaurant company, headquartered in Nashville, with 30 locations around the country. It did not franchise its operations, and all facilities were company operated. Advertising on radio and television was not done generally, and rarely in newspapers. The restaurant was moderately priced, and family oriented. Hours of operation were proposed to be from 11:00 A. M. to 11:00 P.M., Sunday through Thursday, and 11:00 A.M. to 1:00 A.M. on Friday and Saturday. They were not interested in operating a nightclub, and were not requesting any outdoor seating. The only advertising contemplated was in the Palm Beach Daily News or in the hotel publications. Parking was part of an existing approved C-PC for Royal Poinciana Plaza, and was adequate. A parking study had been done on December 2, 1998, copy of which was provided to Town staff, which showed that there were 489 vehicles on site at 12:15 PM. Mr. Brindell displayed some exhibits indicating various Houston facilities, which were custom tailored for each location. There was no uniform package, and no uniform sign package—it was tailored to the particular area. Mr. Brindell pointed out that the restaurant would be Town-serving in terms of the type of food provided, pricing, and the fact that it would be occupying an existing space. The nightclub permit would not be used.

Councilman Wyett expressed concern about the tight parking already existing in the Poinciana Plaza, and commented that he did not believe the area could support any more parking.

Attorney Doyle Rogers, on behalf of the owner of Poinciana Plaza, addressed the Town Council, stating that a plan had been approved for valet parking in the Plaza, and it was his understanding that it had been used when necessary. The 75 spaces immediately north of the Playhouse had not been used as a valet parking area, and were spaces for self-parking. If it was necessary to use them the valets would incorporate them.

Mr. Lorrie Gregon, owner of Prestige Valet, addressed the Town Council, stating that his company was going into its third season of working in the Poinciana Plaza. He commented that he had personally worked the parking lot, and the lot had never been completely filled, with the exception of two times when functions had been held. Today anyone holding functions must go through the Poinciana Plaza office, and if traffic could not be handled the event is not accepted. He maintained that there would be no problem in handling an extra 50-60 vehicles to accommodate the needs of Houston's Restaurant.

Mr. Rogers commented that he had been to the Houston's Restaurant in Nashville, Tennessee, and he considered it a nice place to have lunch, and considered it a nice operation.

~~MINUTES OF THE TOWN COUNCIL MEETING HELD ON DECEMBER 8, 1998~~

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Police & Fire Departments: No comment; Comprehensive Plan: Should demonstrate Town serving; Public Works: Grease trap needed for compliance with existing Code; Building Department: Needs to demonstrate Town serving; grease trap required; Town Manager: concurs with above staff comments, although noise, parking, and other special exception criteria must be addressed. Mr. Moore pointed out that he had advised the applicant that it was his opinion that parking, and some of the other issues relating to the crowding of the Poinciana Plaza should be addressed.

Police Chief Croft addressed the Town Council, commenting that the property was private, and would be the problem of the owner as to control.

Attorney Brindell pointed out that the lease negotiated with the owner of the Plaza stated that if the landlord required valet parking they would agree.

Councilman Shaw commented that he did not believe that the Houston's patron would be a valet patron, and that the policy of the restaurant was not to take reservations, which caused a longer waiting period for seating. He maintained that all of these things that made Houston's well-known, and attractive, would not fall in line with the Town serving requirement, as well as how parking was handled. He noted that there was no marketing plan submitted, and the restaurant was known for the type of food, clientele, and atmosphere that he believed would attract people to Palm Beach.

Mrs. Gail Coniglio commented that the parking issue was a huge problem, and noted that the egress into Poinciana Plaza was also a problem.

Attorney Howard Rudolph, representing 264 Restaurant, commented that Houston's Restaurant was a national chain, and they had failed to establish that they were a Town serving business.

Mr. Moore commented that it was anticipated that a certain amount of Town serving establishments would have people that did not live in Palm Beach.

President Smith commented that she believed the restaurant was too much of a turn over operation, without reservations being made, causing people to wait outside, and cars to stack up.

Councilman Wyett concurred with the comments of President Smith, and noted that Palm Beach was a reservation town; people would not use the valet system if the seating was not scheduled. He suggested that the applicant tailor a plan to fit the Island, and return next month to address the Town Council.

Attorney Brindell clarified that 264 Restaurant was a competitor, as well as E.R. Bradley's, which was owned by Ms. Coniglio.

Mr. Joe Ledbetter, co-founder and Executive Vice President of Houston's Restaurant, addressed the Town Council, stating that all of the reasons stated as concerns were the very reasons that Houston's wanted to come to Palm Beach. He noted that out of 32 Houston's Restaurants, 11 of them did valet parking, and special locations were usually chosen for them. He explained that negotiations had been started in West Palm Beach when he had received a call that there was the possibility to propose a restaurant in Palm Beach. After he had come to look at the site he had called his partner and they had decided that they would very much rather be in Palm Beach than in West Palm Beach.

Mr. Glen Beyers, of Houston's Restaurant, addressed the Town Council, stating that the restaurant was prepared to develop an appropriate concept for Palm Beach; the parking lot had been analyzed and they were confident that it would suit the purpose.

Councilman Wyett replied that he would like to see a reduction in the seating for approximately one year, discussion of the bar/liquor situation, and the addition of valet parking and reservations. He suggested that the former Dempsey Restaurant site would be more appropriate for the location of Houston's.

President Smith asked if a marketing survey had been done to determine where the core clientele would come from?

Mr. Ledbetter responded that the space was considered appropriate, as it was far enough north, and right in the middle of the area.

President Smith explained that other businesses coming in under special exceptions had done marketing surveys to determine that they would be Town serving.

Mr. Ledbetter replied that he did not believe that it would be a problem for the restaurant.

Councilman Shaw suggested that the applicant submit a marketing plan, and suggested that the issue be deferred.

Attorney Brindell responded that marketing was done by the national reputation of the restaurant, and not by media marketing.

Mr. Ledbetter noted that the liquor business was 17% of sales, which was very low, and that the restaurant would be called "The Palm Beach Grill," which would be more appropriate to the area.

Councilman Wyett moved deferral of Special Exception No. 34-98 to the January 12, 1999, Town Council Meeting, as it was not 11:26 P.M. and the Town Council Meeting was not yet finished; he believed a comprehensive hearing would be more appropriate at the next meeting. The motion was seconded by President Pro-Tem McLendon.

Mr. Moore pointed out that size would not be addressed by the Town Council, only the Town serving aspect of the application,

however, the issues of traffic, and congestion could be addressed as part of the Town serving issue. He suggested that the restaurant must address how they were going to prove Town serving after a certain period of time.

On roll call the motion carried unanimously.

10. SITE PLAN REVIEW NO.13-98 - Dorset House Associates, 190 Bradley Place; located in the R-D(2) Zoning District; to review a plan to convert 64 rental units to 24 condominium units, reduce parking from 75 to 53 spaces, reconfigure pool area and traffic circulation, landscape open space, and redesign of the facade.

Attorney James Brindell, representing the Dorset House, addressed the Town Council, stating that the Dorset House had been built in the 1960's, and was outdated. It currently had 64 units, and the proposal was to renovate the facility, reduce it to 24 units, and increase the landscaping, open space, reconfigure the pool area and traffic circulation, update the building facade, and decrease impacts on public facilities such as water and sewer.

Architect Gene Lawrence presented the site plan for review by the Town Council.

Zoning Administrator Paul Castro gave the following staff comments: The application for site plan review was a substantial decrease in the density that exists on the subject site at this time. The apartment building had an existing 66 units, going down to 24 units. The concerns of staff were related to the traffic circulation within the parking lot on the south side of the building, and even though the Code requirement was for 9' wide parking spaces, the existing drive aisle was only 21' wide, and staff believed the parking spaces should be 1' wider on the south side of the parking lot. In order to do that some of the landscaped area would have to be eliminated. In addition there was a 5' wide utility easement across the south side of the property, where there now was paved parking, and 2' of that was proposed to be eliminated. Staff had requested landscaping on the wall abutting the property to further screen and provide aesthetics. The landscaping (except for sod) and pavers in the utility easement near the swimming pool area to the rear would have to be pulled out.

Mr. Lawrence replied that the wall was the property of the Park Regent, and they are in agreement with vines being added to the wall. He also mentioned that the additional 1' in the parking spaces could be taken up so that the integrity of the 25' green strip across Bradley Place would remain intact.

Councilman Wyett expressed concern regarding parking in the area for service/staff to the Dorset House, as there was a shortage of parking spaces in the general area.

Mr. Lawrence replied that green space for daytime parking for staff could always be used if it was discovered that the parking situation needed improvement.

Councilman Wyett asked what would happen to tenants with leases that had not yet expired?

Councilman McDonald moved approval of Site Plan No. 13-98. The motion was seconded by President Pro-Tem McLendon.

Councilman Shaw commented that the manager of L'Hermitage had also done a reconstruction project and had requested that the construction schedule be coordinated with the season. Mr. Shaw asked Mr. Moore if there was a way the apartments could be left unfinished before a Certificate of Occupancy was granted so that individual designs could be coordinated, rather than having people buy apartments, gut them, and then put in individual designs?

Mr. Moore replied that the developer could go to the Building Board of Adjustments and Appeals and request relief in that situation.

On roll call the motion carried unanimously.

C. Other

11. Discussion of Items to be Placed Within "Zoning in Progress" for 1998/99 Zoning Season

Director of Planning, Building & Zoning Robert Moore stated that each year "Zoning in Progress" is declared through the Town Manager's office, and no one can obtain a permit to build that would be in contravention of the most rigid of the proposals for change in the Zoning Code. This year the issue of changes in the R-B Zoning District was very extensive, and it was the position of staff that the "Zoning in Progress" advertisements would be placed, with the R-B Zoning District exempted, due to the fact that the proposed changes were so extensive. He explained that if "Zoning in Progress" was placed in the R-B Zoning District there would be no way for an owner or developer to know what could be built.

Dr. Sten Lilja addressed the Town Council, stating that he had submitted a letter to the Town Council regarding the problem with new, big houses, including suggestions as to how to address the problems. He maintained that "Zoning in Progress" must be enacted immediately in order to prevent further irreversible damage. He noted that former Mayor Marix had been ill, and had requested that he

~~MINUTES OF THE TOWN COUNCIL MEETING HELD ON DECEMBER 8, 1998~~

read her letter, with accompanying photographs, from her suggesting that "Zoning in Progress" be enacted.

President Pro-Tem McLendon recommended that this issue be put on the Agenda for the next Town Council Meeting on January 12, 1999. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

XX. ANY OTHER MATTERS

The time for the Special Town Council Meeting to hear the recommendations of the Shore Protection Board scheduled for 10:00 A.M. on January 28, 1999, was changed to 1:30 P.M. on January 28, 1999.

XXI. ADJOURNMENT

The meeting was adjourned at 12:05 A.M. on December 9, 1998.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk

The following is included with and is part of the permanent record of the minutes of the Town Council Meeting held on December 8, 1998.

Verbatim Transcript of VARIANCE NO. 52-98 - David Koch; 150 S. Ocean Blvd. (& formerly 140 S. Ocean Blvd prior to demolition); located in the R-B Zoning District; to allow construction of two second story additions, above existing first floor areas, to a height of 29' in lieu of 22' allowed with a roof height of 33' in lieu of 30' allowed. (*Deferred from November 10, 1998*). Heard at Town Council Meeting of December 8, 1998.

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TOWN OF PALM BEACH
TOWN COUNCIL MEETING

APPEARANCES:
ROBERT MOORE, Building Official
PAUL CASTRO, Zoning Administrator
ALLEN WYETT, Councilman
SAM McLENDON, Councilman
LESLY SMITH, President
PAUL ILYINSKY, Mayor
LESLIE SHAW, Councilman
JACK McDONALD, Councilman
JOHN RANDOPH, Town Attorney
MARY POLLITT, Town Clerk

Tuesday, December 8, 1998
360 South County Road
Palm Beach, Florida 33480

6:20 p.m. - 9:10 p.m.

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ANDES & ASSOCIATES, INC.
(561) 734-7634

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A P P E A R A N C E S

ON BEHALF OF DAVID KOCH:
ROBERT DEZIEL, ESQUIRE
239 South County Road
Palm Beach, Florida 33480
ON BEHALF OF KOSOYS:
ANTHONY J. NATALE, ESQUIRE
502 Palm Street #4
West Palm Beach, Florida 33401
&
JAMES C. PAINE, JR., ESQUIRE
1818 South Australian Avenue
Suite 202
West Palm Beach, Florida 33409

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E X H I B I T S

Kosoy Exhibit Number 1
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Kosoy Exhibit Number 4
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Kosoy Exhibit Number 6 59
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P R O C E E D I N G S

PRESIDENT SMITH: Variance
number 52-98 - David Koch, 150 South Ocean
Boulevard and formerly 140 South Ocean
Boulevard located in the R-B Zoning
District, to allow construction of two
second story additions, above existing first
floor areas, to a height of twenty-nine feet
in lieu of twenty-two feet allowed with a
roof height of thirty-three feet in lieu of
thirty feet allowed.

Ex parte please starting with
Mr. Wyett.

COUNCILMAN WYETT: Yes.
Mr. Smith. Mr. Deziel.

PRESIDENT SMITH: Mr. McLendon.

MR. McLENDON: Yes. I had a
meeting on-site with Mr. Smith and Mr.
Deziel and two of the building and proposed
work. I also met the attorney and the owner
of the house to the south and viewed their
place and viewed their house to do the
proposed work.

PRESIDENT SMITH: Thank you.
Mr. Mayor.

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MAYOR ILYINSKY: Yes.
MS. SMITH: Who?
MAYOR ILYINSKY: Mr. Deziel.
Mr. Smith.

PRESIDENT SMITH: Was that it?
MAYOR ILYINSKY: Yes, ma'am.
MS. SMITH: All right. Mr.
Shaw.

COUNCILMAN SHAW: Yes. I met
with Mr. Deziel. I met with M. Smith. I
met with half of his staff, most of the
construction workers. And I'm sure there is
someone else that I must have met that's
nearby pertaining to it.

PRESIDENT SMITH: Mr. McDonald.
MR. McDONALD: Mr. Deziel

17 called me and Mr. Paine called me.
18 COUNCILMAN SHAW: Oh, yes, Mr.
19 Paine. I had two conversations with Mr.
20 Paine. I apologize.
21 PRESIDENT SMITH: I didn't speak
22 with anybody not even the baby.
23 So go ahead, Mr. Deziel, see if you
24 can do better than the baby.
25 MR. DEZIEL: I thought I was

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1 going to start off saying good afternoon but
2 good evening, Madam President, Members of
3 the Council. For the record my name is
4 Robert Deziel. I represent the applicants
5 in this case, Mr. and Mrs. David and Julia
6 Koch, who are here this evening with us
7 along with their young son, David. Also
8 with me this evening are Jeffrey Smith, the
9 project architect, and Dr. Donald Curl,
10 architectural historian consultant with the
11 project.

12 Before commencing I'd like to just
13 revisit and remind everybody where we, how
14 we got here this month and what happened
15 last month. Last month we came with a
16 variance very similar to the one we're
17 coming with today along with some other
18 improvements to this project at 140, 150
19 South Ocean Boulevard. All of the other
20 requests were approved except for this one.

21 What we're back here with today
22 received a deferral and the vote on that
23 deferral was three to two and we interpreted
24 the two descending votes to be in favor of
25 the project, however, we did have a message

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1 from all of you that we needed to go back
2 and work on certain elements of the project.

3 Over the last month we've done quite
4 a bit of work on the project. But before we
5 go over that, I'd like to remind this
6 Council the directions that we took away
7 with us last month.

8 I believe it was Mr. McDonald that
9 asked us to revisit the hardship and study
10 the hardship and come back with a hardship
11 that he thought was appropriate for
12 approval. I believe it was Mr. Wyett who
13 gave us the comment that he wasn't sure
14 whether a landmark structure should receive
15 approval for changes of this magnitude, it
16 something along those lines.

17 COUNCILMAN WYETT: I didn't say
18 landmark structure could be altered to the
19 point where you wouldn't recognize the
20 structure.

21 MR. DEZIEL: Okay. I stand
22 corrected.

23 COUNCILMAN WYETT: Landmark
24 structures can be altered. We have many
25 examples of it. I was just concerned having

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1 passed this house for the last twenty-eight

years and I compliment Mr. Koch after having purchased it, it happens to be my favorite house in town.

MR. DEZIEL: We also received the direction and I think it was from Mr. Wyett and Mr. McDonald and probably the other vote that was for the approval of the deferral to consider alternate locations and some alternate plans for the use that we need this addition for.

And then lastly there was a proposal and I believe, it was a suggestion and a direction I believe, by Councilman Shaw that we consider some possible changes to the request that we presented last month.

In connection with that request President Smith just recently read it but I would like to summarize what we're here for today.

Basically above the existing one story loggia that I think all of you are familiar with, you either visited the property with us or I'm sure driven by or had a chance to take a look at the model.

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In addition to asking for an increase beam height, the overall height of this structure will be three feet higher than the code allows. That three feet higher area will match the existing roof heights.

I'd like to point out that as part of the work that we did since last month, we addressed the revisions to the variance area, and I'm going to let Jeff Smith review those in detail as he goes over the model with you. In addition, we addressed certain comments that were made by the neighbors that were here last month and are here today and I think they have their entire team with them here today, but we left here with the direction to study the landscaping on the property line, their northern border and our southern border and in addition to see if we can make any other changes to our proposal that would accommodate the neighbors as well as accommodate this Council in trying to come to a solution that will work for Mr. and Mrs. Koch.

Before Jeff Smith addresses the model and shows you the exact change that we're

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here for today, I'd like to point out several important elements of this project. First of all, the subject property consists of in excess of two acres. Even though it's in a zoning district that allows structures to be built on properties one-eighth the size of what this project has, it has in excess of two acres. Furthermore, that excess size and the dimensions of the property imposes more restrictive zoning requirements on this property than our neighbors to the south, our neighbors to the west and even other properties in the vicinity. Those setback -- I mean -- excuse me. Those zoning requirements include increase setbacks, cubic content ratios that

would be reduced and in addition our lot coverage.

I'd like to point out before Jeff addresses the model, the project has a modest sixteen percent lot coverage and a three point three cubic content ratio. I bring that up because I know all of you are familiar with those figures in reviewing other projects that come before you and

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other projects that go before other town commissions. I think all of you know that both of those figures are extremely modest considering the size of the property and the zoning district in which the property is located.

