MINUTES OF THE TOWN COUNCIL MEETING HELD ON OCTOBER 13, 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 October 13, 1998 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 Samuel McLendon, Councilmen Jack McDonald, Leslie Shaw, and Allen Wyett. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Chief Code Compliance Officer Brian House, Finance Director James Demming, Fire-Rescue Chief Ken Elmore, Information Systems Manager Spencer Wilson, Planner/Projects Coordinator Tim Frank, Planning, Zoning & Building Director Robert Moore, Zoning Administrator Paul Castro, Police Chief Frank Croft, Public Works Director Al Dusey, Purchasing Agent Charles Boggs, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Reverend Dwight Stevens of Paramount Church. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS - None

IV. COMMENTS OF THE MAYOR

There were none.

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

To be pulled from the "Approved Agenda" and considered as the first item under the "Regular Agenda" prior to item XIV. - Old Business: Approval of Major Matters Considered by the Architectural Commission at its Meeting of September 23, 1998 (because ARCOM Item B68-98 is the subject of an appeal to be heard under "Development Review."

Councilman Shaw made a motion to pull Item XIV. - Old Business: Approval of Major Matters Considered by the Architectural Commission at its Meeting of September 23, 1998 from the "Approved Agenda" and consider it as the first item under the "Regular Agenda." The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Defer Item XVII.B.2. - Variance No. 34-98 - Sydell Miller, 1415 South Ocean Blvd. (Also known as 1420 South Ocean Blvd.) - to December 8, 1998, per letter dated September 10, 1998, from Mr. Robert E. Deziel.

Councilman moved deferral of Item XVII.B.2 - Variance No. 34-98, to the December 8, 1998, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Defer Item XVII.B.3. - Variance No. 32-98 - Eric & Ann Fishman, 143 Clarendon Avenue - to November 10, 1998, per letter dated October 7, 1998, from Mr. James R. Brindell.

Councilman Wyett moved deferral of Item XVII.B.3. - Variance No. 32-98, to the November 10, 1998, Town Council

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

Defer Item XVII.B.14. - Special Exception No. 30-98 with Variance - One 79 Corp., 179 Bradley Place - to November 10, 1998, per letter dated October 5, 1998, from Mr. William W. Atterbury, III.

President Pro-Tem McLendon moved deferral of Item XVII.B.14. - Special Exception No. 30-98, to the November 11, 1998, Town Council Meeting. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

Add for discussion only Item XV.D.9, but leave on Approved Agenda (discussion to include how approvals are processed and licenses changed) - Item X.B.1. - Application for a new 4COP-SRX Alcoholic Beverage License by Ms. Flora August for Restaurant 2730 at 2730 South Ocean Blvd. (this was approved as part of Approved Agenda).

Councilman Shaw made a motion to add discussion of the approval process for alcoholic beverage licenses as Item XV.D.9 under the "Regular Agenda," leaving Item X.B.1. - Application for a new 4COP-SRX Alcoholic Beverage License for Restaurant 2730 on the "Approved Agenda." The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Add Item XV.B.10 - Cyber Space - Town Hall - discuss allowing residents to use the computer to obtain Town services (to be added to the November 10, 1998 Town Council Meeting when Information Systems Manager Wilson would address the subject).

Councilman McDonald made a motion to add Item XV.B.10 - Cyber Space - Town Hall to the "Regular Agenda," under Item XV. New Business. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

Add XV.B.11 - Review of Worth Avenue Regulations for Contractors as an agenda item for November 10, 1998.

Councilman Wyett made a motion to add Item XV.B.11 to the Agenda - Review of Worth Avenue Regulations for Contractors as an agenda item for the November 10, 1998, Town Council Meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

TOWN MANAGER REVIEW: The November 10, 1998, Agenda will include a meeting to be scheduled for long range goals and Town Manager review.

Add Item XV. D. 12 - Consideration of Consent Jurisdiction in regard to Zoric vs. Town of Palm Beach.

Town Attorney Randolph requested that an item be added to the Agenda concerning Consent Jurisdiction in Zoric vs. Town of Palm Beach. Councilman McDonald made a motion to add Item XV.D.12 - Consideration of Consent Jurisdiction - Zoric vs. Town of Palm Beach, to the Agenda. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

Councilman Shaw moved approval of the Agenda, as amended. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

VI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

There was none.

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF SEPTEMBER 8, 10, AND 28, 1998

VIII. APPROVAL OF CHECK REGISTERS FOR SEPTEMBER 1998

IX. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF SEPTEMBER 23, 1998 (Moved to be heard prior to XIV. Old Business on the Regular Agenda and approved with the exception of Item B68-98)

X. LICENSES AND PERMITS

1. Charitable Solicitations

1. **Palm Beach Opera; No. 68-99**
2. **Cystic Fibrosis Foundation; No. 72-99**
3. **Arthritis Foundation; No. 87-99**
4. **American Friends of the Hebrew University, Inc.; No. 101-99**
5. **Hanley-Hazelden Foundation; No. 239-99**
6. **Joseph L. Morse Geriatric Center; No. 248-99**
7. **Dana-Farber Cancer Institute; No. 288-99**
8. **Growing Together, Inc.; No. 339-99**
9. **Palm Beach Pops, Inc.; No. 354-99**
10. **Sailing Foundation of the Palm Beaches, Inc.; No. 448-99**
11. **Friends of the Western Communities Center for the Arts, Inc.; No. 449-99**

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

12. **American Heart Association; No. 6-99**
13. **Peggy Adams Animal Rescue League of the Palm Beaches; No. 7-99**
14. **Rosarian Academy; No. 127-99**

2. Alcoholic Beverage Licenses

1. **Application for a new 4COP-SRX Alcoholic Beverage License by Ms. Flora August for Restaurant 2730 at 2730 South Ocean Boulevard**

XI. CONTRACT AND AGREEMENT RENEWALS

1. **Authorization for Town Manager to Execute Agreement Between the District Board of Trustees of the Palm Beach Community College and the Town of Palm Beach for Paramedic Clinical Practicums per Memorandum dated September 15, 1998, from Fire-Rescue Chief Elmore**

XII. SEALED BIDS

1. **Sealed Bid No. 99-01 - Two 20 Cubit-Yard Garbage Compactors; per Memorandum dated October 5, 1998, from Public Works Director Dusey**

XIII. OTHER

1. **Funding of the Town's Improved Holiday Tree Program for 1998 per Memorandum dated October 5, 1998, from Assistant Town Manager Elwell**

2. **Countywide Beach Funding Report to be Considered by the Issues Forum of the Palm Beach County Intergovernmental Coordination Program per Memorandum dated October 5, 1998, from Assistant Town Manager Elwell**

Councilman Wyett moved approval of the Approved Agenda. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

<u>REGULAR AGENDA</u>

XIV. OLD BUSINESS

A. Major Matters Considered by the Architectural Commission at its Meeting of September 23, 1998

President Pro-Tem McLendon moved approval of the Major Matters Considered by the Architectural Commission at its Meeting of September 23, 1998, with the exception of Item B68-98, which was on appeal and would be considered later in the meeting. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

A.1 Ordinances

1. **Ordinance No. 15-98 - Amendment to the Noise Ordinance *(Continued from September 8, 1998)* - (First Reading)**

Town Attorney Randolph read Ordinance No. 15-98 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 12, NUISANCES, AT ARTICLE IV, NOISE, DIVISION 1, SECTION 12-47(A), "NOISE MEASURED CRITERIA," "USE OF METER AUTHORIZED" SO AS TO PROVIDE THAT THE MEASUREMENT OF NOISE MADE WITH A SOUND LEVEL METER SHALL BE MEASURED AND RECORDED AT THE PROPERTY LINE OF THE OWNER OR LESSEE OF THE PARTY COMPLAINING OF THE NOISE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Chief Code Compliance Officer Brian House commented that he had been requested to do a noise demonstration, however, he had determined that it would not work with the acoustics in the Town Council Chambers. He had contacted a noise control/acoustical engineering firm and had been advised that they had assisted Delray Beach in changing their noise ordinance to include three separate districts for noise levels: residential district, commercial abutting residential district, and commercial district. He suggested that the Town of Palm Beach noise ordinance should be changed accordingly, in order to comply with what the noise engineers had determined.

Councilman Wyett commented that the most important issue was the peace and quiet of residents, and their right to enjoy their property free of interference from noise.

Mayor Ilyinsky expressed concern that the number of ordinances was getting to the point of becoming unmanageable for the Police Department, and suggested that neighbors talk to each other when there is a noise problem.

Councilman Shaw moved that Ordinance 15-98 be remanded to the Ordinances, Rules & Standards (ORS) Committee for review. The motion was seconded by President Smith, who passed the gavel to second for discussion.

After discussion, it was determined that Mr. House would gather information from other municipalities in this regard and present the information to the ORS Committee.

On roll call the motion carried unanimously.

2. **Ordinance No. 13-98 - Update to Chapter 7 of the Town Code of Ordinances Relating to Fire Protection and Prevention by Adopting the 1997 Edition of the Standard Fire Prevention Code and NFPA Life Safety Code - (Second Reading)**

Town Attorney Randolph read Ordinance No. 13-98 by title: (second reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 7 OF THE TOWN CODE OF ORDINANCES RELATING TO FIRE PROTECTION AND PREVENTION AT ARTICLE 2, FIRE PREVENTION, ADOPTING BY REFERENCE THE 1997 EDITION OF THE STANDARD FIRE PREVENTION CODE AND THE 1997 EDITION OF THE NATIONAL FIRE PREVENTION ASSOCIATION LIFE SAFETY CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Shaw moved approval of Ordinance No. 13-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

B. 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 revealed plans to build a temporary bridge south of the existing structure, with the idea to have four lanes of traffic as soon as possible.

Mr. Joe Borello of FDOT addressed the Town Council, noting that the recent bridge closure had changed plans on how the project would proceed. He distributed a sketch of the proposed plans, indicating that a temporary bridge would be constructed as the quickest way to get four lanes of traffic, and speed up the ultimate construction of the permanent structure. The pacing item right now was the environmental permits. The normal permit scenario was 28 months to design and build a new bridge. The FDOT was asking the agencies involved to defer the sea grass issue on the temporary bridge, and it would be addressed as the permanent bridge went up. There were three major issues with the temporary bridge: sea grasses, the State Historical Preservation Office (regarding the Church of Christ Scientist), and the National Marine Fisheries and the Trustees of the State Internal Improvement Fund. Meetings had been scheduled with all the agencies involved. Mr. Borello requested a temporary easement from the Town on the east side of the touch down point of the bridge in order to construct the approaches, which would be completely restored.

Mr. Wyett thanked Mr. Borello for the presentation, moving that the temporary easement on the east side of the bridge be conceptually approved. The motion was seconded by President Pro-Tem, subject to the verification of Mr. Dusey. Mr Borello stated that the FDOT would submit the official written legal description of the requirements to the Town for Council approval. On roll call the motion carried unanimously.

2. Flagler Memorial Bridge Repairs

Public Works Director Al Dusey reported that notification had been received from the Florida Department of Transportation (FDOT) that the Flagler Bridge would need repair, and that extended construction hours may speed the project toward completion. There would be a period of time when the bridge would be totally closed, and all possibilities had been explored with FDOT and the contractor, including working 24-hours per day, and nights, leaving the structure opened during the day. The current contract called for the hours of 8:00 A.M. to 6:00 P.M.

President Smith expressed concern over the timing of the bridge repairs, and questioned how the situation had occurred?

Mr. Dusey replied that FDOT had indicated that they were delayed by a procedural problem, the bid protest that was made.

FDOT Eric Pedrone, Project Engineer for Construction on the bridge project, reported that the contractor had submitted a 5-week schedule for the entire project. The project had been rushed through, and was originally supposed to be a 120 days project. The project should be finished by November 25th according to schedule. According to contract, the bridge would be closed for 4 days, with 14 days of lane closures of one lane of traffic in each direction. He stated that jackhammering would not be done 24 hours per day, if work hours were extended.

Town Engineer James Bowser stated that his recommendation was that the contractor also be allowed to work nighttime and Sundays, with lane closures on weekends.

Councilman Shaw moved that work be permitted on a 24-hour basis, including Sundays with no activities that would emit excessive noise (as defined by the Public Works Department) from 9 p.m. until 8 a.m. up to and including the Tuesday prior to Thanksgiving; all efforts would be made to have lane closures on weekends; if the work is not finished by Thanksgiving, work will cease on the Tuesday prior to Thanksgiving, and not start up again until the Monday afterwards; thereafter there would be no Sunday work. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Fire-Rescue Chief Ken Elmore addressed the Town Council, reporting that arrangements had been made for use of a Trauma-Hawk in the case of a traffic gridlock as a result of the bridge project.

3. Status Report from Town Staff and Town Attorney Regarding Regulation of Newsracks

Town Attorney Randolph reported that a meeting had been held with newspaper representatives in regard to the newsrack issue, and various options had been proposed to amend the Newsrack Ordinance. The list of the various newsrack locations had been updated. Mr. Randolph noted that he had provided copies of two ordinances which he felt contained options that may be of consideration to the Town Council as to how to control the proliferation of newsracks.

President Smith commented that there were 32 newsracks in the 100 block of Worth Avenue, with more than half of them filled with free publications, and she asked if there was any limit that could be put on the number of free publications offered?

Mr. Randolph replied that the least objectionable location of newsracks on the block could be determined, and it could then be designated where on the block it would go, with the location specified in the ordinance. Another option was simply to have a provision stating that there be no more than a certain number of newsracks within a particular block

President Smith asked if a ratio formula could be used?

Mr. Randolph responded that consideration had been given to a priority basis, which would allow the paid publications to have first option, with the free publications having last choice; a ratio formula could be considered on a first come, first served basis. It would first have to be determined how many would be allowed at any one particular location; then establish on a first come, first served basis who would go in there. He advised that, absent any change in the ordinance, the Town could address the worst areas, and make a determination as to how many newsracks were appropriate in those particular locations, and allow them to use a modular unit to accommodate all the publications that would want to go in that particular location.

Councilman McDonald moved that this issue go back to the Ordinances, Rules & Standards (ORS) Committee for review, requesting that staff prepare a list of recommendations to provide to the ORS Committee. Councilman Shaw seconded the motion.

Mr. Matich suggested that publications be restricted from putting signs all over the modular units, and be required to keep them neat.

Mr. Randolph replied that he believed that was a restriction in the current ordinance, which was certainly a legitimate restriction.

Mrs. Newton suggested that the Town charge the media a fee per box in order to limit the number of boxes that any particular newspaper or publication would have; also businesses could be encouraged to locate the boxes within the business and be compensated for that from the publication. She also suggested that there be a maximum number of boxes per publication within the Town limits.

Mr. Randolph replied that it would be possible to charge a permit fee, however only from the standpoint of defraying expenses involved in regulating newsracks. The media did have a constitutional right to use the rights-of-way, however, the Town also had the right to regulate them; he therefore did not believe newsracks could be kept off of the rights-of-way altogether by having an arrangement for them to go into private businesses.

Discussion took place concerning the types of enclosures/modules available, with photos presented of different types by Assistant to the Town Manager David Jakubiak.

Councilman McDonald requested that staff prepare for the ORS meeting with the specific direction to take the permissible legal restrictions outlined by Town Attorney Randolph, and make recommendations as to what locations, how many boxes, whether they should be modular or free standing, and whether they should be enclosed.

Mr. Stanley Silken commented that he had vacationed in Colorado this summer, and had noticed that some of the cities there had modules for free publications that held six publications in one module. In addition he had noticed that there was a uniformity in the size and look of the modules. He had also noticed the modules in the Palm Beach Airport, which were very attractive. He suggested that the Town could look into following the same procedure.

On roll call the motion of Councilman McDonald to refer the issue to ORS carried unanimously.

4. Water Issues:

a. Status Report by the Town Attorney and Town Staff

Town Attorney Randolph advised that the City of West Palm Beach could not meet the October 13th deadline to respond to the possible purchase of the water system by the Town, but would hope to meet the deadline for the November meeting. City Attorney Pat Brown had indicated that he did not believe that the City of West Palm Beach could be forced into binding arbitration on this issue. Mr. Randolph commented that he believed that the franchise allowed the Town the option to purchase the West Palm Beach system.

Councilman McLendon commented that the results of negotiations with the City of West Palm Beach for the past three years had not produced any indication that the City was willing to negotiate anything reasonably, and he did not believe that the future would hold the possibility of reasonable negotiations, until the City saw activity in the Town to construct parallel water mains, and until they were convinced that the Town was serious about replacing and getting decent pipes he did not believe they would cooperate.

Councilman McDonald moved that Town Attorney Randolph be authorized to file a Complaint for Declaratory Judgement. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

b. Water Meter Installation on West Palm Beach Water Main Crossings - Request for Funding

Public Works Director Al Dusey reported that flow meters on the pipes coming into the Town from West Palm Beach, and also the pipes leaving Town going to South Palm Beach, had been authorized for the purpose of gathering better information about peak flows, water loss, etc. Hartman and Associates had prepared a very innovative and cost effective way of gathering the information, with a total estimated project cost of $136,000.

Councilman Shaw moved approval of the funding for the project in the amount of $136,000, with a transfer account (water account) being set up so that all funds being spent could be tracked. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

Councilman McLendon requested that a proposal from Hartman and Associates for the analysis of the dollar value for replacing water mains in Town be put on the November Town Council Agenda, which was agreed upon by the entire Town Council.

5. Semi-Annual Report on Unpaid Assessments, Fines, Fees, and Other Monies Owed to the Town

Finance Director James Demming referred to his memorandum of October 6, 1998, summarizing the delinquent accounts that had been turned over to the Finance Department to pursue collection efforts as of September 30, 1998. The total was $18,352.00, and Mr. Demming offered to respond to any questions.

Councilman Shaw moved acceptance of the status report. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously. The report would continue to be on the Town Council Agenda on a semi-annual basis.

6. Sunrise/Sunset Avenue Business District Traffic Study

Director of Public Works Al Dusey reported that Alternate #1 of the Sunrise/Sunset Avenues Business District Traffic Study included permitted movement at Sunset and County Road, from the Sunset Avenue approaches, which would involve the loss of four parking spaces and one loading zone. Northbound on Cocoanut Row at Royal Poinciana the left turn through lane would become an exclusive left turn lane. On Bradley, southbound, there would be a right turn signal installed so that when eastbound Royal Poinciana was turning left the southbound Bradley traffic could turn right. At Sunrise and Bradley a turn lane from northbound Bradley to eastbound Sunrise would be made, which would eliminate one parking space. There would be some changes in signal timing and coordination. He requested the amount of $10,000 to implement Alternate #1.

Ms. Eleanor Balfour, 120 Sunset Avenue, commented that the suggestions were endorsed by residents of the area, as confusion would be eliminated and safety would be improved.

Councilman Shaw moved approval of the implementation of Alternate #1 of the Sunrise/Sunset Avenues traffic recommendation in the amount of $10,000. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

7. Schedule a Town Council Workshop Regarding Long Range Planning *(Deferred from May 12, 1998)*

A Long Range Planning Workshop Meeting was scheduled for April 16, 1999, at 10:00 A.M.

XV. NEW BUSINESS

A. Ordinances (First Reading)

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

Town Attorney Randolph read Ordinance No. 16-98 by title:

Mr. Randolph submitted a modification to the Ordinance to include exceptions to the Ordinance to allow for authorized government vehicles in the areas discussed. He noted that in order to make the Ordinance enforceable, permits from the State would be needed. The permit applications would require that an ordinance accompany them; thus the first reading of Ordinance No. 16-98 today.

Mr. Randolph explained that the Ordinance No. 16-98 would do four things:

- ✦ It would create a zone 400' from the mean low water mark, in which watercraft was prohibited in the four public beach areas (Phipps Ocean Park, Mid-Town Beach, Clarke Avenue Beach, and Kreusler Park).
- ✦ It provided that there would not be any watercraft within other beaches of the Town operating in excess of idle speed.

- ✦ It would be unlawful to launch any motorized or non-motorized watercraft to or from public beaches of the Town.
- ✦ The incorporation of the areas of the Florida Statutes in this regard.

Councilman Shaw moved approval of Ordinance No. 16-98. The motion was seconded by President Pro-Tem McLendon.

Councilman Wyett questioned the practicality and cost of markers which would be necessary in order to enforce the ordinance?

Mr. Randolph explained that the purpose of the markers was to give notice, and it would have to be determined how much notice would be necessary, as far as spacing of the markers.

Public Works Director Al Dusey commented that the mean low water line was always changing according to season.

Mr. Randolph suggested that the most restrictive mean low water mark that exists during the year could be the point of measurement.

Mr. Dusey advised that there was no cost to date, as they had not been sure how many would be necessary, however, he estimated that they would be fairly expensive–each buoy could cost approximately $500.00, with additional costs for maintenance.

Police Chief Croft commented that the ordinance could be enforced, although the Police Department was limited with its resources in this regard; he suggested that public education was an important aspect, and information from the Police Department could be passed out to agencies renting water equipment to be passed out to patrons. He also noted that once the boundaries were demarcated on navigational maps the public would be aware of the limitations.

Town Attorney Randolph read Ordinance No. 16-98 by title:

> 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; RESCINDING SECTION 14-62 IN ITS ENTIRETY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

On roll call the motion to approve Ordinance No. 16-98, as modified, carried unanimously.

