

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING
HELD ON OCTOBER 13, 1999 - MAR-A-LAGO CLUB**

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I. CALL TO ORDER AND ROLL CALL

The Special Meeting of the Town Council was called to order at 9:40 a.m. by President Lesly Smith in the Town Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Allen Wyett, Councilman Jack McDonald, Councilman Samuel McLendon, and Councilman Leslie Shaw. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Town Attorney John Randolph, Fire-Rescue Chief Ken Elmore, Police Chief Frank Croft, Planning, Zoning & Building Director Robert Moore, Zoning Administrator Paul Castro, Public Works Director Al Dusey, Town Consultants Philip Tokich, P.E., AICP, Frederick R. Harris, Inc., William F. Brisson, AICP, Adley, Brisson, Engman Planners & Economists, Inc., Town Clerk Mary Pollitt, and Deputy Town Clerk Susan Eichhorn.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. APPROVAL OF AGENDA

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

IV. SPECIAL EXCEPTION NO. 24-99 WITH SITE PLAN REVIEW - THE Mar-A-Lago Club, 1100 S. Ocean Blvd.; located in the R-A & R-AA Zoning District. To allow amendment to Special Exception #11-93 establishing the Club and the Declaration of Use Agreement of 8/10/93. Applicant requests a special events attendance limitation of 740 people (presently 390) ; to allow a millennium event attendance of 940 people on 12/31/99; to approve construction of a pavilion building to replace the existing tent, and to allow the tent to remain October thru May of each year until completion of the pavilion. (*Deferred from September 17, 1999*).

President Smith clarified that this was an entirely new application, and a new record was being set for this meeting.

Councilman McDonald recommended setting equal time limitations to both sides of the matter, suggesting two hours for each side to present its case, with public comment also being part of the two hours.

Town Attorney Randolph advised that a reasonable period of time would be appropriate, however, he expressed concern regarding placing a two hour limitation. He suggested that each speaker be advised that comments be as concise as possible.

President Smith advised that she would be leaving the meeting at 3:45 p.m., and clarified that the Town Council would like to finish considering the application today. Councilman McLendon advised that he would be leaving the meeting at 2:00 p.m.

At this time Town Clerk Pollitt administered the oath to all those who would be giving testimony in the matter under discussion today.

Attorney Ray Royce, representing the applicant, introduced Attorney Culver Smith, who would also be representing the applicant. He thanked the Town Council for holding the special meeting, and represented that he would move the case along as quickly as possible. He requested that application 24-99, and all exhibits be made part of the record. He reminded the Town Council that 97% of the time, the events that took place at the Mar-A-Lago Club were the same kinds of events that were taking place at any other club, and that day in and day out the members of the Mar-A-Lago Club were enjoying everyday, ordinary events. He pointed out that there had been discussions about enforcement of the limitations placed on the Club by the Town, and he suggested that the fire code limited occupancy, and the Town had the tools to set attendance limits in any building; the Town also had a Police Department, Code Enforcement Board, and the Declaration of Use Agreement to enforce any limitations put upon the Club.

Mr. Wes Blackman, Director of Projects at the Mar-A-Lago Club, addressed the Town Council, giving a brief resume of his experience and expertise. He summarized the results of the Town Council review in the past year of the master plan for the Mar-A-Lago Club. The master plan had taken over three years to prepare, including elements that

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were left unanswered at the time of the original Club approval in 1993. The master plan addressed the reasonable development of the beach portion of the Mar-A-Lago Estate, and addressed the need of the Club to hold parties and events in a permanent weather proof setting. A traffic management plan had been prepared, to prove that the Club could handle traffic generated by an event of more than 390 people, and up to 740 people. The Club had limited experience with groups of 390 or greater, and learning from those instances, with input from professional traffic engineers, and the Town of Palm Beach Police Department, the Club approached its traffic management plan in a concise, 3-stage approach. He noted that the Club currently had approximately 360 members; if each member brought a spouse or guest to an event the Club was faced with a possible situation of 720 people in attendance. He explained that members also invite guests, who displace those members who chose not to come to any given event. In order to discourage members from abusing the ability of bringing guests, the Club limits attendance by specific guest to a maximum of two visits per year, however, it was getting more and more difficult to comply with the 390 limitation. He noted that the maximum limit for the Club on members was 500, which could easily be met within a two-three year period, at which time the Club would have even more difficulty holding the maximum attendance of 390. For this reason, he explained, the application today was requesting an increase in the attendance limitation, and was one of the key reasons why the Club was also requesting a permanent building.

Mr. Blackman advised that the traffic management plan that had been devised for the Mar-A-Lago Club included many protective and preventative measures to ensure that traffic situations did not arise that would impact the flow of traffic on adjacent thoroughfares. He referred to the proposed pavilion building, remarking that the size of its assembly area was roughly equal to that currently found in the tent on the Mar-A-Lago grounds. Mr. Blackman referred to the site plans for the pavilion building, with an east/west access, with the assembly area containing 11,100 square feet, and using the standard occupancy for dining of 15 square feet per occupant, it would hold 740 persons (74 tables of ten). With the addition of a dance floor, 90 seats would be lost, bringing the total occupancy down to 650 persons. A food preparation area had been incorporated into the building on the west side, as well as a stage for entertainment.

Mr. Blackman continued his presentation, stating that in order to get through the coming few seasons before the permanent building was constructed, the Club must use the tent an additional two months out of the year, with the tent in place from October to May. According to Town code, the Club had one and one-half months of tent use remaining, and two and one-half months of calendar year remaining. He maintained that the granting of this request would allow the least disruption in the operational schedule of the Club.

Mr. Blackman addressed the request for a millennium event with attendance of 940 people, with entertainer Gladys Knight to celebrate the once in a lifetime event. He noted that a lower limit for attendance would also be acceptable to the Club.

Mr. Blackman summarized that all of the requests today met the requirements for approval of Special Exceptions and Site Plans, as listed in Section 134-229 of the Town of Palm Beach Zoning Code.

Attorney Frank Chopin, on behalf of the Preservation Foundation, asked Mr. Blackman if a traffic analysis of the impact of traffic generated as a consequence of the new construction would be submitted by the Club in connection with this application?

Mr. Blackman replied negatively; a traffic management plan had been prepared as part of the application.

Attorney Chopin discussed the current tent accommodations and the uses of the tent with Mr. Blackman. Attorney Chopin asked how many persons the proposed pavilion would hold for theater seating?

Mr. Blackman replied that the Club had agreed to limit the occupancy to 740 persons, maintaining that the exact number was immaterial, since the Club was not asking for that number of persons. Mr. Blackman asserted that to state that number would lead in a direction that was inappropriate, and that he did not care to answer, as it was not part of the application.

Town Attorney Randolph advised that in the past, during hearings, the strict rules of evidence had not been followed, particularly as it would relate to objections of relevancy, and any testimony which could be helpful had generally been allowed, as well as information which some persons deemed irrelevant. He noted that it would be legitimate to say that one did not know or did not remember, but not to merely refuse to respond to a question. He pointed out that this was not a court of law, and the formal rules of evidence were not followed in such a matter.

Attorney Royce advised that the only things he had asked to be included as part of the record today was the Application No. 24-99, the exhibits to the application, and the plans presented by Mr. Blackman. He distinguished that he was not attempting to make previous testimony, minutes, evidence, or transcripts relating to prior meetings on this subject part of the record today.

Attorney Ron Kolins commented that anything about the proposed building would be relevant, and requested that he go on record to register his objection to the refusal of Mr. Blackman to answer the question.

Mr. Blackman responded that he did not want to be accused of being a recalcitrant witness, and he gave the number of persons that the pavilion could hold for theater seating as 1200 persons.

Attorney Gary Brandenburg, of the law firm of Carlton Fields, representing Mrs. Nancy DeMoss, questioned Mr. Blackman regarding the requests in the application, and the traffic management plan submitted as part of the application.

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Mr. Henry Skokowski, after giving a brief resume of his experience and expertise, submitted a summary of his findings as part of the record today, stating that the requests in the application today met all of the criteria in the special exception provisions of Section 134-229 of the Town of Palm Beach Code, and concluded that the use would not cause substantial injury to the surrounding property, was compatible with adjoining development as planned, and was consistent with the purpose of the Zoning District. He submitted that the traffic plan was appropriate. He noted that there were criteria for site plan approval, which he believed were also met.

Attorney Chopin questioned Mr. Skokowski regarding his testimony, referring to the Town Comprehensive Plan, Policy 2.2, concerning redevelopment and traffic generation, asking him if he had seen any traffic analysis that addressed the level of service on A-1-A?

Mr. Skokowski replied that he had seen several documents relating to that matter, including the past reviews of the project, letters, correspondence to Palm Beach County with respect to confirmation of level of service. He noted that there had been no specific traffic analysis done as part of the application in question today. He stated that Town staff had been given information regarding the satisfaction of a level of service requirement in order to make a determination. He referred to an analysis performed by Kimley-Horn Associates on October 10, 1996. He explained that it was his understanding that the membership analysis that was done on October 10, 1996, took into consideration that there would be a variety of membership events of all sorts, many of which were unknown at that time. A level of activity would be associated with a membership number, and a tent or pavilion, or some other activity, would have been taken into consideration based on the membership level that was analyzed at that time.

Attorney Chopin asked if there was a traffic analysis prepared which addressed the construction of the pavilion and the impact on the level of service of A-1-A at the segment south of County Road and north of Southern Blvd?

Mr. Skokowski replied that he did not have such a report, and noted that everyone should understand that one was not required to support his conclusions.

Attorney Brandenburg questioned Mr. Skokowski, referring to the Town Comprehensive Plan and its growth policy to prevent critical and dangerous overuse of its streets, parking resources, public services and facilities, and damage to its historic character, and to overall property values of the community the Town would take all technical and administrative measures legally available, including the use of its Comprehensive Plan, to minimize the change or transition of existing low density areas or structures to more intensive use patterns, and thereby lower the pattern of density where possible. He asked Mr. Skokowski how an increase of intensity of use from 390 to 740 in the most restricted residential district in the Town comply with the Comprehensive Plan requirement.

Mr. Skokowski replied that there had been efforts to measure, analyze, and study those sorts of impacts, and it was his understanding that the analysis had taken place. He stated that he had reviewed the entire Comprehensive Plan, and did not consider the Club a commercial or a quasi-commercial facility.

Attorney Ron Kolins asked Mr. Skokowski if each of the standards for granting a special exception must be satisfied in order for the application to be approved?

Mr. Skokowski replied that it was his conclusion that they were all satisfied.

Attorney Kolins then maintained that the purpose of the proposed pavilion building was to have banquets, entertainment, etc., and noted that the first criteria for approval of a special exception use was (Section 134.229 of the Town Code) that the use was a permitted special exception use as set forth in Article 6 of this chapter. He asked Mr. Skokowski if a prohibited acts under the Town Code could be conducted in that Zoning District, and would not then satisfy the first criteria.

Mr. Skokowski replied that if it was prohibited that would be true.

Attorney Kolins then addressed criteria 4, wherein the use was to be compatible with adjoining development, and the intended purpose of the district in which it was to be located. He asked Mr. Skokowski if criteria 4 would be satisfied if the uses of the proposed pavilion building were not compatible with the intended purpose of the R-AA Zoning District.

Mr Skokowski responded that if one came to that conclusion that it was not consistent with the intended purpose of that district, then the criteria would not be satisfied.

Attorney Kolins then addressed criteria 14, wherein the proposed use would not place a greater burden than would be caused by the permitted use on municipal police services the use of the Mar-A-Lago Club and the use of the proposed pavilion with the residential permitted use in the district if the Mar-A-Lago Club and pavilion would place a greater burden upon the fire, police, and municipal services of the Town of Palm Beach?

Mr. Skokowski replied that was not the test of the criteria; the issue was that the proposed use would not place a greater burden than would be caused by a permitted use. He explained that the permitted uses were very clear—one, as a single family dwelling, two as a municipally owned and operated park and recreation area. He concluded that a club facility would not necessarily cause any additional or greater burden than a municipally owned and operated park and recreation area, which was a permitted use.

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In response to Attorney Royce, Mr. Skokowski replied that one special exception use allowed in the district was for private, social, swimming, golf, tennis and yacht clubs in existence prior to January 1, 1996, and that the Mar-A-Lago Club was an existing special exception use approved in 1993.

Attorney Royce submitted the credentials of Ms. Diane Jenkins, general real estate appraiser, who reported that she was asked to determine if the pavilion building and surrounding property would have a detrimental impact on properties or values. She concluded that her analysis revealed that there was no detrimental impact from the proposed pavilion building.

Attorneys Chopin and Brandenburg cross-examined Ms. Jenkins regarding the possibilities of traffic increase on the values of surrounding property, and the noise factors that may have been emitted from the tent which may affect surrounding properties.

Attorney Royce submitted the resume of Ms. Yvonne Ziel, professional engineer, who reported that the traffic management plan prepared would result in appropriate management of traffic, and responded to cross examination by Attorney Chopin, Attorney Brandenburg, and Attorney Kolins.

Attorney Royce introduced Joseph Pollack, a professional engineer, who had previously testified as a witness in matters of traffic engineering.

Mr. Joseph Pollack, Kimley Horn & Associates, addressed the Town Council, reporting that the Mar-A-Lago Club did have traffic concurrency satisfaction with Palm Beach County. He noted that the traffic analysis approved by Palm Beach County in 1996 was based upon actual traffic observations from and at the Mar-A-Lago Club in terms of specific traffic activity into and out of the Club during the peak season, as well as off-peak season. He explained that the tent was in existence during that peak season when the traffic counts were obtained; there were approximately 250 members of the Club at that time; it was projected that the total traffic for 1,008 members would be roughly four times what the traffic was for 250 members. He also noted that special events were being held during that season, and the influence on the traffic generation relating to concurrency were specifically included and addressed. He noted that performance standards only deal with weekday traffic conditions. He mentioned that there was a copy of the traffic study which had been reviewed and approved in October 1996, as well as numerous letters and correspondence with Palm Beach County and Town staff relating to Palm Beach County traffic concurrency determinations.

Attorney Royce identified the documents he would be putting into the record:

- Traffic Impact Analysis prepared by Kimley Horn in October 1996
- Letter dated 10/30/96 from office of the Palm Beach County Engineer to Zoning Administrator Castro
- Letter dated 12/4/97 from Palm Beach County Engineering Dept. to Zoning Administrator Castro
- Letter dated 12/5/97 from Palm Beach County Engineering Dept. directed to the Mar-A-Lago Club
- Letter dated 6/7/99 from Palm Beach County Engineer to Zoning Administrator Castro regarding the inquiry of Attorney Kolins
- Letter dated 8/27/99 from Palm Beach County Engineer to Mr. Pollack regarding traffic performance standards
- Letter dated 9/27/99 from Palm Beach County Engineer to Attorney Kolins regarding the traffic performance standards
- Letters of 9/10/99 and 9/17/99 from Attorney Royce providing information to the Palm Beach County traffic division staff
- Traffic monitoring information provided by Mr. Blackman on 9/13/99
- Information in a comment letter to the Town of Palm Beach dated 9/16/99, prepared by Mr. Philip Tokich of Frederic R. Harris
- Letter of 4/27/99 from Frederick R. Harris to the Town of Palm Beach
- Letter dated 7/7/99 from Frederick R. Harris to the Town of Palm Beach
- Letter dated 9/16/99 from Frederick R. Harris to the Town of Palm Beach
- Memo from William Brisson
- Concurrency determination by Kimley Horn
- Infrastructure Impact by Kimley Horn

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Attorney Chopin cross examined Mr. Pollock, stating that Palm Beach County had indicated that unless 1,000 new trips were generated, they would not have to review concurrency.

Mr. Pollock explained that there were 250 members at the time of the 1996 traffic study, and a traffic projection had been done for 1,008, which was included in the study.

Attorney Brandenburg then cross examined Mr. Pollock.

Attorney Kolins then cross examined Mr. Pollock asking factual information regarding the traffic management plan.

Attorney Royce introduced Mr. Kiernan Kilday, professional planner, making his resume part of the record.

Mr. Kiernan Kilday addressed the Town Council, submitting his summary report dealing with the Comprehensive Plan. He explained that when dealing with special exceptions the issue actually became the issue of external affect on the neighborhood, and three items were usually considered: 1) visual, which was not an issue in this case; 2) noise: the building would be enclosed and noise would not likely be an issue; 3) traffic: a traffic management plan had been submitted, and he stated that he believed that the experts who had put the plan together had an appropriate plan, meeting the obligation as to the impact on the external area. He explained that he believed the zoning code was met in this case.

At this time public comment was heard, with the following persons speaking in support of Mar-A-Lago:

Maurice Sharfer
Harriet Golding
Vincent Bytner
Ruth Granet
Ralph Schiller
Robin Bernstein
Sandra Goldberg
Richard Bernstein
Vilda DePoro
Martin Klein
Bruce Sitka
Dorothy Sullivan

Mr. Donald Trump stated that he was trying to do a good job with Mar-A-Lago.

*****The meeting was adjourned for the luncheon recess at 1:25 p.m.*****

*****The meeting was reconvened at 2:15 p.m.*****

Town Attorney Randolph explained the procedure that would now be followed. The applicant would complete his presentation. At that point, anyone wishing to speak could do so, allowing cross-examination of any witnesses. The final rebuttal would rest with the applicant, after which the Town Council would go into executive sessions, with the Town Council considering the application, having the opportunity to ask questions of anyone, however, the public session would be closed. When the application was considered by the Town Council according to the criteria set forth in the Town Code.

Attorney Chopin stated that the Preservation Foundation was most concerned about traffic. He stated that it had been said that a traffic analysis was not needed because Palm Beach County had said they would not review their concurrency unless there was 1,000 new trips. There had therefore been no traffic analysis regarding the impact of the requests being made by the applicant today. He clarified that it was his position that the conclusion of concurrency at the Town level could not be made because there was no evidence whatever in the record that established that any traffic expert looked at the application, or determined the affect of the application on traffic. He noted that under the Comprehensive Land Use Plan the Town Council must make a positive determination that the granting of an application would not cause the level of service on A-1-A to be degraded below level of service "E." He stated that there had been no testimony offered that allows that conclusion, and that, in fact, that road was already in level of service "F" for this particular road. He introduced Mr. William E. Tipton, Jr., professional traffic and civil engineer, Tipton Associates, Orlando, Florida, submitting a brief resume of his experience and expertise for the record.

Attorney Chopin referred to the letter from Frederick R. Harris, traffic consultant to the Town of Palm Beach, dated September 16, 1999, asking Mr. Tipton if the question of the application meeting the Town concurrency requirements had been addressed?

Mr. Tipton replied that the letter, which referred to and reconfirmed the letter of April 27, 1998, stated that the

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application did meet the Town concurrency requirements

Attorney Chopin then referred to the letter dated April 27, 1998, from Frederick R. Harris, and proceeded to question Mr. Tipton regarding the traffic analysis provided therein from 1998. Mr. Tipton acknowledged that he had not seen any report whatsoever that made a traffic analysis based on 1999 numbers. He agreed that there was no traffic analysis that looked at the impact of the beach front development or the pavilion, as to the impact of traffic on A-1-A; the question of membership increases had been the issue reviewed.

Attorney Chopin discussed traffic counts from Palm Beach County on A-1-A, and asked Mr. Tipton to state the traffic count as determined by the County.

Mr. Tipton replied that the 1998 peak season count accomplished by Palm Beach County documented a p.m./peak hour volume on A-1-A between Southern Blvd. and County Road of 1,834 vehicles.

Attorney Chopin submitted traffic count data prepared by Mr. Tipton. Mr. Tipton then specifically explained the numbers in detail to the Town Council, summarizing that on average the segments of A-1-A contained in the report had an average capacity of 99% of the permitted capacity. He explained that the 1998 peak hour/peak season had exceeded the maximum allowable capacity, and it was therefore no longer operating at the "E" threshold, and had crossed over to a level "F" operating condition. He acknowledged that he had made a traffic analysis of both the effect of the beach front development and the pavilion as to traffic on A-1-A, concluding that the addition of the cabanas, and the other facilities contemplated in the current application were going to generate additional trips beyond the base member trip threshold. He explained that calculations had been made for additional trips generated as support staff to the special events, and for the cabanas and beach club that had been generated, and that it was his contention that a Club with more and more amenities would tend to generate more trips per member. He explained that it was reasonable to assume that for 740 people in an event, a staff of at least 100 people would be needed, including waiters, chefs, etc., with 75 of those people coming in at the peak hour, which would add to the peak hour trips along A-1-A. The entourage of the entertainment would also add to the peak hour trips. The end result had been an additional 46 p.m./peak hour/peak season trips on A-1-A. He noted that the Frederic R. Harris letter stated that the Club would need 74 additional trips, and yet everything would work. He explained that the key was that the data from the County revealed that there was a traffic problem now, and when the additional 46 trips were added, that problem would become even more compound. He explained that his data had used the averaging methodology-taking the two better acting segments of A-1-A, and the worst case segment, blending them all together, and coming up with a reasonable solution. He agreed that it was his conclusion that the construction of the cabanas, the beach development, as well as the proposed pavilion would add traffic to A-1-A as a consequence of the new construction.

Attorney Culver Smith, representing the applicant, cross-examined Mr. Tipton, noting that the study performed by Mr. Tipton had used a study done by and for Palm Beach County. Mr. Tipton agreed that the traffic counts taken by the Town that appeared in the Frederic R. Harris report demonstrated compliance with the Town traffic performance standards. He explained that, based upon the Comprehensive Plan, an amendment to the development order in the addition of the requested new construction items would justify the need for an updated analysis to determine whether concurrency was still satisfied.

At this time, President Smith announced that Councilman McLendon would be leaving the meeting, and would return at 5:00 p.m. In fairness to all participants of the hearing, President Smith adjourned the meeting at 3:40 p.m. to resume at or about 5:00 p.m.

*****The meeting was adjourned at 3:40 p.m.*****

*****the meeting was reconvened at 5:10 p.m.*****

Attorney Smith continued his cross-examination of Mr. Tipton, noting that Mr. Tipton had used traffic counts done by Palm Beach County.

Mr. Tipton explained that he had used traffic counts accomplished by Palm Beach County as part of their count data base, which was available to the public and consultants.

Attorney Smith referred to the Mar-A-Lago Concurrency Analysis 1998 chart, attached to the April 27, 1998 letter from Frederic R. Harris, asking Mr. Tipton what he understood were the 1998 counts?

Mr. Tipton replied that it indicated they were using counts accomplished by Keith & Snares in a report dated March 30, 1998. He indicated that the counts from Palm Beach County were from February 1998. He stated that it was his opinion, that based on the traffic circulation element in the provision for evaluation by the Town of amendments to a development order there would need to be traffic study documentation to document that the additional trips attributed to a membership increase would still be compatible with the increases that were being proposed in the current application. Mr. Tipton explained that his methodology had included information from a caterer regarding what level of staffing would be needed solely for the purpose of a 740 person banquet.

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Attorney Smith discussed the data submitted by Mr. Tipton regarding the beach cabanas, which had involved the use of a hotel model for establishing traffic counts. Mr. Tipton explained that he had used what he believed was the most appropriate rate that was available, a hotel and/or apartment rate, since the cabanas would be used by people for the day, and those rates seemed to fit as closely as possible to the definition. He explained that it was his contention that the additional amenities would generate a higher level of usage by the same membership, as the new facilities had not been in place at the time of the former traffic studies which had been submitted regarding the Mar-A-Lago Club.

Attorney Chopin then questioned Mr. Tipton regarding the date he had provided in the traffic study. He asked if the segment of A-1-A between Southern Blvd. and County Road had suffered over-capacity?

Mr. Tipton replied affirmatively, noting that that segment of road, no matter which set of capacities or counts used, was still over-capacity, based on the 1998 peak season demands. He explained that the road, in the p.m./peak hour/peak season conditions in 1998, was carrying more traffic than was legally permitted per the traffic circulation elements of the Town Comprehensive Plan. He clarified that would mean significant congestion, and very low operating speeds in traveling through that particular road segment; any additional growth would lend to that getting worse.

Ms. Polly Earl, Executive Director of the Palm Beach Preservation Foundation, testified that she worked with historic buildings and landmarked structures. She acknowledged that if the proposed pavilion building was reduced in size it would still be possible to conform to the nature and character of the Mar-A-Lago estate.

Attorney Brandenburg stated that he did not believe the application should be taking up the time of the Town Council today, as he maintained that the applicant had withdrawn the original application, and according to Town Code the applicant should wait 12 months before coming back. In addition, he cited the administrative res judicata doctrine, wherein a person received one chance to present evidence. He noted that the applicant had applied in 1993, with a full hearing, in 1996 with a full hearing, in 1999 with a three-day hearing when the applicant had been heard on this same matter. He requested that the applicant be denied, and that a determination be made as to the use of the tents, and whether it had been appropriate.

Attorney Royce responded that he did not agree on the question of administrative res judicata, no members, and no operating experience. He explained that there had been a significant change of circumstances throughout the community, and with the Mar-A-Lago Club. In addition, he maintained that withdrawals had been made in a timely fashion in accordance with Town Code, and that the applications had been changed and re-filed.

Mr. Brandenburg introduced professional planner, Anna Cottrell of Anna S. Cottrell & Associates, Inc.

Ms. Anna Cottrell, 319 Clematis St., West Palm Beach, reported that she had reviewed the application submitted, the town Codes, and the Town Comprehensive Plan in order to formulate a conclusion as to whether the application met the criteria required for approval. She stated that she had concluded that the application requests did not meet the criteria required for special exception approvals; it did not meet the requirement that the use was compatible with adjoining development, and the intended purpose of the district in which it was to be located. She discussed her reasoning and the specific policies within the Town Code and Comprehensive Plan that she believed were violated by the applicant. She summarized that the application must be evaluated as a new special exception in its entirety, based on the entire list of activities, and the potential impacts from all of the structures and all of the uses; consistency with the Comprehensive Plan and the town Codes must district.

Attorney Culver Smith questioned Ms. Cottrell regarding her testimony relevant to the capacity of the proposed pavilion, the Town-serving requirement, the Town Comprehensive Plan, and the evaluation of the use of the structures.

Attorney Doyle Rogers addressed the Town Council on behalf of Mr. Edward G. Watkins, stating that Mr. Watkins owned a beach front home at 1067 S. Ocean Blvd., and was opposing any further expansion of the facilities of the Mar-A-Lago Club.

Mr. Bill Guttman, 216 West Indies Drive, Palm Beach, and Co-Chairman of the Palm Beach Civic Association, addressed the Town Council, stating that countless hours had been spent on hearing testimony regarding easing the cap on special events and the construction of a pavilion. He maintained that the general rule regarding withdrawals of applications was that the case would be dismissed with prejudice, under the res judicata doctrine. He stated that the Civic Association found the current application filing arrogant and insulting, and objected to the shameless abuse of local government procedures, finding the persistent attempts of the Mar-A-Lago Club to use and manipulate the Town Council and the residents of the community deplorable.

Attorney Ron Kolins, representing Mrs. Massey, commented that the applicant had no right to impose upon the rights of other citizens to be able to fully enjoy the ambiance of the Town. He maintained that the 173 events held at Mar-A-Lago computed to one event every other day if spread out over the year, or one event per day if the Club was opened for seven months per year. He noted that the requests today may result in an increase in events and traffic. He suggested that it would be illegal and unlawful to grant the application today for two reasons: 1) It was clear that the traffic analysis for the segment of road outside Mar-A-Lago using Palm Beach County number level of service "E" was exceeded, and 2) A prohibited use could not exist in a given district that would violate the Comprehensive Plan. He noted that Mar-A-Lago had put up a tent big enough for three times the people they were limited to, and that they were allowed to keep it up after consulting with Town staff each time. He referred to language in the Declaration of Use Agreement wherein it was stated that special events shall be limited to 390 individuals; tents may only be used for special events upon approval of the Town Building & Zoning Director after presentation of satisfactory assurances that the

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attendance limitation would not be exceeded. He referred to the standards for special exception approval, as stated in the Town Code (Section 134-229) commenting that the proposed use must be good for the town and its citizens, as set forth in the criteria in the Code.

Attorney Kolins acknowledged that some may wish to accommodate the requests of the applicant, and he suggested that if the application was not denied, that an attendance limitation of 50 be imposed on the applicant, however, the pavilion building must be limited in size to be appropriate with that number.

President Smith commented that Mr. Greenwald, a member of the public, had not had a chance to speak, and noted for the record that Mr. Greenwald was in favor of the application.

Attorney Randolph introduced a copy of the Declaration of Use Agreement, dated August 10, 1993, and the minutes of May 13, June 1, June 3, 1993, into the record.

Attorney Royce objected to the entering into the record of the minutes of the prior years.

Attorney Royce then summarized that the same few opponents had made the same objections over the years, however, very little real evidence had been included. He maintained that the Town Code had established an R-AA District, had set forth certain uses and purposes, and certain permitted uses, providing for a series of accessory uses, and special exception uses, including private, social, swimming, golf, tennis and yacht clubs in existence prior to January 1, 1996. He noted that the request today was to modify conditions of an existing Special exception. He pointed out that the Mar-A-Lago property had passed to the Federal Government when Mrs. Post died, and was on its way to becoming a public property; a subdivision of the property was then proposed with possibilities of destruction of the mansion; Mar-A-Lago had then been saved by Donald Trump, who had provided Palm Beach class facilities for the members of the Mar-A-Lago Club. He maintained that the evidence had shown that the requirements of the Town Code had been met, that the Town had the tools to enforce any requirements, and requested that the application be approved.

President Smith announced that the Executive Session of the meeting would now commence. She requested declarations of any ex-parte communication held by the council members.

Councilman McDonald declared that he had several conversations with Mr. Trump, and Attorney Royce. President Pro-Tem Wyatt declared that he had spoken with numerous people in the community, such as Mr. Klein, members of the Civic Association, members of the Citizens Association, Attorney Royce, Attorney Kolins, Attorney Brandenburg, Councilman Shaw declared that he had spoken with Attorney Royce, Mr. Trump, Mr. Guttman, and passing conversations with many people and Town staff. Councilman McLendon declared that he had spoken with Attorney Royce, Mr. Blackman, Mr. Trump, members of the Civic Associations, members of the Mar-A-Lago Club, including Mr. and Mrs. Blank, Mrs. Robinson, and several others.

Attorney Randolph clarified that the Town Council must be able to base its decision on the testimony heard and only upon that.

Attorney Randolph then reviewed the procedures that would now follow: He explained that this was both a Special Exception and a Site Plan Review, and in giving consideration to this application, consideration to those portions of the Town Code dealing with each of these must be given. Findings must be determined to support the decision. He explained that the Town Council was sitting as a quasi-judicial body, as judges, regarding the matters that had been presented today, and a decision must be made based upon the competent, substantial evidence. There would be the opportunity for any Council member to ask questions of staff or the public, however, if anyone else testified at this point, anyone who wishes could cross-examine that person.

Mayor Ilyinsky left the meeting at 8:17 p.m.

After lengthy discussion, the following motions were made in regard to Special Exception Application No. 24-99:

Regarding the request for attendance limitation:

President Pro-Tem Wyatt moved that the attendance cap be limited to 500 at any event held at Mar-A-Lago, on the basis that it was a 20% increase over the present number of 390, and on the basis of the criteria that was set forth in the Site Plan Review section of the Town Code and the Special Exception section of the Town Code. President Smith passed the gavel to second the motion. On roll call the motion failed 2/3, with President Pro-Tem Wyatt and President casting affirmative votes; Councilman McDonald, Councilman McLendon, and Councilman Shaw casting dissenting votes.

Councilman Shaw moved that the attendance cap be limited to 600 persons on the premises for any event, with the stipulation that reservations would not be accepted higher than 550 for any event; that a valid reservation system be

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enacted in the plan and be provided to the Town; in the event that the pavilion building was approved, the pavilion would be allowed to go up to 700, with the reservation cap at 675. He incorporated the finding that the granting of such would meet all of the conditions of the Special Exception and Site Plan Review sections of the Town Code, and that it was not adverse to the public interest. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/2, with Councilman Shaw, Councilman McLendon, and Councilman McDonald casting affirmative votes, President Smith and President Pro-Tem Wyett casting dissenting votes.

Regarding the request to allow a millennium event attendance of 940 people on 12/31/99:

Councilman McLendon moved approval of the request to allow a millennium event attendance of 940 people on 12/31/99. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/1, with President Pro-Tem Wyett casting a dissenting vote.

Regarding the request to construct a pavilion building to replace the existing tent:

President Pro-Tem Wyett moved approval of a pavilion building sufficient to house the 600 approved attendance capacity, and nothing larger. The motion died for lack of a second.

Councilman Shaw moved approval of allowing the pavilion building, with the interior space permitting a capacity of not more than 700 persons, with a reservation cap of 675. The motion was seconded by Councilman McLendon.

President Smith suggested that construction of the pavilion building not start until after the permanent middle (Royal Park) bridge was in place. Councilman Shaw agreed to incorporate that condition into his motion.

On roll call the motion to approve the pavilion building, with the interior space permitting a capacity of not more than 700 persons, with a reservation cap of 675, and with construction not beginning until after the permanent Royal Park bridge was in place carried 3/2, with Councilman Shaw, Councilman McLendon, and Councilman McDonald casting affirmative votes; President Pro-Tem Wyett and President Smith casting dissenting votes.

Regarding the request to allow the tent to remain October through May of each year until completion of the pavilion:

President Pro-Tem Wyett moved approval of allowing the tent to remain in accordance with the Town Ordinance of six months, with a capacity of 600 persons, until the completion of the pavilion. He stipulated that this year the tent could remain as planned for this year, however from next year forward the tent would remain for the six month period as stipulated by Town Ordinance. The motion was seconded by Councilman Shaw. On roll call the motion carried 3/2, with President Pro-Tem Wyett, Councilman Shaw and Councilman McLendon casting affirmative votes; Councilman McDonald and President Smith casting dissenting votes.

President Smith clarified that the Declaration of Use Agreement would come back to the Town Council at the November 9, 1999, Town Council meeting, after Attorney Royce and Town Attorney Randolph prepared it as amended.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

The meeting was adjourned at 9:40 p.m.

Mary A. Pollitt, Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk