MINUTES OF THE TOWN COUNCIL MEETING HELD ON AUGUST 12, 1997

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Smith at 9:30 A..M. on August 12, 1997. The roll was called, and the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky; President Lesly Smith, President Pro-Tem Leslie Shaw, Councilmen Jack McDonald, Sam McLendon, and Allen Wyett. Also in attendance for all or part of the meeting were: Town Manager Robert J. Doney; Town Attorney John C. Randolph; Assistant Town Manager Peter B. Elwell; Assistant to the Town Manager David F. Jakubiak; Fire-Rescue Chief Ken Elmore; Police Chief Joseph L. Terlizzese; Director of Public Works Albert P. Dusey; Finance Director James H. Demming; Fire Marshal John Wandell; Purchasing Agent Charles Boggs III; Recreation Director Russell E. Bitzer; Director of Planning, Zoning, & Building Robert L. Moore; Town Engineer James E. Bowser; Zoning Administrator Paul Castro; and Town Clerk Mary A. Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Rev. Celeste Cox of Bethesda-by-the-Sea. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS - None

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky complimented Recreation Director Russell Bitzer and his staff on the summer Recreation Program. Mayor Ilyinsky reported that he had received many compliments from Town residents who had participated in the programs.

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

Item X.A.4. Page 3 - Consideration of Proposal to Eliminate Limousine/Taxicab Stands on Worth Avenue Pursuant to Section 10-330 of the Town Code of Ordinances request for deferral to the September 9, 1997, Town Council meeting per letter dated August 11th.

Motion made by Councilman McLendon to defer item X.A.4 to the September 9, 1997, Town Council meeting. President Smith passed the gavel and seconded the motion. President Smith announced that one of the principals was ill and could not be present at this meeting.

Mr. Moore confirmed that the licensing for that category could be deferred until after the September 9, 1997, Town Council meeting.

Mrs. Smith stated the proposal was a parking issue, originally suggested by Mr. Wyett who suggested the taxi/limousine stands could be used for parking on Worth Avenue. Mrs. Smith recalled that Chief Terlizzese said the elimination could be possible since the spaces were not used, because beepers were now used by taxi companies and the stands were not as important as they once were.

On roll call, the motion carried 4/1 with Mr. Wyett casting a negative vote.

Item XIV.B.1. Page 5 - Consideration of Appeal of the Landmarks Preservation Commission to Undesignate 150-A Australian Avenue.

Mr. Shaw made a motion to defer item XIV.B.1. to the September 9, 1997, Town Council meeting. The motion was seconded by Mr. McDonald and carried unanimously.

Item XIV.B.2. Page 5 - Consideration of Appeal of the Architectural Commission's Decision of June 25, 1997, regarding 127 Oceanview Road. Request for Deferral to the September 9, 1997, Town Council meeting per letter dated August 1st.

Mr. Wyett made a motion to defer Item XIV.B.2. to the September 9, 1997, Town Council meeting. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

Item X.A.1.b. Page 3 - Consideration of Setting a Time and Date for an Outside Water Company's Presentation Regarding Reverse Osmosis Systems;

At this time, responding to questions from President Smith, Mr. Moore clarified that items XIV.D. 3. and D.6. would be heard today, and Attorney Jim Brindell would be present to represent the applicants. Mr. Moore indicated that Mr. Brindell did not wish to defer the items.

Mr. McLendon said he would like to set a date, time, and place for a Water Committee meeting either as an agenda item or under discussion of other water issues on this agenda.

Mrs. Smith replied she understood a time and date for the meeting would be set under the discussion of the other water issues.

Mr. Wyett requested the Town Council authorize a presentation of an outside firm on alternate programs for water. Mr. Wyett made a motion incorporating this request--to be put on the September agenda. After considering the motion, Mr. Wyett said he could not vote or make the motion because he had a conflict of interest with the company.

Mr. McDonald made a motion, seconded by Mr. Shaw, to have an outside company present a program at the September 9, 1997, Town Council meeting. The motion carried unanimously with Mr. Wyett recusing himself. *(A Conflict of Interest form from Mr. Wyett is on file in the Town Clerk's office.)*

Mrs. Smith clarified with Mr. Doney that the item will be added to the current agenda under item X.A. Other 1.a. 1 for discussion

Mr. McDonald said he would like to see the Town Council review the most recent monthly activity report of the Police Department to give it the attention it deserves, and made a motion to add it to the September 9, 1997, Town Council agenda. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

Mr. Wyett made a motion to approve the agenda as amended. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

VI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Mr. Adrian Winterfield suggested immediate action might be appropriate regarding several Occupational License issues. Mr. Winterfield said that approximately ten hotels, motels, and private clubs are required to have licenses for public swimming pools. Mr. Winterfield said public swimming pools are defined under State law as applying to every property servicing five or more residential units. He continued that a provision stated approximately thirty may be exempt from annual inspections. Mr. Winterfield said it was appropriate for the Town Council to make the policy decision as to what "public swimming pool" should mean under the occupational license ordinance.

Mr. Winterfield questioned the category of "jewelers" in the occupational license ordinance and the confusion between retailers who sold jewelry and entities who sold only jewelry.

Mr. Winterfield also questioned the operation of the Bank Julius Baer--referring back to its 1992 inception at the Palm Beach Towers. Mr. Winterfield said that institution should not have been granted permission to operate at the Palm Beach Towers, because it was obviously a financial organization. He maintained that Bank Julius Baer currently occupied space on Royal Palm Way with signage, and should be treated as the financial institution it is at this time.

Mr. Winterfield addressed the rental of public rooms by (primarily) hotels which had been explained as an economic activity that did not require a separate license because *it was an integral part of the hotel operation.* Mr. Winterfield said he disagreed with that rationale and, if that were true, no separate licenses would be issued for restaurants, retail shops, etc. He continued that use was a distinct economic operation, and the Town Council should give direction that licenses were required for such activity.

Ann Herman addressed the Town Council, advising that many of the condominiums and co-ops are not taking advantage of the voluntary recycling programs. Mrs. Herman reported that a large volume of recyclable material was included in the regular sanitary garbage pick-up. Mrs. Herman requested Town Council give direction to the multiple dwelling buildings to recycle materials.

Mrs. Smith noted that the Civic Association was present at the meeting, and this issue would undoubtedly be presented by them to the condominiums, asking them to comply with the recycling. Mrs. Smith said she would not like to see the Town Council make directives to any individual buildings.

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF JULY 8 AND 29, 1997

VIII. LICENSES, PERMITS, AND AGREEMENTS

A. Charitable Solicitations

1. American Cancer Society; No. 19-98
2. Rehabilitation Center for Children and Adults, Inc.; No. 126-98
3. Preservation Foundation of Palm Beach, Inc.; No. 192-98
4. Hospice Guild of Palm Beach; No. 205-98
5. Adam Walsh Children's Fund; No. 314-98
6. Center for Children in Crisis; No. 341-98

Other - Results Forms Filed Late and $25 Late Fee Paid

7. The Boys and Girls Clubs of Palm Beach County, Inc.; No. 104-98
8. Lourdes Foundation, Inc.; No. 135-98
9. American Committee for the Weizmann Institute of Science; No. 151-98

B. Alcoholic Beverage Licenses - None

Mr. Wyett made a motion to approve the Approved Agenda. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

REGULAR AGENDA

IX. PUBLIC HEARINGS

A. Landmark Designation of 150 Clarke Avenue; Resolution No. 35-97 *(Deferred from June 10, 1997)*

President Smith questioned if a deferral had been requested asking if an attorney was present to represent the applicant?

Attorney David Petersen, representing the owners, Mr. and Mrs. Zacher, addressed the Council and said he did not wish a deferment but would address the issue at this meeting.

Mr. Castro read the criteria for designating the property: "Staff believes the subject house and property meets the following criteria for designation--the house embodies distinguishing characteristics of an architectural type and is a specimen inherently valuable for the study of a period style, method of construction, or use of indigenous materials or craftsmen. The house is representative of a notable work of a master builder, designer, or architect whose individual building has been recognized or who has influenced his age."