I'd like to draw your attention to one of the pictures that I passed out. The first picture I passed out depicts a regency style home north of the property that we're discussing today. I think all of you know that at this time this home has been demolished. And the background on acquiring that property was that the applicant had the intention of combining the two properties like they were combined nearly seventy years ago and increasing the green space and trying to do its best to make a good project and return this architectural gem to its historical position.

In buying the home and demolishing it, I'd like to point out a couple of features that have come out of that effort. There's been a reduction in density by one residential unit which is in pursuit of our

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comprehensive plan. There's been an increase by more than fifty percent in the green space of the site and in a separate town requirement, the front yard green space has been increased by nearly two hundred fifty percent. There's been a substantial reduction in the building area in excess of four thousand square feet and elimination of substantially all of the hardscape along South Ocean Boulevard.

I'd also like to point out that with respect to the variance request before you there is substantial precedent before this Council. Mr. Moore, our building official, may want to comment on that statement, but before doing so I would like to point out several projects that Jeff and I have worked on that involve similar issues that are before you today. First of all, Casa Apava at 1300 South Ocean Boulevard, Ronald Pearlman's residence where we received approval for additions in excess of five thousand square feet with substantial modifications to the structure. 135 Grace Trail owned by Alberto Vitale, also a

13

landmark structure. The existing approvals

2 were increased by thirty percent along with
3 substantial changes to the existing
4 structure. That project received the
5 Florida Trust for Historic Preservation
6 Award, State of Florida A.I.A. award and the
7 Palm Beach County A.I.A. award. Cossa de
8 Malona (phonetic) at 450 Worth Avenue owned
9 by Michael Price. We received approvals
10 there also for substantial renovations.
11 Following the completion of the project the
12 residents received the prestigious ballinger
13 award from the Preservation Foundation. At
14 126 South Ocean Boulevard, the Leonard
15 Lauder residence, immediately across the
16 street from the project before you today,
17 just earlier this year we received approval
18 for a major addition which is nearly
19 completed at this time. At 220 El Bravo, a
20 property owned by Dudley Moore, it's
21 currently undergoing a major renovation,
22 also with substantial additions that were
23 approved this year and one of the -- and the
24 main variance in that case was exactly the
25 same variance we're going for today. The

14

1 Carriage House at 790 South County Road
2 currently owned by Bob and Cobey Rappaport.
3 That project received approval for variances
4 and was the subject of major additions that
5 nearly doubled the size of the residence.
6 The final product also received state
7 awards. 201 El Bravo owned by Herbert
8 Pheney. We recently came before this
9 Council this year and received approval for
10 a variance to add a substantial addition.
11 At 460 Worth Avenue, property owned by
12 Steven Myers, was completely reconfigured
13 and constructed with multiple additions. In
14 conjunction with that project approvals were
15 obtained for 458 Worth Avenue, Kathleen
16 McFarland's home, to construct additions
17 that in fact connected the two landmark
18 structures. At 319 Brazilian Avenue which
19 was restored with additions to increase the
20 size by fifty percent. That project also
21 received the ballinger award. Just a few
22 months ago we came here for a project at a
23 home formerly owned Susan and Jack Taylor at
24 125 Via del Lago that we seek once again the
25 exact variance that we're here before you

15

1 today with.

2 Having established the precedent that
3 exists for what we're here today, at this
4 time I'd like Jeff Smith to review the model
5 with you and show you exactly what we're
6 doing.

7 Before doing that I'd like to give
8 Jeff Smith's qualifications as an architect
9 and to present the project to you today.
10 Jeff has represented clients and has been
11 requested to perform commissions throughout
12 the State of Florida and the United States.
13 He was recently commissioned to supervise
14 the restoration of a seventeenth century
15 villa in Italy. His credentials include the

16 following recognition and awards. He is
17 currently the chairman of the Town of Palm
18 Beach Landmarks Preservation Commission. He
19 is currently a trustee of the Preservation
20 Foundation of Palm Beach. He is currently a
21 member of both the Florida Trust and
22 National Trust for Historic Preservation.
23 He is currently a director of the Palm Beach
24 County Historical Society. He is past
25 chairman of the Town of Palm Beach

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1 Architectural Commission. He is past
2 president of the American Institute of
3 Architects Palm Beach County Chapter. He is
4 the recipient of fifteen local, state and
5 national awards for historic preservation
6 including three ballinger awards for
7 outstanding contribution to Palm Beach
8 Heritage, all presented by the Preservation
9 Foundation of Palm Beach. In addition, he
10 received the Florida Trust For Historic
11 Preservation award for restoration of the
12 Town of Palm Beach town hall, the building
13 we're in today. His work has been published
14 eleven times including the Best Architect of
15 South Florida Award given in 1996 for an
16 addition to another Palm Beach landmark
17 structure. While he is truly astute of
18 historic preservation and his work evidences
19 that fact, after your comments last month,
20 we retained Dr. Donald Curl to review and
21 assess the project. Dr. Curl is also here
22 today to provide an objective evaluation of
23 the project before you and hopefully help
24 you make an affirmative decision.

25 At this time I'd like Jeff to review

17

1 the model with you and clearly describe and
2 show you the variance area and after that
3 Dr. Curl will address the Council.

4 PRESIDENT SMITH: All right.
5 Mr. Shaw.

6 COUNCILMAN SHAW: I don't know
7 if we're going to need staff comments
8 subsequent to the changes.

9 PRESIDENT SMITH: Well, I was
10 going to ask staff comments actually before
11 your question. Go ahead.

12 COUNCILMAN SHAW: After that I
13 think we have all seen the model and we
14 understand what the changes are and what has
15 been done and I appreciate the time you're
16 taking to give us a very good history lesson
17 in architecture in Palm Beach.

18 I think that we went over the details
19 last month and we understood what the
20 variance is and it was an architectural
21 issue more than anything else than the
22 height and the variance issue because you
23 could have built this without our help. The
24 problem is you'd have a three foot bedroom
25 so what you needed was to resolve that

18

1 problem and I think what you have presented,

2 and without going into a long presentation,
3 just to explain what you have done in
4 keeping with what was there and what is now
5 there, I would move approval but I'm not
6 going to move it until staff has time to
7 make a comment.

8 PRESIDENT SMITH: Did you move
9 approval?

10 COUNCILMAN SHAW: I'm perfectly
11 willing to move approval on the basis of the
12 changes in the application and the
13 presentation that is before us in the
14 visible.

15 PRESIDENT SMITH: If you could
16 wait until we have staff comments and
17 withdraw your motion because we're not quite
18 ready for that.

19 COUNCILMAN SHAW: That's why I
20 didn't want to make it until you asked me.

21 PRESIDENT SMITH: I just wanted
22 to make sure you weren't making a --

23 COUNCILMAN SHAW: I wasn't
24 planning to.

25 MR. MOORE: We believe that it

19

1 would be appropriate for you to hear their
2 presentation if they have a modification. I
3 think it's a public hearing. I think you
4 should go ahead and hear the modification
5 and also we'll be glad to give staff
6 comments after that and certainly we have
7 members of the public here tonight.

8 PRESIDENT SMITH: I know that
9 but I didn't know if you want to do staff
10 comments before or after Mr. Smith because
11 Mr. Smith's work is in front of us and is
12 almost self-evident.

13 Mr. Smith, do you want to walk
14 through the model? If you would walk
15 through the model, I mean for the benefit of
16 the public that's here, I'm sure many of you
17 will enjoy looking at the model and would

18 make it easier if every presentation we had
19 before the Council had a model, particularly
20 the one we just did on Brazilian Avenue.
21 However, Mr. Smith, if you would show us
22 particularly the area that we're speaking to
23 today.

24 MR. SMITH: I'll cut short my
25 presentation and just reduce it to the area

20

1 of the variance.

2 COUNCILMAN WYETT: Maybe, Mary,
3 we don't need to see the whole project, just
4 the front of the house.

5 MR. SMITH: This is the area of
6 the variance request. We took suggestions
7 from Mr. Shaw of trying to, and other
8 Council members have suggested that we keep
9 the ballistrad right along the facade and to
10 push the addition back so a loggia would
11 still appear like the existing loggia that's
12 there now and push it back approximately
13 seven feet. And what we did to try to
14 accommodate the neighbors is totally
15 eliminate the service drive in this area and

16 making it a green space.
 17 We've increased the green space in
 18 the entire front of the project by eight
 19 thousand square feet to eighteen thousand
 20 square feet of landscaped area. And, again,
 21 the distance between this variance and the
 22 property line is fifty-eight feet.
 23 PRESIDENT SMITH: Mr. Smith,
 24 where is this service drive? You relocated
 25 it from the south side.

21

1 MR. SMITH: We're going to use
 2 the service drive currently located in the
 3 rear of the property.
 4 PRESIDENT SMITH: All right.
 5 Fine. Thank you.
 6 Mr. Moore, do you want to may any
 7 staff comments if that's the end of
 8 Mr. Smith's comments.
 9 MR. DEZIEL: Excuse me. Madam
 10 President, may I ask, there's only a couple
 11 more minutes, that we complete our
 12 presentation.
 13 PRESIDENT SMITH: I thought you
 14 were done.
 15 MR. DEZIEL: Only because the
 16 neighbors are here. They've got their
 17 professionals here and they have their court
 18 reporter and we would like to get on the
 19 record the basis for our request.
 20 PRESIDENT SMITH: I thought you
 21 were done. Go ahead, Mr. Deziel.
 22 MR. DEZIEL: Thank you.
 23 At this time I'd like to introduce
 24 Dr. Curl so he can share his thoughts with
 25 us about the project. But for your

22

1 background Dr. Curl is an architectural
 2 historian and his credentials include the
 3 following. He is currently professor and
 4 chair history of Florida Atlantic
 5 University. From 1985 to 1991 he was a
 6 member of the Town of Palm Beach Landmarks
 7 Preservation Commission and served as its
 8 chairman. He is the recipient of literally
 9 dozen of academic distinctions and awards
 10 and the author of many publications related
 11 to our topic today. He is the author of
 12 Mizner's Florida for which he received the
 13 Memorial Book Award for best book published
 14 in Florida history. The book is referred to
 15 as the most complete assessment of Addison
 16 Mizner's life, career and design. We feel
 17 it's important for Dr. Curl to give his
 18 presentation today because the house was
 19 originally constructed by Dr. Addison
 20 Mizner.
 21 PRESIDENT SMITH: All right.
 22 Thank you.
 23 Dr. Curl, please.
 24 MR. CURL: Thank you. I know
 25 how long you've been here and I'll be very

23

1 short even though I'm sure you realize being
2 a professor it's very difficult.

3 PRESIDENT SMITH: That's all
4 right. The Council speaks a long time too
5 and they're not professors.

6 MR. CURL: I wanted to say
7 something that I think has already been said
8 by Mr. Wyett, that this Council does
9 understand what the landmark preservation
10 ordinance was about. Many people on this
11 Council today were part of the fight to have
12 this landmark preservation ordinance passed
13 in 1979. It is not quite twenty-years-old
14 and it has done a marvelous job in Palm
15 Beach but it was realized from the very
16 beginning that Palm Beach was not a Coxwald
17 (phonetic) village or a little town in New
18 England, that Palm Beach evolved with time.
19 Its architecture evolved with time and
20 consequently changes could be made.

21 The house itself is a perfect
22 illustration of changes made. It's a Mizner
23 house, yes, but only one section of it. His
24 design from 1923, the Biddles (phonetic)
25 moved in 1924. By 1926 they already

24

1 commissioned Joseph Urban to add to the
2 house, again, so he added the ballroom. He
3 did this. He did that. And this is the
4 house that, except they sell the house or at
5 least Mrs. Biddle sells the house in 1929 to
6 Jay and Dolly O'Bryan (phonetic) and they
7 immediately go to Fatio and say we need
8 changes again.

9 To make a very long story short, the
10 last major revision that I can find is 1967
11 when Richard Merrill owned the house and he
12 claims he put seven million dollars into
13 changes in the house. I have no idea what
14 he did.

15 But the point is this house has been
16 changed a number of times. There is no
17 purity in the house as far as one design but
18 there's purity in the overall design. It's
19 a very beautiful house, and I agree, one of
20 the more beautiful houses in Palm Beach.
21 And what is being done now is really to take
22 the house back, in some ways much more to
23 how it existed over the years.

24 The idea of doing away with any type
25 of entrance on Ocean Avenue, Ocean Boulevard

25

1 and bringing the entrance in through Barton
2 is really sort of going back to the way
3 things were in the beginning. It's not only
4 much safer but you can see the green that is
5 being added to the house. The house is
6 going to be even more beautiful than it was.
7 And while I'm not an architect, I have seen
8 I think every Mizner house in existence but
9 two and I would say that this house fits
10 very well and the changes that are going
11 into it do not detract from the overall
12 house. Thank you.

13 PRESIDENT SMITH: Thank you,
14 Dr. Curl.

15 MR. NATALE: Madam President,

16 May I cross examine on behalf of my clients
 17 please? May I ask some questions?
 18 PRESIDENT SMITH: Cross examine?
 19 MR. NATALE: At least ask
 20 questions of their witness.
 21 PRESIDENT SMITH: Yes. I don't
 22 think you have any objection, Mr. Deziel.
 23 MR. DEZIEL: Not at all.
 24 PRESIDENT SMITH: All right. If
 25 you take the portable microphone please.

26

1 MR. NATALE: Thank you. Thank
 2 you very much.
 3 PRESIDENT SMITH: Identify
 4 yourself for the record.
 5 MR. NATALE: My name is Anthony
 6 John Natale and I am the attorney of record
 7 for the Kosoys.
 8 CROSS EXAMINATION
 9 BY MR. NATALE:
 10 Q Dr. Curl, the structure which is
 11 presently landmarked, is that the structure that's
 12 invisioned in the photograph which I'm showing you?
 13 A Yes.
 14 Q And in reference to my questions, I
 15 would like you to if you would look at this and then
 16 quite possibly we may even go to your text as you
 17 wrote regarding the El Sarmiento which is the
 18 original name of this; isn't that correct?
 19 A Yes, it is.
 20 Q Now in the documents for the
 21 landscaping, I mean the landmarking that was done
 22 here, there was an architectural description; isn't
 23 that correct?
 24 A Yes.
 25 Q Did you ever have a chance to review

27

1 the actual document which is in the file in the town
 2 hall here that says what the architectural
 3 description was of the property that was landmarked
 4 as it was landmarked?
 5 A I'm afraid I didn't.
 6 Q Would I be able to show you what it
 7 is said there?
 8 MR. NATALE: And, Madam
 9 President, I'll be introducing these later
 10 in our case. They all come from the town
 11 records.
 12 BY MR. NATATLE:
 13 Q The section which I have marked here
 14 is A. It says if the mass of the building spec one
 15 is again used to emphasize the central portions of
 16 each side, this time as arch entries with the French
 17 doors below that open into the patio area enclosing
 18 a ballistrad; is that correct?
 19 A That's what it says. I have no idea
 20 what it means.
 21 Q You have no idea what that means?
 22 A No.
 23 Q Very well.
 24 When we look on another page it says
 25 that the second level terrace, which would be up

28

1 here, which echoes the ballistrad below at grade,

2 thus adding another visual unifying element to a
3 whole.
4 Would you agree that that was in the
5 original documentation for the landmark designation
6 for this particular structure?

7 A It's there.

8 MR. DEZIEL: Madam President, I
9 would like to ask the town attorney one
10 question.

11 PRESIDENT SMITH: If I could ask
12 him before you do, Mr. Deziel.

13 Where are we going with this? What
14 is the point of all this? I mean you have
15 not told -- you're asking him is it in the
16 paper. He says it's in the paper. What are
17 we doing here?

18 MR. DEZIEL: What we'd be
19 willing to do to expedite the process, they
20 can admit the landmarks preservation report
21 into evidence. We will not acknowledge all
22 the accuracy of the information in that
23 report. We reviewed it ourself. A lot of
24 the information is -- I'm not going to say a
25 lot of it. A bit of it is inaccurate. But

29

1 we feel that if he admits it into evidence
2 we can dispute the accuracy or inaccuracy of
3 it at a later time. To do that before this
4 Council, we're asking Dr. Curl to give his
5 responses and answers to a document he
6 hasn't read recently and, in fact, it is not
7 even used as a basis for his credentials.

8 PRESIDENT SMITH: Mr. Randolph,
9 can I ask too. You're talking about a
10 document that you're cross examining
11 Dr. Curl on a document that the Council did
12 not receive on their backup. We have no
13 idea what you're talking about or why. If I
14 could say, we are stipulating, according to
15 the Town of Palm Beach, it is a landmark.

16 MR. NATALE: That's correct.
17 And what we are trying to say here is they
18 present a witness to show you that there is
19 historical significance and compatability
20 with what they want to do with what was
21 landmarked. It is our position that when
22 you look at these documentation --

23 PRESIDENT SMITH: But we
24 haven't.

25 MR. NATALE: That's why what

30

1 I'm trying to do is to cross examine him,
2 get him to say his opinion was not based on
3 what was actually here and landmarked. I
4 want to be able to question him to say that
5 this is what was landmarked. This is the
6 historical significance that this Town
7 decided it wanted to preserve.

8 Now if that is the case, then I would
9 like to be able to ask questions that relate
10 as to why in his opinion is that it is
11 consistent with the landmark designation.
12 That's the whole purpose here. Rather than
13 doing it in a vacuum, to do it in the
14 reality of what we are talking about.

15 MAYOR ILYNSKY: So this is not

16 a model of a landmark house then; right?
 17 MR. NATALE: That's correct.
 18 The house is landmarked but the model you
 19 see is not what is there and not what was
 20 landmarked by the commission.
 21 MAYOR ILYINSKY: It's not what
 22 is there now?
 23 PRESIDENT SMITH: What will be.
 24 This is the proposal. He just walked us
 25 through it.

