MINUTES OF THE TOWN COUNCIL MEETING HELD ON OCTOBER 12, 1999

I. CALL TO ORDER AND ROLL CALL

The meeting of the Town Council was called to order at 9:30 a.m. by President Lesly Smith in the Town Council Chambers. On roll call the following elected officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Allen Wyett, Councilman Jack McDonald, Councilman Samuel McLendon, and Councilman Leslie Shaw. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Acting Assistant Town Manager and Fire-Rescue Chief Vincent Elmore, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Chief Code Compliance Officer Brian House, Finance Director Jane Skittone, Assistant Finance Director Cheryl Somers, Human Resources Director William Crouse, Human Resources Analyst Carla Kneipp, Human Resources Analyst Pam Moses, Planning, Zoning & Building Director Robert Moore, Planning, Zoning & Building Zoning Administrator Paul Castro, Police Chief Frank Croft, Public Works Director Al Dusey, Assistant Public Works Director Leonard Greene, Recreation Director Russell Bitzer, Town Clerk Mary Pollitt, and Deputy Town Clerk Susan Eichhorn.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Recognition of William Guttman, Charter Review Commission - From 1997 to 1999

Mayor Ilyinsky presented Mr. Guttman with a plaque in honor of his service on the Charter Review Commission.

B. Recognition of Jeanne Habicht, Charter Review Commission - From 1997 to 1999

Mayor Ilyinsky presented Mrs. Habicht with a plaque in honor of her service on the Charter Review Commission.

C. Recognition of Irving Wolfe, Code Enforcement Board - From 1993 to 1999: To be Presented to Mrs. Irving Wolfe

Mayor Ilyinsky presented Mrs. Irving Wolfe with a plaque in honor of the service of her husband, Irving Wolfe. He commented that he had known Mr. Wolfe for many years, and everyone would miss him terribly.

Mrs. Wolfe thanked everyone for the honor bestowed, stating that Mr. Wolfe would have been touched by the generous contribution to the Fire-Rescue Department. She stated that her husband loved working for the Town, and had been pleased to do anything he could to help in any way that he could, because he thought so much of the area and the fine work of the governing body. She explained that Mr. Wolfe was the kind of an individual who gave of himself because it gave him great pleasure to do so.

IV. COMMENTS OF MAYOR PAUL R. ILYINSKY

Mayor Ilyinsky commented that National Fire Prevention Work had been designated as October 3-9, and during that week Town Fire-Rescue personnel conducted fire safety training for the Public Works employees and educated students at the Palm Beach Day School and Palm Beach Public School.

Mayor Ilyinsky noted that October 17-23 was Florida City Government Week, and a special time to recognize the important role played by town government in everyday lives. He reminded all citizens that they were an integral part of that government.

Mayor Ilyinsky commented that on Thursday, October 21, 1999, the Police Department Crime Watch Fall Membership Meeting would be held in the Town Hall Council Chambers.

Mayor Ilyinsky commented that October 24-30 was Red Ribbon Week, and the Police Department encouraged all citizens and employees to wear a red ribbon to show support for a drug free community, and a commitment to a drug free lifestyle.

Mayor Ilyinsky commented that on Saturday, October 30, 1999, from 6:30-8:30 p.m. there would be Halloween festivities at the Town Recreation Center.

Mayor Ilyinsky mentioned that October was also National Crime Prevention Month, and he encouraged everyone to obtain a copy of the Palm Beach Crime Watch Newsletter. He also congratulated the Public Works Department for their commitment to keeping Palm Beach safe and secure by being part of the new Police Department Mobile Crime Watch Program.

President Smith commented that she had been personally saddened to lose Rick Caruso, who had been a member for many years of the Code Enforcement Board. He had been a long time supporter of the Town and the Town Council.

V. APPROVAL OF THE AGENDA

DEFER Item X. B. 2 - Town Application to State Division of Historical Resources "Great Floridians 2000 Program: - Proposed Location of Henry Morrison Flagler Memorial Statute - to the November 9, 1999, Town Council Meeting. Motion made by President Pro-Tem Wyett, seconded by Councilman McLendon, carrying unanimously on roll call.

ADDITION of Item XI. D. 5 - Rochelle Faltz vs. Town of Palm Beach. Motion made by President Pro-Tem Wyett, seconded by Councilman McLendon, carrying unanimously on roll call.

DEFER Item XIII.A.1.- Appeal of the Architectural Commission Decision of May 26, 199, Concerning 740 Hi-Mount Road by Mr. Ronald Kolins - to the November 9, 1999, Town Council Meeting. Motion made by President Pro-Tem Wyett, seconded by Councilman McLendon, carrying unanimously on roll call.

WITHDRAW Item XIII.A.2. - Appeal of the Architectural Commission Decision of July 28, 1999, Concerning 242 Country Club Road by Mr. Ronald Kolins. Motion made by President Pro-Tem Wyett, seconded by Councilman Shaw, carrying unanimously on roll call.

DEFER Item XIII.A.3. - Appeal of the Architectural Commission Decision of September 22, 1999, Concerning 226 Merrain Road by Mr. J. Kenneth Brower - to the November 9, 1999, Town Council Meeting. Motion made by President Pro-Tem Wyett, seconded by Councilman Shaw, carrying unanimously on roll call.

DEFER Item XIII.A.4. - Appeal of the Architectural Commission Decision of September 22, 1999, Concerning 1515 North Ocean Way by Ms. Maura Ziska - to the November 9, 1999, Town Council Meeting. Motion made by President Pro-Tem Wyett, seconded by Councilman McLendon, carrying unanimously on roll call.

DEFER Item XIII.C.1. - Special Exception No. 20-99 with Site Plan Review - Royal Poinciana Chapel Trustee, Inc., 60 Cocoanut Row - to the November 9, 1999, Town Council Meeting. Motion made by President Pro-Tem Wyett, seconded by Councilman Shaw, carrying unanimously on roll call.

WITHDRAW Item XIII.C.15. - Special Exception No. 30-99 - Palm Beach Synagogue, Inc., 223 Sunset Avenue. Motion made by Councilman Shaw, seconded by Councilman McLendon, carrying unanimously on roll call.

DEFER Item XIII. C.2 - Special Exception No. 21-99 - Nikiforos Stoupas, 101 N. County Rd., per request of Attorney James Brindell - to the November 9, 1999, Town Council Meeting. Motion made by Councilman McDonald, seconded by Councilman Shaw, carrying unanimously on roll call.

ADD - To Item X. B. 4, as Item X.B.4.a. - Discussion by Attorney Nick Miller regarding BellSouth Telecommunications Inc. v. Town of Palm Beach.

MOVE - Item XIII.C.7. - Flood Variance No. 2-99 - from New Business - Minor to New Business - Major No. 7. Motion made by Councilman McDonald, seconded by Councilman Shaw, carrying unanimously on roll call.

MOVE - Item XI D. 2. - 17th Annual Town of palm Beach Pro-Am Tournament - Recommended Beneficiaries and Distribution of Proceeds - to Approved Agenda. Motion made by Councilman Shaw, seconded by Councilman McDonald, carrying unanimously on roll call.

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

VI. COMMUNICATIONS FROM CITIZENS

There were none.

APPROVED AGENDA

VII APPROVAL OF MINUTES OF SEPTEMBER 17 AND 29, 1999

VIII APPROVAL OF CHECK REGISTERS FOR SEPTEMBER 1999

IX APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF SEPTEMBER 22, 1999

X 17th ANNUAL TOWN OF PALM BEACH PRO-AM GOLF TOURNAMENT - RECOMMENDED BENEFICIARIES AND DISTRIBUTION OF PROCEEDS

Councilman Shaw moved approval of the "Approved Agenda." The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

REGULAR AGENDA

X OLD BUSINESS

A. Sealed Bids

1. Sealed Bid No. 99-06 - Marina Security Service *(Deferred from September 17, 1999)*

Public Works Director Al Dusey reported that bid No. 99-06 had been opened for the Marina security, and it was recommended that the award go to Ultimate Security and Investigations, Inc., in the amount of $50,392.80.

President Pro-Tem Wyett moved approval of Sealed Bid No. 99-06. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

B. Other

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

PCL Project Manager Gail McKenna reported that paving of both approaches would begin on October 19th. The first bascule leaf would be relocated on October 20th, and the Coast Guard had been contacted in order to notify mariners regarding channel closures. Pile driving at night had been accomplished, with as much as possible being done during daylight hours.

Joe Borello of the Florida Department of Transportation (FDOT) reported that E. C. Driver & Assoc., Kimley Horn, and the bridge architects from H2L2, had done some graphics to demonstrate the driver's eye view of what the bridge would look like.

Mario Echaguarra of E. C. Driver & Assoc. reported that the final bridge structure would be completed in 2003, however four traffic lanes would be available soon with the use of the temporary bridge. Mr. Echaguarra discussed the issues of the median on Royal Palm Way, the left turn onto Flagler Drive, and current design standards in providing for pedestrians and bicycles, demonstrating with graphic material. He explained that the bridge could be narrow, with a reduction of median width, however, the bridge width would then be varying from its 100' proposed width, with a 16' median, to a 90' width. The arches would then not be in a straight line, and the look of the bridge would be affected. He responded to questions concerning the bicycle lane.

Chairman of the Landmarks Preservation Commission, Jeff Smith, commented that he had reviewed some of the documents being discussed, and that it was his opinion that the bridge should be straight, and that the median area with landscaping was a very good solution to dividing the two lanes; the Landmarks Preservation Commission would be reviewing the design aspects of the bridge.

In response to President Smith, Mr. Paul Cherry with Kimley Horn, reported that there would be a right turn lane added to the bridge leading to Flagler Dr., with an island added so that pooling of traffic would be better facilitated

President Smith clarified that it appeared that the 100' bridge width was acceptable, and that a straight bridge would be preferred.

Director of the Preservation Foundation Polly Earl suggested that the Landmarks Preservation Foundation be allowed to have the opportunity to continue to look at some of the issues associated with the bridge.

b. Town Application to State Division of Historical Resources "Great Floridians 2000 Program" - Proposed Location of Henry Morrison Flagler Memorial Statue

This item was deferred under V. "Approval of the Agenda" to the November 9, 199, Town Council Meeting.

c. Charter Review Commission Report Dated April 19, 1999 *(Deferred from May 11, and July 13, 1999)*

A Special Town Council Meeting was set to discuss the Charter Review Commission Report, on Tuesday, October 26, 1999, at 1:30 p.m. in the Town Council Chambers.

d. Cable TV System Technical Evaluation and Institutional Network (I-Net) Document by Columbia Telecommunication Corporation

Assistant to the Town Manager David Jakubiak reported that two documents had been received regarding the cable system: A technical evaluation of the cable system, and the planning document for the creation of the Institutional Network (I-Net). These reports were part of the Phase 2 process; interviews had been conducted with all Town departments and various community groups to discuss the I-Net; Comcast representatives and personnel from Columbia Telecommunication Corporation had reviewed the technical aspects in the field of the cable system. He verified that currently, the Town of Palm Beach had no fiber optic cable, as confirmed by Comcast Cable.

Attorney Nick Miller, Miller, Van Eaton, et al, reported that the Town would be conducting renewal negotiations with Comcast Cable, who were planning to transfer their system to Adelphia in the year 2000. He explained that Town staff had presented a four phase approach to the renewal, with Phase 1 being the seminar held to inform the Town Council of the issues, Phase 2 being the conduction of a series of expert studies and reviews to establish a baseline of the current system, and consideration of the needs of the Town. The reports being discussed today were part of Phase 2: a report by Columbia Telecommunication Corporation who had 1) investigated the current cable television system, and what the base line technology that was currently installed and operating in the Town of Palm Beach; 2) conducted a series of extensive interviews with department heads, and all relevant senior Town staff to determine the next generation of Town services; 3) met with a series of community leaders; 4) provided a report to provide a system level presentation of an Institutional Network. He explained the Institutional Network would be a dedicated portion of the cable television system capacity that would be available for governmental and non-profit uses to provide advanced telecommunications infrastructure. Mr. Miller advised that Phase 3 and Phase 4 could now be undertaken, emphasizing that the budget for Phase 2 was sufficient to allow more studies than had been conducted, with 1/3 of the monies authorized being spent. He suggested that money be held in reserve, as additional supplementary studies may be needed.

Andrew Afflerbach, of Columbia Telecommunication Corporation, summarized the lengthy report furnished to the Town Council, explaining that the first part of the study reviewed the subscriber cable network, the network that was connected to the homes of all subscriber/residents, and it was found that the system would not be able to deliver two-way services in its current state; the second part of the study concerned information resulting from meetings with Town department heads and various community organizations – it was found that public safety and Town operations could be more cost effective and efficient with a more advanced Town telecommunications infrastructure. The technology plan was the last portion of the report, which would serve as a road map for the Town telecommunication needs by way of an Institutional Network.

Mr. Afflerbach noted that it would be important that the cable television system be able to support more technology in both the professional and entertainment world. Cost savings to build an institutional network that would connect all Town departments would amount to $250,000 by doing this now, rather than later on. Currently the Town buildings were interconnected over a computer network that runs over telephone lines leased from BellSouth. The lines cost approximately $2,000 per month, and even at that cost they cannot keep pace with the requirements for Internet, etc. With fiber optics in place, the $2,000 per month charge would be removed, and more advanced telecommunications would be provided. The expense to build an I-Net would be high, however, it would be a cost effective way for the Town to have its own dedicated use.

Diane Christie, Director of System Development, Comcast Cable, commented that she was looking forward to moving ahead with negotiations with the Town.

Attorney Miller advised that Town Council approval was now needed for Phase 3, which was to prepare the documents for negotiations, and to begin negotiations with Comcast Cable. He explained that each individual Council member would be met with as to preferences regarding the negotiations. Mr. Miller explained that Phase 1 had been budgeted at $10,000, with $4,500 being spent; Phase 2 was budgeted at $60,000, and to date $24,000 had been spent.

He requested that the remaining monies be kept in reserve, as it may be necessary to do some additional expert studies. Phase 3 had been estimated at $15,000. Phase 4 would be driven by how quickly the negotiations went – the estimate was approximately $3,000 per negotiating session.

Councilman McDonald moved approval of the amount of $15,000 for Phase 3, and $20,000 for Phase 4 (5 sessions with Comcast Cable) from the FY2000 General Contingency Fund. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

President Smith clarified that, considering the importance of this issue, it would be an ongoing item on the Agenda monthly to update the Town Council.

a. Status Report on BellSouth Litigation

Attorney Nick Miller explained that in 1996 the current BellSouth telephone franchise expired and the Town attempted to start renewal negotiations. In 1997 the town Council passed Ordinance No. 16-97, which was a comprehensive management structure for supervising and regulating use of the rights-of-way of the Town by telecommunications companies, which was specifically designed to address franchise fees, right-of-way management, and franchise authority. BellSouth then sued the Town in April 1998, with the Florida State Legislature revisiting the whole issue in November 1998, passing an amendment that then turned State Law to extend and limit local government compensation to 1% of local service revenues, and to prohibit any form of in-kind compensation, such as free conduit, and restricting the local government authority to regulate the type of equipment that telecommunication companies were proposing to install in the right-of-way. A decision had been made in the case, which Mr. Miller indicated he believed would be appealed by BellSouth. Mr. Miller explained that the Town of Coral Springs had contacted him to ask if the Town of Palm Beach would join with them in a joint appeal, so that costs could be shared. He emphasized that filing a Notice of Appeal would not obligate the Town of Palm Beach to pursue the appeal; the Notice could always be withdrawn.

President Pro-Tem Wyett moved approval of filing a Notice to Appeal, as recommended by Attorney Miller. The motion was seconded by Councilman McLendon

President Pro-Tem Wyett suggested that the Florida League of Cities be contacted to discuss the issue as an interested party. Attorney Randolph responded that he would contact them, although he believed that the issues were fairly narrow.

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

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

Finance Director Jane Skittone reported that the Semi-Annual Report on Unpaid Assessments, Fines, Fees, and Other Monies Owed to the Town as of September 30, 1999 totaled $1,252.70; past due solid waste assessments were $402.70; amount due for outstanding alarm accounts was $850.00.

Councilman McDonald commented that the process had improved and moved that the report be made on an annual basis, rather than semi-annual. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

XI. NEW BUSINESS

A. Resolutions

1. Resolution No. 29-99 - Revisions to Rights-of-Way Standards Manual

Director of Public Works Al Dusey reported that Resolution No. 29-99 was in response to the recent Ordinances, Rules & Standards (ORS) Committee Meeting, and the Town Council meeting of September 17, 1999. The issue was parking on Worth Avenue, and the ORS Committee had recommended that only two vehicles be allowed spaces, and that they be charged $100 per space, and that they be used only for loading and unloading. Resolution No. 29-99 amended the Right-of-Way Manual, which would establish the restrictions.

Director of Planning, Zoning & Building Robert Moore commented that several contractors using Worth Avenue had noted that there were other essential construction activities that took place, other than loading and unloading, requiring parking spaces for a period of time. He recommended that the language on page 3 of 3, (which was Attachment A of Resolution No. 29-99) be amended to read: "for the purpose of essential construction activity and loading and unloading."

President Pro-Tem Wyett moved approval of Resolution No. 29-99, as modified. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Attorney Randolph read Resolution No. 29-99 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH

COUNTY, FLORIDA, AMENDING THE DEPARTMENT OF PUBLIC WORKS ENGINEERING DIVISION STANDARDS APPLICABLE TO PUBLIC RIGHTS OF WAY AND EASEMENTS WITHIN THE TOWN OF PALM BEACH.

Public Works Director Al Dusey pointed out that Attachment A would also need to be modified in the second paragraph, which amended the Right of Way Manual, in the same manner as the Resolution.