Responding to Mrs. Smith's question regarding proof of publication, Town Clerk Pollitt confirmed that was received.

At this time, Town Clerk Pollitt administered the oath to all individuals who would give testimony during the proceedings.

Historic Preservation Consultant Jane Day, reported that the residence at 150 Clarke Avenue was designed by Howard Major in 1934 for Alice and Ernest Howells, and was a good example of the Monterey style of architecture that was popular in the United States from 1925 to 1955. The main architectural feature of this style was a cantilevered balcony. Mrs. Day stated that this particular example had English Colonial and some French Creole design details on the residence, representing the work of Howard Major.

Mrs. Day said that John Volk was hired in 1948 and designed an addition for the rear of the property that was not highly visible from Clarke Avenue. Mrs. Day reported that the Landmarks Commission recommended the landmarking of the front facade of the property only. Mrs. Day said she believed the residence was a good example of the work of Howard Major and John Volk.

Responding to questions from Mr. Wyett regarding the number of landmarked Monterey type properties, Mrs. Day said seven of Howard Major's designs were landmarked, but the number of purely Monterey types was not available at this time.

Mr. Shaw made a motion to accept the report from Mrs. Day. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

Attorney David Petersen, representing the owners, Mr. and Mrs. William Zacher, referred to his letter of August 7, 1997, stating the opposition of the owners to the landmarking of the property. He explained that there did not seem to be any compelling need for the landmarking; furthermore, the recommendation was for only a single facade of the building. In addition, he noted that partial designation did not offer any of the advantages or benefits of landmark designation, although Mr. and Mrs. Zacher were not motivated to seek such benefits at this time. He expressed that a partial designation could also subject the property to additional layers of review or regulation, for example, for repairs or replacement of the roof the owner would need approval of both the Architectural Commission as well as the Landmarks Commission. He concluded that Mr. and Mrs. Zacher regarded the property as their residence, and were not seeking landmark designation for any part of the property.

Building Director Robert Moore explained that both commissions had employed the policy that if one jurisdiction governed a portion of a structure, the owner would not be subject to go before the other commission.

Councilman McLendon made a motion not to landmark the property located at 150 Clarke Avenue, as there did not seem to be sufficient reason to do so; seconded by President Pro-Tem Shaw.

Architect Gene Pandula, Vice Chairman of the Landmarks Preservation Commission voiced concern that he believed the property was worthy of landmarking, even though Mr. Baker, the prior owner had made a very eloquent presentation as to why the building should not be landmarked.

On roll call, the motion carried 4/1, with Councilman McDonald casting a negative vote.

X. OLD BUSINESS

A. Other

1. Status Report on Water Franchise Agreement Negotiations with the City of West Palm Beach

President Smith reported that a meeting had been held with Mayor Graham and staff on July 24, 1997, at which time it was indicated that a letter outlining the status of the negotiations would be presented to the Town. After receipt of the letter, Mrs. Smith reported that specific points of negotiation and agreement had not been included, and she had written back to Mayor Graham advising same.

Town Attorney Randolph reported that the initial stages of negotiations with the City of West Palm Beach had been encouraging, however, later meetings had been canceled by the City, and it was learned at the July 24 meeting that the City did not wish to negotiate the water franchise during the period of time that the lawsuit concerning the Downtown Master Plan was active. He related that this caused great disappointment on the part of the Town, as the matters had been considered separate and independent. He addressed the three issues noted in the letter from Mayor Graham dated August 11, 1997:

The capital improvement program to be accomplished by the City of West Palm Beach was now proposed to take 10 years as opposed to 5 years as previously proposed.

The surcharge matter remained unresolved, although no specifics were stated in the letter. He explained that lowering the surcharge had not been discussed, although discussion had taken place as far as setting it aside for capital improvements and perhaps capping it.

The minimum initial term of the Franchise as it applied to potable water. He explained that the City was contemplating a minimum term of the Franchise before there would be an opportunity for the Town to opt out.

Mr. Randolph advised that the three issues were very major issues that had been left unresolved as of the last mutual meeting. Other minor items would also be involved in the negotiations.

Councilman McDonald moved that good faith negotiations continue to take place, and that in the meantime a complaint be filed for declaratory judgment regarding the surcharge. The motion was seconded by Mr. Shaw.

Town Attorney Randolph noted that a motion was not necessary, as the Town Council had already authorized filing of suit.

Mayor Ilyinsky commented that the shameless treatment of the Town by the City of West Palm Beach and the "money games" being played were absolutely mind boggling and had caused him to change his mind to recommend that a lawsuit be filed in this regard.

Town Attorney Randolph received approval to incorporate other causes of action within the lawsuit, including neglect of the system and negligence in maintenance.

Councilman McLendon suggested that change in the State Statute be investigated regarding the charges for municipal water use.

Town Attorney Randolph replied that efforts would have to begin in Tallahassee, with support from a local delegation. It would be difficult to amend the State Statute.

Town Manager Doney commented that the results of the survey drafted by Councilman McLendon being sent to other municipalities may be useful in making future supportive contacts with similar situations.

a. Consideration of Request by Councilman McLendon for Hutcheon Engineers to Perform Engineering Evaluation of Water Re-Use Proposal

Councilman McLendon explained that he believed the $1,750 required for the Hutcheon Engineering report would be money well spent unless the Town Council was inclined to do a full report on an irrigation water system using reclaimed water.

Public Works Director Al Dusey stated that the $1,750 engineering report would confirm that Councilman McLendon's study was reasonable and within the proper range, however a detailed study of the water reuse issue would require a proposal and much greater costs.

Councilman McLendon moved that the $1,750 cost for the Hutcheon Engineering report be approved. The motion was seconded by President Pro-Tem Shaw for discussion.

Councilman McLendon commented that he had intended that specific costs for filter plants, pumps, motors, and electric systems would be reviewed by Hutcheon Engineers as part of the report.

President Smith suggested that this issue be discussed at a Water Committee Meeting so that a thorough review could be made of all the materials available and recommendations could be consolidated for presentation.

Councilman McLendon withdrew the motion, agreeing that the issue could be discussed at a Water Committee Meeting.

b. Consideration of setting a Time and a Date for a Meeting for a Presentation by an Outside Water Company Regarding Reverse Osmosis Systems

A Special Town Council Meeting was scheduled for Thursday, October 16, 1997 at 10:00 A.M. to hear the presentation regarding reverse osmosis. The Water Committee would then meet immediately following.

2. Consideration of Recommendation by Shore Protection Board for Town to Employ Coastal Engineering Consultant to Perform "Peer Review" on Comprehensive Coastal Management Plan (CCMP) Update

Vice Chairman of the Shore Protection Board Chip Moffett addressed the Town Council requesting approximately $10,000 for a coastal engineering consultant peer review on the Comprehensive Coastal Management Plan (CCMP) Update. He explained that it would eliminate any conflicts of interest on the firm making the proposal, and would reduce criticism of any item within the total plan.

Councilman McLendon made a motion to approve the cost of $10,000 for the peer review on the Comprehensive Coastal Management Plan Update; seconded by Councilman McDonald. On roll call, the motion carried unanimously.

3. Consideration of Authorization to Proceed with Bidding for Equipment and Services to Implement Beach Cleaning Program for the Citizens' Association South of Sloan's Curve

Public Works Director Al Dusey reported that at the last Town Council Meeting approval had been given for the Public Works Department to provide beach cleaning services to private properties from Sloan's Curve to the south Town limits under contract to the Citizens' Association South of Sloan's Curve, at their cost. In order to implement the program equipment (beach tractor, beach rake, trailer, and pick-up truck) would be needed in the amount of $51,000, which would be amortized over a period of 8-10 years.

Albert Levinson, representing the Citizens' Association South of Sloan's Curve stated that the Association would assume the responsibility of billing each individual condominium once the front footage lineage was decided.

Councilman McLendon moved approval of $51,000 for the beach cleaning project. The motion was seconded by Mr. Wyett. On roll call, the motion carried unanimously.

