

**MINUTES OF SPECIAL TOWN COUNCIL MEETING**  
**HELD ON SEPTEMBER 16, 1996**

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**I. CALL TO ORDER AND ROLL CALL**

The Special Town Council Meeting was called to order by President Smith at 9:30 A.M. on September 16, 1996. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Jack McDonald, Councilmen Sam McLendon, Leslie Shaw, and Allen Wyett. Also in attendance were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Town Attorney John Randolph, Public Works Director Al Dusey, Town Engineer James Bowser, Police Chief Joseph Terlizese, Fire Chief Vincent Elmore, Fire Marshall John Wandell, Director of Planning, Building & Zoning Robert Moore, Zoning Administrator Paul Castro, and Town Clerk Mary Pollitt. Planner/Consultant William Brisson from the firm of Adley, Brisson, Engman, Inc. and Senior Transportation Planner Jeff Weidner from Frederic R. Harris, Inc. also attended the meeting.

**II. INVOCATION AND PLEDGE OF ALLEGIANCE**

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

**III. APPROVAL OF THE AGENDA**

Mr. Wyett made a motion to approve the Agenda; seconded by Mr. McLendon. On roll call, the motion carried unanimously.

**IV. CONSIDERATION OF APPLICATION FOR SPECIAL EXCEPTION NO. 18-96 WITH SITE PLAN REVIEW, MAR-A-LAGO CLUB, 1100 SOUTH OCEAN BOULEVARD, WITH REGARD TO AMENDING THE "DECLARATION OF USE AGREEMENT"**

Mrs. Smith explained that the purpose of this meeting was to hear Special Exception 18-96, and that a lunch break would be taken at 1:00 P.M., and the meeting would be stopped at 5:00 P.M. If it was necessary to continue a time certain would be agreed upon by everyone. All persons who addressed the Town Council would be sworn in. The procedure would begin with the applicant presenting the case, the public would then be permitted to speak and ask questions, Town staff would give their reports, and the applicant would have a further opportunity to comment and cross examine.

Mayor Ilyinsky commented that everyone should remember that they were ladies and gentlemen living in an unusual town, which called for unusual behavior.

Town Attorney John Randolph stated that he would begin by asking Attorney Rampell several questions so that he could advise the Town Council in regard to what was being heard today. He explained that the Special Exception Application of May 10, 1996 requested that the Declaration of Use Agreement be amended to eliminate all conditions thereunder which had been fully discharged, and all regulations thereunder which did not apply to other private clubs in the Town of Palm Beach. In furtherance to that, Mr. Randolph noted that a letter from Mr. Rampell of September 3, 1996, confirmed that the Application requested removal of all conditions which were precedent to the issuance of the Certificate of Occupancy, which had been satisfied, and removal of all conditions which were not applicable to other private clubs in the Town of Palm Beach. Mr. Randolph asked Mr. Rampell if that indeed was the information on the Application?

Mr. Rampell replied affirmatively.

Mr. Randolph then referred to the portion of the Application requesting conditions be removed that were not applicable to other clubs in the Town, and asked Mr. Rampell what, if any, circumstances had changed from the time the Mar-a-Lago Club signed the Declaration of Use Agreement, causing the applicant to come to the Town Council to ask for changes at this time?

Mr. Rampell replied that during his presentation he would comment in response to that question.

Mr. Randolph asked if there were indeed circumstances which had changed since that time which would allow the Town Council to consider the matter today?

Mr. Rampell responded affirmatively.

Mr. Randolph asked if it was the statement of Mr. Rampell that the circumstances upon which the request today

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was based were different than the circumstances as they existed at the time the Declaration of Use Agreement was signed?

Mr. Rampell responded affirmatively.

Mr. Randolph advised the Town Council that he had received letters from attorneys over the weekend which would need the attention of the Town Council before the substance of this application was reached, and he passed the letters out to the Town Council and the applicant.

Mr. Randolph mentioned a letter requesting voluntary recusal of Town Council Members who were also members of the Mar-a-Lago Club, and the opportunity to address the matter if there was not voluntary recusal, and a letter from Gary Brandenburg of the law firm of Carlton Fields on behalf of Nancy DeMoss, with an accompanying affidavit, dated September 14, 1996.

At this point, Mr. Rampell entered an objection to the process.

Mr. Randolph stated that he would like the Town Council and the applicant to have an opportunity to look at the letter addressing recusal which indicated that because two members of the Town Council were also members of the Club that, aside from the fact that they may not have a financial conflict of interest, they may under the law be partial in their consideration of this matter, and the request was being made that they therefore disqualify themselves.

Mrs. Smith explained to the public that this was a quasi-judicial process and the Town Council therefore had not been previously presented with the aforementioned letter, or any other of the information that would be presented today, and requested a few minutes for them to review the material.

Mr. Rampell stated that the issue had been addressed thoroughly over and over again, and it seemed as though there was a dramatic deviation from the customary process by which Special Exception Applications were heard. He expressed that the Mar-a-Lago Club was entitled to make its initial presentation. The recusal of any members could wait until just a few minutes before the actual vote, as was made clear in previous hearings, and he suggested that it would be more appropriate for the position of an objector to be argued during the response to the presentation of the applicant. He added that there would be ample time for any member of the Town Council to recuse themselves if they chose to do that.

Mr. Randolph commented that prior to the substance of the application being heard each Council Member would be asked whether or not they had any ex-parte communications, the purpose being to determine whether a fair and impartial hearing could be held. At that point, each Council Member would be asked whether a fair and impartial decision could be rendered based upon the evidence as heard today, and not based upon anything heard outside of the hearing. He explained that it was important that decision be made prior to a Council Member participating in the hearing itself. He expressed that the request submitted needed to be dealt with prior to the substance of the application being reached.

Attorney Kenneth Graves, with the law firm of Carlton Fields, addressed the Town Council, stating that the letter had been submitted on behalf of client, Nancy DeMoss, and it was his belief that recusal should be *prior* to any participation in the hearing. If there was no voluntary recusal, Mr. Graves requested that he be allowed to make a presentation in support of his position.

Mr. Graves pointed out that this was a quasi-judicial proceeding, adding an element that must be considered. He made the distinction between the ethical statutory conflict and the announcement of a conflict, and the judicial-like capacity that was presently being employed. The request for disqualification of Council Members came from language appearing in the Jennings decision--*adherence to procedures which ensure fairness is essential, not only to the legal validity of the administrative regulation, but also to the maintenance of public confidence in the value and soundness of this important governmental process. The constitutional compulsions which led to the establishment of rules regarding disqualification of judges apply with equal force to every tribunal exercising judicial, or quasi-judicial functions.* Mr. Graves added that it was his opinion that if this matter was in litigation and a judge had an interest by being a member of the club at issue, then the judge could not hear that matter, and that there were two members of the Town Council who were also members of Mar-a-Lago, Inc. He explained that the question was not whether those members could vote impartially, but was the appearance of the soundness and integrity of the system that was at issue; if members of the Club, who are also members of the Town Council, voted on their own application, the appearance was sufficient under case law to drive one to a decision that those members having that relationship must disqualify themselves. He reported that in other cases in non-judge, non courtroom settings, this issue had been discussed in administrative hearings, citing the Texaco case --*an administrative hearing must be attended not only with an element of fairness, but with the appearance of complete fairness. Only then can the tribunal conducting a quasi-adjudicatory proceeding meet the very basic requirements of due process.* He suggested that was exactly the situation today. He referred to the Affidavit of Mrs. DeMoss who believed that the participation and voting of the two members noted in the letter, Mr. McDonald and Mr. Shaw, would not result in an impartial hearing. Mr. Graves established that if the Jennings decision decried ex-parte, or single sided communication, and said that if just a comment to a member is enough to prejudice or taint the entire hearing, then certainly this was reaching far beyond that. He asserted that the members were, indeed, the applicant--they were members of the applicant, and would be participating and voting on their own application, flying in the face of due process, flying in the face of fundamental fairness. Most importantly, he alleged that it brought into question the integrity of this process, and how the Town looked at the process--it was a public policy argument, and people would lose trust if members who were the applicant could participate and vote. For those reasons, Mr. Graves asked that the two members be disqualified from participation and voting.

Mr. Randolph agreed that in a quasi-judicial hearing, persons who had a bias in regard to an application and who

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had made up their minds on how they would vote on a matter should not participate in the matter. Therefore, he maintained that the question was whether or not any member of the Town Council, or whether or not the two individual members, had a bias? In fact, he added, law indicated that each tribunal member who was indeed biased in fact had the duty to disqualify themselves from the proceeding. It was therefore appropriate to inquire of each member of the Council if there was preconceived bias in regard to the application. He noted that the affidavit indicated that perhaps the members could vote only for the Club, as a vote against the Club would destroy the value of their membership, etc. Mr. Randolph requested permission to ask Mr. McDonald and Mr. Shaw some questions that would allow the hearing to go forward.

Mr. Randolph asked Mr. McDonald if he was a member of the Mar-a-Lago Club?

Mr. McDonald replied affirmatively.

Mr. Randolph asked Mr. McDonald if he felt he had a financial conflict of interest under Florida State Statutes?

Mr. McDonald replied negatively.

Mr. Randolph asked Mr. McDonald if he had formed any opinion in regard to the manner in which he would vote on the application today?

Mr. McDonald replied negatively.

Mr. Randolph asked Mr. McDonald if he had ex-parte communication in regard to this application?

Mr. McDonald replied affirmatively.

Mr. Randolph asked Mr. McDonald if he could render a fair and impartial decision on the basis of the testimony heard today, and *only* on the basis of the testimony in evidence heard at this hearing?

Mr. McDonald replied affirmatively.

Mr. Randolph referred to a statement in the affidavit of the fear that Mr. McDonald could vote *only for* the Club, as a vote against would destroy the value of his membership. He asked Mr. McDonald if he agreed with that statement?

Mr. McDonald replied that he disagreed with the statement; that he had voted against the Club in the past and it had not destroyed his membership. He did not foresee that happening in the future.

Mr. Randolph then asked Mr. Shaw if he had ex-parte communication in regard to this application?

Mr. Shaw replied affirmatively.

Mr. Randolph asked Mr. Shaw if he could render a fair and impartial decision today, regardless of any ex-parte communication, based solely on the evidence and testimony that would come before him at the hearing today?

Mr. Shaw replied affirmatively.

Mr. Randolph asked Mr. Shaw if he had any preconceived notions of the manner in which he would vote in regard to this application?

Mr. Shaw replied negatively.

Mr. Randolph asked Mr. Shaw if he had a fear that voting against the Club would destroy his membership.

Mr. Shaw replied that he did not believe that it would affect his membership.

Mr. Randolph asked Mr. Shaw if he believed he could render a fair and impartial decision based upon the evidence heard today, regardless of membership in the Club?

Mr. Shaw replied affirmatively.

Mr. Graves asked that a copy of the letter of request be received and filed into the record.

Mrs. Smith assured him that it would be entered into the record.