31

1 MR. NATALE: These are the
 2 alterations.
 3 MR. RANDOLPH: Maybe I can
 4 respond to a couple of questions.
 5 PRESIDENT SMITH: Mr. Randolph,
 6 please.
 7 MR. RANDOLPH: First of all,
 8 due process entitles Mr. Natale to cross
 9 examine any witnesses that are presented and
 10 put on any evidence that he feels is
 11 appropriate to prove his particular case.
 12 However, I would point out I believe
 13 that Dr. Curl indicated that he did not see
 14 this report nor did he even know what some
 15 of the things in it mean. And I would just
 16 indicate that on that basis perhaps if you
 17 would like to just simply submit the report
 18 and reserve argument based upon the report.
 19 MR. NATALE: Very well.
 20 MR. RANDOLPH: I'm not keeping
 21 you from asking the questions.
 22 MR. NATALE: I understand that.
 23 MR. RANDOLPH: I don't want to,
 24 you know, if you have an objection to being
 25 cut short on your questions, then we should

32

1 hear it now, but I'm just suggesting that
 2 perhaps since Dr. Curl hasn't seen this, his
 3 questions aren't going to be, his answers
 4 won't be helpful to you and that perhaps you
 5 can just argue your --
 6 MR. NATALE: Then what I will
 7 do is cross examine him without utilization
 8 of these documents. And what I may utilize
 9 however is his own text.
 10 PRESIDENT SMITH: Mr. Natale, we
 11 want to give you the full opportunity to do
 12 all of this. If we appear to be
 13 disinterested it's because we haven't seen
 14 the document either. You're cross examining
 15 him on something we haven't seen and he
 16 hasn't seen.
 17 MR. RANDLOPH: You know what
 18 might be helpful to you though if Mr. Natale
 19 simply proffers to you what he's trying to
 20 show by these questions so that they can
 21 sort of know where you're going.
 22 PRESIDENT SMITH: That would be
 23 a help because you do know I imagine, even
 24 though you were not here last month, that
 25 there were other variances and this project

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1 was approved by the Council except for the
2 one section over the second floor on the
3 southeast corner. And we all know that the
4 model that's been presented to us today is
5 the renovations of a landmark house and the
6 way it will appear when it is finished if
7 the last variance that we're hearing today
8 is passed which is that one corner.

9 Mr. Shaw has a question. We have to
10 figure out where we're going here because
11 this is a surprise.

12 COUNCILMAN SHAW: My question
13 is very simply this. We're not here to sit
14 as landmarks. Everything you're saying is
15 addressing a landmark issue which needs to
16 go before the Landmarks Commission who will
17 actually be the ones to approve any changes
18 to this structure. We're here for one
19 reason and one reason only, to approve a
20 change in the variance, to approve a
21 variance which allows them conceptually to
22 build something that is going to be three
23 feet higher than allowed at the top of the
24 roof. That's all we're here to hear and
25 whether or not we as the Council feel that

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1 this particular variance is in keeping with
2 what we're allowed to do. Anything
3 pertaining to the status of the property,
4 the landmark qualities, the historical
5 value, all of that I believe is a case to be
6 heard at landmarks.

7 MR. RANDOLPH: Mr. Shaw, I
8 agree with you. However, the applicant in
9 making its presentation has put on an expert
10 that appears to be aiming at the landmark
11 aspect of this and I guess that's the only
12 reason that they're having to ask those
13 questions.

14 MR. NATALE: That's correct.
15 If they're willing to strike his testimony
16 and have it removed as part of the record in
17 this case, I have no further
18 cross-examination.

19 PRESIDENT SMITH: Well, don't
20 look at us.

21 MR. NATALE: I'm just saying --
22 Mr. Randolph saying --

23 PRESIDENT SMITH: I don't know.

24 MR. DEZIEL: We'll strike the
25 testimony.

35

1 MR. NATALE: That the testimony
2 is considered then stricken and will not be
3 part of the decision making. Is that my
4 understanding then?

5 PRESIDENT SMITH: The jury will
6 disregard his testimony.

7 MR. DEZIEL: I would like to
8 strike the testimony of Dr. Curl.

9 COUNCILMAN SHAW: We want to
10 get back now to simply discussing why you
11 need to have the three foot roof height,
12 seven foot tie beam variance. And going to
13 the property, which you were kind enough to
14 show me, that in order to build a second

15 floor on this property and meet the code,
16 the ceiling height was at five feet. Now I
17 don't think that that's a reasonable request
18 to ask somebody to put a ceiling height at
19 five feet or tie beam height at five feet in
20 a house and therefore I thought the request
21 to raise it up to the height was appropriate
22 in the fact that you were asking which I
23 think would be the minimum to keep it in
24 line with the rest of the structure.
25 Now as far as the hardship --

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1 MR. RANDOLPH: You better wait
2 until you hear the rest of the presentation.

3 PRESIDENT SMITH: We haven't
4 heard the presentation from the neighbors.

5 Mr. Natale, you have more
6 presentation?

7 MR. NATALE: Oh, absolutely.

8 PRESIDENT SMITH: Oh, good. I
9 can't wait.

10 MR. DEZIEL: We're going to be
11 brief and I'm going to delete the balance of
12 my presentation except for one element and
13 that is the hardship which I would like
14 to -- first of all I would like to
15 incorporate my reference to variance
16 application that was submitted. Secondly,
17 the correspondence I submitted to town hall
18 dated December 4, 1998. And then lastly for
19 the record I would like to read the
20 hardship.

21 The hardship which runs with the land
22 is the configuration of this structure and
23 the existing height of the second story
24 beam. At the time this residence was
25 constructed, the proposed improvements would

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1 be allowed and a variance would not be
2 needed. However, because of a change in the
3 zoning code requirements, the configuration
4 of the structure and landmark status of the
5 structure, a variance is now required.

6 Thank you very much and if you have
7 any questions of any of our professionals,
8 we'll be happy to answer them.

9 PRESIDENT SMITH: Mr. Natale
10 please.

11 MR. NATALE: Thank you very
12 much.

13 PRESIDENT SMITH: Unless any
14 members of the Council has a question for
15 Mr. Deziel at this time. No.

16 Mr. Natale.

17 MR. NATALE: Thank you very
18 much.

19 Madam President, the position that we
20 have on behalf of the Kosoys, the neighbors
21 to the south, are as follows. If I may,
22 by -- first board I'm showing you are the
23 three zoning positions which we believe are
24 not met by the applicant in this case and
25 the testimony that we prepared to present to

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1 you is going to show that these three zoning
2 sections and the three sections of the
3 landmark requirements are also not met.
4 If we look at page twenty-four and
5 twenty-five of the minutes of the last
6 meeting, we note that the staff comment said
7 the design can be modified to conform to
8 code and also additions should be separate
9 to conform with the Secretary of Interior
10 Standards. The building department said
11 hardship must be shown and the town manager
12 concurred with the staff comments.
13 As a result of that we believe that
14 what we are here for at this point is to
15 address the fact that there is no legal
16 hardship as defined by all of the applicable
17 Florida case law.
18 The first witness that I would like
19 to call is an appraiser and then from there
20 we have an architect and then from there we
21 will be presenting other testimony as it
22 relates to the lack of hardship that is
23 presently in the record and the fact that
24 hardship is in fact incurred by the
25 neighbors.

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1 Ed. Do you want to take the hand
2 mike?
3 DIRECT EXAMINATION
4 BY MR. NATALE:
5 Q Sir, could you please state your full
6 name?
7 A My name is James Edward Kerr.
8 Q What is your occupation?
9 A I'm a real estate appraiser.
10 Q And do you have a curriculum vitae or
11 a resume?
12 A Yes, I provided a copy of one.
13 MR. NATALE: Madam Clerk, I'd
14 like to present this as part of the
15 evidence.
16 BY MR. NATALE:
17 Q Briefly could you summarize for the
18 Council your knowledge and experience in the area of
19 appraising residences within Palm Beach?
20 A I'm one of the owners of Palm Beach
21 Appraisers and Consultants, the company that's been
22 in Palm Beach County since 1980. I've appraised --
23 I don't have any properties right before, you're
24 obviously familiar with the area. I've done a
25 number of properties in Palm Beach, the Kennedy

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1 mansion, Mr. Perry's house a long time ago,
2 Sullivan's house, a number of others.
3 Q Did you have an opportunity to look
4 into the Kosoy residence as well as the neighboring
5 El Sarmiento in order to make an evaluation?
6 A Yes.
7 Q Could you tell the City Council what
8 in fact you did, what you looked at and were you
9 able to come up with some type of opinion?
10 A Yes. I was hired to look at the
11 property and see how it conformed and look at the
12 improvements that were being made to the house in
13 question and how they impacted our clients'
14 property.

15 In doing so I drove the neighborhood
16 and surveyed the property and looked for conformity,
17 one of the main features of property value.
18 Prefacing some of these things with the property in
19 closest proximity is the one that has the most
20 effect on the subject value. This property, I
21 assume you're all aware was a double lot. It's now
22 three lots and has effectually almost taken over the
23 entire block. The rest of the property in the
24 immediate area are more compatible in that they're
25 similarly sized lots and sized houses and one

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1 comptable with the other. This year --

2 Q Are you saying that as you proceed
3 down this road, the lots are generally divided in
4 halves with houses approximately the same size?

5 A Yes.

6 Q And this is a bit of an unusual
7 configuration?

8 A This is an unusual configuration.
9 And obviously it was assemblage. What's good
10 assemblage, you buy one in the middle and then you
11 buy the ones at either end and you control the whole
12 thing. It's the normal way to do it. It makes a
13 lot of sense.

14 The shear mass of this house and the
15 additions, especially to the south end of the
16 property where our clients' property is located, are
17 what create the objection.

18 Q Could you tell us what, if any,
19 normally accepted appraisal policies, considerations
20 or guidelines you followed in making your opinion?

21 A All the normal things relative to
22 compatibility, highest and best use, location, size,
23 conformity, et cetera. They're all factors that
24 impact property value and they all relate to this
25 property no similar to a lot of stuff in the north

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1 end where a lot of people are concerned about mass
2 and size, et cetera.

3 Q Did you have the opportunity to make
4 an analysis of the principles of substitution as to
5 what, if any, effect that would have on the value of
6 the Kosoy property?

7 A In looking at a substitution for this
8 site, somebody who would be interested in this would
9 be more interested in something that was more
10 compatible some place else where it wasn't
11 overpowered by the property next door, given similar
12 features of ocean view, lot size, house, proximity,
13 et cetera. You know, you don't want to be the guest
14 house on the block. You want to be comptable with
15 your neighbor as the same size.

16 Q Did you have a chance to view both
17 properties?

18 A Yes, I did.

19 Q You have did a chance to view what
20 intrusions there would be to the line of site to the
21 bedrooms in this case as it relates to this
22 addition?

23 A Yes. The bedrooms in the, not the
24 subject property but in the neighbors' property to
25 the south, are all along the north side of the house

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1 and the views from those bedrooms are all obstructed
2 to some degree by the additions that are being
3 constructed.

4 Q Did you have an opportunity to come
5 to an opinion as to whether there is a diminution of
6 value based on the additions as proposed and
7 evidenced in that model?

8 A There's a diminution. I quantified
9 it. Any time you lose any one of your abutting
10 rights, any one of your site ammenities, any kind of
11 view ammenity, something is taken away, in my
12 opinion that diminishes the value of the piece of
13 property.

14 Q Now there is also part of this
15 addition to build a linkage between two structures
16 that are already in existence and that's the area
17 that comes by the courtyard.

18 Did you have a chance to look at that
19 and to make a determination as to what, if any,
20 effect that would have on the value?

21 A Yes. That definitely blocks the view
22 to the north from the rooms that are in there that
23 are designed to have a view.

24 Q You're aware that that however though
25 does not require a zoning variance; correct?

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1 A Apparently not.

2 MR. NATALE: Okay. I have no
3 further questions.

4 PRESIDENT SMITH: Mr. Deziel,
5 do you want to ask any questions?

6 MR. DEZIEL: I would like to
7 ask this gentleman just a couple of
8 questions. I'll try move it along because I
9 know we have other people who are waiting to
10 get up here.

11 CROSS EXAMINATION

12 BY MR. DEZIEL:

13 Q You said you visited the Kosoy
14 property.

15 A Yes, sir.

16 Q And you also said you visited the
17 Koch property.

18 A I walked around the exterior.

19 Q What are the dimensions of the Kosoy
20 property?

21 A The lot dimensions?

22 Q Yes.

23 A They're identified on the plat here.

24 The frontage is ninety-seven feet by two hundred
25 thirty-six feet I believe.

45

1 Q What's the zoning district of the
2 Kosoy property?

3 A I don't know if it's R-B or R-B.

4 Q You don't know for the record?

5 A No.

6 Q What are the lot dimension
7 requirements in this zoning district?

8 A I don't know.

9 Q You mentioned --

10 A I didn't research it.

11 Q Okay. You mentioned a term
12 conformity.

13 A Yes.

14 Q I presumed that when you say

15 conformity you mean from a zoning standpoint or from
 16 a physical structural standpoint?
 17 A From an overall structural
 18 standpoint.
 19 Q Excuse my ignorance but I don't know
 20 what overall means.
 21 A Overall. If you look at the other
 22 properties in the neighborhood, they're all built on
 23 similar size lots.
 24 Q Did you walk across the street from
 25 the Koch property? Did you happen to visit the

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1 Leonard Lauder residence?
 2 A No.
 3 Q Next to the Leonard Lauder, did you
 4 happen to visit the Ronald Lauder residence?
 5 A No.
 6 Q Are you familiar with the fact that
 7 consecutively the three properties going from north
 8 to south are the Ronald Lauder residence, the
 9 Leonard Lauder residence and the Mr. and Mrs. David
 10 Koch residence? Are you familiar with that fact?
 11 A No.
 12 Q Do you know how large the Ronald
 13 Lauder property is? Do you know what those lot
 14 dimensions are?
 15 A The properties to the north you're
 16 talking about?
 17 Q Correct.
 18 A Yes. They're similar in size.
 19 They're more similar in size than the properties to
 20 the south.
 21 Q More similar in size to what?
 22 A To the subject, to the property that
 23 we're discussing up here.
 24 Q Are you familiar with the lot
 25 dimensions and the overall size of the Leonard

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1 Lauder property?
 2 A No.
 3 Q Are you familiar with the overall
 4 size and dimensions of Mr. and Mrs. David Koch's
 5 property?
 6 A Just from the plat that I have here
 7 and as you testified it was over two acres?
 8 Q Yes.
 9 A Yes.
 10 Q Do you know what those dimensions
 11 are?
 12 A I could add them up here. They're
 13 identified on the plat.
 14 Q Are you familiar with the fact that
 15 even though they're in the same zoning district, the
 16 Kosoy property and Koch property have different
 17 zoning requirements?
 18 A No, I'm not.
 19 Q Okay. You referred to the Kosoy
 20 residence and you talked about the northern
 21 elevation and you talked about views.
 22 A Yes.
 23 Q Is that the front, rear or side yard
 24 of the Kosoy property?
 25 A That's the side yard.

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1 MR. DEZIEL: Okay. I'd like the
2 record to stand corrected that that is the
3 rear yard of the Kosoy property.
4 BY MR. DEZIEL:
5 Q Are you familiar with what that
6 setback requirement is?
7 A No.
8 Q Are you familiar with what the
9 setback requirement is for the north setback of the
10 connector position of the Kochs?
11 A No.
12 Q You talked about three elements and I
13 think you mentioned a fourth but in your delivery I
14 missed it but the three I did catch when you talked
15 about a diminution in value, you talked about
16 compatability, conformity and size and you also made
17 some general statements that the Koch property
18 didn't meet any of those tests.
19 MR. DEZIEL: I would like the
20 record to reflect the fact that it is the
21 Kosoy property that does not conform in size
22 with what is going on in the neighborhood on
23 that street on South Ocean Boulevard and as
24 you move up Flagler Lane. I'd like to put
25 on the record I know this for a fact because

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1 I represent both of those other clients that
2 I have referred to.
3 BY MR. DEZIEL:
4 Q You talked about sight and that the
5 sight by the Kosoy's property outside their rear
6 yard would be inhibited.
7 Generally when you're doing
8 appraisal -- let me ask you.
9 Do property owners have rights of
10 view over other people's property?
11 A To a degree, yes.
12 Q In what degree?
13 A In the degree the sky, the light and
14 all the other -- it can't be blocked off.
15 Q Are you familiar with the setback
16 that exists at the variance that we're proposing
17 today?
18 A Technically, no.
19 Q Okay. If I told you it was
20 fifty-eight feet away from the property line and the
21 Kosoy's property was ten feet away from the property
22 line, would you conclude that we did not interfere
23 with their vertical sight?
24 A No.
25 Q You think that we conclude with their

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1 vertical sight?
2 A I think that you interfere with
3 their -- oh, the vertical sight.
4 Q Yes.
5 A Yes.
6 Q I only say that because when I asked
7 you about the sight that you're familiar with that
8 the one that may interfere with you talk about light
9 and air.
10 A Yes.
11 Q Are you familiar with what the side
12 yard setback requirement is for the area in which
13 we're pursuing the variance?
14 A No.

15 Q If I told you it was thirty feet,
16 would you think that that inhibited -- that had the
17 potential to interfere with their sight?

18 A It would depend on the height of the
19 structure that indicated.

20 Q If I told you it was fifteen feet,
21 would that interfere with it?

22 A Probably.

23 Q Okay. If I told you that by right
24 without a variance that the Kochs could build a
25 structure fifteen feet off the Kosoy property line

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1 to a point of measurement that would be three feet
2 lower on a roof than this structure here that we're
3 proposing, we're talking about the difference
4 between thirty-three feet and thirty at the overall,
5 would you conclude that the alternative I've just
6 described would interfere with their sight in a more
7 extreme fashion?

8 A Anything built on the south side of
9 the property would interfere with what they enjoy
10 currently.

11 Q So would you conclude that if they
12 built an addition that I just described it would
13 interfere to a greater degree?

14 A Yes.

15 MR. DEZIEL: I have no further
16 questions.

17 COUNCILMAN WYETT: I have one
18 question. You made a statement that the two
19 lots, Koch property and the property to the
20 south, are in the R-B zone; right?

21 MR. DEZIEL: Correct.

22 COUNCILMAN WYETT: You said
23 there were different zoning requirements.

24 MR. DEZIEL: Correct.

25 COUNCILMAN WYETT: Could you
52

1 explain that?

2 MR. DEZIEL: Sure. And Mr.
3 Castro and Mr. Moore are much more familiar
4 with the elements than I am. But what it
5 is, remember, Mr. Wyett, when we adopted the
6 provision that when you have excess frontage
7 on your width and you exceed the one hundred
8 fifty feet then, though you're in the R-B
9 you jump to the R-A requirements and then
10 you jump to the R-AA requirements. The
11 fact, the whole important element of what I
12 was trying to address there is the fact that
13 we shifted our front yard to Barton Avenue
14 which now makes our rear yard the property
15 line by the Kosoy. It used to be right
16 South Ocean Boulevard going west. So if we
17 had the Kosoy's size property, we could have
18 a ten foot rear yard setback. But because
19 we have an extremely large property and
20 extraordinarily deep lot, we are held to the
21 R-AA requirements of fifteen feet as opposed
22 to the ten feet and that's the point I was
23 trying to address. The Kosoy's property
24 actually is and has the potential to be
25 closer than ours and we're moving ours away.

