MINUTES OF THE TOWN COUNCIL MEETING HELD ON NOVEMBER 10, 1998

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Lesly Smith at 9:30 A.M. on November 10, 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, Town Attorney John Randolph, Finance Director James Demming, Assistant Finance Director Cheryl Somers, Fire-Rescue Chief Ken Elmore, Personnel Director William Crouse, Planning, Zoning & Building Director Robert Moore, Planning, Zoning & Building Administrator Paul Castro, Police Chief Frank Croft, Public Works Director Al Dusey, Recreation Director Russell Bitzer, Risk Coordinator Karen Temme, Town Engineer James Bowser, Town Clerk Mary Pollitt, and Deputy Town Clerk Susan Eichhorn.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Rabbi Moshe Scheiner of Palm Beach Orthodox Synagogue. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS

1. Recognition of Mr. Jesse D. Newman, Code Enforcement Board - From 1993 to 1998

Mayor Ilyinsky presented a plaque to Mr. Newman recognizing his service on the Code Enforcement Board.

2. Presentation of "Certificate of Achievement for Excellence in Financial Reporting" by Representative of Government Finance Officers Association for Fiscal Year Ending September 30, 1997, to Town's Elected Officials and Staff

Linda Davidson, representing the Government Finance Officers Association, presented the "Certificate of Achievement for Excellence in Financial Reporting," noting that it was the 10th year the Town had received the award.

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky commented that the Director of the Airport had notified him of another group of meetings that had been set up by the County, and they would be attended by representatives of the Town. He advised that the Civic associations in Town may also want to attend.

Mayor Ilyinsky gave the following schedule of Christmas Tree lightings:

Royal Poinciana Way on Monday, November 30, 1998 at 6:00 P.M.

Memorial Fountain Park on Tuesday, December 1, 1998, at 5:30 P.M.

Worth Avenue and Hibiscus on Tuesday, December 1, 1998 at 6:25 P.M.

V. APPROVAL OF THE AGENDA

Item XV C. 1 - Shore Protection Board Request for Funding Authorization would be heard at a time certain of 2:00 P.M.

ADD Item XV. C 4. - Maureen Kerschke vs. The Town of Palm Beach, Case No. 98-8947AH - Offer of Settlement by Plaintiff.

DEFER Item XVII A.2 - Variance No. 42-98 - Gay Cinque, 3 Golf Road to December 8, 1998, Town Council Meeting per letter dated October 16, 1998, from Attorney Ronald K. Kolins.

Councilman Wyett moved approval of deferral of Item XVII A.2. - Variance No. 42-98, to the December 8, 1998, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon, and carried unanimously on roll call.

WITHDRAWAL of Item XVII. A.3 - Variance No. 43-98 - Philip Bartley & Dabney Moore, 146 Seaspray, per letter dated October 5, 1998, from Mrs. Dabney Moore.

Councilman Wyett moved approval of withdrawal of Item XVII. A.3. - Variance No. 43-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

DEFER Item XVII. A. 7 - Variance No. 49-98 - George Merck, 1197 N. Lake Way to December 8, 1998, Town Council Meeting per letter dated November 9, 1998, from Attorney Robert Deziel.

Councilman Wyett moved approval of deferral of Item XVII.A.7. - Variance No. 49-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

DEFER Item XV.B.2 - Landmarks Preservation Commission appointment of one alternate member, to December 8, 1998, Town Council Meeting, per the request of Director of Planning, Zoning & Building Robert Moore.

Councilman Wyett moved approval of deferral of Item XV.B.2. - Landmarks Preservation Commission appointment, to the December 8, 1998 Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

ADD Item XV.C.5 - Consideration of Discussion of Zoning in Progress

President Smith passed the gavel and made a motion to add Item XV.C.5. - Consideration of Discussion of Zoning in Progress. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS

There was no one wishing to speak at this time.

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF APRIL 29, AND OCTOBER 13, 1998

VIII. APPROVAL OF CHECK REGISTERS FOR OCTOBER 1998

IX. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF OCTOBER 28, 1998

X. LICENSES AND PERMITS

1. Charitable Solicitations

    1. Jewish Federation of Palm Beach County; No. 22-99
    2. Leukemia Society of America, Palm Beach Chapter; No. 39-99
    3. Henry Morrison Flagler Museum; No. 74-99

4. Anti-Defamation League of B'nai B'rith; No. 83-99
5. The Garden Club of Palm Beach; No. 123-99
6. Mental Health Association of Palm Beach County; No. 145-99
7. Juvenile Diabetes Foundation Int'l, Palm Beach Chapter; No. 240- 99
8. Adopt-A-Family; No. 254-99
9. Simon Wiesenthal Center, Inc.; No. 264-99
10. Edna Hibel Art Foundation/Hibel Museum of Art; No. 292-99
11. Make-A-Wish Foundation of South Florida; No. 300-99
12. Louis A. Gaeta, III Memorial Scholarship Fund; No. 377-99
13. Israel Cancer Association USA; No. 379-99
14. Palm Beach Fellowship of Christians and Jews; No. 401-99
15. American Red Magen David for Israel-Palm Beach Friends of MDA; No. 410-99
16. Crohn's & Colitis Foundation of America, Inc., Gold Coast Chapter; No. 415-99
17. The Angels of Charity; No. 435-99
18. Win for the Kids - A Helping Hand for Children, Inc.; No. 450-99
19. Center for Creative Education; No. 451-99

<u>Other - Results Form Filed Late and $25 Late Fee Paid</u>

20. St. Ann School; No. 306-99
21. YWCA of Palm Beach County; No. 325-99

<u>Other - Application Filed Late and $25 Late Fee Paid</u>

22. Comprehensive Aids Program of Palm Beach County; No. 337-99

XI. CONTRACT AND AGREEMENT RENEWALS

1. Authorization for Town Manager to Execute Agreement Between the School District of Palm Beach County and the Town of Palm Beach for Vocational Education Programs per Memorandum dated October 27, 1998, from Fire-Rescue Chief Elmore

XII. REAPPOINTMENT

1. Golf Commission - Proposed Reappointment of Mr. Arthur Gross as a Regular Member with a Term to Expire November 2001, per Memorandum dated October 30, 1998, from Recreation Director Bitzer

XIII. OTHER

1. Request for Appropriations from the Law Enforcement Trust Fund for Palm Beach Police Department Purchases of Technical Equipment, Crime Prevention Program, and Other Law Enforcement Purposes per Memorandum dated October 26, 1998, from Police Chief Croft

The "Approved Agenda" was approved through motion of Councilman Wyett; seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

<u>REGULAR AGENDA</u>

XIV. OLD BUSINESS

1. Ordinances (Second Reading)

   1. Ordinance No. 16-98 - Restricted Boating Areas

Town Attorney Randolph read Ordinance No. 16-98 by title: (second reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 14, ARTICLE IV, BOATS AND BOATING, AT SECTION 14-79, SO AS TO CREATE A RESTRICTED ZONE REGULATING THE USE OF WATERCRAFT; PROVIDING A PROHIBITION ON THE USE OF

WATERCRAFT IN THE ATLANTIC OCEAN WITHIN FOUR HUNDRED FEET OF PUBLIC BEACHES WITHIN THE TOWN; PROHIBITING THE OPERATION OF WATERCRAFT IN THE ATLANTIC OCEAN AT A SPEED GREATER THAN IDLE SPEED WITHIN FOUR HUNDRED FEET OF THE BEACHES OF THE TOWN; PROVIDING FOR DEFINITION; PROVIDING A PROHIBITION ON THE LAUNCHING OF WATERCRAFT INTO THE ATLANTIC OCEAN FROM THE PUBLIC BEACHES OF THE TOWN; ADOPTING THE PROVISIONS OF CHAPTER 327, FLORIDA STATUTES; PROVIDING FOR EXCEPTIONS; RESCINDING SECTION 14-62 IN ITS ENTIRETY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Dr. Sanford Kuvin addressed the Town Council, speaking against the Ordinance, stating that there were enough maritime laws that could not be enforced already on the books of the State and the Town, including laws concerning careless and reckless driving by boat owners, the need to stay at least 100' away from swimmers, and numerous other boating safety ordinances. He mentioned that the Palm Beach Police had only one boat for marine patrol, primarily as a crime prevention unit, and not as a boating safety zone ordinance enforcer. Dr. Kuvin addressed concerns with definition of watercraft, education of watercraft operators, idle speed requirements, and the cost of buoys to mark the zones. He suggested that rather than punishing the vast majority in seeking to address the unsafe and imprudent behavior of a very small percentage of watercraft operators, the Town Council should provide levels of enforcement to those who break existing laws. He maintained that this ordinance would impose increased prohibitions on a significant member of Palm Beach residents who own, enjoy, and responsibly use watercraft of all types.