Mr. Randolph clarified that the two individuals were not recusing themselves because they believed they could render a fair and impartial decision in regard to this matter today.

Mr. McDonald and Mr. Shaw affirmed the statement.

Mr. Randolph continued with the preliminary matters:

He referred to a letter from the law firm of Carlton Fields, setting forth several legal arguments in regard to this

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matter, submitting it to the Town Council and the applicant. He addressed the argument of administrative res judicata, and explained that it gave a governmental entity a right to have finality in regard to its decisions. Courts had ruled that the doctrine of administrative res judicata applied to re-zonings, special exceptions, variances, and decisions by city personnel boards. Any arguments or reasons in favor of granting a special exception that could have been presented before, and were not presented, or which were presented and which were finally dealt with by way of the culmination of the Declaration of Use Agreement might be considered to be matters that had been finally resolved by the Town Council, and which should not be re-addressed at this time. Mr. Randolph explained that it was for this reason that he had asked Mr. Rampell the questions concerning the Application, as on the face of the Application, it appeared that the reasons stated for the Special Exception Application now were similar to reasons which could have been used before, particularly the reason that regulations should be removed that were not attributable to other clubs. That argument could have been raised before, and certainly could have been raised before the Mar-a-Lago Club and Mr. Trump and the Town signed the Agreement. If there had been a change of circumstances that had occurred from the time of the last hearing, then administrative res judicata would not apply, however, Mr. Rampell had indicated that there had been a change of circumstances, although the Council had not yet heard what those changes were, which would be of benefit in determining whether administrative res judicata should apply in this case.

Mr. Randolph continued that it was important for the Town Council to know that it was within the discretion of the Town Council to determine whether or not to reject an application on the basis of administrative res judicata. He quoted from one court case--*whether an application is to be rejected on the grounds of res judicata is in the first instance for the board to determine even if the application is closely similar to a previous one, or identical to it, but it is alleged that surrounding circumstances have changed, or that experience has shown that prior denial was error it is within the discretion of the board whether to reject the application on the grounds of res judicata, and the exercise of that discretion may not be overturned on appeal in the absence of a showing of unreasonableness.* Mr. Randolph advised that there were many cases that talked about the principle of res judicata, and he read from some of those cases: In the case of Merrill vs. Hardy--*the doctrine of administrative judicata is applicable to rulings or decisions of administrative bodies and to rulings of such bodies dealing with zoning regulations unless it can be shown that since the earlier ruling thereon there has been a substantial change of circumstances relating to the subject matter of the ruling sufficient to prompt a different or contrary determination. The doctrine of administrative res judicata should be applied in zoning cases with great caution, and then only if the requirements of identity of parties and causes of action are met.*

Mr. Randolph explained that the Town Council would have to make a determination as to whether or not administrative res judicata should apply; the determination as to whether to hear the matter was solely within the discretion of the Town Council. Indeed, if the Town Council heard this matter today, even if there was not a change of circumstances, an argument could be made that the matter could be re-opened as it related to the initial application. He stressed that case law said that the doctrine of administrative res judicata should be applied with great caution. Absent a change of circumstances, the entire Agreement would be opened up to new scrutiny. The Town Council had the right to rely upon that Agreement and the decisions that were made by the Council at that time. The applicant had agreed to those conditions, and the Town Council had agreed to those conditions. If it were not for the granting of those conditions, there was a question to be raised as to whether or not the application for the operation of the club as a special exception would have been granted in the first instance. Mr. Randolph cautioned that if the Town Council heard this matter today, it must be understood that the issue was being opened to scrutiny again.

Mayor Ilyinsky stated that the time had come to hear this application today in all fairness to the applicant as well as those who did not agree with the applicant.

Mr. Wyett stated that he had not heard any changes in circumstances, but had heard Mr. Rampell say there were changes, and he would reserve all judgment until such time as he presented the evidence of the changes in circumstances.

Mr. McLendon agreed that the Town Council should proceed.

Mr. McDonald and Mr. Shaw agreed to proceed.

Mr. Randolph addressed another argument made by Mr. Brandenburg wherein it was indicated that the application requested an improper intensification of a non-conforming use, arguing that the Town Council amended its Zoning Ordinance after entering into the Agreement, so as to make non-conforming clubs within residential districts within the Town. Mr. Randolph stated that he disagreed with that argument, as he was involved in drafting the language that came before the Town Council in regard to this matter, and he recalled that it was the intent of the staff and the intent of the amendment not to make those clubs which currently existed within the Town non-conforming --the Town had not wanted to treat them as non-conforming uses, and therefore Mr. Randolph disagreed with the argument that what was being proposed today was an intensification of a non-conforming use.

Mr. Randolph advised that the equal protection argument referred to in the letter could be made when the applicant addressed the application, as this was basically an argument as to why the Application should not be granted.

Mr. Randolph raised the issue of the Bert Harris Property Rights Act, and advised that it was a relatively new act of the Florida Legislature, indicating that if a property owner felt an inordinate burden had been placed on the property by any action of the Town Council there was a procedure that could be undertaken pursuant to State Statutes. The Bert Harris Property Rights Act had not applied, however, when the Declaration of Use Agreement was entered into; therefore, at that time there would not have been an opportunity for the applicant to use the Bert Harris Property Rights Act if it was felt that the Declaration of Use Agreement had inordinately burdened the property. There was a question as to whether an action now in regard to a Special Exception would open the Town up to an action under the Bert Harris Property Rights

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Act. Mr. Randolph stressed that he wanted the Town Council to be aware of this issue in going forward with hearing the application. He noted that there was a provision of the Bert Harris Property Rights Act which may take away the concern, but there had been no court decisions in regard to the Act so it was not known how the courts would interpret it. The Act provided that no cause of action existed under this section as to the application of any law enacted on or before the date of the adjournment of the 1995 regular session of the legislature, so the Bert Harris Property Rights Act would not have applied to the Declaration of Use Agreement. Mr. Randolph emphasized the following language: *a subsequent amendment to any such*

*law, rule, regulation or ordinance gives rise to a cause of action under this section only to the extent that the application of the amendatory language imposes an inordinate burden apart from the law, rule, regulation or ordinance being amended.* Mr. Randolph explained that there was an argument to be made that even though action may be taken, unless greater restrictions were imposed than what existed before there may not be a cause of action under the Act, however, he did not know, nor did anyone know, the answer to that question.

Mrs. Smith asked if there were any other preliminary matters to be raised before the hearing began?

There were none.

Mrs. Smith remarked that there had been ex-parte communication by all members of the town Council, and there had been at least 112 letters received.

Mr. Randolph commented that each and every letter received by the Town should be made part of the record, and the applicant should have an opportunity to review them.

Mr. McLendon suggested making the letters part of the record, without reading each one. It was agreed by consensus not to read each letter at the meeting, however, they would be made part of the record.

Anyone speaking to the issue at this meeting stood to be sworn in by Town Clerk Pollitt.

The Council Members then declared ex-parte communications concerning the Mar-a-Lago application:

Mr. Shaw declared that he had spoken with Mr. Trump, had a number of messages, calls, and letters.

Mr. Randolph stated that each Council Member should announce ex-parte communication including with whom he/she communicated and the subject matter of the communication.

Mr. Shaw stated that his conversation with Mr. Trump concerned looking at the application in fairness. He had not spoken to other members of the community on a one-to-one basis other than a few passing comments, and he did not have a list of people that he had spoken with.

Mr. McDonald declared that he had several faxes sent to him, and had talked to Mr. Silverman, Gertrude Maxwell, Mr. Silken, Mr. Alex Beal, Mr. Trump, and had received copies of all of the letters in the record.

Mrs. Smith declared that she had received hundreds of letters, that were all on the record, a fax from Mrs. Massey, and a movie from Mr. Rampell.

Mayor Ilyinsky declared that almost everyone in Town had spoken to him at one time or the other, and he had received many letters.

Mr. McLendon declared that he had phone calls from London, Michigan, faxes from Montana and locally, and 25-30 phone calls. He declared ex-parte communications with Mr. Doyle Rogers, Mr. Louis Pryor, Mr. Jean Habik, Alex Beal, and Adrian Winterfield.

Mr. Wyett declared that he had received hundreds of phone calls, letters, faxes, and a movie from Mr. Rampell (which he had not opened and would return to Mr. Rampell). He commented that he could probably name half the people in the Town of Palm Beach, and had received messages on both sides of the fence. He mentioned Dr. Sten Lilja, Mr. Max Shore.

At this time Fire Chief Elmore pointed out all exits from the room, as the room was full to capacity, and asked that the aisles be kept clear, and that the press not set up any tripods.

Mr. Randolph asked if each Council Member could render a fair and impartial decision on the basis of the evidence and testimony heard today based solely on the testimony and not on anything heard outside of the room?

Mr. Wyett declared that he could render a fair opinion.

Mr. McLendon declared that he could render a fair opinion based on the evidence today.

Mrs. Smith declared that she could render a fair and equitable judgment on the application.

Mr. McDonald declared that he could render a fair opinion.

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Mr. Shaw declared that he could render a fair opinion.

Mayor Ilyinsky declared that, if needed, he could render a fair opinion.

Mr. Randolph commented that Mr. Rampell had sent a letter over the weekend, copy of which he passed out to the Town Council, regarding the case law concerning the Application today. He noted that the Town Council would be allowing the opportunity for cross examination of witnesses. Mr. Rampell would have the opportunity to present witnesses, then cross examination would occur. After that, the Town would make its presentation, and any member of the public could speak. Then, in the final analysis, the applicant would have the opportunity for rebuttal. At that point the matter would be considered by the Town Council.

Mrs. Smith made it clear that after the public had the opportunity to speak the Town staff would give their reports.

Mr. Randolph made it clear that all three letters mentioned should be made part of the record: one from Mr. Rampell, dated September 13, 1996; two from Carlton Fields dated September 12, 1996 and September 14, 1996.

Attorney Ron Kolins addressed the Town Council suggesting that staff comments should be presented prior to the public comments and directly after the applicant made his case, since there would be no opportunity to address issues which may be raised by staff.

Mr. Kolins then requested that after the applicant's presentation had been completed, and after the staff reports had been completed that the public speaking in support of the application speak, followed by those opposed to the application.

Mr. McLendon stated that he agreed with the suggestions of Mr. Kolins.

Mr. Wyett stated that he believed that after the staff report the public should have an opportunity to comment a second time.

Mr. McDonald made a motion to adopt the recommendation of Mr. Kolins.

Mr. Shaw agreed with Mr. Kolins suggestions, adding that speakers could use a card system so that order could be maintained.

Mrs. Smith stated that she was opposed to having one side or another of the public speak first, and believed it to be more democratic to have each person come up one by one, however, she suggested that some form of order be used.

Mr. McDonald withdrew his motion.

All Council Members agreed with the suggestion of Mrs. Smith.

Mr. Randolph advised that for purposes of organization members of the public wishing to speak could sign a list if desired.

Attorney Paul Rampell addressed the Town Council, representing the Mar-a-Lago Club, introducing Donald J. Trump, President of the Mar-a-Lago Club, who wished to make a few brief remarks.

