MINUTES OF THE TOWN COUNCIL MEETING HELD ON SEPTEMBER 8, 1998

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Lesly Smith at 9:30 A.M. on September 8, 1998 in the Town Council Chambers. Upon roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Samuel McLendon, Councilmen Jack McDonald, Leslie Shaw, and Allen Wyett. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Finance Director James Demming, Fire-Rescue Chief Ken Elmore, Personnel Director William Crouse, Planning, Zoning & Building Director Robert Moore, Planning, Zoning & Building Administrator Paul Castro, Planning, Zoning & Building Chief Code Compliance Officer Brian House, Police Chief Frank Croft, Public Works Director Al Dusey, Public Works Department Facility Maintenance Division Manager Joseph Ugi, Purchasing Agent Charles Boggs, Recreation Director Russell Bitzer, Risk Coordinator Karen Temme, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Reverend Ralph Warren of Bethesda by the Sea. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS

1. Presentation by the Florida Inland Navigation District of Reimbursement to the Town - Funding Assistance for the Australian Dock Reconstruction and Expansion Project

Public Works Director Al Dusey reported that $382,000 will be reimbursed to the Town from the Florida Inland Navigation District for the Australian Dock Reconstruction and Expansion Project.

2. Retirement of Robert Curro, Storekeeper, 17 Years and 3 Months

Mayor Ilyinsky presented Robert Curro with a ring and recognized his years of service to the Town.

IV. COMMENTS OF THE MAYOR

There were none.

V. ORGANIZATIONAL ITEMS

1. Appointment of Town Manager - Pursuant to Section 4.02 of the Town Charter and Section 2-3 of the Town Code of Ordinances

Councilman Wyett moved approval of the appointment of the Town Manager, Robert J. Doney, with the request that next year the Town Council and management would set goals for the ensuing year, which would be part of the re-appointment. Councilman Shaw seconded the motion. On roll call the motion carried unanimously.

President Smith suggested that the Town Council schedule a meeting to determine details of the evaluation process. She noted that Assistant Town Manager Peter Elwell had admirably served as Acting Town Manager during the absence of Mr. Doney, and suggested that a bonus be given to Mr. Elwell in the amount of $10,000. Councilman Wyett moved approval of a $10,000 bonus for Mr. Elwell, with the funds to be transferred from the Designated Reserves in the General Fund. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Appointment of Administrative Officials - Pursuant to Sections 2-2 and 2-3 of the Town Code of Ordinances

Administration	Name
Town Clerk	Mary A. Pollitt
Finance Director	James H. Demming
Director of Planning, Zoning, and Building	Robert L. Moore
Town Attorney	John C. Randolph, (Jones, Foster, Johnston & Stubbs, P.A.)
Town Engineer	Albert P. Dusey or his Designee
Personnel Director	William C. Crouse
Recreation Director	Russell E. Bitzer

Public Safety

Chief of Police	Frank A. Croft
Chief of Fire-Rescue	Vincent K. Elmore

Public Works

Director of Public Works	Albert P. Dusey

Acting Town Manager: Peter B. Elwell

Councilman Wyett moved approval of the recommendations of Town Manager Doney in accordance with Section 4.04 of the Town Charter, and Sections 2-2 and 2-3 of the Town Code. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

VI. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

ADD Item XIX. Development Review (currently listed under Item VI.) - Other, page 9, Consider Request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction, for Escada, at 222 Worth Avenue.

Councilman Wyett moved approval of adding current Item VI. as Item XIX. Development Review - Other, Request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction for Escada, 222 Worth Avenue. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

DEFER Item XVI.B.1. - Resolution No. 31-98 - Establishing an Application Fee for Obtaining Voluntary Landmark Status to the April 13, 1999, Town Council meeting.

Councilman Wyett moved approval of deferral of Item XVI.B.1 - Resolution No. 31-98, to the April 13, 1999, Town Council Meeting. President Pro-Tem McLendon seconded the motion. On roll call the motion carried unanimously.

WITHDRAW Item XIX.B.3. - Special Exception No. 9-98 - The Poinciana Club, Inc., 70 Royal Poinciana Plaza, per letter from Attorney James Brindell.

President McLendon moved approval of withdrawal of Item XIX.B.3. - Special Exception No. 9-98. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

DEFER Item XIX.B.5. - Variance No. 30-98 - 355 North Lake Way to the December 8, 1998 Town Council meeting, per letter from Attorney Ron Kolins.

President Pro-Tem McLendon moved approval of deferral of Item XIX.B.5. - Variance No. 30-98, to the December 8, 1998, Town Council Meeting. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

DEFER Item XIX.B.7. - Variance No. 32-98 - 143 Clarendon Avenue to the October 13, 1998, Town Council meeting, per letter from Attorney James Brindell.

Councilman Wyett moved approval of deferral of Item XIX.B.7. - Variance No. 32-98, to the October 13, 1998, Town Council meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

ADD Item XVII.C.5. - Discussion of Keeping Construction Sites Clean.

Councilman McDonald moved addition of Item XVII.C.5. - Discussion of Keeping Construction Sites Clean. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

ADD Item XVII.C.6. - Consideration of Discussion of Golf Commission Minutes.

Councilman McDonald moved addition of Item XVII.C.6. - Consideration of Discussion of Golf Commission Minutes. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

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

VII. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

There were none.

APPROVED AGENDA

VIII. APPROVAL OF MINUTES OF JULY 9, AND AUGUST 11, 1998

IX. APPROVAL OF CHECK REGISTERS FOR AUGUST 1998

X. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF AUGUST 26, 1998

XI. LICENSES AND PERMITS

1. Charitable Solicitations

    1. The Jewish Guild for the Blind; No. 23-99
    2. Children's Home Society; No. 60-99
    3. Paracare Association of Palm Beach; No. 143-99
    4. International Game Fish Association, Inc.; No. 235-99
    5. Muscular Dystrophy Association, Inc.; No. 424-99

XII. APPOINTMENTS

1. Public Employee Relations Commission (MINI-PERC) - Four Year Term to Expire September 2002 per Memorandum Dated August 19, 1998, from Personnel Director Crouse

XIII. CONTRACT AND AGREEMENT RENEWALS

1. Authorization for Town Manager to Execute Contract for Town Physician for FY99 per Memorandum Dated

August 18, 1998, from Personnel Director Crouse

2. Authorization for Town Manager to Execute Contract for Medical Director for FY99 per Memorandum Dated August 19, 1998, from Fire-Rescue Chief Elmore

3. Authorization for Town Manager to Execute Concession Agreement for the Operation of the Palm Beach Municipal Golf Course for FY99 per Memorandum Dated August 21, 1998, from Recreation Director Bitzer

4. Authorization for Town Manager to Execute Concession Agreement for the Operation of the Palm Beach Municipal Tennis Courts for FY99 per Memorandum Dated August 21, 1998, from Recreation Director Bitzer

XIV. SEALED BIDS

1. Sealed Bid No. 98-14 - Air Conditioning Services

2. Sealed Bid No. 98-16 - Janitorial Services

Councilman Wyett requested that a correction be made in the minutes of August 11, 1998 on page 14 in the third paragraph which read: "Councilman Wyett commented that the cost of having the small plant as part of a major system (should the Town go entirely reverse osmosis) was $100,000 - $200,000...". to now read: "Councilman Wyett commented that the *additional* cost of having the small plant as part of a major system..."

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

REGULAR AGENDA

XV. PUBLIC HEARINGS

1. De-designation of an Historic/Specimen Tree at 445 Antigua Lane; Resolution No. 23-98 *(Deferred from April 14, May 12, and June 9, 1998)*

Public Works Director Al Dusey reported that there had been no resolution made by the neighbors involved, additional research had been done, and he now recommended that the Kapok tree NOT be de-designated.

President Smith requested that in the future more thorough research by staff should be done on recommendations for de-designation, after review by the Town Council regarding the situation.

Councilman McDonald commented that the efforts of Mr. and Mrs. Guild, adjacent property owners, should be acknowledged, as they had actually saved the tree.

Mr. George Milidrag, owner of the home at 445 Antigua Lane, commented that he, too, would like to see the tree saved, and had gone to some expense hiring a structural engineer, and experts in this regard. He suggested that he and his attorney meet with staff to share the conclusions. He therefore requested a deferral on this matter.

Mr. Hoyt, horticulturist, reported that he had examined the tree on several occasions, and in an effort to save the tree, a plan had been designed to install a root barrier between the tree and the house. It would necessitate digging a trench approximately 12" away from the wall of the house, which would sever some good sized roots, however, the tree should tolerate that root pruning. Currently the roots were actually in contact with the house, growing along the side of the house and exerting a lateral and vertical force along the house. He noted that the Milidrag house had suffered structural damage as a result.

Councilman Shaw pointed out that he did not believe a deferral was necessary, as the plan to prune would require administrative permission.

Councilman Wyett moved approval of maintaining the historic designation of the tree, and thanked all parties for their help and concern. The motion was seconded by Councilman McDonald.

Scott Lewis commented that the Guilds had done an extensive amount of work in order to maintain the tree. He strongly supported the recommendation to maintain the historic designation status.

Mr. Milidrag commented that he would prefer to wait for advice from his attorney, Mr. Chopin, before he withdrew his application to de-designate the Kapok tree, noting that his primary concern had been that the tree would be blown over and cause personal or structural damage.

Councilman Wyett amended his motion to deny the de-designation of the historic specimen tree at 445 Antigua Lane, Resolution 23-98. Councilman McDonald, who had seconded the original motion, agreed with the amendment. On

~~roll call the motion carried unanimously.~~

XVI. OLD BUSINESS

1. Ordinances (Second Reading)

    1. Ordinance No. 12-98 - Change in Sealed Bid Limit for Purchases of Supplies and Services

Town Attorney Randolph read Ordinance No. 12-98 by title: (second reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2 OF THE TOWN CODE OF ORDINANCES AT SECTION 2-162 RELATING TO PROCEDURES FOR CONTRACTS, PURCHASES, EXCEEDING $25,000.00; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

President Pro-Tem McLendon asked if there was an unofficial regulation that required written informal bids for purchases exceeding $25,000.00?

Purchasing Agent Charles Boggs responded that the Town Purchasing Manual required three written quotes for purchases under the sealed bid limit. There was no formal written request for quotations, unless the matter was very complicated. Most of the purchases falling into this category would be for supplies and equipment that were generally available and three quotes could be received fairly easily. Some purchases were available under State Contract, however the State Contract purchases for vehicles had lost their advantage, as manufacturers had stopped subsidizing local government purchases.

Councilman Wyett moved approval of Ordinance 12-98. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

2. Resolutions

    1. Resolution No. 31-98 - Establishing an Application Fee for Obtaining Voluntary Landmark Status *(Deferred from August 11, 1998)* - **Staff Recommends Deferral to April 13, 1999, per Memorandum dated September 3, 1998, from Planning, Zoning & Building Director Moore**

    This item was deferred earlier in the meeting.

3. Other

    1. Royal Park Bridge Status Report by the Public Works Director

Public Works Director Dusey reported that the State completed its inspection and load testing of the bridge structure for the west bound lanes last week and found no obvious problems. The State had installed electronic monitoring resulting in computer analysis, and the results were expected later this week.