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1 I'd also like the record to reflect
2 the addition that they refer to in the rear,
3 that testimony is irrelevant because that
4 application is not before you here today.
5 I apologize for taking the time I
6 have. I'm only doing it to protect my
7 clients' position.
8 PRESIDENT SMITH: We're not
9 complaining about the time. There's no time
10 restraint here.
11 Go ahead please.
12 MR. NATALE: Your Honor, next
13 witness. I got to -- keep doing that the
14 last time I was here.
15 PRESIDENT SMITH: Yeah, you did.
16 There's something about you. If we had
17 known we would have gotten to this part of
18 the agenda earlier; right?
19 MR. NATALE: Yeah, I know it,
20 but then again you would have saved the best
21 for the last.
22 PRESIDENT SMITH: You're not the
23 last.
24 COUNCILMAN WYETT: You're not
25 the last.

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1 COUNCILMAN SHAW: And maybe not
2 the best.
3 MR. NATALE: We'll try.
4 PRESIDENT SMITH: All right.
5 MR. NATALE: Our next witness.
6 DIRECT EXAMINATION
7 BY MR. NATALE:
8 Q Please identify yourself to the Town
9 Council.
10 A My name is Joseph Robert Legan. I'm
11 an architect registered in the State of Florida and
12 several other states.
13 Q And did you have an opportunity to
14 look at and review the site plans that were set
15 forth in the application?
16 A Yes, I did.
17 Q Did you have an opportunity to look
18 at the general parcel of land to make a
19 determination as to whether there was anything
20 unique to this parcel of land which presented the
21 owner with the hardship?
22 A No.
23 MR. DEZIEL: Excuse me. Is he
24 an architect?
25 MR. NATALE: Yes.

55

1 MR. DEZIEL: I don't think he's
2 qualified to answer the question because
3 it's a legal question. I wish Mr. Randolph
4 were here. But it's a legal question that
5 calls for a legal opinion and with his
6 educational background I don't believe he's
7 qualified to answer the question.
8 COUNCILMAN McDONALD: I suggest
9 we take a couple minutes break until Mr.
10 Randolph gets back so he can answer your
11 question.
12 PRESIDENT SMITH: Good. Then I
13 can send someone home to walk my dog.
14 Five minute break.

15 (Whereupon, a short recess was taken.)
16 PRESIDENT SMITH: I'd like to
17 reconvene the meeting please. Is everyone
18 ready?

19 MR. NATALE: Yes, we are.

20 PRESIDENT SMITH: Mr. Wyett
21 please. Mr. Wyett.

22 MR. NATALE: The break was
23 utilized productively by both parties and by
24 stipulation there will be admitted into the
25 record the resume of Mr. Legan.

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1 PRESIDENT SMITH: Mr. Moore,
2 will you take it and we'll so stipulate that
3 all of the documents proffered will be
4 entered into the record.

5 BY MR. NATALE:

6 Q You would testify that that resume is
7 in fact truthful and accurate to the best of your
8 abilities.

9 A I do.

10 MR. NATALE: Next is the
11 photograph that has been presented. This is
12 the photograph which was taken out of the
13 large pictorial I guess coffee table book
14 called The Houses of Palm Beach. That's
15 where it came from. And the date of that I
16 do not exactly know but yet we would submit
17 that this is the structure that was
18 landmarked in the accompanying documents at
19 the Town Council's records.

20 PRESIDENT SMITH: That will be
21 entered.

22 Have you seen all these documents,
23 Mr. Deziel?

24 MR. DEZIEL: Yes, Mrs. Smith.

25 PRESIDENT SMITH: Thank you.

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1 MR. NATALE: Then we have the
2 two documents that relate to the LCP
3 property file form from the Florida master
4 site file regarding the landmark designation
5 as well as the supporting documentation of
6 El Sarmiento which is contained in the
7 public records of the Town of Palm Beach.

8 PRESIDENT SMITH: Okay. Thank
9 you.

10 MR. DEZIEL: If it's okay and
11 I'd like the record to reflect that both
12 parties have agreed that we'll let the
13 documents into the record. We're not
14 stipulating as to the accuracy of any
15 information. I think both sides have agreed
16 to that and the accurate facts will be in
17 the record and any inaccuracies we're not
18 acknowledging.

19 PRESIDENT SMITH: Are they all
20 numbered?

21 MR. NATALE: I will have them
22 numbered. I have not numbered them.

23 PRESIDENT SMITH: I think it
24 will be helpful if we numbered them so
25 everyone knows what we're talking about for

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1 the record.
 2 MR. NATALE: We submit that
 3 what's contained in the public records is,
 4 in fact, accurate public records. They may
 5 have a position that something contained in
 6 there is inaccurate but nonetheless those
 7 are true copies of the public records and
 8 that's what we all stipulated to.
 9 PRESIDENT SMITH: We all agree
 10 that they're copies of the public records.
 11 Mr. Moore, are they all numbered?
 12 MR. MOORE: Yep.
 13 MR. NATALE: Very well. Let me
 14 then go quickly to Mr. Legan.
 15 BY MR. NATALE:
 16 Q Could you tell us --
 17 MR. MOORE: Any other exhibits?
 18 MR. NATALE: Not now. The only
 19 other thing that we will subsequently have
 20 is to take notice of the Town Variance
 21 Standards and for the record --
 22 PRESIDENT SMITH: What number
 23 are you up to, Mr. Moore?
 24 MR. MOORE: This will be Number
 25 5 and 6.

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1 MR. NATALE: Both boards.
 2 May I use the mike. This would be --
 3 did you say 5?
 4 MR. MOORE: 5.
 5 MR. NATALE: This would be 5
 6 which is the Town Variance Standard C, D and
 7 E and then the Federal Landmark Standards 2,
 8 9 and 10.
 9 PRESIDENT SMITH: That will be
 10 Number 6.
 11 MR. DEZIEL: I would object to
 12 the landmark standards only because they're
 13 not applicable to whether or not a hardship
 14 exists that the variances warranted. If the
 15 town attorney thinks otherwise, I could go
 16 on to withdraw the objection but I don't
 17 think it's relevant.
 18 MR. RANDOLPH: They may or may
 19 not be. It's just that we don't follow
 20 formal rules of evidence at these hearings
 21 and generally let everything in, whether
 22 it's relevant or not. The only reason I
 23 made the comment in regard to the cross
 24 examination that he was making in regard to
 25 the landmarks issue was because you had

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1 raised the landmarks issue so he had an
 2 opportunity to rebut it and then you
 3 withdrew your expert in regard to that.
 4 MR. MOORE: Do you still need
 5 these, Mr. Natale?
 6 MR. NATALE: Yes, I'll need them
 7 for hearsay.
 8 MR. MOORE: Very well. 5 and 6
 9 and I'll give the rest.
 10 BY MR. NATALE:
 11 Q Mr. Legan, have you ever had the
 12 opportunity to go before town councils or city
 13 commissions or other zoning commissions for
 14 variances?

15 A Yes, very often.
 16 Q On how many times?
 17 A Maybe less than one hundred, many
 18 more than fifty.
 19 Q In doing so have you become familiar
 20 with certain terms and considerations both as an
 21 architect and as someone who is presenting projects
 22 to zoning boards?
 23 A Yes, I have.
 24 Q And have you ever been involved in
 25 any petition in requiring a variance for a hardship?

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1 A For a hardship?
 2 Q Yes.
 3 A Yes, I have.
 4 Q Now in doing your architectural
 5 analysis of the addition as proposed here what, if
 6 any, documents did you look at?
 7 A Well, I looked at the site plan and
 8 reviewed the photographs of the property. I also
 9 visited the properties, the, and other information
 10 relative to the codes and the submission for the
 11 landmark.
 12 Q Okay. Based on all of them, do you
 13 have an opinion as to whether there is a substitute
 14 location on the property which could be utilized to
 15 accomplish a master bedroom suite?
 16 A Yes, I do. There's probably a number
 17 of locations but an ideal location certainly would
 18 be on the north side of the property. There is a
 19 substantial piece of land there now that I
 20 understand is owned as a part of the property, seems
 21 to be developed on the model and similar elevations
 22 for some sort of arcade, but that would have been an
 23 ideal location to suggest and build this master
 24 bedroom suite addition that's being proposed.
 25 Q From an architectural standpoint is

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1 there any unique reason why the master bedroom must
 2 be where it is on the plans submitted by the
 3 applicant?
 4 A No. And, in fact, I never personally
 5 would have suggested that, you know, in the many
 6 buildings we designed. And, you know, I guess this
 7 goes back to when I took my state board exam up in
 8 Wisconsin back in '65 or so. They had a structural
 9 problem in which we had a hotel coming down on top
 10 of a ballroom and after that I don't think I'd ever
 11 want to stick my client with that sort of a
 12 structural problem.
 13 Q When you say structural problem,
 14 could you tell us what you see structurally would
 15 need to be done which would in essence change the
 16 authenticity of the structure which is presently
 17 there?
 18 A Well, not having firsthand
 19 information on everything I couldn't tell you in
 20 detail but --
 21 MR. DEZIEL: Mr. Randolph, if
 22 he's just going to speculate and he
 23 acknowledged for the record that he doesn't
 24 have firsthand information, I really don't
 25 think it's appropriate for him just to give

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1 information. It's not based on any facts
2 whatsoever. He acknowledged himself that
3 it's not based on firsthand information.

4 THE WITNESS: I was speaking of
5 the detail.

6 MR. RANDOLPH: I think the
7 Council can take that into account when it
8 akes its decision into it but I don't
9 think --

10 MR. DEZIEL: I want to keep the
11 parameters of this discussion within the
12 bounds of what we all know and are familiar
13 with.

14 MR. RANDOLPH: I understand.

15 THE WITNESS: Because of the
16 loads and the spans that are required
17 inside, things would have to be done to the
18 building below that would probably change
19 its structural characteristicss and may
20 change it physically and visibly and also
21 the foundations.

22 BY MR. NATALE:

23 Q Now when you had a chance to review
24 the zoning which is part of what you do as an
25 architect; correct?

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1 A Yes.

2 Q And the landmark designation and
3 standards, that is also something an architect would
4 do in designing a project; would he not?

5 A Certainly.

6 Q In doing so do you have an opinion as
7 to whether the addition as anticipated is consistent
8 with the zoning code regulations and the landmark
9 regulations?

10 A Well, it's not consistent with the
11 zoning code regulations because that's why we're
12 here tonight. We're dealing with a variance in
13 height that's required or it's being requested.
14 That variance in height, if this was built on
15 another part of the site, might not be required at
16 all. Or if someone wanted to require it and it
17 would be acceptable, it would certainly be more
18 acceptable somewhere else to our client than where
19 it is but it's not required. There's no hardship.

20 Q When you say there is no hardship,
21 what do you understand hardship to be?

22 A Well, my understanding in dealing
23 with it in many other variance committees and
24 councils, et cetera, is that it can't be
25 self-imposed. It must be a real hardship and it

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1 must be something that causes and creates the
2 problem that is being solved by the requested
3 solution or suggestion or direction.

4 MR. NATALE: I have no further
5 questions.

6 MR. DEZIEL: I have just a
7 couple quick ones.

8 PRESIDENT SMITH: Mr. Deziel.

9 CROSS EXAMINATION

10 BY MR. DEZIEL:

11 Q Mr. Legan, in your experience how
12 many resident, single family residential structures,
13 have you been commissioned on in excess of fifty
14 thousand square feet?

15 A Single family? Probably none.
 16 Q How about fifty thousand square
 17 feet.
 18 How about forty?
 19 A Possibly.
 20 Q Where you were you the architect of
 21 record.
 22 A I worked on the King residence in
 23 Boca Raton.
 24 Q I mean when you were the architect of
 25 record. Forty?

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1 A Yes.
 2 Q How about thirty?
 3 A It could have been fifty.
 4 Q How about thirty?
 5 A I couldn't say beyond that.
 6 Q Okay.
 7 A We worked on one or two remodelings
 8 here in Palm Beach but I don't know the exact square
 9 footage.
 10 Q Okay. How about twenty?
 11 A I don't know.
 12 Q How many square feet are in the Kosoy
 13 house?
 14 A About ten thousand.
 15 Q How many square feet are in the Koch
 16 residence?
 17 A Without the addition? About nineteen
 18 thousand.
 19 Q How many square feet is the addition?
 20 A Four thousand.
 21 Q Okay. How many landmark structures
 22 have you been the architect of record on in Palm
 23 Beach?
 24 A Possibly one.
 25 Q Which one is that?

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1 A I don't know the name of it right
 2 now.
 3 Q I mean generally --
 4 A It was done a long time.
 5 Q You either applied your seal or you
 6 didn't but you don't remember?
 7 A It was a long time ago. I've been in
 8 business for thirty-five years.
 9 Q Okay. You talked about the
 10 structural changes that would be needed to this
 11 property in order to implement the variance;
 12 correct?
 13 A Right.
 14 Q Did you review the structural plans
 15 of this property as it exists today?
 16 A No.
 17 Q Are you familiar with the structural
 18 elements in this property that we're talking about
 19 today? And I'm talking about tie beams, tie
 20 columns, steel, footings and the sort?
 21 A Am I familiar?
 22 Q With their location and their ability
 23 to support the loads of what we're proposing today.
 24 A I don't have any plans. I didn't
 25 review the plans of the building as it exists today.

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1 Q Okay. I asked you these questions
2 just to get a familiarity with the basis on which
3 you make your opinion on the work that would have to
4 be implemented so that the work contemplated by the
5 variance could be completed. I've asked you if you
6 looked at plans and I've asked you if you're
7 familiar with the structural elements in place, and
8 correct me if I'm wrong, but I believe you said no
9 to both.

10 A That's correct.

11 Q Okay.

12 A But I also didn't mention that there
13 are mechanical problems with bathrooms connected
14 with master suites that would increase the cost in
15 that area. It's not a very cost effective way to
16 approach it. It puzzles me as to why --

17 Q Let me ask you this. Has cost been
18 raised by anybody other than yourself as an issue
19 today?

20 A I don't know. I don't recall.

21 Q Okay. In connection with Town of
22 Palm Beach historic structures, how many variance
23 applications have you pursued in your career?

24 A None.

25 Q Are you familiar -- you stated that

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1 the request before the Council today did not have a
2 valid hardship; is that correct?

3 A That's what I stated.

4 Q Would you please repeat for me the
5 hardship that was presented in connection with the
6 application today based on what you think it is that
7 caused you to say that it did not meet the hardship
8 requirements?

9 A What the hardship is? I don't know.

10 Harship is -- I didn't hear precisely what the
11 hardship was.

12 Q Okay. You're talking now you didn't
13 hear what the hardship was but you also previously
14 told me that you didn't think the hardship that was
15 presented met the test of a hardship and was a valid
16 hardship.

17 A No. I'd like to clarify that. I
18 merely said there was no hardship period, not the
19 one that was presented but no hardship.

20 Q Okay. So you're not even addressing
21 the hardship that was presented. You're saying in
22 your opinion you don't see any hardship anywhere?

23 A Correct, because it could be built in
24 another manner.

25 Q Okay. What is the built in another

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1 manner have -- I'm not talking about the variance
2 ordinance but -- have to do with whether a hardship
3 exists? I'll acknowledge that a hardship is one of
4 the elements of a variance.

5 A Are you saying there could be a
6 hardship even if someone did not want to build
7 anything?

8 Q No. What I'm saying or proposing is
9 that a hardship and whether or not it could be built
10 somewhere else are two different issues.

11 MR. DEZIEL: But with that I'll
12 close my cross examination of this witness
13 and ask the Kosoy's Counsel if they have any
14 other witness that they're going to present.

15 MR. NATALE: Yes. James Paine.

16 DIRECT EXAMINATION
 17 BY MR. NATALE:
 18 Q Sir, could you please state your full
 19 name?
 20 A James C. Paine, Junior.
 21 Q And what is your profession?
 22 A I'm an attorney and registered
 23 architect.
 24 Q When you say you're a registered
 25 architect, does that mean you were licensed by the

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1 State of Florida to practice as an architect?
 2 A Yes, it does.
 3 Q Have you done so?
 4 A I'm not currently practicing to any
 5 great extent but I have in the past.
 6 Q For how long?
 7 A From 1980 through 1990 as a
 8 registered architect.
 9 Q You are a member of The Florida Bar;
 10 are you not?
 11 A Yes.
 12 Q As it relates to the application in
 13 this case, did you have a chance to review the
 14 application as an architect and as an attorney?
 15 A Yes.
 16 Q I'd like to direct your attention to
 17 Town Variance Standard C which says the granting of
 18 variance requires will not confer on the applicant a
 19 special privilege that is denied by this ordinance
 20 to other lands, buildings or structures in the same
 21 zoning.
 22 Do you have an opinion as to whether
 23 the structure as anticipated and as manifested in
 24 the model would constitute a special privilege and
 25 therefore a violation of the Town Variance Standard

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1 C?
 2 A I believe it would, yes.
 3 Q Could you please explain to the
 4 Commission why?
 5 A Because to grant the variance to
 6 build a master bedroom suite in the position that is
 7 proposed allows the finished floor to be seven foot
 8 higher than what is currently allowable and allows
 9 the tie beam to be seven foot higher than what is
 10 currently available to other new structures in the
 11 R-B zoning district.
 12 Q Based on that do you have any other
 13 comments you would make as far as what is the,
 14 whether this is a unique privilege based on personal
 15 preference or whether it is something that is unique
 16 to the actual land and parcel?
 17 A I would say it's unique based on a
 18 personal preference in that there's ample space
 19 available on the property to build the master
 20 bedroom suite in conformity with the codes.
 21 Q Town Variance Standard D, do you have
 22 an opinion as to whether that has been met by the
 23 applicants in this case, and if not why not, and
 24 does the proposed application and plans set before
 25 us meet that standard or is it in violation of that

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1 standard?

2 A I believe it's in violation. The
3 standard requires that the literal interpretation of
4 the provisions of this ordinance would deprive the
5 applicant of rights commonly enjoyed by other
6 properties in the same zoning district under the
7 terms of this ordinance and would work unnecessary
8 and undue hardship on the applicant.

9 I believe that there's no undue
10 hardship shown under these circumstances because
11 there's ample room to build that addition elsewhere
12 on the site within the zoning code.