Mr. Trump addressed the Town Council, stating that he was very proud of what had happened at Mar-a-Lago, as prior to his purchase the wrecker's ball was close, and Mar-a-Lago had been saved in a non-discriminatory fashion.

Mr. Rampell explained that the application for Special Exception was seeking the removal of certain conditions and restrictions that applied to the Mar-a-Lago Club, but none of the other social clubs in the Town of Palm Beach. He noted that some people were under the misconception that an attempt was being made to re-negotiate the Declaration of Use Agreement, and pointed out that the Agreement, by its own terms, anticipated change in Article II "Club Use" which provided the procedure by which further changes to the Agreement would be made by new Special Exception Applications, such as the application today. The Declaration of Use Agreement had been modified previously by Special Exception Application 24-95 in which the Town approved five new tennis courts and an expanded northern parking area. The Mar-a-Lago Club was in good standing under the Declaration of Use Agreement, and the Town had recently renewed all of its various licenses. The appearance today was following the letter and spirit of the law. He explained that an amendment was being requested today, as the Declaration of Use Agreement contained some mistakes that could be corrected, and under U.S. Supreme Court Case - Shelly vs. Kramer, the provisions of this agreement which were unconstitutional were unenforceable, but could be made constitutional today. He asserted that many circumstances had changed: All of the millions of dollars of construction required under the Declaration of Use Agreement had been completed; the Mar-a-Lago Club was no longer a plan or a concept or a set or projections, but a living and breathing membership consisting of people from all different ancestries and ethnic backgrounds; the Club had been used to its fullest capacity and everyone had admitted that the Club had been a good neighbor. Many people had predicted disaster if the Club was approved in 1993--all sorts of projections about traffic congestion had been made, which had not come to pass.

Mr. Rampell displayed an exhibit of the conditions attached to the Declaration of Use Agreement for the Mar-a-Lago Club. He explained that he would be using two different words: *conditions* and *regulations*, distinguishing that a condition in the Declaration of Use Agreement would refer to construction that was required prior to the issuance of the

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Certificate of Occupancy; regulations or restrictions would refer to ongoing regulations or limitations that had been placed on the Mar-a-Lago Club.

The conditions, under the Declaration of Use Agreement, had all been completed. The Club had installed a sewage overflow valve; calculated sewage generation; the pump station had been upgraded and replaced; air conditioning condensate had been re-routed into the storm sewer system; exfiltration trenches had been constructed along a portion of the perimeter of the parking area and intermittently along the cart path; the tunnel to the beach area had been evaluated for structural soundness and was improved as required. Mar-a-Lago had been modernized and upgraded without any compromise of its historic integrity by compliance with all applicable building, fire and life safety codes. Fire hydrants had been installed. A fire detection system had been installed. A fire extinguishing system had been installed. A solid masonry wall along the northern perimeter, along with vegetation had been installed, serving as a buffer for the residents of Woodbridge. A surety had been posted for the completion of certain work. The northbound left turn storage lane on Ocean Blvd. had been constructed. A gate west of the existing Southern Blvd. gate had been provided. Parking spaces (252 stabilized parking spaces) had been completed. The cart path had been widened to 18'. The Town had been reimbursed for all reasonable costs of consultants that had been incurred during the initial application. These conditions had been pre-requisites to a Certificate of Occupancy, and all of them were one time obligations that had been satisfied, as proven by the Certificate of Occupancy. The conditions now were moot. The obligations themselves involved construction which would be pragmatically and legally impossible to reverse. A one sentence amendment would clarify the completion of all of the conditions. The sentence would read as follows: *All conditions hereunder, which were precedent to the issuance of a Certificate of Occupancy have been satisfied, and the Club shall hereinafter remain subject only to the Code of Ordinances of the Town of Palm Beach.* Since the conditions were moot, there was less concern today about past completed conditions than the ongoing regulations. The elimination of these conditions would simplify the Declaration of Use Agreement, and they would prevent misconceptions about Mar-a-Lago's chain of title, but were substantially less vital than the amendment regarding regulations.

The applicant was now seeking the removal of any and all regulations which apply to the Mar-a-Lago Club, but not to the other clubs in the Town. Examples of the regulations included the 500 membership cap, traffic limits, restrictions on the usage of guest suites, fiduciary accounts, and attendance limits to special events. This equality of treatment was vitally important, and could be accomplished by one sentence as follows: *The Club shall be subject only to the same regulations presently governing other private social clubs in the Town, notwithstanding any other provision of this Agreement.* Mr. Rampell maintained that they were not asking for any exemption of any provision of any kind in the Code of Ordinances. If the application was granted today, the Mar-a-Lago Club would not be unregulated, and if a change was ever desired, a Special Exception or Variance would have to be applied for, just like all other clubs. At this time, there were no definite plans in the form of applications pending before the Town Council, and there were no definite plans to make any changes of any kind. Possible future changes could not legally bear upon today's application. Mr. Rampell called attention to the Code of Ordinances. If the regulations were removed, the Mar-a-Lago Club would continue to be subject to multitudinous provisions of the Code of Ordinances. The Code regulated animals and fowl, buildings, swimming pools, signs and awnings, bulkheads, consistency and concurrence management systems, fire protection, garbage and trash, health and sanitation, all sorts of activities through different licenses, general regulations, regulations of charitable solicitations, parking lots, motor vehicles and traffic, natural resources, provisions which address nuisances, miscellaneous offenses, planning generally, public improvements, streets and sidewalks, subdivisions, trees and shrubs, and all sorts of zoning regulations. All of these would continue to apply to Mar-a-Lago, just as they applied to other clubs in the Town. Mr. Rampell stated that if the conditions and regulations in the Declaration of Use Agreement were removed the Mar-a-Lago Club would still be prohibited from causing nuisances by the Code of Ordinances and by Florida Statutes and by common law. All of these laws could prevent any nuisances that might arise. The Club could face fines, the loss of its Occupational License, injunctions, and even civil and criminal prosecution if it committed illegal or obnoxious acts. The differential, unequal treatment of Mar-a-Lago, especially given its heterogenous membership, violated the U.S. Constitution provisions regarding freedom of association, freedom of speech, equal protection, due process, interstate commerce, privileges and immunities and other safeguards against acts by the government, however well-intentioned these acts may be. Anything in the Declaration of Use Agreement infringing on these fundamental rights, must pass a test of strict scrutiny in which a compelling government interest existed and was furthered by narrowly tailored regulation. Provisions in the Agreement failed this test. Every provision in the Agreement must have a rational basis. The burden was on the government to prove this rational basis. Unfortunately, the Agreement in effect, as opposed to in theory, failed the rational basis test as well as the strict scrutiny test in various parts. At the time the Declaration of Use Agreement was approved fears, and even hysteria over potential traffic congestion led to an irrational basis underlying most of the regulations for which amendment was being sought, i.e., the prohibition of photography, the 500 membership limitation, the limitation on automobile traffic, the utilization of a shuttle van, and the limitation of special events to 390 individuals. All of these were implemented in anticipation of traffic. The traffic was based on projections; the projections were based on data in 1993, however, the data had changed. Traffic expert Joe Pollock could confirm that the calculation of concurrency had substantially changed. No traffic problem existed at Mar-a-Lago and these regulations had proven to be irrational, with no logical basis. No evidence existed that indicated any problem of usage of Mar-a-Lago as a club, as opposed to a residential estate. The application should be approved based on today's evidence, which was compelling, empirical, and current. It should not be denied because of erroneous 1993 forecasts.

Mr. Rampell demonstrated why the Mar-a-Lago Club did not cause a traffic problem. He exhibited a site plan of Mar-a-Lago showing the entranceway where 26 cars could queue off of South Ocean Blvd. onto the property. Cars that were waiting were on site, off the public thoroughfare. Additionally, now that South Ocean Blvd. had been expanded to include a left turn lane, six cars could be stored. This enabled northbound traffic to proceed without any delay. The gates on Southern Blvd. were on site, where 20 cars could queue up before the valet stand. In addition, Southern Blvd. had been widened as a condition precedent to the Certificate of Occupancy. It now had a left turn lane with a five car storage capacity so that traffic traveling east could proceed without any delay because traffic into Mar-a-Lago had a separate left

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turn lane. Mr. Rampell exhibited several photographs of the area, as well as a photograph of the restaurant, Charlie's Crab as a contrast, where two cars could be stored on site.

Mr. Rampell stated that evidence proved that Mar-a-Lago could handle all of its traffic flow without the imposition of a photography ban, membership limits, car trip limits, a shuttle van, or limits to special events of 390 people, or the various other restrictions related directly or indirectly to traffic. Club Colette on Peruvian Ave., and the Palm Beach Yacht Club on Flagler Drive each had over 1,000 members and neither had the driveway or the parking available at Mar-a-Lago. The Poinciana Club had been re-opened through a Special Exception Application, and despite rather intense traffic congestion at the Royal Poinciana Plaza no membership cap had been imposed. The Everglades Club and the Bath and Tennis Club each could add 1,000 new members to their restricted lists. If there was any correlation between club memberships and traffic, it was meager and insufficient as a rational compelling basis to single out the Mar-a-Lago Club. All clubs were, or should be, subject to the provisions in the Zoning Code which required one parking space for every four members. This parking space regulation alone controlled membership, car traffic, and general usage at all of the clubs. If a club had 100 parking spaces, it could have 400 members. If it had 200 parking spaces it could have 800 members, etc. One, among many, of the errors in the Declaration of Use Agreement was indicated precisely on this subject. The Agreement improperly limited the membership to 500, but required 252 parking spaces, thus mandating one space for every two members, whereas one space for every four members was required at other clubs. Mr. Rampell maintained it would be equal, fair and consistent to make the parking regulations, controlled general conditions, and usages at Mar-a-Lago Club the same as those applied to other clubs.

Mr. Rampell submitted for the record the calendar of events at Mar-a-Lago which had occurred during the 1995-96 season. At the peak hours of usage, when hundreds of cars came to the Club, no traffic back-up had occurred. Peak traffic had been totally controlled at Mar-a-Lago. This Club could actually, not theoretically, accommodate cars. He mentioned several celebrities that had appeared during the '95-'96 season. There had been no traffic jams of any kind at the Mar-a-Lago Club, and Palm Beach Police reports would verify and confirm that fact.

Mr. Rampell displayed a chart with special events for charity that had occurred at Mar-a-Lago during the past season, indicating over \$6.8 million raised by charity during the '95-'96 season, totaling more than all of the other clubs in Palm Beach combined. He considered that the Mar-a-Lago Club should be praised, not handicapped. The restrictions had been proven to be illogical. The Declaration of Use Agreement allowed an unlimited number of guests, an unlimited number of employees, but a limit to the number of members, which did not make sense. Hundreds of seats had been added to restaurants in the recent past, and not one traffic study had been required in connection with these expansions. No traffic limitations had been imposed--the most serious traffic congestion existed in the area of the new and expanded restaurants. Mr. Rampell declared that the Declaration of Use Agreement contained mistakes that could be corrected today. The restrictions should be removed now because the Mar-a-Lago Club has shown that it did not cause traffic, noise, odors, or other nuisances. The many regulations had been proven by empirical evidence to be unnecessary and with no rational nexus. Removal could be sought gradually, one at a time, but it was more efficient and fair to put the Club on equal footing now and forever. Charities in the upcoming season would like to invite more people. Seasonal subscriptions, summer memberships, or other membership types could be given.

Mr. Rampell asserted that one of the obstacles to an objective and dispassionate analysis of the application was the obsession of certain residents in the Town of Palm Beach with the flamboyance of Donald Trump. Mr. Rampell then made the following statements: Mr. Trump was a billionaire, twice over, and all self made American billionaires were controversial during their lifetimes. Many left great and benevolent legacies. Put into a historical perspective, Mr. Trump would be one of the most admired men of our times. Apart from his landmarked buildings in New York, he was a best selling author, a television entertainer, movie star, political activist, financial genius--he was all American. The application itself should be the focus, not the applicant. One of the reasons why Donald Trump was controversial in the Town was that when he came here he did not participate in any gentlemen's agreement. After Marjorie Meriwether Post died in 1973, no individual and no institution for 12 years came forward to shoulder the burdens of Mar-a-Lago. The Palm Beach Civic Association and the Preservation Foundation were around during this time. They could have purchased the property from Doyle Rogers, the Florida executor or administrator of the Post Estate until 1985. If either of these organizations undertook the huge responsibility for the preservation of the property they could have operated it as they pleased. The Preservation Foundation held its annual balls at Mar-a-Lago with unlimited numbers in attendance, and these big parties were blessed. Doyle Rogers, a big supporter of the Civic Association and the Preservation Foundation, a member of the Everglades Club and the Bath & Tennis Club was the right sort of gentlemen, and these arrangements were never scrutinized the way the usages at Mar-a-Lago were now scrutinized. Mr. Trump came forward to purchase the property, and at that time he was regarded as a savior because it was his intention to protect the property from subdivision. However, Mr. Trump stopped the Preservation Foundation's annual balls after the property was essentially trashed and he had to clean it up. He went from hero to villain in this organization's eyes. Mr. Trump had already achieved a successful club. At the request of the Everglades Club in 1984, the Town Council amended its Zoning Ordinance in an attempt to give the Club a monopoly on club living facilities. This attempt failed because other Code sections allowing overnight amenities were not fixed, in both senses of the word. Although the Everglades technically was in the Worth Avenue Zoning District, it mostly is located in a residential neighborhood with homes along its northern, southern, and eastern borders. The Mar-a-Lago Club, in contrast, abuts only five homes, and a six foot high wall protects these homes. Mar-a-Lago faces Lake Worth to the west, the Atlantic Ocean to the east, and the Bath & Tennis Club to the south. It scarcely has any impact on its neighborhood. All clubs in Palm Beach with one more than one acre are in residential neighborhoods. Overnight amenities are conceivable and appropriate in any of them. Additional amenities of any kind were not being requested, but the same zoning regulation procedures should apply to Mar-a-Lago just as they apply to all other clubs. The preservation of Mar-a-Lago is a valid and legitimate public policy, as evidenced by the Deed of Conservation and Preservation Easement to the National Trust for Historic Preservation, which was not subject to amendment. The Mar-a-Lago Club should be supported at every opportunity because it as the most significant step

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towards the opening of Palm Beach society.

Mr. Rampell stated that in the conversion of Mar-a-Lago into an unrestricted club, the idea of mutual aid and tolerance among all people was pursued in a democratic fashion. He was hopeful that the Town Council would have the moral courage to face the pressure, opposition, and adversity and pursue the right and fair course of putting the Mar-a-Lago Club on equal footing with the other clubs in Town.

Mr. Randolph asked Mr. Rampell if his presentation had been intended to be testimony or legal argument?

Mr. Rampell replied that it was intended to be argument, although the exhibits submitted were evidence.

Mr. Randolph asked Mr. Rampell if he considered himself a witness, from the standpoint of testimony?

Mr. Rampell replied negatively.

Mr. Randolph clarified the name of the applicant.

Mr. Rampell replied the Mar-a-Lago Club.

Mr. Randolph referred to a Settlement Agreement entered into by the Mar-a-Lago Club, LLC Club, and Palm Beach County, which had a whereas clause indicating that the Mar-a-Lago Club LLC specifically represents that it is the successor to all legal claims of all persons or entities holding title to Mar-a-Lago on or after April 6, 1995. He asked if Mar-a-Lago Club LLC was a distinct entity from the Mar-a-Lago Club?

Mr. Rampell replied that it was essentially the same, that it was a successor in interest, and was the owner of Mar-a-Lago Club, Inc., and Mr. Trump was the owner of both.

Mr. Randolph asked if Mr. Rampell could sign for the Mar-a-Lago Club LLC for purposes of presenting the application today?

Mr. Rampell replied affirmatively.

Mr. Rampell then introduced Joseph B. Pollock, Jr., a traffic engineer.

Mr. Pollock addressed the Town Council, stating that he was associated with Kimley-Horn & Associates, Inc., and was a registered professional engineer in the State of Florida, as well as other states. He read from a letter dated September 13, 1996 to Mr. Rampell from himself:

"We have reviewed the traffic situation for The Mar-A-Lago Club since it has now been open for approximately one year. This study considers the traffic conditions as they exist at the present time and includes traffic associated with the Mar-A-Lago Club.

A review of the current 1995/1996 average daily traffic count data from Palm Beach County indicates that the traffic volumes on Ocean Boulevard at Mar-A-Lago have dropped significantly since 1993 when the traffic studies for the Club were completed. There are over 1,500 vehicles per day in unused capacity on Ocean Boulevard before the daily volume standard would be exceeded. Further, all roadways within one-half mile of the Club have unused capacity. Thus, the Countywide Traffic Performance Standards do not cause any restrictions for The Mar-A-Lago Club today.

The Town's 1996 peak traffic count data likewise indicates that Ocean Boulevard at Mar-A-Lago has unused capacity. Thus, the town's level of service standard on Ocean Boulevard would not cause a limitation for the Mar-A-Lago Club today either.

The Mar-A-Lago Club has also constructed a northbound left-turn lane on Ocean Boulevard at the Club's main entrance. The left-turn lane allows left-turn vehicles to wait for a gap to turn left without impeding northbound through traffic on Ocean Boulevard. Thus, the northbound left-turn traffic into the Club is not causing safety or congestion problems on Ocean Boulevard.

The main entrance to the Club has the width to accommodate two lanes of cars entering the site and approaching the valet drop-off point. The drive from the drop-off point to the gate has more than sufficient capacity and length to accommodate the queue of vehicles waiting for the valet operation. Thus, the valet operation and on-property queue of vehicles waiting for valet service prevents the congestion of traffic on Ocean Boulevard.

The Club as required by the town has constructed a new Southern Boulevard gate and an eastbound left-turn lane. As with the Ocean Boulevard entrance, the gate entrance/exit operation enhances safety and prevents congestion problems for Southern Boulevard through traffic.

On an overall basis, we can conclude that The Mar-A-Lago Club is operating safely and efficiently. The entrance/exit improvements, the valet operation and parking improvements have all been implemented as committed by the Club and have contributed to the safe and efficient operation of traffic entering and leaving the Club.

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The many traffic-related restrictions imposed in 1993 are today unnecessary.”

Mr. Pollock stated that he would submit the letter to the Town Clerk and members of the Town Council.

Mrs. Smith asked Mr. Pollock what had occurred to lessen traffic in Palm Beach when all indications were that growth was excessive in Florida?

Mr. Pollock replied that the traffic volumes in that particular area were significantly less today and had dropped over time in the County traffic counts that he had referred to.

Mrs. Smith stated that *Mr. Pollock* had recommended in 1993 that 40% of the employees be shuttled, and it was hardly a discriminatory practice put into effect by the Town Council. She referred to page 9 of the Town Council Minutes of May 13, 1993.

Mr. Pollock expressed that because of the drop in traffic the shuttle requirement would no longer be necessary.

Attorney Chopin asked Mr. Pollock if he had prepared a professional report detailing the effect of traffic on the infrastructure of the Town of Palm Beach in the event that the restrictions contained in the Declaration of Use were lifted?

Mr. Pollock replied that he had just read the study he had undertaken.

Mr. Chopin asked Mr. Pollock if he had seen a site plan study in conjunction with the application for the Special Exception filed with the Town?

Mr. Rampell objected to the question, as he believed it was beyond the scope of the testimony that Mr. Pollock had given.

Mr. Randolph explained that the purpose of this hearing was to provide the fundamental due process and objections that would be heard in a court of law would not be applicable in this instance, with the opportunity for full cross examination being provided.

Mr. Pollock responded that he had seen a site plan as referenced by Mr. Rampell, but was not aware of any written report.

Mr. Chopin clarified that Mr. Pollock had not seen a professional report detailing the effects on the infrastructure.

Mr. Pollock agreed that he had not seen such a document.

Mr. Chopin asked what time periods the traffic counts had involved?

Mr. Pollock responded that the county traffic counts had been completed during the summer months of the year as well as the peak season of the year, and the Town's traffic counts had been completed in January or February of the current year. The county figures were for 1995 and 1996, and had been done on the first quarter/third quarter basis.

Mr. Chopin asked if the county had changed its concurrency requirements since 1993 with respect to the number of daily trips permitted on that section of A-1-A?

Mr. Pollock replied that the standard was virtually the same today as it had been then.

Mr. Chopin asked how many trips had been permitted under county performance standards in 1993?

Mr. Pollock replied that the Declaration of Use Agreement referenced 313 trips per day, and that figure had come from 113 trips generated by the Mar-a-Lago property at that point in time plus an additional 200 allowed under the county traffic performance standards. The country traffic performance standards had not substantively changed since 1993.

Mr. Chopin asked if it had changed since 1993?

Mr. Pollock replied that it had, however the number of trips permitted had not changed.

Mr. Chopin asked Mr. Pollock if it was his testimony that no change in circumstances had occurred since 1993 with respect to the number of trips permitted on a daily basis under the county traffic performance standards?

Mr. Pollock replied that was not correct. He explained that the traffic volumes were such today that the 200 trip limitation would not be imposed by Palm Beach County.

Mr. Chopin asked Mr. Pollock if the number had changed in terms of traffic performance of the projections that the Club at full membership would generate?

Mr. Pollock replied that the numbers had not been revised.

Mr. Chopin asked Mr. Pollock how many members the Club had at the time the county and the Town had done

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their traffic studies as referred to in his letter?

Mr. Pollock replied that he did not know.

Mr. Chopin asked Mr. Pollock if it would be likely that there would be more trips on A-1-A if the membership of the Club increased?

Mr. Pollock responded that would be possible.

Mr. Rampell interjected the comment that he would not allow Mr. Pollock, or any other witness testifying to be harassed.

Mrs. Smith stated that Mr. Pollock was present to testify as a traffic expert, and that the Town Council Minutes of 1993 stated that Mr. Pollock made his estimate on the number of trips based on the number of projected members.

Mr. Chopin asked Mr. Pollock if the members increased then could there be increased usage of A-1-A?

Mr. Pollock replied that there could be some.

Mr. Chopin asked if more people were coming for dinner, there were more guest suites, and a marina, could there be increased usage of A-1-A?

Mr. Chopin asked if it was permissible to have an attorney go to the witness while being cross examined on the stand and whisper in his ear?

Mr. Randolph explained that the attorney for an applicant had the right to speak to a witness, however, once the witness was on the stand he/she should not be spoken to during the course of testimony.

In response to the query of Mr. Chopin regarding the whispering, Mr. Pollock stated that he had been reminded that the original application for the Mar-a-Lago Club had been for 1,003 members.

Mr. Chopin referred to the photograph of the cars queued in the driveway, and asked Mr. Pollock if it was a posed picture or real life action?

Mr. Pollock responded that he did not know.

Mr. Chopin asked if the mere fact that there was a place to store cars off of A-1-A had an impact on the concurrency issue?

Mr. Pollock responded it had no bearing on concurrency.

Mr. Chopin had no further questions.

Attorney Ron Kolins asked Mr. Pollock if it was true that each roadway was assigned a certain capacity of vehicles?

Mr. Pollock responded affirmatively.

Mr. Kolins asked if anything was allowed to be added beyond that capacity?

Mr. Pollock responded that there were cases where one could go beyond.

Mr. Kolins asked if A-1-A could be developed in the Town of Palm Beach without limitation due to traffic constraints?

Mr. Pollock responded that the level of service standards would have to be adhered to.

Mr. Kolins asked if there was a capacity for A-1-A in the area of the Mar-a-Lago Club?

Mr. Pollock responded affirmatively, as per the county and Town standards.

Mr. Kolins asked Mr. Pollock if an increase of traffic for any use whatsoever would be allowed beyond that capacity?

Mr. Pollock replied that the approval of a use that would cause the exceedence would not be allowed.

Mr. Kolins had no further questions.

Mr. Randolph asked Mr. Pollock if he had performed any kind of a study as to the number of trips that were actually involved in the Mar-a-Lago Club now?

Mr. Pollock responded that traffic count information was submitted to the Town several months ago.

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Mr. Randolph asked Mr. Pollock if the additional tennis courts had been constructed when the study had been performed?

Mr. Pollock replied that he did not know, however, he thought the tennis courts may have been approved but not yet in operation.

Mr. Randolph asked if there was a health spa scheduled to open in November, 1996.

Mr. Pollock replied that he was not certain.

Mr. Randolph asked if Mr. Pollock if the health spa had been in operation when the study had been performed?

Mr. Pollock replied that he did not know.

Mr. Randolph clarified that the letter from Mr. Pollock did not have any studies attached, but was simply a conclusion that additional trips could be assessed to the Mar-a-Lago Club.

Mr. Pollock replied that was his professional opinion.

Mr. Randolph asked if it was based on any traffic counts?

Mr. Pollock responded that it was not based on submitted documents, but was based on information available either at the Town or Palm Beach County.

Mrs. Smith suggested that the figures referred to by Mr. Pollock be made available to the Town Council.

Mr. Moore stated that information was available, and he would provide the figures for the Town Council.

Attorney Chopin asked if the Southern Blvd. bridge had been closed during the traffic counts?

Mr. Pollock replied that he was not certain.

Mr. Chopin asked Mr. Pollock if he had asked the Town for counts provided by Mar-a-Lago?

Mr. Pollock responded negatively.

Mr. Chopin stated that he had not been able to obtain the records from the Town, and Mr. Pollock would have had to get them from Mar-a-Lago.

Mr. Shaw stated that he did not see a correlation between the letter of Mr. Pollock and the position of the County in regard to road capacities. He asked what the capacity of Ocean Blvd. in this area?

Mr. Pollock replied 13,400 vehicles per day. The county had been the source of traffic count information that he had reviewed. The county conducted counts twice per year. He declared that the county would agree that based upon their observed traffic volumes and standards that there was an unused capacity at that location of approximately 1,500 vehicles per day.

Mr. Wyett pointed out that concurrency was based on an average of the first and third quarter, and asked what the count was in the first quarter?

Mr. Pollock responded that he did not know.

Mr. Wyett stated that the concern of the Town Council was the capacity of the road to service the existing facilities in season, as there was a seasonal capacity.

Mr. Pollock replied that it must be recognized that the traffic performance standards of the County were based upon the average. He explained that the Town had collected peak season traffic count information which was used to evaluate the Town's traffic level of service standards, and that information indicated that the actual traffic counts during the peak season were less than the Town standards.

Mr. Wyett stated that on many occasions, on all days and seasons, there was a traffic problem at Southern Blvd, which created a very delicate area to which the Town Council must address.

Mr. Rampell called Wes Blackman for testimony.

Mr. Wes Blackman, Director of Projects at Mar-a-Lago Club, addressed the Town Council, stating that the requirements had been met to convert Mar-a-Lago into a private club. He reminded the Town Council that he had accepted his position after the Declaration of Use Agreement had been signed. Prior to that he had been a part of the West Palm Beach Planning Department, with one of his primary duties being to establish the concurrency system and its integration with the Palm Beach County Traffic Performance Standards Ordinance. In that capacity he had reviewed many traffic reports to be sure that all development complied with concurrency regulations. Today, he was prepared to discuss

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the nature of concurrency regulations, the development review process, the Mar-a-Lago Club requirement for monitoring and reporting traffic generation and the traffic situation in general within the Town of Palm Beach.

Mr. Blackman stated that the cornerstone of the Florida Growth Management Legislation and the subsequent comprehensive planning process that communities throughout the State undertook was that the impact of development must be concurrent with the availability of public infrastructure to service those impacts. Each county and municipality had to set certain levels of service for each of the elements of public infrastructure covered by the State Legislation. With individual comprehensive plans, communities identified levels of service and methods to show how those infrastructure systems levels of service would be maintained or improved. Communities had then been required to enact regulations that followed the lead of their adopted Comprehensive Plans. Palm Beach County and the Town of Palm Beach had been two such communities that had adopted methods to regulate traffic generation from new and intensified uses. Palm Beach County had adopted the Countywide Traffic Performance Standards Ordinance and Municipal Implementation Ordinance. The Town of Palm Beach adopted their own concurrency regulations and these were found in Chapter 6.5 of the Town Code of Ordinances, defining development permit very broadly, including site plan, development approval, subdivision approval, or building permit. Management procedures were addressed--single family subdivisions and multi family or nonresidential uses would be evaluated by the Town Building Official upon the advice of the Town Engineer for the impact of the development upon major arterial and major collector roadways in the Town. The estimated number of trips to be generated by the project would be subtracted from the available capacity of the roadway and compared to the Town's adopted level of service to determine whether or not the available capacity was adequate to support the project. Further, there was a condition that stated: *applicant must submit evidence to the Town that the proposed project conforms to the requirements of the Palm Beach County Traffic Performance Standards Ordinance as it applied to the Town of Palm Beach.* Nowhere in the ordinance were thresholds for review discussed, other than that single and two-family residential structures were exempt. There was no mention or mandate after the fact of monitoring traffic from a given project. This was why a detailed traffic study had been performed prior to the issuance of a development order in the form of the Declaration of Use Agreement consecrated by the Town and the Mar-a-Lago Club. The approved total trips of 313 per day took into consideration the existing number of 100 trips per day as a single family residence. Thus, some 213 were forecast to be from the increase use of the estate as a private club. The Mar-a-Lago Club must report, according to the existing agreement, traffic counts taken during the first and third quarters. He held up the report, which was about the size of the New York City white pages, which was required to be submitted to the Town of Palm Beach. No project, in his history of being a planner had to monitor traffic after the approval process. The burden of preparing and reviewing such a report was tremendous. During the counts batteries and hoses needed to be checked daily-- reviewers shifted through all collected data and came to conclusions. The report had been put together, and results were well under the threshold.

Mr. Blackman established that one would think that the Town would like to have a National Historic Landmark within its borders remain vibrant and a contributing member of the community to supply funds for the maintenance, repair, and restoration of the estate. No one else in the Town or County was required to monitor and report traffic to any governmental entity.

Mr. Blackman suggested that there may be other areas where Town control and review of traffic generation may be more effective in controlling traffic. The rigorous enforcement adhered to by the Mar-a-Lago Club was not practiced throughout the Town of Palm Beach. According to Dan Wiseberg of the Palm Beach County Engineering Department, Traffic Division, a total of only five concurrency letters had been written to the Town of Palm Beach since the ordinance went into effect in 1990. Two of the five concerned the Mar-a-Lago Club. All applicants for development orders since 1990 should have letters written by a traffic engineer, at the least, stating that the project conformed to the requirements of the Palm Beach County Traffic Performance Standards Ordinance, or letters from the County itself. Likewise, some assessment had to be made with each application that the impacts of development would not affect the Town's adopted levels of service and its concurrency standards. The only way to do that would be to require all applicants to present their trip generation of their expansion or new development; then keep a cumulative total of all trip generation from approved development to assess the impact on the local transportation system. Mr. Blackman said that he had reviewed copies of 18 applications for the opening or expansion of restaurants in the Town of Palm Beach since March 1993, and nine of them represented an increase in intensity of use. No traffic study, no comments from the Town Engineer, nothing regarding the trips generated from those uses had been included in the application, or discussed as part of the application process. The total number of trips generated from those applications equaled approximately 887 trips per day, assuming a reduction for existing pass by traffic. All of those applications should have contained evidence of meeting the County Traffic Performance Standards Ordinance by the Town Code. Three years prior to March of 1993 the same procedure should have been followed. There were a total number of 9,503 restaurant seats in the Town of Palm Beach, made up of 57 establishments. Together, these represented a total trip generation of approximately 23,101. Mr. Blackman stated that he did not know any restaurant, club, or hotel establishment within the Town of Palm Beach besides the Mar-a-Lago Club, and perhaps the Breakers Hotel that had two dedicated left hand turn lanes into the property, stacking for 40+ vehicles on the property, and parking for over 250 vehicles. Any additional traffic generated from the existing restaurant uses would be immediately felt on the street. The Town of Palm Beach Comprehensive Plan identifies traffic and parking problem areas on Map 2-2. All of the nine applications that had asked for increases in restaurant use intensity were within areas that were serviced by roads with identified seasonal traffic problems. During last season, Mr. Blackman reported that he had attended selected events at the Mar-a-Lago Club, and had been impressed with the lack of traffic and parking problems. He concluded that traffic generated by the Mar-a-Lago Club was not the source of traffic problems within the Town of Palm Beach. Continued monitoring of traffic would do nothing but waste time and energy of Town Staff, Town Consultants, and those dedicated to the preservation of Mar-a-Lago.

Mr. Randolph asked Mr. Rampell if he would be presenting any other representatives of the Club as witnesses?

Mr. Rampell replied that some members of the club would be testifying.

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Mr. Randolph asked if Mr. Blackman was the person most qualified to answer questions in regard to club operation?

Mr. Rampell replied affirmatively.

Mr. Randolph asked Mr. Blackman if the health spa on the Club grounds was opened at this time?

Mr. Blackman replied negatively.

Mr. Randolph asked if the health spa would open in November, to which Mr. Blackman responded affirmatively.

Mr. Randolph asked Mr. Blackman to describe the nature of the intended spa?

Mr. Blackman responded that it was a members only health spa, as well as guests; it would be called The Greenhouse Mar-a-Lago, and that Mr. Randolph could rely on the description in the Palm Beach Daily News that (The Greenhouse) would offer destination opportunities for members and guests and they would have an opportunity to stay on the property and have a total spa experience modeled after the Greenhouse program in Dallas; members would have to pay a certain fee in order to become members, and that it was not the intention to open the spa, without cap, to any number of people who wished to use it as a destination.

Mr. Randolph asked if Mr. Blackman knew of any other private social club in the Town of Palm Beach that had a nationally or internationally known spa associated with it?

Mr. Blackman replied negatively.

Mr. Randolph asked how Mr. Blackman would describe the nature of the guest suites that were in the Mar-a-Lago Club?

Mr. Blackman responded that they were luxurious.

Mr. Randolph asked Mr. Blackman if he recalled the claim that likened the ten member guest rooms for purposes of hotel trip generation purposes to being much like a resort hotel?

Mr. Blackman responded that he did not recall that claim.

Mr. Randolph referred to the addendum to the Mar-a-Lago Club Special Exception use wherein it was stated that the ten member guest rooms as stated previously were assumed to function much like a resort hotel for trip generation purposes. He asked if Mr. Blackman understood that the Town Zoning Code did not allow for a resort in the single family zoning district?

Mr. Blackman agreed.

Mr. Randolph asked Mr. Blackman what private social club in the town of Palm Beach that was entirely located in a residential zoning district provided overnight accommodations for guests?

Mr. Blackman replied the Mar-a-Lago Club only.

Mr. Randolph asked Mr. Blackman the periods of time during the 1996 season that the guest suites booked?

Mr. Blackman responded that he was not privileged to that information.

Mr. Randolph asked if Mr. Blackman had a reason for feeling that the Mar-a-Lago Club should be entitled to guest suites in the single family zoning district of the Town, when no other clubs similarly situated had that ability?

Mr. Blackman responded that it was opened to members and their guests and it had been approved previously.

Mr. Randolph asked how many rooms there were in the facility known as Mar-a-Lago?

Mr. Blackman responded that he did not know; that there were more than 10 rooms that could be used as bedrooms.

Mr. Randolph asked if the cap was removed on the 10 guest suites then would many more rooms be used as hotel rooms?

Mr. Blackman replied that the Club would be subject to all the rules and regulations of the Town of Palm Beach and the State of Florida.

Mr. Randolph asked Mr. Blackman if he understood that the provision in the Town Code to allow private social clubs was subject to special exception criteria being met?

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Mr. Blackman agreed.

Mr. Randolph asked Mr. Blackman if he understood that none of the other private social clubs located within single family residential districts when they were organized had those special exception criteria in place?

Mr. Blackman agreed.

Mr. Randolph asked Mr. Blackman what entertainment was booked for the 1996 season at Mar-a-Lago?

Mr. Blackman responded that he did not have that information.

Mr. Randolph asked Mr. Blackman if he had heard anyone connected with the Mar-a-Lago Club compare the quality of entertainment offered at the Mar-a-Lago Club to that offered at the Kravis Center in West Palm Beach?

Mr. Blackman responded that there may have been a reference to that.

Mr. Randolph asked if Mr. Blackman had heard it boasted that the entertainment was as good or better than that available at the Kravis Center?

Mr. Blackman replied that the reason that it was as good or better was that it was a much more intimate setting, with fewer people participating.

Mr. Randolph asked Mr. Blackman if it was true that advertisements previously booked at the Mar-a-Lago Club had appeared in the newspaper?

Mr. Blackman replied that may be the case.

Mr. Randolph stated that he understood that the ads appeared with the notation: members and guests only.

Mr. Blackman agreed.

Mr. Randolph asked why advertising would be done in a newspaper of general circulation in the community when attendance was restricted to members and guests of the club?

Mr. Blackman replied that they were interested in increasing membership, and making people aware of the Mar-a-Lago Club and what goes on at the Mar-a-Lago Club.

Mr. Randolph asked Mr. Blackman if he knew of another private social club in the Town of Palm Beach which offered the quality and type of entertainment of national and international renown as was offered at Mar-a-Lago?

Mr. Blackman replied negatively.

Mr. Randolph asked Mr. Blackman he agreed that if the cap on membership was lifted as well as the limitation on the number of persons who could attend an event that this facility could attract as many people as could be accommodated on the property?

Mr. Blackman replied that they would like to keep an intimate scale.

Mr. Randolph asked if the caps were removed on attendance and membership could the facility accommodate as many people as could get on the property at any one event?

Mr. Blackman replied that they would have limitations on parking, valet difficulties, and a number of internal problems which would hinder them from doing that.

Mr. Randolph asked Mr. Blackman if he would agree that unlimited attendance at events would not be conducive or consistent with the purposes of a single family zoning district in the Town of Palm Beach?

Mr. Blackman replied that if there were no other regulations in the Town of Palm Beach he would say yes.

Mr. Randolph had no further questions.

Mr. McLendon asked Mr. Blackman if the new tennis courts were in operation?

Mr. Blackman responded that they were completed.

Mr. McLendon asked if the parking had been completed?

Mr. Blackman responded that was underway, and expected it to be finished by November 1, 1996.

Mr. Kolins asked Mr. Blackman how many members there were presently at the Club?

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Mr. Blackman responded that he was not sure of the exact figure?

Mr. Kolins asked if it was less than 400?

Mr. Blackman responded affirmatively.

Mr. Kolins asked Mr. Blackman if there were any restrictions as to the number of guests that a member could bring to any particular activity at the Club?

Mr. Blackman replied negatively.

Mrs. Smith asked Mr. Blackman if he was the person who could address questions on the Club, and that other people testifying were members?

Mr. Blackman responded affirmatively.

Mrs. Smith asked Mr. Blackman who would know how many members there were?

Mr. Rampell responded that there were applications for membership pending. A certificate of use affidavit had been submitted indicating that there were under 325 members.

Mrs. Smith asked if there was a membership list?

Mr. Rampell responded that was privileged, private information.

Mrs. Smith pointed out that the other clubs had lists of members, and the Town Council was being accused of discriminating against Mar-a-Lago Club on the basis of its membership, yet did not know who they were. She added that she found it a little difficult to follow.

Mr. Rampell responded that the Club was under no obligation to provide the names of membership any more than the Everglades Club, which was not required to submit a list of its members when it recently filed an application for Special Exception and was granted approval for the demolition of a duplex and the construction of two single family homes on its property.

Mrs. Smith stated that she was simply saying that the members of the Town Council did not know who the members of the Mar-a-Lago Club were. She added that the Everglades Club by-laws and membership list was public, as well as the Bath & Tennis Club.

Mayor Ilyinsky asked Mr. Rampell if any member of the Club could invite as many people as they wanted to any special occasion there?

Mr. Rampell responded that under the Declaration of Use Agreement the total number of individuals who could attend a special event was 390; on an average day, however, each member could bring five guests. He added that there was no limit on the number of people who could attend special events at the Everglades Club, or any of the other clubs.

Mayor Ilyinsky asked Mr. Rampell what he would like the cap to be for special events?

Mr. Rampell replied that there were capacities established for each room at Mar-a-Lago by the Fire Marshall, and the club was willing to be subject to the marketplace and the laws of supply and demand. He stated that none of the other clubs in Town had any limits whatsoever on the number of members, guests, or special events, and that if the Mar-a-Lago Club application was filed today there would be no limit needed in order to meet concurrency.

Mr. Wyett asked Mr. Rampell if special categories of memberships, such as summer memberships, were desired?

Mr. Rampell responded affirmatively.

Mr. Wyett asked if spa memberships would be part of a special category?

Mr. Rampell responded that was possible.

Mr. Wyett asked if spa memberships could be considered a commercial venture, which was not permitted in a residential area?

Mr. Rampell replied that the spa facilities were already approved by the Town Council.

Mr. Wyett stated that approval had been for a private club--his questions had applied to special spa memberships and whether that would not be a commercial use of the property?

Mr. Rampell replied negatively.

Mr. Wyett asked if any other social clubs in the Town of Palm Beach had special categories of memberships?

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Mr. Rampell responded affirmatively; the Sailfish Club and the Beach Club each had special summer memberships, and an unlimited number could be sold. He added that the Bath & Tennis Club had some sort of a barber shop/beauty salon, and he asked if that was a commercial use of the property?

Mr. Wyett replied that if it was only used by members it would not be. He expressed that a special membership category created in his mind a commercial use, and an intensity of use. He asked if the Club had ever advertised itself in terms of public advertising in newspapers or in business cards as a hotel?

Mr. Rampell responded that he did not believe so.

Mr. Wyett replied that he believed he had seen business cards issued indicating the Mar-a-Lago Club and Hotel.

Mr. Rampell replied that was absurd.

Mr. Wyett asked if it was true that the actual membership was closer to 250 people rather than 320?

Mr. Rampell responded negatively.

Mr. Wyett asked the name of the General Manager and where he lived?

Mr. Blackman responded that the General Manager was Bernard Lembcke, and he resided in Palm Beach, but not at the Club.

Attorney Ken Graves asked Mr. Rampell if he considered Mr. Blackman's testimony as a traffic expert?

Mr. Rampell replied that to the extent that traffic was part of planning, Mr. Blackman was an expert.

Mr. Graves asked Mr. Blackman if he was a traffic engineer?

Mr. Blackman responded that he was not, nor was he one three years ago, and that he was not authorized to complete and sign an application relative to traffic concurrency in Palm Beach County.

Mr. Rampell introduced several members of the Mar-a-Lago Club.

Mrs. Ryskinski addressed the Town Council, stating that she was a member of the Mar-a-Lago Club, as well as the Preservation Foundation. She explained that she had lived all of her life in Morocco until she came to the U.S., and that she cherished the scenery, quietness, and peacefulness at Mar-a-Lago. She asked that the Preservation Foundation deal with the Club in an amiable fashion. She stated that she had known Mr. Trump for 24 years and had worked with him on benefits in New York, that she greatly admired him, and that he had done a splendid job with Mar-a-Lago.

Mr. Adam Donner addressed the Town Council stating that he was a partner in a civil trial law firm, a resident of Palm Beach, and a proud member of the Mar-a-Lago Club. He observed that Donald Trump had taken an old white elephant and restored it to the status of an American castle, and created a club membership representative of the real membership of our society, where a person from a middle class background could become a member of a private Palm Beach Club. In addition, he maintained that Donald Trump had been a good neighbor by giving new life to the Town. He discussed the 500 member cap, noting that the Club had operated with no incidence of traffic problems, and was not a noise nuisance. He declared that the membership cap at Mar-a-Lago was purely a matter of economics, and that Mar-a-Lago was indeed stiff competition for other clubs in Town who would want to keep it capped at 500 members. Mr. Donner stated that the membership cap was unfair, a restraint on free trade and commerce, and was unconstitutional with no compelling public reason for implementation. He urged that the Town Council grant the Special Exception Application, and repeal the membership cap, as well as the other unreasonably discriminatory restrictions originally placed upon the Club.

Mrs. Hermine Weiner addressed the Town Council, stating that she had been a member of the Town Council at the time this matter originally had been discussed, was also a member of the Preservation Foundation, and a member of the Mar-a-Lago Club. She declared that she took exception to the manner in which the two council members who were members of the Mar-a-Lago Club were treated today, as she found it incorrect and unprofessional; other members of the Town Council belonged to organizations that were heavily involved in attempting to have the vote regarding Mar-a-Lago a no vote. She was concerned about the safety and legality of what would be done today. She also took exception that the Town Attorney had found himself in the position of cross examining someone talking on behalf of Mar-a-Lago, which she believed was the job of the members of the Town Council.

Mrs. Weiner commented that at the time she sat on the Town Council she had only one serious question concerning Mar-a-Lago, and that had to do with traffic. She had made her decisions based on the proper handling of the traffic situation, and believed there was no traffic problem today. She expressed that she had attended a fundraiser at Mar-a-Lago some years ago and the estate had been in a state of disgrace. She maintained that Mr. Trump should be a hero to a preservationist, as he had preserved and brought back the estate. Mrs. Weiner expressed that this was an opportunity for the Town Council to work together with clubs. She concluded that nothing had changed in the quality of lives in Palm Beach because of Mar-a-Lago, and that the Club should be able to obtain some of their requests today and be made equal to every other club in the Town.

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Mr. Rampell submitted the following items for the record: by reference, all of the Charitable Solicitation Permits within the Town, a Certificate of Usage, a letter by Attorney James K. Green, constitutional counsel to Mar-a-Lago, and an opinion letter from Attorney Alan Ciklin.

Ms. Gladys Alpert addressed the Town Council, stating that she was a member of Mar-a-Lago and had chaired a Federation luncheon there last January, raising the largest amount ever for a ladies' luncheon. She noted that there had been no congestion on A-1-A. She stated that she appreciated the efforts of the Town Council to protect and preserve Palm Beach, however, Mar-a-Lago was a beautiful asset to the Town.

Ms. Monique Matheson addressed the Town Council stating that Mar-a-Lago was the best thing to ever happen to Palm Beach, and Mr. Trump had kept it at the best quality.

Ms. Dorothy Sullivan addressed the Town Council, stating that she was involved in several local charities and the establishment of the Mar-a-Lago Club had opened up a wonderful venue for charity fundraising events in Palm Beach, however a capacity existed at the Mar-a-Lago Club. She urged that restrictions be amended to expand the capacity.

Mr. Randolph referred to the Ciklin and Green letters, asking Mr. Rampell if they had been submitted as legal argument?

Mr. Rampell replied that they were submitted as evidence.

Mrs. Gertrude Maxwell addressed the Town Council stating that she was a concerned citizen who loved the Town of Palm Beach, and believed that all clubs in Palm Beach should be operated under the same regulations and ordinances commensurate to property amenities. She stated that Mar-a-Lago was saved by Donald Trump, and that conditions that had been complied with should be removed, as well as conditions and restrictions applied to Mar-a-Lago Club in 1993, but not to other clubs in Palm Beach.

Mr. Randolph submitted the following for the record: the prior Application for Special Exception from 1993, including the amendment to the Application; copies of the minutes of each of the meetings relating to consideration by the Town Council of that application (May 13, 1993, June 1, 1993, June 3, 1993); the Declaration of Use Agreement; the current Application; the letter from Mr. Rampell relating to the application, dated September 3, 1996.

Mr. Rampell asked that all correspondence between he and Mr. Randolph and all minutes of previous hearings in regard to scheduling the hearing today, as well as all of the minutes in which recusals had been discussed be incorporated as part of the record.

Mr. Paul Castro, Zoning Administrator, read the following staff comments:

Police Department: Request that the regulations and agreement stay the same for the life of said Agreement (which is the Declaration of Use Agreement).

Fire Department: The Agreement conditions relative to fire protection and public safety should remain in effect.

Town Planner: Must adhere to the requirements of the Landmark Ordinance and 9J5 as it relates to Comprehensive Plan review requirements.

Public Works: 1) Mr. Dusey would recommend that the infrastructure improvements completed not be removed from the Agreement since they lend an historical perspective on what was constructed and when. This may be important if and when the property and Club changed ownership, as well as establish certain maintenance responsibilities.

2) Any increases in membership numbers that require additional sanitary facilities and/or the addition of kitchens and guest suites would necessitate that the capacity of the new sanitary pump station be re-examined and the pump station upgraded, if necessary.

3) It appeared to be premature to assume that the Club should not have limitations on automotive trips because "the Club has not caused traffic problems of any kind on either South Ocean Boulevard or Southern Boulevard" since its opening. The Club has reportedly not yet reached full membership at this time.

Town Engineer: The conditions relating to the infrastructure improvements conditioned for the certification of occupancy should remain for the life of the Agreement.

Building Department: Comments were basically reflected in the report from the consultant.

Town Manager: Concur with the above staff comments, however, additional questions and comments may need to be addressed depending on the details in the applicant's presentation on September 16, 1996.

Police Chief Terlizze addressed the Town Council, stating that since the Club had been opened there had been no major traffic problems in or around the premises. A check of computer records showed that there were 84 police-type incidents reported in and around the Club. The address used for computer purposes was 1100 South Ocean Blvd. He stated that it should be noted that some of the 84 incidents occurred inside the Club and some occurred on A-1-A.

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Mrs. Smith asked if there had been traffic problems at Mar-a-Lago prior to it becoming a club?

Chief Terlizzese responded affirmatively--for probably 20 years or more police officers were stationed there throughout the season, in particular, to help with traffic control primarily during the peak hours in the afternoon from 4-6:00 P.M.

Mrs. Smith asked if there were problems with special events at Mar-a-Lago prior to it becoming a club?

Chief Terlizzese responded that there had not been that many special events there, and on a couple of occasions when there were special events there had not been too many problems, because off duty police officers had assisted.

Mr. Shaw asked if there had been any problem of traffic with the Bath & Tennis Club?

Chief Terlizzese responded negatively.

Mr. Rampell asked Chief Terlizzese if he had heard the testimony concerning the luncheon sponsored by Gladys Alpert, when there had been a substantial crowd at the lunch hour?

Chief Terlizzese responded that he had heard that testimony.

Mr. Rampell asked Chief Terlizzese if there had been any sort of a traffic jam related to that event?

Chief Terlizzese responded that there had not been a traffic jam related to that event.

Mr. Rampell asked Chief Terlizzese if he was aware of any traffic jam that had occurred as a result of the usage of Mar-a-Lago as a Club versus a residential estate?

Chief Terlizzese responded negatively.

Mr. Rampell asked Chief Terlizzese if some of the police reports referred to concerned such items as an unwell person, a disabled motor vehicle, a 911 hang up, etc.

Chief Terlizzese responded affirmatively.

Mr. Rampell clarified that it was a variety of reports, none of which necessarily reflected a traffic problem.

Chief Terlizzese responded that there were several items in the report that had been on A-1-A, and whether they had any connection to the Club or not, he did not know without doing research.

Mr. Rampell asked if there had been any traffic jams during special events at the Club, when large crowds had come to the property?

Chief Terlizzese responded nothing unusual had happened to his knowledge.

Chief Ken Elmore of the Fire-Rescue Department addressed the Town Council, stating that the Fire-Rescue Department requested that, because of the change in occupancy, certain fire protection and safety system code requirements had been placed on the Mar-a-Lago Club. These had been installed, and the Fire Department requested that they remain in place.

In response to the query of Mr. Shaw, Chief Elmore responded that there was no occupancy limit per se on the whole property of Mar-a-Lago, although each room or individual area had an occupancy load.

Mr. Rampell asked if there had been any problems relating to fire?

Chief Elmore responded negatively.

Mr. Rampell asked Chief Elmore if he was satisfied with the fire protection/prevention system installed at the Club?

Chief Elmore responded affirmatively.

Mr. Rampell asked if he was aware of the fact that Mar-a-Lago was not requesting that these systems be removed?

Chief Elmore responded that he was not aware of that, and would like to be sure that was a fact.

Fire Marshall Wandell addressed the Town Council, stating that there was a total of 652 possibilities regarding occupancy limits for the Mar-a-Lago building--the dining room was 70, the living room was 260, the library bar was 54, and the pavilion 223; the monkey loggia and tea room was an additional 45.

Mr. McLendon asked Chief Elmore if the hydrants on site at Mar-a-Lago were routinely tested?

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Chief Elmore responded affirmatively.

Mr. Rampell asked Mr. Wandell if he was aware that there were three fire hydrants on site?

Mr. Wandell responded affirmatively.

Mr. Al Dusey, Director of Public Works, addressed the Town Council, stating that his comments had included the recommendation that the infrastructure improvements completed not be removed from the Agreement, since they lend a historic perspective, and it would establish maintenance responsibilities for a different owner. He added that any increase in membership that would require additional sanitary facilities, and/or the addition of kitchens in the guest suites would necessitate that the capacity of the sanitary pump station be re-examined. He noted that it would seem premature to say that there were no traffic problems when full membership had not been reached.

Mr. Rampell asked Mr. Dusey if he understood that the application did not request to reverse any of the completed construction?

Mr. Dusey responded affirmatively.

Mr. Rampell asked Mr. Dusey if the infrastructure of the other clubs in Town were analyzed prior to an increase in memberships?

Mr. Dusey responded that if use intensified in some way there would be an analysis done.

Mr. Rampell noted that he was speaking specifically of increases in membership--he asked if the impact of an increase in membership would be analyzed at any other club if it increased its membership?

Mr. Dusey replied that he would not know if there was an increase in membership; the answer was no.

Mr. Rampell asked Mr. Dusey if he was aware of the fact that the limit on the number of guest suites was not being asked for today?

Mr. Dusey responded affirmatively.

Mr. Randolph asked that each person testifying give their professional experience and qualifications.

Mr. Dusey stated that he was a graduate civil engineer, a registered professional in the State of Florida and several others.

Mr. Kolins asked Mr. Dusey if his testimony was that if there were going to be more guest suites than there currently were, a review would be conducted regarding the possible impact on utility requirements?

Mr. Dusey replied that guest suites involving bathroom facilities would be considered.

Mr. Kolins asked if adding kitchens to some or all of the guest suites would be another issue relating to the infrastructure of the property that would require review?

Mr. Dusey responded affirmatively.

Mr. Kolins asked if an application that had either or both of those impacts would require review by the Public Works Department before full consideration could be given by the Town?

Mr. Dusey replied affirmatively.

Mrs. Smith asked what changes had been made to the original Mar-a-Lago to accomodate the Club?

Mr. Dusey replied that a new pump station had been constructed on site to replace an older station that had a lesser capacity.

Mr. McLendon clarified that the new pump station had been paid for by Mar-a-Lago, but was owned and operated by the Town.

Mr. Rampell asked Mr. Dusey if he could give a brief description of the pumping station that had been at Mar-a-Lago prior to the Club conversion?

Mr. Dusey explained that the pump station that had been there was driven by air, an ejector station, a single station with double capacity, and the new one had two pumps with a third spare pump.

Mr. Dusey explained that he had been a Public Works Director for 16 years, and prior to that had worked for the Department of Transportation in Pennsylvania for 12 years.

Mr. Randolph stated that for purposes of the record those who had testified would give their professional

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experience and expertise.

Chief Elmore reported that he had been Fire Chief for 15 years, had been in the business since 1957, had an Associates Degree in Fire Science and a Bachelor's Degree in Fire Administration.

Chief Terlizzese reported that he had been a police officer for 36 years, had been Chief of Police for 18 years, had an Associates Degree in Criminal Justice Science, a Bachelor's Degree in Criminal Justice Administration and a Master's Degree in Criminal Justice Administration.

Town Engineer Jim Bowser stated that his educational background included a Bachelor of Environmental Resource Management Degree, a Master's Degree in Environmental Pollution Control, and a Bachelor of Science in Civil Engineering, a registered licensed professional engineer in the State of Florida, had 16 years municipal engineering experience, had been the Town Engineer for 11 years and had 3 years of private land development experience in Broward County. He explained that his comments were made with a conservative approach, not knowing the impacts of removal of infrastructure conditions from the Agreement, and his recommendation was that they remain.

Mr. William Brisson, of Adley, Brisson, Engman Planners & Economists, Inc., zoning and planning consultants for the Town of Palm Beach, addressed the Town Council, stating that he had been with his firm for 25 years and the consultant for the Town of Palm Beach for 22 of those years. He received his Bachelor's Degree in Marketing in 1970, and was a member of the Institute of Certified Planner, having met all of their qualifications. He had been in the planning field working on comprehensive plans since 1971 and zoning items since 1976. He had worked on all of the comprehensive planning items for the Town since he had been with the firm, and had annually represented the Town since 1979. He explained that he was requested to review the Application in seven areas of interest related to planning. He had reviewed the Comprehensive Plan of the Town, the Town Zoning Code, the original Application of 1993 as well as all of his notes from the public hearings at that time, the Agreement between the Town and Mar-a-Lago Club, and the traffic data provided for the Town, as well as a short letter from Mr. Pollock relating to traffic counts and generation for Mar-a-Lago Club. Mr. Brisson submitted his curriculum vitae as part of the record.

The report of Mr. Brisson was also made part of the record at this time.

Mr. Brisson proceeded with the report, reciting the seven items which were discussed:

1. Pertinent differences between the Mar-a-Lago Club and other private social clubs in the Tow.

Mr. Brisson summarized the comments contained in the report, noting that no other club in the Town had been originally approved under the situations which were comparable to those which had come before the Town Council for the Mar-a-Lago Cub. A more detailed point by point explanation was contained in the actual report.

2. Limitation on guest suites at the Mar-a-Lago Cub.

Because of references made as to how there were no such conditions on the Everglades Club, Mr. Brisson referred to important distinctions between the Everglades Club and the Mar-a-Lago Club as noted in his report, as well as the distinction between the definition of guest rooms and residential living units. Mr. Brisson explained that as long as the number of guest room remained low, qualifying as an incidental use of the Club it would be no problem, however, if the number of guest rooms increased to where it was no longer incidental there could be a problem. He referred to the customary expectations for accessory commercial uses which were from 5-15% of the floor area--with Mar-a-Lago guest rooms constituting 17% of the floor area. Specific details were enumerated in his report.

Mr. Wyett asked if an owner's residence was permitted under the zoning regulations?

Mr. Brisson stated that he recalled that the Application made reference to the owner's residence, and had been approved that way in the original Special Exception as he understood it.

Mr. Moore stated that it had been in the Application, however the Declaration of Use Agreement was silent to it.

Mr. Wyett stated that he had no objection to Mr. Trump using any part of the facilities.

Mrs. Smith stated that there was some confusion because at the May 1993 meeting Mr. Rampell had been asked whether Mr. Trump would continue to live at Mar-a-Lago, and the answer had been no, except that he would be a member of the Club and would be entitled to use the guest rooms.

3. Traffic concurrency and limitation on membership.

According to recent computations there had been 270 trips per day in and out of the Mar-a-Lago Club, and about 314 members, however, there were a number of factors which caused Mr. Brisson concern: The counts were taken at a time when the Club was not yet in full operation; Mr. Weidner had found certain deficiencies in the recording of the traffic data, which may understate the volume of traffic generated by Mar-a-Lago Cub; there was still considerable construction traffic making it difficult to determine the actual traffic generation that could be expected under normal operation.

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While the recent experience at the Club may not have created any problems, Mr. Brisson expressed that there were only 314 members and the cap was 500; based on the information provided by the applicant and Mr. Weidner's comments and the fact that the Club was not fully operational at the time the traffic information was available, there was no assurance that there would be no problems if the conditions were removed. Mr. Brisson reported that based on the available data, it would appear that the present limitation of 500 was reasonable.

4. Unity of Title.

Mr. Brisson stated that the Unity of Title was necessary to ensure that the project as a whole, as approved under the Special Exception remained intact. Elimination of the Unity of Title would imply that the ability to make a physical change to the property was desired, in direct contravention to the representations made in the original Application. In addition, Mr. Brisson pointed out that the removal of the requirement for Unity of Title would impose on the Town the necessity of record keeping and vigilance to avoid misunderstandings relative to what could or could not be done with portions of the property that had been sold.

5. Limitation on automotive trips at the Club.

Mr. Brisson explained that it was his understanding that the limitation of automotive average annual daily trips at the Club to 313 was related to meeting the County's concurrency requirements. Basically the Applicant proposed to keep below a threshold of 200 additional trips over that which originally was generated at Mar-a-Lago prior to its conversion as a Club. Mr. Brisson stated that since nothing had changed in that regard the County Transportation Traffic Performance Standards Ordinance was still in effect; the 313 trips would still meet that requirement under the Comprehensive Plan, and would have to be kept as part of the Agreement. Mr. Brisson noted that even if there was not the requirement to meet the concurrency there were still legitimate regulations for the Town Council to undertake under the provisions relating to Special Exceptions in general, as well as in the Site Plan Review.

6. Requirement for traffic monitoring at the Club.

Mr. Brisson indicated that traffic monitoring at the Club must continue as determination of whether the Club had reached the allowable traffic generation and could only be accomplished if the traffic was monitored.

7. Limitation on the number of individuals per special event.

Mr. Brisson stated that the current restrictions should remain; the recent experience at the Club had not created any problems, however, the Club was not operating at full membership nor with its full complement of services and amenities. The limited experience did not indicate that future problems would not be caused.

In summary, Mr. Brisson commented that the Town had added a variety of conditions to the approval of the Special Exception, which were intended to minimize the potential impacts of the Club on the Town and surrounding properties. The conditions were intended to assure that the character of the Club and the impacts would remain within the perimeters that the Council considered acceptable at that time. Mr. Brisson stated that he believed there was a danger in indiscriminately removing the original conditions of approval without an adequate history of the operation of the Club at full operation, and that the removal of conditions at this point could alter the character of the Club and its impacts upon the Town and adjoining properties.

Mr. Rampell asked Mr. Brisson whom he had spoken with at the Town in preparation of his report?

Mr. Brisson replied that he had spoken with Mr. Moore, Mr. Castro, Mr. Randolph, Mr. Ackerman, and Mr. Frank.

Mr. Rampell asked Mr. Brisson if he had spoken with him?

Mr. Brisson replied negatively.

Mr. Rampell asked Mr. Brisson if he had spoken with anyone on behalf of the Mar-a-Lago Club in preparing his report?

Mr. Brisson replied negatively.

Mr. Rampell asked Mr. Brisson if he had visited the property in preparing his report?

Mr. Brisson responded negatively.

Mr. Rampell asked Mr. Brisson if he had observed any operations at the Mar-a-Lago Club during the past season?

Mr. Brisson responded negatively.

Mr. Rampell remarked that it was interesting that all of Mr. Brisson's conclusions were in opposition to the Application.

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Mr. Brisson replied that there had been one where change had not been recommended, and although it may be interesting, his review of a situation included looking at the available information and give answers in response to that.

Mr. Rampell asked Mr. Brisson if he had detected any predisposition or prejudice on the part of Mr. Randolph, or any Town official, when he was asked to prepare the report?

Mr. Brisson responded negatively; the only way he could be of value to the Town was to be able to answer on cross examination the facts and conclusions as he saw them.

Mr. Rampell observed that Mr. Brisson had given a very elaborate opinion against the installation of kitchens in any of the guest suites, and he asked Mr. Brisson if he was aware of the fact that there were no kitchen facilities being requested with this Application?

Mr. Brisson replied that he was aware of the fact that the prohibitions for kitchens had been requested to be removed.

Mr. Rampell asked if there was anything in the Declaration of Use Agreement that Mr. Brisson would recommend be improved?

Mr. Brisson replied that he was not asked to look through the Declaration of Use Agreement to determine whether it was good or bad.

Mr. Rampell asked what he had been asked to do?

Mr. Brisson replied that he was asked to look through the Application and comment on the conditions and identify the differences between Mar-a-Lago and other clubs. He gave his comments, and had not been asked to arrive at any particular conclusions, but had given guidance to the Town Council as to what he believed was most appropriate under each instance.

Mr. Rampell asked how many automobile trips were generated by a single club member?

Mr. Brisson replied that according to date, there were 270 trips, with 314 members, which would be about .86 trips per member.

Mr. Rampell interjected that he was not speaking about Mar-a-Lago, but generally, and asked how many automobile trips were generated according to general planning principles?

Mr. Brisson responded that he did not know as he was not dealing with general instances, but specific instances.

Mrs. Smith noted that this would be an appropriate time for the applicant and the members of the Town Council to decide a convenient time to come back, since it had been decided to stop at 5:00 P.M. today.

It was agreed by both applicant and Town Council that the hearing would be resumed on October 10, 1996 at 9:30 A.M.

Mr. Randolph asked that the Town Council refrain from discussing the testimony heard today so that when the hearing resumed matters could be addressed in a fair and impartial manner.

**V. ANY OTHER MATTERS**

There were none.

**VI. ADJOURNMENT**

The meeting was adjourned at 5:10 P.M.

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Mary A. Pollitt  
Town Clerk

Prepared by:  
Susan Eichhorn