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

   a. First Reading of Ordinance

Town Attorney Randolph read Ordinance No. 17-98 by title (first reading):

> 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 Shaw moved approval of Ordinance No. 17-98. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

   b. Options for Distribution

Assistant Town Manager Peter Elwell noted that the effective date of the new Code would be January 1, 1999. He referred to his memorandum of October 6, 1998, and the memorandum of Town Clerk Pollitt of October 5, 1998, with the reasons why "Option A" would be the best way to proceed with distribution of copies of the Code. This would enable Municipal Code Corporation to handle all of the inventory, distribution, and marketing of the Code Book for minimal cost, which would offer a better service to the public, and the Town would still recover all the fees related to the service.

Councilman Shaw moved approval of "Option A" of the Distribution Services offered by the Municipal Code Corporation. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

B. Resolutions

1. Resolution No. 38-98 - Supporting Florida Constitutional Revision No. 10, which includes the following:
   - Eliminate taxes for property that is used for governmental or city purposes;
   - Allow counties and cities to waive property taxes for lands used for conservation;
   - Allow counties to waive taxes for tangible personal property such as appliances and furnishings in mobile homes; and
   - Allow citizens to communicate with local officials outside of local hearings about land use issues.

Town Attorney Randolph read Resolution No. 38-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, SUPPORTING REVISION #10 TO THE FLORIDA CONSTITUTION, AND ENCOURAGING OUR CITIZENRY TO VOTE YES TO THIS REVISION.

Councilman Shaw moved approval of Resolution No. 38-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Resolution No. 39-98 - Authorization for Town Manager to Sign Financial Responsibility Statement Concerning Reverse Osmosis Brine Disposal Wells at Quadrille Boulevard, West Palm Beach

Town Engineer James Bowser addressed the Town Council, stating that the Town Council had authorized the preparation of brine disposal permits in connection with a proposed reverse osmosis facility at Quadrille Boulevard and Phipps Ocean Park. Pre-application meetings had been held with the Florida Department of Environmental Protection, who wanted the applications signed, as well as a financial responsibility statement which would bind the Town of Palm Beach should the well be built, and need to be closed some day for some reason. The Town would then be obligated financially to properly close the wells. The estimate to close the three wells would be $1.25 million.

Councilman Shaw moved approval of Resolution No. 39-98. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

3. Resolution No. 40-98 - Authorization for Town Manager to Sign Financial Responsibility Statement Concerning Reverse Osmosis Brine Disposal Wells at Phipps Ocean Park, Palm Beach

Town Attorney Randolph read Resolution No. 40-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE A FINANCIAL RESPONSIBILITY CERTIFICATE FOR THE PHIPPS OCEAN PARK REVERSE OSMOSIS WATER TREATMENT FACILITY.

Councilman Shaw moved approval of Resolution No. 40-98. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

4. Resolution No. 41-98 - Street Lighting Maintenance Agreement with Florida Department of Transportation for State Road A1A, From Royal Palm Way to Royal Poinciana Way

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE EXECUTION OF A JOINT PROJECT AGREEMENT FOR HIGHWAY LIGHTING, STATE ROAD A1A FROM ROYAL PALM WAY TO ROYAL POINCIANA WAY.

Councilman Shaw moved approval of Resolution 41-98. President Smith passed the gavel to second the motion. On roll call the motion carried unanimously.

5. Resolution No. 42-98 - Joint Participation Agreement with the Florida Department of Transportation (FDOT) for Storm Drainage Improvements Constructed by the Town on Behalf of the FDOT for State Road A1A, From Royal Palm Way to Royal Poinciana Way

Town Attorney Randolph read Resolution 42-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE EXECUTION OF A JOINT PROJECT AGREEMENT FOR STORM DRAINAGE, STATE ROAD A1A FROM ROYAL PALM WAY TO VIA BETHESDA.

Councilman Shaw moved approval of Resolution No. 42-98. President Smith passed the gavel to second the motion. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

C. Sealed Bids

1. Sealed Bid No. 99-02 - Seaview Park Athletic Field; Resolution No. 43-98

Town Attorney Randolph read Resolution No. 43-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO HAVERLAND BLACKROCK CORPORATION FOR THE SEAVIEW PARK ATHLETIC FIELD RENOVATION.

Alan Brown, Recreation Supervisor, reported that he had received a letter from Jack Thompson, the Headmaster of the Palm Beach Day School, with a commitment to pay their 50% share, and that the money would be deposited prior to April 1, 1999.

Councilman Shaw moved approval of Resolution No. 43-98. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

D. Other

1. Request by the Four Seasons Resort for a Variance to Chapter 8, Garbage and Trash, Section 8-7, Frequency of Collections, of the Town Code of Ordinances

Public Works Director Al Dusey reported that the Four Seasons Resort was not covering service on a six day per week basis in its compacted garbage, and had requested permission to reduce that to three days per week, as they had a 30 yard container. The area had been visited by staff, and it was clean and odor free. Mr. Dusey noted that similar relief had been given to The Breakers and The Bath and Tennis Club, and recommended approval for the Four Seasons Resort as well.

Councilman Shaw moved approval of the request by the Four Seasons Resort for a Variance to Chapter 8, Garbage and Trash, Section 8-7, Frequency of Collections, of the Town Code of Ordinances. President Pro-Tem McLendon seconded the motion.

Councilman Wyett noted that the Four Seasons Resort was in close proximity to residential areas, and the other two sites mentioned were relatively isolated, and recommended that the motion be amended to be trial approval for a six month period. The maker of the motion agreed with that amendment. On roll call the motion carried 4/0, as Councilman McDonald was temporarily out of the room.

2. Schedule a Finance and Taxation Committee Meeting Regarding Preliminary Year End Fund Balances for Fiscal Year 1998

The Finance and Taxation Committee Meeting regarding Preliminary Year End Fund Balances for FY98 was scheduled for Friday, December 11, 1998, at 10:00 A.M.

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The meeting was adjourned for lunch at 12:20 P.M., and was resumed at 1:45 P.M.

MINUTES OF THE TOWN COUNCIL MEETING HELD ON OCTOBER 13, 1998

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3. 1999 State Legislative Issues:

A. Authorize Attendance at the Florida League of Cities 38th Annual Legislative Conference in Orlando, November 19 & 20, 1998

There would be no member of the Town Council attending the Conference.

B. Draft FY99 Legislative Issues for Palm Beach County

Director of Planning, Zoning & Building Moore identified the Following FY'99 Legislative Issues for position that Palm Beach County had adopted to support with the State Legislative Delegation per His Memorandum of September 18, 1998:

Item #6 - Lake Worth Lagoon Ecosystem Management Project

Item #14 -Interim Improvement Surcharge/partial Year Assessment

Item #16 -Code Enforcement Fines

Item #17 -Workers' Compensation Fraud

The Town Council Approved Support for the Items Enumerated Above.

President Pro-Tem McLendon moved approval of support for the legislative issues items brought forward by Mr. Moore. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

4. Study the Issue of Official Bulkhead and Pierhead Lines in Lake Worth Within the Town of Palm Beach

Director of Planning, Zoning & Building Robert Moore reported that it was the request of staff that the Ordinances, Rules and Standards (ORS) Committee study the issue of bulkhead and pier heads in relation to the Lake Worth side of the Island.

Councilman Shaw moved approval of the recommendation of staff to send the issue to the ORS Committee. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

5. State Historic Signing Program

Director of Planning, Zoning & Building Robert Moore reported that the State was planning on putting some identification signs up on the right-of-way, as well as on private property, to identify the Flagler Museum and Via Mizner. He had advised the State that any type of signage that would be placed on these two locations would require approval of the Landmarks Preservation Commission. To date nothing had been received back from the State.

Councilman Shaw moved denial of the signs. The motion was seconded by Councilman Wyett.

Councilman McLendon commented that he had objected to the proposed southerly signs in the Worth Avenue vicinity, as it would direct additional traffic along Worth Avenue from South Ocean Blvd. to Cocoanut Row.

Town Manager Doney commented that he would request that Mr. Moore contact the officials in charge of the signage matter in order to advise them that the Town Council had spoken.

On roll call the motion carried unanimously.

6. Building Division Staffing Issues

Director of Planning, Zoning & Building Robert Moore referred to his memorandum of September 30, 1998, wherein he had identified the need for additional staff in the Building Department. He requested that the Town Council authorize an additional building inspector and secretary as two additional employees of the Building Department. He explained that the costs would have no impact on the tax base, as the revenue would be supported by the Building Department.

Councilman Shaw moved approval of the two additional employees. The motion was seconded by Councilman McDonald for discussion.

Councilman McDonald commented that the Building Department could be further computerized in order to makes things run more efficiently, and also questioned the availability of space?

Mr. Moore responded that he had conferred with staff members and work was ongoing in regard to computerization. He noted that space was being considered in other buildings, and he would like to complete a study of space needs for the Building Department.

Councilman Wyett expressed concern regarding the possibility of a recession, or a reduction in construction in the Town and the additional employees.

Mr. Moore replied that there were employees in the Building Department that were near retirement; in addition the issuance of permits had doubled in a ten year span, and until the demand lessened for property and re-development, he did not see a turn down in the current level of business.

Councilman Wyett suggested that the inspection process could be streamlined, as he had heard many complaints in this regard.

On roll call the motion carried unanimously.

7. Reshaping of Flagler Drive in the City of West Palm Beach - Upcoming Meetings by Waterfront Steering Committee Appointed by West Palm Beach Mayor and City Commission

Mr. Randolph reported that there was currently no intent to reconfigure Flagler Drive, however the City of West Palm Beach was looking for comments regarding Flagler Drive, with a series of meetings being set up held by an ad hoc committee, which would report back to the City Commission. There were nine meetings, with the first three being opportunities for input in regard to what should happen to Flagler Drive; the second three meetings would involve synthesizing that input; the final three meetings would be to put a report together back to the city.

Councilman McDonald moved that Assistant Town Manager Elwell attend the meetings. The motion was seconded by Councilman Shaw.

Mr. Elwell commented that there had been staff meetings in this regard, and the determination had been that at this point it would be prudent to stay involved in the process, primarily listening, and state for the record that the Town of Palm Beach was very interested in the forthcoming recommendations. At the appropriate time the Town Council would have an opportunity to offer input to the formal recommendation.

Mr. Randolph commented that there would be a general session at the beginning, then there would be a breakdown into different groups, comments would be made from the groups, and then the Committee members would take the group findings back to the full Committee. He advised that the first three meetings were very important because he believed that the determination that would be made by the City would rely upon the comments received at the first three meetings.

Councilman Wyett expressed concern regarding traffic conditions and the bridge replacement. He suggested that any physical action should be delayed until after the completion of the bridge. He also expressed concern over emergency hospital trips for Palm Beach residents.

Mr. Elwell responded that these concerns had been so noted and would be brought forward as concerns of the Town of Palm Beach.

On roll call the motion carried unanimously.

Councilman Wyett suggested that the traffic lights coming off and on the bridge should be coordinated with any plans for Flagler Drive.

Mr. Elwell responded that Palm Beach County Traffic Division controlled that, and there had been communication with them related to the current situation at the Royal Park Bridge and the need to allow a longer time to move traffic westward, particularly in the evenings.

Town Engineer James Bowser reported that he would meet with officials from Palm Beach County next week, and that it appeared that some changes had been made in the traffic light situation.

Councilman McDonald added that he would also like Town Attorney Randolph to accompany Mr. Elwell at the Flagler Drive meetings.

8. Issues Regarding the Golf Commission and the Seaview Park Commission

Town Manager Doney referred to the memoranda of Russell Bitzer, Director of Recreation, dated September 30th and October 6th, wherein his recommendations were made in regard to the consolidation of the Golf Commission and Seaview Park Commission into one Recreation Advisory Board.

Councilman Wyett asked how it would be determined who would stay on a consolidated commission, if that was the final recommendation?

President Smith replied that she believed the fair way would be for all of the members of both commissions to resign, and let the Town Council start over with new appointments. The Town Council would have to consider representation for both the golfers, the child and adult programs at the Recreation Center, and the functions in the two areas; the appointments should not be political appointments.

Councilman Shaw commented that there was merit to consolidating the two commissions and that a new committee also have criteria that would be followed by ordinance for its membership.

Carolyn Stone, Recreation Supervisor, commented that the staff could work with one or two commissions, however, one commission would save time for the staff, and reduce the number of meetings. Their primary concern was equal representation for all segments of the Recreation Department.

Golf Course Manager Rick Dytrych addressed the Town Council, stating that the Golf Tournament had two or three meetings so far. He had met with the Golf Commission and Carolyn Stone, who along with himself, planned the logistics of the Golf Tournament. If there was a change in the commissions, he suggested that a committee would then be formed of people who were already on the Golf Commission and Recreation Commission to work on the Golf Tournament.

President Smith suggested that the Golf Commission could still run the fund raising tournament, and any new consolidated commission created could begin in February.

Councilman Shaw commented that he believed the two commissions should be put together, and Mr. Dytrych could put together a volunteer body to assist in the Golf Tournament fund raising drive to make it financially successful.

Mr. Dytrych replied that there was a very active volunteer organization regarding the logistics of the Golf Tournament, and he was sure that members of the Commission who were active in the fund raising and who worked with Carolyn on everything from the invitations to the parking could evolve into those committees.

Ms. Ann Herman, Golf Commission Chairperson, addressed the Town Council, stating that they were in favor of merging or making a new commission, and suggested that the parks in Town could use supervision. She requested that if a new commission was created it be given clear definition of its purpose and powers.

Councilman Shaw moved that the Golf Commission and Seaview Park Commission be merged; that a volunteer group be established through Mr. Dytrych to assist in the fund raising for the Golf Tournament; that the issue be considered by the Ordinances, Rules and Standards (ORS) Committee with recommendations brought to the ORS Meeting, where a new ordinance would be drafted to consolidate the two Commissions. Councilman Wyett seconded the motion.

Ms. Gail Coniglio commented that she had served on the Seaview Park Commission for ten years, overseeing the building of the Recreation Center, upgrading fields and services, and increasing landscaping. She noted that the Seaview Park Commission was tremendously involved in the Golf Tournament, including fund raising, sponsorships of holes, and the logistical running of the project. She expressed concern that combining the two Commissions would eliminate the direct representation of each, and she feared lopsided use of the Commission; that there would be too much golf, or too much tennis, without the widespread representation. She urged that great thought be given to how it could be done so that people could be assigned to certain parts of the Commission.

Attorney Randolph clarified that the suggestion in regard to volunteers was fine, but it should be kept in mind that as long as the Ordinance continued to exist in the form that it was in currently, the bodies were still operating under the Sunshine Law.

Councilman Shaw replied that whatever was being discussed would take place in the future. Nothing had changed currently. The recommendation may not really kick in until April or May until it took effect. Nothing would change for this season.

On roll call the motion carried unanimously.

9. Discussion of Alcohol Licensing Process

Councilman Shaw requested a summary of the different types of licenses used within the Town, what was involved in a change of license, and how it would affect an operation to be included on the November Town Council Agenda.

Director of Planning, Zoning & Building Robert Moore commented that there may not be a need to put this item on the November Agenda, as it was his understanding that particular item had been removed from the process of an applicant coming to the Town, because liquor licenses were governed by the State.

President Smith suggested that Mr. Moore do a memorandum on it, rather than include it on the November Agenda, which was agreed to by Councilman Shaw.

10. Public Use of the Computer - Cyperspace in Town Hall

Councilman McDonald commented that Town residents were some of the most computer literate in the country, and he believed they should be able to take care of Town business on the computer. He encouraged the computer department to proceed with implementing access of Town services to residents through the computer.

Information Systems Manager Spencer Wilson replied that the process of creating a Web Page for the Town was already beginning, to include all departments in the Town. He agreed to return to the Town Council to update them on the process at a future date.

11. Long Range Planning and Review of Town Manager

This item had been put on the November Town Council Meeting Agenda.

12. Discussion of Zoric vs. Town of Palm Beach

Town Attorney Randolph reported that in the lawsuit of Zoric vs. Town of Palm Beach, a civil rights case filed against the Town, he had received an order setting trial date and discovery deadlines, and one of the items within the order said that within 20 days of the entry of the order each attorney was ordered to meet with his client and discuss the option of whether to have the case tried by a magistrate or whether to have it tried by the judge that was assigned to the case. The benefit to the parties in having the case tried by a magistrate was that a magistrate's calendar was not as busy as a judge's and there were several magistrates available, who could set the case for a time certain, rather than being set on a court calendar. He advised that it was his preference to have the judge assigned to the case handle it, rather than a magistrate.

Councilman McDonald moved that the Town proceed with the judge assigned to the case. He explained that the judge was already familiar with the case, and he believed it was to the advantage of the Town, as the defendant. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

13. Scheduling of Ordinances, Rules & Standards (ORS) Committee Meeting

The meeting of the Ordinances, Rules & Standards (ORS) Committee was scheduled for Tuesday, November 17, at 9:00 A.M. in the Town Council Chambers.

XVI. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman McDonald commented that he would like Town Manager Doney to look into the messages left on the switchboard after hours, as he had experienced a delay in receiving a message.

Mr. Doney replied that he would ensure that messages left after hours, on a holiday, or a weekend, were immediately relayed to his office for follow up.

Councilman Shaw commented on the back-up provided for items coming before the Town Council, and suggested cutting some of the longer dialogue during Council Meetings. He suggested that Council Members individually meet with staff to review items, then hear it, vote on it, and move on.

President Smith commented that she was happy to see the number of people in attendance at the meeting, and she reminded everyone to vote in the national election on November 3, 1998.

President Pro-Tem McLendon commented that on the Palm Beach County Intergovernmental Coordination Program, currently Councilman Wyett was the member and he was the alternate, and he suggested that the roles be reversed.

Councilman Wyett commented that there were few issues that came up in these meetings that affected the Town of Palm Beach, and that when issues concerning Palm Beach came up those meetings were attended, and staff usually attended those meetings also.

Town Manager Doney replied that Tim Frank, Planner/Projects Coordinator attended, however, at times a voting member was necessary.

Councilman Wyett moved that the Mr. McLendon become the member and that he become the alternate. President Smith passed the gavel to second the motion. On roll call the motion carried unanimously.

Councilman Wyett commented that several members of the Charter Review Commission had asked for clarification from the Town Council, as there had been some confusion as to the action taken by the Town Council last month. He stated that he believed that the Town Council had instructed the Charter Commission not to get involved in the review of the Town Manager, as to how, when and where, but it did not restrict the Charter Commission from putting such an item as a requirement of the Council; they could put wording in that there shall be the obligation of the Town Council to review the Town Manager before reappointment. He also suggested that the two civic associations in Town prepare their ideas and recommendations on the review of the Town Manager for the appropriate meeting.

Assistant Town Manager Elwell responded that he had understood the action of the Town Council on September 28th to be that Dr. Gross would not come to address the Charter Commission about goals and objectives and performance evaluations, however Dr. MacManus would come to address the Charter Commission. He had understood that the Town Council intended to reserve for themselves the issue of performance evaluation, goals and objectives.

Councilman Wyett clarified that he understood that the Town Council had not said that the Charter Commission could not put a provision in the Charter for Town Manager review; but had said that the Charter Commission could not tell the Town Council how to do a review, because conditions could change from year to year. He further clarified that the Charter Commission would have the right, subject to the approval of the Town Council, to put a requirement into the Charter that they shall be Town Manager review.

President Smith commented that she did not believe that the Town Council had told the Charter Commission anything about what could be proposed.

Councilman Wyett agreed, however, he stated that the Charter Commission was concerned.

President Smith asked if the Charter Review Commission had conducted a meeting since the last Town Council Meeting where concerns regarding this issue had been expressed?

Mr. Elwell replied negatively; that individual members had expressed concern. He clarified that he understood that it was the intention of the Town Council that the Charter Commission should look at all issues and recommend whatever proposals regarding potential changes; there was no intention by the Town Council to segregate anything out from that.

Councilman Wyett commented that he had noticed more and more often that people on Commissions leave early, and sometimes do not come back after lunch. He suggested that the members should realize that attendance was an all day attendance, except for rare occasions, and it was not satisfactory to consistently leave early.

XVIII. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of the Architectural Commission's Decision on September 23, 1998, by Bayhill Development, Inc. Regarding 321 Brazilian Avenue

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

The following is a verbatim transcript:

Attorney
BRINDELL: Good afternoon. My name is Jim Brindell. I'm here on behalf of Bayhill Development and Franklin DeMarco. Mr. DeMarco is right over here. You know him, I think. He's been a resident of this Town a long time. He is the contract purchaser of the property at 321 Brazilian Avenue, and in contemplation of that what he hopes to do is build a home there. He currently has a home in the north end, which he is going to dispose of if he is able to build a new home here in the mid-Town area, and so this is in an R-C Zoning District, which is medium density residential, and under the Code that provides for single family, two family, townhouses, multi-family, and by special exception, group homes and foster care facilities. I point that out because I think that inherent in this particular district is a variety of physical forms and sizes, as well as types of residential dwellings. That, I believe, produces what you see if you actually go down Brazilian--- for example, in the 200, 300, and 400 block, and you look at the structures that are there, there is a variety of structures--- some are small, some are large, some are medium, some are two family, some are apartments. The Brazilian Court hotel is there; been there a long time, recently refurbished, not going anywhere anytime soon I don't believe, nor would the Town want it to, since it's landmarked. In other words, there is a variety there. Of course we have in this area, as in many areas of Town, this continuing issue of re-development and re-use of existing properties, and what is appropriate. Now, before I start, I'd like to ask you if this location for these exhibits is satisfactory, or whether you would rather have them up here on this easel.

President
SMITH: Members of the Council, better on the easel? On the easel please.

BRINDELL: All right.

SMITH: And while you're moving it over, Mr. Brindell, if I could ask, since this is quasi-judicial, would everyone who is going to be speaking on this part of the agenda please stand to be sworn in. Everybody. This is all for the variances and special exceptions. If you're not sworn, you shouldn't speak, please. Thank you.