Mayor Ilyinsky disagreed with several statements of Dr. Kuvin, commenting that Palm Beach County may become involved in this issue, and had large resources for this purpose. He stated that the Town had the right and the obligation to start somewhere with enforcement.

Police Chief Croft commented that he did not believe there was an easy solution to the problem, and that public education was the answer, combined with strict enforcement. He agreed with some of the statements of Dr. Kuvin, as there were many residents in Palm Beach who owned jet skiis. He remarked that he believed the buoys were the only clear cut answer to delineating a safety area.

Town Attorney Randolph commented that one alternative would be to simply enforce reckless operation. Another alternative would be to adopt the ordinance, put it on the books, and use it to give warnings to individuals. Many municipalities had similar ordinances that had not gone the route of making application to the State for the buoys. The downside of that was that citations issued would not be successful in court. The next step today would be to send the adopted ordinance in with the application to the State for approval of the placement of buoys and enforcement of the ordinance.

Councilman Shaw moved approval of Ordinance No. 16-98 on second reading. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

2. Ordinance No. 17-98 - Adoption of Updated and Reformatted Town Code of Ordinances

Town Attorney Randolph read Ordinance No. 17-98 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ADOPTING AND ENACTING A NEW CODE FOR THE TOWN OF PALM BEACH, FLORIDA, PROVIDING FOR THE REPEAL OF ORDINANCES NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

Councilman Wyett moved approval of Ordinance No. 17-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Other

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

Public Works Director Al Dusey reported that the Florida Department of Transportation (FDOT) had signed an Emergency Declaration, with 100% State funding, allowing a temporary replacement structure south of the existing structure to be completed within a one year construction period. The final replacement structure was now on a schedule for final completion in four years, rather than the original seven. A public meeting was scheduled for November 19th at the Palm Beach Public School.

President Pro-Tem McLendon commented on the possibility of three lanes in each direction on the new bridge.

Mr. Dusey replied that the width of the bridge had that capability, however, it was not the intent to have three lanes in either direction. There would be a 4' bicycle lane, an 8' sidewalk, two 24' lanes for travel, and a 16' median.

President Smith expressed concern about the timing of traffic lights in the area, as well as the timing for opening of the bridge for watercraft.

Mr. Dusey replied that the traffic lights would be reviewed with the County on all three bridges, with traffic studies being done after completion of the work on the Flagler Bridge. He advised that the Coast Guard would be contacted regarding the bridge openings so that the bridge tenders could be alerted.

Councilman Wyett pointed out that the Lake Worth bridge should also be included in any traffic studies.

Resident Ann Herman expressed concern about the back up of traffic on Southern Blvd. from the Southern Blvd. bridge, and suggested that there was some manner of adjustment.

Police Chief Croft commented that traffic has always backed up between the hours of 4:00 - 6:00 P.M. Police officers had been put at the corner of South Ocean Blvd, and South County Road, and at the Bath and Tennis Club as well, however they were actually unable to expedite traffic, although it made people feel better that there was a police officer directing traffic.

Mrs. Elise MacKintosh addressed the Town Council, stating that there seemed no conclusion on how to solve the traffic problems, yet things such as Neiman Marcus were encouraged, which would result in more traffic.

Assistant Town Manager Peter Elwell reported that he had attended the meeting held by the City of West Palm Beach regarding the planning of Flagler Drive, and some assurance had been received that the City was as concerned as the Town regarding traffic flow in and out of the Town, and that it would be considered in the ultimate plan. Mr. Elwell would continue to report to the Town Council on this matter on a timely basis.

2. Water Issues:

a. Status Report by the Town Attorney, Town Staff, and Water Consultant

Town Attorney Randolph advised that a complaint would be ready for filing in approximately 10-15 days. Meetings between staff from the Town and the City of West Palm Beach had been set for possible negotiations.

Public Works Director Al Dusey reported that bulk purchase of water had been discussed with the County, and two or three scenarios had been brought up. Hartman and Associates was currently reviewing that, and discussions were continuing.

Mr. Dusey advised that Mr. Hartman would present the Valuation of the System today, which he would discuss with the Town Council.

Gerald Hartman of Hartman and Associates gave an overview of the Valuation of the City of West Palm Beach water system. He advised that the valuation of the system in place at this juncture was $5,310,000, in the professional opinion of Hartman and Associates.

Councilman McLendon asked how far back the comparable sales could go–for example, when West Palm Beach bought the system from the West Palm Water Company in 1955, they paid approximately $1.5 million for the distribution system, and $8.5 million for the whole system.

Mr. Hartman replied that he did not know if it was appropriate to look at the original transaction, as a proper valuation of comparable sales usually goes back seven years from the date of the appraisal. Adjustments must be made to historically comparable sales to the present sale. Because of that the adjustments create more skew the older the sale becomes. The other issue was the review of original costs in a valuation, which was something that needed to be researched and documented for a reasonableness test.

b. Proposal from Hartman and Associates to Develop Construction Estimate for Replacement Program for the City of West Palm Beach's Water System

Mr. Dusey reported that the Town Council had requested a proposal from Hartman and Associates to go through the West Palm Beach system and estimate the construction costs to bring that system up to an acceptable level. The proposal to do that work was not to exceed the amount of $42,810, which he believed was critical to the Town in its deliberations as to proceeding with the project.

Councilman Wyett moved approval of the amount of $42,810 for the proposal from Hartman and Associates. The motion was seconded by President Pro-Tem McLendon. The funds would be transferred from the General Contingency Fund to the Capital Improvement Program line item established for water related studies.

Mr. Hartman agreed that the report would be finished in 60 days. A copy of the report would be sent to the City of West Palm Beach, per the direction of the Town Council.

After discussion of alternate brine disposal system to include ocean outfall, Mr. Hartman indicated that he did not have an estimate for this type of proposal and would have to present it as a proposal to the Town Council at a later date.

Councilman McLendon moved approval of a proposal from Mr. Hartman to complete an application for an alternate brine disposal system to include the ocean outfall.

Councilman Wyett commented that the suggestion of Mr. McLendon was excellent, however, he suggested that it was premature and that the suggestion should be deferred.

Councilman McLendon withdrew his motion.

Public Works Director Al Dusey noted that staff had been directed to negotiate with the City of West Palm Beach for the purchase of bulk water and the water system, and he requested that Mr. Hartman accompany staff in that process. His proposal was at an hourly rate not to exceed a total of $5,000 in order to participate in two full days of negotiation, as well as preparation both before and after.