President Pro-Tem Wyett moved approval of the modification to Attachment A, of Resolution No. 29-99. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

B. Ordinances (First Reading)

1. Ordinance No. 7-99 - Amending Section 10-4 of the Town Code of Ordinances Relating to Animal Regulation

Town Attorney Randolph read Ordinance No. 7-99 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 10, ANIMALS, SECTION 10-4, SO AS TO INCORPORATE A NEW PROVISION WHICH SHALL MAKE IT UNLAWFUL FOR ANY PERSON TO HAVE ANY ANIMAL UNDER THEIR CUSTODY OR CONTROL IN CERTAIN AREAS OF THE TOWN WITHOUT HAVING ON HIS OR HER PERSON A DEVICE CAPABLE OF REMOVING ANY OFFAL, FECES, OR EXCRETA OF THE ANIMAL UNDER THEIR CONTROL; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Town Attorney Randolph reported that he had received notification from the Police Department that there was a concern regarding Ordinance No. 7-99, that there be some language incorporated that would require people to display the device they have on their person in the event they were requested to do so by the Code Enforcement or Police officer, as per the language: "said device shall be displayed upon the request of the Town Code Enforcement Officer or Police Officers," to be inserted in Item (c).

Councilman McDonald moved approval of Ordinance No. 7-99, as amended. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/1, with President Smith casting a dissenting vote.

2. Ordinance No. 8-99 - Amending Chapter 54, Article II, of the Town Code of Ordinances, Landmarks Preservation Commission, Relating to Terms, Conflicts of Interest, Outside Experts, Lack of Attendance, and Excused Absences

Town Attorney Randolph read Ordinance No. 8-99 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 54, HISTORICAL PRESERVATION, OF THE TOWN CODE OF ORDINANCES AT ARTICLE 2, LANDMARKS PRESERVATION COMMISSION, AMENDING SECTION 54-36, RELATING TO APPOINTMENT, QUALIFICATIONS, TERMS, COMPENSATION, FILLING VACANCIES, AND REAPPOINTMENT; AMENDING SECTION 54-37, RELATING TO ALTERNATE MEMBERS; AMENDING SECTION 54-38, REGARDING REMOVAL PROVISIONS, ABSENCES, AND CONFLICTS OF INTEREST; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Councilman McDonald moved approval of Ordinance No. 8-99. The motion was seconded by President Pro-Tem Wyett.

Director of the Preservation Foundation Polly Earl expressed concern regarding excused absences for attendance at professional meetings.

Director of Planning, Building & Zoning Robert Moore commented that it had been his understanding that staff had been directed to consider excused absences, and the policy decision of the Town Council had been to consider attendance at professional meetings by board members as an excused absence.

President Smith clarified that was correct, and there was no need for further language to be added to Ordinance No. 8-99.

On roll call the motion carried unanimously.

3. Ordinance No. 9-99 - Amending Chapter 18, Article III, of the Town Code of Ordinances, Architectural Commission, Relating to Terms, Conflicts of Interest, Lack of Attendance, and Excused Absences

Town Attorney Randolph read Ordinance No. 9-99 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 18, BUILDING AND BUILDING REGULATIONS, OF THE TOWN CODE OF ORDINANCES, ARTICLE 3, ARCHITECTURAL REVIEW, SO AS TO AMEND SECTION 18-168 RELATING TO TERMS, AMENDING SECTION 18-169 RELATING TO REMOVAL OF MEMBERS, AMENDING SECTION 18-170 RELATING TO CONFLICTS OF INTEREST; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman McLendon moved approval of Ordinance No. 9-99. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

4. Ordinance No. 10-99 - Amending Chapter 74, Article I, of the Town Code of Ordinances, Recreation Advisory Commission, Relating to Terms, Conflicts of Interest, Lack of Attendance, and Excused Absences

Town Attorney Randolph read Ordinance No. 10-99 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 74, PARKS AND RECREATION, OF THE TOWN CODE OF ORDINANCES, AT ARTICLE 1, IN GENERAL, AMENDING SECTION 74-1 RELATING TO APPOINTMENTS, TERMS, QUALIFICATIONS, ADVISORY FUNCTIONS, ALTERNATES, REQUIREMENTS, OFFICERS, PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE

President Pro-Tem Wyett moved approval of Ordinance No. 10-99. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

5. Ordinance No. 11-99 - Amending Chapter 2, Article IV, of the Town Code of Ordinances, Zoning Commission, Relating to Terms, Conflicts of Interest, Lack of Attendance, and Excused Absences

Town Attorney Randolph read Ordinance No .11-99 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION OF THE TOWN CODE OF ORDINANCES AT ARTICLE 4, BOARDS AND COMMISSIONS, DIVISION 2, ZONING COMMISSION, AMENDING SECTION 2-328, RELATING TO REMOVAL PROVISIONS, AMENDING SECTION 3-330, RELATING TO CONSECUTIVE TERMS, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE

President Pro-Tem Wyett moved approval of Ordinance No. 11-99. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

6. Ordinance No. 12-99 - Amending Section 42-199 of the Town Code of Ordinances Regarding Worth Avenue Construction Work Hours

Town Attorney Randolph read Ordinance No. 12-99 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AT CHAPTER 42, ENVIRONMENT, ARTICLE 5, NOISE, SECTION 42-199, HOURS FOR CONSTRUCTION WORK, SO AS TO MODIFY THE PERMITTED PERIODS FOR CONSTRUCTION WORK ON WORTH AVENUE, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE

President Pro-Tem Wyett moved approval of Ordinance No. 12-99. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

7. Ordinance No. 13-99 - Creating a New Section 106.59 in the Town Code of Ordinances Regarding Height Clearance Above Sidewalks, Bike Trails, Streets, and Roadways

Town Attorney Randolph read Ordinance No. 13-99 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 106 OF THE TOWN CODE OF ORDINANCES, RELATING TO STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES AT ARTICLE 5, SIDEWALKS, SO AS TO PROVIDE A NEW SECTION, 106.159, REQUIRING THAT THERE BE A HEIGHT CLEARANCE OF 8' MEASURED FROM THE EDGES AND EXTENDING THE FULL WIDTH OF ALL SIDEWALKS AND BIKE TRAILS WITHIN THE TOWN, REQUIRING THAT THERE SHALL BE AN 18' CLEARANCE ABOVE STREETS AND ROADWAYS WITHIN THE TOWN, PROVIDING THAT IT SHALL BE UNLAWFUL FOR ANY PERSON OWNING AND/OR OCCUPYING ANY LOT OR PART OF A LOT WITHIN THE TOWN TO OMIT TO KEEP THE ABUTTING SIDEWALKS AND/OR BIKE TRAILS OR STREETS AND ROADWAYS MAINTAINED IN THE MANNER SET FORTH HEREIN; PROVIDING FOR PENALTIES, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

President Pro-Tem Wyett moved approval of Ordinance No. 13-99. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

8. Ordinance No. 14-99 - Rescinding Section 126-33 of the Town Code of Ordinances Relating to Limbs, Branches Overhanging Neighboring Property

Town Attorney Randolph read Ordinance No. 14-99 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 126 OF THE TOWN CODE OF ORDINANCES, AT ARTICLE 2, TREES, SECTION 126-33, LIMBS, BRANCHES, OVERHANGING NEIGHBORING PROPERTY, SO AS TO RESCIND SECTION 126-33 IN ITS ENTIRETY; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

President Pro-Tem Wyett moved approval of Ordinance No. 14-99. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

9. Ordinance No. 15-99 - Amending Chapter 2, Article V, of the Town Code of Ordinances, Code Enforcement Board, Relating to Organization, Terms, and Lack of Attendance; and Amending Section 2-439 of the Town Code of Ordinances Relating to Citation Fine Schedule

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION OF THE TOWN CODE OF ORDINANCES AT ARTICLE 5, CODE ENFORCEMENT, DIVISION 2, CODE ENFORCEMENT BOARD, AMENDING SECTION 2-401, RELATING TO ORGANIZATION, AMENDING SECTION 2-402, RELATING TO TERMS, AMENDING DIVISION 3, PROCEDURE, AT SECTION 2-439, RELATING TO CITATION FINE SCHEDULE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

10. Ordinance No. 16-99 - Amending Chapter 82 of the Town Code of Ordinances Relating to Employee Benefits/Retirement System

Attorney McCracken read Ordinance No. 16-99 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 82 OF THE TOWN OF PALM BEACH CODE OF ORDINANCES, TO COMPLY WITH THE PROVISIONS OF CHAPTER 99-1, LAWS OF FLORIDA, AMENDING DEFINITIONS, PROVIDING TENURE, CERTAIN BENEFITS TO PUBLIC SAFETY OFFICERS, PROVIDING OPTIONAL FORMS OF PAYMENT TO PUBLIC SAFETY OFFICERS, LIMITING WORKERS COMPENSATION OFFSETS ON PAYMENTS TO PUBLIC SAFETY OFFICERS, ESTABLISHING A SEPARATE PLAN FOR PUBLIC SAFETY OFFICERS, RECONSTITUTING THE BOARD OF TRUSTEES TO BECOME THE GENERAL EMPLOYEE BOARD OF TRUSTEES, ESTABLISHING A PUBLIC SAFETY OFFICER BOARD OF TRUSTEES, ESTABLISHING QUALIFICATIONS FOR MEMBERS THEREOF, PROVIDING FOR INVESTMENT

OF ASSETS AND INVESTMENT POLICIES, PROVIDING FOR CONTINUATION OF DISABILITY BENEFITS, PROVIDING FOR PLAN AND ASSET SEGREGATION, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Transcript of Item XI. NEW BUSINESS B. Ordinances No. 10:

Ordinance No. 16-99 - Amending Chapter 82 of the Town Code of Ordinances Relating to Employee Benefits/Retirement System:

McCracken: An Ordinance of the Town Council of the Town of Palm Beach, Palm Beach County Florida, amending Chapter 82 of the Town of Palm Beach Code of Ordinances to comply with the provisions of Chapter 99-01, Laws of Florida, amending definitions, providing tenure, certain benefits to public safety officers, providing optional forms of payment to public safety officers, limiting workers compensation offsets on payments to public safety officers, establishing a separate plan for public safety officers, reconstituting the Board of Trustees to become the General Employee Board of Trustees, establishing a Public Safety Officer Board of Trustees, establishing qualifications for members thereof, providing for investment of assets and investment policies, providing for continuation of disability benefits, providing for plan and asset segregation, providing for severability, providing for repeal of ordinances in conflict, providing for codification, and providing an effective date.

