# MINUTES OF THE TOWN COUNCIL MEETING HELD ON SEPTEMBER 12, 2000

## I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting of September 12, 2000, was called to order at 9:30 a.m. in the Town Council Chambers by President Jack McDonald. On roll call the following Elected Officials were found to be present: Mayor Lesly Smith, President Jack McDonald, Councilman William Brooks, Councilman Samuel McLendon. Elected Officials absent from the meeting were: Councilman Allen Wyett, and Councilman Norman Goldblum. Also in attendance for all or a portion of the meeting were: Acting Town Manager Thomas Bradford, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Director of Planning, Zoning & Building Robert Moore, Assistant Director of Planning, Zoning & Building Veronica Close, Zoning Administrator Paul Castro, Chief Code Compliance Officer Brian House, Finance Director Jane Skittone, Fire-Rescue Chief Vincent Elmore, Information Systems Manager Spencer Wilson, Police Chief Frank Croft, Public Works Director Al Dusey, Public Works Assistant Director Leonard Greene, Recreation Director Russell Bitzer, Risk Coordinator KarenTemme, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

## II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

## III. PRESENTATIONS

A. None

## IV. COMMENTS OF MAYOR LESLY S. SMITH

The comments of Mayor Smith were as follows:

First, I would like to note that in last Tuesday's election, voters elected a new County Commissioner to represent District 7, which includes the southern part of the Town of Palm Beach. My congratulations to Addie Greene, former state legislator and former mayor of Mangonia Park, who will take her seat after the November elections. We look forward to working with Commissioner Greene and would welcome her help on the many issues that we share with the county.

We have a number of agenda items, and I want to comment on just a few.

Our effort goes on to make sure that high quality medical care remains accessible, and I am pleased that Palm Beach continues to be the catalyst for information sharing and new ideas. I was sorry to see the resignation of several caring, committed Palm Beachers from the Intracoastal Board, but hope that this is indeed the beginning of a better governing process, which is absolutely vital to the safety of the people of Palm Beach. The Attorney General's office continues its fact-finding process and has asked for contributions for a forensic audit – a detailed examination of Intracoastal's books that we hope will answer many of the questions that have been raised. So I urge the Council to approve the request for a $50,000 contribution from the Town. Our job is to protect our residents' health and safety and I see this as an important part of that job. On Sunday, September 24th, there will be a meeting of Floridians For Health Care at 2:30 p.m. at Testa's. Any residents or people that are concerned about this should attend.

There has been some discussion about beautification of the Southern Boulevard causeway and I want to add my voice to those who support this project. Our police department tells us that lights would be a significant deterrent to criminal activities there. As you all know form reading the papers, we had a snatch and grab this last week. All of the criminals fled south. That part of the island was closed by the police, and they were able to apprehend several of the criminals. I understand that several private citizens have offered to contribute to lights and landscaping on the Southern Blvd. causeway. I also understand, and I hope it's true, not just a rumor, that the Bath and Tennis Club has committed to $20,000, and I understand that possibly the Mar-a-Lago Club will also be contributing to the beautification.

Discussion of the sand transfer plant and our meetings with the Army Corps of Engineers has been deferred from July 11 and the Corps' willingness to help - or not – bears on the cost and timing of our entire shore restoration project. We need to remain firm in our commitment and continue to seek Congressman Shaw's intervention.

Finally, it is my honor to single out a Palm Beach police officer, Scott McClure, for saving the life of a woman snorkeler who had been swept up by the incoming tide. She was six months pregnant, and I hope she names the baby "Scott." Congratulations, Officer McClure.

## V. APPROVAL OF THE AGENDA

**DEFER** Item XII. J. -Variance No. 46-2000, James H. Clark, Trustee, 1500 S. Ocean Blvd., per letter dated September 6, 2000, from Attorney Doyle Rogers.

**President Pro-Tem McLendon moved deferral of Item XII. J. - Variance No. 46-2000, to the October 10, 2000 Town Council Meeting. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

**DEFER** Item XII.L. - Special Exception No. 15-2000, Stephen Shapiro for Highland Unlimited, Inc., 230 Pendleton Ave., per letter dated September 5, 2000, from Attorney James Brindell.

**Councilman Brooks moved deferral of Item XII.L. - Special Exception No. 15-2000, to the October 10, 2000 Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

Mayor Smith commented that the preliminary land use plans the Town Council has seen regarding Peanut Island are an absolute disgrace. She said she would like to see the citizens of Palm Beach become involved in the planning process. She remarked that the lack of planning by the Port Authority and the Peanut Island organizers was terrible, and because of the invasion of privacy for the residents in the north end of Palm Beach, the Town of Palm Beach should be a major player in the planning.

## VI. COMMUNICATIONS FROM CITIZENS - 3 MINUTE LIMIT PLEASE

Former Mayor Yvelyne deMarcellus Marix, 1570 N. Ocean Blvd., addressed the Town Council regarding the hearing of variances by the Town Council under Development Review Matters on the agenda. She said the Town's Zoning Code is explicit in the matter of variances and the Zoning Commission meets every year in full season to update and validate the Code. Mrs. Marix said variances can only be granted when a hardship is shown, and that hardship must run with the land and not be self-imposed. She said granting variances for the wrong reasons undermines and invalidates the Town's Zoning Code which all Elected Officials have sworn to uphold. Mrs. Marix suggested that meetings could be shortened if the Town Council would establish the hardship before hearing any details thus not listening to any details unless there is a true hardship that runs with the land.

Dr. Sten Lilja, 1330 N. Ocean Blvd., asked Acting Town Manager Tom Bradford if he conveyed his September 5th letter addressed to the Department of Environmental Protection in Tallahassee regarding the petition?

Mr. Bradford replied he had forwarded that letter.

Dr. Lilja said another letter from Mr. Walesky, head of the local Department of Environmental Resources Management (DERM), was addressed to the Florida Department of Environmental Protection (FDEP). He asked Mr. Bradford if he was aware of that letter?

Mr. Bradford replied he was not aware of that letter.

Dr. Lilja suggested Mr. Bradford obtain the letter and distribute it to the Mayor and Town Council. He said a letter he had written to the Town was not available in the Town Clerk's office on the morning of this meeting. Dr. Lilja said this office was recognized previously as the place to obtain public information and that was not being done at this time.

Dr. Lilja referred to the August Town Council meeting where a report was given regarding the Erosion Control Line and the negotiations with the FDEP. He cited an excerpt from the August 8th minutes, page 9, and a later quote from Public Works Director Al Dusey that was different from the excerpt. Dr. Lilja suggested that if the Town negotiates with the FDEP, the Town should be aware of this and not agree to something that is not correct.

Dr. Lilja said he wrote a letter on August 17th, the fourth in a series, where he requested the Town's position regarding seeking a declaratory judgement action. He said he requested that response in writing or at this meeting.

William Cooley, 233 Tradewind, addressed the Mayor and Town Council and thanked the Mayor for continuing to keep the residents updated on the ongoing activities related to the beach project. He said he did not see anything related to the beach project on the agenda for this meeting. He requested that an informational section be on the agendas that discussed the beach project on an ongoing basis since it is the largest Public Works project in the Town's history. He suggested the topic might be "How is the Permitting Going".