Mr. Dusey said the kick-off meeting for interagency coordination will take place on October 1st. The meeting would be in West Palm Beach in the morning, and the purpose of the meeting was to update the status of the project and receive input from any interested party. At 2:00 p.m. on the same day, Florida Department of Transportation and their representatives would be in the Town of Palm Beach, Town Hall, to speak to the residents and Town Officials. The purpose of the meeting was for updating and to hear input.

The first meeting of the Technical Advisory Committee was scheduled for mid-October.

2. Water Resource Matters:

    1. Proposal for Study of an Irrigation Quality Water System at the Par 3 Golf Course *(Deferred from July 14, and August 11, 1998)*

Councilman Wyett recused himself, as he was a director of a water company that was a potential bidder.

Public Works Director Al Dusey reported that additional information had been requested at the last Town Council meeting regarding irrigation quality water for the Par 3 Golf Course. Hartman & Associates, Inc. had provided that information, with calculations indicating an average daily use of approximately 88,600 gallons. The capacity of the water treatment plant would be sized at approximately 210,000 gallons, and there would be a 230,000 gallon storage tank to meet peak flows. It would take one-half acre to house the facility.

Councilman Shaw questioned the peak flow issue, since there would be a single user of the water?

Gerald C. Hartman, P.E., President of Hartman & Associates, Inc., addressed the Town Council explaining that there was the option to build the facility for an average daily flow and peak off the system itself. That would downsize the proposed system to approximately 100,000 gallons per day. To meet the needs of the golf course the proposal included the peaking flow and the storage capability, as the needs of irrigation water for the golf course would change throughout the day. The economic aspect of the study had been considered, as well as putting in an application to the South Florida Water Management District for joint funding.

President Pro-Tem McLendon asked why the small water services for the golf course included in the irrigation picture?

Mr. Hartman replied that they were very minor services, which could be maintained as potable service. As a matter of completion, the total demand of the Par 3 Golf Course had been considered. He explained that the reason for chlorination facilities was not for disinfection for potable water quality, but in order to maintain the biological integrity of the lines themselves, and was a very low level of chlorination. The project could be modified and be made more tailor made.
He estimated that the total project cost, which would include brine disposal, would be approximately $650,000 - $700,000 for the golf course only.

Public Works Director expressed that the original direction from the Mayor and Town Council had been to bring back the costs for a feasibility study, which would answer many questions concerning use, costs, etc. That study would cost approximately $20,000.

Councilman Shaw moved that the costs of $20,000 for a feasibility study be approved, according to the scope of services offered by Hartman & Associates in their July 13, 1998, proposal. The motion was seconded by President Smith, who had passed the gavel to second the motion.

President Pro-Tem McLendon expressed opposition, as the debt service on construction costs would be approximately $43,000 and he did not see it as an economical activity.

Mr. Hartman explained that many alternative water supply systems were not, on their face, cost effective, however, SFWMD funding assistance could be available. Without the feasibility study he would not be able to answer whether it would be more economical for the Town to have its own system than to continue getting water from West Palm Beach.

On roll call the motion carried 3/2, as Councilman Wyett had recused himself, President Smith and Councilman Shaw voted affirmatively; President Pro-Tem McLendon and Councilman McDonald cast negative votes; and Mayor Ilyinsky broke the tie with an affirmative vote.

2. Authorization to Pay Application Fees for Brine Disposal and Consumptive Use Permits to Construct Reverse Osmosis Plants for Potable Water Production

Public Works Director Al Dusey, referring to his memorandum of August 28, 1998, reported that the point had been reached where applications for brine disposal and consumptive use permits could be made later this month. Application fees associated with the consumptive use permit were $2,700; two applications for the brine disposal at the Quadrille property, and Phipps Ocean Park were $12,500 each. The total cost of permit fees was $27,700. He requested allocation of those monies from the Designated Reserve in the General Fund Budget. He explained that direction had been given by the Mayor and Town Council on July 9, 1998, to move forward in confirming that the water could be obtained, and reverse osmosis plants could be built, and these permits were part of that process. The permits would not be needed if the Town decided to buy the system and purchase the water wholesale from West Palm Beach.

Councilman Shaw suggested that the South Florida Water Management District (SFWMD) application fee for the consumptive use permit alone be approved, rather than including the brine disposal permit fees at this time, waiting until more definitive information was available in location and size. President Pro-Tem McLendon seconded the motion, asking Mr. Hartman if a full-fledged engineering report would be required by SFWMD?

Mr. Hartman replied that the treatment mode and brine disposal would be considered as part of the typical consumptive use permit. He expressed concern about a provisional consumptive use permit, and the costs per month for using the water, which were reasons he considered for expediting the process with both the brine disposal and consumptive use permits submitted simultaneously.

Mr. William Guttman, of the Palm Beach Civic Association, addressed the Town Council, stating that the Palm Beach Civic Association and the Citizens Association both believed that the Town needed a competitive alternative water supply. He suggested that until the Town knew it had the ability to get all of the permits it would not be in a position to negotiate with West Palm Beach, and that it would be important to fund the total permits fees of $27,000.

Councilman McDonald commented that he agreed with the comments made by Mr. Guttman.

Councilman Shaw amended his motion to approve the total permit fees in the amount of $27,700. President Pro-Tem McLendon, as the seconder of the motion, accepted that amendment. On roll call the motion carried 4/0, as Councilman Wyett had recused himself.

3. Status Report of Renewal of Agreement with AT&T for Intercontinental Cable Crossing *(Deferred from August 11, 1998)*

Assistant to the Town Manager David Jakubiak addressed the Town Council, stating that the agreement between AT & T and the Town would expire September 30th, however there was no action recommended at this time. Last month the Town Council had approved a property appraisal on the property in question. That had been done, and AT & T had been notified that the agreement was subject to expire. A further report would be made at the October Town Council Meeting.

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

Town Attorney Randolph reported that he had met with staff and suggested that a policy decision be made in this regard. Staff had considered the approximately 10 cluster newsrack locations within the Town, and he had suggested that there were two ways to approach the issue: legislatively by amending the ordinance to preclude the accumulation of more than a certain number of newsracks at a particular location, or by meeting with representatives of the media and the vendors to determine if the issue could be resolved in another manner.

Assistant to the Town Manager David Jakubiak reported that a thorough review had been conducted and offered to respond to any additional questions. He noted that discussions had taken place regarding restrictions, and he suggested that the attorneys representing newspapers were willing to work on the problem.

President Pro-Tem McLendon questioned the costs of newsrack enclosures?

Town Attorney Randolph commented that enclosure costs varied, and could be considered after a policy decision was made by the Town Council.

Mr. Jakubiak commented that the lattice type enclosures used in the Town historic area cost approximately $12,500. The Palm Beach Post had indicated that a modular unit for four coin operated machines would cost approximately $3,900. Information on enclosures had been gathered and was currently in the Town Manager's office.

Councilman McDonald commented that he did not feel the report had given enough information, and had left unanswered questions that had been raised in the motion he had made regarding this issue at the Ordinances, Rules & Standards Committee meeting.

Mr. Jakubiak responded that he understood the level of frustration with this issue, and explained that the type of structure preferred must be understood. Estimates of costs would depend on the number of locations, etc. Once that was determined costs could be more accurately estimated.

Councilman McDonald commented that he was not as concerned about the number of boxes and the types of enclosures as much as the aesthetic appearance from the street. He wanted the boxes to look attractive from the street.

Councilman Shaw expressed concern about the massive appearance of some groups of newsrack boxes, maintaining that the numbers and locations should be limited.

Mayor Ilyinsky commented that he agreed that aesthetics were a consideration, and also agreed that the number of boxes should be limited. He suggested that a workshop might be in order regarding this issue.

President Pro-Tem McLendon suggested that Town policy include having two or more newsrack boxes enclosed, limiting the maximum numbers of boxes in an enclosure to eight, with a minimum distance between groupings.

Councilman Wyett commented that the visual appearance was a concern, as well as the number of boxes per location. He agreed that negotiations through the Town Attorney would be appropriate.

President Smith summarized that it was the general consensus that Town Attorney Randolph meet with representatives from the media, and Town staff, to express the concerns of the Town Council regarding the appearance and proliferation of newsracks. After that time, a workshop could be held, with the media invited, in order to finalize any decisions.

Town Manager Doney pointed out that there were legal issues and policy issues to determine in order for staff to have direction.

Town Attorney Randolph suggested that an Ordinances, Rules, and Standards (ORS) Committee Meeting be held with media representatives invited to discuss the issues, indicating that unless some sort of an agreement was reached, legislative measures would have to be taken.

President Smith pointed out that had already been done at a prior ORS Meeting, and she questioned the purpose of scheduling another meeting; at some point the Town Council would need to determine the policy it would like followed.

Councilman Wyett suggested that a formula be used to determine locations for both paid publications and free newspapers.

After discussion, it was determined that points A-G as raised in the report from Attorney Randolph, dated July 28, 1998 would be responded to as follows:

1. Whether newsracks should be enclosed within a common enclosure and, if so, who will bear the cost of same.

2. Shall the number of newsracks in any one location be limited?

Eight newsracks should be permitted on any one city block. The locations of newsracks should be limited.

3. Should there be an administrative fee in place for the inspection and regulation of newsracks?

There should not be an administrative fee in place for the inspection and regulation of newsracks.

4. Should the Town ordinance be more specific in regard to the maintenance of newsracks?

If the newsracks are not maintained properly, a system of fines would be in place through ordinance.

5. Should the Town ordinance be specific in regard to insurance, indemnification, and hold harmless provisions?

Yes, the Town ordinance should be specific in regard to insurance, indemnification, and hold harmless provisions.

6. Should the Town ordinance contain specific removal provisions and provisions for abandoned newsracks?

Yes, the Town ordinance should contain specific removal provisions and provisions for abandoned newsracks.

7. Other specific provisions narrowly tailored to regulate the location and appearance of newsracks within the Town.

Yes, staff recommendations would include these provisions.

XVII. NEW BUSINESS

1. Ordinances (First Reading)

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

Town Attorney Randolph read Ordinance No. 13-98 by title:

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

Councilman Wyett moved approval of Ordinance No. 13-98 (first reading). The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as Councilman McDonald was temporarily out of the room.

    2. Ordinance No. 15-98 - Amendment to the Noise Ordinance

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

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

AN EFFECTIVE DATE.

President Smith noted that Councilman Wyett had expressed concern regarding more public comment in this regard.

In response to the question of whether a noise meter reading would be taken from the condominium unit itself, or the property line of the condominium, Police Chief Croft explained that the reading would be taken from the unit itself.

Chief Code Compliance Officer Brian House explained that he would take the noise meter reading at the closest property line, as stated in the Ordinance, which would be the property line of the building.

Councilman Wyett commented that he would find it an invasion of privacy if the Police Department entered a particular condominium unit to take a reading, and agreed with Mr. House that the reading should be taken from the property line of the condominium building.

Councilman Shaw expressed concern regarding a uniform noise level for all residential areas and consideration for the commercial districts and the abutting residential/commercial areas in all parts of Town, and urged that it be ascertained that all decibel levels were correctly established. He also mentioned that consideration may be given to daytime weekend noise levels as well.

Mr. House replied that he could not explain why different areas with different noise levels had been created in the past.

Town Attorney Randolph commented that consideration should be given to what had occurred in the past, as originally there had been a simple dispute between two departments as to where noise levels should be measured; there were other ordinances on the books that would allow the police to have people reduce noise levels.

Police Chief Croft commented that historically the Police Department had taken decibel measurements from the property line of the source as specified in the ordinance. He noted that he had advised the Town Council that it was his opinion that the original ordinance had been drafted to protect the interest of the public at large, not an individual property owner. That was why the decibel rates were described in the ordinance. The point of where to take the measurement was also for the benefit of the public, and not an individual. It was not necessary to have a noise meter reading in order to enforce the ordinance; it was a common sense approach to any type of noise call.

Town Attorney Randolph clarified that a decision must be made as to whether to stay with the ordinance as it was, which was understood by all, but which was being administered differently; or change the ordinance to be in accordance with the way Chief Code Compliance Officer House had been measuring.

Chief Code Compliance Officer House commented that he had no problem in enforcing the ordinance. Once he had become aware that he had been wrong he had begun to enforce the ordinance in the manner in which it was written. He noted that the Code Enforcement Board had refused to issue a fine to a defendant because it was taken at their property line; that was what had precipitated this issue.

Attorney Ron Kolins commented that he was representing the Biltmore, and suggested that the proposed change to the ordinance was significantly flawed, as residents would have the burden of complaining. In addition, he noted that many residents were not in Town currently, and suggested that further action and discussion on this matter be deferred until more people would have an opportunity to express their views.

Attorney Michael Tamara, representing Royal Poinciana South, commented that he agreed with Attorney Kolins.

Attorney Robin Rosenberg, representing a resident at the Biltmore, also agreed with the comments of Attorney Kolins.

Gail Coniglio, of E.R. Bradley's, commented that common sense should be the requirement in this issue. For 14 years, all noise complaints had been taken from the property line of the person that complained. When it was discussed at the last meeting and the changes to the ordinance were proposed, Councilman McDonald specifically asked if it would work if the ordinance read that readings were taken from the property line of the complaining person, not from their apartment. She estimated that there were many people in the Biltmore as there was a great deal of construction ongoing, which she listened to as a good neighbor. She noted that Chief Croft had explained that noise complaints were from predominately residential areas, not from business or commercial abutting residential areas. Mr. House had said that the decibel level could be over the limit simply by traffic on the street. She urged that the ordinance be changed so that it was fair to the entire general public. The change would not affect residential areas.

Chief Code Compliance Officer Brian House stated that the lowest decibel level approximated a normal conversation, between 58-61 decibels.

President Pro-Tem McLendon moved deferral of Ordinance 15-98 for further study. The motion died for lack of a second.

Councilman Wyett moved that the Noise Ordinance stand as it was, with no change, and that a decibel study be deferred to the appropriate committee. The motion was seconded by Councilman Shaw. On roll call the motion failed 2/3, with Councilmen Shaw and Wyett casting affirmative votes; President Smith, President Pro-Tem McLendon, and Councilman McDonald casting negative votes.

Councilman Wyett moved that the existing Noise Ordinance remain as is, which would automatically deny approval of Ordinance 15-98, and that the appropriate committee investigate decibel levels. Councilman Shaw requested that the motion be amended to approve Ordinance 15-98 as written, subject to a change in the establishment of uniform decibel levels for residential and commercial districts, and assurance that there was a uniform level that was being enforced.

Councilman Wyett moved deferral of this issue for further study. The motion died for lack of a second.

Councilman Wyett made a motion that the decibel level be studied. President Smith passed the gavel and seconded the motion, suggesting that perhaps a presentation could be made by Chief Code Compliance Officer House as to decibel levels at the next Town Council meeting, at which time the proper level could be determined. On roll call the motion carried unanimously.

****Lunch Was Taken From 12:30 - 1:45 p.m.****

2. Resolutions

1. Resolution No. 33-98 - Designation of Town Depositories and Authorization to Sign Checks for FY98

Town Attorney Randolph read Resolution No. 33-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, DESIGNATING TOWN DEPOSITORIES FOR FISCAL YEAR 1999, PURSUANT TO SECTION 2-160 OF THE TOWN CODE OF ORDINANCES AND DESIGNATING PARTIES TO SIGN CHECKS OR WARRANTS ON BEHALF OF THE TOWN PURSUANT TO SECTION 2-159 OF THE TOWN CODE OF ORDINANCES.

Councilman Wyett moved approval of Resolution No. 33-98. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

2. Resolution No. 36-98 - Abandonment of Utility Easement at 321 Tangier Avenue

Town Attorney Randolph read Resolution No. 36-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, VACATING AND ABANDONING A PORTION OF A THREE FOOT UTILITY EASEMENT ON PROPERTY COMMONLY KNOWN AS 321 TANGIER AVENUE, PALM BEACH, FLORIDA, AND DEDICATING A TWO FOOT WIDE UTILITY EASEMENT TO BELLSOUTH TELECOMMUNICATIONS, INC. ON PROPERTY COMMONLY KNOWN AS 321 TANGIER AVENUE, PALM BEACH, FLORIDA.

Town Engineer James Bowser addressed the Town Council, stating that Town staff had received a request from Mr. and Mrs. Ross of 321 Tangier, to abandon a portion of a three-foot utility easement in the rear of their lot. All of the utility companies had agreed to the abandonment except for BellSouth, which needed an additional 2' x 20' easement in that location, which Mr. and Mrs. Ross had agreed to dedicate. In accordance with Town Ordinance No. 19-93, adjacent property owners had been contacted and there had been no objections received to date. Town staff thus recommended approval of the abandonment conditioned upon a 2' x 20' easement dedicated to BellSouth, and that the property owners pay all fees related to implementing the abandonment and dedication, including, but not limited to, document preparation recording fees.

Councilman Wyett moved approval of Resolution No. 36-98. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

3. Other

1. Proposed FY99 Property/Liability/Workers' Compensation Insurance Program and Claims Management Services

Assistant Town Manager Peter Elwell identified two representatives of Arthur J. Gallagher & Co. who were present to respond to any questions: Greg Butterfield, Area President, and Jori Van Der Voort, Account Executive. Mr. Elwell thanked Mr. Butterfield for his outstanding assistance to the Town in the past year.

Karen Temme, Risk Coordinator, reported that the overall insurance package was being offered at a 7% decrease, which amounted to $57,354. There were some changes throughout the package in regard to coverage limits and premiums. Approval was recommended to renew the insurance policies in accordance with the proposals by Arthur J. Gallagher & Co., and Gallagher Bassett Services, Inc.

Councilman Wyett moved approval of renewal of the insurance policies as proposed by Arthur J. Gallagher & Co., and Gallagher Bassett Services, Inc. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

2. Shore Protection Board's Recommendation that Mayor and Town Council Receive and Accept the Comprehensive Coastal Management Plan Update

Director of Public Works Al Dusey reported that the Comprehensive Coastal Management Plan was now in final draft form, and the Shore Protection Board had requested that the Town Council receive and accept the report. There was no action required, as the Shore Protection Board would present an entire package with financing, public relations, etc., included. He commented that Chairman of the Shore Protection Board, Mr. Lickle, was present to respond to any questions.

Councilman Wyett moved acceptance of the final draft of the Comprehensive Coastal Management Plan. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

3. Charter Review Commission Request for Appropriation of up to $1000 for Dr. James Svara of North Carolina State University to Address the Commission at its Meeting on October 23, 1998

Assistant Town Manager Peter Elwell referred to the back-up material provided to the Town Council, wherein a description of Dr. Svara was given, as well as the reasons for requesting his expertise.

President Pro-Tem McLendon moved approval of the request for an appropriation of $1,000 to fund the costs of Dr. James Svara of North Carolina State University to address the Charter Commission at its meeting of October 23, 1998. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Councilman Shaw suggested that a schedule be provided of how the Charter Commission would proceed, as well as a date of conclusion.

4. Request by Palm Tran for Possible Sites for Installation of Bus Shelters Within the Town

President Smith explained that a fax message had been received from Palm Tran, stating that the proposed shelter sites were being deleted from the project.

Councilman Wyett moved that the issue, therefore, be removed from the Agenda. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

5. Discussion of Keeping Construction Sites Clean

Councilman McDonald requested that the Building & Zoning Department report at the next Town Council meeting what, if any, requirements were imposed on contractors during renovation or new construction projects regarding trash. If there were no requirements currently, Mr. McDonald suggested that some should be put in place.

Director of Planning, Zoning & Building Robert Moore responded that currently there were several methods of dealing with construction sites. Code Compliance personnel generally would cite the contractor with warnings, and ultimately the issuance of a violation; the job could be shut down and the permit revoked until the violations were corrected.

Councilman McDonald asked how often people called with complaints in this regard?

Mr. Moore responded that generally one or two calls per month were received.

Councilman McDonald suggested that someone should be responsible to clean the site each day when the work was finished; perhaps through a handout when the actual permit was issued.

Mr. Moore replied that notices would be passed out when the permits were issued, and hopefully the contractors would take that as a first warning.

6. Consideration of Discussion of Golf Commission Minutes

Councilman McDonald commented that he had read the Golf Commission minutes for the last several months, and it seemed questions had been raised by the Commission that it felt had not been answered. There had been concerns about obtaining a refund from the Public Works Department for work that had been done on the golf course.

Mrs. Ann Herman, of the Golf Commission, commented that the work done on the golf course had not been acceptable, and that she would review the minutes and report back to the Town Council at the October 13th Town Council meeting for discussion.

Town Manager Doney suggested that Mrs. Herman submit a brief list of the items involved so that staff comments could be made prior to the Town Council meeting.

XVIII. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman McDonald commented that he had made an inspection of the xeriscape projects in Town; the one near Phipps estate was very good, however, the one in the south end of Town needed some attention.

President Pro-Tem McLendon observed that he had heard comments concerning the cost of any proposed water system as it related to taxes, and to the best of his knowledge no consideration had been given at this point to any water project being paid from tax monies; water projects would be paid from water revenues.

Councilman Wyett commented that at the recent Florida League of Cities Convention, Mr. Doney had personally paid for a dinner attended by the Town Council members and some staff members. He requested Council direction at this time for payment to be made from the appropriate Town funds.

Mr. Doney responded that he taken the per diem food allowance into account, and graciously refused further reimbursement.

XIX. DEVELOPMENT REVIEWS

At this time Town Clerk Pollitt administered the oath to all those who would be testifying in the following matters.

1. Time Extensions - None

2. Variances, Special Exceptions, and Site Plan Reviews

Old Business - Major

1. SITE PLAN REVIEW NO. 3-96 WITH VARIANCE - FH of Palm Beach, Inc., commonly known as C-15 and C-16 of the Palm Beach Hotel, 235 Sunrise Avenue; said units also known as 251 Sunrise Avenue; located in the C-TS Zoning District. Review the requested expansion of a nonconforming structure, a 870 sq. ft. addition (from canopy to permanent) and said 10' to 13' wall additions and modifications around the exterior dining area. *(Condition of Approval at the October 8, 1996, Town Council Meeting was to return one year from the date of Certificate of Occupancy (9/97) to review compliance with all conditions of approval.)*

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

The following is a verbatim transcript:

Mariano GARCIA: Good afternoon Council. Mariano Garcia here on behalf of FH of Palm Beach; here to address four conditions of approval that were mandated by the Town following the approval of this project on October 8, 1996. The certificate of completion was issued approximately one year ago, and since that time–I'll just go down these four conditions one by one: the four French doors that were approved are closed at 11:00 P.M. Number two: the doors on the inside wall, which enclosed a previous patio area remain closed. Number three: the off-duty Town police officers are there during the weekends, beginning at 9:00 P.M. Number four: the proprietors investigated the use of the parking space, which at the time they applied for this, the property which now houses Aquaterra was an empty lot. At that time

List Management had access to that property. They discussed the use of that lot with them. Subsequently during the construction project the building that now houses Aquaterra went up, and as a condition of Aquaterra's approval, that lot that is above the restaurant was deemed to be used exclusively by Aquaterra. As a result, the most feasible option to the proprietors of the restaurant was to retain a valet parking service that has rights to utilize various lots in the area, and that is what is being done. That's all.

President
SMITH: Mr. Moore?

Robert
MOORE: Mr. Garcia has addressed the conditions that were in the letter of approval that was granted for the Site Plan review with variance. At the time this particular building was enjoying a grandfathered status, as you recall, as a restaurant, which happened to have a nightclub license, and subsequently the remodeling took place. He was correct in the certificate of occupancy being issued. There have been several problems associated with this particular approval, not the least of which are some of the Fire Department's concerns. We've had Police Department concerns. We certainly have had zoning concerns, as the restaurant has now changed into a nightclub with accessory use of restaurant, rather than restaurant, accessory use nightclub. The issue of parking–the valet parking that is being done may or may not be to our knowledge or not approved for any type of shared parking. So there are several issues that are here before you today that Mr. Garcia should probably begin to address.

SMITH: All right. Would you like to do that now, Mr. Garcia?

GARCIA: If the Council has a specific question. I think I've already addressed each of the four issues. I'll be happy to answer the questions as best as I can.

SMITH: All right, then perhaps you should hear some of the Council comments.

Who would like to start, Mr. McDonald?

Councilman
McDONALD: I have none.

Councilman
SHAW: When the applicant first came before us, it was Mr. Ricca that did the application, I think that what was presented to us was that of a restaurant that was going to be opening up in the location, and at no time was there any indication that really what was opening up was a nightclub/bar. And I think that whether it's in the letter of the law or the spirit of the law, 251 has not complied with what their application was. I don't believe that they've been a true benefit to the neighborhood. I'm not sure they're a benefit to the Town, and I don't think that they are meeting what was intended. Parking was a major issue, but one of the other issues was going to be how they were going to interact within the community and what was going to happen pertaining to the bar. And there was a quest on my side, which was to eliminate one of the bars, and I believe it was Chief Terlizzese who said that it wasn't going to matter if they added the bar or took out the bar it still was going to be awfully crowded. And I think that is exactly what had happened. There was some discussion about curfews, as to when you would be serving dinner, and at no time during that dialogue–I think it said Mr. Moore replied, soundproofing on the inside, curfew of dinners at 11:00 P.M. until 1:00 P.M. Friday and Saturday, and no music entertainment after 1:00 A.M. I'm not sure exactly what transpired and how it got sort of shifted, but that was I think the establishment we thought that was being approved. That's not the establishment that's there, and although I enjoy their hamburgers and think they're probably one of the best in Town, I don't think that 251 is serving the needs of the residents of the Town of Palm Beach. I know it sounds like a very harsh way of approaching it, and I don't know really where we stand. I voted for the place to be granted a special exception. I believe the vote was 3/2. If I knew then what I know today I would have voted 2/3, and that's how I'm going to vote today.

President Pro-Tem
McLENDON: I don't have anything to say at this point.

Councilman
WYETT: I'd like to say ditto to Mr. Shaw. I think he was very elegant and pretty comprehensive. I just want to elaborate a little. At that meeting of approval I asked the two owners who came here whether they understood all of the restrictions and all the code of the Town of Palm Beach relative to the operation of 251, and they said absolutely yes, and then I asked are you prepared to take the consequences if you don't meet them? And they said yes. Well, from day one occupancy violations were such that the Town had to ask the Police and Fire Departments to investigate occupancies for the entire Town, because we couldn't single out one, and occupancies were almost always in excess of the legal limit, which is done for public safety. More important, as soon as the Police and Fire Departments leave the occupancy filled right back up again, on the theory that how often could the Fire Department come back, especially when they had to that same night look at all the other people, most of which all passed the rules. I personally have seen the rear door open many a time. It's opened mostly by employees, by my observation, who want to go out for a smoke, but the reason that door is supposed to remain shut is for noise control for the adjacent neighbors. I want to re-emphasize what the Town Zoning Commissioner said, that this is no longer a restaurant–it started out somewhat as a restaurant, but now the food is very minor there, and that's not in conformity.

There is still a lot of noise coming out of there, a lot of congestion. The French doors you referred to are often opened by patrons, because I guess for fire purposes they can't be locked. The shared parking is in total violation. I disagree with your comment about the space across the street. Five years ago that was authorized by ARCOM to have a building put there, and everyone knew what building was going there, and we just recently found out by error, with something unrelated, that you're using another parking lot without a shared parking agreement, which is another violation. You operate into the wee hours of the night, and I challenge you to prove you're Town serving.

GARCIA: Mr. Shaw, let me start with your comments about the original presentation that was made. Although I was not here, I can represent to you that the intent of the proprietor was to open a restaurant with the bar as an accessory use. I can tell you, they're not here right now because they had prior family commitments, that they believe they are in compliance with the original approval, and I have checked with the Town to see if there are any issues with compliance, be it code, be it parking, and so forth, and to my knowledge I'm not aware of any at this time. I came here today prepared to address the four issues that are on this letter and I think that they've been addressed properly. I have made notes of the comments that Mr. Shaw and Mr. Wyett have made, and I'm going to pass them along to the proprietor because I agree, they're serious comments, and I think that if there is any perceived violation that needs to be dealt with in a constructive way, and I think that they're prepared to do that. I can tell you personally I think that they've made strides, and significant progress, from the time that they were originally approved. I know that we did deal with the issue concerning the doors opening in the back, and I think that those were appropriately addressed. I don't think that I have ever come to these proprietors, or the Town has, and they haven't been willing to a) listen; and b) do something to rectify any perceived problems, but again, I'm just here to address these four issues. I think they have been appropriately addressed. If you have any additional comments, I'd be happy to listen and pass them along.

SMITH: Well, Mr. Garcia, I'm going to ask to hear from Chief Elmore, because he has dealt with the overcrowding on almost a constant basis, and one of the things that I wanted to say is that I know one of the conditions was that an off-duty policeman be there on Thursday, Friday, and Saturday nights of every weekend, and I'm not sure that that was complied with. Did you know, Chief Croft? If you would come up too, and speak.

Fire-Rescue Chief ELMORE: Ken Elmore, Chief of Fire-Rescue. During the season, which we started sort of late, it was in December, actually the mid-part of December of last season. We had 61 occasions where we conducted evening inspections. On 15 occasions 251 was way overcrowded, and more than one time in that particular evening we asked them to remove people. On twelve of those occasions, not of the 15, but 12 additional occasions they were full, running a line, which we had requested. I will say that they were always cooperative with us. It's just that we shouldn't have to go there every Friday and Saturday night and find that there's 40 more people in there than should be, and ask them to start a line. They should start a line without us having to give them notice every Friday and Saturday night, and that's what happened during the season.

SHAW: My question was–I think there was a comment that there was going to be a restaurant with bar as an accessory use. What is the type of license, Mr. Moore, that they presently hold?

MOORE: I believe it is a 4-COP license, rather than a 4-COPSRX, which is a restaurant license.

SHAW: Okay, so in reality, their license is not what they represented they would be?

MOORE: That is correct.

SHAW: I think that's material. I mean, if somebody tells me you're going to be a restaurant where the bar is an accessory use, and then I find out that you had a nightclub bar license, and that's not what was discussed, and I think had that been presented to us at the onset...

MOORE: Excuse me, I'd like to...

SHAW: I know it was changed.

MOORE: That's correct. The original license was an SRX license, and has been changed to a 4COP.

SHAW: Right. And their license was changed because they found they weren't meeting the guidelines of a restaurant license, with 50% of their revenue coming from food. So, in order to get around that problem they got their license changed, but the Town was not a part of the licensing process, so at that particular point we were out of the loop as whether to grant or not grant to continue in operation. I'm not sure where we stand. I just think something is wrong. I mean, if you can assure us that you are going to go back to running a restaurant, and that it is not going to be a late night bar, then I have no problem with 251 continuing to be in business, but, you know, you're not what you asked this Council to be, and although that may not be the real issue, I guess we could look at the four points that are in the application and say well, you violated the doors a few times, so obviously where do we draw the line? I mean, if you say I'm going to keep the doors closed and you open them, then you didn't comply, so you didn't meet that requirement. You know, if you were supposed to do something else and you didn't do it, you didn't meet that requirement. I don't think we said in there that if you have the doors open 10 times we'll renew it, and if it's 11 we won't. So maybe it is subjective, and I will sort of look to Mr. Randolph to advise where we really stand and what our positions are.

Police Chief
CROFT: I was notified about mid-July that there were no more police officers working at 251 because they had failed to pay. There hasn't, to my knowledge, been a police officer present since the end of June. The bill was between $2,000 and $5,000. I don't remember the exact number.

SMITH: And has the bill been paid, or not paid?

CROFT: Last week I sent a very simple, but sternly written letter, that payment was required within 10 days. Last Thursday I was notified that half of that amount had been paid, and that there had been a promise made by the General Manager to pay the remaining half today. Now, it's 3:00 and I haven't been notified that.

SMITH: Well, he has two hours, but going on to what you said, Mr. Garcia, that all the conditions had been met, obviously they haven't, and you may not be aware of some of the problems at 251. That's why we're trying to bring them out and discuss them here today. So, condition number 3 was about the off-duty policemen, and that's obviously not being complied with for certainly the last three months. I think when you make the condition the caveat to that is that they must pay for it, and so I think you're finding out more today than you knew when you came in here. Mr. Moore, do you want to discuss the difference between restaurant and nightclub please?

MOORE: What I'm going to refer to at this particular point is the application that was before you for this approval, when you heard this application on October 8, 1996, and Mr. Garcia, I believe, was the representative, according to the minutes, at that time, along with Don Kino from Jeff's Smith office, but in the entire description of the project, and I'll save the boredom of reading it for the record. I'll let the description stand for itself. It describes a restaurant space consisting of interior and exterior dining area that is to be remodeled, and that never once leaves any doubt in this project description, nor the plans, which became part of the record of this approval, which showed dining area with seating, have anywhere else were you to contrive to believe that this was not going to be a restaurant as the grandfathered status of this building indicated. So, it was represented to you by the attorney that is here today, during that time frame, that this would indeed be a restaurant, and furthermore, the original plan that is shown for the approval of the restaurant does indicate office space on the second floor. It is our direct knowledge that that space is no longer used exclusively for office. In fact, it's used for a private club area, which is not part and parcel of that original approval. So they have extended beyond their original approval of those plans that were before you as a use that was not permitted. So it is before you today. I am saying that I agree that after Chief Croft's testimony that item number three has not been complied with. We have first hand information and knowledge that number two, which is the inside doors which enclose the previous patio area shall remain closed. Those are opened and operable and are opened from time to time as evidenced by noise complaints and first hand viewing by our Code Enforcement Department as well as the Fire Department when they are there for the overcrowding. So actually they have not complied with items two or three, and have gone beyond their original approval, which was granted for the floor plans as a restaurant that's before you today. So I don't have an answer for you today of what you can do about this, but certainly they are not in compliance.

SMITH: When did they change the license from restaurant to nightclub?

MOORE: I believe that was changed with the State of Florida in January of 1998. It was in the process...

SMITH: So in other words about four months after they received their certificate of occupancy in September of '97 they applied to change it to a nightclub.

MOORE: That would be approximately correct. It's our contention, although it's not before you today, but it is our contention that they are obligated to return for a special exception because of the change from restaurant to bar with accessory use as swapping with one another, however, that's not before you today.

SMITH: Were you planning on doing that, Mr. Garcia, returning to the Town Council for permission to change use from the restaurant to the nightclub?

GARCIA: Let me answer that this way. That 4COP license that was issued by the State, it's our position is permissible. It's not a nightclub liquor license, okay? The State issues various licenses depending upon the number of people that you will serve and the type of business that you will run, and the State does not impose any type of restriction, that is to say 4COP license can be used by a restaurant. The reason 4COPSRX licenses are issued are because there is a limit on the number of pure 4COP licenses that are out there. I can tell you that it was their intent from the very beginning to obtain a 4COP license, but that they couldn't because those are in limited numbers. They obtained a 4COPSRX license from the State for the purpose of opening up, and once one became available they obtained it. As far as we're concerned there is no restriction on them being able to go to the State to obtain such a license.

MOORE: That's a position that Mr. Garcia and his clients take, and I certainly defer to Mr. Randolph in this particular matter, however, what he did not advise you is that the State requires the Town Zoning Department to sign off on the license application for this particular license. Even though I said it wasn't before you today, it certainly is something that you should be aware of, and that is that we did sign off on that license for the 4COP license with a condition that a special exception was required. The State took that condition and issued them the 4COP license. It's their choice and position at this point that they do not need to come to you for the special exception, although that was the only way we would sign off for the zoning approval with the State.

SMITH: It would appear that you have a problem, Mr. Garcia.

GARCIA: It's been addressed with the Town, with the appropriate people in the Town, including Mr. Randolph. We've articulated our position well. In fact, it was the State's position that the Town did not have authority to restrict the issuance of that license because only the State is allowed to issue them. Again, to use the term this is a nightclub license versus a restaurant license I think is inappropriate, and I say that respectfully, but there is nothing that prohibits them from using that license, and I will be happy to address that a future time.

SMITH: All right. Sure. So you don't feel that you had to come before the Town Council for a special exception?

GARCIA: We thought that it could be that the issuance of that license could be approved by the Zoning Department through its administrative process.

SMITH: So then we'll just go back and deal with whether or not you've complied with the conditions of approval. All right, Mr Randolph, is there anything you would like to add at this time?

RANDOLPH: Only that the issues before you today are those four items that have been addressed by Mr. Garcia in his opening remarks and which some of you have addressed. There are certainly some other issues that have come to the attention of the Building Department that I think would have to be dealt with in perhaps a different form; either administratively or ultimately by Council, but those issues haven't been noticed for discussion today, and I believe your discussion should be limited to the four items that Mr. Garcia was asked to address today.

Councilman McDONALD: I agree. We're drifting. So I think I would move that we withdraw our approval based on the failure to comply with conditions, I believe, it's two and three.

SMITH: Is there a second?

WYETT: Second. If we withdraw the approval, Mr. Randolph, what is the next action?

RANDOLPH: Well, if you're withdrawing the approval, then they've got to go back to where they were prior to their getting your approval. In other words, if they came to build walls around–to enclose the patio by adding walls, they would have to go back to the state they were in prior to that particular period of time.

SMITH: But, tear down the walls, or close the patio area? We're not asking them to tear down the walls, but we are asking them, I would imagine, to close the patio area.

RANDOLPH: I would have to examine the application at the date that they came in, and they would have to revert to the position they were in prior to that time.

SMITH: Then perhaps, Mr. Moore, you know what the condition was, so that if this motion to withdraw the approval is passed they will know exactly where they stand.

MOORE: Yes. We have an accurate drawing of how the building was prior to granting the approval to make the modifications, which was conditioned, as indicated by these four conditions–five conditions actually.

SHAW: On the original plans they were tables that were marked. There was a primary or main entrance that was indicated, and I don't believe that under the present layout of the restaurant that that is what is there. So I think that that has already created a shift as to how it is being used. I know there was some discussion about eliminating the second bar and making tables out of it. If I'm correct, it's not that they have to take it back to the original condition, it's just that they cannot use the exterior portion. Would that be.....they had an exterior, they wanted to use it–it was a canvas roof. After some discussion to grant them use of the area, they agreed to put a fixed roof over what was an outdoor patio area, and make it soundproof. It was basically to enclose what was an outside garden area with an awning to make it an interior soundproofed area. That was the gist of what they were doing. So if we vote not to renew, or not to permit them to continue, in essence what we are saying is that they cannot use the outside area.

RANDOLPH: Well, they had the right to use that outside area before they came to you, didn't they? They just came to you to enclose it to attempt to reduce the noise.

MOORE: That is correct.

RANDOLPH: So I don't see how you can tell them that they can't use that area. I think you have to go back—if you're withdrawing the approval, you just simply have to put them back to where they were prior to them coming before you.

GARCIA: I agree that's an accurate----it was a restaurant with an outside patio area with a nightclub license.

SMITH: Mr. Kolins?

KOLINS: Ron Kolins. President Smith, members of the Council, I did not come here today to participate in this proceeding and have not discussed it with my client, the Park Avenue residents, but as you will recall, the operation of 251 does have an impact on the people that I represent on Park Avenue. It was my understanding, and I did not review it for this hearing, so Mr. Moore may tell me that I'm wrong, but it was my understanding that they were not to be able to use that patio area; that indeed those French doors were to be fixed closed, except as emergency doors or something like that.

SHAW: There was an interesting representation...

SMITH: Mr. Shaw, let Mr. Moore answer, all right?

MOORE: Mr. Kolins, different patio area. The area that you were talking about belongs to the Palm Beach Hotel. The space that's known as C.J.'s. This area was part and parcel of the original L'Trattoria Restaurant that was closed over and walled in, with the French doors abutting, or facing your client's property. That was a patio area that's been made permanent. So it would not be the patio area you're referring to.

KOLINS: Okay. Very good then. Thank you.

WYETT: Ron, while you're there. We're kind of aware today, that we weren't aware then, that this is the straw that broke the camel's back so to speak. There were always some problems in that area, but they didn't reach the crescendo they did when you became the attorney of record for the Park Avenue. There are more problems that have been enumerated right here that again add to the violations, and the noncompatibility that they have maintained, in spite of the fact that they were informed of all the requirements and assured us that they were going to do it---- in every respect I have not yet heard one thing which they did right. While we can't tell them they can't use the area, we can ask them to remove the roof and any improvements, and that's what I think we ought to do.

SMITH: That, I believe, is what they said we would be doing if the motion to deny this passes. Is there any further discussion? Mrs. Pollitt?

Town Clerk
POLLITT: (Roll call taken. Vote results: 5/0 - unanimous).

SHAW: Mr. Moore, in light of the motion, is there another use that they can come back and say that we would like to do something different with the establishment? I mean they can basically make an application to do whatever they want with it, is that correct? If they want to redesign it and come up with a different use?

MOORE: A different use? I'm sorry, I'm not following that.

SHAW: Basically what we're saying is that they've got to remove what is a very nice interior room and turn it back into an outside courtyard with a canvas. If they elect to come before the Council with an application to have a different use of the facility that would permit them to keep what they have. That would require a whole new application and a special exception, or would that be something----how would they go about it? I just want to know from my standpoint what we're telling them their options are. And I think they are entitled to know what their options are other than rip it out.

MOORE: Well, this is rather----this is a little unusual; I haven't had time to consider all of the ramifications and aspects of it, however, I would want to consult with Mr. Randolph and Mr. Castro regarding this, but I would say to you that anyone is allowed and permitted to come in for a special exception request if it involves a special exception use, and whatever variances might be necessary. But, they would not be precluded from making a new application.

SMITH: I'm not sure that we want to design the application that's going to come in. I think that it's up to the applicant to come in with what they're looking for.

SHAW: Okay, as of the effective date of this vote, what can they do in that room? Do they lose their C-O for that part of the building? Are they not allowed to use it? Do they have to wall it off, close it off? I mean, what are we telling them they can do?

McDONALD: What he said is that he can't give you an answer until he talks to Mr. Randolph and...

MOORE: That's what I tried to say.

SHAW: All right. So, they don't know what to do with it tonight?

MOORE: Until I talk to Mr. Randolph and Mr. Castro and try to make a determination as to how to comply with the result of your vote.

RANDOLPH: As I understand the vote, it was based upon the testimony that you had before you today regarding number three, that indeed they have not complied with that condition, and number two.

McDONALD: It was actually two and three.

SMITH: Two and three. Mr. McDonald had that in his motion. There were four conditions or five conditions we discussed, and they were not complying with number two and three. All right?

*****End of verbatim transcript******

2. SPECIAL EXCEPTION NO. 40-97 - The 375 South County Association, 375 South County Road, The Ginger Man Restaurant; located in the C-TS Zoning District; to allow a tenant change under Schedule of Use Regulations Footnote 3, which requires Town-serving to be demonstrated by the new tenant, to continue as a 150 seat restaurant, and to allow an occupancy of 5,000 sq. ft. *(Condition of Approval at the October 14, 1997, Town Council meeting was to return in six months from date of opening to review compliance with all conditions of approval - Deferred from May 8, 1998)*

As there was no one present to represent the applicant, the Town Council withdrew approval of Special Exception No. 40-97, through motion of Councilman McDonald, seconded by Councilman Wyett, carrying unanimously.

3. SPECIAL EXCEPTION NO. 9-98 - The Poinciana Club, Inc.; 70 Royal Poinciana Plaza; located in the C-PC Zoning District; to allow conversion of a private club to a public restaurant and nightclub. *(Deferred from May 12, June 9, July 14, and August 11, 1998)* - **Request for Withdrawal per letter dated August 25, 1998, from Mr. James R. Brindell**

(This item was withdrawn earlier in the meeting.)

4. SITE PLAN REVIEW NO. 7-98 WITH SPECIAL EXCEPTION AND VARIANCES - The Beach Club, Inc. and Dr. Gary Marder, 755 N. County Rd.; located in the R-B Zoning District; to allow amendment to a 1971 agreement with the Town requiring a 50' landscape strip between Lots 1, 2 and 3 of Ocean Lane and the Beach Club property. The Applicants propose to transfer ownership of the 50' strip to Dr. Marder. By transferring the 50' strip, the Beach Club: 1) increases its nonconformity and eliminates the required 30' setback on the property's south property line providing no side yard setback; 2) reduces the existing landscaped open space from 21.1% to 7.7%, in lieu of 50% required by Code; 3) increases the floor area ratio from 41% to 48%, in lieu of 45% maximum allowed; 4) increases the cubic content ratio from 4.13 to 4.84, in lieu of 4.5 maximum allowed; and, 5) increases the building coverage from 21.9% to 25.6%, in lieu of 25% maximum allowed. *(Deferred from June 9, July 14, and August 11, 1998)*

President Pro-Tem McLendon recused himself as he was a stockholder member of the Beach Club.

Ex-parte communication was declared by Councilman Wyett with Attorney Ron Kolins; by President Smith with Attorney Kolins; by Mayor Ilyinsky with many residents; by Councilman Shaw with Attorney Kolins concerning the setback requirements discussed at the prior Town Council meeting.

Attorney Ron Kolins addressed the Town Council, stating that a plan had been devised that would meet all concerns expressed at prior hearings. He presented a diagram of the plan for review by the Town Council, illustrating the border between the Beach Club and the 50' buffer strip between it and the lots to the south. He noted that the buffer strip was presently owned by the Beach Club, and would be sold to the owner of Lots 1, 2, and 3 to the south. If that was allowed, the applicant was prepared to do the following: the 15' immediately adjacent to the cabana building of the Beach Club would be a no build zone; a 15' setback would be immediately adjacent and to the south, so that the property of Dr. Marder (lying to the south of the cabana area) would have to respect a 30' zone, of which 15' would be a no build zone, with another 15' being a regular setback from the end of the no build zone. This would allow a usable area of 20' out of the 50'. On either side of the zones were two buildings, a mechanical building on one side, and storage buildings on the other side. A 30' radius was drawn on both sides in order to accommodate that no structures would be constructed adjacent to those two structures. He advised that he believed these conditions would satisfy any concerns regarding setbacks, should Dr. Marder choose to expand his present house. He noted that there was a parking lot on the north side of a wall, and Town Code did not require setbacks adjacent to a parking lot. He offered to give a 15' setback from the wall, which he illustrated on the diagram presented. This would protect the spatial relations between the lots on the north and the Beach Club on the south, which had been the concerns of some of the Council. Mr. Kolins stated that he was now hopeful that the applications would be approved with the commitments made today. He added that Dr. Marder had assured him that the house on lot 3 would remain a guest house; the house on lot 2 may or may not be torn down, the house on lot 1 would be expanded with the area on lot 2 becoming gardens, tennis courts, etc. He noted that the surrounding properties were all on lots larger than all of the lots of Dr. Marder, and that there was nothing that could be done on the property of Dr. Marder that would take it out of scale within the neighborhood.

Mr. Homer Marshman, Secretary of the Beach Club, addressed the Town Council on behalf of the Board of Directors, commenting that the Board was in favor of the application, offering to respond to any questions.

President Smith asked if the Beach Club Board had ever considered keeping a portion of the property as a buffer or for access in order to do maintenance?

Mr. Marshman replied that had been contemplated as part of the contract; in the event there was maintenance necessary on the south side of the cabanas there would be access legally.

Attorney Kolins pointed out that there would be a perpetual easement for the Beach Club for maintenance work, etc.

Councilman Wyett asked what would happen if the Beach Club was destroyed by a hurricane or fire? It would then be necessary to have major equipment entering the south side of the building.

Attorney Kolins replied that easements from the south side of the property would be given to the Beach Club in order to maintain, rebuild, or whatever was necessary.

Mr. Marshman commented that a catastrophic event had been contemplated, and Dr. Marder had been very cooperative regarding the easements.

Councilman Wyett expressed concern over the size of any new house that would be built on the property.

Attorney Kolins explained that Dr. Marder could only build what he had a right to build, and would have to come to the Council for any variance or special exception. He pointed out that there was not enough property to build a house out of scale with the rest of the neighborhood; the most that he would intend would be to enlarge the house on lot 1, and in the vicinity of lot 2, with lot 2 being used mainly for non-structural changes.

Councilman Wyett noted that the two large lots around the property of Dr. Marder contained two large estate homes which had been built many years ago, and were probably in conformity with all of the rules and regulations today. The adjacent area to the west, however, contained homes that were not on that scale. If the application was granted today, and the grounds of lot 2 were used, Mr. Wyett recommended a Unity of Title. He questioned how many square feet would be included in the lot with the additional 50'?

Attorney Kolins estimated that the square footage of the two lots together would be approximately 30,000 sq. ft.

Mrs. Karen Marder commented that the goal was to beautify the property in total, and they were willing to work with the Beach Club; she offered to do anything that would make an amicable solution. She noted that the main reason for encompassing some of the easement was for a driveway, so that the house entrance would be off of County Road.

Attorney Kolins commented that the Beach Club was presently liable for the property and required to maintain it; thus they wanted to address the whole property area, as keeping any of it was a headache to them.

Councilman Wyett suggested that 35' be requested, rather than 50', which would eliminate the need for so many variances.

Mr. Marshman commented that the Beach Club entered into a contract to sell 50', and he was not sure the Beach Club Board would want to sell only 35'. The contract had been evaluated, a corporate decision had made, and that was what the Beach Club had decided upon.

Councilman Shaw asked what would happen if the building was destroyed; would the owners be permitted to build it back on the same present footprint?

Mr. Moore replied negatively; the Club would have to have a variance to re-build. He reminded the Council that what was before them today was from the Beach Club, because in order for them to do what they wished to do they would be increasing their nonconformity; thus they would need the special exception with variances. The agreement with Dr. Marder would have to be dealt with after the decision on a special exception with variances.

Attorney Kolins explained that any approval would be conditioned upon an agreement between the Town and Dr. Marder to put certain restrictions of use on that 50' strip of property.

Mr. Moore added that the original agreement had been entered into some years ago, so the full intent was unknown, and it was open to interpretation. There were some other agreements in Town that would be similar to this, and there could possibly be several other applications in the future in this regard. From staff standpoint, Mr. Moore suggested that the variance ought to be the minimum type variance. One of the concepts of the ordinance involved not increasing a nonconformity with the sale of property. On the other hand, the Beach Club did want to divest itself of the property and Dr. Marder had a good use for the property. Staff proposed that two things be done: create a non-build zone of 15', with a setback running the entire 15' along the property running east/west, so the total amount of no build area would be 30'. In addition, Dr. Marder could use all of that land in his calculations, and whatever accessory structures were permitted to go within 10' of the property could go into the additional 15' setback to the south.

In response to the request of Councilman McDonald, Attorney Kolins expressed that the hardship was that the property was subject to an agreement entered into by the Town with the Beach Club, making the lot owners of lots 1, 2, and 3 the specific named third-party beneficiaries of an agreement which allows them to acquire this property from the Beach Club. In addition, the Beach Club is compelled to maintain and take liability for 50' of property, which is virtually not of use, nor of benefit to them. He took the position that Dr. Marder and the Beach Club could close on their contract tomorrow under the terms of the original 1973 agreement, however, they had chosen to come back before the Town Council.

Town Attorney Randolph clarified that the Building Department had interpreted that the applicant must come before the Town Council with this request, and that the agreement itself could not be relied upon.

Attorney Kolins explained that he had taken the position that the 1973 agreement, by giving an absolute right to lots 1, 2, and 3 to buy the property from the Beach Club, did not vest the ability to deny the effectuation of that agreement with the Town, simply because the Town wanted to impose setback requirements that were not contained in the agreement. He noted that he had made that argument, and the Town and staff had taken a different position. Rather than fight that, he had decided to go through the process that was ongoing. As to the agreement between Dr. Marder and the Beach Club, Mr. Kolins took the position that they could close on that deal immediately, and Dr. Marder would then own all of the property. The battle would begin only when Dr. Marder wanted to build something on that 50'.

Councilman McDonald expressed concern with the hardship, as he believed the agreement had been freely entered into by the parties, and the wall was obviously a self-imposed hardship.

Mr. Moore responded that the original agreement had been in 1971 for the development of the Beach Club. In developing the Beach Club the then Town Council felt it was appropriate to protect the abutting neighbors to the south, therefore, the 50' in question was put into a green space buffer area. He reminded the Town Council again that the application was from the Beach Club, and not from Dr. Marder, and some of the issue had been confused. The then Town Council did assume that at some point of time in the future the sale of the 50' might take place. However, the Town Council had not predicted the future, and the future zoning requirements in 1998 for R-B zoned property. That, in itself, was unusual and unique enough to give consideration to this matter. If the zoning requirements in place at the time (1971) were considered, none of the proposed variances would have been required. The variances required today had come about because of changes in the ordinance which could not have been contemplated by the 1971 Town Council.

Councilman McDonald asked Mr. Moore if it was his legal conclusion that the agreement was not freely entered into by the parties?

Mr. Moore responded that he believed it was absolutely freely entered into as a condition for development of the Beach Club, but he also believed that at that point in time the Town Council had not contemplated what the future zoning might be, but did contemplate the potential sale of the property.

Councilman Shaw moved approval of Site Plan 7-98 with Special Exception and Variances based on the fact that the hardship was with the fact that the original agreement was designed and written under then existing zoning codes, which permitted the sale, and would not have had the impacts as indicated by items 1-5 of the variance, with the following conditions:

1. The owners of lots 1, 2, and 3 enter into an agreement with the Town as follows:

2. that upon acquisition of this 50' buffer strip they agree that there will be a "no build" zone running the length of the property from County Road to the Ocean, which will measure 15', as shown on the plans presented at the Town Council Meeting of September 8, 1998.

3. An additional 15' setback be established from the "no build" zone, as shown on the plans presented at the Town Council Meeting of September 8, 1998.

4. A Unity of Title for lots 1, 2, and 3.

President Smith passed the gavel to second the motion. On roll call the motion carried 3/2, with President Pro-Tem McLendon being recused from voting; President Smith, and Councilman Shaw casting affirmative votes; Councilmen McDonald and Wyett casting negative votes; and Mayor Ilyinsky breaking the tie vote with an affirmative vote.

5. VARIANCE NO. 30-98 - Arthur Levine, 355 North Lake Way; located in the R-B Zoning District; to allow construction of a 2nd story addition with a 3.5' height variance on a non-conforming structure that provides an 8' side yard setback in lieu of 15' required. *(Deferred from July 14, and August 11, 1998)* - **Request Deferral to December 8, 1998, per letter dated August 25, 1998, from Mr. Ronald K. Kolins**

(This item was deferred to the December 8, 1998, Town Council meeting earlier in this meeting.)

6. SPECIAL EXCEPTION NO. 16-98 WITH SITE PLAN REVIEW & VARIANCES - New Technology Business S.A., 1226 North Lake Way; located in the R-B Zoning District; to allow construction of a new 2-story residence on a lot 83' wide in lieu of 100 minimum required; to allow the building height point of measurement to begin from 10' NGVD in lieu of 7.5' allowed; and, to allow a side yard setback of 12.5' in lieu of 15' required. Additionally, a variance is requested to construct a 6' high wall along Lake Trail in lieu of 4' maximum allowed. *(Deferred from July 14, and August 11, 1998)*

Ex-parte communication was declared by President Pro-Tem McLendon with Mr. Zukov to discuss the changes since the last plans in this regard, and by Mayor Ilyinsky with Mr. Zukov.

Attorney Ron Kolins, representing the applicant, addressed the Town Council, stating that the project had been before the Town Council in July, when three variances had been requested. The Town Council had determined that the house was too large for the lot, and requested that the point of measurement variance be taken down from 10' to 9', and to reduce or eliminate the side setback variances. In the interim, Mr. Zukov and Architect Albarran de Mendoza had revised the plans accordingly. The point of measurement variance had been reduced from 10' to 9'; side setback variances had been reduced to one at 13' only in the area of the garage (the adjacent property owner to the south had no objection); the wall variance had been eliminated entirely.

Zoning Administrator Paul Castro commented that the applicant had come back with a scaled down plan, and staff recommended approval. Staff did believe, however, that the garage portion did need to meet the 15' setback required under the two-story requirements in the Zoning Code.

Attorney Kolins explained why the garage request was 13' instead of 15': the garage was slightly smaller than standard size for a two car garage, and if the variance request was eliminated the garage would have to be moved into the front entrance area of the house.

Attorney Robert Deziel, after being administered the oath by Town Clerk Pollitt, addressed the Town Council on behalf of the neighboring property owners on either side of the project. He recalled that in July there had been a comment that the project should come back with no variances. He pointed out that the construction was new, and the home was not an existing structure, which indicated that there was not a hardship for either the side yard setback variance or the height. He noted that the his client, Mr. Kooluris, and the applicant had initialed a drawing indicating a 6" variance on the height on the sides, and 1'6" in the middle. The plans had not been submitted to the Town until Friday, which was one business day before the Town Council meeting, providing for a 1'6" variance request, rather than a 6" variance request.

Mr. Al Bruno, 1230 North Lake Way, addressed the Town Council, objecting to the height of the house, and commenting that there was no legal hardship.

Attorney Kolins pointed out that the proposed house was about 4' lower than the Code allowed, and the point of measurement changed only the height of the beam, not anything that Mr. Bruno would ever see. He maintained that his client had met with Mr. Kooluris, and shown him the plans as submitted today.

Architect Albarran-de Mendoza of SKA Architects, commented that the beam in the wings abutting the property of Mr Kooluris was only 6" higher than what was allowed by Code in the proposed house. When Mr. Kooluris realized that he had agreed, there was no objection.

Attorney Deziel responded that he had then miscalculated the figures.

Mr. Kirby Kooluris commented that he had no objections, at this point, to the revised plans.

Councilman Wyett expressed concern over the size of the garage, mentioning that there was no storage space for trash, etc., suggesting that the garage be moved back and enlarged several feet.

Councilman Wyett moved approval of Special Exception No. 16-98, with the condition that the garage be set back attached to the house, that the minimum lot in the front be 35', and the auxiliary driveway eliminated, based on the hardship of the narrow lot and slope of the land. The motion was seconded by President Pro-Tem McLendon.

Mrs. Marie Bruno, 1230 North Lake Way, commented that she would like to see the finished floor at 9', which was 1' lower than what was being requested.

Attorney Kolins responded that he could not agree with that.

Architect Albarran-de-Mendoza proposed a small connection between the garage and the house for storage space.

Councilman Wyett agreed to amend his motion accordingly, re-stating his motion to be approval of Special Exception No. 16-98, with the provision that the architect attempt to move the garage back or provide more room in the garage for inside storage, based on the hardship of the narrow lot, and unusual slope of the land. The seconder of the motion, President Pro-Tem McLendon, agreed with the amended motion. On roll call the motion carried 3/2, with President Smith, President Pro-Tem McLendon, and Councilman Wyett casting affirmative votes; Councilmen McDonald and Shaw casting negative votes.

7. VARIANCE NO. 32-98 - Eric & Ann Fishman, 143 Clarendon Ave.; located in the R-A Zoning District; to allow installation of a gate & posts providing a front yard setback 8' from the street pavement in lieu of 18' required. *(Deferred from August 11, 1998)* - **Request for Deferral to October 13, 1998, per letter dated August 28, 1998, from Mr. James R. Brindell**

   (This item was deferred to the October 13, 1998, Town Council meeting earlier in this meeting.)

New Business - Major

8. VARIANCE NO. 40-98 - Daniel & Judith Doctor, 3 Pelican Lane; located in the R-A Zoning District; to allow construction of an addition providing a 22' street side yard setback in lieu of 35' required and providing an interior side yard setback of 10.5' in lieu of 15', thereby allowing expansion of a nonconforming structure per Sec. 8.21 of the Town Zoning Code.

Ex-parte communication was declared by Councilman Wyett with Attorney Ron Kolins.

Attorney Ron Kolins, representing Daniel & Judith Doctor, addressed the Town Council, stating that the home had been purchased in May of 1998, and variances were being requested that were technically correct and filed the way Town staff wanted them filed. He maintained that what was actually being requested was less than 1' of a variance on one side setback. He referred to the illustration of the construction plan in order to explain his statement to the Town Council.

Director of Planning, Zoning & Building Robert Moore commented that the hardship needed to be addressed. He explained that a prior variance had been granted on the property, and Mr. Kolins needed to explain the request for an additional variance.

Attorney Kolins explained that the undersized lot was the first hardship; the second hardship was that the house was landmarked and the owner wanted to put it into the appropriate configuration to make the roof lines connect properly and for the house to have the appropriate symmetry for a landmarked structure.

Councilman Wyett moved approval of Variance 40-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

9. VARIANCE NO. 41-98 - Sun & Surf Association, 100 Sunrise Ave.; located in the R-C Zoning District; to allow construction of a driveway entrance setback 3' from the pavement in lieu of 18' required.

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

Attorney Greg Kino addressed the Town Council on behalf of the Sun & Surf Association, displaying a plan of the proposed construction, to include a wall at the end of Sunrise Avenue, and a 14' security gate at the southern portion of Sunrise Avenue which would be open Monday through Friday, and closed in the evenings and on weekends. The gate could not be set back 18' as required because of the small service area space. The proposal was to set the gate back 3' from the pavement. The hardship was the irregular shape of the property, as well as the design of the building.

Director of Planning, Zoning & Building Robert Moore commented that the drawing submitted with the application had been difficult to understand, however, every department had indicated concern about the installation of the gate as far as traffic safety was concerned. He suggested that a deferral may be in order so that a much more conclusive traffic plan could be presented.

In response to the query of Councilman Wyett, Mr. Frank Levalonti, General Manger of the Sun & Surf responded that typically there would be four to five vehicles entering the property. He explained that when there was an emergency, such as fire, the vehicles could come through the oval driveway pass on the property; currently the service area was not used as there was a problem with the trucks entering in that area because of the width of the opening.

After discussion, Councilman Shaw moved deferral of Variance 41-98 until the October 13, 1998 meeting so that a more comprehensive plan could be submitted. President Smith passed the gavel and seconded the motion, commenting that every department head had objected to the position of the gate. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

10. VARIANCE NO. 42-98 - Gay Cinque, 3 Golf Rd.; located in the R-A Zoning District; to allow construction of two garages providing a southwest side yard setback of 4.6' and a northwest side yard setback of .05' (less than one inch) in lieu of 15' required, and providing a rearyard setback of 5' in lieu of 15' required.

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

Mrs. Gay Cinque, owner of the home at 3 Golf Road, addressed the Town Council, stating that she had appeared before the Town Council several months ago, and at that time it had been suggested that the proposed garage be put towards the back. She explained that Golf Road had been platted in the 1920's and all of the lots were 75'. The architect had attempted to get the garages off the alleyway, but there was a problem because of the pool and pool pump. If the garage was built in another section where there was available land there would be a problem of walking through heat and rain to get into the house. Currently, she explained that she parked on the driveway and her husband parked on the street. When they had purchased the house they were not living there permanently, however, they were now year round residents. The proposed plan was now to push the one-car garage back another 10', so it would be 35' off of Golf Rd., with a portion of the family room removed to provide the other garage off of the alleyway. In that manner, her husband could enter through the family room and she could come through the front porch. She submitted photographs of the front of the house and alleyway for the Town Council to review. She commented that the hardship was the size of the lot, the exposure to the elements, there was no other way to make the house more livable, and the two garages would still keep the spirit of the street. All of the homes on the street were nonconforming, since they had been built many years ago.

Zoning Administrator Paul Castro gave the following staff comments: Planning Department: the garage would not function in the rear; there is not enough room for a vehicle to maneuver; no hardship or unusual circumstances related to the property. Town Engineer: there is insufficient room behind the garage and alleyway for ingress and egress into the garage. Building Department: the hardship would need to be addressed. Town Manager: Concurs with staff comments. Mr. Castro noted that the neighbor to the west had written a letter commenting that there was no objection to the garage to the front, as long as there was a deed restriction that the 20' high hedge be maintained in perpetuity, however, he did object to the garage in the back since it was right on the property line and there was not sufficient room to screen the garage.

In response to the query of President Smith, Mrs. Cinque explained that the hardship was that the lot was 75'; that it was zoned and platted in the 1920's. When the house was built it was allowed to have lesser setbacks.

President Smith remarked that there were no garages on the street facing Golf Rd. currently.

Mrs. Cinque asked if there was anyplace that she could put the garage in the front of the yard that would be allowed?

Councilman Wyett commented that there was room in the back area of the property, however, that would involve moving the family room elsewhere.

Councilman McDonald moved deferral of Variance No. 42-98 to the November 10, 1998, Town Council Meeting, so that Mrs. Cinque could come back with a plan that would be satisfactory. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

11. VARIANCE NO. 43-98 - Philip Bartley & Dabney Moore, 146 Seaspray Avenue; located in the R-B Zoning District; to allow construction of a second story addition to a nonconforming accessory structure (already a two-story) and to allow it providing a rear yard setback of 5.6' in lieu of 10' minimum required.

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

Dr. Moore addressed the Town Council, stating that his mother-in-law had come to live with the family permanently, therefore, he was requesting a variance to allow construction of a second story addition to the nonconforming accessory structure, with the hardship being the fact that his elderly mother-in-law would be permanently living in the home. He presented copies of two surveys to indicate the actual building, as well as photographs of the property. He noted that he understood the objections of neighboring property owners, however, he wished to accommodate his mother-in-law and increase her quality of life. The proposed sundeck would provide an outside sitting area.

Zoning Administrator Paul Castro gave the following staff comments: Comprehensive Plan: does not meet the criteria for granting a variance. Town Engineer: there was insufficient information to review; there was not site plan and no property survey. Building Department: there was no hardship related to the request.

Mr. William Buckley, 151 Seaview Avenue, addressed the Town Council, commenting that Dr. Moore was a fine neighbor, however, the proposed structure was only approximately 10' from his property. He maintained that the proposed structure would interfere with the privacy now enjoyed by his family.

Dr. Moore suggested that the variance request be deferred so that he could present a satisfactory plan.

Councilman Wyett moved deferral of Variance 43-98 to the November 10, 1998, Town Council Meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

12. VARIANCE NO. 44-98 - Justin McInerny TR, Nob House Land Trust, 1021 N. Ocean Blvd.; located in the R-A Zoning District; to allow construction of a 2nd story addition with a 9.96' side yard setback in lieu of 15' required, and to allow a first story addition providing a 12.5' side yard setback in lieu of 15' required.

Attorney Robert Deziel, representing the applicant, Donald Burns, as the beneficiary under a trust, addressed the Town Council requesting a side yard setback variance for a second story addition above an existing one-story. He presented architectural drawings of the proposal. He pointed out that the original variance request submitted had referred to a one-story loggia, which had now been removed from the request. He explained that the applicant was attempting to update a home that had been built in the 1940's, without demolishing the structure and building something way too large for the lot.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: there was no objection, as the second story was over the existing first floor. Town Manager: hardship must be addressed. Comprehensive Plan: could be designed to meet the Code.

Councilman Shaw moved approval of Variance No. 44-98. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

13. VARIANCE NO. 45-98 - Robert & Suzanne Wright, 400 Arabian Rd.; located in the R-A Zoning District; to allow construction of a dock located 25' west of the bulkhead line & the US Pierhead Line, in lieu of the 6' maximum allowed.

Ex-parte communication was declared by Councilman McDonald with Mr. Commander regarding the merits of the application.

Mr. Jonathan Commander addressed the Town Council, stating the the variance request was occasioned by the US Pierhead Line, which was right next to the bulkhead in this particular area. The ordinance said that no docks could be built westward of the Pierhead Line, however, there were docks that were westward of it. The hardship was that the dock would have to be as proposed in order to obtain an acceptable depth for docking.

Mr. Ron Dixon, Engineer, commented that the water depth at a proposed permitted marginal dock would be 2.9' at mean low tide, and less than 2' at very low tides, which occurred 5 or 6 months of the year. Therefore, any boat moored there would be in peril.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Planning: adequate facilities could be constructed on the site. Town Engineer: no jurisdiction to grant variance. Building Department: no hardship. If approved Corps of Engineer approval required. Town Manager: concurs with staff comments. Mr. Moore pointed out that the Town Engineer had commented that there was a secondary channel that was very close to the proximity of the proposed dock. The Town Engineer had been concerned that the closeness to the secondary channel may prove to be a navigational hazard. He also added that there had been occasion to authorize marginal docks near the Pierhead Line, with 6' wide docks, with lifts that could be attached. There were two areas (Ibis Island and Everglades Island) where the Pierhead Line ran in line with docks, and in this area requests for perpendicular docks had been turned down. Docks had also been turned down in the commercial area in the vicinity of Poinciana Plaza, where the Poinciana Club was located. The situation today was unusual, in that the two areas where docks had been turned down were the islands and the commercial area. This was the first request from the mainland area of pure residential properties.

Mr. Commander commented that the hardship was that, through no fault of the owner of the property, the water was too shallow to bring a boat in to his property.

Mr. Moore explained that the dock was an accessory use. The principal use of the property was residential, single family. There was absolutely no guarantee that accessory uses could be put to the land and the adjoining water if it was not part of the regulations. There was a guarantee of the right to use the property, but not the right to accessory uses.

Councilman McDonald made a motion to approve Variance No. 45-98. The motion was seconded by President Pro-Tem McLendon.

President Pro-Tem McLendon expressed concern over the precedence that may be set, and asked Mr. Moore how many other dock permits had been considered?

Mr. Moore explained that both Ibis and Everglades Isle were islands and were further away from the mainland, and were directly adjacent with their seawalls to the Pierhead Line. The commercial district was distinct and should be looked at on its own merits.

Mr. Commander stated that he believed that this was the only place in the Town of Palm Beach where the condition occurred, because the land juts out to the west in this area, and does so in no other place. He expressed concern as to why the Pierhead line was where it was, and had no explanation as to why it was drawn that way.

After further discussion, the motion carried 4/1, with President Smith casting a negative vote.

14. SPECIAL EXCEPTION NO. 21-98 WITH SITE PLAN REVIEW & VARIANCES - Hals Realty Assoc. Ltd.; 401 S. County Rd.; located in the C-TS Zoning District; to allow a US Post Office to exceed 2,000 sq. ft.; to modify site adding a loading zone, eliminating two parking spaces for a one-way drive aisle, and adding a 650 sq.ft. canopy on a new loading berth area. Variances requested are 1) removal of 3 required parking spaces; 2) allow loading space encroachment into a drive aisle, and; 3) allow two 5 sq.ft. logos, in lieu of 1 sq. ft. allowed, and to allow one on each street corner.

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

Director of Planning, Zoning & Building Robert Moore commented that the U.S. Post Office had furnished a courtesy plan for review of the Town Council. They would be doing their own inspections, and had a licensed contractor.

Attorney Peter Broberg addressed the Town Council, stating that a Special Exception was required to exceed 2,000 sq. ft. The site would need to be modified for mail trucks to drop off mail in a loading area. The site currently had 16 parking spaces, striped to be 10' wide. They would be re-striped at 9', which would allow an additional space and 7/10 of another space, with the two spaces taken as turn around space would be usable during the day as trucks would not be loading.

Councilman Wyett expressed concern over the 9' spaces, as he believed it to be too narrow for larger cars.

Mr. Gregg Gatt commented that employees driving the postal trucks would park their cars in the turn around space during the day.

Councilman McDonald also expressed concern over the 9' spaces, suggesting that perhaps employees could use 9' spaces, with 10' spaces used for public parking.

On behalf of Police Chief Croft, Mr. Moore gave the following comments: No objection to removal of the off-street parking; question on street parking for the people using the Post Office; parking should be the 15 minute parking on County Road, and the meters on Peruvian on the immediate block should be the first 15 minutes of free parking.

Other staff comments were as follows: Planning Department: signage should conform to the codes, including the logos. Public Works: believe that cross access agreement should be subject to review and approval by the Public Works Director. The sign logo should be one square foot. No objection to parking space. Re-visit loading dock design. Town Manager: Concurs with staff comments. Fire Department: No comment.

Councilman Wyett moved approval of Special Exception No. 21-98, to incorporate the remarks of the Building Department, and with the conditions that the employee parking spaces remain at 9', with any public parking spaces at 10', with all signs conforming to the building code, and that the loading docks be removed if the Post Office vacated the building.

Attorney Peter Broberg maintained that the U.S. Post Office would prove that it was a Town-serving business on an annual basis.

On roll call the motion carried unanimously.

15. <u>SPECIAL EXCEPTION NO. 22-98 WITH SITE PLAN REVIEW</u> - Worth Avenue Association Ltd., commonly known as the Esplanade, 150 Worth Ave.; located in the C-WA Zoning District; to allow a gross leasable expansion of Saks Fifth Ave from 38.765 sq. ft to 49,917 sq.ft. To allow a 1,575 sq.ft. increase in the Esplanade's gross leasable space providing 8 shared (onsite) parking spaces.

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that Saks Fifth Avenue wished to expand its existing space in the Esplanade by a total of 11,152 sq. ft., some of which would be located on the first floor, some of which would be located on the second floor. He demonstrated the area involved on several drawings which he exhibited, noting that there would be an increase in the gross leasable space of 1,575, providing 8 shared (onsite) parking spaces.

Councilman Wyett moved approval of Special Exception 22-98 with the condition that Saks Fifth Avenue NOT come back to the Town Council for a given number of years to request more space, and that if they did request additional space, the expansion would have to be on the second floor, NOT on the first floor. The motion was seconded by President Pro-Tem McLendon.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Building Department: must show Town serving; roof deck landscaping must be rehabilitated; conditions should be agreed to that this was maximum square footage. Town Manager: concurs with staff.

Mr. Brindell addressed the traffic count figures, citing 39 trips in and 39 trips out on a daily basis, with 4 trips in and 4 trips out at the peak hour, which was less than ½ of 1% of the capacity of Worth Avenue. He has passed comments on the roof deck to the management of Saks.

Mr. Moore commented that the original agreement regarding landscaping for the roof deck was done correctly, but the roof deck had been allowed to deteriorate. The applicant had been asked to upgrade the landscaping.

On roll call the motion carried unanimously.

16. Request for Extension of the Construction Hours for Escada at 222 Worth Avenue.

Mr. Greg Vreeland, Vice President of Field Operations with RCC Associates, who was in contract with Escada USA. During demolition last week they had uncovered some severe structural problems that affected the design of the store at 222 Worth Avenue. In order to complete the work an extension of construction hours was being requested until 8:00 P.M. through November 15, 1998.

Councilman Wyett moved approval of the request for extension of the construction hours for Escada at 222 Worth Avenue, with the condition that trucks not be parked on Worth Avenue after making deliveries. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

XX. ANY OTHER MATTERS

Assistant Town Manager Peter Elwell commented that the second public hearing on the budget would have to be rescheduled. It was determined that the public hearing on the budget would be held Monday, September 28, 1998 at 5:01 P.M.

XXI. ADJOURNMENT

The meeting was adjourned at 7:32 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME McLENDON, SAMUEL C.	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Town Council, Town of Palm Beach
MAILING ADDRESS 300 S. OCEAN BLVD (5A)	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Palm Beach, FL. COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION: TOWN OF PALM BEACH
DATE ON WHICH VOTE OCCURRED 9-8-98	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

You must abstain from voting and disclose the conflict in the situations described above and in the manner described for elected officers. In order to participate in these matters, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, SAMUEL C. McLENDON, hereby disclose that on Sept. 8, 1998:

(a) A measure came or will come before my agency which (check one)

✓ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, ___;

___ inured to the special gain or loss of my relative, ___;

___ inured to the special gain or loss of ___, by whom I am retained; or

___ inured to the special gain or loss of ___, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

My wife and I are Stockholder Members of The BEACH CLUB. The BEACH CLUB WOULD profit financially if said application to sell a portion (Southerly portion) of The site of The BEACH CLUB, said portion not being used nor anticipated to be used

9-8-98
Date Filed

Samuel C McLendon
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.

XVI C. 2. a. and b.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
Wyett, Allen	Town Council
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☐ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY / COUNTY	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED: September 8, 1998	MY POSITION IS: ☐ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

You must abstain from voting and disclose the conflict in the situations described above and in the manner described for elected officers. In order to participate in these matters, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes.
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- The form must be read publicly at the next meeting after the form is filed.

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- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Allen S Wyett, hereby disclose that on Sept 8, 1998:

(a) A measure came or will come before my agency which (check one)

____ inured to my special private gain or loss;

____ inured to the special gain or loss of my business associate, ____;

____ inured to the special gain or loss of my relative, ____;

____ inured to the special gain or loss of ____, by whom I am retained; or

____ inured to the special gain or loss of ____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

I am a director of IONICS - INC A potential bidder should the project go to approval + BID.

I own 1/100 of 1% of the 16,500,000 out standing stock — i.e. 2150 shares.

9-8-98
Date Filed

Allen S Wyett
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.