4. Consideration of Proposal to Eliminate Limousine/Taxicab Stands on Worth Avenue Pursuant to Section 10-330 of the Town Code of Ordinances *(Deferred from June 10, 1997 and July 8, 1997)* **-Request for Deferral to September 9, 1997, per letter dated August 11, 1997, from Ms. Lisa Aiello**

THIS ITEM WAS DEFERRED TO THE SEPTEMBER 9, 1997, TOWN COUNCIL MEETING.

5. Consideration of Parking Meter Maintenance and Collection Program Improvements *(Deferred from July 8, 1997)*

Public Works Director Al Dusey reported that there were two separate issues: rehabilitating 184 metal heads, which could be done for approximately $11,000, and to convert some of the meters to electronic meters for approximately $54,000, with the expectation that the maintenance load would be reduced enough to eliminate the maintenance position authorized. He requested the amount of $65,000 be approved by the Town Council for the project.

Councilman Wyett made a motion to approve the amount of $65,000 from the Undesignated General Fund Capital Improvements Program for the parking meter maintenance and collection program improvements. On roll call, the motion carried unanimously.

6. Consideration of Tent Permits and the Length of Time Allowed for Tents to Remain in Place *(Deferred from June 10, 1997)*

Director of Building, Planning & Zoning Robert Moore requested that additional time be given to study the requirements of other communities in regard to tent permits/structures, reporting back to the Town Council no later than November, 1997.

Councilman Wyett made a motion to defer discussion of this issue until the November 12, 1997 Town Council Meeting; seconded by Mr. McDonald. On roll call, the motion carried unanimously.

7. Consideration of Issuing Charitable Event Permits for Longer than a One Year Period *(Deferred from July 8, 1997)*

Town Clerk Mary Pollitt referred to the memorandum from herself to Town Manager Doney, dated July 22, 1997, regarding this subject matter, advising that in order to properly regulate the solicitation of funds in the Town of Palm Beach applications should continue to be issued on an annual basis. Mrs. Pollitt concurred with the recommendations to increase the permit fee from $25 to $50, and the option of submitting a Federal 990 form in lieu of an audit or compilation.

Councilman McLendon moved approval of applications being submitted on an annual basis, increase of the permit fee to $50, and the option of submitting a Federal 990 form in lieu of an audit or compilation.

Councilman Wyett commented that he had met with Mrs. Pollitt in regard to this matter, and believed that processing costs exceeded the revenue. He recommended that the cost of the application should increase to $150, plus the advertising fee.

President Pro-Tem Shaw recommended that a dual fee system be used: a charitable organization raising under $10,000 would pay a permit fee of $25; a charitable organization raising more than $10,000 would pay a permit fee of $100.

At this time it was decided to split the original motion made by Councilman McLendon, which he amended, to approve applications being submitted on an annual basis, with the option of submittal of Federal Form 990 in lieu of an audit or compilation. The amended motion was seconded by Councilman Wyett. On roll call, the motion carried unanimously.

Councilman McDonald then moved that the Charitable Solicitation Permit fee be increased to $100. The motion was seconded by Councilman McLendon.

President Pro-Tem Shaw suggested that the motion be amended to include a permit fee of $25 for those organizations raising under $10,000, with those raising over $10,000 paying a permit fee of $100.

Councilman McDonald agreed to amend the motion per the suggestion of President Pro-Tem Shaw, as did the seconder of the motion, Councilman McLendon. On roll call, the motion carried unanimously.

8. Request for Reconsideration on Requirement for Perpetual Maintenance of the Access Path Landscaping from Caribbean Road to the Beach

Director of Public Works Al Dusey reported that at the June 10, 1997 Town Council Meeting approval had been given for landscaping of the Caribbean Road beach access path from North Ocean Way to the beach by the property owners to the north, Arthur and Angela Williams. Part of that approval had required that the landscaping be maintained by that property owner in perpetuity, so that a recorded agreement would be necessary to run with the property. The property owners were asking for relief from that, as they did not want to encumber the property.

President Pro-Tem Shaw moved that the property be maintained by the Town. The motion was seconded by Mr. McLendon.

Steve Dauber, Landscape Architect, addressed the Town Council, stating that Mr. and Mrs. Williams had agreed to maintain the maintenance for as long as they owned the property, however, if they should decide to sell, the agreement would not run with the land.

President Pro-Tem Shaw modified the motion to include that the maintenance of the property would be the responsibility of Mr. and Mrs. Williams, however, it would not be a covenant running with the land. Councilman McLendon agreed to the modification. On roll call, the motion carried unanimously.

9. Consideration of Date and Time to Schedule Ordinances, Rules, and Standards Committee Meeting to Discuss Draft Telecommunications Ordinance

A meeting of the Ordinances, Rules, and Standards Committee was scheduled for Thursday, October 23, 1997 at 10:00 A.M. Attorney Nick Miller will be available by conference call.

XI. NEW BUSINESS

A. Ordinances

1. Ordinance No. 7-97 - Amendments to Electrical Code

Town Attorney read Ordinance 7-97 by title: (First Reading)

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE III, "ELECTRICITY", OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTION 5-101 ADOPTING BY REFERENCE THE 1996 EDITION OF THE NATIONAL ELECTRICAL CODE AND ADOPTING BY REFERENCE THE PALM BEACH COUNTY AMENDMENTS; PROVIDING FOR ADDITIONS AND DELETIONS TO SAID CODE IN SECTION 5-102 "AMENDMENTS"; AND AMENDING SECTIONS 5-103, 5-104 AND 5-106; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Wyett moved approval of Ordinance 7-97. The motion was seconded by Councilman McLendon. On roll call, the motion carried unanimously.

2. Ordinance No. 9-97 - Amendments to the Town's Employee Retirement System Ordinance

Town Attorney Randolph read Ordinance 9-97 by title: (First Reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 15 OF THE CODE OF ORDINANCES RELATING TO PENSIONS AND RETIREMENT AT SECTION 15-15 TO MODIFY THE AGE FOR BENEFIT GROUP GENERAL NORMAL RETIREMENT; AT SECTION 15-22 TO INCREASE MINIMUM DISABILITY PENSION BENEFITS FOR BENEFIT GROUP PUBLIC SAFETY; AT SECTION 15-23 TO INCREASE MINIMUM DUTY DISABILITY PENSION BENEFITS FOR BENEFIT GROUP PUBLIC SAFETY; AT SECTION 15-33 TO MODIFY THE BENEFIT ROUP GENERAL CONTRIBUTION RATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman McDonald moved approval of Ordinance 9-97. The motion was seconded by President Pro-Tem Shaw. On roll call, the motion carried unanimously.

3. Ordinance No. 10-97 - Amendments to Code Enforcement Board Ordinance

Town Attorney Randolph read Ordinance 10-97 by title: (First Reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2, ADMINISTRATION, ARTICLE X, CODE ENFORCEMENT BOARD, OF THE TOWN CODE OF ORDINANCES AT SECTION 2-182, FINES AND LIENS, SO AS TO PROVIDE THAT LIENS OF THE CODE ENFORCEMENT BOARD SHALL BE A LIEN UPON PROPERTY SUPERIOR TO ALL OTHER LIENS, ENCUMBRANCES, TITLES AND CLAIMS, AND EQUAL IN RANK AND DIGNITY WITH A LIEN FOR AD VALOREM TAXES; PROVIDING THAT LIENS UNDER THE LOCAL GOVERNMENT CODE ENFORCEMENT ACT SHALL CONTINUE FOR A PERIOD OF UP TO TWENTY YEARS AFTER THE CERTIFIED COPY OF AN ORDER IMPOSING A FINE HAS BEEN RECORDED; AMENDING SECTION 2-186, FEE SCHEDULE, REGARDING CHAPTER 8, GARBAGE AND TRASH; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

President Pro-Tem Shaw clarified that the fines were not per annum, but would carry forward from year to year, and expressed some concern as to the method of applying the terms of fines; violations could occur two or three years apart, and fines would continue to be assessed as second, third, and fourth offenses.

Councilman McDonald suggested that the Code Enforcement Board review its collection procedures so that it would be known what steps would be taken and when.