Mr. Cooley said the Mayor mentioned the Erosion Control Line earlier in this meeting, but he would like to hear a discussion as to where the negotiations stand on the ECL. Although the question of a Federal lawsuit has appeared on the agenda for several months, it is not listed on this agenda although nothing may be going on. He mentioned the petition for waiver and variance which is most interesting reading on beach renourishment. It raises the validity of the sand study report for which the Town paid $500,000, and based on the recommendations of that report, the Town Council authorized the sale of $23,000,000 worth of bonds. He added that it turned out that the recommendations were not "right on the money" and therefore the need arose for a petition for waiver and variance. Mr. Cooley said he understood the need for the petition was submitted by the Town consultant without the knowledge of the Town Manager or the Town Council. If that is correct, Mr. Cooley said he did not think that was right, and in his opinion, something of this magnitude that varies a plan adopted by the Council should be brought to the Council. He suggested this should be an ongoing item on the agenda.

President McDonald said Mr. Cooley made a very good point, and that would be taken under advisement for next month's agenda.

Mayor Smith added she thought it would be a good idea to add it to the agenda. She said she would respond to Mr. Cooley's letter.

## VII. APPROVED AGENDA

A. APPROVAL OF TOWN COUNCIL MEETING MINUTES OF AUGUST 8, 2000

B. APPROVAL OF CHECK REGISTERS FOR AUGUST 2000

C. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING ON AUGUST 23, 2000

D. OTHER

1. Sand Transfer Plant - U.S. Army Corps of Engineers Project Monitoring *(Deferred from July 11, 2000 Town Council Meeting)*

2. Authorization to Extend Janitorial Services Contract for FY 2000/2001 per Memorandum Dated August 23, 2000, from Albert P. Dusey, Director of Public Works

3. Authorization to Extend Street Sweeping Contract for FY 2000/2001 per Memorandum Dated August 23, 2000, from Albert P. Dusey, Director of Public Works

4. Approval of Grant Application to the Department of Community Affairs for the Florida Coastal Management Program Coastal Partnerships Initiative for Financial Assistance of up to $ 50,000 to Access Coastal Resources (Phipps Ocean Park) and Authorizing Town Council President Jack McDonald to Execute the Same on Behalf of the Town

5. Approval of Suggested Rule Changes to Annual/Seasonal Lease Agreement for Town Marina Slips Based Upon June 2000 Marina Survey Conducted by the Public Works Department

6. Staff Report on BellSouth Issues *(Recommend Deferral to the October 10, 2000, Town Council Meeting)*

7. Approval of Town Staff's Recommendation Regarding Gray's Mobil Parcel *(Recommend Deferral to the October 10, 2000, Town Council Meeting)*

    a. Resolution No. 45-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Declaring the Town's Official Intent to Seek Reimbursement for Certain Capital Expenditures Made or to be Made in Respect to the Relocation, Acquisition, Construction and Equipping of a New Fire Rescue Facility, and Renovation of Portions of Town Hall From the Proceeds of its not to Exceed $8,000,000 Principal Amount of Bonds (*Recommend Deferral to the October 10, 2000, Town Council Meeting*)

8. Approval of Annual Renewal of Excess Insurance and Claims Management Services for FY 2001 as Recommended in Memorandum, dated September 6, 2000, from Karen Temme, Risk Coordinator, and Authorizing the Town Manager to Execute Same on Behalf of the Town

9. Consideration of Re-Appointment of Paul Bennett to the Town's Public Employee Relations Commission for a Four Year Term Expiring September 30, 2004

**President Pro-Tem McLendon moved approval of the Approved Agenda. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

## VIII. REGULAR AGENDA

*Old Business*

A. Update on the Proposed Florida Department of Transportation Project on Royal Poinciana Way Regarding Construction Work Hours and Parking Concerns. James M. Bowser, Town Engineer *(Deferred from August 8, 2000 Town Council Meeting)*

Town Engineer Bowser reported that he would go through the recommendations of the Public Works Department, as noted in his memorandum dated August 31, 2000:

1. Allow weekend work from Friday at 7:00 p.m. through Monday at 7:00 a.m., to work in the intersections of County Road and Cocoanut Row/Bradley Place, for approximately four weekends during the summer.

Mr. Leslie Shaw, Director of the Royal Poinciana Association, commented that the project would be short lived, and the Association would not focus on that issue at this time.

**Councilman Brooks moved approval of the recommendation to allow weekend work from Friday at 7:00 p.m. through Monday at 7:00 a.m. to work in the intersections of County Road and Cocoanut Row/Bradley Place. The motion was seconded by Councilman McLendon, and carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

2. Allow the milling operation for the northerly lanes to occur beginning at 12:00 a.m. and proceed through 10:00 a.m., with no milling permitted on Sundays or holidays.

Mr. Leslie Shaw commented that there were residences to the north of the area in question, however, stated that the milling machines would not be so noisy as to be annoying. He explained that the Royal Poinciana Association was attempting to help minimize the amount of time that the residents and merchants would be exposed to the construction project. He pointed out that Royal Poinciana Way was a major thoroughfare coming in and out of the island, and there were timing and time management concerns; he suggested that a schedule be made to minimize the closing of the street

Councilman Brooks suggested that the contract be written in such a way that any delay would result in completion of the work the next season.

Mr. Bowser replied that the Florida Department of Transportation (FDOT) may consider such a contract, however, the Town may be asked to pick up the costs for demobilization and remobilization the next summer; he suggested that it could be put in as a line item in the contract, so that costs would be evident. He noted that there was another upcoming meeting with the Royal Poinciana Association, and the FDOT would be in attendance, and that the project did contain an incentive clause for the contract to perform on time.

In response to Mayor Smith, Mr. Bowser agreed that he would present the concerns of the Royal Poinciana Association to the contractor; however, he pointed out that it would extend the life of the project.

**Councilman Brooks moved approval of the milling operation for the northerly lanes of Royal Poinciana Way, beginning at 12:00 a.m. through 10:00 a.m. with no work permitted on Sundays or holidays. The motion was seconded by President Pro-Tem McLendon, and on roll call carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

3. Allow extended work hours on a daily basis from 7:00 a.m. through 7:00 p.m., Monday through Saturday, with the exception of legally observed holidays

Mr. Shaw commented that far greater flexibility was needed in the work hours, and suggested that the contractor could advise what hours could be managed in order to complete the project in a more timely fashion.

Mr. Bowser replied that longer hours could be allowed; the FDOT had stated that the Town would be required to pay for any delays or down time involved with the use of multiple work crews. He stated that, if the Town Council so desired, he could offer to extend work hours beyond the 7:00 a.m. through 7:00 p.m. work hours. He noted that the FDOT needed to finalize the contracts and would need to know the extended work hours, and that he would report back at the October 10, 2000 Town Council Meeting with any further details.

Mr. Leslie Evans commented that the attitude should be that the FDOT should minimize the upheaval caused, mentioning that the municipality of Lake Worth had experienced delays in work done by the FDOT contractors, and complaints had resulted in the FDOT working 24-7 at no extra charge. He suggested that other areas where the FDOT had done work should be checked in order to determine what had been accepted by the FDOT.

**President Pro-Tem McLendon moved approval of extended work hours of 7:00 a.m. through 7:00 p.m. Monday through Saturday, with the exception of legally observed holidays. The motion was seconded by Councilman Brooks, and on roll carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

4. Concrete sidewalks across the medians during the construction period.

Town Engineer Bowser reported that the FDOT had not yet made a commitment, however, he suggested that perhaps they could be convinced to construct concrete sidewalks at the 1/3 points crossing north to south across the medians. He noted that the Public Works Department recommended that the sidewalks not remain after the construction period. The cost estimate was $9,000; he would pursue including it in the contract, however, it may come back to the Town as a cost.

President McDonald commented that if the FDOT would not include the cost in the contract, the Town would like to be able to have the option of paying for the temporary concrete sidewalks.

**President Pro-Tem McLendon approved the temporary sidewalks on the medians between Bradley Place/Cocoanut Row and North County Road; if the estimated costs of $9,000 were not included in the contract, the Town Council would then consider the costs at a later date. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

*New Business*

B. Consideration of Request of the State Attorney General's Office for Town Funding of a

Portion of the Cost of Conducting an Audit of Intracoastal Health Systems, Inc.

Assistant Attorney General Daniel Hyndman addressed the Town Council, reporting that the Office of the Attorney General was conducting a detailed review of the proposal of Intracoastal Health Systems to close St. Mary's Hospital. A detailed financial analysis would be necessary, for which the health care management firm of Jennings Ryan and Kolb had been retained, at an estimated cost of $206,000. Mr. Hyndman explained that financial assistance was being requested from the Town of Palm Beach in the amount of $50,000, as the hiring of the firm was an unanticipated, unexpected expense for the Office of the Attorney General. He noted that a $50,000 grant had already been approved by the City of West Palm Beach, and an additional $50,000 request was pending with Palm Beach County. He stated that it was hoped that the balance of the expense would be contributed by other effected municipalities.

In response to President Pro-Tem McLendon regarding the time frame for receipt of the report of the analysis, Mr. Hyndman replied that would depend on the cooperation from Intracoastal Health Systems, and it would be as soon as possible.

President McDonald commented that he was somewhat dismayed by the slow action of the Office of the Attorney General, and asked what basis had been used for the request of $50,000 from the Town of Palm Beach?

Mr. Hyndman replied that the request was based on fundamental fairness and proportionality; the three major governments effected were Palm Beach County, the City of West Palm Beach, and the Town of Palm Beach. He noted that the Office of the Attorney General was moving very quickly on the review; citizens had approached them in May and a thorough review had immediately commenced for a very thorough, full financial/legal analysis of the entire situation. He indicated that he was aware of the $10,000 costs to the Town of Palm Beach to prepare a lawsuit against Intracoastal Systems, as well as the other lawsuits that had been filed in Federal Court.

**Councilman Brooks moved approval of the request for $50,000 by the Office of the Attorney General, to be funded from the General Fund Contingency (through reallocation of the $250,000 that had previously been set aside for the development of the urban park at the Boynton Landscape property, which would result in freeing up $50,000, which could then be allocated from the General Fund Contingency). The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

At a later point in the meeting, Mayor Smith requested that the Intracoastal Funding issue be re-opened, and that the amount of Town funding be changed from $50,000 to $40,000, since a donation of $10,000 had just been received from Mr. Llwyd Ecclestone.

**Councilman Brooks moved approval of re-opening the Intracoastal Funding request issue. The motion was seconded by President Pro-Tem McLendon, and carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

**Councilman Brooks moved approval of the amount of Town funding in the amount of $40,000 (rather than the original amount of $50,000 approved in the earlier motion) per the request of the Office of the Attorney General for financial assistance in the completion of a detailed financial analysis of Intracoastal Health Systems, Inc. (to be allocated from the General Fund Contingency). The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

C. Consideration of Acceptance of donation of the Name "Camp Palm Beach" to the Town of Palm Beach from Robert and Tami Whitacre

Town Attorney Randolph reported that there had been a dispute between the Whitacres and the Town of Palm Beach in regard to the use of the name "Camp Palm Beach." Camp Palm Beach was the name that the Town had given to its summer recreation program, and the Whitacres had taken the position that the Town did not have the right to use that name. The dispute had ultimately been followed up by a letter from the Whitacres whereby they had indicated that they did not want to continue to contest the issue with the Town, and would give the name "Camp Palm Beach" to the Town of Palm Beach.

**Councilman Brooks moved approval of the acceptance of the donation of the name "Camp Palm Beach" from Mr. and Mrs. Whitacre to the Town of Palm Beach, thanking them for the donation, requesting that a letter of thanks from the Mayor be extended to them. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

D. Appeal of Right-of-Way Fines at 414 Australian Avenue

Town Clerk Pollitt administered the oath to those who would be speaking regarding this matter.

Public Works Director Al Dusey referred to his memorandum of September 1, 2000, to Acting Town Manager Thomas Bradford, reporting what had taken place regarding the right-of-way violation fines issued to a contractor hired by the property owner of 414 Australian Ave., Mr. Mark Rowan, who had then protested the fines. He recommended that the Town Council uphold the fines issued.

Mr. Mark Rowan addressed the Town Council, stating that he had been attempting to replace the two driveways on the property, both of which were perpendicular to Australian Avenue. He explained that he had received a permit to install the driveways, and had applied for a right-of-way permit, which he then paid for and obtained a receipt. The next day three yards of stone were dropped on the apron of the driveway and pushed in with a bobcat, since the pillars on the driveway were 8' apart, and the truck was 11' wide. At that time Leonard Greene, of the Public Works Department, issued a fine of $375.00 for a number of violations he cited. Mr. Rowan had then approached Public Works Director Dusey, who had indicated that he could appeal the fines to the Town Council.

In response to President McDonald, Mr. Rowan agreed that it was his testimony that it was his interpretation that he had not violated any of the ordinances of the Town of Palm Beach, and that he had made application for a permit, and did not know that a right-of-way permit would have to be issued.

In response to Councilman Brooks, Mr. Rowan indicated that the building permit itself was issued from the Town of Palm Beach Building Department, and the right-of-way permit was subsequently issued by the Public Works Department.

President McDonald commented that there were clearly defined right-of-way standards, and that Mr. Rowan did not have a right-of-way permit to do the work, and that the fine should be upheld.

**President Pro-Tem McLendon commented that he did not think that Mr. Rowan intended to do anything wrong, and suggested that the number of violations cited could be modified, moving that the fines be reduced from $375.00 to $150.00.**

Councilman Brooks commented that ignorance of the law was not an excuse from the strictures of the law, however, this case did not blatantly speak out with the spirit of contempt, and seconded the motion.

Mayor Smith asked what communication would take place between the Building Department and the Public Works Department regarding a right-of-way permit and a building permit?

Mr. Dusey replied that the application was made to the Building Department, who collected the money and the application on behalf of the Public Works Department. The Public Works Department then picked up the application, reviewed it, established conditions, gave the conditions back to the Building Department, and the permit was then issued on behalf of the Public Works Department.

Mayor Smith suggested that Mr. Rowan may have considered that he had completed the procedure when he applied for the permit to do the work and was given a permit from the Building Department. She considered that there was a gray area, whereby the procedure was not clear.

Mr. Dusey replied that there were two permits issued: one permit for driveway work that was issued a year in advance of the actual work; the right-of-way permit was actually for work being done in the right-of-way.

President Smith noted that the water was muddied enough that there could be confusion in this situation, and therefore she supported the motion being made for the $150.00 fine. She noted that it was difficult when the permits were coming from different places.

Mr. Dusey replied that the permits were coming from the same place, and it was set up that way so that there would not be confusion.

President Smith pointed out that there was a time lapse from when the applicant received the permit to dump the stone in the driveway, and to be working in the right-of-way; if the truck had gone into the driveway Mr. Rowan would not have had the problem at all; it would be possible for the owner of a property not to know where the right-of-way was located.

**On roll call the motion of President Pro-Tem McLendon to reduce the fine from $375.00 to $150.00, seconded by Councilman Brooks, carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

E. Sea Lord Hotel, 2315 South Ocean Boulevard – Proposed Initiation of Foreclosure (Code Enforcement Case No. 99-1073)

Director of Planning, Zoning & Building Robert Moore reported that foreclosure proceedings had been recommended for the property in question, due to the lack of meaningful work and failure to post the Letter of Credit. He recommended that the Town proceed with the foreclosure action.

Attorney David Norris, representing the owner of the Sea Lord Hotel, Mr. Remo Polselli, requested continued patience in this matter. He explained that Mr. Polselli had worked very hard and spent a great deal of money improving the property, and would meet the Code Enforcement requirements after the completion of some painting; Mr. Polselli had an overall renovation project in progress on the property as well, which was several months away from being completed, and had caused some delays, because the overall renovation was being scheduled along with the specific requirements of the Code Enforcement Board. Mr. Norris explained that Mr. Polselli had experienced some personnel problems, and had now taken a much more personal role in the project.

President McDonald commented that he had lost patience with the Sea Lord Hotel, and received many phone calls in this regard; he clarified that the fines must be paid.

Mr. Remo Polselli addressed the Town Council, apologizing to the Mayor and Town Council for the embarrassment of what had happened on the property in question. He explained that he owned seven hotels in Florida, and two chateaux in France, and was a hotelier by profession. The property in question was purchased approximately three years ago, and was closed down in October to start renovations which were to be completed in January 2000. He noted that he had spent $100,000 in the past two months on the property; $25,000 reinforcing balconies, and repainted the entire exterior. He stated that he had flown in from Michigan today to attend the meeting, and could provide a rendering/scale model of the property; renovations would be completed by February/March. He noted that all that remained to be done regarding Code Enforcement was to paint the east side of the building, which would be done within ten days from today.

Councilman Brooks commented that neighbors to the north and south had put up with the eyesore, and many promises had been made and unfulfilled.

After further discussion, President McDonald suggested that perhaps this issue could be deferred for one month so that the promises made today could be fulfilled.

**Councilman Brooks moved approval of foreclosure against Sand Pillow, Inc. The motion was seconded by President Pro-Tem McLendon.**

President McDonald asked Attorney Randolph if Code Enforcement liens would take precedence over any of the Notice of Commencements that had been filed on the property?

Town Attorney Randolph replied that the Town could argue in its foreclosure action that the Code Enforcement liens would take precedence, however, it would depend on whether the Court decided the liens were a super priority over the Notice of Commencements.

Attorney Theresa Lemme, St. John Dicker Krivok & Core, P.A., representing Tres Vidas Association, which was the neighbor to the south of the Sea Lord, addressed the Town Council, expressing the disappointment and frustration experienced by Tres Vidas over the matter regarding the Sea Lord, and concurred that the matter should go forth with foreclosure at this point.

Director of Planning, Zoning & Building Robert Moore commented that the neighboring Harbor House shared the concerns of Tres Vidas, and it was the position of staff that any deferral of this issue be conditioned with authorization being given to Town Attorney Randolph to take foreclosure action in the event that Sea Lord did not address the Code Enforcement violations, and initiate and continue construction on the property to bring it back to pristine condition.

Mr. Norris commented that he had heard comments that nothing had been done on the Sea Lord property, and that statement was incorrect, as, in fact much had been accomplished, and there was one minor item (the painting of the east wall) that needed to be completed regarding the Code Enforcement violations; the overall renovation project would take some time to complete, and Mr. Polselli was in the process of doing that. He pointed out that the complaints of the neighbors were in regard to the renovation, and were not dealing with the Code Enforcement Board requirements, which had all been met, with the exception of the painting. He noted that the letter of credit had actually been posted timely, however, the form had not been acceptable, and that had now been rectified. He requested that foreclosure action not be initiated at this time, as that would merely delay the project even further.

Chief Code Enforcement Board Officer Brian House commented that staff was concerned with the fines being paid in a timely manner, which were $250 per day, which were approximately $83,000 at this point in time.

Mr. Norris requested that Mr. Polselli be allowed to complete the project, so that funding could be utilized in that regard, and then address the payment of the fines.

In response to Mayor Smith, Mr. Polselli explained that he had never lied to anyone in this room, that he had the funds to renovate the property, and that he had an offer from an individual wanting to buy the property for $7.5 million; progress on the building had been stopped during those negotiations; the rendering boards had been completed in the last six months; the blueprints for the renovations were finished last week, and were being submitted to the Building Department.

In response to President McDonald, Mr. Polselli stated that the Code Enforcement fines would be paid by the end of this year, December 31, 2000.

Mrs. Wendy Victor, Town resident, commented that she supported Councilman Brooks.

**On roll call the motion of Councilman Brooks to approve proceeding with foreclosure action carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

## IX. RESOLUTIONS

A. Resolution No. 34-00 -A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Establishing New Dock Rates for Annual and Summer Transient Leases

Town Attorney Randolph read Resolution No. 34-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, ESTABLISHING NEW DOCK RATES FOR ANNUAL AND SUMMER TRANSIENT LEASES.

**Councilman Brooks moved approval of Resolution No. 34-00. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

B. Resolution No. 35-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Designating Town Depositories for Fiscal Year 2001, Pursuant to Section 2-517 of the Town Code of Ordinances and Designating Parties to Sign Checks or Warrants on Behalf of the Town Pursuant to Section 2-36 of the Town Code of Ordinances

Town Attorney Randolph read Resolution No. 35-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DESIGNATING TOWN DEPOSITORIES FOR FISCAL YEAR 2001, PURSUANT TO SECTION 2-517 OF THE TOWN CODE OF ORDINANCES AND DESIGNATING PARTIES TO SIGN CHECKS OR WARRANTS ON BEHALF OF THE TOWN PURSUANT TO SECTION 2-36 OF THE TOWN CODE OF ORDINANCES.

**President Pro-Tem McLendon moved approval of Resolution No. 35-00. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

C. Resolution No. 36-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm

Beach County, Florida, Re-adopting the Town's "Guidelines for Routine Dune Maintenance"

Town Attorney Randolph read Resolution No. 36-00 by title:

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

**Councilman Brooks moved approval of Resolution No. 36-00. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

D. Resolution No. 37-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Approving the Renewal of the Contractual Service Specialists Agreement Between the Town of Palm Beach and Randall L. Wolff, M.D. as Medical Director and Authorizing the Acting Town Manager to Execute the Same on Behalf of the Town

Town Attorney Randolph read Resolution No. 37-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE RENEWAL OF THE CONTRACTUAL SERVICE SPECIALISTS AGREEMENT BETWEEN THE TOWN OF PALM BEACH AND RANDALL L. WOLFF, M.D., AS MEDICAL DIRECTOR AND AUTHORIZING THE ACTING TOWN MANAGER TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

**President Pro-Tem McLendon moved approval of Resolution No. 37-00. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

E. Resolution No. 38-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Approving an Interlocal Agreement with the Solid Waste Authority of Palm Beach County for Municipal Recycling and Grant Management and Authorizing the Mayor to Execute the Same on Behalf of the Town

Town Attorney Randolph read Resolution No. 38-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT WITH THE SOLID WASTE AUTHORITY OF PALM BEACH COUNTY FOR MUNICIPAL RECYCLING AND GRANT MANAGEMENT AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

**Councilman Brooks moved approval of Resolution No. 38-00. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

F. Resolution No. 39-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Approving the Renewal of the Agreement for Medical Services between the Town of Palm Beach and M. Michael Hanna, D.O., P.A., as the Town Physician and Authorizing the Acting Town Manager to Execute the Same on Behalf of the Town

Town Attorney Randolph read Resolution No. 39-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE RENEWAL OF THE AGREEMENT FOR MEDICAL SERVICES BETWEEN THE TOWN OF PALM BEACH AND M. MICHAEL HANNA, D.O., P.A., AS

THE TOWN PHYSICIAN AND AUTHORIZING THE ACTING TOWN MANAGER TO EXECUTE THE SAME ON BEHALF OF THE TOWN.

**President Pro-Tem McLendon moved approval of Resolution No. 39-00. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

G. Resolution No. 40-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Approving a Concession Agreement for the Palm Beach Municipal Golf Course Between the Town of Palm Beach and the Golf Pro and Authorizing the Acting Town Manager to Execute Same on behalf of the Town

Town Attorney Randolph read Resolution No. 40-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A CONCESSION AGREEMENT FOR THE PALM BEACH MUNICIPAL GOLF COURSE BETWEEN THE TOWN OF PALM BEACH AND THE GOLF PRO AND AUTHORIZING THE ACTING TOWN MANAGER TO EXECUTE SAME ON BEHALF OF THE TOWN.

**Councilman Brooks moved approval of Resolution No. 40-00. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

H. Resolution No. 41-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Approving a Concession Agreement for the Palm Beach Municipal Tennis Courts Between the Town of Palm Beach and the Tennis Pro and Authorizing the Acting Town Manager to Execute Same on Behalf of the Town

Town Attorney Randolph read Resolution No. 41-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A CONCESSION AGREEMENT FOR THE PALM BEACH MUNICIPAL TENNIS COURTS BETWEEN THE TOWN OF PALM BEACH AND THE TENNIS PRO AND AUTHORIZING THE ACTING TOWN MANAGER TO EXECUTE SAME ON BEHALF OF THE TOWN.

**President Pro-Tem McLendon moved approval of Resolution No. 41-00. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

I. Resolution No. 42-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida Approving an Interlocal Agreement for Co-Utilization of the Palm Beach County Surplus Thrift Store and Authorizing the Mayor to Execute Same on Behalf of the Town

Town Attorney Randolph read Resolution No. 42-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA ,APPROVING AN INTERLOCAL AGREEMENT FOR CO-UTILIZATION OF THE PALM BEACH COUNTY SURPLUS THRIFT STORE BETWEEN THE TOWN OF PALM BEACH AND PALM BEACH COUNTY, AND AUTHORIZING THE MAYOR TO EXECUTE SAME ON BEHALF OF THE TOWN.

**President Pro-Tem McLendon moved approval of Resolution No. 42-00. The motion was seconded by Councilman Brooks.**

In response to Mayor Smith, Police Chief Croft explained that the items were not being sold at the Town auction, as historically the Police Department conducted auctions to relieve itself of inventory, surplus equipment and property. He explained that those auctions were not cost efficient, and the point had been reached where there was an overload of material stored, and space was becoming critical; in some cases the disposal of the material was regulated by Florida State Statutes. He explained that there was a very technical, legal way to dispose of the material, and the easiest way to do that was through the use of the county thrift store.

**On roll call the motion to approve Resolution No. 42-00 carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

J. Resolution No. 43-00 - A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Approving a Grant Agreement between the State of Florida Department of Environmental Protection and the Town of Palm Beach Under the Florida Beach Erosion Control Program for the Project known as the Palm Beach Island Beach Restoration Project, and Authorizing the Town Council President to Execute Same on Behalf of the Town

Town Attorney Randolph read Resolution No. 43-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A GRANT AGREEMENT DEP CONTRACT NO. 00PB1,BETWEEN THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE TOWN OF PALM BEACH, UNDER THE FLORIDA BEACH EROSION CONTROL PROGRAM FOR THE PROJECT KNOWN AS THE PROJECT ISLAND BEACH RESTORATION PROJECT, AND AUTHORIZING THE TOWN COUNCIL PRESIDENT TO EXECUTE SAME ON BEHALF OF THE TOWN.

**Councilman Brooks moved approval of Resolution No. 43-00. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

K. Resolution No. 44-00 -A Resolution of the Town Council of the Town of Palm Beach, Palm Beach County, Florida, Authorizing the Execution of a Roadway Lighting System Maintenance Agreement, With Conditions, Between the Florida Department of Transportation and the Town of Palm Beach for Maintenance of a Highway Lighting System on State Road A1A Lying Between Flagler Memorial Bridge and Royal Palm Way (State Road 704) in the Town of Palm Beach, Florida

Town Attorney Randolph read Resolution No. 44-00 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM EACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE EXECUTION OF A ROADWAY LIGHTING SYSTEM MAINTENANCE AGREEMENT, WITH CONDITIONS, BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND THE TOWN OF PALM BEACH FOR MAINTENANCE OF A HIGHWAY LIGHTING SYSTEM ON STATE ROAD A1A LYING BETWEEN FLAGLER MEMORIAL BRIDE AND ROYAL PALM WAY (STATE ROAD 704) IN THE TOWN OF PALM BEACH, FLORIDA.

**President Pro-Tem McLendon moved approval of Resolution No. 44-00. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

**X. ORDINANCES**

*Second Reading*

A. None

*First Reading*

B. Ordinance No. 23-00 - Amending the Code of Ordinances at Chapter 42, Environment, Article V, Noise, Section 42-199, Hours for Construction Work; Providing for Severability; Providing for Codification; and Providing for an Effective Date and a Sunset Date

Town Attorney Randolph read Ordinance No. 23-00 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES AT CHAPTER 42, ENVIRONMENT, ARTICLE V., NOISE, SECTION 42-199, HOURS FOR CONSTRUCTION WORK; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE AND A SUNSET DATE.

**Councilman Brooks moved approval of Ordinance No. 23-00. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

## XI. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman Brooks expressed concern with the South County Road construction, noting that it had been delayed because of some anticipated problems, and suggested that the work on the east side of the road could be stopped between Royal Palm Way and Royal Poinciana Way until May 2001.

Town Engineer James Bowser replied that question could be advanced to the Florida Department of Transportation (FDOT), however, Royal Poinciana Way construction would then be coincidental with the construction on South County Road. He explained that the east side of County Road would go much faster, as most of the utility work had been on the west side of the road. He stated that FDOT had advised a final completion date of the first or second week of December, and that there would be expenses connected with mobilization and demobilization; he advised that it would be best to let them stay there and complete the project.

President McDonald commented that he would add the road construction issue to the Agenda for the October and November Town Council meetings in order to receive updates.

Mr. Bowser replied that a FDOT representative would be requested to appear at those meetings, and that he would meet with them and attempt to provide an updated report through the normal daily mail as well.

Councilman McLendon commented regarding an item on the "Approved Agenda," regarding a letter from Public Works Director Dusey recommending the Town do nothing regarding pushing the Army Corps of Engineers to do something about the Sand Transfer Plant. He considered that the Corps had 4 ½ years to honor a commitment they had made, and he suggested that the Town should move towards litigation.

Town Attorney Randolph responded that the question of litigation was on hold, and that could be pursued if there was no cooperation form the Army Corps of Engineers; at the last meeting with them, held in Congressman Clay Shaw's office, they had indicated that they were willing to cooperate with the Town in working towards obtaining funding for beach restoration, etc.; he had understood that Congressman Clay Shaw would pursue the interests of the Town.

After further discussion, it was determined that the Sand Transfer Plant issues would be put on the Town Council Agenda as a monthly item for discussion.

President McDonald thanked Councilman Brooks for his help with "Camp Palm Beach."

*****The luncheon recess was taken at 12:05 p.m.*****

*****The Town Council Meeting of September 12, 2000 was reconvened at 1:15 p.m.*****

**XII. DEVELOPMENT REVIEWS**

A. Time Extensions - None

B. Variances, Special Exceptions, and Site Plan Reviews

*Old Business*

C. None

*New Business - Minor*

D. None

*New Business - Major*

Town Attorney Randolph reminded all that in order to prevail on an application, each applicant must understand (as previously notified by the Building Department) that a 3/5 vote must be secured; today, since there were only three Council members present, a unanimous vote of the Town Council would be needed; if one Council member voted against an application today it would not pass. Because the applicants today did not have the opportunity to present applications to a full Town Council, the opportunity would be given for deferral until the next Town Council Meeting.

E. SITE PLAN REVIEW NO. 10-2000 WITH VARIANCE The application of Burton Handelsman, Love III relative to property described as Unit 1 of Via Lela of Worth Avenue; commonly known as 250 Worth Ave. Condo Unit 1; located in the C-WA Zoning District. To allow construction of a 1st and 2nd floor additions (134.34 sf & 63.5 sf respectively) on a non-conforming building, providing 56.02% lot coverage in lieu of 35% maximum allowed, and providing no additional parking in lieu of one off-street parking space required

President McDonald requested declaration of any ex-parte communication. There was none declared.

Attorney John O'Neill, on behalf of the applicant, requested a deferral to the October 10, 2000, Town Council Meeting.

**Councilman Brooks moved approval of the deferral of Site Plan Review No. 10-2000 to the October 10, 2000, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

F. VARIANCE NO. 42-2000 The application of Norman Latham Trust relative to property described as Lot 22, East Shore; commonly known as 271 Plantation Rd; located in the R-B Zoning District. To allow construction of a 2nd floor addition providing 28.08' street sideyard setback in lieu of 30' required

President McDonald requested declaration of ex-parte communication. There was none.

Attorney Jim Paine, on behalf of the Norman Latham Trust, addressed the Town Council, requesting a deferral until the end of the meeting today.

At the end of the Development Review items, Variance No. 42-2000 was heard. Attorney Jim Paine addressed the Town Council, stating that although he believed he had a very strong argument and a definite hardship, he did not want to risk a year's delay if the project was denied today. He then requested deferral.

**President Pro-Tem McLendon moved deferral of Variance No. 42-2000 to the October 10, 2000 Town Council meeting. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

G. VARIANCE NO. 43-2000 The application of New Ventures of P.B. County relative to property described as Lot 11 Vita Serena; commonly known as 181 Clarendon Ave.; located in the R-A Zoning District. To allow construction of a pool providing a 25.81' frontyard setback in lieu of 35' required; to allow construction of one and two story additions providing a 29' frontyard setback in lieu of 35' required and allowing 28.16% lot coverage in lieu of 25% maximum allowed

Ex-parte communication was declared by Councilman Brooks with Attorney Ziska on the merits of the application; and by President Pro-Tem McLendon with Attorney Ziska on the merits of the application.

Attorney Maura Ziska, representing Laura Andre, Inc. of 181 Clarendon Ave, addressed the Town Council, explaining that the project had been before the Town Council in June for some variance requests. At that time the Town Council had found a hardship based on the nonconforming depth of the property and the landmarked status of the property, and had approved a variance for the front yard setback for a 856 sq. ft. second story addition, and lot coverage for a pool pavilion and cabana bath. After the approval, the project was presented to the Landmarks Commission, and was deferred with the following recommendations: the addition looked too much like an addition and detracted from the original historic nature of the house; the second story addition should be pushed back so as not to detract from the original structure and lowered; the windows were spaced the same and should look different so as not to detract from the original structure; the pool area needed to be balanced, and the pool should be centered on the building; the cabana bath roof detracted from the gate. Based on those recommendations, the plans were revised and the variance requests were now before the Town Council for approval of the additional variances based on the recommendations of the Landmarks Commission, based on the hardship that the residence was a Palm Beach historic landmark that needed to be upgraded to current living standards; the property was nonconforming in depth; the area of the lot was nonconforming.

Director of Planning, Zoning & Building Robert Moore commented that the Landmarks Commission had not directed that the applicant re-design and then return to the Town Council for additional variances – they had commented purely on the application that had been before them, which did not meet their approval. He stated that Town staff believed that the hardships needed to be addressed; the pool could be re-designed and not require the variance requested; the re-design on the other additions were being done because the applicant wanted more square footage.

Ms. Ziska noted that the second story addition had not changed in square footage; it was exactly the same as proposed in June; there was a 102 sq. ft. addition, which was basically roofing an area between the main house and garage.

Mayor Smith commented that the addition was now larger, and that there was currently a request that would involve the property being raised in the near future with the house temporarily relocated and the road closed for a period of time; she suggested that the neighboring property owners must be notified in this regard as well.

Mr. Moore pointed out that the Public Works Department was sending out notices to all neighboring property owners within 200' so that they would be aware of the request to raise the property, and allow the use of the right-of-way. He noted that if the 40' x 17' pool was made into a 30' pool it would make the pool symmetrical with the house, and eliminate the setback variance request.

Ms. Ziska agreed that the pool would be changed to 30', and that she would withdraw the variance request concerning the construction of the pool. She stated that the hardships related to the fact that it was important for the owners to have the covered 102 sq. ft. so that they could enter the main house in bad weather; in addition, the lot was nonconforming in depth, and the structure was landmarked.

**President Pro-Tem McLendon moved approval of the two remaining portions of Variance No. 43-2000 with the pool 30' rather than 40'. The motion died for lack of a second.**

Ms. Ziska requested a deferral in order to submit a revised application.

Mr. Moore suggested that the applicant could withdraw the pool construction variance, the 102 sq. ft. addition, and request the lot coverage variance only.

Ms. Ziska agreed that she would withdraw both the pool construction variance and the 102 sq. ft. addition variance (29' frontyard setback in lieu of 35' required), and request only the lot coverage portion of the variance request today.

**President Pro-Tem McLendon moved approval of the variance request to allow 28.16% lot coverage in lieu of 25% maximum allowed, with the hardship being the dimensions of the property. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

H. VARIANCE NO. 44-2000 The application of Laura Andre Inc. relative to property described as Lots 158 & 159 Floral Park; commonly known as 159 Sunset Ave; located in the R-C Zoning District. To allow construction of a 2nd story addition with a point of measurement of 17.28' NGVD in lieu of 12.37' maximum allowed; to allow construction of a driveway reducing the landscape open space from 40.4 to 32.9% in lieu of 35% minimum required; and, to allow construction of a spa providing 7.23' sideyard setback in lieu of 10' required

President McDonald requested declaration of ex-parte communication. Councilman Brooks reported that he had walked the property.

Architect Albert Jackman, addressed the Town Council, providing photographs of the property in question, and requesting that a 2nd story addition be allowed , noting the differences in elevation.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: plan could be drawn to become more conforming; Town Engineer: driveway should be reconfigured so that there was a total of 6' from the property line; Building Department: no hardship with the spa, and the point of measurement could be 1' lower than requested with a different configuration of the roof on the proposed addition.

Councilman Brooks commented that there was a one-story building in the back of the property which was in a state of disrepair, and questioned if that would be demolished?

Mr. Jackman replied that it was included under a separate permit that had already been granted to repair and renovate the structure.

Councilman Brooks commented that he had some concerns with the spa portion of the variance, and had considered that if the existing building was demolished there would be no need for a variance, as the spa could then be installed in that location.

In response to the request of Mayor Smith concerning the hardship for the spa, Mr. Jackman explained that there was an existing swimming pool, and there was no room anywhere else for the spa; the hardship ran with the land.

Mayor Smith asked if the project could be designed without the bow window and the additional 1' elevation on the second floor?

Mr. Jackman replied that it could be designed without it, however, it would then not be compatible with what was in place currently.

**Councilman Brooks moved approval of the portions of the request concerning the 2nd story addition and the driveway, and denial of the portion of the request concerning the construction of a spa. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 2/1, with Councilman Brooks and President Pro-Tem McLendon casting affirmative votes; President McDonald casting a dissenting vote, and Councilmen Goldblum and Wyett being absent from the meeting.** (*A motion for deferral immediately followed).*

**After further discussion concerning the necessary 3/5 vote in order for an application to pass, President Pro-Tem McLendon moved deferral of Variance No. 44-2000 to the October 10, 2000 Town Council Meeting. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

Mr. Moore added that a revised application would need to be submitted at the October 10, 2000, Town Council meeting.

I. VARIANCE NO. 45-2000 The application of Misbah Ahdab relative to property described as Lots 63 & 64 Mark Rafalsky; commonly known as 745 N. Lake Way; located in the R-B Zoning District. To allow installation of driveway gates providing a 4' street sideyard setback in lieu of 18' required

Attorney Maura Ziska, on behalf of the applicant, addressed the Town Council, requesting a deferral until the October 10, 2000 Town Council meeting.

**Councilman Brooks moved deferral of Variance No. 45-2000 to the October 10, 2000 Town Council meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

J. VARIANCE NO. 46-2000 The application of James H. Clark Trustee relative to property commonly known as 1500 S. Ocean Blvd.; lengthy legal description on file at the Building Dept; located in the R-AA Zoning District. To allow construction of a relocated main drive entry with gate posts at a 16.33' height in lieu of 8' maximum allowed, allow gates at a 14.33' height in lieu of 8' maximum allowed, and to allow supporting walls at a 10.58' height in lieu of 6' maximum allowed **(Request for Deferral per Letter Dated, September 6, 2000, from Doyle Rogers, to be deferred to the October 10, 2000 Town Council Meeting)**

This item was deferred to the October 10, 2000 Town Council meeting, earlier in the meeting under Item V. "Approval of the Agenda."

K. VARIANCE NO. 47-2000 The application of George Sharoubim relative to property described as Lot 5-16 Royal Park Block 18; commonly known as 230 Worth Ave.; located in the C-WA Zoning District. To allow installation of a business identification sign located 18' above the 1st floor in lieu of the 15' maximum allowed per Sec. 134-2440. To allow four (4) logos in lieu of one (1) maximum permitted and to allow one of the four logos at 16 sq. inches in lieu of a 12 sq. inch maximum permitted per Sec. 134-2438 of the Town Zoning Code

Ex-parte communication was declared by Councilman Brooks with Attorney Ron Kolins, and by President Pro-Tem McLendon with Attorney Kolins.

Attorney Ron Kolins, on behalf of the applicant, addressed the Town Council, requesting that the variance requests be considered individually, and submitted photographs of the actual store "Giorgio's" on Worth Avenue, as well as a graphic representation.

Attorney Kolins referred to the variance request regarding the height of the signage above the sidewalk above the building, which he did not believe needed approval from the Town Council, for which he would present the argument.

Director of Planning, Zoning and Building Robert Moore stated that the location of the sign as shown on the plan would need a variance, and staff had no objection to that request. He noted that Attorney Kolins had advised him that he had a different opinion, and that he would seek relief from the Town Council.

Town Attorney Randolph commented that it was very clear in the Town ordinance that a challenge of the decision of the administrative official must follow a certain procedure, which should be advertised and noticed.

Attorney Kolins replied that it was his understanding that the procedures for challenging a ruling of administrative staff would go to a final ruling of the staff – staff had stated that a variance was required and he did not interpret that as a decision that would require an appeal to the Town Council.

Town Attorney Randolph responded that when staff told an applicant that a variance was needed, that was a decision of finality that should be appealed to the Town Council for any argument of that decision.

Attorney Kolins stated that he would make the argument as part of the hardship argument, rather than constitute an appeal of an administrative decision on that portion of the variance request.

Attorney Kolins referred to the graphic display, pointing out the main facade sign proposed, and the height of the top of that sign down to the sidewalk, noting that the ordinance addressing the height of the signs said "no building identification sign shall be higher than the building on which it is attached, nor shall any sign be located over or upon the roof of any building. . . no individual business sign on a one-story building shall be located higher than the building on which it is attached, nor shall any sign be located over or upon the roof of any building . . . no individual business sign on a multi-story building shall be located higher than the first floor elevation of the building or 15', whichever is lower." He maintained that the building in question was a one story building in terms of the intent and purpose of the ordinance. He referred to a photograph of the building indicating that the building had one two story element, however, he suggested that approval for a sign 18' above the ground would be in accordance with the ordinance, since the building met the criteria for a one-story building.

President McDonald asked if the entire building was considered a two-story building, even if there was only one two-story element in the building?

Mr. Moore replied that was correct. He recommended that staff believed the area where the sign would be located was fine, because of the configuration of the awning.

**Councilman Brooks moved approval of the location and height of the sign at 18". The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

Attorney Kolins continued with his representation of the application regarding the logo, questioning whether the purpose of the criteria of the ordinance was served by considering the letter "G, as shaded, to be a logo. He suggested that it was not a typical logo, and that the shading was not the kind of thing that the code contemplated as a logo which should be minimized in size or number. If the shaded "G" was considered a logo, Attorney Kolins requested that the letter "G" be allowed in the 16" square with the other letters of the name in proportional size. If the sign was made any smaller he maintained that it would be out of proportion to the building and would not look right on Worth Avenue.

Zoning Administrator Paul Castro commented that staff believed that the sign was a logo, as the definition of logo in the zoning ordinance was: "logo means a graphic representation, letter, character, symbol, trademark, design, or crest or combinations thereof, used to identify a business or organization."

Councilman Brooks asked if the "G" in the square was a registered mark in the State of Florida?

Attorney Kolins replied that he did not know.

Councilman Brooks commented that logos were something that companies treasure, and there had been many lawsuits on infringement on logos. He stated that he agreed with staff, and believed the "G" in the square to be a logo, not a sign.

Attorney Kolins replied that he thought of the "G" in the square as an identification mark, rather than a logo, and gave several examples of stores with similar marks on Worth Avenue.

President McDonald commented that it was the consensus that the sign was indeed a logo.

Mr. Moore replied that the "G" was not considered the logo, however, it was the background shading that was the logo.

Attorney Kolins again explained that the issue was whether the 16" square shaded box would be allowed in lieu of the 12" square allowed by the Code. He maintained that if the 16" square was not approved, the 12" sign would then be so small that it would look ridiculous.

Mr. George Sharoubim, owner of Giorgio's of Palm Beach, addressed the Town Council, stating that he would compromise as far as the background color – he could go two shades darker than the shade of the building.

Councilman Brooks replied that the color was not the argument; it appeared that it was the consensus that the "G" in the square with the black background was a logo.

Attorney Kolins requested a deferral on this issue.

Mr. Sharoubim commented that he would go ahead with the 12" logo if the Town Council could not approve a larger, more proper size. He stated that he would like the sign to look proper on the building, and was requesting that the sign be allowed to be larger.

**After further discussion, Councilman Brooks moved denial of the variance request for a 16" square logo sign in lieu of the allowed 12" square. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

Attorney Kolins then addressed the portion of the variance request concerning allowing four logos in lieu of one maximum permitted. He indicated the location of each logo on the graphic representation of the store, and reduced the request from four to three logos, two on the doors (with white boxes), and one on the front (with the black box) of the building.

**Councilman Brooks moved approval of the door logos in addition to the one logo allowed on the front of the building. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

L. SPECIAL EXCEPTION NO. 15-2000 WITH VARIANCES The application of Stephen Shapiro for Highland Unlimited Inc. relative to property described as W32.37' of Lot 6, Lot 7, E20.22' of Lot 8, Reverie Block 2; commonly known as 230 Pendleton Ave.; located in the R-B Zoning District. To allow construction of a 2nd story addition providing a 4.9' sideyard setback in lieu of 15' required, allowing 33.5% lot coverage in lieu of 32% existing and 30% maximum allowed, and allowing a 6.23 cubic content ratio in lieu of 5.49 existing and 4.5 maximum allowed. To allow installation of a second kitchen in said addition **(Request for Deferral per Letter Dated, September 5, 2000, from James R. Brindell, to be deferred to the October 10, 2000 Town Council Meeting)**

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

M. SPECIAL EXCEPTION NO. 16-2000 The application of the Breakers Palm Beach, Inc, relative to property described as Breakers Row PL No. 1 Replat Tract 14 & part of 15; commonly known as 1 S. County Rd.; located in the PUD-A Zoning District. To allow five tennis courts to be lighted (five are currently lighted); this would provide lighting for all tennis courts

Councilman Brooks declared ex-parte communication via electronic mail with Attorney James Brindell; President Pro-Tem McLendon declared ex-parte communication with Attorney James Brindell.

Director of Planning, Zoning & Building Robert Moore commented that part of the special exception requirements that should be addressed would be that the light would be confined to the property of The Breakers, and not be a hindrance to vehicle traffic or neighboring residences.

Attorney James Brindell, on behalf of The Breakers, addressed the Town Council, stating that each of the requirements for a special exception had been addressed on the application, and that the closest court to South County Road was approximately 90' from the road, and there were no adjacent residences to the site; there would therefore be no light or noise impact on residences or light on the streets; specifications for the lights had been provided; times of lighting were until 9:00 p.m.

**Councilman Brooks moved approval of Special Exception No. 16-2000. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

*Other*

N. Consideration of a Request by the Mar-A-Lago Club Inc. to Approve a Construction Management Plan Required By Condition of Approval to Construct Cabanas on East Side of South Ocean Boulevard Per Special Exception No. 9-99.

Director of Planning, Zoning & Building Robert Moore commented that as a condition for special exception approval of the Mar-A-Lago Club beach cabanas, the Town Council had directed that Town staff meet with the owner of the property and develop a construction management plan that would have the least amount of impact upon the Town and the use of Ocean Blvd. He reported that staff had conducted such a meeting.

Zoning Administrator Castro reported that staff had met with representatives of the Mar-A-Lago Club, and their contractors on August 22, 2000. The purpose of the meeting had been to allow staff to listen to the proposals for a construction management plan, and walk the site to work out traffic circulation problems or noise caused by construction. Mr. Castro noted that the project was two-phased; with the first phase beginning as soon as possible to construct the pilings for the cabanas and the pool and deck area, to be completed by December 1, 2000. Phase 2 would begin in April and end by December 2001. He reported that the contractor and the Mar-A-Lago Club had agreed to abide by all hours of operation according to the current Code of Ordinances of the Town of Palm Beach. Primary access to the construction site would be through the tunnel, and all parking, as well as construction trailers would be on the west side of the primary Mar-A-Lago property. All construction traffic for heavy loads would enter the site on non-peak traffic hours, with a police officer on site at all times during the construction at that location to ensure smooth egress and ingress. The location of the emergency pull off area had been worked out, and agreement with sewage connections and a lift station had been reached. Mr. Castro stated that staff recommend approval.

Mr. Ned Barnes, Palm Beach Civic Association, questioned the procedure for enforcement and penalties for any violations.

Mr. Castro replied that the Mar-A-Lago Club would adhere to the Town Code of Ordinances and follow the procedure included in the Code.

Mr. Moore commented that Attorney Royce had provided a letter to Mr. Castro with the special conditions associated with the permit; it was an agreement that was entered into, and any violation of it would be subject to stop work orders.

**Councilman Brooks moved approval of the request of the Mar-A-Lago Club, Inc. to approve a construction management plan required by condition of approval to construct cabanas on the east side of South Ocean Boulevard per Special Exception No .9-99. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

O. Consideration of a Request from the Goodman Company for Approval of a Proposed Tenant Construction Program for the Esplanade from October 1, 2000 to December 1, 2000 and from January 2, 2001 to May 1, 2001. James R. Brindell, Esq., Agent

Attorney James Brindell addressed the Town Council on behalf of the Goodman Company, stating that the Esplanade storefront renovations were being completed, and three storefront spaces were being completed for Louis Vuitton, Pucci and Christofle. The storefront work on Christofle would begin on October 1, to be completed by November 15, then Pucci would be completed by December 1, with barricades underneath the arcade being used through December 1, with no barricades through the balance of December. He explained that the work would be primarily staged from inside the building, using the garage as the place for construction vehicles to bring materials. On January 2, 2001, the barricade would be put back up in front of Louis Vuitton for a two-week period so that the storefront could be installed. All workers would park either in the garage or off-Island, and there would be no on-street parking by workers. Attorney Brindell requested work hours of 8:00 a.m. to 7:00 p.m., except for Sundays and holidays.

Director of Planning, Zoning & Building Robert Moore commented that the Building Department had been delegated the authority to analyze the Esplanade project and issue permits accordingly, without coming to the Town Council. He pointed out that staff was now bringing the remainder of the project back to the Town Council for final approval.

**President Pro-Tem McLendon moved approval of the request from the Goodman Company for approval of a proposed tenant construction program for the Esplanade from October 1, 2000 to December 1, 2000, and from January 2, 2001 to May 1, 2001; work hours of 8:00 a.m. to 7:00 p.m., except for Sundays and holidays. The motion was seconded by Councilman Brooks. On roll call the motion carried 3/0, as Councilmen Goldblum and Wyett were absent from the meeting.**

## XIII. ANY OTHER MATTERS

There were none.

## XIV. ADJOURNMENT

The Town Council Meeting of September 12, 2000, was adjourned at 2:45 p.m.

Mary A. Pollitt
Town Clerk