(Town Clerk administered the oath to all those who would be speaking to the referenced issues)

SMITH: Mr. Randolph. If it's quasi-judicial, should there be ex-parte?

Town Attorney
RANDOLPH: Yes.

SMITH: All right. We'll do that please, starting with Mr. Wyett.

Councilman
WYETT: Yes. I spoke to all the parties here today on the appeal.

SMITH: You spoke to Mr. Brindell? Can you specify who you spoke to?

WYETT: Yes. Mr. Brindell, Mrs. DeMarco, and the architect here.

SMITH: All right. Thank you. Mr. McLendon?

President
Pro-Tem
McLENDON: I had a meeting with Mr. Brindell and Mr. DeMarco.

SMITH: All right. I had no communication. Mr. Mayor?

Mayor
ILYINSKY: No. I haven't discussed the issue with anyone.

SMITH: All right. Mr. Shaw?

Councilman
SHAW: Mr. Brindell, Mr. DeMarco, and Mr Smith.

SMITH: Mr. McDonald?

Councilman
McDONALD: I was at a coffee klatch and Mr. DeMarco spoke to me regarding the merits of the application.

SMITH: All right. Thank You. All right. Good. Thank you, Mr. Brindell.

BRINDELL: Again, I want to emphasize that in this particular district you will see, and we'll show you some photographs in a moment, a variety of structures, sizes and types of residences. This particular house was built in 1920. It had a carport added in 1962, and a front entry porch in 1964. It is two stories. As you can see, it's a very boxy sort of structure. The two stories have about 3,000 square feet in them, and then there's an apartment, which you can see down here toward the rear, which has 388 square feet, so there is a total of 3,350 square feet in the existing house. Now we came to you all, some background, back in August, and showed you the site plan, and some floor plans and elevations because we needed some variances, because the lot here is very narrow. It's 50 feet wide, and 180 feet long, and so we had a discussion at that point in time about setbacks from the west side for the house and for the garage, you may recall we shortened up the garage a little bit, as a result of looking at the site plan, and Harold Smith, who is the architect and is here, explained the site plan problems, and several of the options that had been gone through with regard to developing a site plan for this particular lot, and how he came out with the plan that he did, and therefore why the variances were needed, and you did, in fact, grant those variances. We showed you, I believe, at that time, an elevation of the house which is classified as formal Italianate– a classic, Mediterranean in-style home. I think you all thought that was a pretty nice looking design, for whatever it was worth; I mean, somebody commented to that effect, as I recall. Now, you need also remember that this lot, on the north side of Brazilian, backs up to the offices that are on Royal Palm Way. There is a parking lot and an office building immediately behind this house. Mr. Smith and Mr. DeMarco went to ARCOM twice, and I'll tell you in a minute why we are here today, really, as opposed to perhaps being back at ARCOM again. But, based on meetings which Mr. Smith had with ARCOM members individually and at the first ARCOM meeting, there were a number of changes made to the plan, which included, first of all, and very importantly, changing the roof style from a flat roof, as you'll recall in the rendering he showed you, the elevation he showed you a moment ago– it was a flat roof, with a parapet wall, to a barrel tile hip roof with wood bracketed outlookers. The thought was that would somehow make the house look less massive from the street. There was a balcony railing added to the second floor above the entry door. There was a change in the entry door to a raised panel. There was removal of some horizontal banting and pillisters. There were changes in the windows to circle heads, which were more Spanish/Mediterranean. This design has kind of moved from, and I'm not an architect, but as I understand it from Mr. Smith–it has really moved kind of from an Italian motif to more of a Spanish/Mediterranean motif as a result of the conversations and review by ARCOM. Added a double window in the library and pushed the library wall south to create some asymmetry, which again is typical of Mediterranean style homes. Truncated the roof ridge to lower the overall height, and changed the color to off-white. The original color, which was sort of a, I'd say, salmon color, was against–perceived to be too bold, although I think quite Mediterranean. So there were changes made. If we showed you the first ARCOM presentation, and then the second ARCOM presentation. Now ARCOM asked for a reduction in square footage. This–I might say by the way, I'm going to back up; I mentioned the dimensions, but the lot has 9,000 square feet instead of the minimum code requirement of 10,000 square feet. This house, as it is designed, has 5,598 square feet in it. The existing house has 3,350 square feet, but it is basically a 1920's house.

WYETT: Can I have the square footage again of the proposed?

BRINDELL: 5,598, and I'm going to go through that, and have Harold go through that with you in just a little bit, because I think it is pertinent here–and the point I want to make in a moment is that while I think ARCOM feels somewhat of an obligation or philosophy to sort of cut square feet frequently, at least that's what most people see. The architect designs a property to try to be functional, and to try to meet certain needs, and we want to go through those in a minute, because the basic reason that Mr. DeMarco chose not to reduce the square footage was that he felt it would not produce a satisfactory plan. He felt that the proposed size was minimally adequate. Now, ARCOM, as I said, recommended denial of the house on the grounds that it was too large in terms of the FAR, the CCR, and the height, and specifically the criteria in the Code relate to those which say projects shall not be visibly excessively dissimilar in relation to other nearby structures, and there is another provision about it not being–or that it is supposed to be appropriate in relation to the established character of other structures in the immediate neighborhood, or neighboring areas, in terms of size and mass. And this is a common problem that ARCOM deals with all the time, particularly where you have very old houses, many of which were built at a time when people spent only three or four months of the year here, to a time in almost 2000 when more and more people spend all year here, or the majority of the year here, have their children living with them at younger ages, and have some certainly changed expectations about what they feel are the minimum requirements for a home today that in 1920 weren't part of what people felt about a home in Palm Beach for the season in some of these neighborhoods. And so there is no question this is a continual tussel to try to figure out what is appropriate. Mr. DeMarco thinks that what he has proposed is appropriate. ARCOM thinks it isn't, and we of course want to try to explain to you why Mr. DeMarco, and Mr. Smith, his architect, believe it is.

Now, if I show you the site plan, you'll see on that site plan the proposed house, and then also out lined is the existing one, so you can sort of see how the existing one overlays with the proposed. They both take up a good bit of the width of the 50 foot width of the lot. Actually we have a greater setback with this proposed design than currently exists on both sides, and you'll see that in terms of its depth the new house goes back somewhat farther than the other one, but the other house also comprised and utilized a good bit of the depth of the lot. If you would look at the floor plans I think that this is where we get to the practicalities that Mr. DeMarco faces. This house has two floors. The main house has 4,288 square feet in it. Then there is a garage that has 699 square feet, and above it a staff quarters of 611 square feet. Now if you look at the components of the house I think it's fair to conclude that the number of rooms is not unreasonable, the sizes of the rooms clearly are not unreasonable sizes, and that all together produces this total square footage for these two components together. You have three bedrooms, four baths, a his and her bath, which a lot of us I think is probably a pretty good innovative idea in these days and times; having perhaps had the other mistake previously. There is a powder room, not uncommon, downstairs on the first floor, five closets–not a lot of closets, a living room, a dining room, a kitchen with a breakfast area, a sitting room, a loggia, a library, a pantry, a laundry room, a mechanical room, and a foyer. I'd like Harold, if you would, to just go through the dimensions of these rooms for a moment, because I want the record, and I want the Council to understand that these are not excessively large.

Architect
HAROLD SMITH: Thank you. For the record my name is Harold Smith. Again, the rooms are not large in size by any means. The largest room in the house is the living room, which is 19' wide by 28' long. The dining room, for instance, is 17'7" x 11'. The library is 17'9" x 11'. So we have some widths in rooms that are affected by the lack of width in the lot. The master bedroom is roughly 18' x 19', and the secondary bedrooms are 17.5' x 11', and 14'10" by 11'.

BRINDELL: The staff quarters and garage–I indicated the garage is 699 square feet, and that includes room for two cars, a little cabana area out by the pool, a wet bar and a bath. The staff quarters of 611 square feet, which is above the garage, has a bedroom, a living room, a kitchenette, a bath and two closets. That's a total of 5,598 square feet. The Code allows a maximum FAR of 70%, and this project is at 62%. Now, if we could show them the elevations, Harold, that will help perhaps make the other date more meaningful.

The Code provides for a maximum cubic content of 8.75, and this project is at 6.7. The height of the project is 22', from the slab to the top of the tie beam, which is how its measured, and the Code provides for a maximum of 25. And I should note, by the way, that the height was increased somewhat by the change in the roof design, which ARCOM members thought was a better approach, and also, of course, the existing elevation of the existing house is at 5.5, but of course because of the flood elevation we had to move it up and start at 7.5, so that was another 2'. If you look at the street scape, I think it's fair to conclude, and I don't think ARCOM disagreed with this, that from the street the profile of this proposed house, with others on the block, is not out of scale either in terms of height or width, as you look at it from the front of the street. I think it is somewhat higher than some, and lower than others.

President
SMITH: Are those the two houses either side of this property? The house to the west? Is that the one to the west?

Robert
MOORE: That's the Glightsman house, which is under development that the Landmarks Commission...

President
SMITH: That's the one where they're talking about the demolition of the wall and putting in the townhouses behind it?

BRINDELL: Not the demolition. Part of the wall can't be demolished because it's a landmark...

President SMITH: Well, none of it should be demolished, because the whole thing is landmarked, but that's a different story, sorry.

BRINDELL: The wall is landmarked, but not the house behind it.

President SMITH: The wall is landmarked.

BRINDELL: I think there's been a demolition approval on the house.

President SMITH: And then that's the house next to it?

MOORE: The house next to the east. That's the Robert Deziel landmarked house.

President SMITH: Right. The little one. The cottage, all right. Thank you.

BRINDELL: Now I would point out that in 1997-98 in the Zoning Season the consultant for the town, as part of the staff Zoning Proposal Report, made some comments about the R-C District to this effect: The town staff has noted that recent re-development of duplexes and townhouses on assembled lots in the R-C District has been at or near the limits allowable under present development regulations. Under the current regulations with maximum coverage of 35% and maximum height of 25', the highest achievable FAR is 0.7 and the highest achievable CCR is 8.75. We're under both of those. Review of four recently constructed duplexes/townhouses indicates that they have been developed at or very near the maximum allowable under current regulations. Lot coverage has varied from 30.3% to 35%. FAR has ranged from 0.597 to 0.700, and the CCR has ranged from 7.36 to 8.17. Again, we have not had adequate time to study the development patterns to determine the prevailing floor area ratio and compare it with more recent developments in order to document the problem, and have sufficient information to determine the FAR that would be most appropriate to maintain the established character within the R-C District. The point is there have been, and it's recognized, a number of other approvals that have set a trend toward re-development of lots at somewhat of a larger scale than some, and I say <u>some</u> of the existing properties, but not all. Again, this, if you go up and down the street, you will find a mixture of sizes and styles. Now, we have some photos which I'd like to show you of the houses in the area on this street, so that you can see the buildings that exist on the street and how what's being proposed compares to it.

President SMITH: Are these all the houses within 200'?

BRINDELL: Some are within 200'. We can show you which ones are. They cover the entire block, and then we have some others that...

President SMITH: I think if you would specify which ones are within 200', because that's actually what ARCOM looks at.

BRINDELL: Sure. Probably need to start on the other side, if you're going to do that, with Brazilian. We actually have a chart here that shows you the circle of 200, which Harold can show you. Why don't we show you that first, and then you can maybe--what you can do is maybe point out on the photographs where those are.

Harold SMITH: As you can see our property is close to the center of the block on the north side of the street. We have three or four properties to the west and to the east that are within 200'. These properties along Hibiscus are also within 200'. Now those photos are small. I have these at a larger scale, and I can point those out to you.

BRINDELL: Let's do that, please.

Harold SMITH: Now from west to east, within 200', we have 337 Brazilian, which is a two story Mediterranean style home; 333, which is a two story Monterey style; directly to the west we have the Mizner wall with the one story house behind it. The next house to the east is 319 Brazilian, which is the two story bungalow. Adjacent to that is a very traditional; I don't know what style you want to call it, two story home. Again, very formal in its appearance. A relatively hidden two story Mediterranean style home at 307 Brazilian. And around the corner on Hibiscus, at the corner of Royal Palm Way, we have two two story commercial buildings. On the south side of the street we have, of course, at the corner, the Brazilian Court hotel. This is from east, going west. A two story landmarked Mediterranean style home adjacent to that. What I don't have pictured here is the vacant parcel. Mr Hollis' property. I think we can see part of it here.

President SMITH: Oh, right. The empty lot.

Harold SMITH: The empty lot. Right. Then we have the three story building condominium at 340 Brazilian, and a little bit further down the block we have some two story apartment homes. Pictured below are some properties in the 200 and 400 block, which are the most recent developments that Mr. Brindell was talking about.

BRINDELL: Would you go over. Well, I've got a copy of this chart. Do you want to show them the chart with a circle on it?

Within that 200' there are properties that have FARs of .85, .65, .31, .36; there is a range there. With regard to the CCR there are some that are at 8, 6.5, 4, .28, and we're at 6.7. So, there is a range already on the street of FARs and CCRs, and again, I would point out that I think that's inherent in this particular Zoning District. This is not a single family only district. In addition to that, if you look at that chart you'll see there are a number of lot widths effectively here. A number of these are 50' I presume. Most of them were originally platted as 50' lots. Some have been assembled so you have larger lots, but all these numbers we've given you are related to 50' width components of these properties. So, we think that what was proposed fairly fitted within the FAR and the CCR range of what is there, and what is reasonable. The house is not excessively large regarding the number of rooms, the sizes of rooms, other structures in the area, other structures recently approved in, say, the associated 300, I mean, the associated 200 and 400 blocks; not excessive in given the dimensions of the lot. This lot, being 50' wide and 180' long doesn't give you much alternative but to design long. There isn't a lot of spread out you can do in any direction but the length of the lot. An keep in mind again that it backs up to a commercial office building with a parking lot, and the height again is not out of character with what else is on the street. Now I don't know if Mr. DeMarco would like to make a statement to you about what he wants, or whether he thinks I fairly represented why he feels that this is a minimally acceptable house under today's circumstances in terms of use and what is anticipated in a house today. So, Franklin, if you'd like to maybe comment on that, I think that might be helpful.

Franklin DeMARCO: Franklin DeMarco. I have approached the Council to try to have a house built for my primary residence. This is not something that is going to be used seasonally, like the bungalows that were there years ago. I'm giving up a large residence in the north end to have a primary residence closer to my business. The rooms, as the architect went through, are certainly not large. A bedroom 11 x 17, a dining room about the same size; none of those rooms are excessive, and I've reviewed the plans this morning to try to figure out where you would cut, and there does not make any sense to reduce bedroom, bathroom and closet size to make them functionally obsolescent just to be arbitrary. So I've requested of the Council that they review these plans to find that the house fits within the perimeters, and I'd like approval. Thank you.

BRINDELL: With that I think, unless you have anything else you want to add, we'll stop and be glad to answer or address any comments you have, or any comments that others in the audience might have. We'd like an opportunity to respond to those if we could.

President SMITH: Have we had staff comments?

BRINDELL: I'm just saying we're going to stop now, but we would like an opportunity to respond. Thank you.

President SMITH: Mr. Moore?

MOORE: Mrs. Smith, we've also asked Mr. Schuler, who is the Chairman of the Architectural Commission, to come today to give you, if you will, the Architectural Commission's point of view, but I'd like to give you some staff comments before you call on Mr. Schuler. Mr. Brindell has, notwithstanding his very excellent and quite accurate presentation of the presentation that was given to the Architectural Commission, there are a couple of mitigating factors here, which I think Mr. Brindell fairly touched on, but for obvious reasons, didn't elaborate upon. The existing house on the property, the existing square footage of 3,350 square feet is extremely large for the immediate neighborhood, and the single family use that's there. Quite correctly, he told you that there is a mixed use in that neighborhood, from a three story hotel across the street, to bungalows to the east, bungalows to the west, and a bungalow across the street. It is my remembrance of the Architectural Commission that in the discussions with the architect, and subsequently, Mr. Brindell representing Mr. DeMarco, that the Architectural Commission asked them to concentrate more on addressing the comparison of this single family residence to the single family residences that would be the same usage in the same immediate vicinity. I think that if you use the Brazilian Court or any of the commercial buildings or any of the apartment buildings, you can certainly can skew the allowable square footage under FAR and CCR, which is not currently a requirement in this Zoning District. In fact, only lot coverage is. I think Mr. Brindell correctly pointed out that this was only a 9,000 square foot lot, only 50 foot in width, and in fact, if you were to apply a standard in the–which is applied in the R-B District on single family residence, which this is, with the garage apartment–that permissive square footage would be 4,050 square feet based on a .45 floor area ratio maximum allowed. That's approximately 1,050 square feet more--- than their application is for approximately 1,050 square feet more than would be permitted if those rules were applied. I think there was given and take, and I'd like certainly Mr. Schuler to address that as the Chairman. This, and I did talk with Mr. Brindell regarding what the staff's position would be upon this. I think that this is prematurely before you, as under an appeal. I understand Mr. Brindell's reasons. I understand Mr. DeMarco's reasons for wanting to come directly to you, in short, without addressing further any of the Architectural Commission's concerns. But I think Mr. Schuler can verify, and I certainly from a staff standpoint can tell you, that in your review of this for your variance that you granted, you were not giving it a site plan review, as you would with a special exception. You certainly weren't looking at it for architectural design under a variance request, because that you've always left to the Architectural Commission, so in the event that you deem that this is here too early for you, you certainly would have the right to return it to the Architectural Commission to address the issues that the Architectural Commission felt were relevant, and that were not satisfactory to the applicant, who is here today. But with that said, I think that Mr. Schuler may have some additional comments that are maybe worthy of your listening to.

President SMITH: All right. I certainly would like to hear from Mr. Schuler. I would like to say before you do speak, Mr. Schuler, that I did read the minutes of the Architectural Commission, and immediately resisted the impulse to re-design this project, as I would have done if I was on ARCOM, and I do feel that...

SCHULER: We would have been happy to have you do that.

President
SMITH: Thank you Mr Schuler. And I do feel that the action taken by the Architectural Commission was wrong. I think you should have given a deferral. I think that Mr. Smith is a very fine architect and could have designed this project down to meet the criteria that you all were looking for, and I would have given a deferral, and attempted to keep working with the applicant. So, for whatever reason Mr. Brindell and Mr. DeMarco are here before the Council today, I hope it isn't because they think that the Council is an easier body to get by than the Architectural Commission. Because I think the Architectural Commission does so much good for the town in representing the neighborhoods and the sizes, and that's what I have to say, so please go ahead, Mr. Schuler, and I'm sorry I kept you waiting.

SCHULER: Thank you. That's all right. No problem. Madam President, John Schuler, Chairman of the Architectural Commission. I think that the minutes are clear. I think that they're self explanatory, and they are certainly clear relative to the objections to this particular project. The Commission did offer a deferral, going back to your statement, in an effort to resolve the issue, but the applicant, through his representatives, requested the denial. Now, I might mention that Mr. Brindell brought up the two times before the Architectural Commission, and I believe Mr. Smith can verify this—the second time that you came you have a different entry facade, and that's when we attempted to give a deferral to the project so that we could work together to resolve this particular issue. But they requested denial. Now, this is, as Mr Brindell pointed out, is a very long, rectangular building, which is out of proportion to the other residences in the neighborhood, and I think that this, if I recall correctly, Mr. Moore, is the largest house, residence, on that street. Am I not correct about that?

MOORE: I believe that is correct.

SCHULER: And I think too in looking at our mission, it is to provide for the town good architecture—that's the basic concept of the Architectural Commission. And I think we should protect the neighborhoods to ensure that a project is in proportion to the neighborhood, because proportion, in my judgement, is a very important aspect of architecture, because if the architectural design is not in proportion, then there is a problem from that aspect. So, what we approve today, whether it be at the Architectural Commission or the Town Council Meeting, the town is going to be left with it, and I think that there are someways to improve this project, and I would suggest that you return it to the Architectural Commission with no comments, because we had wanted to work out a deferral with this particular applicant. Now, I'll be happy to answer any questions that you'd like me to answer.

President
SMITH: Thank you Mr. Schuler. Mr. Shaw?

SHAW: If I'm correct in what I'm reading, the motion was made by Mr. Wideman to defer the project until a more reasonable sized project could be presented. Motion died for lack of a second.

SCHULER: So let me answer that question for you. Should I?

President
SMITH: Go ahead Mr Schuler.

SCHULER: All right. They immediately spoke up and said they would prefer a denial, and that's exactly what happened. So no one then stepped forward and seconded the project.

SHAW: You just said they would prefer a denial?

SCHULER: They said they would prefer a denial. That's exactly what they said, and that's in the minutes also. Not a deferral.

RANDOLPH: So that you have an understanding of why that is, is because under our Architectural Commission Ordinance an applicant is entitled to relief within 30 days of the filing of the action, and if it appears to an applicant that they are not going to get the relief that they are seeking, they may wish that the application be ruled upon so that they can pursue their appellant rights as opposed to having to continue to go back before the Architectural Commission on one or more occasions before they ultimately appeal. So it's just exercising a right under the ordinance.

SCHULER: But if I'm correct, I think if a deferral is voted upon, they still have a right to go back with the deferral to appeal it. Am I correct?

President
SMITH: They can appeal a deferral to the Town Council.

SCHULER: They can appeal a deferral to another body. In this case, it's this body.

RANDOLPH: Basically what they're doing in appealing a deferral is not accepting the deferral. They're saying we want to go back to the Town Council. So, I think that to preserve their right to appeal they just said we do not want a deferral; we want to go to the Town Council.