Councilman McDonald moved approval of an amount not to exceed $5,000 (to come from the General Contingency fund) for Mr. Hartman to attend the two day session regarding the purchase of bulk water and the water system from the City of West Palm Beach. 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, and September 8, 1998)* - **Town Staff Recommends Deferral to December 8, 1998**

XV. NEW BUSINESS

1. Resolutions

1. Resolution No. 44-98 - Commercial Solid Waste Collection Fees

Town Attorney Randolph read Resolution No. 44-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ESTABLISHING COMMERCIAL SOLID WASTE COLLECTION FEES TO BECOME EFFECTIVE JANUARY 1, 1999.

Councilman Shaw moved approval of Resolution No. 44-98. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

2. Resolution No. 45-98 - Establishing Commercial Yard Trash Collection Fees

Town Attorney Randolph read Resolution No. 45-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ESTABLISHING COMMERCIAL YARD TRASH COLLECTION FEES TO BECOME EFFECTIVE DECEMBER 1, 1998.

Councilman Wyett moved approval of Resolution No. 45-98. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

3. Resolution No. 46-98 - Re-adoption of Dune Maintenance Guidelines for the Town of Palm Beach

Town Attorney Randolph read Resolution No. 46-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RE-ADOPTING THE TOWN'S GUIDELINES FOR ROUTINE DUNE MAINTENANCE.

Councilman Shaw moved approval of Resolution No. 46-98. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

2. Appointments

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

Mr. Gene Lawrence was appointed as the new full member, moving from alternate status, and J. Richard Allison was appointed as the new member to take the place of Mr. Jesse Newman.

2. Landmarks Preservation Commission - One Alternate Member Term to Expire March 2000

Deferred to December 8, 1998, Town Council Meeting per request of Director of Planning, Zoning & Building Robert Moore.

3. Other

1. Shore Protection Board Request for Funding Authorization to Proceed with Tasks 1 & 2 of Proposed Public Education Program for Comprehensive Coastal Management Plan Update (See Proposal dated October 12, 1998, from Gooderham & Associates to Public Works Director Dusey) - **To be Heard at 2:00 P.M. Time Certain**

After discussion, Councilman McDonald moved approval of the amount of $12,160 as funding to proceed with Tasks 1 & 2 of the Public Education Program for the Comprehensive Coastal Management Plan Update per the proposal from Gooderham & Associates. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Medical Insurance Premium Rates for Calendar Year 1999

Personnel Director William Crouse referred to his memorandum to Town Manager Doney, dated November 3, 1998, wherein the particulars of the health care premiums were delineated. The changes of modifications recommended would more than make up for the premium changes that were suggested by the rate-making report from the firm of Gabriel, Roder, Smith & Company. Mr. Crouse recommended that the Town pick up and maintain the premium rates as they were current, as well as the following modifications of the medical insurance benefits:

1. Increase the office visit co-payments for the PPO Plan from $10 to $15.

2. Increase the office visit co-payments for the EPO Plan from $5 to $10.

3. Increase Emergency room co-payment for EPO Plan from $25 to $50.

4. Increase outpatient surgery co-payment for EPO Plan from $25 to $50.

Mr. Crouse also recommended modifications to the prescription drug program as follows:

1. Increase the co-payment for brand name drugs from $5/20% of cost to $10/20% of the cost.

2. Introduce a voluntary Preferred Medication List (known as a "formulary").

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

3. Schedule a Special Town Council Meeting to Review Town Manager's Performance and Long Range Goals

President Smith suggested that a Special Town Council Meeting to review the Town Manager be held prior to the Long Range Planning Workshop scheduled for April 16, 1999.

Councilman Wyett commented that he was in favor of a workshop on the subject of review, preceding any Town Council discussion, since the Town Council had not conducted such a review for some time, and that some experts were willing to come to address the Town Council in this regard.

President Pro-Tem McLendon pointed out that Dr. Gross, an expert in the field, would be making a presentation to the Town Council regarding goal setting and performance measurements at the Long Range Planning Workshop scheduled for April 16, 1999.

Mr. William Guttman addressed the Town Council, stating that he believed the workshop would be richer if it was opened up to people with experience in this area to come and speak, in addition to Dr. Gross.

President Smith suggested that anyone with suggestions as to speakers for the April 16th meeting could submit names to the Town Council for review at the December Town Council Meeting, and it could then be decided who would be invited to speak at the meeting in April.

Councilman Wyett moved approval of placing discussion of the arrangements for the April 16, 1999, meeting on the Agenda for the December Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Town Manager Doney commented that he was aware of requests for information from the following to date: The Florida League of Cities (and the four towns that were represented at the workshop conducted regarding manager review and goals), Palm Beach County, The Village of Tequesta, and the International City Managers Associations(ICMA).

President Smith clarified that requests for speakers and information would be submitted at the December Town Council Meeting, so that there would be a definitive list of who would be contacted and what material would be necessary for the meeting of April 16, 1999.

4. Maureen Kerschke vs. Town of Palm Beach, Case No. 98-8947 AH - Offer of Settlement by Plaintiff

Town Attorney Randolph reported that the attorney for the plaintiff had suggested that the Town pay the limits of exposure of up to $100,000, as he had indicated that the damages were well in excess of that. Mr. Randolph advised that he believed it was very premature to respond positively to such a settlement proposal, and recommended that it be rejected.

Councilman Wyett moved that the offer of settlement by the plaintiff be rejected. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

5. Discussion of Zoning in Progress Action at the December Town Council Meeting.

President Smith passed the gavel and moved approval of the addition of this item to the December Town Council Meeting. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

XVI. COMMENTS OF THE TOWN COUNCIL MEMBERS

President Smith expressed that she believed it was disloyal and a disservice to those who had defended our country for work to take place in the Town of Palm Beach on Veteran's Day.

Public Works Director Al Dusey reported that the D-14 contractors had been scheduled to work on Veteran's Day, and he would notify them that work could not be done on this day.

Mr. McDonald made reference to the recent exchange of letters between Mr. Dusey and Mr. Ecclestone, and suggested that when a citizen agrees to pay for any service, it should be in writing.

Mr. Shaw commented that he had attended the Zoning Workshops and that the air conditioning was very cold for the audience.

Mr. Wyett suggested that there be a special recognition of citizens who have assisted the Town.

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The meeting was adjourned at 12:00 P.M.
for lunch and was resumed at 1:30 P.M.

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XVII. DEVELOPMENT REVIEWS

1. Variances, Special Exceptions, and Site Plan Reviews

<u>Old Business - Major</u>

1. <u>VARIANCE NO. 32-98</u> - Eric & Ann Fishman, 143 Clarendon Ave.; located in the R-A Zoning District; to allow installation of a gate & posts providing a front yard setback 8' from the street pavement in lieu of 18' required. *(Deferred from August 11, September 8,1998, and October 13, 1998)*

Attorney James Brindell addressed the Town Council on behalf of Dr. and Mrs. Fishman, with the request to provide an 8' front yard setback for a gate, rather than the code requirement of 18'. Mr. Brindell exhibited photographs of the area in question, stating that the property line was essentially at the curb, and the distance between the curb and the face of the house was 40'. There was a 3 ½' front stoop that protruded from the front of the house. The street was a fairly small street with 7 houses on it presently. There were several large construction projects ongoing on the south side of the street, which involved heavy construction traffic. He explained that Dr. and Mrs. Fishman were the parents of small children, and were concerned for their security and safety.

Mrs. Ann Fishman addressed the Town Council, imploring that the variance request be granted.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: need to determine actual measurement from edge of pavement; Public Works: no comment; Town Engineer: survey to access location of easements with request to improvements, if approved; removal agreements will be required; Building Department: driveway and gates could be relocated; Town Manager: concurs with staff comments.