Wyett: Move approval.

McDonald: Second.

Shaw: I have a question on Exhibit A, just for clarification. I guess it's the summary of the changes that were made to Section 82. Under compensation, I thought there was some discussion about the fact that special detail pay was now going to be included, and it was one of the issues of a rather lengthy discussion at one point, and in this it says: "Special detail pay shall <u>not</u> be included as compensation."

Crouse: Special detail pay if different than special assignment pay. Special assignment pay, which is covered as overtime by FLSA cannot be excluded from the retirement system, but there is still special duty, and that we do want to remain in the system as being excluded. That is voluntary work.

Shaw: I'm not sure that I understand what the difference is, but that was one question, and I'm not acquiescing to it, but also, on page 6, it may be subtle, and I may just be missing it, and I apologize, but I don't see the difference in the tenure plan for both page 6 and page 8, and yet if the person has retired, and then they pass away, versus how could somebody die during their employment, and then still have the –I think it's a – the way you've written it – I'm sure that the idea is that if somebody is to die after they retire within a 10 year period, they're entitled to get their retirement benefits for a total of 10 years.

Smith: All right, but let's specify. He's looking at Section 82-147(c) - Tenure Certain, and he's on page 8, also Item 3(c) Tenure Certain.

McCracken: One is for the situation where someone dies after they are retired, and the other is for a situation where someone dies while in service to the Town.

Shaw: But the second section is while they're in service, so then they can't die after they retire if they're in service. If I'm working for the Town and I die, I can't have retired, and I think you should not have a comma between the word "terminated" and "until."

McCracken: On both pages?

Shaw: Yes.

Smith: It's in the 4th line.

McCracken: In other words, on the 4th line, to delete both commas?

Shaw: Well, that's minor. That's grammar. I'm saying that on the second of the two is referring to the fact that it's death while an employee of the Town. If you are an employee of the Town and die, then you haven't retired, and the comment is if the retiree, who is a member of the benefit group, police officer, or benefit group fire fighter, dies within 10 years of retirement. Well, he's died before he got to retirement, so it's just the phrasing that's wrong. I'm not discussing the concept that if you die as an employee you're to get your benefits for 10 years.

McCracken: I think you're right. I think it should – retiree is a term of art. I think you can just – you're right though – you just take out "to the retiree," so it would read "which may have been due or terminated until the tenth anniversary after the..."

Shaw: Yes, it's the "dies" in the second line. He's died already in the clause, so you can't die after. I mean, just clean it up.

Smith: All right. Absolutely. I understand, Mr Shaw, but I think this is a perfect example of something that should have been brought to their attention prior to the Council meeting.

Shaw: I'm sorry, but I got this at 5:00 yesterday, and when I called Mr. McCracken he was gone, and when I called –

Smith: But, you know, sometimes – we know that you e-mail like crazy, so sometimes if they had been e-mailed early, then perhaps they could have responded to it before the meeting.

McDonald: How about 9:00 this morning?

Smith: How about 9:00 this morning? So, I appreciate, Mr. Shaw's bringing this to our attention, but to bog down the meeting on a grammatical, or a wording thing –

Shaw: Just fix it. It's not a bog down. It's just take a look at it and have it, I guess, fixed for second reading, that's all. It's not a dialog.

McCracken: Well, if I may do that, I'd appreciate it. Thank you.

Smith: All right. So, then, we'll do that. Thank you. Chief Croft?

Croft: My question is directed to Mr. Shaw. Could you one more time go over your first concern?

Shaw: Well, it's a question. I don't know that it's a concern. I just want a clarification.

Wyett: Can't we do this at break?

Smith: No, I think we have to finish this. Mr. Shaw, what page are you talking about?

Shaw: Well, I'm looking at Exhibit A. I didn't bring the whole 82-page document. It has to do under definitions, sections 82-52, and under the definition of compensation, I just want a clarification which, I understand there is a difference between special duty and special detail – I thought there was a concern about –I thought they were the same – special detail pay shall not be included as compensation is what it says. If that is the intent, and that's the agreement, then that is fine.

Croft: I don't know whether we agree or disagree.

Shaw: Neither do I. I'm just underlining an item and let you resolve it, because it's not my agreement.

Croft: Well, let me say this. This is the first time I've read this specific part, and there is no such thing as special detail pay anymore. It's all, and I believe this is what you said, assigned special overtime.

Shaw: I mean, if an assignment to guard the President coming to the United States, if that's the definition of special detail, o.k., but then define what special detail is.

Croft: First of all, I think that last sentence should be omitted, and an additional sentence be added that says that special assignment overtime is included as compensation.

Smith: All right, but Chief Croft, now I think that this is something that you, and Mr. Crouse, and Mr. McCracken can deal with, and if you want to bring it back to the Council at this meeting, please do, or if Mr. Randolph and Mr. McCracken feel that this is something that can be amended and incorporated into the second reading of the ordinance, then we'll do it that way.

Croft: I certainly would have enjoyed discussing this before today, and I'm sorry to take up you time, but this is an important issue.

Smith: I know it is an important issue, and I think it is something that should be dealt with and not just quickly glossed over, so I think this is something that you're going to need to talk about. Mr. Doney?

Doney: Yes, and I have a suggestion too, and that is, when I got this yesterday afternoon, if the Town Council, because of the lateness of arrival of this lengthy document, and believe me, until late last night I was still receiving other documents – if the Council does not want to act on this issue today, but wants to act on it at the November 9th meeting for first reading, and then the December meeting for final reading, the second reading of the ordinance, that's fine too. This was the best that could be done under the time available.

Smith: There is absolutely no criticism being leveled here, Mr. Doney, we worked very hard to expedite this, because we said at the special meeting when we looked into the pension board and the split of plans that we would move as quickly as we could to get the ordinance on first reading. If the Council now determines, with the questions that have been brought up, that we're not ready for first reading, then we'll pull back on first reading. Now, members of the Council, let's discuss – because there is a very important issue to the Town, but we wanted to show in good faith that we were moving ahead. No one is being criticized here. I was the one who suggested that we would have it for October. Mr. McCracken and Mr. Randolph had heart attacks. But, they have tried to do this. Now, if it isn't ready, and it is such an important thing, we can certainly put it off and do first reading in November for further study, but everybody has attempted to move ahead with it as best they can, so –

Wyett: Can't we suggest that these gentlemen take a break, come back at the end – right after lunch – is that enough time to resolve this one or two sentence problem?

Smith: But it occurs to me that perhaps, with these two things that have come up and sort of being looked at after 5:00 and 9:00, that it may be determined, after further study, that there are other items that need –

Randolph: If you get lucky, it may be that these two minor items will do it, and you could put it on first reading, and then upon the Chief having finally reviewed it, finds nothing more, then you will be able to do it on first reading.

Smith: All right. So, why don't we take this particular ordinance, 16-99, and move it back further in the Agenda, perhaps to the first item before Development Review, whenever that will be this afternoon, to give everyone a chance to look at it, all right, and then we'll come back to it this afternoon, and at that time you can tell us if you feel there are other items that you need to look into. All right?

-----this item was continued after the luncheon recess-----

Smith: We are going back to an item on the Agenda earlier, that we put off until the first item after lunch, and that is New Business B. Ordinances - First Reading, Item No. 10 - Ordinance 16-99, Amending Chapter 82 of the Town Code of Ordinances relating to Employee Benefits Retirement System. Mr. McCracken please.

McCracken: Yes, we have met to discuss the two issues that were raised by Councilman Shaw, both of which required changes in the draft, and the first, if you'll look on page 1 of Exhibit A, which I have handed out to you, at the bottom of the page we have added the language "special assignment overtime pay," and I believe both Chief Croft and Chief Elmore agree that that's an appropriate change. Chief Elmore does want to make a comment on that change.

Elmore: When the Police Department switched from special detail to the special assignment overtime a few months back, the Fire-Rescue Department did not, and I was really sort of waiting to – to be consistent now, both in the two departments, and also to the people that we're serving, I'd like to come back to you next month with a recommendation that the Fire-Rescue Department does the same thing that the Police Department is doing – charges the same rate, and we pay our employees at the special assignment overtime, rather than the special detail, and then that will correct this.

Smith: Thank you, Chief.