Councilman
WYETT: I think you have to balance something right here, so it's not misunderstood. In speaking to Mr. DeMarco, he communicated

in his private appeal to me that he would—the reason he asked for a denial because if he couldn't get pretty close to the house he had submitted, he'd rather vacate his option to buy, and try to find another location. That may be the Town's option. It may be the best course. It may not be. It's for everyone to decide. In defense of this particular site, it's not the greatest site in town, with that big building behind us, and with the rear end of the Brazilian Court in front of you, so there's a problem there. That doesn't mean Mr. DeMarco is entitled because of that, but I think it's a mitigating situation. He has an option to buy, and he has revealed that price, and the other side of this is what is the zoning; what is ARCOM's prerogative relative to the zoning; what are the rights of the citizens to depend upon; and are we diminishing a valuable piece of property by saying that you must build substantially—I don't mean a little bit—a substantially under code, zoning code, that is. I mean, those are all questions. I'm not sitting here as Solomon with the answers, but I think it's fair to present them.

SCHULER: Well, Mr. Wyett, I think it is fair, but I think I want to go back to one statement I made. Everything is geared to the proportion of the structure relative to the neighborhood and the piece of property involved, and that's very important. And you have served on the Architectural Commission, and you've seen that, I'm sure, on many occasions. I know Ms. Smith has. So, we, as a commission, have to take all of those factors into consideration, and if we don't, then we're not doing our job.

WYETT: Oh, I completely agree with you. John, I wasn't giving you an opinion on which way it should go. I was just saying that adding in all of the other factors involved.

SHAW: Before the demolition permit was granted, if I'm correct, the plans that are—the original plans that were presented to you were seen.

SCHULER: I beg your pardon.

President SMITH: What was the question?

SHAW: Before the demolition permit was granted, the plans that the original plans were reviewed by ARCOM?

President SMITH: For the new house? Mr. Smith is nodding yes, is that correct? I think the question was, did the Architectural Commission review the plans for the proposed new house prior to the demolition permit being granted?

Harold SMITH: Those plans were presented at the same meeting at which they approved demolition of the structure, yes.

SHAW: Was the house that was on the property as massive, or as forward sitting on the lot as high as the house that's proposed? How—I know about the square footage, I'm talking about, as you said, the impact on a neighborhood.

MOORE: The house is still there. I don't think they've demolished. You haven't demolished have you?

Harold SMITH: No the house is still there.

MOORE: The house is still there.

President SMITH: Hasn't bought it yet. Right. Is that what I understand, that the purchase is contingent on getting the approval for the house plans. So if it hasn't been bought it hasn't been demolished.

SHAW: But the demolition permit was granted.

MOORE: The approval was granted.

SHAW: Right. Okay. What I'm trying to establish—is the house that is there now, from a street standpoint, and from I guess the neighbors' standpoint, more, less, or similar in size as what is being proposed to go on the lot?

Harold SMITH: It is somewhat larger.

President SMITH: It's a lot larger, Mr. Smith. We've all looked at the figures. It's a lot larger.

SHAW: I'm talking about the street scape. We're looking at pictures of houses. I don't know what's behind a wall. I have no idea what's going 100 feet down the line. I'm driving down the street and one of the issues of balancing of homes is that they blend with the neighborhood. Does this house, do the plans for this house blend with what is there?

Harold SMITH: If I can show this diagram that we've done. We've overlaid the mass of the existing side elevation, looking from the west and looking from the east. The front of the existing house is a the same setback as the existing. We're proposing the same front setback. You can see that the vertical plane of the wall extends about a foot and a half higher than the existing parapet line. From there you have a sloping roof that goes up another four feet. And you can see that from front to back...

BRINDELL: I want to point out that sloping roof, by the way, was something we did in response to recommendations from some ARCOM members as opposed to the original flat roof design which would have actually been lower. He thought was that the angled roof actually looked shorter perhaps, or less imposing.

Harold SMITH: I have a couple photographs looking at the property from various points on the street. A pedestrian approaching the property from the west on the sidewalk would have his view of the property which is beyond this pink wall obscured by landscaping and the pink wall. Of course the house would rise slightly above that. The overall height is probably 8 feet higher than the top of that wall. From the east you see—that's the existing house—we're obscured by the roofline of the adjacent house. Until you get right up to the house you wouldn't even see the mass of the house toward the rear of the property.

SCHULER: Madam President, one thing I might mention is that when Mr. Smith first came with their first presentation there was a question relative to the facade of the house and he was requested to re-design that and come in with some setbacks at various points which would maybe change the appearance. He did do that, but then the second time he came back with a different facade, right?

Harold SMITH: That's correct.

SCHULER: And I think that the idea of the setbacks had a lot of merit to it, but yet we never got the----the last time that was all changed and there was a different entry, so I'm not saying that the first one would have been approved. I'm only one member of that Commission, but I'm saying that there were different presentations involved in this thing.

President SMITH: And you never thrashed out the final details on either one because you went for the denial. I still think that you could have worked out this project by taking the second floor and setting it back, or doing any number of things in design criteria to make it appear less massive from the street. And I do think that your appeal before the Council is premature, and if I were in a position to make a motion I'd send it quickly back to ARCOM. I'm sure this can be worked out, because I know you can do this Mr. Smith. You're a very good architect, and it's the massing from the street that appears to be the major problem, and the fact that it's out of proportion. And slight reductions and moving it back, I believe, could easily be accomplished in working with the Architectural Commission.

SCHULER: I might say, Ms. Smith, that the Commission has always been very receptive to working with the applicants. Now there are some that we never have totally resolved, but not many. We have had people come back to the Commission after our suggestions and working with them sometimes two, three and four times, and they have said thank you for what you have suggested to us. We have a better house. So I'm saying that we're certainly available to do that, and I think I can speak for all members of the Commission in saying that they would be available to work on this.

President SMITH: Sure. I think that we have to wrap this up at this point. We've been working on it now for like forty minutes, and I don't think there's too much more that can be added. Mr. Brindell I know you probably want to finish up. Mr. Wyett would like to say something. So, which one of you----and the Mayor would like to say something, so which one of you would like to go first.

WYETT: I would yield to the Mayor.

President SMITH: All right. Mr. Mayor.

Mayor ILYINSKY: From a philosophical point of view, and I'm sure all of you are bored by this time to be hearing philosophies, but that's why I don't have a vote, so I can be philosophical. Over the years, we have learned to trust our commissions. We have sometimes disagreed with them, but nevertheless I have a very strong feeling about the kind of people who serve on these commissions, and while I may not agree with everything they do, I'm nevertheless perfectly willing to give them the benefit of the doubt because I helped put some of them there in the old days before I had no votes, and I think, for example, that because of the ARCOM, and this is a side winding compliment to Mrs. Smith on my right, certainly to Mr. Schuler, and anybody else in the room who served on that great commission, including you, Mr. Wyett, that Palm Beach is probably a better place to live because of them. And I think this is something which often slips by. We are not here to arbitrate. If, in fact, every objection that a lawyer brings back to us because he and his client don't agree with anything that the ARCOM has said, then I feel I will support the ARCOM one-hundred percent. And I feel that way about this house. I'm not an architect. I've never seen the house. I've seen a line drawing there. It appears to me that the house is enormous, and I'm simply saying that, while I don't have a vote, that I honestly believe that you should go back to ARCOM who seem to be very receptive about making some changes, and getting a house that we can all be proud of and enjoy looking at. Having said that I will shut up.

President SMITH: Thank you, Mr. Mayor. Mr. Wyett?

WYETT: I think the Mayor's sentiments are very good. I have a suggestion that would require an action of the Town Council. Part of mass is reduced by setting a house further back from the street line, and if I understand correctly, there is room to move the rear building back by 10 feet, am I correct?

BRINDELL: Well, the code required 15 feet, and the rear structure is right at 15 feet, but it is true that on the other side of that 15 feet is a parking lot and an office building. I mean, that's sort of what's there, so I guess physically, absent the code, there is probably no reason you couldn't move the house back 10 feet to be within 5 feet.

WYETT: Well, if the Council saw fit to allow you to petition us to move it back into the setback in the rear because that setback is an unusual type of setback, you could probably move the house back 5 or 10 feet, which would reduce the mass, and then ARCOM could review that and see if that helps settle the situation, plus any other agreements you mutually come together on, and I understand there is a procedure to go through that. You can't do that without a change order here at the Council, and possibly re-advertising it, whatever the rules and regulations are. I don't know if that would help or not, but I'm just throwing it out.

MOORE: I'm sorry I didn't get a chance to discuss this with Mr. Wyett earlier, but are you suggesting that they apply for a variance in order to deal with the architectural massiveness of the house?

WYETT: Yes. I mean because that way they could move it further back. I'm not saying the house cannot be changed, you know, and bring down some of the square footage if they can find a way to do it. I'm just saying in addition to that I think the town would benefit by the house being a little further back.

President SMITH: Mr. Brindell, would you like to address the variances that you got when you appeared before the Council originally?

BRINDELL: All right. I'll be glad to do that again.

President SMITH: I mean, I think there's a number of variances that we went through here, and...

BRINDELL: Well, two of them. There were four variances, but two of them were pro forma because one was undersized lot size. You can't deny those basically. I mean, people are stuck with the lots. Same with the 50 foot wide width of the house. Nothing you can do about that. The two real variances had to do with side yard setbacks, in which case we got a 7 foot setback on the west side instead of 10 for the house; 6 instead of 10 for the garage, both of which, by the way, correct me if I'm wrong, Mrs. Smith, is more than currently exists with regard to the house setback. So we actually did----we reduced the nonconformity of the current house, and on the east side the house now meets the----actually 13 feet from the side line rather than the required 10. So even though we got variances, we reduced the nonconformities. Let me just make three comments to you, or four perhaps. First of all, we didn't come here to try to end run ARCOM. We did not have any rancor with ARCOM. I think Mr Schuler will say that's true. It's just that Mr. DeMarco, who is to live in the house, has an opinion about what he thinks he needs in that house, and what he thinks is reasonable, and from his point of view not being over-aggressive about it. So we don't have a big dispute with ARCOM in that sense at that level. To go back, and he by the way, had no problem in dealing with ARCOM on what I'll call the superficial, the external architectural details of the house. Obviously, there have already been some rather significant changes made as a result of those deliberations with ARCOM. This is quite a different looking house than what we showed you in concept when we came here on the variances. Secondly, I quite agree with you, Mrs. Smith, I'm sure that Harold Smith, who is an excellent architect, and I believe not a relation of yours, I don't think, could design a house that we would all love, perhaps, particularly if it was designed in the–as a committee on a piece of property we didn't own and that we weren't putting money into, and we weren't living in. And that's really kind of the point here. Mr. DeMarco is the person paying for all this and has to ultimately want to live in the house that's designed. And as he indicated—alluded to when he stood up here, you can chop some square feet out, a little bit here and there, but where do you take it out. He's been through this exercise with Harold Smith, and you start making closets smaller, and you've only got a few of them to begin with. You know, from his viewpoint you produce room sizes that don't make a lot of sense. That's his opinion. I mean, he is a property owner. So that's the other half of this equation, I think. And I agree with Mr. Schuler, proportion is important, but we've shown you, I think, photographs and drawings of other properties, and there is a mix of scale here. I don't think the ordinance says you only pick out the structures that are single family in an R-C District, and that's all you compare it to. It doesn't say that. It says structures. It doesn't say single family structures. And there, I think is part of the dilemma here in terms of figuring out what's reasonable, plus the overall question of where do you go from here with these lots as they re-develop? So, Mr. DeMarco would like to have some direction to ARCOM, if you chose to send him back there, that the size of the house in terms of square feet and number of rooms in general distribution on the lot is not unreasonable, and that there may be a number of other design issues that ought to be worked on, and then Mr. Wyett's suggestion, which I think has some merit. There's no question, the further you move something back the more it diminishes from your view. That's true. I'm not an architect, but I think that's true. So, we're certainly willing to consider that too.

RANDOLPH: Can I give some direction first? Because the appeal here is whether or not ARCOM was right or wrong in its application of the criteria, and I think that's what you're called upon to rule on. And I think it's appropriate for you to remand to ARCOM as long as you remand with direction. In other words I think you first have to make a finding that they were either correct or incorrect in regard to the application of the criteria, and if you determine that they were incorrect in any way, then you can remand it back to them with direction. I don't think it's appropriate for you just to say that this is premature for us to hear; we're just going to send it back to ARCOM so you guys can work this out. I think that if a court were hearing this on a Petition for Writ of Certiorari or an appeal from this body, and you simply remanded it to ARCOM without direction, they would say well that's not what the appeal was all about, and I think the court then would remand it back to you and say, act on the appeal. And I don't think Mr. Brindell wants that either. I mean, because that's going to slow the process down.

BRINDELL: Well, that's what I said. What Mr DeMarco would like is for you to support his position that the square footage–the FAR, CCR–are not unreasonable, although there may be a lot of room for further deliberations with ARCOM on exterior features of the house, and even the issue of moving the house further back on the lot.

SHAW: Let me take a stab at this. I'm going to move that we approve this appeal, and that the reason being that the structure proposed, I do not believe, is excessively dissimilar from the other structures I the neighborhood, which include commercial, multi-family, and that the existing structure is following within the same guidelines as far as a front yard setback, so therefore, again, it is similar to what was there, and that this Council's already granted side yard setbacks which are greater than the present structure of the house, and that it does meet with the intent of the code.

President SMITH: I don't understand the motion. Could you repeat the beginning part where you said you're approving the appeal? What does that mean?

SHAW: This project was turned down because it says it was visibly and excessively dissimilar in relationship to any other structures existing for which the permit has been issues, and I'm saying that I don't believe that is the case, and that I believe that ARCOM needs to re-address it and accept the fact that the structure as presented is not excessively dissimilar, and that it does meet the criteria as outlined in the code, and that as far as the street scape, since that seems to be our new buzz word, or going to become one, that this house is exactly at the setback of the house that is presently there, and that the side yard setbacks that are on the project were approved by this Council, and that if ARCOM and the applicant need to work out some details as far as possibly if they agree to push it back a little bit further, to bring down a roof line a foot or two in order to keep it in better keeping, that would be what ARCOM should be looking at, but that as far as saying that it's not an acceptable design and excessively dissimilar, and those were the words that were in the motion, I don't believe that that's the case.

President SMITH: Is there a second?

McDONALD: I think, based on Mr. Randolph's comments, I 'll have to second the motion, because I think Mr. Shaw's logic is correct.

WYETT: Mrs. Smith, there's one flaw in the motion, I think. You picking up on my suggestion that they could possibly move the house back, and I'm not trying to back away from that, but it does take an act of this Council to let them move the garage back to move the house back.

SHAW: I'm not so sure that what they do in the front is any variance in the back. I know that Mr. DeMarco had said that he would be willing to move the house back if that was an issue. I don't know that that's an issue. I mean, if that's what he would like to give in exchange for something else, that's fine. But, that's not part of my motion that he move the house back.

President SMITH: But according to your motion then, you're saying the footprint that was submitted, you feel is fine, and you feel that the size of the house and the mass of the house is fine, and that the Architectural Commission was incorrect in their findings—is that our motion? Because I believe that if the motion passes, then the Architectural Commission will not be able to lower the house, or reduce the massing, or put it back with the lawyers. Please tell me what's correct. Mr. Randolph?

RANDOLPH: What I heard from the motion was that indeed the Architectural Commission would have the opportunity to have input in regard to the design, perhaps by lowering a portion of the roofline, or doing other things relating to the architectural integrity of the house, but that they shouldn't disapprove it because they think the house is too large from the standpoint of the footprint.

President SMITH: All right.

SHAW: I accept the fact that it's a complex issue.

President SMITH: Mr. McLendon?

McLENDON: I'd like to see Mr. Wyett's comments about the additional setback of the structures to be near the rear line. I think that would go at least part way toward ameliorating the appearance of some of the bulk, and I think that was a good idea, and my action on the motion would have that condition on it.

President SMITH: But that would take a variance that we're not in a position to grant today because any variance would have to be advertised. That's a totally different variance than the project that was submitted, and I can't vote yes on the basis that maybe this would be something that would be done. I still think it should have gone back to the Architectural Commission. I think the house is too big. I really do. The way it stands.

WYETT: There's another way to get a slight setback in this project. I don't know if it's sufficient, but ARCOM had instructions at their first meeting to change the facade of the building somewhat—instead of a building that was perfectly square in front, the architect came back with a setback on one side of the door of a couple feet, which left half the building at its original frontage, and half of the front a foot or two back–I think it's two feet. I looked at the plans, and I think you could probably again restore the building as being perfectly square so to speak, and eliminate the two feet that hadn't been set back without any change of rules and regulations by the Town, as one potential to look at. I wouldn't make a condition of it, but I think ARCOM might want to look at that.

SCHULER: Well, I think the main thing is that you're looking at a house here that's a very large rectangular building, which does not have the proportions to it, and is going to have to have some architectural work to bring it into a position where it is designed in an acceptable fashion. Now relative to Mr. Shaw's comments, I think that the Architectural Commission chose those issues out of the legal material that we are furnished to provide the reason. Now, the reason was clearly set out in the minutes, and it went into the aspect of the size of this building in relationship and proportion to the residences in that area, and it is a great deal larger. And I think that what we've got to do is...

President SMITH: There's no question about that. It's a thousand feet bigger.

SHAW: I'm not disputing the fact that it's larger. I am not saying that it's not.

President SMITH: It's much larger. If I can ask a question. If the motion fails to----Mr. Shaw's motion fails—could the Council send it back to the Architectural Commission telling them that the house does appear too large; that we concur with the Architectural Commission. We would favor Mr. Wyett's variance that it be pushed back 5 feet if the Architectural Commission would take that into account?

RANDOLPH: If Mr. Shaw's motion fails, then an alternative motion should be passed, and the only alternative motion that I can think of contrary to his is that you agree, you deny the appeal, and that you agree with the Architectural Commission, and then you send it back with direction that they give consideration to setbacks.

President SMITH: Incorporating Mr. Wyett's recommendations and the other. Okay. All Right. Is there any further discussion?

WYETT: I just want to bring out that having studied this, trying to act as a finder of solutions, between too large and too small, it's obvious that the petitioner could , by eliminating his staff quarters over the garage, eliminate 617 feet. That would bring the house to be only roughly 600 feet bigger than the existing house, but that's not going to accomplish too much, other than the numbers, because it's at the back and nobody can see that particular building, but it would certainly bring the house way down. On the other hand, I don't know if that's what ARCOM believes to be way down.

SHAW: For clarification, since I made the motion, I don't believe that I indicated that the square footage had to remain the same. I said the footprint.

MOORE: That's what I want to----because we've gone through one of these once before, down on Ocean Terrace.

SHAW: I did not say the square footage. I said that the front yard setback, and I said that the side yard setback, I felt, were in keeping, and I said that the house could be brought down as far as size, but I'm giving that up to ARCOM, and I'm not saying that the square footage cannot be cut back.

MOORE: Okay. So you're saying for my clarification purposes this time, because this is where we ran into a problem once before with another house that came on appeal when it went back to the Architectural Commission, and then eventually ended up back with you again, so to try to avoid that, you're saying in your motion that the variances that were granted on the site plan are certainly still acceptable.

SHAW: Correct.

MOORE: You're saying that the massing of the house can still be addressed, which does not necessarily mean that they would be allowed to keep the square footage that they have presented and was turned down at the Architectural Commission.

SHAW: Correct.

MOORE: And does the seconder understand that as....?

President SMITH: Are you allowing then, the Architectural Commission to reduce the size of this house?

SHAW: Yes.

President SMITH: Then what are you approving? Then why are you not sending it back?

SHAW: I'm basically saying that I don't believe that the motion that was made to deny is appropriate to the situation. I don't believe that this house, according to what the motion is. Now, if I need to have a transcript of every word that was said and go through the full dialogue, then that may be another issue for another time. But I'm working on what's here.

President
SMITH: But those are the—you were given A through G. I mean, it's by the book, and those are the ones that are too dissimilar. But I think we ought to call the question perhaps and get this straightened out. Mr. Moore?

MOORE: Well, I'm not sure Mr. Randolph's first suggestion may not be the suggestion that would be appropriate, and that is that you grant his appeal; that he's appealing the action for the reasons that you have stated that are in the minutes, but remand it back to the Architectural Commission with direction.

RANDOLPH: That's what he said. He did move to grant their appeal.

MOORE: Well we didn't understand it that way up at this end, and we're sorry, but we didn't understand it that way here. None of us----three of us didn't, so-- we want to make sure there is no misunderstanding.

RANDOLPH: My understanding is that he is granting the appeal because he does not agree that this house is excessively dissimilar from other houses, and that it was inappropriate in regard to the established character of other structures in the immediate area, and so he would grant the appeal in that regard, but remand it back to the Architectural Commission with direction that they look at the design and the square footage, but that the footprint is fine. You're fine with the footprint.

President
SMITH: You're saying the footprint is fine?

SHAW: I'm fine with the footprint, because we granted that footprint. We basically saw those plans and granted that footprint in a variance application for the side yard. So the footprint was something–

MOORE: So if square footage were to come out of the house it could come out on the second floor to address the mass, and I want to make sure the applicant understands that too.

SHAW: Absolutely. Absolutely. It can come out of the second floor. It can come out by reducing the footprint.

President
SMITH: I'm not sure that the attorney or the Chairman of the Architectural Commission understand the motion either. Mrs. Pollitt?

SHAW: Well then, if you want, I can withdraw and let someone else make the motion.

President
SMITH: No, no. Mrs. Pollitt. Let's call it and get it over with, and see what happens.

(Town Clerk Pollitt calls motion):

SHAW: Yes

MCDONALD: Yes;

WYETT: I don't understand what the motion is all about, so therefore, I can't vote; it has to be put in simple language for me

RANDOLPH: Then vote no.

WYETT: No.

McLENDON: No.

President
SMITH: No. Okay. Now, let's come up with something that— try another motion. Mr. Brindell?

BRINDELL: May I just make—while you're thinking, make an observation from this conversation? I really think that Mr. Shaw's motion and your follow up discussion is precisely the dilemma that property owners, ARCOM, and architects have as they try to go through this process. You don't think, if I've heard you correctly, based on what we've shown you, that what was proposed is excessively dissimilar, which is the criteria in the code, but then you say you can take out square footage. Do you see what I'm saying? What isn't excessively—you know, where–out to what point? And that's, I think the dilemma that we have, I mean, we don't have a beef with ARCOM members here. I mean, this is a matter of opinion and people's sense of things, but it is a difficult process, and Mr. DeMarco who is the man that is going to have live there ultimately, hopefully, is trying to find a house that he can live in; not something that we all think is a great way for Mr. DeMarco to live, and then we wave at him as we go past. That's really kind of the dilemma here. So, you know, some direction back to them. I guess what I'm saying is this. It would help all of us, because I'm not sure Harold Smith would know what to do at this point, unless you tell him–give him some direction, as Mr. Randolph suggested, about how to address ourselves on remand. We're not trying not to get a house. We want to get a house for Mr. DeMarco.

Mayor
ILYINSKY: Jim, I just have a feeling that Mr. DeMarco is not going to get the house that he apparently would want on that lot, and you're trying to get the sardines back in the can. I don't think it's going to work.

President
SMITH: Mr. McLendon?

MCLENDON: Well, how long would an additional variance require?

MOORE: It would have to be heard at the December Town Council Meeting, but that would not preclude you, under these circumstances, unless Mr. Randolph feels differently, from allowing the Architectural Commission to continue to work with the process while a variance is being applied for and advertised and then brought to you.

WYETT: That sounds like a very reasonable point. We're giving them the option of coming back in to adjust the variance, giving ARCOM the opportunity to make their suggestions and see if there is any meeting of the minds. Hopefully, they'll be able to meet and understand Mr. DeMarco's needs. Mr. DeMarco will understand the needs that ARCOM represents as being in the best interest of the Town, and it may be the proper route to take.

BRINDELL: If we were to pursue the variance to try to at least be in a position to move the house back further, is there any reason why you couldn't, if we could file an application in say, two days, is there any reason you still couldn't meet your notice requirements? I know it's not your normal, but in the context of this appeal, so that we didn't lose another month?

President
SMITH: For November?

BRINDELL: Ya. It's a simple variance, I mean, it's not complicated.

President
SMITH: I think the Council would be very inclined to. Mr. Moore, why not, since we're–

BRINDELL: I just don't what the time lines are for advertising at this point.

President
SMITH: Since we're going through this, and the idea coming from the Council is to push this back almost on the lot line. I mean, push it way back

Paul
CASTRO: If I could address that issue somewhat. Paul Castro, Zoning Administrator. The problem we have logistically is that they have to get the notification from the Property Appraiser's office, and they say anywhere between five and ten business days, and that's after, you know, we've met, and looked at the application. It is fairly simple, just moving the house back, but I don't know. I just don't know that we can get the notices we need by that time frame and be able to have properly advertised to the Palm Beach Daily News.

President
SMITH: But you're talking about an advertisement of a project that's previously been advertised for the variances it received earlier, and I believe what would be moved back would be the garage–is it the garage that's on the back line?

BRINDELL: Just move everything back.

President
SMITH: So you take the garage, and you take the pool, and you take the whole house, and you move it back.

MOORE: Everything moves back ten feet is what he's talking about.

SHAW: How does moving this whole project back change the mass?

MOORE: It doesn't.

SHAW: I mean, all you've done is taken the box and done that. You've got the same house.

BRINDELL: But let me point out to you something here. In the code it talks about visibly, excessively dissimilar. Visibly. So what you see, what you perceive, is important here. That's the trick you try to get the architects to design to.

SHAW: If you're going for it, that's fine, but you've got a house that you're building exactly where the existing house is from the front side, and is more than the existing house is now. So, I don't see where this is more dissimilar as far as the front and the side yard setback than is presently there.

BRINDELL: It isn't. The fact is from the street this house, and that was the point we were trying to make with showing you the street elevation. It isn't bulkier, bigger, higher, wider, than what sits there today, or other houses on the street. It is longer. It is longer.

SHAW: It is longer, and that's what makes–

MOORE: Well, it's almost 70% bigger, Jim.

SHAW: But it's in length.

BRINDELL: Not width wise it isn't. Not height wise.

MOORE: Not width, but the house is almost 70%--

BRINDELL: But we were talking about from the street. And that was his point. From the street, if you look at it from that plane, it is not higher–it's a little bit higher than some; not as high as others; it's not any wider than the house that's currently there. In fact, we increased the setbacks, side yard setbacks, in both cases over what's there now. It is longer.

WYETT: I think my suggestion will allow you to get a special ruling from the Town Council allowing to adjust the advertising period. I'm taking into account that this has been advertised once before for site plan approval. This really just improves that from the street. And if ARCOM feels they're comfortable with that, it may help them, and you'll arrive at a joint decision. I understand from your point of view that a December hearing here, which would be normal, now creates a full month delay from your original plans. It's true that you never expect to go through ARCOM in one hearing necessarily, although many do. So it's merely whether the Council with staff recommendations will enable you to save a month. Otherwise, you'll do it in December, and you'll still get the same effect.

MOORE: The burden, Mr. Wyett, would be on the applicant in order to meet these deadlines we're talking about, and we'll so announce it at this point. We would need his complete application, including the mailings that would be involved to the abutting property owners, by Friday, this Friday, at noon. Without that, they would forfeit their November and move to December.

WYETT: Is that acceptable?

BRINDELL: Sure, we'll do our very best. I will go back right away. Well, I understand that. If we can't meet that, then we can't meet it, but we'll try to meet it. We'll try to meet it.

MOORE: Otherwise, we don't get the advertising, and we need that.

BRINDELL: We'll try to meet it absolutely. I understand that. Sure. I think we can. But, I mean, I'm speaking for two other people who work for me who may tell me I'm crazy, but–

MOORE: I'd hate to be Kim when you tell her that.

WYETT: Is there a motion on the floor?

President SMITH: No, I'm thinking you're going to do one.

WYETT: I make the motion that the Town Council accept early advertising, if that advertising is completed, and all the other processes outlined by Mr. Moore, by Friday, any particular time?

RANDOLPH: You don't need a motion for that. What you need for a motion now, since the motion to approve the appeal failed, is you need a motion to approve the decision of the Architectural Commission.

President SMITH: And remand the project back.

MOORE: And remand it back.

President SMITH: And remand it back with your recommendations, Mr. Wyett.

MOORE: With your recommendation to set it back.

WYETT: All right. I recommend that in the form of a motion, that we sustain ARCOM's initial refusal on–that we support ARCOM in its decisions for denial, and remand it back to take into consideration a new advertising of siting, and what other compromises, the two parties, meaning ARCOM as one party and Mr. DeMarco as the other party, to reach some reasonable agreement. That's the end of my motion. I just do want to make a comment. I went over the inside of this house, and I could probably take off a couple hundred feet, but I don't think I'd want to recommend that there be less than three bedrooms in a house, nor that the rooms be narrower than eleven feet wide, or a few things of that nature, so I just hope that ARCOM finds some way to let a reasonable house go up, so that we can get rid of what's there, which is not very good.

MOORE: Those were comments.

WYETT: Those were comments.

President SMITH: All right. Is there a second?

McLENDON: I'll second it.

President
SMITH: Thank you. Is there further discussion? Mrs. Pollitt?

Town Clerk Pollitt proceeds with roll call:

WYETT: Yes.

MCLENDON: Yes.

MCDONALD: What does the applicant—is this acceptable to the applicant?

BRINDELL: Well, as far as I understand, we'll go back.

McDONALD: Okay. Yes.

SHAW: Yes.

President
SMITH: Yes. Thank you, Mr. Brindell.

BRINDELL: Thank you very much.

********* End of Verbatim Transcript**********

2. **Appeal of Town Ordinance No. 11-95, Section 5-379(3), Architectural Commission Membership Attendance Requirement, by Dr. Marvin M. Rosenberg**

Councilman Wyett commented that it had come to his attention that a few members of the community think that he had a business or financial relationship with Dr. Marvin Rosenberg. He explained that Dr. Rosenberg and his family and he and his family were good friends, often going out together, however, he never had, never would, nor never intended to have any financial relationship of any manner. He noted that he had disposed of all properties other than his own home in the Town, upon election to the Town Council in order to avoid any improprieties, or impressions of improprieties, and maintained no interests in the Town financially other than his own home.

Director of Planning, Zoning & Building Robert Moore reported that this matter was before the Town Council as a result of Ordinance No. 11-95, which specified that a member or an alternate commission member may not miss more than two meetings that were unexcused during the calendar year. Dr. Rosenberg had missed three meetings during the past year, and had been advised by letter of the attendance requirement, as well as the fact that, if it was the result of extenuating circumstances, he could appeal to the Mayor and Town Council.

Councilman Shaw commented that he had noticed that there were two unexcused absences and one excused, and asked if Dr. Rosenberg had provided information as to the other absences?

Mr. Moore replied that Dr. Rosenberg had advised the Building Department of the absences.

Councilman Shaw asked Town Attorney Randolph to explain the difference between lack of attendance as defined as failure to attend three or more meetings in a calendar year, or more than two consecutive, as stated in the ordinance?

Mr. Moore replied that originally the ordinance had been set up to allow a member to miss three meetings, but that had been changed and the remaining wording had not been changed; thus the confusion in the language. He explained that Dr. Rosenberg had not communicated that his absences were as a result of the illness of his mother, and the absences would have been ruled as excused, however, that had not been communicated until after the fact.

Councilman Shaw moved that Dr. Marvin Rosenberg remain on the Architectural Commission, and that he communicate the reasons for any absences in the future. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

****** A five minute break was taken at this time*****

B. **Variances, Special Exceptions, and Site Plan Reviews**

Old Business - Major

1. **SPECIAL EXCEPTION NO. 43-97 - Testa's, 219 & 221 Royal Poinciana Way; located in the CTS Zoning District; to allow live music in the restaurant, thereby establishing a "night club" within the definition of**

same set forth in Section 4.10, Schedule B, of the Town zoning code. *(Condition of Approval at the November 12, 1997, Town Council meeting was to return before Town Council to discuss any issue or concern that may have arisen from the issuance of the nightclub license. To date, the applicant has not implemented this Special Exception approval - Deferred from June 9, 1998)*

Zoning Administrator Paul Castro reported that he had received correspondence that Testa's was going to let their approval lapse, and had no interest in pursuing the nightclub aspect of Testa's.

Councilman Wyett made a motion to remove Special Exception No. 43-97 from the Agenda. The motion was seconded by Councilman Shaw.

Councilman Wyett commended Testa's for the appropriateness of the withdrawal.

On roll call the motion carried 4/0 as Councilman McDonald had temporarily left the room.

2. **<u>VARIANCE NO. 34-98</u> - Sydell Miller, 1415 South Ocean Blvd. (also known as 1420 South Ocean Blvd.); located in the R-AA Zoning District; to allow construction of a front yard wall at a height of 9' above the crown of the road in lieu of 6' maximum allowed. *(Deferred from July 14, 1998)* - Request for Deferral to December 8, 1998, per letter dated September 10, 1998, from Mr. Robert E. Deziel**

3. **<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, and September 8,1998)* - Request for Deferral to November 10, 1998, per letter dated October 7, 1998, from Mr. James R. Brindell**

4. **<u>VARIANCE NO. 41-98</u> - Sun & Surf Association, 100 Sunrise Ave.; located in the R-C Zoning District; to allow construction of a driveway entrance setback 3' from the pavement in lieu of 18' required. *(Deferred from September 8, 1998)***

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

Attorney Greg Kino addressed the Town Council on behalf of Sun & Surf Association, stating that a gate variance had been requested last month in order to allow a sliding gate for a service delivery area to be located within 3' of the asphalt pavement on Sunrise Avenue. The gate would be opened at all times during normal delivery hours, and also for part of the day on Saturday. In the event the gate was closed, staff had expressed concern about a stacking problem that could be created. He had met with staff on site, and believed that a satisfactory resolution had been made. He displayed a graphic of the site in question, explaining the 20' stacking space from the gate back to a newly created curb, with additional landscaping that would not interfere with cars exiting Sun & Surf. The gate would also be opened a half day on Saturday; someone would be on site at all times to open the gate. The hardship was the irregular shaped parcel, with a 50' piece of property that did not lend itself to a reasonable use. There were no other alternatives.

Zoning Administrator Castro advised that because of the constraints of the site, it would be impractical for the applicant to place the gates back 18' as per code, and get the accessibility needed. Staff recommended approval with the provision that the gates be left open during the day in the week, and partially on the weekend.

Councilman Shaw moved approval of Variance No. 41-98, with the hardship being the lay of the land, and the interest of public safety. The motion was seconded by President Pro-Tem McLendon.

Councilman Wyett questioned why staff was recommending that the gate be kept open, as there were not that many deliveries, and it would not be aesthetically pleasing. He suggested that the gate could be opened on demand with an electric eye.

Mr. Castro replied that staff had suggested that the gate remain open because of the fact that the manager's office was far removed from the gate itself; each delivery person would need to know any combination used with a key pad, and security was an issue. He agreed that an electric eye was a logical solution.

Councilman Wyett recommended that the gates remain closed, and opened by an automatic electric eye, which would be shut off at appropriate times.

Attorney Kino agreed that the idea would be considered, and the applicant would report back to Mr. Castro with the results.

On roll call the motion carried unanimously.

New Business - Major

5. **VARIANCE NO. 46-98 - Bjorn Q. Aaserod, 242 Country Club Rd.; located in the R-B Zoning District; to allow construction of a railing over the 1st floor garage (carport) area providing a 2nd floor deck at 5.5' side yard setback in lieu of 15' required; and to construct a trellis behind the garage (carport) providing a 5.5' setback in lieu of 15' required.**

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

Attorney Stewart Gottlieb, representing the property owner, addressed the Town Council, stating that the architect Blue Mingus would display drawings of the proposed construction.

Mr. Mingus explained that the variance application was relatively simple, seeking to alter or reconstruct a building or structure which was currently nonconforming. A portion of the current residence currently encroaches on the 15' side setback.

Mr. Gottlieb explained that the owner wished to enclose the carport, fence in the top portion of the garage so as to form a deck, and to place a trellis at the rear of the garage to be in the same nature as the anticipated trellis along the rest of the rear of the house. Under code, the owner could not complete the proposed construction without a variance because the present structure was nonconforming. The property would be improved, and the proposed alterations would not negatively impact any of the nearby property owners.

Director of Planning, Building & Zoning Robert Moore gave the following staff comments: Comprehensive Plan: expansion of nonconforming condition; privacy issue no hardship. Building Department: no objection to trellis, no hardship with new deck 5' from property line. Town Manager: concurs with Building Department. He explained that there was no variance required to close in the carport.

Mr. Gottlieb explained that the hardship for the variance was that the house needed to be made to look architecturally acceptable to the owner, and the deck needed to be expanded to the end of the house.

Councilman Wyett moved approval, commenting that there was some question as to whether the deck should be allowed, and that it should be an area that people are not encouraged to use on an active basis, therefore recommending that the doorway going out to the deck be eliminated, as well as the decking material that makes it convenient to use the deck. Councilman Shaw seconded the motion, commenting that the letter of no objection cited by Mr. Gottlieb did not reference this application.

On roll call the motion carried unanimously.

6. **VARIANCE NO. 47-98 - Horst Niehues-Paas & Rebecca Weerth, 250 Pendleton Ave.; located in the R-B Zoning District; to allow construction of a driveway & walkways providing 26.69% landscape open space in lieu of 40% minimum required, thereby allowing a front yard landscape open space of 35% in lieu of 40% required.**

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

Attorney James Brindell, on behalf of the applicants, addressed the Town Council, stating that he wanted to correct the record, as the original plans had been revised based on staff comments, and as a consequence there would actually be a 2% improvement in the overall landscape coverage from 30.38 to 32.39, which was still less than the 40% required by code, but was an overall improvement. There was also a 40% front yard open landscape requirement in this district; the existing house had been at 78.5%, and the proposed re-design was at 61.4%, but still substantially greater than the code requirement of 40%. The reason that this was being done was that the owners had a handicapped child who needed wheel chair access. They also needed a live in nurse and a place for a specially equipped van. Mr. Brindell explained that the existing house had a very large L-shaped pool that took up almost the entire back yard. The pool would be reduced and there would be much more open and green space; the driveway would accommodate a van, and the walkway would provide an entrance for the nurse.

Zoning Administrator Paul Castro noted that the current plan was substantially different from the original plan submitted. One of the changes had been the driveway on the east side of the property to accommodate the van, where pavement had been removed and green area added; green area had also been placed on the west side of the property.

Attorney Mark Payman from the law firm of Schutts & Bowen, on behalf of Mrs. Kane Tilney, resident at 245 Pendleton, objected to Variance 47-98, as his client understood the special needs of her neighbors, but was also concerned about the proposed improvements and how they might affect the property values on the street and how they may affect the aesthetic values from her vantage point. He explained that the homes in the area had minimal setback requirements and needed the landscaped open space minimums to maintain privacy and the aesthetic values. There would be no problem with nurses or other attendants parking on the street and accessing the property.

President Smith suggested that hedging could be run along the street side, and commented that several homes on the street had double driveways, and noted that many houses on Pendleton had recently been renovated and the street was looking much better.

Zoning Administrator Paul Castro noted that the Public Works Department would require for the driveway on the east side of the property that a 6' wide flare be maintained, 3' setback from the property line with 3' flare; in addition they would require the applicant to enter into a Sidewalk Removal Agreement for placing of brickwork in the right-of-way.

Attorney Brindell agreed with those conditions.

Councilman Shaw moved approval of Variance 47-98, incorporating the requirements of the Public Works Department, with the hardship being the lay of the land; the lot was small, there was a decrease in the nonconformity, and the granting of the variance would not make the house look any different from the majority of the other houses on the block and would keep with the character of the street. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

7. **<u>VARIANCE NO. 48-98</u> - Ronald S. Kochman, (James A. Bridgeman, owner), 232 Phipps Plaza; located in the R-C Zoning District; to allow owner to adapt the interior of the garage to habitable space thereby eliminating the two required garage parking spaces.**

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

Attorney James Brindell, on behalf of the applicants, addressed the Town Council, stating that the request was for a variance from the requirement that at least one required parking space be in a garage in the R-C District. The house had been landmarked in 1982 as part of the Phipps Plaza Historic District. The house had undergone modifications through the years, and in 1957 the house had been remodeled as a residence in the garage area, and the applicant wanted to return it to be part of the house in keeping with the character of the house when it was built.

Town Clerk Pollitt administered the oath to Architect Jacquie Albarran de-Mendoza, as well as all others who had not yet been sworn, at this time. Ms. Albarran de-Mendoza exhibited a drawing of the proposed adaptations to the property, explaining that the applicant would like to create a master bedroom, using the space that used to be interior space for approximately 60 years of the life of the building.

Attorney Brindell exhibited photographs of the area, showing the house in question and the parking provided to the structures of Phipps Plaza, almost all of which was either on street, or uncovered off street parking. The request of the applicant was consistent with that, and he maintained that the variance was supported by the fact that the lot was too small to add an additional room, the request would restore the house more closely to its original historic character and enable that historic structure to be more viable as a residence in the future. It would accord the applicant the property rights enjoyed by others in Phipps Plaza relative to parking without cover, and there would be no adverse impact to the public, since four vehicles could be parked on site, and out of sight.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: does not meet the criteria for granting of a variance, no hardship; Building Department: No hardship, would create a poor precedent; Town Manager: requests additional explanation of justification for the variance requested.

Attorney Brindell maintained that the hardship was in two parts: working within the confines of an historic, landmarked house; there was almost no covered parking in the area, and the house would be returned to its prior historic quality.

Councilman Shaw moved denial of Variance No. 48-98, as he believed it would not be an appropriate precedent. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/1, with President Pro-Tem McLendon casting a negative vote.

8. **<u>SPECIAL EXCEPTION NO. 23-98</u> - Peabey Associates, 249 & 251 Royal Palm Way; located in the C-TS Zoning District; to allow expansion of The Tavern restaurant at 251 Royal Palm Way from 5,840 sq. ft. to 7,074 sq.ft. A request for shared parking under Sec. 6.21 (I)(1) is made to provide 13 required parking spaces to be shared with other tenants on the same property.**

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

Attorney Brooks Ricca, representing The Tavern, addressed the Town Council, stating that the request today was to expand the restaurant by adding 1,234 sq. ft. to the existing restaurant. He exhibited a drawing of the proposed expansion. The current restaurant had 150 seats, and the expansion would add 46 seats in the dining room area of the restaurant. The second part of the request was for a special exception for 13 additional parking spaces, which the restaurant would be required to have if the dining room seats were added. Shared parking was being requested in order to accommodate the requirement. The two main reasons for the request for expansion were: 1) to better serve the existing clientele; 2) the new area would allow a meeting to take place, or a private dinner. The Tavern currently utilized the six story parking structure to the north of the building. That parking structure had approximately 268 parking spaces. Attached to the application were exhibits A and B that covered criteria for a special exception. Also attached was a shared parking analysis, which showed the usage of the parking garage. He explained that the restaurant was in a mixed use building, where there were offices also, and after 5:00 P.M. the entire garage was vacant. Mr. Ricca noted that The Tavern did have a nightclub license, and as part of the request for the special exception, the nightclub license would be given up.

Director of Planning, Building & Zoning Robert Moore gave the following staff comments: seating will conform to life safety and building code requirements; Comprehensive Plan: continuing signage problem–the use of sandwich boards should be terminated; problems with valet service should be addressed; approval may aggravate existing problems; Building Department: Town serving must be addressed, nightclub license must be abandoned, valet service must be improved. Town Manager: concurs with staff comments. Mr. Moore noted that the parking/valet issue was most aggravated during the lunch period, not the evening period, and suggested that a condition of approval be an analyzation of the lunch traffic by a traffic engineer, and the requirements recommended by the traffic engineer should be imposed.

Councilman Wyett suggested that any approval contain the provisions that the room with the additional seating not be used during the day, primarily lunch time (because of the parking/valet situation) giving up the nightclub license, eliminate any grandfathering, with closing at 1:00 A.M.

Mr. Ricca responded that the building management was not aware of any complaints from tenants of the building regarding the valet parking. The intention was to upgrade the valet service, however, that valet service was not someone with whom The Tavern directly contracted.

Ms. Pat Kennedy, proprietor of The Tavern, addressed the Town Council stating that the valets were given ample notice whenever more than the usual number of people at lunch time.

Mr. Moore commented that complaints from the tenants of the building had come to the Code Enforcement Department.

Councilman Shaw commented that the valet service of the building was not there for the restaurant, but was there for the building, so any visitor to the building was obligated to use the valet service, and even if the restaurant was closed, the valets were busy; there was therefore an ongoing compounded problem that had nothing to do with the restaurant. He noted that there was also an illegal sandwich board sign, which was not permitted, and that the fire lanes were often blocked with cars parked for people using the building. He also suggested that any approval include the condition that the restaurant license permit be changed to any other type of license without coming before the Town Council, and that if there was any change of use, such as dance floors, or other activities that are not included in the normal use of the restaurant, the applicant also come before the Town Council.

Councilman Wyett moved approval of the increased seating to 196, provided that the increase be used only in the evening hours, after 5:00 P.M.; that the nightclub license be given up in such a manner that it could not be re-issued, no grandfathering; that the 1:00 A.M. closing hour be observed; that any illegal signs under the responsibility of The Tavern be removed or renovated to meet requirements; that shared parking be approved for the evening hours only. President Pro-Tem McLendon seconded the motion.

Mr. Moore brought up the issue of Town serving.

Mr. Ricca responded that he had a letter from the accounting service indicating that the patrons of the restaurant were 85-90% of Town people.

On roll call the motion carried unanimously.

9. <u>SPECIAL EXCEPTION NO. 24-98</u> - Paramount Church, Inc., The Paramount Building, 139 N. County Rd., Spaces 37 & 38; located in the CTS Zoning District; to allow said spaces to be used for school purposes.

Ex-parte communication was declared by Councilman Shaw with Attorney Ricca, and with the President of the Sun & Surf Condominium, and the proprietor of Café Spagnola.

Attorney Gene Lipscher from the law firm of Alley, Mass, Rogers & Lindsay, addressed the Town Council on behalf of Paramount Church and the applicant, South Florida Bible College and Theological Seminary, seeking approval to use spaces 37 and 38, to conduct Bible study classes once per week, beginning in November. He noted that the use was compatible to the existing use, and there would be no adverse effect on the surrounding properties.

Zoning Administrator Paul Castro commented that the Zoning Code did not address college courses, and in this case the application was for a college credit type of course for theological school. He advised that the parking issue was a concern; the Code allowed the Town Council to look at parking separately as a condition of making sure that it would not negatively impact the surrounding properties; consideration should be given to the number of parking spaces needed for 18 students and a teacher on Monday evenings, from

6:30 - 9:00 P.M.

Attorney Brooks Ricca, representing the Sun & Surf Condominium, addressed the Town Council, stating that he had requested that this item be deferred, as less than 30% of the condominium residents were in Town, and were not aware of this request. He noted that they were not necessarily going to fight the issue, but would like the opportunity to consider it. He maintained that one concern of the residents next door was that the whole building may turn into a school, and that the building should remain as a commercial space. He referred to the fact that the situation was not addressed by the Town Code, and the parking situation was also a concern of nearby residents. The Paramount building literally abutted the Sun & Surf property, and parking may be difficult.

Responding to the question of President Smith relating to the request for Bible classes from the Baptist Church, Mr. Moore replied that two different locations had been contemplated, and one had not been acceptable to the Town, and the subsequent location at the gymnasium at the Palm Beach Public School had been accepted as a more appropriate place. He commented that the use of the building was for retail and office, and school was a permitted use in the Town as a special exception. The Town serving issue must be addressed, and the use of the building would have to be considered by the Town Council. He suggested that a deferral may be in order so that the applicant could make the application more specific so that any concessions could be addressed.

President Smith expressed concern that the application was made by the Paramount Church, however, the literature presented was from the South Florida Bible College and Theological Seminary.

Town Attorney Randolph explained that the owner and tenant were listed in special applications, and the owner was Paramount Church, and the applicant was South Florida Bible College and Theological Seminary.

President Smith clarified that the application was being made by the college to hold classes in the Town of Palm Beach in the Paramount Building.

Mr. Lipscher addressed the deferral issue, stating that the college had not plans to expand the once per week Bible study classes; even if they decided to do so they would have to come back before the Town Council to obtain approval.

Dwight Stevens, Pastor of Paramount Church addressed the Town Council, stating that he was a professor of Theology of the college and would be teaching the class. He stated that there was no intention of having more than one night per week of class at any time in the future; members of the church had requested the classes; there were nine pre-enrolled students, with six of those being Town people. He addressed the issue of parking, stating that the Paramount had its own parking lot of 51 spaces, and the lot was virtually empty at night after 6:00 P.M., and there thus would be no need to park on the street.

Councilman Shaw commented that the issue should be considered as a landlord/tenant issue; the landlord had acquired a commercial building abutting a residential zone, and the change in the use of the building gave him some concern, as he did not believe that the residents would be served in the commercial capacity for which the building was designed, and in keeping with the Comprehensive Plan; the tenant of the building would have to be compatible with the designated use. He summarized that he thought it was the wrong use for the building, and the wrong use for the zoning.

Pastor Stevens responded that the building was a landmarked building, and all of the spaces on the ground floor were retail spaces, and all of the spaces on the second floor were office spaces; a very small percentage of the building was used as a church.

Councilman Shaw commented that he believed it was the approach of the landlord of the building to provide reasonable or reduced rentals for non-profit and charitable organizations; if the use of the building now changed to a tax-exempt entity there would be ramifications to the Town.
He explained that if the entire building became tax exempt because of the uses, and if the design of the leases were for non-profit that would change the use, and those were his concerns.

President McLendon mentioned that most churches had Bible study classes, and asked why the classes couldn't be considered part of the Paramount Church activities?

Pastor Stevens replied that the classes would be held for two and one-half hours one night a week, and there was a significant number of people requesting that; college credits were available for those who would like to obtain ministerial degrees in the future.

Mr. Louis Spagnola, proprietor of Café Spagnalo at the Paramount Building, read the following statement:

My being here involves two serious concerns which I have with the present issues at hand. When I first came to Palm Beach and was speaking to residents about the Paramount Building, I was told of the great cultural and social history that the building provided to residents in years past. I was told that the building was a commercial property and that it was there to provide commercial services to its local residents. I decided, with that in mind, that this would be an ideal place to open my business. During my first year at the Paramount, all of these presumptions proved true. However, since the sale of the building to the present owner, I have felt that I have begun to misunderstand the situation which I am now in. I've always thought a commercial building was to house businesses and offices, which provided a commercial service to customers. To me, I always associated commercial zoning with something related to the sale of goods and purchases of goods. I was unaware that commercial zoning also included residential, religious, and not for profit, as also being acceptable under the Zoning statute. Personally, I have no problem whatever direction the present owner of the building chooses to take with his vision of the building, however, if I had known that businessmen who own buildings in the Town have the right to change the use of their buildings at their personal discretion, I certainly would not have signed a lease and opened my business at the Paramount Building. This is my first area of concern, which I'd like to voice. My second concern involves the issue of parking. Three years ago, when I came before the Town, I was issued seven parking spaces to be solely and exclusively used for my business by the Town of Palm Beach. Once again, during the first year there were no problems in handling this. However, at the present time, the businesses at the Paramount Building have a serious problem with *parking, as much of the rest of the Town does. My business, in particular, has a great concern regarding this issue, because without parking my business cannot function as a commercial tenant. Much of this concern also comes from the refusal of the present landlord to enforce my businesses sole use of the above mentioned seven parking spaces, which the Town of Palm Beach mandated that I have. I am sure all of you can understand my frustration, and can realize that by allowing more vehicles to come to the Paramount will only worsen the situation. This will certainly affect all of the commercial businesses at the Paramount Building. Hopefully, I have clearly expressed my two serious concerns, and now leave the present issues in your hands.*

Mr. Moore asked Mr. Spagnola to elaborate on the parking problem.

Mr. Spagnoloa replied that, for some reason, the office hours at the Paramount Building do not end at 5:00 P.M., and go on to later in the evening; parking spaces are not available, and the specific spaces for Spagnola customers are not enforced.

Councilman Wyett commented that there was a parking problem in the area, and people usually take the easiest parking space to find, rather than searching out available spaces; in any given evening in season all of the parking spaces on the street were taken. He mentioned that the Garden Restaurant had approached him asking for support for them to become a public restaurant, and he had advised them of the difficult parking situation in an already congested area. He noted that the Baptist Church had received permission to use the public school and there were twenty off-site parking spaces that only used on school property. He expressed that it was necessary to be fair to the residents in the area, and suggested that a deferral to December would be appropriate.

Councilman Shaw made a motion to deny Special Exception No. 24-98, on the basis that the request was not compatible with the use of the neighborhood. President Smith passed the gavel to second the motion.

Mr. Lipscher responded that the Town Council was assuming that something was going to happen that had not happened, i.e., that the whole building would turn into church related activities. He noted that Dr. Stevens had represented that would not happen. He also advised that there was a pending eviction action against Café Spagnola, and he wanted to let the Town Council know, for the record.

On roll call the motion carried 4/1, with President Pro-Tem McLendon casting a negative vote.

10. <u>SPECIAL EXCEPTION NO. 25-98 WITH VARIANCE</u> - 125 Worth Ave. Ltd. Partnership, 125 Worth Ave.; located in the C-WA Zoning District; to allow expansion of an existing financial special exception use (SE8-96) from 9,981 sq.ft to 10,660 sq.ft on the 2nd floor. A variance for the one additional required parking space is requested.

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

Councilman Shaw moved approval of Special Exception No. 25-98, as it was a Town serving business that was taking existing office space and swapping it for office space. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

11. <u>SPECIAL EXCEPTION NO. 27-98 WITH VARIANCE</u> - Three 50 Realty Corp. & Peruvian Ave. Corp., the Galaxy Grille, 350 5. County Rd. & Apollo Parking, 240/242 Chilean Ave.; located in the C-TS (restaurant) & R-B (parking) Zoning Districts; to allow the restaurant to expand from 5,175 sq.ft to 6,375 sq.ft, adding 44 seats; and to allow the restaurant to provide 15 required off-street parking spaces at the Apollo Parking Lot; said parking lot is 500' from the restaurant as measured to the proposed gated pedestrian walkway on the north side of the Apollo lot. In the alternative, if the proposed walkway is not approved, a request for a variance from the 500' maximum distance requirement is requested.

Attorney James Brindell requested that this item be heard at the end of the meeting, as he and the opposing attorney were very close to working out some mutually agreeable conditions.

****** A five minute break was taken at this time******

President Smith moved Item 11, Special Exception No. 27-98, to the end of the meeting.

12. <u>SPECIAL EXCEPTION NO. 28-98</u> - Lillian M. Rousseau, 336 South County Road; located in the C-TS Zoning District; to allow office space on the first floor; said office does not have direct access to a sidewalk fronting a roadway, nor does it have street frontage.

President Smith asked for ex parte communications. The Mayor and Town Council members declared no ex parte communications.

Greg Kino, representing Lillian M. Rousseau the owner of 336 South County Road, addressed the Town Council. He said he also represented the Revival Ministries of Palm Beach, Inc.

Mr. Kino recalled that he represented Mrs. Rousseau and C. Orrico at the same address. He said approximately 1,000 square feet was left after C. Orrico received approval to occupy the first floor. The 1,000 square feet does not have access off South County Road but does have access from a rear parking lot. At that time, there was no specific tenant to prove the Town-serving requirement.

Mr. Kino explained that Margo Messic Stevens is the president of this not for profit, tax exempt organization which is a non-denominational ministry which is not a church. The office will be strictly for administrative purposes. Responding to Mrs. Smith's question regarding using the premises for meeting purposes, Mr. Kino said they would be happy to go on record that the space will not be used for any church purposes or meeting purposes of that nature.

Mr. Kino said all of the special exception criteria had been addressed in the application. He said the applicant is Town-serving, and he would be happy to provide a list of participants who are Town-persons. Mr. Kino said there was good parking for the office at the rear of the building and respectively requested the Town Council's approval.

President Smith requested that Mr. Moore give his comments.

Mr. Moore said staff had only question, and that was how the Town-serving issue would be addressed?

Mr. Kino presented a list of active persons (24 total) who were part of the organization, and nineteen of those were Town-persons.

President Smith asked if this was a tax exempt organization?

Mr. Kino replied it was, and it was a 501(c)3 organization.

Councilman Wyett asked if the people who would be working in the office would live in Palm Beach or out of Town?

Mr. Kino responded they would live in Town.

Councilman Wyett noted if the workers came across the bridge, it might be harder.

Councilman Shaw said he read the organization "organizes weekly women's and children's prayer and Bible meetings in the Town". Councilman Shaw asked where these would be held?

Mr. Kino responded the meetings were very informal and were held in people's residences. The meetings were held generally once a week for a prayer session. Mr. Kino, responding to Mr. Shaw's Town-serving question, said the participants in the organization are Town persons.

Mr. Kino said the entrance, for convenience purposes, was proposed to enter into C. Oricco's.

Councilman McDonald moved approval of the Special Exception. Councilman Wyett seconded the motion. The motion was seconded with the provision that there will be no meetings or services. The activities should be confined to the normal activities of an office. On roll call, the motion carried unanimously.

13. **<u>SPECIAL EXCEPTION NO. 29-98</u> - 2875 S. Ocean Boulevard; 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.**

Attorney Peter Broberg, representing the applicant, requested a deferral to the November 10, 1998, Town Council meeting.

Councilman Shaw made a motion to defer Special Exception No. 29-98 to the November 10, 1998, Town Council meeting. The motion was seconded by Councilman Wyett. On roll call, the motion carried unanimously.

(Item 15 was heard next.)

15. **<u>SPECIAL EXCEPTION NO. 31-98 WITH SITE PLAN REVIEW & VARIANCES</u> - Henry Morrison Flagler Museum, 1 Whitehall Way; located in the R-C Zoning District; to allow construction of a 2,500 sq. ft. equipment enclosure on the roof. Variances are requested to allow the enclosure at a 40' height in lieu of 30' maximum allowed and to have two 10' high cooling towers that exceed the 3' height limit above the roof.**

Councilman Shaw made a motion for approval of the project based on the fact that the cooling towers are set far back on the property and do not infringe on any of the neighbors as it overlooks the Intracoastal. The motion was seconded by Councilman McDonald.

President Smith said she was concerned about the type of screening that would be used on the north side of the roof which is the part that is visible from the Palm Beach Towers' residents.

Architect Ken Brower replied that the north side is a blank wall with a cornice. Screening has been provided on the west side and the same type of screening could be used on the north side; although he thought the residents of the higher portions of the Palm Beach

Towers would be able to look down on the cooling towers. He said he would have to confer with the mechanical engineer to determine if something could be built on top of the cooling towers.

President Smith asked Mr. Moore if he knew of any type of screening that could be used to obstruct the view from the Palm Beach Towers?

Mr. Moore said Mr. Brower had partially addressed the issue, and that the cooling towers would not be totally screened because of the heights of the Palm Beach Towers and the Flagler Museum. He suggested some effort should be made to screen the cooling towers. Mr. Moore said one of the Palm Beach Towers' residents requested this issue be considered.

Mr. Moore said it was standard with special exception requests that Mr. Blades should address the Town-serving nature of his business although everyone pretty much knows what that is.

President Smith asked how large the structure is?

Mr. Brower replied the structure was approximately 2,500 sq. ft., 67 ft. long by 15 ft. high above the current flat roof in the back. That is the equipment enclosure. There are two separate cooling towers.

Councilman Wyett expressed his concern regarding the screening of the towers toward the lake side.

Mr. Brower pointed out there was some screening on the west side related to the towers that were large louvered devices.

President Smith ascertained this project would be heard by the Landmarks Commission.

Responding to Mr. Shaw's question regarding possible placement of the towers on the south side of the building, Mr. Brower replied that existing elevator shafts were being used as the mechanical equipment drops into the building and this was the only logical location plus additional elements on the south side of the building cannot be moved.

On roll call, the motion carried unanimously.

16. **SITE PLAN REVIEW NO. 11-98 WITH VARIANCE - Number One North Ocean Assn. Inc., 150 N. Ocean Blvd; located in the R-C Zoning District; to allow installation of an awning at the main entry door, providing a 26'10" side yard setback in lieu of 61' required.**

President Smith asked for ex parte communication. There was none.

Councilman Wyett moved approval of the project. Councilman Shaw seconded the motion but added the awning had to have a minimum of 14' clearance and he thought that staff had additional comments.

Mr. Moore said his department had no objection, and this was a minimum variance to accomplish the front shelter; however the staff did want a minimum of 14' clearance due to Public Works concerns regarding the trash trucks.

Mr. Vegosen said that was not a problem; however, trucks cannot go past that point on the property anyway because of the way the building is situated.

Councilman McDonald asked that Mr. Wyett include the hardship in the motion.

Councilman Wyett said the hardship is the odd shape of the lot–the way it curves around.

On roll call, the motion carried unanimously.

(Item number 11 was heard next.)

11. **SPECIAL EXCEPTION NO. 27-98 WITH VARIANCE - Three 50 Realty Corp. & Peruvian Ave. Corp., the Galaxy Grille, 350 S. County Rd. & Apollo Parking, 240/242 Chilean Ave.; located in the C-TS (restaurant) & R-B (parking) Zoning Districts; to allow the restaurant to expand from 5,175 sq. ft. to 6,375 sq. ft., adding 44 seats; and to allow the restaurant to provide 15 required off-street parking spaces at the Apollo Parking Lot; said parking lot is 500' from the restaurant as measured to the proposed gated pedestrian walkway on the north side of the Apollo lot. In the alternative, if the proposed walkway is not approved, a request for a variance from the 500' maximum distance requirement is requested.**

Attorney James Brindell addressed the Town Council on behalf of the Galaxy Grille. Mr. Brindell stated the current operation uses 4,300 sq. ft. and the proposal is to add 788 sq. ft. for a total of 5,088 sq. ft. with 44 additional seats. He said the objective is to be able to provide group dinners and have larger groups. Fifteen off street parking spaces are needed in the C-TS portion of the Apollo Parking lot at Chilean and Hibiscus. Mr. Brindell said the pedestrian gate mentioned in the application is not needed. Mr. Brindell requested a distance variance from the 500' limitation, because the distance is 1,070 feet.

Mr. Brindell said the Apollo lot is a licensed public lot that has spaces available. He mentioned that his client has tried to work out some conditions with a neighbor, Mr. Cortes. The employees of the Galaxy will be instructed to park in the Apollo lot allowing valets to park customers in lots that are closer to the restaurant. The employees who will be directed to park in the Apollo lot will be directed to go via Hibiscus or at least not on Chilean. These employees arrive at approximately 4:00 p.m. and work until closing time.

Mr. Brindell said that because there is a vested restaurant and night club license for this property, there was concern regarding the night club portion of it. Obviously, the Galaxy Grille is primarily a restaurant. He pointed out that Mr. Maurizio Ciminella is the tenant of the space and does not own the land or the building. His prior approval runs with the building, but he is willing to agree to limit the use of the night club license to one night per week, Saturday, and New Year's Eve, New Year's Day, Halloween, 4th of July, Christmas Eve, and Christmas Day. Furthermore, he would agree to a 2:00 a.m. closing time for the restaurant and night club activities which is a very limited use of the night club license.

Mr. Brindell said a Town-serving statement was filed that should satisfy that requirement.

Mr. Brindell said he thought the presentation would be more productive if he presented a list of conditions that had been worked out with Mr. Cortez and his lawyer, Mr. Kino which address some long standing issues with this restaurant and preceding restaurants.

President Smith asked for ex parte communications. Councilman Shaw said he discussed the issue with Maurizio Ciminella.

Mr. Brindell explained that Mr. Cortes lives immediately across the alley from the Galaxy Grille and has expressed concerns regarding noise, odors, etc. Mr. Brindell said his client agrees to the following conditions:

1. The storage and pickup of the restaurant's trash and recyclables shall be in the southeast corner of the adjacent "Bustani Parking Lot" on Chilean Avenue:

2. All restaurant deliveries shall be made from the building's parking lot to the south of the "Bustani Parking Lot". The building's rear alley shall not be used for restaurant deliveries. No deliveries shall be made after 7:00 p.m. or before 8:00 a.m. in the off season.

3. Nightclub operations, as defined by the Town's Zoning Code, shall be limited to one night per week, Saturday, and to New Year's Eve, New Year's Day, Halloween, the 4th of July, Christmas Eve, and Christmas Day.