Mayor Ilyinsky commented that there was an enormous amount of construction ongoing, and he did not believe that the property was what had been expected when the Fishmans had purchased the property. He suggested that there was a hardship involved as a result of increased construction traffic and the changes in the street since the property was purchased.

Councilman Wyett moved approval of Variance No. 32-98, with the conditions that the setback be 13' in lieu of 18', and that the right-of-way easement conditions be adhered to; the hardships being the configuration of the land, and the elevation of the setback from the street. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

(Please Note: Variance No. 32-98 was reconsidered later in the meeting, and was approved to run the entire length of the property, and line up with the Wolofsky wall, with an 11' setback, with the condition that the sidewalk easement be worked out with Town staff.)

2. 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, 1998)* - **Request for Deferral to December 8, 1998, per letter dated October 16, 1998, from Mr. Ronald K. Kolins**

This item was deferred to the December 8, 1998, Town Council Meeting.

3. VARIANCE NO.43-98 - Philip Bartley & Dabney Moore, 146 Seaspray Ave.; located in the R-B Zoning District; to allow construction of a second story addition to a nonconforming accessory structure (already a two-story) and to allow it providing a rear yard setback of 5.6' in lieu of 10' minimum required. *(Deferred from September 8, 1998)* **- Request for Withdrawal per letter dated October 5, 1998, from Mrs. Dabney Moore**

This item was withdrawn from the Agenda.

4. SPECIAL EXCEPTION NO. 29-98 - 2875 S. Ocean Corp.; 2875 S. Ocean Blvd.; legal description on file; 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, 1998)*

Councilman McDonald recused himself from discussion on this matter.

Attorney Peter Broberg requested a deferral of this matter to the December Town Council Meeting.

Councilman Wyett moved approval of deferral of Special Exception No. 29-98 to the December 8th Town Council Meeting. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

5. SPECIAL EXCEPTION NO. 30-98 WITH VARIANCE - One 79 Corp., 179 Bradley Place; located in the C-TS Zoning District; to allow offices on the 1st floor; to allow a 3,400 sq.ft office in lieu of 2,000 sq.ft maximum allowed; and to allow a variance to permit said office with an entrance from a sidewalk fronting a street. *(Deferred from October 13, 1998)*

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

Mr. William Atterbury, representing the Claude Reese Agency, addressed the Town Council, stating that the proposal was for the relocation of the insurance and real estate business from Royal Palm Way to 179 Bradley Place. The applicant was requesting a special exception to allow offices on the first floor, and to allow the applicant to exceed the space of 2,000 sq.ft.; and a variance to allow an entrance onto the sidewalk fronting the street. He stated that the purpose of limiting first floor office access onto to the street was to encourage walking, and strolling on what was otherwise a retail oriented street. He noted that in this area of Bradley Place, it was no longer a walking, strolling, retail street. There were offices on both sides of the applicant's property, and there were essentially no retail uses in the area. The use being proposed was one that was common to the area.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: must show Town-serving and upgrade existing parking lot with some landscaping if that was feasible, with a dumpster enclosure. He noted that the Town-serving documentation had been submitted and there was no objection.

Mr. Atterbury replied that the conditions as stated by Mr. Moore were acceptable.

Councilman Wyett moved approval of Special Exception No. 30-98. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

New Business - Minor

6. VARIANCE NO. 53-98 - Casa Rosada, 323 Brazilian Ave.; located in the R-C Zoning District; to allow a part of a landmark structure and wall to remain at a 5'1" side yard setback in lieu of 12.5' required, and a front yard setback of 24.9' in lieu of 25' required.

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

Director of Planning, Zoning & Building Robert Moore explained that Variance No. 53-98 was a minor variance because of the fact that the structure was existing, and it was a compromise with the Landmarks Preservation Commission to save the wall that extended east/west across the property. The building was being converted to a garage, rendering this particular building from the side and front yard as nonconforming because more than 50% of it was being removed and being converted. It was a minor variance in nature, and staff recommended approval.

Councilman Wyett moved approval of Variance 53-98. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

New Business - Major

7. 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. - **Request for Deferral to December 8, 1998, per letter dated November 9, 1998, from Mr. Robert E. Deziel**

This item was deferred to the December 8, 1998, Town Council Meeting.

8. VARIANCE NO. 50-98 - Kenneth & Mora Wolofsky, 129 Clarendon Ave.; located in the R-A Zoning District; to allow electric gates to remain at a front yard setback of 7' in lieu of 18' required.

Ex-parte communication was declared by Councilman Wyett with Attorney Broberg, by President Pro-Tem McLendon with Attorney Broberg, and by Councilman McDonald with Mrs. Wolofsky concerning the merits of the application.

Attorney Peter Broberg, on behalf of Mr. and Mrs. Wolofsky, addressed the Town Council, stating that the gates in question were in existence and had been in existence for over 4 years. He noted that this had not been done to deceive the Town of Palm Beach, and that a landscape architect and a regular architect had not communicated and the result was the gate placement. He noted that the application was not correct, in the sense that the gates were 11' from the pavement, not 7' as stated in the application. He exhibited some photographs of the property for viewing by the Town Council. He explained that the hardship was associated with the lay of the land and as a safety issue for the owners.

Mayor Ilyinsky asked why it had taken so long for someone to notice that the gates had not been installed according to code?

Director of Planning, Zoning & Building Robert Moore explained that there was no record of any permits for the gates. There had been gates originally on one entrance to the property, and they had been done in 1983 when the house was built. The gate to the west had been approved with the original set of plans when the requirement was not in place. The east gate was on property that had been acquired subsequent to the house being built, however, the north gate did meet code requirements.

Zoning Administrator Paul Castro explained that the gates on the north side had been moved back based on a code enforcement action. The gates on the south side had been inquired about by a resident, and were found to be without a building permit; subsequently staff then followed up.

Mr. Moore noted that originally when the house was built there was no setback requirement for gates, regarding the gate on the west side of the property. When the owners had acquired the property to the east, they matched the gates in the same location of the original gates, considering that if the one had been according to code the other one would be also. The problem was that they had removed the old gate and put a new one in, which would have triggered a variance application. There had been a series of errors that had inadvertently occurred. He noted that one of them had been corrected, which was the one on the north side off the alleyway.

President Smith suggested that this item be postponed until the client of Attorney Broberg could appear to discuss the matter, which was agreed to by all members of the Town Council.

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At a later time in the meeting, (immediately after hearing Variance No. 51-98) the Town Council returned to discussion on Variance No. 50-98.

Mrs. Mora Wolofsky stated that she understood that a neighbor in the same residential area had received a variance of 5' earlier in the meeting today, and she requested that the gates be allowed to remain where they were.

Councilman Wyett noted that the Town Council had just heard a similar variance request (Variance No. 32-98) in which a compromise of 13' had been reached, and he suggested that it would only be fair to adhere to the same requirement in this instance, making that his motion of approval with conditions. The motion was seconded by Councilman Shaw for discussion. Contingent on sidewalk and right of way issue

Councilman Shaw suggested that the earlier Variance considered (Variance No. 32-98) be reconsidered if the gates on the Wolofsky property were allowed to remain where they were.

Councilman McDonald made a motion to approve leaving the gates where they were presently, with the condition that the sidewalk easement be worked out with Town staff.

Councilman Wyett withdrew his motion of approval with conditions. Councilman Shaw withdrew his second to that motion.

Councilman Shaw then seconded the motion of Councilman McDonald.

On roll call the motion carried unanimously.

At this time, Attorney Brindell commented that the gates and wall of his clients, Mr. and Mrs. Fishman (Variance No. 32-98), would not line up with the Wolofsky wall, which was adjacent to their property, and would take away from the street line appearance.

Councilman Wyett moved reconsideration of Variance No. 32-98. President McLendon seconded the motion. On roll call the motion carried unanimously.