Town Attorney Randolph clarified that if the intent was to add the words "per annum" or "in perpetuity to the land owner," then all of the ordinances dealing with first, second and third offenses would have to be so modified. He explained that the Code Enforcement Board had the right to determine and administer violations of the Ordinance.

President Pro-Tem Shaw moved approval of Ordinance 10-97. The motion was seconded by Councilman McLendon.

Mrs. Polly Earl voiced concern regarding the wording in the Ordinance that addressed trash contiguous to a property that was not properly taken care of, resulting in a citation to the person on the contiguous property. She commented that almost every week she had found that someone had put trash in front of her property.

Director of Building, Planning & Zoning Robert Moore replied that the recourse would be to call the proper officials (either the Building Department or Public Works) to notify them of illegal dumping occurring on any property. He commented that the method of applying fines for false alarms gave three free false alarms and was done on a calendar year, which was another consideration regarding Ordinance 10-97.

President Smith commented that there should be consistency in Town policies.

Town Attorney Randolph advised that the only change in the Ordinance had been the change in the amount of fines--there had been no changes regarding the time over which fines would be considered. The Statute regarding Code Enforcement Boards allowed a mechanism for offense fining. The Ordinance would have to be amended if a calendar year time period would be implemented, as well as consideration given to every other schedule set forth in any ordinance addressing second, third, and fourth offenses.

President Pro-Tem Shaw recommended that the definition segment of all ordinances be reviewed, possibly putting in a definition stipulating that all fines were on a calendar basis, so that it would then apply to all ordinances without modifying each of them.

On roll call, the motion carried unanimously.

4. Ordinance No. 11-97 - Amendments to Chapter 8, "Garbage and Trash"

Town Attorney Randolph read Ordinance 11-97 by title: (First Reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 8, GARAGE AND TRASH, OF THE TOWN CODE OF ORDINANCES, AT SECTION 8-15 THEREOF SO AS TO PROVIDE THAT THE OWNER OF A PROPERTY IMMEDIATELY ADJACENT TO THE RIGHT-OF-WAY IN WHICH TRASH IS PLACED FOR COLLECTION IN VIOLATION OF THIS SECTION SHALL BE DEEMED TO BE PRIMA FACIE IN VIOLATION OF THIS SECTION; AMENDING SECTION 8-16, PARAGRAPH (b), SO AS TO AMEND THE AMOUNT OF THE FINE FOR VIOLATION OF THE REQUIREMENTS SET FORTH IN SECTION 8-15 AND SO AS TO PROVIDE THAT VIOLATIONS BE WITHIN THE JURISDICTION OF THE TOWN'S CODE ENFORCEMENT BOARD; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTING DATE.

President Smith commented that item no. 9 under Section 1 of the Ordinance (concerning the placement of traffic cones to demarcate the location of trash in the street) should be eliminated according to prior discussions.

Councilman Wyett remarked that trash placement requirements should start in November, rather than December, and voiced concern over the two days allowed for trash placement when the scheduled day of collection was Monday. He suggested that the condominium areas had greater trash storage capacities and could be picked up on Monday, with the regular Monday route being picked up on another day.

Public Works Dusey replied that possibility was being considered.

Mayor Ilyinsky commented that this was an occupational hazard of living in Florida, and that more trucks and personnel were needed to collect trash.

Town Attorney Randolph suggested that the changes made last month were incorporated within Ordinance 11-97 presently, and if more changes were desired there was nothing that would preclude passage of the Ordinance today, and then having an Ordinances, Rules and Standards (ORS) Meeting in the future to discuss additional changes.

President Pro-Tem Shaw moved approval of Ordinance 11-97, with the elimination of paragraph 9, Section 1. The motion was seconded by Councilman McDonald. On roll call, the motion carried unanimously.

B. Resolutions

1. Resolution No. 41-97 - Commercial Yard Trash Collection Fees

Town Attorney Randolph read Resolution 41-97 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND APPROVING FEES FOR COMMERCIAL YARD TRASH COLLECTION; PROVIDING AN EFFECTIVE DATE.

President Pro-Tem Shaw moved approval of Resolution 41-97. The motion was seconded by Councilman Wyett. On roll call, the motion carried unanimously.

2. Resolution No. 42-97 - Town Marina Fees

Town Attorney Randolph read Resolution 42-97 by title:

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

President Pro-Tem Shaw moved approval of Resolution 42-97. The motion was seconded by Councilman Wyett. On roll call, the motion carried unanimously.

C. Sealed Bids and Requests for Proposals

1. Request for Proposal No. 97-12 - Public Service Tax/Franchise Fee Audit Services for Telephone and Telephone Related Services

Assistant to the Town Manager Dave Jakubiak reported that audit proposals from three firms had been received and reviewed by Finance Director Demming, Purchasing Agent Boggs, and himself. The results were included in the back up provided today. He noted that there was some new legislation passed (House Bill 1275) that contained many administrative restrictions. When an audit was done and it was discovered that money had been overpaid to a community, the community would have to reimburse the monies to the provider. He recommended that Public Resources Management Group, Inc. be retained to conduct the audit.

President Pro-Tem Shaw moved approval of Proposal 97-12. The motion was seconded by Councilman McDonald. On roll call, the motion carried unanimously.

D. Other

1. Consideration of D-14 Stormwater Pump Station Fines from South Florida Water Management District to be Paid by the Town and Reimbursed by Murphy Construction Company and Lanzo Construction Company

Town Attorney Randolph reported that there had been some alleged violations of water quality standards relating to the D-14 Pump Station. Town Staff had been working with South Florida Water Management District (SWFMD) staff for a long period of time regarding the associated fines, which had been negotiated down to 20,800, plus $2,213.80 in investigative costs. It was staff recommendation that the fines be paid, with the intention of being reimbursed from the contractors associated with the violations. It was anticipated that the Town would bear one-third of the cost of the $8,000 fine attributable to Murphy Construction, however, the remainder of the fines would be charged back to the contractors and/or engineers involved in the project. Mr. Randolph presented a Consent Agreement that had been drafted by himself as well as the attorney for SWFMD.

Councilman Wyett moved approval of payment of the D-14 Stormwater Pump Station fines. The motion was seconded by President Pro-Tem Shaw. On roll call, the motion carried unanimously.

2. Consideration of Potential Staff Study to Create a Substation South of Lake Worth Bridge for the Purpose of Offering Paramedic and Fire-Rescue Services to Neighboring Communities

President Pro-Tem Shaw suggested that it would be beneficial to the Town and its residents to establish a larger scope of paramedic and fire rescue services by including neighboring communities.

Town Manager Doney remarked that one concern of providing services to other communities was a clarity of service issue; there should be a separate facility with separate manning, so that there would be no first response issues.

Fire Chief Elmore addressed the Town Council, stating that he would hesitate recommending taking on another entity and the addition of another unit. He explained that 90% of the Fire-Rescue budget was personnel costs. There were five units, and the budget was $6,000,000, which resulted in approximately $1,000,000 per unit. If another unit was added, another $1,000,000 would be added to costs.

President Pro-Tem Shaw suggested this issue be tabled for the time being, and there was no action taken by the Town Council.

3. Consideration of Traffic Flow Modifications on South County Road (East Side) North of Royal Palm Way

Police Chief Terlizzese addressed the Town Council, stating that signage was in place, regulations for traffic control were in place, and the area had been monitored on a daily basis. At this time, there was no need for modifications.

4. Consideration of Proposed Change to the Town's Travel Policy for Town Staff for Mileage Reimbursements

Personnel Director William Crouse reported that he had reviewed State Law regarding travel reimbursements and subsistence, finding that changes had occurred since the Town last changed its travel policy in regard to payment for mileage, which had been raised to $.29 per mile. He recommended that the Town mileage rate be increased to conform to the minimum State standards.

Councilman Wyett moved approval of the $.29 mileage reimbursement. The motion was seconded by Councilman McLendon. On roll call, the motion carried unanimously.

XII. COMMENTS OF THE TOWN COUNCIL MEMBERS

President Pro-Tem Shaw commented that the report concerning parking meters had been received, and hoped that would be a starting point to review the continued parking problems in the Town.