McCracken: The next change was to page 14(c), where it had the words "or terminated" in there, which have been eliminated, and the final change, and this is the specific section Councilman Shaw was concerned with, was a re-write of the very last page, also a similar sub-section (c) to recognize that we're dealing with deceased members, not deceased retirees. Now, additionally, when we made these changes at lunch time, we observed that when the computer did the compare program on the original ordinance and the changes, it picked up a first draft, and did not include certain of the changes in the Exhibit A, so that is why Exhibit A is now a couple pages longer than the earlier Exhibit A, because of the couple of the sections in the ordinance that were changed were not included in the earlier Exhibit A, so this should be the Exhibit A which will be applicable to the ordinance as written, and should contain the required underlining and crossing out.

Smith: All right, and so how do you recommend we proceed at this time, Mr. McCracken, Mr. Randolph?

McCracken: We're recommending that you proceed with the knowledge that there may be some sections in here – all of the information was in the 82 page document which was provided to the Council and to interested parties. The underlining was not complete in Exhibit A previously, so that there is no change, except that this explains it more carefully, and I think you could proceed with the idea that if there are objections they can be worked out between now and second reading.

Smith: All right. So, there's actually no change in the ordinance from the way you read it this morning.

Randolph: Other than those that he just went through.

McCracken: Yes, the three issues that were worked out with the chiefs.

Shaw: I would move approval on first reading, as amended.

Wyett: Second.

Smith: All right, is there any further discussion?

Doney: Whenever it is appropriate after this vote, I think it's appropriate to look at Mr. McCracken's letter, because there are several items that are also going to require the Town Council's upcoming consideration, and we need to flag those so that you're prepared for it. Not today, but coming attractions.

Smith: Let me go back and call the question.

Pollitt: Takes roll call - motion to approve on first reading, as amended, carries unanimously.

McCracken: The issues are that the Council will have to be in a position to appoint two members to the new Public Safety Board, and we are suggesting that be done at the December meeting. By the December meeting the new members of the Public Safety Board from the Fire Fighters and the Police Officers will have been elected, and it's up to the two who are elected to meet with the two who are appointed sometime in December to select a fifth trustee. Once they have selected that fifth trustee, the fifth trustee will come back before the Board in the January meeting to be confirmed as the fifth member of the Board of Trustees. Additionally, the ordinance provides that a statement of investment policy will be adopted by the Town Council. We discussed this at our previous meeting, that it would be the existing statement of investment policy that the existing Board of Trustees had adopted, which we proposed for adoption by Resolution, and we're suggesting that Resolution be adopted subsequent to the final reading of the Ordinance. Both the Resolution and the Ordinance to go into effect January 1st.

Smith: All right. So, this should all be done at the December meeting is your recommendation?

Doney: Well, second reading of this ordinance will happen in November. Also, it's my –

Smith: But the appointment to the new Boards will be done at the December meeting?

McCracken: Yes.

Doney: And also I think Mr. Crouse can add to – just so we're all proceeding with the same understanding of both Boards and how we're going to move forward, because it's my understanding and it's my intent, as Town Manager, being on one of the Boards, that Mr. Crouse or his designee, if we have to get a contractual person, would act as the Plan Administrator for both Boards, so that we can hopefully get uniformity, but we also have practical considerations of the two Boards.

Smith: But we voted on that at the last meeting, that Mr. Crouse would be the Plan Administrator of both Boards. The Council approved that at the last meeting. We did that.

Doney: Was there anything else, Bill, election wise?

Crouse: We have the election procedures all set to go, so after the Council approves on second reading we will proceed with the election on the 9th and we will be ready to present the entire Board, once you have selected the two residents after the December meeting, we'll be ready to go.

Smith: So, we are all set to go. As far as the policy and the investment statement, I know we talked about it at the last meeting. I don't know if we took formal action on it. That I don't remember.

McCracken: No you have not. That's what the proposed Resolution is about, which would be adopted either in November or December at your pleasure.

Smith: All right, why don't we do the Resolution on the investment policy at the November meeting, and then we'll do the election at the December meeting.

Doney: Just as another consideration for the Town Council is that, and if this can be arrived at mutually, we would have – I know Bill Crouse has talked to me about – that we would have the investment managers, and also the performance monitor and the actuary be able to come in and hopefully be able to have a morning and an afternoon meeting to try to make sure that we're most efficiently using all of this out of town expertise, and minimizing the expense.

Smith: Well, we talked about that, and we also talked about perhaps twice yearly – there are now four meetings for the Board, but two of those meetings could be joint meetings, but this is something I think we could discuss at the November meeting, after we pass the Ordinance on second reading, because we're trying to do whatever we can to financially keep the costs down, and having the meetings on the same day for the two boards, whether they're separate or joint would certainly do that. But, we'll discuss that after the second reading in November, all right.

Doney: And hopefully the Town Council and the Mayor will have some other individuals who have expressed an interest in serving.

Smith: Or they may have some thoughts of asking people to serve. All right. Is that fine? Chief Croft, Chief Elmore, Mr. Crouse – your nodding yes. Yes, thank you. All right. That's it.

End of verbatim transcript.

C. Sealed Bids

1. Sealed Bid No. 2000-01 - Solid Waste Yard Trash Crane

Public Works Director Al Dusey reported that the bid had been slightly less than what had been budgeted, and the award was recommended to Peterson Industries in the amount of $97,990.00

Councilman McLendon moved approval of Sealed Bid No. 2000-01 to Peterson Industries in the amount of $97,990.00. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

D. Other

1. Request for Town Support for Proposed Palm Tree Lighting Beautification Project on South County Road by The Greater South County Road Association, Inc.

Mr. Dana Thomas, on behalf of the Greater South County Road Association, Inc., addressed the Town Council, stating that it was seeking the continued support of the Town Council in its ongoing efforts to enhance the beauty, historical significance and architectural landmarks, providing a safe, pleasant atmosphere for residents and guests to enjoy fine dining and shopping opportunities along South County Road during the evening hours. The Association planned to continue its long term community program by lighting the Palm trees planted along South County Road. The Association was launching a funding campaign and applying for available grant funding to finance the estimated cost of $1,200-$1,500 per tree. Additionally, with the support of the Town Council, the Association would like to provide lighting enhancements to the landscaping in and around the Memorial Fountain.

Mr. Ken Brower explained that there would be 130 trees in the project, with preliminary estimates being $1,000-$1,200 per tree, which would include the electricity, etc. The Memorial Fountain would be an entirely different project. He indicated that he would return to the Town Council in February or March 2000 with a more detailed scope of the project.

2. 17th Annual Town of Palm Beach Pro-Am Golf Tournament - Recommended Beneficiaries and Distribution of Proceeds

This item was included under "Approved Agenda," earlier in the meeting.

3. Medical Insurance Premium Rates for Calendar Year 2000

Human Resources Director William Crouse referred to his memorandum of October 4, 1999, wherein it was recommended that the Town of Palm Beach change its managed care system from the current two party system of Florida Health Choice and Gallagher Bassett to a single system of Blue Cross/Blue Shield. He explained that the service level would be improved, and better discounts would be offered as well.

Councilman Shaw moved approval of the medical insurance premium rates for calendar year 2000. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as President Smith was temporarily out of the room.

4. Palm Beach County Legislative Delegation Meetings/Public Hearings for 1999-2000

Public Works Director Al Dusey explained that the State had changed its system for beaches; the process was entirely different and it would no longer be necessary to have representatives of the Town appear at the Palm Beach County Legislative Delegation Meetings.

5. Rochelle Faltz vs. Town of Palm Beach - Comments by Town Attorney Randolph

Town Attorney Randolph reported that a Demand for Judgement in the amount of $12,500 had been received, and he advised that the liability on the part of the Town was very slim in this roller blading incident, recommending that the Demand for Judgement not be accepted.

Councilman McLendon moved that the Demand for Judgement not be accepted. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

*******The luncheon recess was taken at 12:20 p.m.*******

******* The meeting was reconvened at 2:05 p.m. *******

XII. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman McLendon suggested that the Public Works Department follow up on the water budget in the City of West Palm Beach so that the numbers presented would be clarified.

There were no other Town Council comments.

XIII. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of the Architectural Commission's Decision of May 26, 1999, Concerning 740 Hi-Mount Road by Mr. Ronald K. Kolins *(Deferred from July 13, August 10, and September 17, 1999)* - **Request for Deferral to November 9, 1999, per letter dated October 8, 1999, from Mr. Ronald K. Kolins**

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

2. Appeal of the Architectural Commission's Decision of July 28, 1999, Concerning 242 Country Club Road by Mr. Ronald K. Kolins *(Deferred from August 10, and September 17, 1999)* - **Request for Withdrawal per letter dated October 8, 1999, from Mr. Ronald K. Kolins**

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

3. Appeal of the Architectural Commission's Decision of September 22, 1999, Concerning 226 Merrain Road by Mr. J. Kenneth Brower - **Request for Deferral to November 9, 1999, per letter dated October 11, 1999, from Mr. J. Kenneth Brower**

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

4. Appeal of the Architectural Commission's Decision of September 22, 1999, Concerning 1515 North Ocean Way by Ms. Maura A. Ziska - **Request for Deferral to November 9, 1999, per letter dated October 11, 1999, from Ms. Maura A. Ziska**

Attorney Peter Broberg commented that he had not received a copy of the letter from Attorney Ziska concerning the deferral of this item, and had come prepared to address the matter.

Town Attorney Randolph commented that a neighbor was making the appeal, rather than the applicant, and the neighbor had then requested that their appeal be deferred, which would hold up the applicant on the project. He advised that the applicant had the right to have the appeal heard since the neighbor was filing the appeal.