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At this time Variance No. 32-98 was reconsidered.

Attorney James Brindell stated that the Wolofsky property immediately abutted the property of the Fishmans, and suggested that the wall of the Fishmans be approved to line up with the Wolofsky wall.

Councilman Wyett moved that the wall requested in Variance No. 32-98 by Mr. and Mrs. Fishman be approved to run the entire length of the property, and line up with the Wolofsky wall, with an 11' setback, with the condition that the sidewalk easement be worked out with Town staff.
President Pro-Tem McLendon seconded the motion.

Councilman Shaw commented that the application had indicated that the wall did not start at the abutting property line; that there was a hedge and a chain link fence. He maintained that the wall was therefore not an abutting wall, and any form of hedge material could fill in the difference so that the hedge would align with the existing abutting wall and then stepped back when it got to the point of the solid structural wall and gates.

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

9. VARIANCE NO. 51-98 - Hammon Avenue Partners, Inc., 110 Hammon Ave.; located in the R-C Zoning District; to allow construction of privacy walls along the rear and side lot lines at a height of 9' and 12', in lieu of 7' maximum allowed.

Ex-parte communication was declared by Councilman Wyett with Attorney Kolins, by President Pro-Tem McLendon via telephone with Attorney Kolins, and by Councilman Shaw with Attorney Kolins.

Attorney Ronald Kolins, on behalf of Hammon Avenue Partners, Inc., addressed the Town Council, stating that a wall height variance was being requested, noting that on June 10, 1997 the applicant had been granted a wall height variance for the east and west sides of the property to 8 ½'.Therefore, the height of the wall could currently be up to 8 ½' on the two sides. Today, the request was for a change in the wall height for those two sides, as well as for the rear of the property. Mr. Kolins exhibited architectural drawings and photographs of the area in question. He explained that the wall on the first 25' of the property would be 6' in height, and the request was for a height of 9' for the wall running 25' on the east side and 35' on the west side. In addition, Mr. Kolins requested a wall height of 12' for the remainder of the east and west side walls, and for the rear of the property. He explained that the east side of the property was abutted by a 10-unit apartment building, and the back side of Charley's Crab Restaurant, with air conditioning equipment on the roof in a state of neglect and disrepair, with noise and odors emanating from the area. The applicant was attempting to screen the area visually, as well as for noise and odors. The area abutting the rear of the property was presently vacant and a wall of the same height in this area would be symmetrical. The west side of the property was abutted by property owned by the Colony Hotel, used as a parking lot. The applicant would like to continue the 12' wall in that area as well. The applicant would landscape the inside of the walls and would speak with the Colony Hotel about landscaping their side of the proposed wall.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: applicant had not demonstrated how variance from code would be beneficial; Public Works: the wall structure on the south property line was encroaching on a utility easement; Building Department: no objection to the east and south side of unit A, however, the applicant was entitled to 7' the rest of the way; Town Manager: requests additional information and justification for variance. Mr. Moore noted that the property owned by the Colony Hotel was a parking lot currently, and there was an approval to excavate that parking lot, put a parking garage below it, and erect a two-story building with additional units. The Colony Hotel had not yet taken advantage of that approval.

Councilman Wyett expressed concern about the noise and odors coming from the restaurant, and suggested that landscaping and trees could accomplish the objectives of the applicant, rather than a wall.

Attorney Kolins responded that the restaurant had been approached regarding a landscaping/screening project and the owner had not been agreeable; thus, the request for a wall. He explained that the hardship on the south and west sides was the noise from the parking lot, as well as the potential for a large structure to be built on the property.

President Smith asked Mr. Moore how many complaints had been received from the nearby residents regarding noise from Charley's Crab Restaurant?

Mr. Moore responded that there had been little or no complaints in recent years, however, the house in question would need some protection from that area.

Councilman Shaw moved approval of Variance No. 51-98 with the conditions that the 8 ½' wall approved on the south side and west side remain; with a gradual tiering down from 12' on the east side, tiering down in two or three stages for the length of the property, continuing along the back wall, and then continue at 8 ½' ' for the balance of the property as originally approved. The hardship was the adjacent existing property. The motion was seconded by Councilman Wyett.

Mr. Moore replied that he understood the intent of the motion, and would work with the architect for an architecturally acceptable tiered down wall.

Councilman Shaw clarified that his intent was that the wall not continue along the south wall going west until the very last minute.

Councilman McLendon expressed preference for landscape screening on the south 37'.

On roll call the motion carried unanimously.

10. 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.

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

Attorney Robert Deziel, representing David Koch, addressed the Town Council stating that the variance was for the beam height of two modest second floor additions. The first addition at the front of the residence was approximately 1,300 sq. ft., and the second addition at the rear of the residence was approximately 480 sq. ft. The residence was a landmarked structure, and the land area consisted of three lots. The project involved the following zoning calculations: with the improvements a lot coverage of 16%, an FAR of 27%, and a CCR of 3.3. The setback where the front addition was being requested was 57' from the south boundary line of the property. The hardship was the configuration of the existing structure, which was positioned along the coral ridge at a high elevation. In the R-B Zoning District the beam height calculation was from the existing floor slab, as opposed to the crown of the road. This home had been built 70 years ago, and was built at its current floor slab, which was higher than the norm in the R-B Zoning District, as well as the fact that the home had higher than normal ceilings on the first floor. The purpose of the variance application was so that the additions would match the existing beam heights throughout the balance of the residence. Mr. Deziel noted that a letter had been written to the Town in objection from Mr. and Mrs. David Kosoy, and since that time the applicant had met with them and addressed all of their concerns. Those conditions

Attorney James Brindell advised that Town-serving documentation had been submitted from Price-Waterhouse, which showed 61% Town-serving.

On roll call the motion carried 4/1, as Councilman McDonald had temporarily left the room.

14. SPECIAL EXCEPTION NO. 33-98 - Breakers Palm Beach, 40 Cocoanut Row; located in the C-TS Zoning District; to allow an office use to exceed the 2,000 sq.ft limit, and to allow said office to locate on a first floor with frontage on a roadway; the proposed first and second office will occupy 20,730 sq.ft.

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

Attorney James Brindell addressed the Town Council on behalf of The Breakers, presenting photographs of the existing First Union Building on 40 Cocoanut Row. He noted that the plan was for The Breakers to occupy the offices for administrative support services, and some catering administrative services. The bank would contract into the space delineated on the architectural drawing submitted. The Breakers would outline the areas delineated on the architectural drawing in green. Two drive through teller units would be retained for banking purposes, and the other two would be taken out of service. The ATM machine would remain. He explained that a variance was being requested from the restriction against office on the first floor in C-TS districts, with frontage on public streets. The property was not well-suited to the typical C-TS uses, such as restaurants, and bars, and was an isolated piece of the C-TS district.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Fire Department: Building needs to be brought to code with tenant separation, proper exiting, etc., and the possibility of a fire sprinkler system. Subsequently, it was determined that the fire sprinkler system was not required. Building Department: Requested that Town-serving documentation be provided; Town Manager: Concurred with staff comments. Mr. Moore explained that there had been a misunderstanding about occupying commercial space for commercial space. The Flagler System had not been aware that they needed a special exception initially, and their Human Services Department partially occupied the building currently, however, it had not been done intentionally.

Councilman Wyett moved approval of Special Exception No. 33-98, with the conditions stated by the Fire Department concerning conformance to code, and certification of Town-serving. He also expressed concern regarding space for vehicles to get by the teller unit, and suggested that the middle two teller units remain opened, and the one closest to the bank building be reconstructed for a parking area, adding that to his motion for approval. The motion was seconded by President Pro-Tem McLendon.