13 Q Town Variance Standard E, that the
14 variance granted is a minimum variance that will
15 make possible the reasonable use of the land,
16 building and structure.

17 Do you have an opinion as to that?

18 A I don't feel that it is the minimum
19 variance. I feel that no variance at all is
20 necessary. There are other ways they could
21 construct this addition and still request a variance
22 and those variance requests might be less
23 substantial and less onerous than this one.

24 For example, if they were to request
25 a variance to build to this height on the other side

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1 of the site without any impact upon the neighbors,
2 that would be minimum or at least be a lesser
3 variance request than the one that is here before
4 us. But the truth of the matter is that there are
5 ways to build that would require no variance at
6 all.

7 Q When you say a hardship, is this
8 structure as presently landmarked, is this incapable
9 of people living in it, having bedrooms, having
10 families and using it?

11 A Absolutely not.

12 Q I'd like to direct your attention to
13 Federal Landmark Standard Number 2. Do you have an
14 opinion as to whether or not the applicant's
15 proposal would be consistent or inconsistent with
16 that objective?

17 A I believe it's inconsistent.

18 Q Could you tell us why?

19 A The Federal Landmark Standard states
20 that the removal of historic materials or the
21 alteration of features and spaces that characterizes
22 a property shall be avoided.

23 I firmly believe that the balcony
24 over the ballroom is a unique feature of this
25 residence as landmarked. It is designated in the

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1 documents as one of the reasons that the house was
2 landmarked and the proposed addition wipes it out.

3 MR. RANDOLPH: Mr. Natale, may
4 I interrupt a moment? I don't want to keep
5 you from asking questions you think you need
6 to have in the record. We pretty well
7 indicated that the landmark status of the
8 property was not going to go into. In fact,
9 Mr., the applicant withdrew his witness in
10 that regard. I was just wondering if you
11 really feel a need to go forward with that.

12 MR. NATALE: I think the only
13 reason why we would feel a need to present
14 it is the mark-up as shown, and maybe I can
15 do it by argument later, but basically there

16 is a sense that this is consistent with the
17 architectural landmark history and we're
18 saying that it's inconsistent so therefore
19 there is nothing unique about this property
20 which gives them the hardship which is the
21 whole legal predicate is you can't use it
22 for anything else.

23 I could be very brief with this. I
24 would just like to put it in the record if I
25 may.

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1 BY MR. NATALE:

2 Q Please continue as to whether you
3 believe that that criteria would be met.

4 A No, it would not be met.

5 Q Why's that, sir?

6 A Because, as I stated before, a unique
7 feature of space is being eliminated and I would
8 offer further that the town zone -- well, let me
9 back up.

10 I honestly feel that the two issues,
11 landmarked, landmarking and the variance problem,
12 are intertwined and it's hard to get away from both
13 and they were both discussed at length during our
14 last meeting. And having said that, I note the
15 town's landmark ordinance says that the existing
16 written created by existing building masses and
17 space between them should be preserved. And I
18 firmly believe that we are losing a visual break in
19 this long elevation and that we're losing a unique
20 space and I believe that it's improper and in
21 violation of the town's ordinance and of the federal
22 standards.

23 Q And the last criteria under the
24 federal landmarks, 10?

25 A New additions that are adjacent or

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1 related reconstruction shall be undertaken in such a
2 manner that if removed in the future the essential
3 form and integrity of the historic property and its
4 environment would be unimpaired.

5 It's my opinion that to build on the
6 north side where there's ample space would be, could
7 be done in such a manner that it could be easily
8 removed in the future if necessary. To build over
9 the ballroom will require structural changes to the
10 span and to the foundation. And although anything
11 can be done with enough funds, it is I believe less
12 likely and much more difficult to restore the
13 property to the form that it was in when it was
14 landmarked.

15 Q Are you familiar with the landmark
16 designation of the Kosoy property?

17 A Yes.

18 Q Is it landmarked?

19 A Yes, it is.

20 Q What part of it is landmarked?

21 A The front facade.

22 Q And is there -- do you have an
23 opinion as to whether or not the development of this
24 project as set forth would interfere with their
25 quiet enjoyment of what they presently have

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1 available to them and, if so, why?

2 A I do believe it will interfere. The
3 Council can view from their seats I believe. I
4 forgotten which drawing is there but we projected
5 the lines of prospective forward.

6 PRESIDENT SMITH: Mr. Paine,
7 please use the microphone.

8 MR. PAINE: My apologies.

9 We took a photograph from Mr. Kosoy's
10 balcony.

11 PRESIDENT SMITH: Mr. Deziel,
12 have you seen --

13 MR. DEZIEL: I have not seen
14 the picture. If you could please turn it
15 around, I'd appreciate.

16 PRESIDENT SMITH: It's a
17 conceptual ink pen drawing. I think that's
18 getting a little dramatic perhaps.

19 MR. DEZIEL: Mr. Randolph, I
20 would ask that this be stricken because
21 there's no scientific background to it. The
22 drawing is not to scale. It may not even be
23 proportionate. Every document that we have
24 presented in evidence today is to scale and
25 accurately represents the field. To have

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1 somebody present a sketch in evidence today,
2 I don't think it's appropriate because it
3 doesn't even, it's not sealed and it doesn't
4 even say it's to scale. I don't even know
5 how relevant it is.

6 MR. RANDOLPH: I think the
7 Council can take it into account, the fact
8 that it's not sealed and it's not to scale,
9 but I think they have the right to present
10 it.

11 MR. PAINE: I'd like to add also
12 that any photograph as presented, while it
13 may not be an accurate photograph, does not
14 necessarily have to be to scale. This is
15 certainly an accurate photograph.

16 PRESIDENT SMITH: We see the
17 photograph, Mr. Paine, and we see the line
18 drawings. Please don't argue with Mr.
19 Deziel over the photograph and the line
20 drawings.

21 MR. PAINE: My apologies.

22 PRESIDENT SMITH: We do see it
23 and we understand what the photograph is
24 of. It's a view from the Kosoy's house
25 facing northwest into the property.

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1 MR. NATALE: Mr. Paine, while
2 you are there --

3 PRESIDENT SMITH: Which is the
4 view that they have now and I assume that
5 they had when they bought the house. Did
6 they not just buy the house?

7 MR. NATALE: No. When was the
8 house purchased?

9 MR. KOSOY: 1991.

10 PRESIDENT SMITH: So the house
11 was purchased in the last eight years. I
12 was two years off. I figured it was ten
13 years. And they've done a lot of work on
14 it, I realize that. But the house as it's

15 standing was the house that was there when
16 Mr. Orungo (phonetic) had it. If we could
17 just move it along in a little quicker pace,
18 I think the Council would appreciate it.
19 MR. NATALE: Very well.
20 BY MR. NATALE:
21 Q Mr. Paine, would you direct your
22 attention to the markup model.
23 In looking at the markup model, is
24 there anything that you think is important to
25 explain to the members of the Council as to how the

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1 facade affects the mass and the architectural effect
2 that this has on the neighbor, the Kosoy's?
3 A Well, when this entire corner is
4 infilled over the existing deck the mass is
5 increased in this direction. The Kosoy's house is
6 not shown on the model but it is in close proximity.
7 It's much smaller. All the bedrooms in the Kosoy
8 house face north, although they do enjoy ocean views
9 to the northeast. All of these bedrooms are
10 impacted by this addition because the wall from
11 about, I'm not absolutely sure, but I believe about
12 in this neighborhood is all new. And previously
13 they would have had a view which would have included
14 quite a bit more sky.

15 Also all the views are framed. This
16 view is framed by the end of the balcony. The views
17 out the window are framed by the window frames
18 themselves so from inside the room your perception
19 is drastically affected by this addition. And if
20 you were able to lean or had to lean out the window,
21 then you would see sky above and you wouldn't be
22 quite so affected. But if you stand back from the
23 window, the appature, the opening, is restricted and
24 your view changes in many situations from a sky to
25 wall and they are very upset about that.

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1 PRESIDENT SMITH: What you're
2 saying though is their view is affected to
3 the north but not to the east of the ocean.

4 MR. WITNESS: Not to a great
5 degree except from the furthest back
6 bedroom, I will agree with you there.

7 COUNCILMAN SHAW: How would the
8 view be affected if there was a twenty-five
9 foot hedge on the property line?

10 THE WITNESS: It would be
11 affected negatively.

12 COUNCILMAN SHAW: How would it
13 be affected if there was beautiful trees
14 that were planted with very thick crowns?

15 THE WITNESS: It would depend
16 on the location of the trees.

17 COUNCILMAN SHAW: Right on that
18 area that --

19 THE WITNESS: Right on the
20 property line?

21 COUNCILMAN SHAW: Right on the
22 property line.

23 THE WITNESS: Well, I believe
24 that trees are preferable to wall, but some
25 of the bedrooms also at an angle enjoy ocean

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1 views so you might lose your ocean views
2 while gaining protection from the new wall.

3 COUNCILMAN SHAW: And is the
4 Kosoy's house forward, equal to or further
5 back?

6 THE WITNESS: It's very similar
7 but I believe it's a little bit forward.

8 COUNCILMAN SHAW: Because the
9 angle that's on that photo, although we
10 can't really establish it, shows it very far
11 forward.

12 THE WITNESS: Let's get the site
13 plan out. Can we do that?

14 PRESIDENT SMITH: The site plan
15 show both houses.

16 THE WITNESS: Yes. We prepared
17 a site plan that shows both houses and this
18 is the relationship. Very quickly let me
19 show you this side which is a blown-up that
20 shows the position of these bedrooms.

21 PRESIDENT SMITH: You're going
22 to have to tell us what you're showing us at
23 this stage, Mr. Paine. You're flipping it
24 like it's a --

25 THE WITNESS: I apologize.

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1 Which side would you like to see, the
2 overall or --

3 PRESIDENT SMITH: Site plan
4 showing the two houses.

5 MR. SHAW: The blow-up side
6 would be best.

7 MR. NATALE: And we'll have that
8 entered as next exhibit, Number 7.

9 PRESIDENT SMITH: Now all the
10 lines look the same when they're in black
11 and white. So if you could point out the
12 property line of the Kochs and the property
13 line of the Kosoy's and the location of the
14 two houses please.

15 THE WITNESS: I'd be happy to do
16 that. Let me back up just a minute because
17 I want to be accurate.

18 This particular plan is a plan we
19 prepared to illustrate how an addition could
20 be done on the north side and it's not what
21 has been proposed. We do have the correct
22 plan if somebody could grab it for me. Very
23 similar but --

24 COUNCILMAN WYETT: Mrs. Smith,
25 while they're waiting to talk about view,

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1 vista, air concepts has not been accepted I
2 don't believe by this Council. You don't
3 own, unless you have an easement over
4 adjacent property, a future right to be able
5 to see the ocean. The reason we have
6 setbacks is to provide light and air and I
7 don't think it's, I don't think it's
8 material to this case. I think the material
9 part of this case, I think you're making
10 other points, is is there a hardship, can
11 this Council legally grant a hardship that's
12 been presented being the tie beam and I'm
13 not really interested in the vistas because
14 I don't think they're anything legally we

15 can consider.

16 PRESIDENT SMITH: It was just a
17 question, Mr. Wyett, that which house, what
18 is the location of the two houses and from
19 that drawing it appears both houses line up
20 approximately the same line on the east side
21 of their properties.

22 Is that what I'm looking at?

23 THE WITNESS: Yes. You're
24 absolutely correct and I'll elaborate more
25 but if Council's seen enough, fine.

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1 PRESIDENT SMITH: No. Just
2 simply asked the question.

3 COUNCILMAN SHAW: Since you
4 brought up that this is going to affect the
5 view of the side bedrooms, on the assumption
6 that there isn't a twenty-five foot hedge
7 which can be built, excuse me, planned for
8 tomorrow, how does this addition affect the
9 openness? I think the appraiser's comment
10 was as long as you have air going up and you
11 have light, it's not an issue. Can you show
12 me from the bedrooms, just draw a line as to
13 what part of the view is being obscured,
14 assuming you look onto the neighbors. And
15 while you're looking onto your neighbor's
16 yard --

17 COUNCILMAN SHAW: We're back
18 on.

19 PRESIDENT SMITH: I assume you
20 all are going to stay when we hear Hooters
21 or Houston's or whatever it is. We have six
22 more writeups to go on this agenda and I
23 really think if I had thought that this
24 presentation was going to take a couple of
25 hours I would have put it on a time certain

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1 or at a separate meeting. I think next time
2 for all the lawyers that are here, you
3 realize that you're going to have an hour
4 presentation or two hour presentation in the
5 middle of a regular town council meeting
6 that's going to come up at 8:00 o'clock at
7 night, if you let us know and we can maybe
8 schedule it at a special time because this
9 is a very long presentation and both sides
10 deserve to get our full attention and our
11 full focus on what you're saying. I'm just
12 telling you why. We're giving you all the
13 time.

14 MR. NATALE: I understand.

15 Did you want to say something about
16 the schedule?

17 MR. DEZIEL: We would stipulate
18 to finishing up in five minutes each or
19 three minutes each and to the extent that
20 opposing Counsel needs to submit records or
21 evidence for the record, we would do that on
22 an expedited basis because we feel the
23 record speaks for itself. I think we were
24 good sports and acting in good faith by
25 expediting Dr. Curl's testimony and his

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1 cross-examination. We would really like to
2 see the other side do the same.

3 MR. NATALE: Mr. Paine, could
4 you step down because I think I have some
5 more, very few more questions for you.

6 MR. NATALE: I have no further
7 questions.

8 PRESIDENT SMITH: All right.
9 Thank you then, Mr. Natale.

10 Mr. Deziel, do you have any
11 questions? All right.

12 Mr. Kosoy.

13 MR. DEZIEL: Before he does it
14 I just want to ask Mr. Paine a couple of
15 questions.

16 PRESIDENT SMITH: All right.

17 CROSS EXAMINATION

18 BY MR. DEZIEL:

19 Q How many variance applications as an
20 attorney have you pursued before the Town Council in
21 the Town of Palm Beach as an applicant?

22 A None.

23 Q Okay. How many state, national or
24 local awards have you received for your work as an
25 architect in connection with historic restorations?

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1 A None.

2 Q Are you familiar at all with property
3 owners' rights and views? I'm not now -- I'm asking
4 as a lawyer.

5 A To some extent, yes.

6 MR. DEZIEL: I only want to know
7 how much this guy makes an hour. He's got
8 all these degrees here.

9 PRESIDENT SMITH: You're
10 jealous.

11 BY MR. DEZIEL:

12 Q If the Kochs were to install a hedge
13 tomorrow on their property line but on their
14 property, and presuming it didn't encroach on the
15 Kosoy's property and like Mr. Shaw asked if that
16 hedge went anywhere from twenty-five to forty feet
17 high and it was a solid hedge, would you acknowledge
18 that the Kochs would have the legal right to do
19 that?

20 A I'm not absolutely sure.

21 Q Okay. And how is it that you're not
22 sure? Is it because you're not aware of the facts
23 or the law?

24 A The facts are clear. You presented a
25 clear hypothetical. I'm not absolutely sure that

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1 they would have no legal remedies.

2 Q Okay. If that were the case, would
3 you acknowledge that all their concerns regarding
4 their views would go away if those diminished views
5 were behind the hedge was higher than the
6 improvements we're proposing today?

7 A Could you clarify the question?

8 Q If the hedge blocked out the
9 improvements we're proposing today and blocked out
10 the entire property line all the way over to South
11 Ocean Boulevard, would all your concerns be
12 diminished and the hedge be the main concern?

13 A The weight would shift. The weight
14 would shift but we have freezes. We have new owners

15 who don't like hedges. Things can change.
16 Landscaping is temporary.
17 Q But if the Kochs put one in and it
18 was a solid hedge, would the view issue of the
19 improvements that we're proposing today go away?
20 A I don't think so. I don't think it
21 would go away. I think we have other issues that
22 were related to the view issue. Everything ties
23 together, Robert.
24 Q Okay. I'll move on.
25 MR. DEZIEL: I'll hold off on my

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1 summary which will be real brief until they
2 bring up their last witness.
3 PRESIDENT SMITH: Mr. Moore.
4 MR. MOORE: One question. The
5 Kosoy's house is two stories or three
6 stories?
7 THE WITNESS: It has a third
8 level room.
9 MR. MOORE: No. I said two
10 stories or three stories?
11 THE WITNESS: Three stories.
12 MR. MOORE: The height of their
13 overall house?
14 THE WITNESS: I'm not exactly
15 sure. To the peak of the roof?
16 MR. MOORE: Yeah.
17 THE WITNESS: I'm not sure of
18 the exact height.
19 MR. DEZIEL: Jim, let me ask
20 you one more question.
21 BY MR. DEZIEL:
22 Q Which house is higher, the Kosoy
23 house or the Koch house?
24 A They're very closer.
25 Q If I told you that the Kosoy house

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1 was higher, would that be believable to you?
2 A It would be believable, yes. It
3 would be matter of feet but it would be believable,
4 single peak.
5 Q For the record, I'd like the record
6 to reflect that we sent a surveyor out to both
7 properties and had them measure and the Kosoy
8 property or the residence structure is in fact
9 higher than the Koch structure.
10 PRESIDENT SMITH: Thank you,
11 Mr. Deziel.
12 DIRECT EXAMINATION
13 BY MR. NATALE:
14 Q Mr. Kosoy, sir, could you please
15 state your full name and address?
16 A Peter Kosoy, 158 South Ocean
17 Boulevard.
18 Q Are you the neighbor to the south?
19 A We are.
20 Q What is that address?
21 A 158 South Ocean Boulevard.
22 Q When you purchased your property did
23 you realize it was landmarked?
24 A Yes, we did.
25 Q As a result of that did you do any

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1 renovations at all?

2 A Yes, we did.

3 Q When you did your renovations what,
4 if anything, did you do to try to get variances with
5 the zoning?

6 A None. No variances. We hired
7 Mr. Smith actually to do it because we knew he could
8 do the job.

9 Q Is there anything that you believe is
10 important to inform the Council about as to your
11 position regarding this particular addition as
12 constructed and as represented?