Director of Planning, Zoning & Building Robert Moore commented that the issue of the area of concern that the neighbor had raised was an issue that had been required to come back to the Architectural Commission. He noted that if the item had not been requested for deferral today he would have advised that it would have been premature for the Town Council to hear an appeal on a matter that would be returning to the Architectural Commission for final review and approval, and indicated that he had so advised Attorney Broberg and Attorney Ziska prior to today.

Attorney Broberg commented that the appeal maintained that there was a mis-statement of fact in the granting of the approval for the two-story addition in the application, which had nothing to do with arches, which was the concern of the appeal.

Town Attorney Randolph commented that he was not familiar with the facts of the appeal, however, he suggested that applicants and neighbors should not begin bifurcating the issues that go before the Architectural Commission; the matters should not be appealed until the Architectural Commission had completed dealing with the issue.

Mr. Moore commented that the building department could not issue a permit for this project until it had gone back to the Architectural Commission, and if approved, a building permit could be issued ten days after the meeting.

Town Attorney Randolph suggested that the request for appeal was premature, and on that basis it could be denied without prejudice, which would allow the filing of an appeal after the Architectural Commission had reviewed the project.

Councilman McDonald moved a motion to approve that the Agenda be reconsidered. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Councilman McDonald then moved reconsideration of XIII.A.4. - Appeal of the Architectural Commission Decision of September 22, 1999, Concerning 1515 North Ocean Way.
President Smith passed the gavel to second the motion. On roll call the motion carried unanimously.

The Town Council now considered Item XIII.A. 4. - Appeal of the Architectural Commission Decision of September 22, 1999, Concerning 1515 North Ocean Way; - Request for deferral to the November 9, 1999, Town Council Meeting from Attorney Ziska.

Councilman McDonald moved that the appeal be denied without prejudice. The motion was seconded by Councilman McLendon.

On roll call the motion carried unanimously.

Attorney Ziska commented that the reason the appeal was filed had been to preserve the rights of her client; she had not been aware that the rights would be preserved until the next Architectural Commission meeting – had she known that she would not have appealed it until that time. She apologized for taking the time of the Town Council in this matter.

B. Time Extensions

1. Request for a One-Year Time Extension for Special Exception No. 24-97, Testa's, Inc. by Mr. Francis X.J. Lynch

President Pro-Tem Wyett moved approval of the request for a one-year time extension for Special Exception No. 24-97, Testa's Inc. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

2. Request for a One-Year Time Extension for Variance No. 32-98, 143 Clarendon Avenue, by Mr. James R. Brindell

President Pro-Tem Wyett moved approval of the request for a one-year time extension for Variance No. 32-98, 143 Clarendon Avenue. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

C. Variances, Special Exceptions, and Site Plan Reviews

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

Old Business - Major

1. SPECIAL EXCEPTION NO. 20-99 WITH SITE PLAN REVIEW - Royal Poinciana Chapel Trustee, Inc.; commonly known as Seagull Cottage, a part of the Chapel, 60 Cocoanut Row; located in the R-B Zoning District. To allow construction of minor building additions and modifications to this previously approved special exception with site plan review. *(Deferred from July 13 and August 10, 1999)* - **Request Deferral to November 9, 1999, per letter dated August 19, 1999, from Mr. John Banister**

This item was deferred under Item V. "Approval of the Agenda."

2. SPECIAL EXCEPTION NO. 21-99 - Nikiforos Stoupas, 101 N. County Rd.; located in the C-TS & R-C Zoning District. To allow a nightclub use at the Casablanca Restaurant; said nightclub would include a dance floor and stage for live entertainment. To allow a total of 150 seats (an addition of 85), a modification to Special Exception approval 23-94. To allow required parking, 30 spaces, on the adjacent lot located in the R-C Zoning District. *(Deferred from July 13, August 10, and September 17, 1999)*

This item was deferred under Item V. "Approval of the Agenda."

3. AMENDED VARIANCE NO. 26-99 - Justin McInery TR, 1021 N. Ocean Blvd.; located in the R-A Zoning District. To allow a point of measurement for height of house at 10.1' NGVD in lieu of 7.5' required, in order to reconstruct a 2nd story addition and to allow the reconstruction of this 2-story residence on the same nonconforming footprint, and at the same overall height. *(Deferred from September 17, 1999)*

Ex-parte communication was declared by Councilman Shaw with Attorney Ziska, and by Councilman McLendon with Attorney Ziska.

Attorney Maura Ziska, on behalf of the NOB Land Trust, explained the history of the application, noting that there had been a surveying error, which became a problem requiring a point of measurement variance. In addition, the contractor had removed more than 50% of the cubic footage on the structure. She explained that she had met with officials in the Town Building Department, and upon their recommendation the application had addressed the 50% rule.

Director of Planning, Zoning & Building Robert Moore commented that the issue at hand was the demonstration of why the applicant could not meet the existing setbacks. There was no objection by staff to the point of measurement, however, the applicant would need to demonstrate the hardship.

Attorney Ziska commented that the hardship was that the applicant was building on an existing footprint, which would not require a permit from the Department of Environmental Protection.

Councilman McLendon moved approval of Amended Variance No. 26-99, with the hardship being the use of the existing footprint, thus not requiring action from the Department of Environmental Protection, as well as the size of the lot. The motion was seconded by Councilman Shaw. On roll call, the motion carried 3/1, with President Smith being temporarily out of the room, and Councilman McDonald casting a dissenting vote.

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

Attorney James Brindell, on behalf of Cecilia L. Farris, explaining that a generator had been purchased to be located on the north side of the house, and there was a Town requirement that generators must be covered from view with a wall, which would be limited to a height of 7'. The generator was 9' in height, with an additional muffler adding 1.4', thus requiring a wall that was 10.5' high.

Director of Planning, Zoning & Building Robert Moore commented that there was no objection by staff.

Zoning Administrator Paul Castro commented that the applicant had requested a permit, and originally the Building Department had determined that the generator was in the setback and within a utility easement, and a waiver would be needed, as well as a wall the height of the generator in order to screen and buffer it from neighboring properties. He explained that the site was fairly constrained in terms of a utility easement, swimming pool, and other structures in the rear yard, and there was a limited ability to place the generator in a location that would enable use of the swimming pool area.

Attorney Brindell commented that the Town Code was confusing, whereas it had a provision for generators, however, the wall requirement was for more general uses, such as a perimeter wall. He explained that the provider of the generator had indicated that the generator could not be depressed.

Mr. Moore commented that in cases such as this the area where the generator was located would be depressed, although that was not possible in this case, since that area of the property was already low. He indicated that the generator needed to be confined only on the side abutting neighbors, just as was done with air conditioning equipment.

Councilman McDonald moved deferral of Amended Variance 31-99, in order to gather specific information as to what was needed. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

5. VARIANCE NO. 35-99 - Horst Petersen & Evelyn Knauer-Petersen, 2236 W. Ibis Isle Rd.; located in the R-B Zoning District. To allow construction of an addition to a nonconforming structure providing a front yard setback of 20' in lieu of 25' required, providing a building angle of vision (front) of 110 degrees in lieu of 100 degrees allowed, and providing a side yard setback of 10' in lieu of 12.5' required. *(Deferred from September 17, 1999)*

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

Attorney Betsy Burden, representing the applicant, requested a deferral until the end of the Agenda, since the applicant and the contractor were not present at this time. The request was accepted by the Town Council.

New Business - Minor

6. SITE PLAN REVIEW NO. 18-99 - James & Eleanor Woolems, 259 Merrain Rd.; located in the R-B Zoning District. To allow construction of a two-story residence on a lot 95' wide in lieu of 100' required.

Director of Planning, Zoning & Building Robert Moore reported that the lot in question was undersized, the house would be reviewed by the Architectural Commission, and staff had no objection.

President Pro-Tem Wyett moved approval of Site Plan Review No. 18-99. The motion was seconded by Councilman McLendon.

On roll call the motion carried unanimously.

New Business - Major

7. FLOOD VARIANCE NO. 2-99 - Andrew & Khooshe Aiken, 145 Seagate Rd.; located in the R-B Zoning District. To allow remodeling of a residence, which provides a 7.1' NGVD in lieu of the 7.5' NGVD required, which exceeds the maximum allowed 50% of the building's market value.

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

Mrs. Khooshe Aiken stated that the renovation of the home had been completed, and during this time, it had been determined that the roof needed replacement, which had been replaced, and then made the renovation costs exceed the allowed 50% of the building's market value.

Director of Planning, Zoning & Building Robert Moore commented that the roof had been a problem, and the owners had the option of coming to the Town Council for a variance because the Federal Flood Insurance Regulation allowed consideration of the issues at hand, and grant a variance between 7' and 7.5' without any penalty.

Councilman McDonald expressed concern regarding abuse the 50% rule in renovation projects.

Mr. Moore stated that the Federal Government would allow the ability to put the new roof on, as long as it was inspected, if it was done before the other renovations were completed. The roof could be exempted, but after the fact, or during the project they would not allow the exemption.

President Smith commented that common sense should be used in helping out an owner who was renovating a house, rather than tearing it down.

President Pro-Tem Wyett moved approval of Flood Variance No. 2-99. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

Mrs. Aiken then commented that along with this variance she was also asking that the kitchen, which was very old and disintegrating, could be renovated, which was also part of the application.

President Pro-Tem Wyett moved approval, with the condition that a Hold Harmless Agreement be entered into with the Town. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

8. VARIANCE NO. 36-99 - 100 El Vedado Way, Inc., 100 El Vedado Way; located in the R-A Zoning District. To allow construction of 2-story residence with a point of measurement of 20' NGVD in lieu of 15.5' required.

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

Attorney Robert Deziel, representing the applicant, stated that the applicant wished to replace a residence with a new residence, as the existing residence currently had a 20' point of measurement finished floor slab, and it would be duplicated. He exhibited the site plan, noting that the hardship was the grade of the land.

Director of Planning, Zoning & Building Robert Moore commented that the minimum variance should have been approximately 2.5' above South Ocean Blvd., which would have given the applicant a variance of 17 ½', rather than the 20' being requested.

Architect Harold Smith commented that the neighboring house to the south was approximately 13,000 sq. ft., with the house to the north being over 12,000 sq. ft. The length of the proposed house was 130'.

Attorney Deziel commented that the residence to the north was somewhat closer to South Ocean Blvd., and did not have the setback proposed for the residence in question. He stated that the tennis courts would not be visible from South Ocean Blvd.

Councilman Shaw moved approval of Variance 36-99 on the basis that the minimum variance of 17.6' rather than 20'. The motion was seconded by Councilman McDonald.

Architect Harold Smith commented that the applicant had a Department of Environmental Protection permit which required the bottom of the floor structure to be at elevation 15.5. The engineers had calculated grade beam requirements of approximately 36", and that would put the structure at 18.5', just to build the structure.

Mr. Moore commented that the applicant must deal with the Department of Environmental Protection as a prerequisite before coming to the Town Council.

Attorney Deziel requested that the motion be amended to a variance of 18.6', as it would help the architect with the coastal control issue, and would bridge the gap of having to deal with the grade of neighboring properties.

Mr. Moore suggested that the Building Department be allowed to verify the requirements with the Department of Environmental Protection; he explained that if the point of measurement was one that had been selected by the applicant themselves, and not a requirement of the Department of Environmental Protection, staff would suggest that the point of measurement remain at 17 ½'.

Councilman Shaw clarified the motion to approve, with the approval of 17 ½' elevation, unless a higher elevation was required by the Department of Environmental Protection, (to be substantiated by the Department of Environmental Protection) in which case the approval would be granted up to 18 ½' without the applicant having to come back to the Town Council.

Mr. Bill Elias addressed the Town Council, stating that he had been involved in the design, permitting, and would be building the house, explained that the Department of Environmental Protection statement could be substantiated, and that he would be happy to accept the motion to approve as it stood.

On roll call the motion carried unanimously.

9. VARIANCE NO. 37-99 - N. Ocean Partners, LLC, 111 Dunbar Rd.; located in the R-B Zoning District. To allow a lot split creating a nonconforming structure, and to allow moving a house onto a lot which would allow a 7.42 cubic content ratio in lieu of 4.5 maximum allowed.

Ex-parte communication was declared by Councilman McLendon with Attorney Kolins and Mr. Wohl, by Councilman Shaw with Attorney Kolins and Mr. Wohl, by President Smith with Attorney Kolins regarding the merits of the application; by President Pro-Tem Wyett with Attorney Kolins and the intended owners.

Attorney Ron Kolins addressed the Town Council, providing graphic and factual data, stating that the house presently sat on a lot situated on the corner of North Ocean Blvd. and Dunbar; the lot had been approved for a lot split, as well as the home being approved for demolition. In the interim, Mr. and Mrs. Wohl came upon the house, and decided they would like to save the house, proposing that the house be moved to the lot immediately to the west of the lot where it was currently sitting; he explained that 60% of the house would be moved, and the rest would be demolished. All lot and yard requirements would be satisfied, however a variance from the cubic content ratio (CCR) limitation in the Town Code would be necessary.

Director of Planning, Zoning & Building Moore commented that the Comprehensive Plan reviewer had suggested that the CCR was excessive, and a larger lot allocation should be considered, the Building Department had recommended review of the same aspect; the Town Engineer had commented that a suitable utility easement must be dedicated on the westerly lot for service of the newly created easterly lot; Town Manager: concurs with staff comments.

President Smith noted that there had been two letters of objection submitted for the record, one from Mr. Harvey and one from Mrs. and Mrs. Brekus.

Attorney Kolins responded that he had not been aware of the letters, however, the applicant would contact the two neighbors and speak with them.

President Pro-Tem Wyett moved approval of Variance No. 37-99. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/1, as Councilman McDonald had temporarily left the room.

10. VARIANCE NO. 38-99 - James & Lisa Bertles, 226 Eden Rd.; located in the R-B Zoning District. To allow construction of a 2-story addition providing a 11.5' side yard setback in lieu of 15' required.

Ex-parte communication was declared by Councilman Shaw with Mr. Bertles and Attorney Brindell; and by President Pro-Tem Wyett with Mr. Bertles and Attorney Brindell.

Attorney James Brindell, on behalf of James & Lisa Bertles, addressed the Town Council, stating that the applicant was attempting to make a fine, old house more liveable without tearing it down. The applicant was proposing to extend the garage back toward the alley, and create a second story on top of the garage for a new guest room. Currently there was a guest room in the existing house, however, that area often experienced flooding, and the applicant wished to move the guest room above the garage, as well as to raise the floor elevation in the flood area, and expand the kitchen. The variance requested would allow the second story to be created in line with the existing wall location of the garage.

Director of Planning, Zoning & Building Robert Moore commented that there were no staff objections.

President Pro-Tem Wyett moved approval of Variance No. 38-99. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

11. VARIANCE NO. 40-99 - Robert Wood, 116 Gulfstream Rd.; located in the R-A Zoning District. To allow construction of an addition providing 8' & 10' side yard setbacks in lieu of 15' required.

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

Mr. Robert Wood, 116 Gulfstream Rd., addressed the Town Council, explaining that the house had been built in the 1930's and the east side yard setback had been 13 ½' at the time the house was built, which was since made nonconforming. A number of years ago permission had been obtained for a 10' side yard setback in order to enlarge the house, rather than tearing it down and building a new house. At the present time, Mr. Wood confirmed that he was requesting an 8' & 10' side yard setback in a southerly direction, whereby a loggia would be created. He explained that the hardship was the fact that the house was located adjacent to an R-C Zone, with a three story apartment building right next door, and was the only house in the Town where that situation took place. He further explained that the loggia would buffer the activity emanating from the apartment building.

Director of Planning, Zoning & Building Robert Moore commented that Mr. Wood had indicated that his hardship was regarding the three story apartment structure beside him; in addition, Mr. Moore pointed out that the lot itself was a narrow lot, and did not meet the minimum size for an R-B lot. Comments from the Comprehensive Plan: could be designed to meet Code, or closer to Code compliance, and should at least maintain existing setbacks; Building Department: no objection to loggia, however, the area of the bar and grill was much closer to the property line, and the hardship must be identified.

Mr. Wood explained that he had not considered the bar and grill a problem, since no one could see it, and there was a 7' fence in place as well.

President Pro-Tem Wyett moved approval of Variance No. 40-99, on the basis of the hardship of the narrow lot, and the fact that the house was adjacent to a commercial zone. The motion was seconded by Councilman McLendon.

Councilman Shaw asked if the barbeque could be moved west?

Mr. Wood replied that it would then not be in line with the existing house, and would block off one of the french doors in the living room. He suggested that the barbeque could be moved 1' inward, as a compromise.

President Pro-Tem Wyett accepted the compromise as part of the motion to approve, as did the seconder of the motion.

On roll call the motion carried unanimously.

12. VARIANCE NO. 41-99 - Javier Marques DeOlaso, 1496 N. Lake Way; located in the R-B Zoning District. To allow construction of alterations & addition providing a 23' front yard setback in lieu of 30' required; to allow construction of a 13.5' high equipment enclosure in lieu of 7' required; to allow construction of a wall (on a deck) providing a 4.83' side yard setback in lieu of 12.5' required; and to allow construction of a loggia providing a 6.35' rear yard setback in lieu of 10' required.

President Pro-Tem Wyett declared ex-parte communication with Attorney Brindell.

Attorney James Brindell, on behalf of Mr. DeOlaso, addressed the Town Council, stating that the house in question was a 1959/1960 house, and the objective was to add approximately 512 sq. ft. of enclosed space, all within the current overhang area. He presented drawings and photographs of the project indicating the proposed construction, and explained the specifics of the project, noting that there were two Town pump stations around the house.

Zoning Administrator Castro commented that all of the proposed improvements were under the existing roof line, with the hardship being the location of the building as it exists, and how it was developed under past Code. He pointed out that staff did have a concern with the wall area on the back of the property, used to enclose the pool heater, believing that a 7' high wall around that would provide the necessary screening, and that the hardship must be noted.

Architect Michael Ventura commented that the architecture of the house would remain contemporary, with a much fresher, cleaner look.

President Pro-Tem Wyett moved approval of Variance No. 41-99, with the condition that the wall round the pool heater be 7' high, as recommended by staff; with the hardship being the existing location of the house, the lay of the land, and the fact that the house lay between the sewage pump and storm water pump. Councilman McDonald seconded the motion for discussion. On roll call the motion carried 4/1, with Councilman Shaw casting a dissenting vote.

13. SPECIAL EXCEPTION NO. 28-99 - Breakers Palm Beach, Inc., 230 Sunrise Ave.; located in the C-TS Zoning District. To allow continuation of a restaurant in a 4,585 sq.ft space; to allow 24 outdoor seats at 6 tables; and to allow continuation of on-site shared parking.

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

Attorney James Brindell, representing Flagler Systems Management, Inc., and Palm Beach Hotel LP, addressed the Town Council, stating that the site in question was the site of the former Aquaterra restaurant. He stated that a substitution was being requested with Flagler Systems Management, Inc. as the operator of the restaurant under the same terms and conditions as the previous operator.

Zoning Administrator Castro commented that the applicant had agreed to meet all previous conditions of approval for the previous restaurant; the applicant would need to demonstrate the Town serving requirement.

Councilman Shaw moved approval of Special Exception 28-99, with the applicant following the same requirements as the previous operator. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

14. SPECIAL EXCEPTION NO. 29-99 WITH VARIANCES - Edward Meegan, Suite 601 Palm Beach Towers, 44 Cocoanut Row PH-W; located in the R-D(2) Zoning District. To allow an expansion of a nonconforming 6-story multi-family structure by adding to the 6th floor, in lieu of current regulation to a maximum of 5 stories by special exception. The variance is required as to the maximum and overall height of the existing building.

Ex-parte communication was declared by Councilman McLendon with Attorney Kolins; by Councilman Shaw with Attorney Kolins; by President Pro-Tem Wyett with Attorney Kolins; by President Smith with Attorney Kolins.

Attorney Ron Kolins, representing the applicant, addressed the Town Council, stating that Mr. and Mrs. Meegan lived in one of the two penthouse apartments on the sixth floor of Palm Beach Towers, and would like to expand their unit. He presented a booklet containing pictures and diagrams of the proposed construction. The Palm Beach Towers Association had indicated their support of the application.

Zoning Administrator Paul Castro commented that the building was nonconforming relating to height, and the proposed addition was minimal related to the expansion of a nonconforming building. He indicated that the hardship was related to the smaller size of the building in the penthouse area as compared to the floor below it, and staff had no objections.

President Pro-Tem Wyett moved approval of Special Exception No. 29-99. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

*****At this time Variance No. 35-99 was heard, as determined earlier in the meeting*****

VARIANCE NO. 35-99 - Horst Petersen & Evelyn Knauer-Petersen, 2236 W. Ibis Isle Rd.; located in the R-B Zoning District. To allow construction of an addition to a nonconforming structure providing a front yard setback of 20' in lieu of 25' required, providing a building angle of vision (front) of 110 degrees in lieu of 100 degrees allowed, and providing a side yard setback of 10' in lieu of 12.5' required. *(Deferred from September 17, 1999)*

Attorney Betsy Burden, representing Mr. and Mrs. Horst Petersen, stated that two variances were being requested, with the application being amended to delete the need for a front yard setback. She explained that the applicant wished to expand and renovate the property, and were limited to the current zoning code, resulting in the variances being requested; the applicant was currently constricted by the uniqueness of the property, and would like to bring it into conformity with the other properties on the street.

Mr. David Palmer, Livingston Builders, commented that the applicant had requested a design which would allow them to expand a one story house without obstructing their neighbor to the north, and without removal of the swimming pool in the backyard. He submitted a plan of the project for the review of the Town Council.

Zoning Administrator Paul Castro commented that the applicant had tried to minimize the appearance of the house from the street, and staff believed there was a hardship related to the amount of right-of-way on the street, and how far the house really was from the street pavement, as opposed to the property line. Staff did not see a hardship in the side yard setback, as the house was currently conforming to the south side setback, and the addition would make it nonconforming.

Director of Planning, Zoning & Building Moore commented that the Town has a 15' easement on the property, and there were no utilities in that strip. He stated that there were no records indicating why the easement had been dedicated, and that most of the home on that side of the street were also set back using the street, rather than the right-of-way line. The issue of the front was the reason that staff did not have a problem with the angle of vision, as the other requests had been reduced substantially. Mr. Moore explained that staff may be able to determine the possibility of sending each property owner a letter to ask if they would be interested in purchasing the easement property.

President Pro-Tem Wyett commented that he saw the hardship as the fact that many of the houses in the area were using a 10' setback instead of 12 ½' setback, the lot was small and narrow, and the proposal would not negatively impact the neighborhood. He suggested that the land be sold to the property owners for $1.00, with the Town recuperating the money through property taxes each year.

Councilman McDonald recommended that the issues be separated, and that the application only be reviewed today. He moved approval of Variance No. 35-99, with the hardship being that the lot was the smallest on Ibis Isle. The motion was seconded by President

Pro-Tem Wyett. On roll call the motion carried unanimously.

President Smith clarified that staff would determine the value of the easement property, and all property owners on the street would be offered what was determined as a fair price.

15. SPECIAL EXCEPTION NO. 30-99 - Palm Beach Synagogue Inc., 223 Sunset Ave.; located in the C-TS Zoning District. To allow the operation of a 40 seat synagogue with required parking. - **Request for Withdrawal per letter dated October 8, 1999, from Mr. Raymond W. Royce**

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

16. SPECIAL EXCEPTION NO. 31-99 - Dudley & Margaret Moore, 220 El Bravo Way; located in the R-A Zoning District. To allow construction a lighted tennis court per Sec. 134-1759(c) of Town Code.

Ex-parte communication was declared by President Pro-Tem with Attorney Deziel; by Councilman Shaw with Attorney Ziska; by Councilman McLendon with Attorney Ziska.

Attorney Maura Ziska, on behalf of Mr. and Mrs. Moore, addressed the Town Council, requesting night lighting for the approved tennis court, which met the Code criteria: the lights must be on timers to be shut off automatically at 9:00 p.m.; state of the art lighting must be used; a 14' high fence would be around the court, and a 21' high hedge. She stated that she was aware that both neighbors across the street and abutting the property were objecting to the lighting, however, there would be no light seen, and the applicant had offered to insert a 7' wall on the rear of the property, and the applicant was attempting to mitigate the request as much as possible.

Zoning Administrator Paul Castro comments that the applicant had provided a plan showing the light dispersion of the proposed tennis court lighting. The plans reflected that the most intense part of the lighting would be on the tennis court, with little dispersion off of the court site itself. He indicated that the Ficus hedge must be the height of the lighting at the time of planting, and would need to be a continuous hedge. He stated that the Public Works Department had commented that there was substantial landscaping in utility easements that could not remain there. In addition, there was landscape lighting, that was not part of the tennis court lighting that would need to be reviewed by the Landmarks Commission.

President Smith noted that there had been five letters of objection from neighboring property owners.

Attorney James Brindell, on behalf of John and Deborah Gay, addressed the Town Council, stating that their property abutted the property of Mr. and Mrs. Moore, and referred to a site plan outlining the areas in question. He maintained that the outdoor entertainment/swimming/tennis area abutted the property of Mr. and Mrs. Gay, and the tennis night lights would encourage nighttime activity, and make the backyard of Mr. and Mrs. Gay less tranquil and pleasant. He indicated that the tennis court lights were in violation of Sections 134-229, 134-329 of the Town Code, and urged that the request of the applicant be denied.

Attorney Ziska responded that the tennis courts had been approved, and in the summer season, it would be light until approximately 9:00 p.m., and the light would be confined as much as possible for the months of the year when it was dark earlier than 9:00 p.m.

Attorney Doyle Rogers, on behalf of Mr. George Sommers, and Mrs. and Mrs. Randy Marks, addressed the Town Council, indicating opposition to the special exception request. He explained that the neighborhood was quite, and there were only two other properties with tennis courts, neither of which had lighting. He maintained that lighting would increase noise to the neighboring properties, and would be a nuisance to his clients.

President Smith commented that the lights would be seen from the Sommers' property, and El Bravo was one of the smallest, narrowest streets in Town, with houses close together; the charming neighborhood would be disrupted by having lights at night, and she indicated that she was opposed to the application for lights.

Councilman McLendon expressed opposition to the application because of the objections stated.

Councilman Shaw commented that this had been a piece meal growth of an application, and not part of the original upgrading of the property.

Mayor Ilyinsky commented that the issue was very complex, and that there was not another lit tennis court in this section of Town, and suggested that it would be detrimental to the lovely street, and open up a Pandora's box.

Councilman McDonald suggested that a deferral be taken so that the neighboring property owners could be approached with a time limit for the lighting.

President Pro-Tem Wyett moved deferral of Special Exception No. 31-99 to the November 9, 1999, Town Council Meeting, in order to allow the applicant to reach a compromise with the neighboring property owners. The motion was seconded by Councilman McDonald. On roll call the motion carried 3/2, with President Pro-Tem Wyett, Councilman McDonald, and Councilman McLendon casting affirmative votes; President Smith and Councilman Shaw casting negative votes.

XII. ANY OTHER MATTERS

There were none.

XIII. ADJOURNMENT

The meeting was adjourned at 5:20 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk
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