Attorney Brindell agreed that adjustment would be made.

On roll call the motion carried unanimously.

2. Other

1. Consideration of Mitigation Plan Relating to FH of Palm Beach, Inc., commonly known as C-15 and C-16 of the Palm Beach Hotel, 251 Sunrise Avenue

Ex-parte communication was declared by Councilman Shaw with Brian Krisner and Attorney Maura Ziska regarding the application and the proposed mitigation letter. President Pro-Tem McLendon declared communication with Donald Carmichael regarding his interest in the restaurant. Councilman Wyett declared communication with Gilda Bean regarding her objections.

Town Attorney John Randolph commented that he did not believe that this was a quasi-judicial matter. The applicant had requested that the Town Council allow a mitigation plan proposed via letter from Attorney Maura Ziska. He noted that the letter referred to the proposed expansion of restaurant use and limitation of nightclub use, which would require a Special Exception, and he did not believe that it would be appropriate for the Town Council to give consideration to any conditions that would be placed on a Special Exception. He explained that his comments had been made to avoid a great deal of discussion in regard to matters connected with a request for a Special Exception, and that any conditions of a Special Exception should not be tied to those conditions made a part of the mitigation plan.

Attorney Ziska commented on six noise complaints that had been lodged since October 1st, noting that there had been no actual citations or violations issued. She also addressed a letter from Attorney Paul Thibadeau with concerns regarding recyclables. She explained that the offer of the 1:00 A.M. closing time three nights per week was a proposal of the <u>mitigation plan</u>, and was not connected to the restaurant expansion.

Police Chief Croft and Fire-Rescue Chief Elmore commented on the noise complaints and violations of the occupancy rate in the restaurant.

After lengthy discussion, the following was approved through motion of Councilman Shaw; seconded by President Pro-Tem McLendon, with the stipulation that the 251 Sunrise Restaurant report progress at the February 12, 1999, Town Council Meeting:

1. The Town Council conditionally abated the order to remove the permanent roof that was constructed on "251" based on the approval of Site Plan Review No. 3-96 until the February 9, 1999, Town Council Meeting.

2. Off-duty policeman (3 hour minimum) will be provided on any evening in which there is a night club activity from 10:00

P.M. until all of the patrons have left.

3. Parking must be addressed under a Special Exception application for a shared parking arrangement no later than the January 12, 1999 Town Council Meeting.

4. 251 Sunrise Restaurant hours:

Opened seven nights per week for dinner:

Sunday, Monday and Tuesday: Close at 1:00 A.M., meal service ceases by 12:00 A.M.; last call for alcoholic beverages at 12:45 A.M.

Wednesday, Thursday, Friday, and Saturday: Close at 3:00 A.M., meal service ceases at 2:00 A.M.; last call for alcoholic beverages at 2:30 A.M.. Off-duty police officer needed those nights. Restaurant will notify Town if they decide not to be opened for night club activity on a night so designated. On any night designated as a night club activity if the restaurant closes early the off-duty police officer can be relieved of duty at that time.

5. The 251 Sunrise Restaurant will acknowledge the occupancy limits of 196 people and is aware of the Town codes pertaining to overcrowding and the ramifications of being in violation.

6. Recycables will remain inside and will not go out until morning. Garbage will stay on the 251 property until early morning, at which time it is placed on Sunrise Avenue for Town pick up.

7. The decibel level from the speakers in the west patio bar that abut the French doors to the rear will always remain at dinner level, to help reduce the risk of noise escaping to the outside.

8. The icemaker will be accessed through an interior door through the Palm Beach Hotel.

9. The French doors on the north side would be equipped with a detex emergency alarm system. Additionally, weather stripping will be added to the north doors.

10. French doors on Sunrise at the south side of the building, and French doors on the north side of the patio will always remain closed during the hours of operation of the restaurant from 7:00 P.M. until the following morning. The French doors on the south side of the restaurant shall be closed daily by 11:00 P.M.

11. The upstairs room will not be used for patrons, just employees, and for only business purposes. The bar that is located in that area will be permanently removed.

12. The public telephone that was previously in the garden area shall be permanently removed.

On roll call the motion carried unanimously.

Town Attorney Randolph clarified that 251 Sunrise has been approved as a restaurant, not as a night club, and that the references that have been made to night club simply mean the nights that the restaurant is having night club activities.

Ms. Gilda Bean, Park Avenue resident, addressed the Town Council, stating that she had noticed recycables in back of 251 not being emptied for two to three weeks.

Public Works Director Al Dusey noted that recycables were only serviced from the front, and if they are not brought to the front they are not picked up.

President Smith suggested that Ms. Bean notify the Public Works Department if there was a problem again.

Ms. Bean also commented on the noise coming from the restaurant as a result of loud music, drums, and bottles being dumped.

2. Review of Worth Avenue Construction Regulations

Director of Planning, Building and Zoning Robert Moore reported that staff had met with Mr. Schwalberg, the President of Worth Avenue Association, and some of the issues related to the construction taking place on Worth Avenue were administratively related, and Mr. Moore suggested that he and Public Works Director Al Dusey meet with members of the Worth Avenue Association to work out the details of what was desired.

President Pro-Tem McLendon moved that the issue be assigned to staff to negotiate with the interested parties. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

were: 1) There would be a 10' wide landscape buffer on the south side of the Koch property immediately adjacent to the Kosoy property, with variation in height subject to specifications and approval of Mrs. Kosoy, installed by Thanksgiving. 2) immediately south of the proposed improvements there would also be another landscape buffer of palm trees at various heights, with the highest height reaching 29' in order to buffer the beam from the view of the Kosoys. That buffer would also be subject to the specifications and approval of Mrs. Kosoy, and would be installed concurrent with the landscaping of the entire project. 3) Service to the residence by maintenance and staff of the owner had been discussed and all was in accordance in that respect.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: Design can be modified to conform to code; also addition should be separate to conform with Secretary of Interior standards; Building Department: Hardship must be shown; Town Manager: concurs with other staff comments. Mr. Moore noted that staff had spoken with the attorney representing the Kosoys to ask them to attempt to resolve the issues of the buffering between the two properties with Attorney Deziel, and as evidenced by the statements of Mr. Deziel that issue had been resolved. The house was a landmarked structure that was going to be remodeled to make it more livable.

Councilman Shaw asked Architect Smith if the Landmarks Commission looked favorably upon the changes proposed to the landmarked structure?

Architect Jeff Smith responded that numerous additions had been done to landmarked structures, and the total amount of area being added was 1,800 sq. ft., which was insignificant compared to what had been done at Casa Apava, for example.

Councilman Shaw responded that he was not concerned about the percentage of space being added; when the house was landmarked it was landmarked for its overall characteristics, and he questioned the approval of the Landmarks Commission of such changes.

Councilman Wyett commented that he believed it would be an error to change the house, as it would change the charm of the home and make it too massive. He stated that he saw no hardship whatsoever.

Architect Smith responded that he thought it was the clearest hardship that he had ever presented.

Attorney Deziel commented that the term massive was relative, and that the house was very large on a very large piece of property.

After further discussion, Councilman Shaw moved approval of the variance for the small addition in the rear, the west addition, and deferral of the remainder of the variance on the east.

Attorney Deziel requested that the remaining portion of the variance request be deferred for consideration later in the meeting.

At this point, Councilman Shaw withdrew his original motion, and made a motion to approve the western addition variance as a fill in variance as it was not seen from the street. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

Councilman Shaw then moved that further action on Variance No. 52-98 be deferred until the end of the meeting today. President Smith passed the gavel to second the motion. On roll call the motion carried unanimously.