13 A Yes. I can just say that when we
14 bought this house it was landmarked and we were very
15 aware that the next door was landmarked and it was
16 very unlikely that some people, including Mr. Deziel
17 talked about views and obstruction with trees and
18 Councilman Wyett thought that it wasn't relevant.
19 We thought it was relevant because we knew it was
20 landmarked and we knew nothing could be put there or
21 changed very easily at all. And we felt, you
22 know -- and by the way, I'd like to just apologize
23 if I was short with anybody here or anything because
24 if you want to talk about emotion or undue hardship,
25 we feel that we are the people with the undue

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1 hardship. We don't have the ability to build
2 wherever we want. Our lot is small. Our house is
3 much smaller than the adjoining and we feel that the
4 people next to us have more of an ability to change
5 where there is, their house is.

6 And I also feel when we first came
7 here to trying to make some peace, let's say a week
8 ago we tried to do this, but we felt we were mislead
9 by the Counsel and architects, threatened, et
10 cetera, that the vote was in, we'll win, et cetera,
11 don't worry, you better do this, we'll build next to
12 you, et cetera. And when we found out that wasn't
13 actually the case, we were pretty upset. And I'm
14 quite concerned here that relationship here caused
15 me a lot of concerned. Hopefully that won't come
16 into play when you're making your decisions, that
17 the law is what is here and I don't see how anyone
18 could come to a different decision but to reject
19 this according to law about undue hardship.

20 And I found it quite disturbing that
21 before we even presented our side Mr. Shaw was
22 making an approval of this case without even hearing
23 us and saying, yes, I would vote for it without
24 hearing parts. I find that deeply concerning from a
25 judicial point of view and I find, I know there's a

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1 lot of relationships here with the gentleman all in
2 this thing and I find that many times in this town
3 relationships get the vote and I feel if anybody has
4 let's say a relationship that they don't feel is
5 just based on the merits and the law they should
6 recruit themselves. I really believe that. And I
7 think that if anyone has an undue hardship it is us
8 not someone trying to expand a nineteen thousand
9 square foot home.

10 Q Anything further, sir?

11 A No, that's all.

12 PRESIDENT SMITH: Could I ask
13 you if you have any specific relationships
14 in mind?

15 THE WITNESS: No.
16 PRESIDENT SMITH: So you don't?
17 THE WITNESS: No. I'm just
18 saying if there is.
19 PRESIDENT SMITH: You're just
20 making a blanket statement.
21 THE WITNESS: Yes.
22 PRESIDENT SMITH: Fortunately,
23 I'd like to say very fortunately, in a small
24 town most of us know each other. I've known
25 Mr. Paine since he was twelve-years-old but

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1 I feel I'm still very qualified to listen to
2 him. I've probably known him more than a
3 lot of people in this room.
4 THE WITNESS: All I'm saying it
5 should be done on the law and not on a
6 relationship. I'm not accusing anyone.
7 PRESIDENT SMITH: Sure. I think
8 this Council goes out of their way to bend
9 over backwards not to work on relationships
10 and there isn't anyone sitting on Council
11 today that has a business relationship or
12 personal relationship that I know of.
13 THE WITNESS: I have some
14 concern considering the discussions I had
15 with the lawyer and the architect for the
16 applicants before.
17 PRESIDENT SMITH: Okay.
18 MR. NATALE: I have no further
19 testimony. Just would have argument.
20 PRESIDENT SMITH: Mr. Deziel, do
21 you have any questions?
22 MR. DEZIEL: I have no
23 questions. You can close.
24 MR. NATALE: Thank you very
25 much.

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1 The key issue here is has a hardship
2 been proven by the evidence in this case. I
3 think that your Council is quite astute in
4 the law but for the record I'm going to cite
5 the case of Nance versus town of
6 Indianlantic, 419 Southern 2d 1041. In that
7 case it says that the zoning decisions must
8 be based on a unique hardship is the burden
9 of proof in order to show it. The variance
10 seeker must demonstrate a unique hardship in
11 order to qualify for the variance.
12 The cases then go on in reading from
13 Matero versus City of Coral Gables, 619
14 Southern 2d 455. It says that by allowing
15 the reasonable use of a building or
16 structure or property which because of the
17 unusual or unique circumstances is denied by
18 the zoning, can constitute an unnecessary
19 hardship. It is an arduous restriction upon
20 the uses of the particular property which
21 are unique and distinct from that of
22 adjoining property owners in the same zoning
23 district. Florida courts have held that a
24 legal hardship will be found to exist only
25 in those cases where the property is

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1 virtually unusable or incapable of yielding
2 a reasonable return when used pursuant to
3 the applicant's zoning regulations.
4 Further, the hardship must not arise from
5 the circumstances peculiar -- must arise
6 from the circumstances peculiar to the real
7 estate alone and not be self-generated or
8 self-originating by its owners or its
9 buyers. It cannot be a self-imposed act. A
10 self-imposed act is insufficient to
11 constitute a hardship.

12 Now I recall standing here before and
13 hearing the words a deal is a deal
14 resounding through these halls. When this
15 property was purchased, it was not purchased
16 contingent upon a zoning variance. It was
17 not purchased contingent to anything. What
18 was purchased was this landmarked property.
19 This is the landmarked property that was
20 purchased. It was purchased with the full
21 and complete understanding as to what the
22 law required and what the law restricted.
23 This is what was landmarked. This is what
24 was provided. It is the same position that
25 the Kosoys purchased their property. You

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1 purchase the property. If you have a
2 question you make it contingent upon the
3 zoning, contingent upon these factors.

4 The case law is quite clear that
5 merely the fact that you purchase it and
6 then you can't use it the way you want does
7 not constitute a hardship. In fact, the
8 hardship according to Town of Pounce Inlet
9 versus Rancour states the hardship cannot be
10 self-created. It cannot be merely of
11 economic disadvantage.

12 Again, all of the case law, every
13 single case talks about the need to prevent
14 spot zoning, the need to say we can't go
15 around and say because we like this or we
16 like this, we're going to change the zoning
17 willy-nilly, and that is what we are
18 encouraging here. I think that this Council
19 and its other parties have said we don't
20 want to have mass. We don't want to have
21 largeness even though the zoning allows it.
22 We're saying build smaller, build less and
23 in this case we're saying build more, even
24 though it's going to require a change in the
25 zoning.

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1 If we look at the City of Opa Locka
2 versus Orange County at 299 Southern 2d
3 657, it lists basically six criteria. One,
4 there are particular and peculiar
5 circumstances in existence that do not apply
6 to other land use structures in the same
7 zoning district. Not true here. The
8 applicant did not cause the particular
9 circumstances. Clearly it is the
10 applicants' desire to build this which
11 caused it. Three, the granting of the
12 variance will not afford the applicant any
13 special privileges. Clearly this would be a
14 special privilege because there are

15 alternatives and there's been nothing to
16 refute in the record that alternatives to be
17 used are not there for them. They are there
18 and they can be used. Four, the literal
19 interpretation would result in an undue
20 hardship. Again, there has been nothing to
21 say of an undue hardship. It's just saying
22 this is what we want. This is what we like.
23 It's economic. It's personal pleasure. It
24 has nothing to do with the legal standard
25 for an undue hardship. Five, the variance

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1 is of minimum one of reasonable use. And
2 then six the granting of the variance will
3 be harmonious and non-injurious to the
4 surrounding land. It is our position that
5 it would be. G.K. Chesterton had said one
6 can only find the truth in logic if you've
7 been able to find it without it.

8 In this situation the Kosoy's are
9 asking for nothing more than to say the law
10 does not justify this. The facts do not
11 justify it. Follow the law. They're asking
12 nothing more than that. For them the deal
13 that you purchase the property is the deal
14 that you live with the property.

15 I think however that the citizens of
16 Palm Beach and the people who are going to
17 be in a position to see this structure and
18 want to have the preserved zoning and the
19 landmarking are in a position that they
20 would have to say do not approve this and we
21 ask you to do no less than to follow the
22 law. Thank you.

23 PRESIDENT SMITH: Thank you.
24 Mr. Deziel please.

25 Mr. Paine, are you finished? Mr.

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1 Paine.

2 MR. PAINE: I wouldn't mind
3 saying two sentences.

4 I'm glad that the Council granted the
5 variance for the lady on Golf Road that
6 needed the garage and I think that the Mayor
7 made a good point when he said that nobody
8 was going to be hurt by that. There was no
9 objection. And under those circumstances I
10 like what happened. But I think when people
11 are going to be hurt, and it's a matter of
12 degree, but I think when people are clearly
13 going to be hurt, that it puts a different
14 light and a different spin on a variance
15 request. That's all I have to say.

16 PRESIDENT SMITH: Mr. Deziel.

17 MR. DEZIEL: Okay. Real
18 briefly I'd just like to address some of
19 the law that's been referred to and some of
20 the facts also.

21 We will acknowledge what the existing
22 law is in the State of Florida relative to
23 the definition of hardship and variances.
24 We know what that is and we feel we meet
25 those criteria. We've stated our hardship.

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1 We feel that we have an excellent hardship
2 in our beam height. The fact we're a
3 landmark structure and even proposed by the
4 Kosoys' Counsel. We have landmark rules
5 that we have to follow. One of our
6 hardships is we're replacing this addition.
7 We have a beautiful sixteen, fourteen to
8 sixteen foot ceiling below that we just
9 can't lower to add our addition. So the
10 statement that was made that we're asking
11 for a special privilege, we're not asking
12 for a special privilege. We just want a
13 second story above an existing story that's
14 lower than our neighbors' house and the only
15 reason we need it is because our home at one
16 time was built higher than our current code
17 allows and the fact that it was built higher
18 stays that way because it is a landmark
19 structure.

20 As for the facts, I think it was
21 obvious on the record today, we made a valid
22 attempt to explain to this Council the
23 history of this project and the
24 qualifications of Jeff Smith and what we
25 were doing today and to do that we brought

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1 Dr. Curl with us.

2 I think the record is evident and
3 full of facts that the Kosoys brought some
4 professionals with them that I'm sure are
5 very good at what they do somewhere else but
6 on the record they have no experience in
7 dealing with landmark structures with what
8 we're talking about today. They're not
9 familiar with our zoning ordinances.

10 They're not even familiar with the
11 properties around the property we're talking
12 about.

13 And then lastly I'd like to make two
14 points and then I'm done. It was so clear
15 to me today when Mr. Paine was talking about
16 how his property -- his property really cuts
17 off our view to the southeast. That's
18 what's going on here. And what is really
19 clear to me is that it's the case of a
20 neighbor who has his but doesn't want us to
21 have ours. His house is bigger. It's
22 non-conforming all over the place. It's
23 higher. On a density basis it's much
24 larger. But we can't have an addition
25 that's seventy feet away that still won't

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1 reach the height of his roof beam.

2 And lastly I'll conclude, today I
3 think this an effort of disgruntled
4 neighbors. Mr. Kosoy did say some things
5 today that were not accurate about our first
6 meeting. I don't want to go into the
7 details of what he said because I'm sure it
8 will inflame him in getting back up here,
9 but one thing he did say was, I thought you
10 were going to buy our house.

11 When we met with him his agenda was
12 to have a man who is his neighbor who
13 publicly has the resources to buy his
14 house. And I think this is nothing more

15 than a ploy, pressure, to have that mission
16 accomplished. In fact, I've been told that
17 just as of a couple few weeks ago, a few
18 weeks ago Mr. Kosoy had a contract to sell
19 his house to somebody else. He's on his way
20 out of town. We've got a family that wants
21 to come to this town and enjoy this property
22 and use it in a way to take it forward for a
23 whole other generation.

24 And I think the record today speaks
25 for itself. The hardship is clearly stated.

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1 If you have any questions we'll be
2 happy to answer them.

3 MR. NATALE: Madam President, I
4 would just briefly like to respond to the
5 fact that the Kosoy's are out of town.
6 Sterling Companies is where his business is
7 located. That is located right down the
8 street here. That's where his business is
9 located. That's where the man works.
10 That's where he conducts himself and he
11 lives just down the street. He isn't going
12 anywhere. And I think it is a gross
13 misrepresentation to say that someone who
14 has an active, ongoing business in this town
15 and has done so, has had many houses in this
16 town, has been involved in many properties
17 in this town, continues to live here and
18 wants to live here and put a tremendous
19 amount of money into his house that he is
20 "leaving town", I think is just false and
21 should not in any way enter into your
22 consideration, particularly since it was not
23 put in by competent testimony under oath.
24 It was just by argument.

25 PRESIDENT SMITH: Mr. Deziel,

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1 while you're standing there can I ask you a
2 question?

3 MR. NATALE: I thought you said
4 Mr. Deziel.

5 PRESIDENT SMITH: No. I'm
6 mumbling.

7 MR. NATALE: I'm sorry.

8 PRESIDENT SMITH: If the
9 variance had not been granted and if the
10 proposed loggia and new entrance was not
11 moved to the north side of the house, if
12 there was no entrance there, if the entrance
13 was remaining on South Ocean Boulevard,
14 would you feel that there was such a problem
15 with filling in above the left-hand side of
16 the front door?

17 MR. NATALE: Yes. And the
18 reason is is that when you look at it, and
19 if I may take the mike and better explain
20 our position.

21 PRESIDENT SMITH: So much of
22 your position has been based on the fact
23 that there is building on the north side.
24 If that loggia wasn't there, you'd have a
25 perfectly square house.

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1 MR. NATALE: If you look at this
2 as it really is now and you look at the
3 photographs you have an asymmetrical,
4 irregular design which is what is actually
5 articulated in the landmark. The landmark
6 says it's irregular and so you have the
7 irregular. You have in here the typical
8 flow-through of cross ventilation. You have
9 an open lighted area. When you close this
10 off, when you close this off, you're really
11 changing significantly the facade of the
12 house and you're creating something which is
13 more symmetrical but yet as it's more
14 symmetrical it is more in opposite to the
15 original landscape design which was
16 irregular, asymmetrical.

17 If the building was to be on this
18 side, you could maintain the notion of
19 balance yet asymmetry. You would still be
20 able to have the bedroom, the master
21 bedroom, coming off a major stairway which
22 is located here.

23 PRESIDENT SMITH: I don't know
24 the floor plan. I'm looking at the
25 architect from the outside.

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1 MR. NATALE: What I'm saying is
2 from the outside here this could be opened
3 and if you look there on the photograph
4 that's been landmarked, that will be open.
5 As for closing it off, you are dramatically
6 changing and you're making a dramatic change
7 in the mass of what is going on. That is
8 simply our position in that the hardship has
9 to be, according to the case law, that
10 without doing this these people will be
11 suffering the inability to have the quiet
12 use and enjoyment of the property they
13 purchased. If you look at the case law --

14 MR. DEZIEL: Is he going to
15 reargue the case?

16 PRESIDENT SMITH: No. He's
17 answering the question because in effect I'm
18 also dealing with the issue of reasonable
19 use of the property and on the surface it
20 does appear that that building to the north
21 that that's only a fill-in. Is that
22 correct?

23 MR. NATALE: That's correct.

24 PRESIDENT SMITH: All right.
25 Mr. Deziel.

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1 MR. DEZIEL: I don't want to
2 take --

3 PRESIDENT SMITH: Anything else?
4 Members of the Council? Mr. McLendon.

5 COUNCILMAN McLENDON: I would
6 just like to comment on my visit to both
7 structures. I first looked at the proposed
8 project and the next day went through the
9 Kosoy's house with Mr. Paine and Mrs.
10 Kosoy. What I found from a visual effect in
11 the, how it affected me, I found the biggest
12 objection is something that we will really
13 we have no control over and you already got
14 a permit for and that's the view from the

15 north windows looking toward the structure
16 that's going to be expanded for staff
17 quarters. I found that wall very close to
18 the windows and bear concrete and I don't
19 know that there's any substitute to that.
20 I feel that the view from the front
21 room, front bedrooms, toward the Koch home,
22 if there were, I mean I would not prefer a
23 hedge or heavy trees near the property line.
24 I would prefer from a screening point of
25 view for there to be perhaps halfway between

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1 the two house walls and I think it can be
2 effectively screened in that fashion. So
3 that's just my amateurish view of what I saw
4 and what I would be reacting to.

5 PRESIDENT SMITH: Done?

6 COUNCILMAN McLENDON: Yes,
7 ma'am.

8 PRESIDENT SMITH: Mr. Moore,
9 something you were going to add?

10 MR. MOORE: Sure. Whenever.

11 PRESIDENT SMITH: Well, I mean
12 feel free to speak.

13 MR. MOORE: Staff comments were
14 already given to you by Mr. Natale from our
15 last meeting but they bear repeating again.

16 The comprehensive plan did address
17 the fact that you could build an addition
18 that could be conformed by building it
19 separately on the property and also it
20 should be comparative and be compatible with
21 the Secretary of Interior Standards and
22 building department's hardship must be shown
23 and the town manager says they do concur, he
24 does, with the staff comments. But I mean I
25 have some other comments, after listening to

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1 all of this, that I think probably would be
2 appropriate at some point.

3 PRESIDENT SMITH: Please make
4 them now.

5 MR. MOORE: I do need to get up
6 and address them with the microphone.

7 MR. MAYOR: Do you consider
8 this a property landmark house?

9 MR. MOORE: Yes, sir.

10 MR. MAYOR: Mr. Natale doesn't
11 think so. That's interesting. Thank you.

12 Do we have any other houses in Palm
13 Beach have that been landmarked and then
14 changed afterwards?

15 MR. MOORE: Yes, sir.

16 MR. MAYOR: Do they need a
17 variance?

18 MR. MOORE: Many have, yes,
19 sir.

20 MR. MAYOR: Were they usually
21 granted?

22 MR. MOORE: That goes to some of
23 my remarks that I was going to make.

24 MR. MAYOR: Okay. Well, then
25 I'll -- go ahead.

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1 PRESIDENT SMITH: Mr. Moore,
2 please go ahead and make your remarks.

3 MR. MOORE: To try to summarize
4 briefly from what we've been hearing and if
5 I might approach the model too, each case
6 that you hear it must be heard on its own
7 merits. Mr. Randolph said that so many
8 times that I've got it memorized and hope
9 that that's appropriately said again.

10 What you're looking at is a problem
11 that we do have, and Mr. Natale has
12 presented a case as to why it shouldn't be
13 granted and Mr. Deziel has presented a case
14 why he believes it should be granted, but in
15 essence you're talking about a very, very
16 small area right in this area here.

17 Without discussing the merits of the
18 landmarking aspect and the architecture, you
19 do have a Landmark Preservation Commission
20 that is charged with looking at that. And
21 if it's not appropriate, they certainly
22 won't pass it. It is appealable to you if
23 they feel that it should have been passed.

24 But you're dealing with an area, and
25 I did ask Mr. Paine the question about the

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1 neighbors who have shown the concern, and
2 rightfully so they've shown concern, about
3 any kind of construction that would be going
4 on beside them.

5 What you've got is a request for an
6 increase in a tie beam height of seven feet
7 in the R-B zoning district because of a very
8 large ballroom with a Mizner ceiling below
9 that is coming up seven feet and three
10 additional feet here to meet an existing
11 height that exists and was appropriate when
12 the house was originally built. What we're
13 not doing is adding a brand-new first floor
14 and second floor and trying to match a
15 height of an existing roof. I think that's
16 distinguishable in your deliberations in
17 some of the arguments that have been made by
18 Mr. Natale and certainly not to the legal
19 arguments. That would be for Mr. Randolph
20 to address in a later forum if that's
21 necessary.

22 But I would like you to consider that
23 if you are going to find favorably for this
24 application that you take into consideration
25 what has been threatened, but I think that

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1 should be addressed by you in asking the
2 applicant to agree to and that is some
3 protection for this non-conforming house,
4 three stories, higher than this house and on
5 a non-conforming lot with a facade that's
6 landmarked.

7 Should Mr. Koch decide to sell to
8 someone else or should the Kosoy's decide to
9 sell to someone else, I think that you ought
10 to consider this boundary line. This is
11 fifty-eight feet according to the
12 presentation from the Kosoy's property line
13 and another ten feet to their rear property
14 line so you're talking about sixty-eight

15 feet. That's far more than what would be
16 required because now this is the property
17 line of the rear yard of Mr. Koch. He only
18 needs to stay fifteen feet off of this
19 property line.
20 But I think for the long-term value
21 for the Town and its residents, whether it's
22 the Kosoy or whether it's the Kochs, I
23 think that you ought to ask, if you do find
24 favorably, that the Kochs agree to deed
25 restrictions in this area that would not

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1 only provide for no cutting off of any
2 further view that the Kosoy house might have
3 by way of landscaping at thirty-five to
4 forty feet in height or certainly any
5 structures that might go in there.

6 With that I would leave you to your
7 further deliberations.

8 PRESIDENT SMITH: Let me ask you
9 a question, Mr. Moore, while you're up
10 there. I agreed with Mr. McLendon. I would
11 have had more concern about the variance on
12 the west, on the southwest side of the
13 property where the two properties are so
14 terribly close but that variance was granted
15 and is in effect.

16 In looking at the picture that Mr.
17 Paine put up from the balcony looking at the
18 Kochs' house, there is no landscaping there
19 now and I'm not sure that anyone would want
20 landscaping in possibly. I mean landscaping
21 or trees or hedges would certainly block the
22 view.

23 Is there any landscaping from the
24 middle of the south property line to the
25 east? Is there any landscaping there now?

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1 MR. MOORE: Yes, large trees.

2 PRESIDENT SMITH: I know there's
3 a very large seagrape hedge.

4 MR. MOORE: Very large Norfolk
5 pines.

6 MR. MAYOR: Up to the driveway.

7 PRESIDENT SMITH: How do we see
8 through to look at the house? Mr. Paine,
9 how did you see through to look at the
10 house? It certainly looked like there was
11 no landscaping there. Could you take the
12 microphone please. Because it didn't look
13 like there was any so that's why I would be
14 hesitant to oppose landscaping.

15 MR. PAINE: Let me clarify
16 what's happening there. There isn't any
17 landscaping at the point where that
18 photograph was taken. There's one Norfolk
19 pine that may or may not appear in that
20 photograph.

21 PRESIDENT SMITH: Approximately
22 where, Mr. Moore? Where do you think it is?

23 MR. MOORE: There are Norfolk
24 pines that exist in this area here.

25 MR. PAINE: And there's a

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1 single Norfolk about halfway in between the
2 two structures. It may show in that
3 photograph. I'm not sure. There's a group
4 of Norfolk pines further east but they don't
5 block the view directly across.

6 PRESIDENT SMITH: All right.
7 So as far as landscaping, I can understand
8 why you certainly want landscaping in the
9 rear but what sort of landscaping? I mean
10 you put up this landscaping or stipulate a
11 wall. I'm not sure that that would be
12 agreeable. I mean I would hate to see a
13 wall go up if we're trying to protect the
14 neighbor to the south and the neighbor to
15 the south doesn't want a wall.

16 MR. DEZIEL: The area you're
17 talking about I believe is towards the west
18 from where the balcony is and at one time we
19 had stipulated to agreement with the
20 neighbors that we would let them choose the
21 landscape plan that they wanted in that area
22 and it includes some landscaping on our
23 property as well as landscaping on their
24 property and that offer is still open. In
25 fact, we called them and tried to implement

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1 the plans to the extent they want more
2 landscaping. We offered to put it in. If
3 they want it diminished we'll take it out.

4 PRESIDENT SMITH: The seagrape
5 hedge now which in effect shields the house
6 from the road, if you're driving down the
7 road you can't see the house because of the
8 seagrape hedge and the driveway is going to
9 be closed up there won't be a service
10 drive. Does that remain?

11 MR. DEZIEL: Yes.

12 PRESIDENT SMITH: Does that
13 seascape hedge, because they gave me a
14 picture, does that go around the corner on
15 the south line?

16 MR. DEZIEL: Head west on the
17 south line, the answer is yes.

18 PRESIDENT SMITH: How far back;
19 do you know, Mr. Deziel?

20 MR. DEZIEL: I don't know.
21 Approximately forty feet. I'm looking at
22 the same picture you are and I know the
23 dimensions. I'm going to say thirty to
24 forty feet.

25 PRESIDENT SMITH: So the view

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1 is blocked on the ground floor by the
2 seagrape hedge.

3 MR. DEZIEL: Substantially. I
4 don't know how much they can see from their
5 ground floor. I don't know what's
6 restricted from the second floor by the
7 seagrape on the picture that you have here.

8 PRESIDENT SMITH: There's
9 something in front of the picture now so --

10 MR. DEZIEL: My little one that
11 I handed out was taken recently and I'll
12 show it to Mr. Paine so he can check.

13 PRESIDENT SMITH: The seagrape
14 hedge on the road is what, twenty-five feet

MINUTES OF THE TOWN COUNCIL MEETING HELD ON DECEMBER 8, 1998

15 high?
16 MR. PAINE: More like fifteen.
17 PRESIDENT SMITH: That goes
18 around the corner and it's fifteen feet
19 high.
20 MR. DEZIEL: Yes. In that
21 range, yes.
22 PRESIDENT SMITH: If you're in
23 a car on the road now --
24 MR. DEZIEL: You're not going
25 to see through there. The answer is no.

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1 PRESIDENT SMITH: All right.
2 COUNCILMAN McLENDON: It appears
3 there's two Norfolk pines that would be east
4 of the view of Kosoys' bedroom looking
5 north. It's wide open from their bedroom
6 looking toward the new balcony. And I would
7 think that if I were living there I wouldn't
8 want high shrubbery near the property line.
9 I would want it further north and I think it
10 would make sense from your clients' point of
11 view too. And that existing tall tree
12 that's right near the building, is that
13 coming out?
14 MR. DEZIEL: The current plan
15 that we had last discussed with the Kosoys
16 called for that to be removed.
17 PRESIDENT SMITH: And the
18 landscaping plan, just to clarify, the
19 landscaping plan that you talked about at
20 last month's meeting, is that still in
21 effect for the south side of the property
22 where those buildings are so close together
23 or is it in effect at all or in
24 consideration?
25 MR. DEZIEL: I don't know if it

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1 answers your question, Mrs. Smith, but I'm
2 not sure if the Kosoys accepted it, but
3 certainly the offer to implement that plan
4 is on the table.
5 PRESIDENT SMITH: Let me change
6 it then. The Kochs are going to put in
7 landscaping on the south property line of
8 their property.
9 MR. DEZIEL: Yes.
10 PRESIDENT SMITH: They discussed
11 the type of landscaping with the Kosoys and
12 given them input to that. That's what we
13 were told at the last meeting.
14 MR. DEZIEL: Here's exactly
15 what happened. We sent our landscape
16 architect over to Mrs. Kosoy to develop a
17 plan and a plan was delivered back to me
18 with a schedule of plantings. We thought
19 that was -- at one time it was agreed to by
20 the Kosoys and I'll also acknowledge that
21 that agreement was later unbundled but that
22 offer is still on the table and if that
23 offer needs to be supplemented and it needs
24 to be tweaked and work with it, that offer
25 is still on the table.

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1 PRESIDENT SMITH: Mr. McDonald.
2 COUNCILMAN McDONALD: I have
3 lots of comments.

4 PRESIDENT SMITH: Good.

5 COUNCILMAN McDONALD: Two
6 thirds of what we heard today is irrelevant,
7 certainly immaterial because the reason
8 Council is here today is to determine if
9 there's a hardship. Hardship is pretty
10 easily defined. And we've been down this
11 road several times before, the Bernard case
12 in 1990 and the Lawrence case in '91. And
13 basically what the applicant has to show is
14 that in order to be entitled to a variance,
15 he's got to show a unique hardship that
16 involves physical features such as the size,
17 the shape or grade and its drainage. Most
18 significantly he has to demonstrate without
19 the variance he would be denied all
20 beneficial use of the land and I don't know
21 how he possibly can meet that criteria.

22 MR. DEZIEL: I can answer that.

23 COUNCILMAN McDONALD: I'm sure you
24 can but I don't know how you meet it.

25 MR. DEZIEL: We would be denied

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1 the ability to use as living space that area
2 we would like to put, where we would like to
3 put the addition. We'd basically be talking
4 about walls that would be three foot high so
5 that we can use that area, we have a
6 hardship. The hardship, and you stated it,
7 Mr. McDonald, runs with the structure.

8 COUNCILMAN McDONALD: It doesn't
9 run with the structure, Mr. Deziel.

10 MR. DEZIEL: The structure is
11 included in the definition of the land in
12 the State of Florida.

13 MR. McDONALD: I disagree with
14 you and I also say, is it, you're telling me
15 that by denying this request you are denied
16 the beneficial use of all the land?

17 MR. DEZIEL: I'm talking about
18 the area that we're talking about.

19 COUNCILMAN McDONALD: You've
20 asked for a variance for this property. I'm
21 saying if this is denied, have you lost all
22 of your ability to use this land,
23 beneficially?

24 MR. DEZIEL: That is not the
25 interpretation of the case law on that

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1 issue. I'll back down. I'm not going to
2 debate the hardship rules and laws with you
3 here.

4 COUNCILMAN McDONALD: You don't
5 need to because that's why you're here. You
6 have to prove to us that you meet the
7 criteria for the hardship. You have to
8 argue.

9 MR. DEZIEL: We have met the
10 criteria. Apparently in connection with
11 your interpretation we have not and I'll
12 acknowledge that maybe we haven't met your
13 criteria. The State of Florida, the
14 interpretations, the case law, my

15 familiarity with them, we have met the test.
 16 COUNCILMAN McDONALD: I don't
 17 agree and I don't think you've met the
 18 burden.
 19 PRESIDENT SMITH: Any other
 20 questions or statements, Mr. McDonald?
 21 COUNCILMAN McDONALD: No. Thank
 22 you.
 23 PRESIDENT SMITH: All right.
 24 Mr. Shaw. Mr. McLendon. Mr. Wyett. You
 25 can't possibly say you haven't heard the

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1 presentation. We heard it for two hours.
 2 And I believe it's time for the Council to
 3 take some action. This is the second time
 4 we heard this.
 5 COUNCILMAN WYETT: I think
 6 you're right. I'm torn on the type of
 7 decision here. I would like to vote
 8 approval because I know that Mr. and Mrs.
 9 Koch would do a first class job on this
 10 property which the Town would be proud of.
 11 But I also know that I am bound to follow
 12 the law of the State of Florida and the laws
 13 of the Town of Palm Beach. We often violate
 14 that when it comes to hardship when there's
 15 no one objecting because without anybody
 16 objecting we're not concerned about being
 17 reversed. However, in this case I am
 18 concerned about being reversed.
 19 My understanding is that hardships
 20 run with the land. Hardships cannot be
 21 self-imposed. I don't find a hardship even
 22 though you maintain that the tie beam is a
 23 hardship. If there was no other place on
 24 this large piece of land sixty-five thousand
 25 feet, I might agree with you. But it is

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1 possible with a very fine architectural
 2 firm, which I'm sure Mr. Smith has, to find
 3 another good place for a master bedroom or
 4 any other rooms they want. Also a variance
 5 should be a de minimis request. I don't
 6 think it meets that test either.
 7 There's minor issues, whether the
 8 federal statute with removing balconies or
 9 something, I don't know how much value that
 10 has. But I have trouble voting affirmative
 11 primarily because it does not meet the test
 12 and a neighbor is strongly objecting. If
 13 you can get together with your neighbor to
 14 eliminate that objection, then I have no
 15 problem with the variance.
 16 PRESIDENT SMITH: Would you like
 17 to speak or the Mayor would like to?
 18 COUNCILMAN McDONALD: Let the
 19 Mayor speak first.
 20 MR. MAYOR: I just, once again
 21 to be partially philosophical, I think we
 22 are indeed on the wings of that famous Palm
 23 Beach bird court dilemma and we have two
 24 houses that do indeed appear that one is not
 25 as big as the other, even though it maybe

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higher. For that reason I think the neighbors got themselves into a little tight bind.

I would agree with Counsel that it's a very difficult variance to follow from any normal point of view. On the other hand, I think we have two couples involved in this, both of which hopefully will stay in Palm Beach a long time. And while one appears to have made a request which is not sitting terribly favorable with all of you ladies and gentlemen, I think that Mr. Koch and Mrs. Koch and that human telephone they've got over there that rings every now and then, have a right also to pursue the, as it were, the complicated footsteps of happiness which is a difficult way to put it. So I would just implore all of you to think this thing through very, very carefully.

I don't believe you're hurting the neighborhood by a taller house by granting this variance if in fact you grant the right to do it. I really don't. I think Mr. Koch has offered to completely replant the south side of the building which is what I would

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love him to do if I were looking down that way. I won't be able to see much of the house, and move the driveway which I think is enormously important. I think that was a great move in the right direction, whether or not the variance is granted one way or the other. The driveway over there makes a lot more sense, makes the house face the way it ought to and by the way it originally did.

So I would beg all of you to think this thing through and you may want to put it off. Maybe we could spend another five hours talking about it. But anyway that's, I always like to please everybody and that's absolutely impossible in most cases and I think that's a constant example of that. I believe in the good judgment of all of you sitting at this table and I value your opinions and your judgments.

PRESIDENT SMITH: All right.
Mr. McLendon.

COUNCILMAN McLENDON: I suppose it's no secret that I have an inclination to recognize when a property after being

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developed then it's completely rezoned which I presume is what happened here several years ago, I think that the existence of the existing tie beam is a justifiable hardship and that the project with the proper screening should be approved.

PRESIDENT SMITH: Is that it?

COUNCILMAN McLENDON: That's it.

COUNCILMAN WYETT: I want to concur with the Mayor on his major point, whatever decision is made in the affirmative will not hurt the town or the neighborhood and I applaud the Mayor for trying to play the role of the peacemaker because there is

15 that aspect of the case. I wish we could
16 change the law because I don't know if the
17 law of hardship is really doing this town
18 that much good in many cases. I do want to
19 acknowledge that the Mayor made a very good
20 mayortorial vote.
21 MR. MAYOR: Thank you.
22 PRESIDENT SMITH: Thank you,
23 Mr. Wyett.
24 So waiting to see what you all are
25 going to do.

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1 COUNCILMAN SHAW: May I ask you
2 to turn the site plan around at some point.
3 I would like to see something that's on the
4 back side.
5 PRESIDENT SMITH: Where is it?
6 Please speak to the microphone.
7 COUNCILMAN SHAW: I think it's
8 the back one. What's on the back of that,
9 on the back of that. That's the one.
10 PRESIDENT SMITH: Did you see
11 it?
12 COUNCILMAN SHAW: Yeah, I saw
13 what I wanted to see.
14 I assume it will not come as a
15 surprise if I would make a motion to approve
16 this.
17 COUNCILMAN McDONALD: Mr.
18 McLendon already did.
19 COUNCILMAN SHAW: If he did I
20 missed it.
21 PRESIDENT SMITH: Did you, Mr.
22 McLendon, make a motion to approve this?
23 COUNCILMAN McLENDON: I thought I
24 did.
25 COUNCILMAN SHAW: I didn't hear

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1 any second.
2 PRESIDENT SMITH: Didn't hear
3 it.
4 COUNCILMAN McDONALD: I guess I
5 recommend it rather than make a motion.
6 PRESIDENT SMITH: Are you making
7 it a motion?
8 COUNCILMAN McDONALD: I can,
9 yes.
10 PRESIDENT SMITH: Is there a
11 second?
12 COUNCILMAN SHAW: Are you going
13 to do all the hardships?
14 COUNCILMAN McLENDON: I stated
15 what I thought was a hardship.
16 COUNCILMAN SHAW: I didn't hear
17 that.
18 COUNCILMAN McLENDON: Mr.
19 Randolph, will tell us it ain't so.
20 MR. RANDOLPH: I won't tell you
21 that. I will tell you that your motion
22 should incorporate a finding that all the
23 criteria within the ordinance have been met
24 if you believe it has.
25 COUNCILMAN McLENDON: I hope it

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1 has.

2 MR. MOORE: It does or it
3 doesn't. You have to say yes or no.

4 PRESIDENT SMITH: I think at
5 this point we have to be very specific.

6 Mr. McLendon.

7 COUNCILMAN McLENDON: Since I
8 don't know all the criteria I'm not going to
9 sit here and say that it does. To the best
10 of my knowledge it does but I haven't looked
11 at the criteria.

12 PRESIDENT SMITH: Then Mr.
13 McLendon, are you withdrawing your motion?

14 MR. McLENDON: I withdraw my
15 motion.

16 PRESIDENT SMITH: Mr. Shaw, are
17 you going to make a motion?

18 COUNCILMAN SHAW: I'm going to
19 make a motion to approve this because I have
20 been looking at the zoning code and reading
21 variances under 10.13, aside for the fact
22 that my eyes are going and I can't see
23 anything. I'll just make my arms longer.

24 It says that Town Council must and
25 shall find and then under item A it says

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1 that a special condition and circumstances
2 exist which are peculiar, and I'll read it
3 the way I interpret it which is land,
4 structure or building. And I'm basically
5 taking the structure that's involved which
6 is not applicable to other lands or
7 structures in the same zoning code.

8 I think what you've got here is a two
9 story zoning district where this particular
10 part of the structure is a one-story
11 structure at seventeen feet making use of
12 the second story basically impractical if
13 not inhabitable if we follow code. And,
14 therefore, by allowing this, what I see from
15 the measurements, a minimum to get to a
16 habitable space, we're meeting that
17 criteria.

18 Under B it says special conditions
19 and circumstances do not result from the
20 actions of the applicant. The applicant
21 didn't build the house. He didn't create
22 the zoning. It was there when they bought
23 it. They're simply trying to use the
24 property and that part of the structure as
25 permitted within the zoning.

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1 The granting the variance requested
2 will not confer upon the applicant any
3 special privilege that is denied by the
4 ordinance to the land and building and
5 structure. I'm now looking at this part of
6 the structure he was building in the same
7 zoning district. The immediate adjacent
8 property has either two or three story based
9 on how you want to define it and is at the
10 same height or exceeds the height of the
11 applicant so I don't think that the
12 applicant is being granted anything that is
13 in excess of what the neighbor has.

14 Literal interpretation, the provision

15 of this ordinance would deprive the
16 applicant the right to commonly enjoy by
17 other properties in the same zoning
18 district. All the houses in this district
19 are rather high. This is the way they were
20 designed. This is the way they were built.
21 They're rather large homes. I don't think
22 we're supposed to go to the smallest house
23 and I don't believe that it is the biggest
24 house that is going up in the area. So I
25 don't believe that this variance request is

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1 granting them something that others do not
2 have within the same zoning district.

3 E, that the variance granted is the
4 minimum. Again, I say that the structure,
5 the way it is located and the height, what
6 they're doing is they're taking a three foot
7 minimum on the overall height and they're
8 tying into an existing height of a building
9 and whether it is aesthetics or just simply
10 design, it would seem logical that they
11 would not want to go above what's already
12 there and then from a balancing standpoint
13 they would not want to go below that
14 particular height in order to have very low
15 ceilings inside the structure.

16 I don't believe item F is relevant to
17 this.

18 And G, granting the variance will be
19 in harmony with the general intent and
20 purpose of the ordinance. Not only do we
21 have the ordinance that we're dealing with
22 but we also have the fact that we have a
23 landmark property. Our policy with landmark
24 properties has never been putting
25 restrictions on them and saying they can

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1 never change. Most landmark properties are
2 not pure and lilly white. They have been
3 built. They have been rebuilt. They've
4 been redesigned. In some cases they may
5 have even bastardized and then brought back
6 with variances, with some help, to a state
7 of good, sound structural elegant
8 properties.

9 I'm sure that this property is going
10 to be restored beautifully and any
11 deficiencies that have come from over the
12 years have been removed. I think that's
13 within the comp plan which we always look to
14 reduce density. This is being
15 accomplished. A house which was on the
16 corner which I think was not very harmonious
17 with the immediate neighborhood has been
18 removed and I feel that the criteria from
19 the code has been met through my
20 interpretation. I feel that that is the
21 intent of the code and that is, as the Mayor
22 said, the Town we live in is to make it
23 feasible for all of us to live together in
24 harmony.

25 I do have some feelings for the

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1 neighbor and I would not want to see and I
2 would not accuse someone of doing it for
3 spite or just to do it because they are
4 allowed to do it. But I feel that the
5 neighbor has some rights. And although it's
6 not part of our code that says you have the
7 right to look into someone else's yard or
8 the right to look over someone else's house
9 or through what could be a hedged area, I
10 think this is a unique situation where all
11 of these properties that are along the ocean
12 need to be sensitive to their neighbors.

13 And I would like to request that the
14 applicant would accept a deed restriction to
15 the property that will keep the immediate
16 hedge height at the property line and
17 actually throughout the front portion of the
18 property to create what would be in my mind
19 a view easement that would measure, and I
20 think I'm correct in my measurement, of
21 forty-five degrees coming off the corner of
22 what is listed on this board as the guest
23 bedroom and another bedroom.

24 PRESIDENT SMITH: Give a
25 geographic location.

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1 COUNCILMAN SHAW: It is going
2 to be the niche. It's right there. I think
3 you can see it on the TV screens.

4 What this would do is to create a
5 forty-five degree view easement coming from
6 this corner of the property. Of course we
7 may be able to better define that. I think
8 that gives the neighbors, and that view
9 easement would be from the second floor, and
10 that gives them a perpetual view of the
11 ocean, something they do not have at this
12 point because there are trees there.
13 Obviously they are part of the view
14 easement. That does not mean there could be
15 nothing in it. There could be a tree.
16 There could be landscaping as depicted on
17 the model that is here. I think this is a
18 fair and equitable approach for the
19 neighbors to save their interest at the same
20 time give the applicant the right to develop
21 the structure. I don't think I could make
22 this a longer motion so I quit.

23 PRESIDENT SMITH: Is there a
24 second?

25 COUNCILMAN McLENDON: I second

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1 it.

2 PRESIDENT SMITH: Mr. Moore?

3 MR. MOORE: One other question
4 which was raised and so there is no
5 misunderstanding. Mr. Shaw, in your motion
6 that service drive has been eliminated from
7 the original application.

8 COUNCILMAN SHAW: Yes. I feel
9 that's an important issue also as far as how
10 the applicant is looking towards the
11 neighbor. I think that removing a service
12 drive and all of the hardscape, which is
13 directly in front of their property, I think
14 is a plus. I think that it opens it up and

15 I think that this is really a very good
16 solution.
17 PRESIDENT SMITH: Elimination of
18 all vehicular traffic on the south and east
19 side of the house.
20 Does the driveway go around to the
21 front?
22 MR. DEZIEL: Yes.
23 COUNCILMAN SHAW: Even from the
24 standpoint of the traffic on the ocean.
25 MR. MOORE: Part of the deed

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1 restriction?
2 PRESIDENT SMITH: Part of the
3 deed restriction.
4 COUNCILMAN SHAW: Yes, that the
5 entrance will remain. There will be no
6 vehicular traffic.
7 PRESIDENT SMITH: The view
8 easements, Mr. Deziel?
9 COUNCILMAN SHAW: I could be
10 wrong in how I define that so I ask your
11 assistance.
12 MR. DEZIEL: The concept of a
13 view easement is acceptable. The only
14 question we have are the details of the
15 parameters because I know Mr. Moore has
16 experience with another one in town and
17 sometimes -- we would agree witht the
18 concept. It's just that I don't know what
19 the details are and what the purpose of the
20 easement is to see. Is it to see out to the
21 sky? Is it to see the ocean? Is it to see
22 the street? Do you understand what I'm
23 asking, Mr. Shaw?
24 COUNCILMAN SHAW: Yes. The
25 view easement would be from the second story

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1 windows at a horizontal plain.
2 MR. DEZIEL: Okay. In other
3 words, would you say that, I'm just trying
4 to visualize this, that you would not want
5 any growth in that area above, let's just
6 say their first story is twelve feet and you
7 got somebody standing on that twelve feet,
8 you want that person standing on the twelve
9 feet, which would be standing on the second
10 floor, to be able to look out and see what?
11 PRESIDENT SMITH: The ocean.
12 COUNCILMAN SHAW: The ocean.
13 MR. DEZIEL: So you're
14 basically talking -- okay.
15 COUNCILMAN SHAW: I'm almost
16 looking at your model as an idea. I'm not
17 saying that you've got have to have an eight
18 foot hedge because we have a second story.
19 They may be perfectly happy to keep it at
20 ten feet. I'm not putting a limitation.
21 I'm just asking there be a restriction, so
22 that whether we call it a hedge height or
23 maintaining the view easement, that's giving
24 the neighbor the ability to look out from
25 their property and I'm picking a point of

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1 forty-five degrees. Obviously as you get
2 further back it becomes more restricted an
3 angle but it's pretty well guaranteed that
4 they will always have from their bedrooms a
5 view of the ocean.

6 If someone wants to bring up
7 something --

8 PRESIDENT SMITH: Mr. Paine.

9 MR. PAINE: Forty-five
10 degrees --

11 COUNCILMAN SHAW: Use the
12 microphone.

13 PRESIDENT SMITH: Thank you.

14 MR. PAINE: Is this one okay?

15 PRESIDENT SMITH: Yes.

16 MR. PAINE: I would like to ask
17 that the forty-five degrees begin from the
18 furthest back bedroom window so all those
19 bedrooms that have a view of the ocean now
20 will be guaranteed one in the future.

21 COUNCILMAN SHAW: My eyes
22 aren't that good and I may want to change it
23 to maybe forty.

24 I think you need to tell me what the
25 angle is from the back bedroom to the

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1 existing tip of the structure because
2 obviously there's a building there and I
3 don't want to create a view easement.

4 PRESIDENT SMITH: It's a regular
5 one story building with a balcony on top of
6 it.

7 MR. SHAW: It's pretty high.
8 It's twenty feet.

9 PRESIDENT SMITH: Oh, I know.
10 But I mean let's not have anyone think
11 there's no structure there.

12 COUNCILMAN SHAW: There is a
13 structure. With the ballistrad it's
14 probably twenty feet at that point which is
15 why we're dealing with this problem.

16 Mr. Moore, do you have any comments?

17 PRESIDENT SMITH: Mr. Paine,
18 have you all figured out where it is?

19 MR. NATALE: I'm sure they can.

20 PRESIDENT SMITH: I'm sure they
21 can too but I want to make sure that they
22 can so that everybody understands very
23 clearly what's being voted on.

24 COUNCILMAN SHAW: I'll be more
25 than happy to draw it out if that solves the

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1 problem.

2 PRESIDENT SMITH: No, Mr. Shaw,
3 please.

4 COUNCILMAN WYETT: There's an
5 easier way to do this. You just guarantee
6 that the existing vista with the second
7 story on the building will always be
8 maintained. I don't need any measurements.
9 I mean it's there.

10 MR. NATALE: Right.

11 I think, Mr. Shaw, what you're saying
12 is from the bedroom, from sort of like the
13 furthest bedroom, looking out they should be
14 able to see horizontally what's out there;

15 is that correct?
16 COUNCILMAN SHAW: Right. What
17 I'm saying if this is the furthest bedroom,
18 that they should be able to look out past
19 this existing tip of the building so that
20 they have this angle they could look out.
21 MR. NATALE: So in other words,
22 the furthest west window from the furthest
23 bedroom out to the angle of the building.
24 COUNCILMAN SHAW: Right. I'm
25 reading your plan that says this is a

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1 bedroom. I don't even know what this little
2 thing is back here but I'm saying from here
3 that they have a clear view and that's why I
4 would like to either have it marked on the
5 plan and agreed as to where it is going so
6 there's no misunderstanding.
7 MR. NATALE: That's sensible to
8 us.
9 PRESIDENT SMITH: Mr. Paine and
10 Mr. Smith, would you like to look at this
11 plan so that you all know what you all are
12 talking about. I think in this case let's
13 let the architects draw it.
14 COUNCILMAN SHAW: I could draw
15 it.
16 PRESIDENT SMITH: In this case
17 let's let the architects draw it.
18 MR. SMITH: We have no
19 objection to them trying to sneak a view
20 across the property. Our objection is that
21 they are three stories. They sit ten feet
22 from the property line right here. We would
23 like to be able to screen the vision of
24 their house and the effect their house has
25 looming on this house, three stories,

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1 bedrooms, bathrooms on the third floor. We
2 don't mind that they sneak across here. We
3 have no objection to that. But we want to
4 be able to screen their house from our
5 second story bedroom screen.
6 PRESIDENT SMITH: All right.
7 COUNCILMAN McLENDON: I would
8 assume that's a mutual desire.
9 PRESIDENT SMITH: Mr. Paine,
10 while you're talking with Mr. Smith, are you
11 agreeing that neither one of you want to
12 look at each other? Not you personally but
13 the two neighbors. If you're going to have
14 a negotiation you have to have it for the
15 record because we have a court reporter here
16 so what have you all decided on and please
17 tell me now because I'm about to call a
18 question.
19 COUNCILMAN SMITH: I think we
20 can bring the views back further to their
21 bedrooms but I think the angle can't be
22 forty-five. I think it needs to be more
23 like a thirty.
24 MR. PAINE: I have a
25 suggestion.

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1 COUNCILMAN SHAW: Just draw it
2 out.
3 PRESIDENT SMITH: Mr. Shaw,
4 please.
5 COUNCILMAN SHAW: It's my
6 motion.
7 PRESIDENT SMITH: Go ahead,
8 Mr. Paine.
9 It's your motion but they're the
10 architects.
11 Go ahead, Mr. Paine.
12 MR. PAINE: I'd like to ask Mr.
13 Smith how much room he needs to landscape
14 around this rotunda and to tell us the
15 dimension, if we agree and they of course
16 say that's what it is, and then we'll say
17 from our back end of the window we will draw
18 a line with the specs --
19 MR. SMITH: Like that across
20 the property.
21 MR. PAINE: That's how much?
22 PRESIDENT SMITH: All right.
23 MR. NATALE: Have everyone
24 initial it.
25 PRESIDENT SMITH: Are you all

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1 agreeing on this? Remembering that this is
2 a condition that's going to the
3 Architectural Commission, I mean the
4 Landmarks Commission and I'd rather see it
5 in pen so it stays.
6 All right, gentleman. Are you
7 agreed? Mr. Deziel and Mr. Paine, are you
8 agreed? Okay. I give up.
9 I am assuming, stating for the record
10 that the line that you have drawn is
11 agreeable to both of you. I'm about to call
12 the question. We cannot do this here. All
13 formalities are falling apart. Remember the
14 old days when nobody was allowed up here so
15 let's go back on the floor and tell me
16 whether or not you have agreed.
17 MR. DEZIEL: Mrs. Smith, I would
18 like to answer that and simplify it with Mr.
19 Paine's approval. I would like to sort of
20 add to Mr. Shaw's motion that the angle will
21 be as drawn by you and Jeff and agreed to
22 and we'll come up with a document, we'll
23 have a surveyor shoot the height and we'll
24 basically say that there's a height
25 limitation within that angle and the height

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1 limitation is somebody standing on that
2 second floor looking out to the ocean. Does
3 that makes sense to you, horizontally?
4 MR. PAINE: I don't have any
5 problem the way you're structuring that
6 portion, as long as we agree with the
7 location of the line but we haven't agreed
8 to any further procedures on this case.
9 PRESIDENT SMITH: The line, Mr.
10 Paine.
11 MR. PAINE: This isn't an
12 agreement that ends the dispute. Let me put
13 it that way.
14 MR. McDONALD: Mr. Paine, does

15 Mr. Paine -- Mr. Paine.
 16 MR. NATALE: This would not
 17 withdraw our objection. The way I view this
 18 is that if you vote on it as it appears that
 19 it might be that it would be contrary to us,
 20 it would be with this as an amendment. We
 21 would say we'd agree to this so that if
 22 we're going to lose we would at least like
 23 to have this as a concession. However that
 24 is not going to cause us to waive or
 25 relinquish any of the objections that we

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1 made whatsoever.
 2 COUNCILMAN McDONALD: That is my
 3 question.
 4 PRESIDENT SMITH: We understand
 5 that but Mr. Paine did agree that that is
 6 the line.
 7 MR. NATALE: That is the line.
 8 We'd love to have it. That's great. That's
 9 wonderful. We agree to it. Let's have it.
 10 We're just not waiving our right to an
 11 objection.
 12 PRESIDENT SMITH: We understand
 13 this.
 14 MR. DEZIEL: Mr. Shaw, I'd like
 15 to ask. We're happy to do this agreement
 16 but I'm just conceptually looking out, we
 17 have to get the cooperation to draft the
 18 document, prepare it, get it recorded. I'm
 19 sure Mr. Moore's building department, they
 20 want to see this agreement before we go
 21 through these improvements. We're going to
 22 be in an extremely awkward position if we go
 23 forward, we made this concession, we
 24 basically done it on their terms and at the
 25 same time they're opposing us possibly at

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1 some other forum and we can't even get them
 2 to participate in the drafting of the
 3 document.
 4 MR. RANDOLPH: You can't ask
 5 them to give them up their rights. They've
 6 got thirty days to file a petition for a
 7 writ of certiorari. If they file within
 8 that time and this hasn't been finished, you
 9 can work on it in the meantime, but if they
 10 decide to withdraw at sometime they can but
 11 you can't -- it's not fair to ask anybody to
 12 give up their legal right.
 13 PRESIDENT SMITH: You can't ask
 14 us to tell them to withdraw it.
 15 MR. DEZIEL: I'm not asking them
 16 to do that. I'm addressing the stipulation.
 17 PRESIDENT SMITH: All right. I
 18 think we understand that.
 19 Mrs. Pollitt.
 20 MR. McDONALD: We haven't had a
 21 chance to address anything since the motion
 22 has been made. I would like to make a
 23 statement.
 24 PRESIDENT SMITH: Go ahead,
 25 Mr. McDonald, please.

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1 MR. McDONALD: First I would
2 like to say I don't know how this is going
3 to turn out but I think Mr. Deziel and Mr.
4 Natale did an excellent job for their
5 clients in presenting their arguments.

6 Now relating to Mr. Shaw's motion, I
7 think it's defective in two instances
8 dealing with paragraph E, and G. E states
9 that the variance granted is the minimum
10 variance that will make possible the
11 reasonable use of the land, building or
12 structure. And I don't know how he can come
13 to the conclusion that this variance is the
14 minimum variance that would allow minimum
15 use of the land or building.

16 Secondly with the next one, G, which
17 is to grant a variance would be in harmony
18 with the general, intent and purpose of the
19 ordinance. He left out the balance of that
20 which is such variance will not be injurious
21 to the area involved or otherwise be
22 detriment to the public welfare and I think
23 it fails on that count. That's it.

24 PRESIDENT SMITH: Any other
25 member of the Council want to speak before I

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1 call it?

2 Mrs. Pollitt.

3 TOWN CLERK: Mr. Shaw.

4 COUNCILMAN SHAW: Yes.

5 TOWN CLERK: Mr. McLendon.

6 COUNCILMAN McLENDON: Yes.

7 TOWN CLERK: Mr. McDonald.

8 COUNCILMAN McDONALD: No.

9 TOWN CLERK: Mr. Wyett.

10 COUNCILMAN WYETT: No.

11 TOWN CLERK: Mrs. Smith.

12 PRESIDENT SMITH: Yes.

13 Three to two.

14 MR. DEZIEL: Thank you very
15 much.

16 (Whereupon, at 9:15 p.m., the foregoing
17 proceedings were concluded.)

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*****End of Verbatim Transcript*****