XIII. APPROVAL OF WARRANT LIST AND FUND EXPENDITURES FOR JULY 1997

President Pro-Tem Shaw moved approval of the Warrant List and Fund Expenditures for July, 1997. The motion was seconded by Mr. McLendon. On roll call, the motion carried unanimously.

XIV. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of July 23, 1997 - Minutes Available in Town Manager's Office

The major matters discussed at the Architectural Commission at the Meeting of July 23, 1997 were as follows:

A. Deferrals and Continuations - Major Projects

B16-97 Application by James Woolems, 1080 North Ocean Blvd., for demolition of existing residence and construction of new residence - deferred.

B45-97 Application by Euro Homes, 232 Everglade Avenue, for new luxury duplex - approved.

B51-97 Application by Michael Burrows, 1030 North Lake Way, for new single family residence - approved.

B53-97 Application by Michael Burrows, 1020 North Lake Way, for new single family residence - approved.

B54-97 Application by Edward D. Lewis, Trustee, 220 Kawama Lane, for new residence - deferred.

B. New Business - Major Projects:

B60-97 Application by Ms. Carol Oelsner, 369 South Lake Drive, to replace an existing canopy/awning roof with a permanent cast-in-place concrete roof and replace existing perimeter window units with new units - approved.

B61-97 Application by Mr. and Mrs. Michael Picotte, 220 Sanford Avenue, for one story addition, relocate existing cabana, new loggias, pergolas and trellis areas - approved.

B62-97 Application by William Koch, 974 South Ocean Blvd., for new residence - deferred.

B63-97 Application by Karen and Martin Berger, 735 Hi-Mount Road, for existing house to be partially demolished, new additions and interior renovations - approved.

B64-97 Application by F. Eugene Dixon, 220 El Vedado Road, for construction of new two story brick and limestone residence - approved.

B69-97 Application by Kenn Karakul and James Held, 754 South County Road, for demolition of existing residence and construction of new residence - approved.

B65-97 Application by Violet Hill Development, 614 Tarpon Way, for addition of a maid's room (436 s.f.) - approved.

B66-97 Application by Martin Atkins/Boston Homes, 201 Monterey Road (215 Monterey Road) for demolition of the single family homes at 201 Monterey Road, and 215 Monterey Road and construct a new single family Bermuda style home - approved.

B67-97 Application by Bankers Trust Florida c/o Paul Thibadeau, 60 Blossom Way, for demolition of existing one story single family dwelling - approved.

B68-97 Application by Robert E. List, Trustee, 238-240 Sunrise Avenue, for demolition of all buildings on site and construction of 46-48 parking space area - deferred.

President Pro-Tem Shaw moved approval of the Minutes of the Architectural Commission of July 23, 1997. The motion was seconded by Councilman McLendon. On roll call, the motion carried unanimously.

B. Appeals

1. Consideration of Appeal of the Landmarks Preservation Commission to Undesignate 150-A Australian Avenue; Request by Quilty Properties, Inc. *(Deferred from May 13, 1997, June 10, 1997, and July 8, 1997)* - **Request for Deferral to September 9, 1997, per letter dated August 6, 1997, from Mr. James R. Brindell**

THIS ITEM WAS DEFERRED TO THE SEPTEMBER 9, 1997, TOWN COUNCIL MEETING.

2. Consideration of Appeal of the Architectural Commission's Decision of June 25, 1997, Regarding 127 Oceanview Road; Request by Mr. Raymond W. Royce for Mr. Skip Gozzo *(Deferred from July 8, 1997)* - **Request for Deferral to September 9, 1997, per letter dated August 1, 1997, from Mr. Raymond W. Royce**

THIS ITEM WAS DEFERRED TO THE SEPTEMBER 9, 1997, TOWN COUNCIL MEETING.

C. Time Extensions

1. Consideration of Request for a Time Extension for Special Exception No. 17-96 with Variance, 910 South Ocean Boulevard by Mr. Francis X. J. Lynch on behalf of Mr. Fred Kriz

Attorney Frank Lynch addressed the Town Council, requesting a time extension for commencement of construction of the variance approved at the September, 1996 meeting. Mr. and Mrs. Kriz believed that the variance added value to the property.

Councilman Wyett stated that special consideration had been given to this variance because the Council liked what was being built and the property owner had agreed to greater setbacks. Since the property was for sale, the new owners could approach the Town Council.

Director of Building, Planning, & Zoning Robert Moore commented that the time extension was being requested only to create a benefit in selling the property, and that had not been considered as a reason for granting time extensions in the past.

Attorney Lynch replied that the owner was given approval to build one house on two lots, which was a benefit to the Town. Granting the extension would allow a purchaser to proceed without having to appear again before the Town Council.

President Smith noted that the requirements placed on the variance had been placed on the particular structure proposed by Mr. Kriz, which had not yet been before the Architectural Commission. A new owner would most likely not be building that specific house, and Mrs. Smith saw no reason for the Town Council to extend a variance on a structure that had not been approved.

Attorney Lynch replied that the variance was for a transfer of grade, because there was a ridge on the property which was above the crown of the road (a point of measurement variance).

Councilman Wyett moved denial of the time extension. The motion was seconded by President Pro-Tem Shaw for discussion.

President Smith asked if the extension would guarantee that the property would not be divided, with only one house being built?

Attorney Lynch replied that it would, unless the Town Council was approached again.

President Pro-Tem Shaw pointed out that if the lots were divided and houses were built purely within code there would be no need to come back to the Town Council.

President Smith clarified that the consideration of the time extension would then not guarantee one house on the property.

Attorney Lynch agreed.

On roll call, the motion to deny carried unanimously.

D. Variances, Special Exceptions, and Site Plan Reviews

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

Old Business

1. Special Exception No. 8-97 - Palm Beach Public School and the Baptist Church in Palm Beach, tenant, 240 Cocoanut Row - Review Sunday Morning Operations *(Deferred from May 13, 1997)*

Reid Moore, on behalf of the Palm Beach Public School and the Baptist Church requested final approval of Special Exception 8-97 to operate the Baptist Church in the school cafeteria facility. It had been operative since tentative approval had been given in May, without incident.

Director of Building, Planning & Zoning Moore reported that there had been no complaints on the operation of the church in the cafeteria, and staff had no objection.

Councilman Wyett moved approval of Special Exception 8-97. The motion was seconded by Councilman McLendon. On roll call, the motion carried unanimously.

New Business

2. Variance No. 18-97 - Debra Rachlin, 230 Chilean Avenue; located in the R-A Zoning District; to allow the transfer/continuation of the approval granted for the kitchen facility in the garage guest house to new owner.

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

Greg Cohen, on behalf of Debra Rachlin, addressed the Town Council, stating that she had recently purchased the property, and prior to her purchase a kitchen facility had been placed in a cottage attached to the residence. The request today was to keep the kitchen facilities in the cottage for the use of guests or family members staying in the cottage.

Director of Building, Planning & Zoning Moore reported that the application for the kitchen facility had been granted in 1979 by way of variance. The cottage could not be rented and must be used for family or domestic employees, with a Standard Kitchen Agreement being signed and recorded.

Councilman Wyett moved approval of Variance 18-97. The motion was seconded by Councilman McLendon.

President Pro-Tem Shaw questioned the use of a variance, since the present zoning required the use of a Special Exception in this case.

In response to the query of President Pro-Tem Shaw, Zoning Administrator Castro explained that because this was a condition of approval of an original variance, the same instrument was used to obtain approval to keep the kitchen in existence, in accordance with the agreement that was originally recorded.

Town Attorney Randolph suggested that the title of the current request should be changed to "Special Exception," since the ordinance had changed.

Mr. Moore clarified that from now, when there was a change of title, the old Variance requests would now come to the Town Council as Special Exceptions.

On roll call, the motion carried unanimously.

3. Variance No. 22-97 - M. H. Goodman, Trustee, 911 North Ocean Blvd.; located in the R-A Zoning District; to allow construction of structural reinforcement to existing seawall on the waterward side (east of Town bulkhead line) with variances to Zoning Code Section 6-18(a)(1) Location and Alignment, and Section 6-18(a)(2) Projections.

Attorney James Brindell, on behalf of M. H. Goodman, addressed the Town Council stating that Mr. Goodman had become concerned about the erosion of and in front of the seawall on his property and was hoping to reinforce it to withstand the forces of storms. Mr. Goodman had engaged an engineer to design an addition to the face of the seawall, which would become part of the existing seawall and would reinforce it. Mr. Brindell explained the reasons for the variance request.

Director of Building, Planning & Zoning Robert Moore gave the following staff comments: Town Engineer: no objection; cannot determine if proposed structure would be detrimental to adjacent beaches. Building Department: no objection. Town Manager: suggest Town Engineer comments should be addressed.

Town Engineer Bowser addressed the Town Council, explaining that in order to determine the impact to adjacent properties an opinion from a coastal engineer would be needed.

Mr. Brindell commented that Mr. Lockness, an engineer who designed coastal systems, designed the plans, however, he did not know what qualified an engineer as a coastal engineer.

Mr. Bowser explained that the shape of the structure could increase wave refraction or in some way cause a problem to the beach that could affect adjacent beaches, however, he did not have the experience to give an opinion. The Town of Palm Beach had three coastal engineers on retainer, and the owners could choose to select one to request an opinion.

Mr. Brindell stated that the project would have to be approved by the Department of Environmental Protection (DEP), however, if the Town Council directed that an independent coastal engineer give an opinion, that could be accomplished.

Mr. Moore commented that the State would not proceed with its review and permit application until the Town agreed that all Zoning Ordinances had been met. He suggested that this item be narrowed to the zoning issues, leaving the issue of the configuration of the seawall to the State and the review of Mr. Bowser.

Councilman Wyett moved approval of the zoning issues regarding Variance 22-97. The motion died for lack of a second.

After discussion, President Pro-Tem Shaw moved approval of Variance 22-97 with the following conditions:

1. A coastal engineering report would be submitted to the satisfaction of the Town Engineer.

2. The proposed construction would have no effect on neighboring properties.

3. Approval of the Department of Environmental Protection (DEP).

4. Public passage on the beach would not be impaired.

The motion was seconded by Councilman McDonald. On roll call, the motion carried 4/1, with Councilman McLendon casting a negative vote.

4. Variance No. 23-97 - Palm Beach Country Club; 760 North Ocean Blvd.; located in the R-A Zoning District; to allow construction of a 40' extension to the existing site wall along North Lake Way at south side of the Country Club property at a height of 11' in lieu of 6' allowed.

Ex-parte communication was declared by Councilman McLendon with Mr. Goldsmith.

Attorney Frank Chopin, representing the Palm Beach Country Club, addressed the Town Council, exhibiting a drawing of the proposed project. He defined the hardship as the topography of the land, which rose very quickly, elevating the 6' wall to the height of 11'. He explained that the reason the wall was necessary was because of water and drainage issues affecting the road. Landscaping would be provided with the wall, according to the landscaping plan presented.

Director of Building, Planning, & Zoning Robert Moore gave the following staff comments: Town Engineer: sufficient distance between right-of-way line and wall to allow plantings. Plantings cannot overhang right-of-way. Building Department: no objections, with landscaping. Town Manager: Concurs with comments.

Joe Cologne, of Schwab & Twitty, addressed the Town Council, stating that the plan was to landscape with palm trees and low shrubbery to conceal visibility of the wall.

Councilman Wyett moved approval of Variance 23-97. The motion was seconded by Councilman McLendon. On roll call, the motion carried unanimously.

5. Variance No. 24-97 - Mr. & Mrs. Allen D. Scherer, 417 Primavera Way; located in the R-B Zoning District; to allow construction of a pool cabana with a 5' rear yard setback in lieu of 10' required.

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

Attorney Robert Deziel, representing the applicant, addressed the Town Council, presenting a drawing of the proposed construction. He incorporated the application submitted by reference, and highlighted details of the application: the property was extremely oversized for the Zoning District (approximately 30,000 s.f. where 10,000 s.f. was required); the hardship was that a literal interpretation of the Zoning Ordinance would deprive the applicant of the rights commonly enjoyed by others, as well as the "spite strip," which was a 7' wide piece of property on the north side of the Scherer property, lying between the right-of-way on the north and the Scherer property on the south.

Director of Building, Planning & Zoning Robert Moore gave the following staff comments: Building Department: handout indicated a previously proposed structure, which had been approved March 11, 1963. At that time the setback was 5' for accessory structures. The "spite strip" referred to in the hardship was also known as a "nuisance strip." He noted that the structure could either be located to the south, or to the west, however, Mr. Deziel had indicated that was not possible because of the location of formal gardens.

Mr. Deziel noted that the structure was called an "open structure" according to the Zoning Ordinance, which required a 10' rear yard setback instead of the usual 15'.

Mr. Moore noted that a condition of approval would need to be recorded, stating that the structure would always stay open, which Mr. Deziel agreed to.

President Pro-Tem Shaw moved approval of Variance 24-97, with the conditions that the cabana would not be enclosed, nor used as living space, with the hardship being the change in Zoning laws, and the "nuisance strip" location. The motion was seconded by Councilman Wyett. On roll call, the motion carried 4/1, with Councilman McDonald casting a negative vote.

6. Revised Special Exception No. 23-97 - Galaxy Grill, 350 South County Road; located in the C-TS Zoning District; application was revised to include request for permission to provide supplemental off-site shared parking at the Gray's Mobil Station lot, 340 South County Road.

Ex-parte communication was declared by President Pro-Tem Shaw with owner Maurizio Ciminella on the original application; by Councilman Wyett with Jesse Newman and Maurizio Ciminella.

Attorney James Brindell, representing Galaxy Grill, addressed the Town Council, stating that the Agenda item was somewhat confusing as the revised application did not delete the shared parking, but deleted the original request for additional space. All that was being requested was shared parking, using the parking lot at the Gray's Mobil Station for supplemental parking. Mr. Brindell displayed a graphic representation of the area in question, with 42 parking spaces. The Town had been provided with a letter from Traffic Engineer Jerry Wentzel, of DKS Associates, stating that there would be no conflict between the demand for parking by the Mobil Station and Galaxy Grill. The Mobil Station closed at 6 P.M. in the off-season, and 9 P.M. in the season.

Zoning Administrator Paul Castro gave the following staff comments: The site met Town Zoning Ordinance requirements. The site could not be over-utilized, nor conflict with the existing operation of the service station. There had been concerns raised from the Fire Department regarding the excessive amount of noise as patrons left the premises, vehicles being parked in front of the fire stations, and possible relocation of the valet area to the south in order to eliminate traffic circulation problems with emergency equipment leaving the fire station.

President Pro-Tem Shaw expressed concern over fuel deliveries at night at the Mobil Station, and suggested that an agreement could be made stipulating that there would be no fuel delivery before 2 A.M. in order to allow cars to be parked without disturbance. He asked if there had been any consideration to using Australian as a pick-up point for the valet service or relocating the valet stands further south?

Mr. Brindell replied that the valet operation itself had not been an issue of this request, although Mr. Ciminella would be happy to discuss it with the Town.

Police Chief Terlizzese stated that he was happy to hear about the shared parking situation. The valet system was working well, and he did not recommend a change at this time. He recommended approval of the request for the shared parking.

Fire Chief Elmore stated the shared parking would probably alleviate the stacking problem, as well as the noise and parking in front of the fire station.

Councilman McDonald moved approval of Special Exception 23-97. The motion was seconded by Mr. Wyett. (Per discussion, the motion included the following: there would be no fuel deliveries before 2 A.M. at Gray's Mobil Station, the applicant would return in six months with an update of the situation; the applicant would resolve valet parking issues with Chiefs Elmore and Terlizzese).

Town Manager Doney expressed concern over emergency vehicles accessing South County Road, and recommended moving the loading/unloading zone south.

Mr. Brindell stated that was agreeable.

Police Chief Terlizzese disapproved of the relocation south, stating that it would create more stack parking.

President Smith suggested that monitoring of the crowds and parking in front of the restaurant would need to be done by Mr. Ciminella, that the Special Exception could be approved for six months, and then Mr. Ciminella could come back after the holiday season to see how it was working.

Mr. Ciminella would work with both the Police Chief and Fire Chief to work out the best valet loading/unloading system.

On roll call, the motion carried unanimously.

7. Special Exception No. 24-97 With Site Plan Review & Variances - Testa's, 231 & 235 Sunset Avenue; located in the C-TS Zoning District; to allow construction of parking lot where two boarding houses now exist. Variances requested are 1) a walkway 5' in width in lieu of 10' required per Sec. 4.20, A Footnote 3; and 2) relief from a requirement for a wall or hedge for sight screening at the rear (north) side of property.

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

Attorney Frank Lynch, on behalf of Testa's, addressed the Town Council, requesting 1) approval to create a parking lot with 35 spaces; 2) in order to create the lot it would be necessary to demolish three existing rooming houses; 3) a sidewalk of less than 10' as required by code; 4) a variance to eliminate the requirement for a wall or hedge for sight screening at the rear side of the property. The concern was that the easement existing on the north side of the property along with the wall would create a tunnel effect, which would allow individuals to hide behind the sight screening, jeopardizing public safety. In addition, the property backed up to a parking garage, which was the only property that would be sight screened.

Director of Building, Planning & Zoning Robert Moore gave the following staff comments: Police Department: Approved if off-street parking would be assisted; Comprehensive Plan: Town density being reduced; Town Engineer: provide one-inch storm water retention on site before discharge to the Town system; no hedge and wall on rear easement support; lowered hedge at the driveway entrance; Building Department: no objection to use; no objection to south variance obstruction; no hardship for the north variance; Town Manager: concurred with staff comments.

Councilman Wyett commented that a few palms could be added to the rear hedge to create a pleasing appearance; a few parking spaces could be given up to add palms in between where cars would park in order to create a more pleasant appearance.

Mr. Lynch responded that the Town Code required a 4' buffer on each property line, so there was a substantial amount of green space.

Zoning Administrator Paul Castro noted that if two parking spaces were eliminated there would be additional room on the north side of the parking lot to provide an additional landscaped area, and the north variance would no longer be necessary.

Councilman McDonald moved approval of Special Exception 24-97, with the conditions that at least two spaces on the east/west side be planted in palm trees, with a hedge being added on the north side. The motion was seconded by President Pro-Tem Shaw for discussion.

President Pro-Tem Shaw expressed opposition to the parking lot, as he did not want to see the Town of Palm Beach become an "asphalt jungle."

Attorney Lynch explained that the parking lot would be operated by Testa's, with the idea to make the spaces available to merchants and businesses in the area for customers and employees.

Councilman McDonald incorporated the comments on drainage from the Town Engineer into the motion.

Councilman Wyett recommended that one full parking space on each of the three sides be used as planting areas.

Town Engineer Bowser addressed the walkway issue, stating that it would be a policy decision by the Town Council as to whether the sidewalk should conform to the 10' requirement, although the current predominance in the area was 6.5'.

Architect Ken Spina, developer of the property, stated that the lot had been redesigned several times, and the newest proposal included 38.5% landscaping, with hedge on both sides. The hedge had been dropped down at the entrance for safety reasons.

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

Mr. Moore clarified that the existing sidewalks on the street were all approximately 6.5', and zoning codes required that all new construction provide a 10' sidewalk. The applicant was requesting to match the existing sidewalk at 6.5'.

Councilman McDonald moved approval of the sidewalk at 6.5' because of the existing sidewalk specifications, and because of the driveway specifications of the building next door. The motion was seconded by Councilman McLendon.

Councilman Wyett suggested that the motion include approval of the 6.5', with the provision that a 10' sidewalk would be installed if the remainder of the street eventually went to 10' sidewalks, as well as a request to include palm trees being planted in the rear of the lot. Councilman McDonald agreed to add the condition to his motion.

On roll call, the motion carried unanimously.

Attorney Lynch mentioned that a Declaration of Restrictions had been signed in 1983 between Testa's and the Town, when the parking lot was put in for the boarding houses, which indicated that the parking spaces in the lot at that time would not be leased. The thought had been that the Town wanted to prevent spaces from being leased to other businesses.

Councilman McDonald moved that the Deed Restriction be removed from the property. The motion was seconded by Councilman McLendon. On roll call, the motion carried unanimously.

8. Special Exception No. 26-97 With Site Plan Review & Variance - Robert E. List, Trustee, 238 & 240 Sunrise Avenue; located in the C-TS Zoning District; to allow construction of a parking lot for the Palm Beach Hotel. A variance is requested to allow gate posts at a 14' front yard setback in lieu of 18' required.

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

Civil Engineer Lisa Tropepe addressed the Town Council on behalf of the applicant to request approval for a parking lot for the Palm Beach Hotel. She presented a drawing of the proposed site plan, and explained the proposal: A 44 space parking lot, including two handicapped spaces to be used exclusively for the Palm Beach Hotel, which had over 200 units with no specific allocated parking spaces. There was a definite need in the area. The lot would decrease the amount of traffic along Sunrise. There would be no adverse impact to the adjacent property owners. She noted that Town staff had made suggestions which had been incorporated in the plan, as well as suggestions made by President Pro-Tem Shaw. When the site plan had been revised, it had been found that a variance for the gate posts would no longer be required.

Zoning Administrator Paul Castro remarked that the current plan was acceptable to staff, and he recommended approval.

In response to the query of President Smith, Ms. Tropepe made assurances that there would be a gate at the exit as well as the entrance, both of which would meet the required setbacks, and that the green space closest to Sunrise Avenue would be extended 4.5', with as many trees as possible being planted.

Glenn Smith, agent of Robert List, Trustee, addressed the issue of gates, stating that an automatic metal gate would require an area where the gate would slide into the landscaped area, thus disturbing it, or the gate would need to swing forward. The mechanism for a swing gate would work much more slowly than what was being proposed, and a vehicle would be blocking the sidewalk.

President Pro-Tem Shaw recommended that the gates be sliding or swing open.

Glenn Smith requested a 4-5' height maximum on the gate structure.

Councilman Wyett remarked that he could not agree with the gate situation, as he was concerned with the length of time a gate would take to open, resulting in a public safety issue.

President Pro-Tem Shaw moved approval of Special Exception 26-97 with Site Plan Review, with the conditions that the green space closest to Sunrise Avenue be extended 4.5'; that in lieu of an arm gate; a sliding or bi-fold opening gate structure be used not to exceed the code height on both entrance and exit sides; that there be as many trees as possible planted on the property. Councilman McDonald seconded the motion.

President Smith clarified that the parking lot was for the use of the Palm Beach Hotel residents only, and not for the dining room and the nightclub.

Glenn Smith explained that a provision had been included in the proposed Lease Agreement that there would be no shared parking permitted.

On roll call, the motion carried 4/1, with Councilman Wyett casting a negative vote.

9. Special Exception No. 27-97 - Martin A. List, Trustee, 126 North County Road; located in the C-TS Zoning District; to allow 2,500 sq.ft. occupancy for a retail/sales use to The Fortress Corp. who provides services and storage for artwork, in lieu of 2,000 maximum sq.ft. allowed.

Glenn Smith, on behalf of Martin A. List, Trustee, 126-132 North County Road, addressed the Town Council, requesting an increase in usable square footage from 2,000 sq.ft. to 2,550 sq.ft. The proposed tenant was a Boston based company, The Fortress Corporation, who wished to provide services and storage for museum quality artwork, to include Palm Beach residents and local trust companies. He explained that there would be gallery space where consigned artwork could be placed for sale, some restorations would be done, appraisals would be done, and private viewings and showings for specific clients would be offered. The space had been closed for numerous years, and the additional 550 sq.ft. of space was already existing within the property.

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

Zoning Administrator Castro gave the following staff comments: This was an existing tenant space that had been vacant for some time, and the space was approximately 2,500 sq.ft. If the applicant could provide suitable Town serving documentation, staff had no objection to the request.

Councilman McDonald moved approval of Special Exception 27-97. The motion was seconded for discussion by Councilman McLendon.

Mr. Smith replied that a market study report had been included with the application, showing support as Town serving, and additional documentation could be provided at a later date.

Mr. Castro explained that the market study report would meet the requirements, if satisfactory to the Town Council. At the time of renewal of occupational license, a more detailed analysis of Town serving documentation would be required.

President Smith remarked that she had reviewed the market study, which had appeared to be a generic study without going into specifics.

Mayor Ilyinsky commented that it was very unusual not to have a representative of the proposed tenant present.

Director of Building, Planning & Zoning Robert Moore expressed concern that a realtor was being asked to obligate a tenant to a Town serving contract, with the tenant having no idea of what constituted Town-serving, although the realtor had not been advised to have the tenant present. He suggested that Special Exception 27-97 be deferred to the September Town Council Meeting when the tenant could be present.

Councilman McDonald withdrew his original motion, and moved deferral of Special Exception 27-97 to the September 9, 1997 Town Council Meeting. Councilman McLendon withdrew his second to the original motion, and confirmed the second to the current motion.

Martin A. List, owner of the property, suggested that approval could be given, with the requirement that the tenant would agree fully to all terms required.

Mr. Moore commented that the Building Department, in the spirit of cooperation, would agree to process any plans immediately, so that the permit could be issued instantly after the next Town Council meeting if the Special Exception was approved.

On roll call, the motion carried unanimously.

10. Special Exception No. 28-97 With Variance - Mr. & Mrs. Norman G. Peslar, 100 Emerald Beach Way; located in the R-AA Zoning District; to allow installation of driveway gates setback 10' in lieu of 18' required; and to allow said gates and pillars at a 12' height in lieu of 8' maximum allowed.

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

Attorney Robert Deziel addressed the Town Council, representing the applicant, requesting deferral of the application at this time. He explained that he had received a phone call from a neighboring property owner objecting to the project, and that today he had learned that there was a letter of objection in the record.

Councilman McDonald moved deferral of Special Exception 28-97. The motion was seconded by Mr. Shaw.

Director of Building, Planning & Zoning Robert Moore gave the following staff comments: Comprehensive Plan: no hardship other than approximately 6" of location; Town Engineer: gates should meet code; Building Department: no hardship; Town Manager: request additional explanation on hardship issue.

Donna Miller, on behalf of Audrey Zauderer, pointed out that Mrs. Zauderer was the sole owner of the property.

On roll call, the motion carried unanimously.

11. Special Exception No. 29-97 - Mr. & Mrs. Jack M. Friedman, 901 North Ocean Blvd.; located in the R-A Zoning District; to allow an accessory kitchen facility per Sec. 5.51(b)(5) and 6.40.

Ex-parte communication was declared by President Pro-Tem Shaw with Mr. Martin Klein, who objected to the application; Councilman McDonald spoke with Mr. Martin Klein, who opposed the application.

Attorney Robert Deziel, representing the applicants, addressed the Town Council, exhibiting a graphic of the property in question. The applicant desired to install a kitchen facility in the guest house for the use of their children and grandchildren.

Zoning Administrator Paul Castro explained that the applicant had not realized that a special exception was needed for an additional kitchen in the facility with the building that was currently under construction. The additional kitchen facility could not be used as a separate rented dwelling unit, but could be used for guests and employees on the premises, with a Standard Kitchen Agreement being entered into. Staff recommended approval of the request on those conditions.

Mr. Deziel advised that the contractor had expressed that there was not a kitchen in any of the guest houses at this time.

Mr. Moore commented that Mr. Klein had raised an objection to the application, and had submitted a letter as it was necessary for him to leave the meeting. Mr. Moore read the letter of objection from Mr. Klein to the Town Council, referring to the need for a site plan review. He noted that the letter was not signed, but had been submitted by Mr. Klein, and explained that the Building Department disagreed with the interpretation of Mr. Klein, and believed that a site plan review was not required for applications of this sort.

President Smith emphasized that a letter that had not been signed, or entered into the record, would never again be read at a Town Council Meeting. In the future, such a letter could be handed to the Town Clerk, circulated, and not read into the record.

Councilman Wyett moved approval of Special Exception 29-97. The motion was seconded by Councilman McLendon.

Zoning Administrator Castro explained that Section 6.40 of the Town Zoning Code required that all special exception uses required site plan review in accordance with Section 9.60. Section 9.60 delineated what was required under site plan review, and stated: "Applications for site plan review shall be filed by the fee simple property owner. The fee simple title owner may authorize a designee, agent, or representative by power of attorney filed with the building official...the application shall include those of the following items deemed to be applicable by the building official." In this case, the formal site plan was not considered appropriate, given the intent of Special Exception 29-97 for an additional kitchen.

Mr. Moore noted that it had been Town policy, and was discretionary in the Zoning Ordinance for the building official to make the determination as to what should be brought before the Town Council in regard to the site plan review.

On roll call, the motion of approval, with the condition of the signing of a Standard Kitchen Agreement in only one guest house, only used by employees/guests/children/grandchildren, carried unanimously.

12. Site Plan Review No. 6-97 - Salomon Dayan, 476 South Ocean Blvd.; located in the R-A Zoning District; to allow construction of a new two-story residence on a lot 14,996 sq.ft. in lieu of 20,000 required and having a width of 100 ft. in lieu of the minimum 125 ft. required.

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

Designer Brian McCarron, representing the applicant, addressed the Town Council, requesting permission to build a two-story structure of approximately 5,970 sq.ft. on the property that would meet all percentages and requirements issued for the R-A Zoning District.

Zoning Administrator Castro gave the following staff comments: The utility easements were not shown on the Site Plan, which needed to be addressed, as well as the lot size/coverage.

Councilman McDonald moved deferral of Site Plan Review 6-97 to the September 9, 1997 Town Council Meeting. The motion was seconded by Mr. Wyett. On roll call, the motion carried 4/0, as President Smith had temporarily left the meeting.

E. Other

1. Consideration of Request for Waiver to Sections 12-51 and 5-22 of the Town Code of Ordinances, Hours of Construction Work, by Mr. Wes Steen for Spa Thiera, 230 Worth Avenue

Mr. Wes Steen of Seawood Builders, Inc. addressed the Town Council, requesting a waiver of construction hours, since the project could not be completed within the desired time without an extension of work hours. He explained that there had been many zoning requirements that had to be met.

Director of Building, Planning & Zoning Robert Moore stated that extended working hours had been requested through the attorney for Spa Thiera, which had been granted, however, the former construction company had opted not to work those hours. Now, Mr. Steen was taking the project over to finish it, and was requesting additional working hours. The deadline for completion of work on Worth Avenue was November 15th, and staff saw no reason to grant extended working hours, since the applicant had stated that the work could be finished by the second week of September.

President Smith clarified that the Town Council had given the applicant every extension requested.

Councilman McDonald moved denial of the request for waiver to Sections 12-51 and 5-22 of the Town Code of Ordinances, Hours of Construction Work. The motion was seconded by President Pro-Tem Shaw. On roll call, the motion carried unanimously.

2. Reminder of Deadline of September 5, 1997, for 1997/98 Zoning Season Study Items

Director of Building, Planning & Zoning Robert Moore reminded all that all zoning study items should be submitted before September 5, 1997 so that the final list could be presented at the September 9, 1997 Town Council Meeting.

President Smith requested that a preliminary list of study items be submitted as soon as possible, which Mr. Moore agreed to do.

XV. ANY OTHER MATTERS

There were none.

XVI. ADJOURNMENT

The meeting was adjourned at 6:35 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
9/2/97

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

LAST NAME—FIRST NAME—MIDDLE NAME Wyett, Allen S.	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE 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: Town of Palm Beach
DATE ON WHICH VOTE OCCURRED 8/12/97	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, ______________________, hereby disclose that on ______________________, 19 ____:

(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:

appearance of water company before the Town Council or Water Committee

8/12/97
Date Filed

[signature]
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.