Attorney and Architect James Paine, representing the Kosoys, addressed the Town Council, stating that the Kosoys had been very concerned about many of the same issues discussed by the Town Council, and had worked out a compromise, which had been made on the fear that the variance would be passed and the end result that there could be less landscaping. He added that the concerns of the Kosoys still existed, and they were willing to work with the applicant, but were not sure that they would continue with the position that there was no objection to the variance request.

President Smith clarified that the Kosoys had accepted the landscape conditions discussed earlier, to which Mr. Payne agreed. President Smith explained that the Town Council had taken that into consideration when discussion of approval of a portion of the Variance had taken place.

11. VARIANCE NO. 54-98 - Lisa M. Carney, 166 Seabreeze Ave.; located in the R-B Zoning District; to allow construction of an addition providing a 5' side yard setback in lieu of 15' required, and a floor area ratio (FAR) of 50.8% in lieu of 45% required, and the existing FAR of 49%.

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

Attorney James Brindell, representing Lisa M. Carney, addressed the Town Council, stating that the house was a small house of 2,714 sq. ft. The lot was only 50' wide, and the existing setback on the east side was 5.04', and the Code currently required 15' in that district. The house had a porch on the rear section, and it was proposed to extend the porch for a total of 16.4', and enclose it for a total of 102.6 additional square feet. A variance was required for the side yard setback on the east.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: porch should not be enclosed; Building Department: narrow lot, hardship must be addressed; Town Manager: requires additional information and justification for variance. Mr. Moore noted that discussion had taken place in zoning workshops regarding ways to provide minimum additions that would lend to livability of existing homes, rather than creating tear down situations.

Architect Albarren-de-Mendoza explained that the house would go from an existing FAR of 44.3% to 45.98%. She noted that the survey had not been clear originally, and had resulted in some confusion of the calculations.

Councilman Wyett moved approval of Variance No. 54-98, commenting that this was a perfect situation where a small lot and older home could be made more livable. Councilman Shaw seconded the motion. On roll call the motion carried unanimously.

12. VARIANCE NO. 55-98 - Bayhill Development Co., 321 Brazilian Ave; located in the R-C Zoning District; to allow construction of a guest house with garage providing a rear yard setback of 5' in lieu of 15' required.

Ex-parte communication was declared by Councilman Wyett with Mr. deMarco, Attorney Brindell, and Architect Harold Smith with all three people present, by President Pro-Tem McLendon with Attorney Brindell and Architect Harold Smith, by Councilman Shaw with Attorney Brindell and Mr. deMarco, and by Councilman McDonald with Mr. deMarco on the merits of the application.

Attorney James Brindell explained that he had appeared before the Town Council last month on October 13th on an appeal from a recommendation of denial by the Architectural Commission (ARCOM). On October 28th, the plan had again been presented to ARCOM, with the exception that all of the structures had been moved back on the lot an additional 10'. At that time ARCOM had not seemed to think that moving the buildings back an additional 10' made a significant difference relative to the apparent mass. Mr. Brindell advised that he and his clients did not agree with that opinion, and Architect Harold Smith would exhibit drawings and photographs of the effect of moving the house back the additional 10'. He reminded the Town Council that changes had been made in the plan since the beginning of deliberations with ARCOM, albeit it not at the last ARCOM hearing. Mr. Brindell then reviewed all modifications that had been made.

Architect Harold Smith addressed the Town Council, reviewing the plans for the proposed construction, and addressing the methods used to reduce the mass.

Attorney Brindell explained that the hardship was the configuration of the lot, and that with the modifications made, as well as the deed restriction on the property so that the landscaping on the east side would be maintained, the mass issue had been addressed. He requested that the variance be granted, and that additional direction be provided to ARCOM relative to the mass of the project, per the changes that had been made.

Councilman McDonald moved approval of Variance 55-98, based on the hardship of the configuration of the lot, with the condition that the project be sent back to ARCOM with instructions that they would only deal with the remaining aesthetic issues. The motion was seconded by Councilman Wyett.

Attorney Peter Broberg, on behalf of the owner of the bungalow to the east, addressed the Town Council, stating that ARCOM had been concerned with the size of the structure, and would still consider it too large, as did his client. He clarified that his client was opposed to the granting of the variance because of the size of the building.

Architect Harold Smith explained that the square footage of the house was 5,574 sq. ft.

Director of Planning, Zoning & Building Robert Moore commented that ARCOM had been concerned with the size of the main house and the mass, and the plan submitted today had been changed from what had been approved by the Town Council last month in that the actual design of the front of the house had been changed.

Architect Harold Smith explained that last month the Town Council had been shown where the project had started, which ARCOM felt was too severe. He then went back to ARCOM with the more subdued Mediterranean elevation, which was denied, which was the asymmetrical elevation.

Mr. Moore explained that ARCOM had recommended going back to that elevation, and he suggested that the Town Council now determine exactly which elevation was desired.

Mr. Franklyn deMarco addressed the Town Council, stating that he was also at the ARCOM meetings and he was still confused about what ARCOM wanted He was trying to design a house that would meet his needs and fit into the neighborhood.

Councilman McDonald added that his motion was based on Facade Illustration #2, as designated, and Site Plan #2, as designated, as well as the deed restriction on landscaping.

Architect Harold Smith explained that the total floor area of the main house was 4,264 sq. ft. The garage with staff quarters above was 1,310 sq. ft. The total gross floor area of the project was then 5,574 sq. ft., with a Cubic Content Ratio of 6.3, and a Floor Area Ratio of 62%.

On roll call the motion carried unanimously.

13. SPECIAL EXCEPTION NO. 32-98 - Edward W. Cook, 205 & 221 Royal Palm Way; located in the C-OPI & C-TS Zoning District; to allow a financial institution (Chase) to expand their special exception use (SE45-97) from 20,012 sq.ft to 22,185 sq.ft.

Councilman Shaw moved approval, based on the fact that the use was Town-serving, and the space was an existing space that was now being converted for an existing client. The motion was seconded by Councilman Wyett.

3. Request for Waiver to Sections 5-22 (¶ 103.6.3) and 12-51, Hours of Construction, of the Town Code of Ordinances by Mr. James R. Brindell for The Esplanade at 150 Worth Avenue

Director of Planning, Zoning & Building Robert Moore reported that this item was before the Town Council today because Neiman Marcus would not be coming out of the ground until later in April due to problems associated with design and they were asking to transfer the original approvals for the Neiman Marcus building to the Esplanade so there would not be two construction projects going at the same time. In addition the Goodman Company had informed staff that they would landscape, irrigate, and plant Palm Trees and Hibiscus on the Neiman property during the season, waiting for construction, so there would be a completely grassed park area during the Worth Avenue shopping season, before December 15th. Mr. Moore recommended that construction be allowed until December 15th, rather than December 11th, with Worth Avenue cleared and cleaned up by Friday, December 18th. That should finish the project at the Esplanade.

Councilman Wyett moved approval of the transfer of the original approvals for the Neiman Marcus building to the Esplanade, with landscaping, irrigation and planting of Palm Trees and Hibiscus on the Neiman property during the season, with a completely grassed park area completed before December 15th; that construction be allowed until December 15th, rather than December 11th; and that Worth Avenue would be cleared and cleaned up by Friday, December 18th. The motion was seconded by President Pro-Tem McLendon.

Mr. Tim Carew, merchant on Worth Avenue, addressed the Town Council, asking for clarification on what was considered the shopping season. He commented that he would like to see the Neiman Marcus site cleared and sodded by November 15th.

Mr. Moore replied that was impossible because of the construction related materials that were on the Neiman Marcus site that were being used for the Esplanade.

Mr. Carew commented that he believed the Neiman Marcus site was being used as a staging area for the Esplanade.

Mr. Moore replied that was so, as they had permission to work both sites at the same time. It had been determined that was not practical, however.