4. The restaurant and nightclub shall be closed by 2:00 a.m.

5. Evening shift restaurant employees shall be required to park in the approved off-site Apollo Parking Lot and are not permitted to utilize street parking spaces or the adjacent Bustani parking Lot on Chilean Avenue.

6. All garbage, including glass and linens, will be stored in the restaurant after 10:00 p.m. and not placed in the alley or dumpster area until after 8:00 a.m. the next morning provided, however, that garbage and glass, etc. can be moved after 10:00 p.m. to the garbage area as long as the route is down S. County and then down Chilean.

7. Proof of a maintenance contract providing at least bi-weekly comprehensive exhaust system cleaning of the roof top exhaust and chimney shall be submitted to the Town on an annual basis. The frequency can be increased if the Director of Planning, Zoning, and Building determines that such increase is necessary to maintain the equipment in proper working order.

8. Except as provided in Number 6 above, the rear alley door at the back of the restaurant shall not be utilized by the restaurant or nightclub after 8:00 p.m. and shall not be utilized by the restaurant unless in the event of an emergency situation until after 8:00 a.m. After 8:00 p.m., employees entering and exiting the restaurant shall not utilize the rear alley door, but may use either the front entrance on South County Road or side door on Australian Avenue and proceed east to South County but in no event may they use the rear alley door for ingress or egress after 8:00 p.m.

9. The applicant shall return to the Town Council within 6 months to report on compliance with these conditions.

Mr. Kino responded there has been a long history with the restaurant operation, and they have tried to be good neighbors. They hope these conditions will solve the problem. Mr. Kino said his client would like to reserve the right in six months when Galaxy Grille comes back to address the issues. It is their hope that the conditions will minimize the impact and allow the restaurant to operate successfully and allow his client to live in his residence with his family.

Mr. Moore said the Police Department has concerns about the traffic increases in the area and possibly the use of an off duty police officer to assist with late night events. He said the Fire-Rescue Department agreed with the Police Department's comments and this issue should be addressed with Mr. Brindell and his client.

Mr. Moore said the Building Department needs continuing proof of the Town-serving requirement. He noted that Mr. Cortes had been in the Building Office many times over the years in reference to the problems that are associated with the building next door to him. He has endured quite a bit through the years with various operators of establishments. These conditions, agreed to by the current operator, should be made part of the current and ongoing conditions for all operators, present and future.

President Smith said her main concern was that the Chilean Avenue residents would be under siege from the cars running back and forth. She expressed concern that the valet parkers would go down the block and turn into the Apollo lot. When the use of the Apollo lot was expanded about four years ago, the Town Council insisted on a twenty-five foot landscape buffer to protect the residents on the south side of Chilean from the cars. Mrs. Smith said the valets may engage in loud conversations, late at night, on the way down to the parking lot to pick up the cars.

President Smith asked any concerned residents to speak at this time.

Bill Fyke, 235 A Chilean, addressed the Town Council and said he was pleased that the request for a pedestrian entrance into the Apollo Parking Lot was removed; however he was still concerned about the traffic situation. Mr. Fyke suggested using S. County Road to Worth Avenue to Hibiscus as the entrance for the employees' parking. That would take the traffic out of the residential area.

(The Town Clerk swore in all persons who would testify.)

Peter Breed, 231 Chilean Avenue, said he wished to address only the parking part of the petition. He said if the petition was accepted as it is currently phrased, it would go a long way to change de facto in the 200 block of Chilean Avenue into a commercial block from the nice, quiet residential area. Mr. Breed said the residents are being asked to back a commercial convenience for the Galaxy Grille. This is not a commercial necessity. He asked to keep it in a commercial zone where it belongs.

Councilman Shaw said he wished to clarify that the valets will not be driving on Chilean, and the employees will be driving directly to the Apollo lot on the way to work.

Mr. Brindell stated his client had agreed with Mr. Cortes to have the employees park in the additional space at the Apollo lot. He said the employees will be told to access the Apollo lot via S. County Road, Worth Avenue, and Hibiscus.

Mr. Brindell explained the logistics of the current valet parking service at Galaxy Grille – parking in the adjoining lot and then at Gray's Mobil Station. Mr. Ciminella verified that only employees will be parking in the Apollo lot.

Harry Gilbert, a resident who lives adjacent to the Apollo Parking lot on Chilean Avenue, said that approximately two years ago, there were conditions made by the Town Council that stated the Apollo Parking lot was to be used for overflow parking only. He said if employees park there until 1:00 a.m. or 2:00 p.m. and start their cars, it would not be appropriate.

Mr. Moore responded it would not be the lot adjacent to Mr. Gilbert's property, but the lot on the Peruvian side.

President Smith asked if anyone else in the audience would like to speak. There was no one who wished to speak.

Councilman Wyett said he saw valet parkers backing on streets from both the Galaxy Grille and Amici's restaurants and making u-turns in front of the restaurants. He requested Mr. Ciminella to instruct his valet parkers to obey the laws.

Councilman Wyett said his second concern was the entrance to the restaurant. If the space is expanded, he would like to see the entrance moved farther south, because cars do not move to the end of the loading zone.

Councilman Wyett said if the restaurant space is ever vacated, that the additional space requested should not be part of any grandfathered situation and should revert to separate space.

Mr. Brindell asked Mr. Moore if any new occupant would not have to return to the Town Council anyway?

Mr. Moore replied that any new occupant would have to comply with all conditions that were placed on previous applicant and prove the Town-serving requirement. Alternatively, if they wished to change one of the conditions, they would have to apply for a new special exception. Mr. Moore said that if the condition were approved as part of this approval and if the Town Attorney agreed, that would be one of the conditions that any new occupant of the space would have to contend with–meaning that any new occupant could not just come to the Town Council and demonstrate Town-serving and occupy the space. He clarified the new occupant would either vacate the space or apply for a special exception to have the right to use the space.

President Smith asked Mr. Randolph if he concurred with Mr. Moore's legal opinion?

Town Attorney Randolph replied it was reasonable as long as any new applicant had the opportunity to come to the Town Council and address the issue before the space would have to be torn down.

President Smith said she thought the Town Council was trying to avoid the situation that had occurred with another restaurant where the space was grandfathered in, and the Town Council did not want that to happen.

Town Attorney Randolph responded that although the ordinance might address it, he saw no reason why the Town Council should not clarify that issue in any motion that would be passed.

Mr. Brindell suggested if the Town Council wanted to craft a condition to make sure that was not grandfathered space regarding the nightclub license, then the applicant would have to convince the Town Council otherwise or else the applicant would have to segregate that space.

The Town Council discussed the issue of the nightclub usage on holidays. Mr. Ciminella agreed to not include New Year's Day and Christmas Day but added Veterans Day.

Mr. Ciminella said he would talk to his valet service to address Mr. Wyett's concerns about parking at Amici's and the Galaxy Grille.

Councilman Wyett asked that Mr. Ciminella instruct his valet parkers to not take a car unless it is pulled all the way forward.

Councilman Shaw said the issue of the off duty policeman should be part of the application and should be required on Friday and

Saturday nights from 10:00 p.m. until closing. He requested that the valets move from the front door after 10:00 p.m. or later to the lot directly south of the building. The off duty policeman who will be front of the restaurant will be able to direct cars as they come forward to the valet lot. That will become the pick up point. All of this will be done from November 1st until May1 and any deviation will have to come from the Town Manager

Mr. Brindell requested clarification on the need for the police officer.

Councilman Shaw responded that he believed it was driven by the night club nights, and he was also concerned about traffic build-up at that intersection.

President Smith clarified that the issue should go to the Police Department.

Councilman Shaw agreed, but added that he wanted to be sure that the message gets from the Police Department back to the Town Manager, so that the change is known by all.

Councilman Shaw then requested that the restaurant close at 11:00 P.M. for dinner, 12:00 A.M. for the bar during the weekdays and Sunday; Friday and Saturday close at 1:00 A.M. for dinner, 2:00 A.M. for the bar.

Mr. Brindell and Mr. Ciminella agreed with that request.

Councilman Shaw asked where the dance floor was located?

Mr. Ciminella replied that it has always been the center of the back dining room.

Councilman Shaw asked if the plans submitted were correct, and if the Fire Department has seen them?

Mr. Moore responded that the Fire Marshal had seen the plans.

Councilman Shaw questioned the time that glass would be taken out for disposal, and the mention of "no deliveries off season in the alley."

Greg Kino clarified that some language had been struck, and that should read: no deliveries after 7:00 P.M. or before 8:00 A.M. It had nothing to do with season.

Mr. Brindell agreed to modify the condition to say after 5:00 P.M. no glass would be taken out until the next morning.

Mr. Ciminella commented that he would like to use the police officer on Saturday nights only, as there would be no nightclub activities on Friday nights. All the nights that the nightclub would be operated there would be a police officer on duty.

President Smith replied that sounded reasonable, as the applicant would be coming back in six months, and if it was determined by the Police Department that there was a major problem before then, the applicant could always be contacted.

Councilman Shaw moved approval of Special Exception 27-98, with the conditions, as read by Attorney Brindell from the letter of Attorney Kino, included as part of the conditions of approval; that no valet will be permitted in the Apollo Lot–it would be used exclusively for the employees; that an off-duty policeman would be provided from 10:00 P.M. until closing on Saturdays, or any of the nights listed that would be used for nightclub activities; that the hours of operation on Sundays through Thursdays would be 11:00 P.M. for last meal service, and 12:00 A.M. for beverages; on Friday and Saturday 1:00 A.M. for last meal service, and 2:00 A.M. for beverages; in the event the restaurant ceases to operate the additional space being granted today will be vacated. Councilman Wyett seconded the motion.

Councilman Wyett noted that the off-duty police officer would stay until everyone was out of the area.

Mr. Moore suggested that the hour of 3:00 A.M. be used in the event that there were still people around, and then it could be worked accordingly.

Attorney Brindell asked for clarification on the non-grandfathering provision of the space: he asked if the space was vacated by Mr. Ciminella, a new proposed tenant could come to the Town Council to ask for the use of the space, rather than Mr. Ciminella having to tear it out on his way out.

Councilman McDonald agreed, as did the entire Council, making the point that the space would <u>not</u> be automatically grandfathered.

Attorney Kino asked for clarification on vacating the space, noting that the conditions ran with the entire space, and not a portion of the space.

Mr. Moore replied that the conditions went with the entire space.

On roll call the motion carried unanimously.

17. <u>SITE PLAN REVIEW NO. 12-98 WITH VARIANCE</u> - Power-Love Associates , 256 Worth Ave.; located in the C-WA Zoning District; to allow construction of an addition to a nonconforming structure; and to allow a variance for the required 2 additional parking spaces.

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

Attorney Peter Broberg addressed the Town Council, stating that the request was to add 256 sq.ft. to a non-conforming building. The area in question was displayed on a drawing exhibited, showing that it was currently an unsightly covered walkway. Mr. Broberg explained that in 1992 the owner of the property had the same plans designed, and had actually gone to the Landmarks Commission and received approval. With regard to the parking spaces, the landlord had created a net 4,000 sq. ft. of residential space out of commercial space, so the use was less intensified than it had been in the past; two parking spaces were required for every residential unit, and there were 20 spaces allocated to that 4,000 sq.ft.; thus there was plenty of parking to cover the additional 256 sq. ft.

Zoning Administrator Paul Castro commented that the enclosing of the walkway would not impede the pedestrian circulation to the west, however, hardship would need to be demonstrated.

President Smith asked if the work would be finished by November 15th?

Mr. Broberg replied that the contractor was prepared to start.

Councilman Shaw moved approval of Site Plan Review No. 12-98, with the understanding that the job would be finished by November 15, 1998, or work would cease, with no exceptions. Councilman Wyett seconded the motion.

Mr. Moore responded that the permit would not be issued unless the Building Department was sure that the work would be completed by November 15, 1998.

On roll call the motion carried unanimously.

C. Other

1. Request by the Everglades Club to Consider Declarations Limiting Golf Course Property to Recreation Uses in Perpetuity

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

Attorney Wade Byrd, representing the Everglades Club, addressed the Town Council, stating that the purpose of the request was to put the Golf Course in perpetuity for recreational uses. He noted that he had discussed the issue with Mr. Moore and Town Attorney Randolph.

Town Attorney Randolph clarified that this was not an approval of the Declaration, however, the Town Council was merely being asked to accept the Declaration of Restrictive Covenants, and to so sign a document.

Mr. Moore asked if the Everglades Club also considered essential service uses, which would mean any kind of water, plants, etc., that may be in the future and be mutually beneficial for the Town to negotiate within the Comprehensive Plan.

Mr. Byrd responded affirmatively.

Mr. Moore noted that a revised section would have to be supplied stating essential services as well as recreational.

Mr. Byrd replied that he believed the current document would allow that.

Mr. Moore replied that if Mr. Byrd and Mr. Randolph both agreed, that was all that was needed.

Councilman Shaw moved approval and acceptance of signing of the document, suggesting that the rest of the clubs in Town could do the same thing.

Councilman Wyett suggested that this item be deferred, as there were things that residents of the Town were entitled to know about financially. The Everglades Club and all of the other clubs in Town had been reassessed by the Tax Assessor, and taxes would be raised to approximately $600,000 per year, and the Town was being deprived of a tremendous amount of revenue. He stated that he had calculated how much the Everglades Club paid in taxes and how much the Town receives, and he would be happier if the Club would consider making some payment to the Town in lieu of taxes that would equate to making it more equitable for the costs that the Town incurs on its behalf for police, fire, etc. That would remove the burden of supporting this request from all of the Town residents, only a few of whom are members, and give the Club 100% of what they wanted to maintain the golf course, and give the Town a little bit more revenue to offset its costs. In the past years, the Town was actually subsidizing the Club when costs were analyzed versus revenue. He noted that many residents had contacted him in this regard, asking why they should be helping the Club when they were not members. He stated that he was supportive of the Everglades Club, but he wanted to make the Town aware of the financial implications, even though Mr. Byrd had revealed it in his correspondence.

Mr. Byrd replied that the Club would not subsidize the Town. The Club would be taxed as a recreational use, as a golf course, and the taxes paid would be based upon assessment that comes from an appraisal by the Property Appraiser. He noted that at the present time the Town already had a lift station on the Everglades Club property. Currently, the Town has put a culvert in to drain Middle Road, free of charge, on the Everglades Golf Course property. He maintained that since 1923 the Everglades Club had cooperated with the Town of Palm Beach, and likewise. He stated that the Club did not look upon this request today as a favor in the sense that they would have to pay additional taxes. He stated that he thought this was a fair proposition.

Mr. Moore commented that the Everglades Club, the Beach Club, the Sailfish Club, the Bath & Tennis Club, and the Mar-A-Lago Club could all apply for a special recreational use zoning classification. The Town did not have such a use, and wanted to keep the Clubs in their pristine, green condition, and did not want to see them develop. This was an alternative, rather than going through a complete re-zoning of all of these properties. The Town would simply be accepting their renunciation of their development rights, to keep the space green. The property was only valuable if it could be developed. They were saying they did not want to develop it. This was not tax money that the Town was going to lose, because the Town did not have it now.

Councilman Wyett replied that the purpose of his comments had not been to oppose the issue, but to be sure that the issue was fully expressed, because only part of the story had been verbally expressed.

Mr. Byrd responded that the Everglades Club could have given the development rights to a charity, and the tax assessor would also have accepted that, however, the Everglades Club felt more confident with the Town, and felt that the Town of Palm Beach was unique in the world because of dedicated citizens serving as members of the Council and as Mayor through the years.

Councilman Wyett responded that he was not opposing the issue, but was simply explaining his purposes.

As President Smith was temporarily out of the room, President Pro-Tem McLendon passed the gavel to second the motion.

Town Attorney Randolph commented that he would check the document to determine that the essential services was included in the document.

On roll call the motion carried unanimously.

2. 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 Sonya Rykiel, The Esplanade, at 150 Worth Avenue

Attorney James Brindell, on behalf of The Goodman Company and Sonya Rykiel, addressed the Town Council requesting an extension of construction hours from November 15th to December 7th to finish interior renovations. This was the result of some late deliveries of furniture and fixtures from France. The work would be painting, carpeting, and installation of furniture and fixtures. All construction vehicles would be kept inside the parking garage, off the street, during the extended hours, and all deliveries would be made inside the Esplanade.

Mr. Moore explained that the similar requests had been granted in the 100 block of Worth Avenue.

Councilman McDonald moved approval of the Request for Waiver to Sections 5-22 and 12-51, Hours of Construction of the Town Code of Ordinances for Sonya Rykiel, The Esplanade, at 150 Worth Avenue.

Councilman Shaw seconded the motion, adding to the record the letter from the President of Worth Avenue Association, Martin J. Schwalberg. He expressed concern about the completion of construction work on Worth Avenue.

Mr. Moore stated that he like to confer with Mr. Schwalberg, President of the Worth Avenue Association, in response to a letter regarding no further time extensions be approved that he submitted dated October 8, 1998, and determine what his specific problems are, because construction has to take place on Worth Avenue and the idea is to have the construction finished as quickly as possible.

Mr. Shaw said he understood one of the concerns was the right-of-way permits.

On roll call, the motion carried 4/0, as President Smith was temporarily out of the room.

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. Timothy P. Greer for Cartier Boutique at 214 Worth Avenue

No one was present to represent the applicant, therefore the request was not considered.

4. Request for Waiver to Section 12-51, Hours of Construction, of the Town Code of Ordinances by Mr. Mark J. Maher for The Breakers, One South County Road

Councilman Shaw moved approval of the request for Wavier to Section 12-51, Hours of Construction, of the Town Code of Ordinances by Mr. Mark J. Maher for The Breakers. The motion was seconded by Councilman McDonald.

Mr. Moore commented that he believed it was important to hear the presentation of Mr. Maher.

Mr. Maher explained that the reason the extended hours were being requested for 7 days per week from 6:00 A.M. to 12:00 A.M. was because the Beach Club and cabanas were being opened for the Christmas Holidays. He explained that they were not quite on schedule from the previous Town Council Meeting of May 12th, when he had been granted an extension from 7:00 A.M. to 7:00 P.M. At that meeting the Town Council had asked him to come back for an extension at the point of putting up the drywall, finishes, and painting. The area in question was fenced in and inside, so there would be no problems from the outside.

Mr. Moore commented that he recommended that any complaints would result in work stopping immediately until a resolution could be made.

Councilman McDonald moved approval of the request for extended construction hours, incorporating the recommendation of Mr. Moore into the motion. President Pro-Tem McLendon seconded the motion. On roll call the motion carried unanimously.

5. Request for Reconsideration of Site Plan Review No. 3-96, 251 Sunrise Avenue, by Ms. Maura A. Ziska

The following is a verbatim transcript:

Town Attorney
RANDOLPH: Madam President, may I make a comment in regard to this? You had a quasi-judicial hearing in regard to this matter, where you received evidence, and you acted upon that evidence. This is not the time for you to entertain additional evidence. It's not an opportunity for you to hear evidence in regard to this. It's only a decision to be made on your part as to whether or not you want to reconsider, and then I would suggest that in the event that you decide for some reason that you wish to reconsider it, that it not be reconsidered this evening; that the Building Department have an opportunity to give notice to property owners and have it be heard then. The only thing–I don't think that the applicant should give evidence this evening in regard to this application. I think she should just state the reason for wanting reconsideration.

Attorney
MAURA ZISKA: Good evening Madam President, Mr. Mayor, and members of the Town Council. My name is Maura Ziska, and I am here on behalf of FH of Palm Beach, and Mr Alan Heise. They run a restaurant operation, 251 Sunrise. I concur with Mr. Randolph, and basically today what I'm here to tell you or to request for you to do is reconsider the ruling made at last month's Town Council Meeting, and the basis for my request is inadequate notice and that the decision that you made at the meeting of last month you were deprived of hearing competent substantial evidence, which is the standard of review, to make an informed decision.

Let me address the first one: it's the notice requirement. The Certificate of Occupancy was issued September 17, 1997. There was a letter mailed to Mariano Garcia, I think the date of the letter was August 31, 1998, that the conditional approval was going to be considered after a year's time. The owners of the area in consideration are Raphael Abarnante and Antonio Vitello. They were in Italy for the month of September, and they were never notified of the meeting. Also, the Palm Beach Hotel is an interested party, since the improvement was completed, and they would also be interested in appearing at the Town Council Meeting for reconsideration or for consideration of the conditional variance. With regard to the competent substantial evidence the Circuit Court examines the record to determine whether or not the Council had before it competent substantial evidence to support its findings, and judgement to establish whether or not the findings are in accord with the essential requirements of law, that is, the State of Florida on Standard of Review with regard to zoning decisions. Unfortunately at the last meeting there was no evidence brought on behalf of 251, and the ruling was made that 251 was in noncompliance with two of the conditions. I do not want to get into the issues of whether or not they were or were not in compliance with two of the conditions, but as I discussed at a meeting last week with Mr. Randolph, Mr. Moore, and Mr. Castro, there was vague and ambiguous language in the original conditions, and I wanted to be able to bring that to the attention of the Council, and to bring in evidence to support our position and to say that the conditions have been complied with to the best of their ability, and without being able to present that evidence in support of 251, I think making a ruling on the lack of evidence just makes bad law. So I am requesting at this time to bring evidence to you at a later date, so you can make an informed decision with regard to the conditions and the variance.

President
SMITH: Thank you. Mr. Moore, is there anything you would like to add?

MOORE: The applicant–we did meet with the applicant, Mr. Randolph, Mr. Castro–when I say the applicant, the 251 Corporation, and we did discuss issues that were relevant to the approval process for the original Variance and Site Plan Review. There were a number of issues that were brought forward for discussion, including the operation of the restaurant as it exists today, and their intentions for it to be operated in the future. In fact, we received a letter, which I hope you all received your copy of it–it was received on the 12th, and it is from the applicant's attorney, and it does go through several of these conditions. If you are inclined to instruct the staff, including Mr. Randolph, to meet with the applicant and try to go through some of these issues to try to reach a satisfactory conclusion on some of the concerns of the neighbors and the Town, staff would be prepared to do that. Short of that, if you wish to re-hear it we would have to re-advertise this, and we would be required to do that, and I'm not sure we could do it for the November meeting. Mr. Castro would it be November or December?

CASTRO: December.

MOORE: In any event, you would need to direct us on the letter that we have written to them, which is to remove the improvements that were put in place. It is your choice as to how you wish to handle that, with Mr. Randolph's advice also.

SMITH: Members of the Council?

Councilman
SHAW: I'm not sure that I would like to hear this, but

SMITH: We're talking about whether or not we're going to reconsider. We're not going to hear it today.

SHAW: Right. But if we want to reconsider, I would want to know what you're willing to put on the table to have us stay our order. Are you willing to abandon the use of the room until such time as it is reconsidered?

ZISKA: For the next two months?

SHAW: Until it's reconsidered and resolved. Right now you have an order to apply for a demolition permit, and that order has already expired as far as time.

ZISKA: I mean, I think that's a bit drastic, because in the event that you do reconsider it, and you do find that we were in compliance with the conditions, that's two months that we've suffered by not being able to operate.

RANDOLPH: I think the issue this evening is whether, on the basis of the testimony that's been given–or not the testimony, on the argument that's been given, as to whether you wish to reconsider it. She has indicated that one: she felt that notice was not appropriate, and I think, Mr. Moore, did you address that or not? I think it would be worthwhile for you to do that. And in addition she indicated that she would like to have an opportunity to present evidence that wasn't presented to you that could have been presented had they gotten sufficient notice. That's the determination you should make, as to whether it should be reconsidered. If you choose not to reconsider it, then I think you can give consideration as to whether or not you're going to stay the order that has been entered in regard to demolition, subject to the applicant agreeing to mitigate the situation as it exists there now. And let me explain that. I explained that to Ms. Ziska and Mr. Heise in the meeting that we had with them. I indicated that this Council had a concern that the conditions that had been originally imposed on the use of these premises were not being complied with, and indeed the use of the premises was different than it had been represented to you. And I indicated that if for some reason this application–I don't know what action you're going to take in regard to reconsidering this, but if you chose not to reconsider it, then I indicated to Ms. Ziska that she might want to ask that you abate the order requiring the demolition to be applied for within the 30 days, because she's at the end of that time, in order to give them an opportunity to indicate how they might mitigate the situation, and she wrote a letter which I think was aimed partially towards that. I don't want to put words in your mouth, but I think that the letter that came out was aimed towards that, and I think it would be fair for you to give consideration to the types of things that you think might mitigate the situation. So, I think you need to separate the two issues though. I think the first issue before you is whether or not you want to give reconsideration to the matter that you heard last month.

Councilman
McDONALD: Ms. Ziska, you indicated that notice was insufficient. Did not the attorney that represented you at the hearing last month, was not the attorney of record for your client?

ZISKA: No, he was, but not all of the interested parties were present. The owners of the area–the corporation that runs 251 Sunrise do not own the building, or the structure, and because of the improvement, the Palm Beach Hotel now has an interest as well. So, not all of the interested parties were present.

McDONALD: So he didn't represent all of the parties, is that what you're saying?

ZISKA: Yes.

McDONALD: And how would we have known of these new additional interested parties?

ZISKA: I know that you're aware of who owns, because that was on the original application. I guess that it would have just been a logical conclusion that once-- pursuant to condominium law and the Declaration of Condominiums, that once a structure becomes a part of a condominium that, you know, it's owned by all the unit owners, and that 95% of the unit owners vote to make any structural changes as well. I don't know. That might have just been an oversight.

SMITH: So you're saying that you did notify the Town about the change in ownership of the 251 Club?

ZISKA: There was not a change in ownership. When the structure was completed, the Palm Beach Hotel–it's more of an operation of law–becomes the owner of the structure from the dry wall out, I believe, and because of this, by operation of law, they become an interested party. Before the structure, it was a non-issue.

SMITH: So you're saying that the Town was negligent in not notifying the Palm Beach Hotel Condominium?

ZISKA: I don't know if it was negligent, or just an oversight that they are now an interested party.

SMITH: I see. Mr. Castro?

CASTRO: I would like to address that. On the application itself we were under the impression based on the application itself that Mariano Garcia represented all fee simple property owners with interest in the application itself, including the amended application that showed the permanent construction over the patio itself, and it's represented in the application that he does represent everyone with an interest in the property, being Raphael Abantate, as well as

Antonio Vitello, and based on their application, notice was provided for the original approval, and in addition, notice of the meeting in September was provided based on the representation made on the application that Mr Garcia represented all fee simple interests in the property itself. Not having the condominium documents themselves to review, we took the face of the application itself as being adequate notice, and provided a return receipt requested to him, at which time he did appear in front of this Council to represent 251.

McDONALD: Ms. Ziska, based on that, I don't know why you would feel that the notice was insufficient.

ZISKA: Well, I – are you referring to the Palm Beach Hotel or the two unit owners, Raphael and Antonio?

McDONALD: I'm referring to the applicant, whoever the applicant is.

ZISKA: The owners are C-15 and C-16 of the Palm Beach Hotel. I know that the applicant did have their names and the letter noticing the meeting of last month was just directed to Mariano, and I know that the letter of September 11th was directed to both Raphael and Antonio. However, I can only represent that they were out of the country for the two months, and I don't know whether or not Mariano still represents them or not, but in the letter that was sent to Mariano, it did not have the clients' names, care of Mariano Garcia, as the September 11th letter did, when they were seeking the demolition permit.

SMITH: I think actually that what you're doing here tonight, in a way, is splitting hairs, because he did present himself before the Council as representing the 251 Club. He did. And that was spoken for the record. And the Council was very willing to hear any evidence, and everyone, and I asked for public comment; I asked for anyone who wanted to speak to it, and everyone was given the opportunity, so there was no question that there was a fair hearing in September on the representative of the owners of the 251 Club. I mean, I understand you attempting to find a grounds for a new hearing, because you didn't like the result of the September hearing, but as far as saying that there wasn't proper notice, I believe that's incorrect, and the record speaks for itself. Mr. Wyett?

Councilman
WYETT: I have to agree with Mrs. Smith. Basically you're saying that proper notice wasn't given, and that the two owners were in Italy. Well, I can't accept the two owners being in Italy, because they authorized an attorney to appear for them, so therefore they were well aware that that situation was going to arise, so they had to depend upon their attorney representing them and they didn't feel it was necessary to come here. Well, knowing the history of all of the violations that they have created in violation of our agreements, and all of the disturbances that they have been party to, I would think it was a little, at best, naive, and at the least on the other side arrogant not to appear, and then to come here today and say I didn't get notice. They had notice, and according to the document you sent here, all interested parties were represented by that attorney. What I really think you're saying to me is that your associate in your firm was inadequately prepared.

ZISKA: That's not my firm.

WYETT: All right. Pardon me, I take that back. The attorney that appeared here on their behalf was inadequately prepared. He was shocked that we had concerns, because obviously his client, who is sitting here today, told him – no problem. Because the client did not arm him with anything to protect him. So, that is, I think closer to the fact. And as far as you're saying that there was not competent substantial evidence, we referred to so many violations, so many nuisances, so many depriving some of the residents of their peace and quiet. And I remember specifically when this gentleman appeared before us a year before, and we had a whole staff of people telling them what we were concerned about, and I asked specifically, are you prepared to meet all these conditions, and he said yes. And I said are you aware that the Town intends to enforce all those things. However, what happened from the day he opened, he ignored every agreement, and subsequently found more things to violate and it accumulated, I think, during the summer, when he stopped paying the Police Department...

RANDOLPH: Can I interrupt for a minute? Because I indicated to the applicant that we should not give consideration to any specific evidence in regard to this issue. We should just make a determination as to whether or not on the basis of what's been represented this matter should be reconsidered, and I would caution the Council against getting into any evidence in regard to violations at the premises.

WYETT: I was just reiterating what was said at the last meeting.

RANDOLPH: I understand.

WYETT: So I rest.

ZISKA: If I may address the notice issue once more, Madam President, regardless of whether or not the actual unit owners were not notified, and I can't express whether or not Mariano contacted them or not. The main crutch of my argument was that the Palm Beach Hotel was not–if Mariano represented himself on behalf of all of the interested unit owners, I know for a fact that he is not the Condo's attorney, and with respect to the competent substantial evidence I understand your tone from the prior meeting, and I know that those are issues that need to be addressed, but with regard to the four issues or the four conditions of the variance, I would like the opportunity to present evidence with respect to those four issues. I know that there was no evidence brought on, and I know that you had said that you had seen the back door being open, which was one of the conditions. What was not heard was evidence to the fact that that is the rear door to the ice machine.

RANDOLPH: Again, I don't think we can get into that.

SMITH: We're not going to go into that, because if you can stop and let the Council decide now whether or not they chose to reconsider, which is the one matter Mr. Randolph set before us.

SHAW: Okay. On the minutes from last month, it says Site Plan Review, etc., and its says FH of Palm Beach, Inc., commonly known as C-15 and C-16 of the Palm Beach Hotel, and then further down–that was how the application read–and then in the opening statement it says good afternoon Council–is it Mariano Garcia–here on behalf of FH of Palm Beach, here to address the conditions. Well, an application has a name, a gentleman stands up and says I represent that name. At that point, I don't see any misunderstanding or confusion as to who is who. If he was not the entity, then he should have said Hi, I don't represent these people.

ZISKA: You're right. He should have. But, I'm saying that there are more than one entity that are interested.

SMITH: But right now we're merely considering whether or not we're going to reconsider the matter. We're not going to get back on whether you were well or not well represented at the last hearing.

WYETT: Mrs. Smith. I would make a motion...

SHAW: Jack has a question.

SMITH: Mr. McDonald wanted to say something too.

McDONALD: Are you representing the Condominium Association today?

ZISKA: No I'm not.

McDONALD: But you're using that as really the basis of your...

ZISKA: I talked to their attorney today, and discussed what I was going to be representing to the Council, and he agreed with me.

McDONALD: So are you representing them, or you're not?

ZISKA: No. I do not represent them, but I did speak with him and I can speak on their behalf for this issue of reconsideration and notice.

McDONALD: So you are speaking on behalf of the Condominium Association?

ZISKA: Yes. For tonight I am, although I do not represent them, other than tonight.

WYETT: Mrs. Smith. I would move to deny, unless you would agree to stop using that space until this situation is settled. You have–as your client has made no move to show the Town good will, and I'm not interested in whether you would lose a few dollars by not operating that section. We're not telling them to close down, we're just telling them to close down that section, and if he would agree to that, then I could agree to reopen it in the spirit of good will and the purpose of trying to avoid a major court case on both sides. But if he's unwilling to hold the Town free and clear of liability for the cost of closing, then I think it's worthwhile to go to court.

SMITH: Would you like a moment to confer with your client?

ZISKA: I've just been informed by my client that there is scheduled events for the next couple of months that will be using the entire space, and there will be a hardship on the business and interfere. I just think that's a bit drastic, especially if we get to the point where I am able to present evidence in their favor and the issue of the conditions becomes moot at that point.

McLENDON: I must not be hearing something right. Do you recognize the conditions that were put on the original permit?

ZISKA: Yes I do.

McLENDON: And do you admit that they haven't been complied with?

ZISKA: No I do not. And as Mr. Randolph stated, I don't want to get into that right now, because of the fact that, you know, from the very get go there was vague and ambiguity on the face of the conditions, and whether or not they complied or did not comply, I feel that my clients have complied with the four conditions, and if they did not comply there was a reason why they did not comply or an explanation that was out of their hands. And I wanted to be able to bring that evidence to light.

SHAW: How many people do you expect to have at these scheduled events?

McDONALD: Let's not get into–I really don't see where that's important. We either want to grant the appeal or deny the appeal. That's the issue.

MOORE: If you're going to be denying the appeal, we would respectfully request that you consider authorizing the permit, the revocation of the permit, and the order to go ahead and tear it down, to allow the staff to meet with them to discuss what they're willing to do to mitigate. This letter is very–Ms. Ziska has put forward a letter where there are a lot of compromises, and a lot of things that they're willing to do. They're not willing–they've obviously not been willing to talk about closing hours, which may be talked about during either those negotiations or any subsequent hearings if you decide to re-hear this, if that's your choice.

McDONALD: How quickly could we re-hear it, Mr. Randolph? If we granted the appeal how quickly would we re-hear–would it be next month's meeting?

RANDOLPH: No, apparently Mr. Castro says that it would be December.

SMITH: Well, if I could ask one question. When the Council took its action at the last meeting they issued the order that you could not use the space and that it should be torn down. Now you're asking to have the matter reconsidered, but by the same token you're telling us you're continuing to operate without even blinking at the Council's action last month? Is that correct or not?

ZISKA: No, what I'm saying is that I don't feel that the issue has been resolved, and because of procedural problems that have happened since 1996, that this needs to be clarified and explained to the Council and given a chance to comply with the conditions as originally anticipated.

McDONALD: So what you're asking for is we not only approve the appeal, but we also let you keep operating pending the hearing on the appeal.

RANDOLPH: That would be automatic if you gave–if you authorized reconsideration, then that would be automatic; they would be able to continue operating until this was resolved. If you chose not to grant re-consideration, then what Mr. Moore is indicating to you is that he would like to have the order abated for a period of time, until next month, to allow the applicant to attempt to mitigate the problems that exist and get together with staff and come back to you with the way they wish to mitigate.

McDONALD: All right. Okay. Then I'm going to move that we deny the appeal, abate the order, and let the staff and the applicant see if they can mitigate their situation.

WYETT: Would you put a time limit on it?

McDONALD: I think it's December–that's what–.

WYETT: No, it's December for them coming back here, but would you put a time limit of November?

McDONALD: How much time do you need?

SMITH: Mr. Moore?

RANDOLPH: I think you should separate the motion. I think the first part of your motion should be in regard to the Petition for Reconsideration.

McDONALD: All right. We're going to deny the Petition for Reconsideration. I move we deny the Petition for Reconsideration.

WYETT: Second.

SMITH: Any further discussion? Mrs. Pollitt?

POLLITT: (Roll called, and vote was 4/1, with President Pro-Tem McLendon casting a negative vote, as he wished to reconsider).

SMITH: Are you going to speak, Mr. Ricca, at some point, or–?

THIBADEAU: I'm sorry. My name is Paul Thibadeau, I represent Dr. Rhonda Nasser. I just wanted to make my appearance. I have sent a letter to the Council, and I'd like to make that part of the record, keeping in mind with what Mr. Randolph has said, I don't want to get into any of those issues. But, if there is a reconsideration, we would like to be able to participate. From what I heard tonight with the conditions and the agreements made by Galaxy Grille, those things sounded great, and if we can do the same thing here, if it is to reopen, we would appreciate the opportunity to participate in that.

RANDOLPH: Did you just vote on that?

McDONALD: We voted on that one. That's done. Ready for number two?

RANDOLPH: Now, I understand that it's your request, since they have not granted reconsideration, that the order that's been entered be abated so as to allow you to get with the staff and attempt to mitigate.

ZISKA: Yes. My only concern is what about the conditions, and is that just going to fall by the wayside, or are we going to be revisiting this issue after two months?

MOORE: It would be my suggestion–to respond to Ms. Ziska, it would be my suggestion that the applicant, if you're going to be of the mind to wave and abate the order, instruct the Building Department to not follow through with that order, that you condition that order, that the Building Department and Mr. Randolph and all other Town departments that have an interest in this–Police, Fire, Public Works–meet with the applicant, but that the applicant be instructed to file for a Special Exception to address these issues and bring it back in a proper form at the December meeting where it can be discussed at full length. Absent that–

RANDOLPH: Yes, but you don't know what kind of Special Exception is needed.

MOORE: Well, it's a restaurant Special Exception, and the Special Exception would be to operate the restaurant, and with the associated problems to be addressed with the operation of the restaurant. It is a restaurant.

RANDOLPH: Well I understand, but didn't they get a Special Exception already?

MOORE: They did not. That's one of the problems, and that dates back to the liquor license as well. There was no Special Exception when they changed their style of use.

RANDOLPH: Well, my suggestion is that you just–you simply set a period of time in which they can come back to the Town and attempt to mitigate, whether it be 30 days or—in other words, you don't want to leave this open-ended, and have the order abated for an open-ended period of time. I think you should give consideration to what a reasonable period of time is to abate it, and then give them the opportunity to try to deal with this.

WYETT: I suggest by a time certain at the next meeting that Bob Moore be allowed to come back and make a report to us, and if that report is favorable and if the Town Council concurs with that favorable report, that they come in in December for a final hearing.

SMITH: And what happens to the fact that the Council felt that the 251 was not complying with the conditions imposed upon it at the time of approval? The condition about the off-duty policeman?

RANDOLPH: That stands. You have not agreed to reconsider that.

SMITH: I understand that. But does that mean that they don't have to comply with any of those conditions?

RANDOLPH: No. No, if they cannot come in to you at the next meeting and satisfy you that they have mitigated the concerns of the Council relating to the operation, then the order that's in existence stands, because Mr. Wyett is–if you go with Mr. Wyett's suggestion that it be until the next meeting–that the order only be abated until the next meeting.

McDONALD: I'm going to move the order be abated until the next Town Council Meeting, to allow the appellant to mitigate their situation.

WYETT: And if there's no agreement that's satisfactory, I'm going to ask at that time that you cease and desist immediately from using that space, so I'm putting the onus on your client to come in and comply with the Town's rules and regulations.

ZISKA: After the one month period I'm a little bit unclear as to the four conditions that were still–that you're still concerned with. Are we starting with a clean slate from now, and whether or not we–?

RANDOLPH: No. No, you're not starting with a clean slate. The Council has already made a determination, based upon a prior hearing, that you have not met at least two of those conditions, and because you had not met those conditions they entered an order that the space be demolished. We're not readdressing those. The Council has made a determination that it does not wish to readdress those. However, I think what they're saying is that if you can come back at the next meeting and convince them that you will address those conditions to their satisfaction and any other concerns that have been related to you relating to the operation, that then they will give consideration to abating the order.

ZISKA: Indefinitely?

RANDOLPH: Indefinitely, or for a set period of time.

SHAW: And if they cannot satisfy–?

RANDOLPH: Then your order stands. The order that you've entered would stand. All you're doing is abating that order for a period of time.

SHAW: And what becomes the next step?

RANDOLPH: Do you mean if they don't comply with the order?

SHAW: Correct.

RANDOLPH: Then we would either go to Code Enforcement Board or file for Mandatory Injunctive Relief in Court, or both. We haven't decided which way.

SHAW: My concerns are that I don't want this to drag.

McDONALD: Thirty days.

SHAW: Well, then what happens after thirty days–how long does it drag? Because I don't want to see this drag into December/January.

RANDOLPH: Well, it will. If they don't obey the order, then the Code Enforcement Officer is going to have to go out there and cite them, and it's going to come before the Code Enforcement Board and/or we would file a petition in the Circuit Court for a mandamus to have them comply with the order.

SHAW: So in the interim they just operate on their own–

RANDOLPH: You've given them a basically, a thirty day abatement of the order to allow them to attempt to address your concerns.

SHAW: But I'm asking, is–granted they have the thirty days. If we do not reach the conclusion that says everything is okay, then we are basically looking at a process that could take months.

RANDOLPH: That same process could take months if you don't take any action tonight. In other words, if their thirty days ends today to demolish that space, and they haven't done it, then we have to do whatever we're going to do next, and that could take months.

SMITH: But by the same token, the whole thing could be eliminated if we had the cooperation of the owners, and it appeared that the 251 Club was going to work with the Council, as opposed to the feeling that I'm getting sitting here tonight that they're working against us.

RANDOLPH: This thirty days gives you the opportunity to have that done.

SHAW: I think they've had the thirty days.

RANDOLPH: Well, that's all right. Then you can vote against it.

SHAW: I think they've had every opportunity to come in with a plan that was viable. I don't think they need another thirty days. I think we're just–.

SMITH: They haven't had the time to meet with the staff, and work it out and there's a new attorney now on this, and I think the thirty days is fair.

MOORE: The staff would like every opportunity here to try to resolve this before we go to war in court, if at all possible. But, Mr. Randolph, and I apologize for not bringing it up earlier, there is another order out there which I think the Council needs to abate too, and that is that we have ordered them to apply for a Special Exception for restaurant use, a change of use. Ms. Ziska may not be aware of that, and her client may not have made her aware of that, but there's another order out there that we–.

RANDOLPH: But the Council doesn't have to abate that, because that order's been outstanding probably for nine months, Bob, and the Council hasn't dealt with it.

MOORE: Right, but we've been waiting to go forward with that at the same time as we were going–

RANDOLPH: Well, then you can administratively not go forward with that, but you haven't taken that before the Council.

McDONALD: Mrs. Smith. Would someone second my motion, and then we can.

WYETT: Second.

SMITH: Done. Is there any further discussion? Mrs. Pollitt?

POLLITT: (Roll is called; vote is 4/1, with Councilman Shaw casting a negative vote).

***** *End of Verbatim Transcript* *****

XVIII. ANY OTHER MATTERS

There were none.

XIX. ADJOURNMENT

The meeting was adjourned at 9:05 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:

Susan Eichhorn
Deputy Town Clerk
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