Mr. Carew suggested that the streets were often blocked, traffic stopped, and he had received complaints from his customers. He maintained that they had plenty of spaces in their garages and the spaces assigned to them to use as staging areas. He stated that he would like to see all of the barricades down for the Christmas season.

Mr. Moore replied that Neiman Marcus would have been allowed to go until December 15th if they were building right now. The Esplanade would now take that to finish, as staff had asked them to go back and get further architectural approval. He stated that the work could be done before December 15th if longer working hours were approved.

Councilman McDonald commented that both sides of the street were boarded up and construction traffic and materials were crossing Worth Avenue all day, and to have that going on until December 15th was very disconcerting.

Mr. Carew commented that the Christmas selling season was November until December 15th, and he would like all the boards and barricades down.

Attorney Brindell clarified that on the Neiman side of the street there was an area where some materials were stored, and within ten days the sod and irrigation would be in place except for the square area that was enclosed, which would have a barricade in front. The barricades would be gone from the rest of the site, with irrigation and sod in place.

Mr. Carew asked what was stored on the north side of the street that could not be put on the south side?

Mr. Don Jones, Vice President for Construction for the Goodman Company, commented that storage behind the barricades was a necessity, and in approximately 10 days the site on the Neiman side would be sodded and irrigated, and just one small portion of green plywood left. The minute that everything on the Esplanade was complete, the barricades would come down and that area would be sodded, all before December 15th.

Councilman McDonald clarified that 80% of the Neiman Marcus site would be down before Thanksgiving, with the exception of the enclosure for materials, which was agreed to by Mr. Jones and Attorney Brindell.

In response to the query of President Pro-Tem McLendon, Mr. Jones replied that the area of the north side of the street that would not be landscaped, the area where materials were kept, was just west of what had been the old park, and was approximately 60' wide. In addition to sod and irrigation there would be Palm Trees and Hibiscus bushes just like the rest of the street.

On roll call the motion carried 4/0, as President Smith had temporarily left the room during discussion of this item.

4. Request for Waiver to Sections 5-22 (¶ 103.6.3) and 12-51, Hours of Construction, of the Town Code of Ordinances by Mr. Dale R. Hedrick for Cartier at 214 Worth Avenue and Ralph Lauren at 300 Worth Avenue

Director of Planning, Zoning & Building Robert Moore reported that Mr. Hedrick had requested relief to work on Veteran's Day, and pointed out that earlier discussion had been that there would not be construction work allowed on Veteran's Day. He had informed Mr. Hedrick, however, he had chosen to make his presentation to the Town Council. Mr. Moore noted that staff did recommended that

Mr. Hedrick be allowed to work Monday, November 16th, in replacement for his need to work on Veteran's Day.

Councilman Wyett moved approval of the recommendation of the Building Department that Mr. Hedrick be allowed to continue construction work on Monday, November 16th. The motion was seconded by Councilman McDonald.

Mr. Dale Hedrick addressed the Town Council, stating that he appreciated the cooperation to date, and requested that he be allowed to do construction work for an additional day.

Mr. Martin Schwalberg, President of the Worth Avenue Association, commented that construction was often done on Saturdays, however, Town offices were closed on that day, and he suggested that the additional day be given to Mr. Hedrick so that he could complete the job on schedule. He commented that Worth Avenue had been a disaster zone with all of the construction taking place, and he had received many complaints from customers. He suggested that in the future it should be planned that when a holiday falls so closely to the end of the construction schedule that the contractor be allowed to finish their job and work through and finish on schedule.

Councilman McDonald responded that the contractor needed to take scheduling and holidays into consideration, and get the work accomplished before that time, so that the Town would not have to be approached for an extension.

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

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CONTINUATION OF:

New Business, Major, No. 10.- Variance 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.

Attorney Robert Deziel, representing David Koch, passed the microphone to Mrs. Polly Earl for comment.

Mrs. Polly Earl, Director of the Preservation Foundation, commented that there was no longer the situation where people automatically run from landmarking, because of the belief that alterations could not then be made in the home. The Landmarks Commission had been given the leeway to judge any alterations made to landmarked homes, and there were many homes in Palm Beach that had been landmarked, and had been altered. One criteria that was important in the judgement of alterations was that there must be evaluation based on the Secretary of the Interior's standards for rehabilitation. She suggested that when this subject of alteration and changes was discussed, it may be necessary to think in terms of the standards of the Secretary of the Interior. One solution may be to turn the question of changes in the homes to the Landmarks Commission, which dealt with those types of changes at every meeting. It had seemed to her that the Town Council had discussed changes as well as the variance, and her concern had been that modifications to the home may be dealt with on a more consistent basis by the Landmarks Commission, with the question of the variance being dealt with by the Town Council. She commented that what seemed to be involved in this discussion was whether people were going to be potentially making changes in the interior, and it was hoped that people would preserve the interior of their landmarked homes, but they were not mandated to do that under the Landmarks Ordinance.

Director of Planning, Building & Zoning Robert Moore suggested that the Town Council consider the variance requests involved in this item, and leave the aesthetics/landmark issue to the Landmarks Commission, because the applicant would have to return to the Town Council if the changes were not passed by the Landmarks Commission.

President Smith clarified that the design criteria would be dealt with by the Landmarks Commission.

Attorney Deziel pointed out that there were over two acres of property in consideration, and that Mr. Moore had mentioned that there had been a suggestion to set the new addition back, and he asked if the Town Council would consider allowing the applicant to take the project to the Landmarks Commission, in order to judge the aesthetics of the project.

Town Attorney Randolph cautioned that obtaining pre-approval from the Landmarks Commission before appearing before the Town Council would set a negative precedent.

Attorney Deziel assured Mr. Randolph that was not the expectation, as he believed he was dealing with a scenario where the Town Council was deliberating on aesthetics, when it was actually the jurisdiction of the Landmarks Commission.

Councilman McDonald commented that he had clarified his earlier comments to indicate that they were related to the hardship.

Mr. Moore commented that he agreed with Mr. Randolph in that this item should not be sent to the Landmarks Commission for their pre-approval and then sent back to the Town Council. He noted that a hardship was not associated with this issue, under the terms associated under the ordinance. He suggested that the Town Council should look at the variance from the tie beam and overall height. In the past these issues had been considered, and the Town Council had consistently given that consideration through the years; livability of the home should be considered, with the design work left to the Landmarks Commission.

After further discussion, Councilman Wyett moved deferral of Variance No. 52-98 to the December 8th Town Council Meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried 3/2, with Councilman Wyett, Councilman McDonald, and Councilman Shaw casting affirmative votes; President Pro-Tem McLendon and President Smith casting negative votes.

Councilman Wyett noted that he expected that the applicant would determine if there was some other way to expand the house for livability without changing the beautiful facade, to consider diminishing the size of the addition if possible, as there was always more than one way to solve a problem.

President Pro-Tem McLendon explained that he had voted negatively, because when a property was re-zoned to result in a non-conformity he was usually sympathetic to a change in the structure that would not exceed the previous situation. He stated that he would prefer to see the proposed changes, and that he considered the existing beam height as the hardship.

Mrs. Kosoy addressed the Town Council stating that she had agreed with compromise under incredible misinformation and duress, and she believed that she had been bullied into coming to a compromise at the very last minute. She commented that from the moment she had been introduced to the project she had been devastated, as the new addition would have an incredibly dwarfing effect on her home, which was next to it. She noted that there was a vacant lot on the other side of the property.

President Smith commented that there would now be an additional 30 days to discuss the issues and come to a conclusion.

XVI. ANY OTHER MATTERS

There were none.

XVII. ADJOURNMENT

The meeting was adjourned at 7:20 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk