MINUTES OF THE TOWN COUNCIL MEETING HELD ON AUGUST 11,1998

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Pro-Tem McLendon at 9:30 A.M. on August 11, 1998 in the Town Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Pro-Tem Samuel McLendon, Councilman Jack McDonald, and Councilman Allen Wyett. President Lesly Smith arrived at 9:40 A.M. Councilman Shaw was absent from the meeting. 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, Chief Code Compliance Officer Brian House, Finance Director James Demming, Fire-Rescue Chief Ken Elmore, Planner/Projects Coordinator Tim Frank, Planning, Zoning & Building Director Robert Moore, Zoning Administrator Paul Castro, Police Chief Frank Croft, Public Works Director Al Dusey, 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 William Stokes of Bethesda by the Sea Church. President Pro-Tem McLendon led the Pledge of Allegiance.

III. COMMENTS OF THE MAYOR

There were none.

IV. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

Withdraw Item XII. A. - De-designation of an historic/Specimen Tree at 151 Via Bellaria- per letter dated August 3, 1998, from Mr. Mike Busacca, Owner's Agent.

Councilman McDonald moved approval of withdrawal of Item XII.A. - De-designation of an Historic/Specimen Tree at 151 Via Bellaria; Resolution No.28-98. The motion was seconded by Councilman Wyett, and carried 3/0, as President Smith had not yet arrived at the meeting, and Councilman Shaw was absent from the meeting.

Defer Item XVII. C. 2. - Special Exception No.9-98 - The Poinciana club, Inc.; (Deferred to September 8, 1998, per letter from Mr. James R. Brindell).

Councilman Wyett moved approval of deferral of Item XVJI.C.2. - Special Exception No.9-98, to the meeting of September 8, 1998. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

Defer Item XVII.C.3. - Site Plan Review No.7-98 with Special Exception and Variances -The Beach Club, Inc. and Dr. Gary Marder (Deferred to September 8, 1998, per letter from Mr. Ronald K. Kolins).

Councilman Wyett moved approval of deferral of Item XVII.C.3. - Site Plan Review No.7-98 with Special Exception and Variances, to the September 8, 1998, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

Defer Item XVII.C.4. - Variance No.30-98 - Arthur Levine, 355 North Lake Way (Deferred to September 8, 1998, per letter from Mr. Ronald K. Kolins).

Councilman Wyett moved approval of deferral of Item XVII.C.4. - Variance No.30-98, to the September 8, 1998, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting..

Defer Item XVII.C.6. - Special Exception No.16-98 with Site Plan Review & Variances
New Technology Business S.A., 1226 North Lake Way (Deferred to September 8, 998,
per letter from Mr. Ronald K. Kolins).

Councilman Wyett moved approval of deferral of Item XVII.C.6. - Special Exception No. 16-98 with Site Plan Review & Variances, to the meeting of September 8, 1998. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

Defer Item XVII.C.7. - Variance No.32-98 - Eric & Ann Fishman, 143 Clarendon Avenue (Deferred to September 8, 1998, per letter from Mr. James R. Brindell).

Councilman Wyett moved approval of deferral of Item XVII.C.7. - Variance No.32-98, to the meeting of September 8, 1998. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

The Agenda, as revised, was approved through motion of Councilman Wyett; seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

V. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

There were none.

APPROVED AGENDA

VI. APPROVAL OF MINUTES OF JUNE 4, AND JULY14 AND 30,1998

VII. APPROVAL OF CHECK REGISTERS FOR JULY 1998

VIII. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF JULY 22, 1998

IX LICENSES AND PERMITS

A. Charitable Solicitations

1. American Cancer Society; No.19-99
2. American Committee for the Weizmann Institute of Science; No. I51-99
3. Community Foundation for Palm Beach & Martin Counties;.221-99
4. Epilepsy Foundation of the Palm Beaches; No.344-99

X. SEALED BIDS

A. Sealed Bid No.98-15 - Collection of Compacted Garbage

XI. OTHER

A. Proposed Donations from Law Enforcement Trust Fund to Boy Scouts of America (Gulf Stream Council, Inc.) and Criminal Justice Academy Magnet Program per Memorandum dated July 30, 1998, from Police Chief Croft

B. Proposed Expansion of Permit Parking Program to Include the Metered Spaces on the West Side of South Ocean Boulevard Between Royal Palm Way and Hammon Avenue per Memorandum dated July 31, 1998, from Finance Director Demming

The Approved Agenda (Items VI. Through XI.) was approved through motion of Councilman Wyett; seconded by President Pro-Tem McLendon. On roll call the motion carried 410, as Councilman Shaw was absent from the meeting.

REGULAR AGENDA

XII.. PUBLIC HEARINGS

A De-designation of an Historic/Specimen Tree at 151 Via Bellaria; Resolution No.28-98 (Deferred from June 9, and July 14, 1998) - Request for Withdrawal per letter dated August 3, 1998, from Mr. Mike Busacca

This item was withdrawn earlier in the meeting.

XIII. COMMITTEE REPORTS

A. Ordinances, Rules, and Standards Committee Report of July 30, 1998

REPORT OF THE ORDINANCES, RULES, AND STANDARDS COMMITTEE MEETING HELD ON JULY 30, 1998

I. CALL TO ORDER AND ROLL CALL

A meeting of the Ordinances, Rules, and Standards Committee was called to order by Chairman Sam McLendon at 10:34 a.m. on Thursday, July 30, 1998, in the Town Council Chambers. On roll call, Chairman McLendon and Committee Member Jack McDonald were found to be in attendance. Other Elected Officials attending the meeting were Mayor Paul Ilyinsky and Town Council President Lesly Smith. Also attending for all or part of the meeting were: Town Manager Robert Doney; Assistant Town Manager Peter Elwell; Assistant to the Town Manager David Jakubiak; Attorney Tracy Schneider, representing Town Attorney John Randolph; Police Chief Frank Croft; Zoning Administrator Paul Castro; Chief Code Compliance Officer Brian House; Public Works Facility Maintenance Division Manager Joe Ugi; and Town Clerk Mary Pollitt.

II. APPROVAL OF AGENDA

The agenda was approved as printed.

III. REGULATION OF NEWSPAPER RACKS

Representatives from the news media addressed the Committee regarding their views on the possible changes to the Town's ordinance. They were Barbara Bolton-Litten, Counsel to the Palm Beach Post and the Palm Beach Daily News; Bruce Walkup, President of South Florida Newspaper Network; and Darrell Brotherton, S. Florida General Manager, USA Today.

The Committee reviewed the ordinances and the appearance of newspaper racks from other municipalities. Town Attorney Randolph's June 9, 1989, and July 28, 1998, letters were reviewed and the policy issues were considered and discussed at length.

Mr. McDonald suggested that before the ordinance is revised or a new ordinance is prepared, direction be given to the staff to provide information on site locations-- determine where enclosures could be used (the boxes would be facing away from the street); identify areas where enclosures could not be used and consider using modules; look at intersections where three or four corners are occupied by boxes with the possibility of using only one corner; and identify costs of the enclosures and the modules and report the findings to the O.R.S. Committee. Mr. McDonald said after that information was obtained, the O.R.S. Committee could decide if it would be appropriate to write a new ordinance, revise the existing ordinance, or do nothing. He added that in order of priority, aesthetics were his first concern, location was second, and cost was third. The cost was a lower priority because there were options for how the costs could be handled. Stanley Silken, Co-Chairman of the Citizens Association, offered to help raise funds for the newsracks.

Code Enforcement Officer Brian House reported he did not have the right to enforce the removal of any boxes if they were not maintained in a proper manner voluntarily under the current ordinance.

After a lengthy discussion of the newsrack ordinance, **THE COMMITTEE RECOMMENDED THE ISSUE BE REFERRED TO THE STAFF FOR FURTHER RESEARCH AND A REPORT. SPECIFICALLY, THE STAFF SHOULD RESPOND TO THE QUESTIONS RAISED IN MR. RANDOLPH'S LETTER DATED JUNE 9, 1998, AND THE COMMENTS OF THE MEDIA MADE AT THIS MEETING IN TERMS OF WHAT THE MEDIA WOULD LIKE TO SEE AND WHAT WOULD BENEFIT THEM WITHOUT HARMING THE TOWN. INFORMATION SHOULD BE OBTAINED IN TERMS OF AESTHETICS, LOCATION, AND COSTS. THIS INFORMATION SHOULD BE COORDINATED WITH MR. RANDOLPH'S OFFICE IN TERMS OF REGULATION AND THE MANNER THE BOXES COULD BE PLACED.**

Mr. McDonald said his preference would be to work out all of the details of this issue prior to considering the drafting or revising of an ordinance.

IV. PROPOSED AMENDMENTS TO THE HISTORIC/SPECIMEN TREE ORDINANCE

(At the Special Town Council Meeting held immediately preceding this Committee Meeting, two possible changes in the ordinance were submitted directly to the Zoning Commission for consideration during the 1998-99 Zoning Season: 1. No building, no foundation, no paving, and no parking of contractors' trucks within a radius of 20 feet of an historic or specimen tree and 2. Historic and Specimen trees and the radius of their roots must be noted as such on all plot plans, site plans, elevations, and applications for variances.)

After hearing the remarks of Town Council President Smith, representing The Garden Club of Palm Beach, the Committee considered the revising of the existing ordinance to include the implementation of a system for levying fines. Discussion followed on the maintenance responsibility and the legal issues related to caring for the specimen trees on private property, as well as the existing wording in the ordinance regarding the fines and 60 days imprisonment for violation of the ordinance.

THE COMMITTEE RECOMMENDED THE TOWN ACCEPT RESPONSIBILITY FOR MAINTAINING THE TREES; THE ORDINANCE BE AMENDED TO REQUIRE DEVELOPERS TO FENCE SPECIMEN AND HISTORIC TREES TO PROTECT THEM DURING CONSTRUCTION WORK; AND LEAVE THE EXISTING FINE SYSTEM IN THE ORDINANCE.

V. PROPOSED AMENDMENTS TO THE COMMERCIAL MOTION PICTURE MAKING ORDINANCE

After discussion and consideration of Town Attorney Randolph's July 28, 1998, memorandum, **THE COMMITTEE RECOMMENDED THAT NO ACTION BE TAKEN ON THIS ISSUE.**

VI. ENFORCEMENT OF TOWN NOISE ORDINANCE

The Committee discussed the interpretation of the existing Code, Section 12-47, regarding the location where the decibel meter readings should be taken. Police Chief Croft and Code Enforcement Officer Brian House provided information related to the decibel levels and the enforcement of this ordinance. Assistant Town Manager Elwell advised the Committee that interpretation and enforcement of the ordinance would depend upon whom the Town was trying to protect. Comments from Gail Coniglio, proprietor of E. R. Bradley's Saloon, were also considered. After discussion, **THE COMMITTEE RECOMMENDED THAT NO RECOMMENDATION BY THE COMMITTEE BE SENT TO THE TOWN COUNCIL BUT THE ISSUE SHOULD BE SUBMITTED TO THE ENTIRE TOWN COUNCIL FOR THEIR DECISION ON THE INTERPRETATION OR INTENT OF THE ORDINANCE.**

VII. POTENTIAL TOWN REGULATION OF JET SKI USE

The Committee considered the comments of Dr. Sten Lilja and reviewed the two petitions submitted by him at the meeting. After lengthy discussion and consideration of the options outlined in Mr. Randolph's July 7, 1998, letter, **THE COMMITTEE RECOMMENDED THAT THE ORDINANCE SHOULD BE REVISED TO INCLUDE THE ENFORCEMENT IN THE NON-CRIMINAL SECTIONS OF FLORIDA STATUTE 327.33 AND HAVE THE STAFF DESIGNATE THE AREAS AND RECOMMEND RESTRICTIONS FOR THOSE AREAS THAT SHOULD BE INCLUDED IN THE ORDINANCE.**

After hearing comments from Police Chief Croft, the Committee agreed with Chief Croft that jet skis would not be prohibited, even on the Atlantic Ocean side, but when the jet skis were within 400 feet, the jet skis would be at idle speed.

Attorney Schneider, after hearing additional comments from Dr. Lilja, said it may be possible for a definition to be crafted specific to the jet ski type of vehicle that would restrict them more than other types of private and commercial vehicles.

Mr. McLendon and Mr. McDonald agreed that the staff and the attorney need to designate the areas, define the ordinance in terms of the limitation of jet skis more than other kinds of water crafts, and indicate what the specific restrictions would be within the designated areas.

VIII. ANY OTHER MATTERS

There were none.

IX. ADJOURNMENT

The meeting was adjourned at 1:30 p.m.

SAM MCLENDON, CHAIRMAN

JACK MCDONALD, COMMITTEE MEMBER

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President Pro-Tem McLendon, as Chairman of the Ordinances, Rules, and Standards Committee, reported that discussion had taken place at the meeting of July 30, 1998, regarding newspaper racks. The Committee then recommended that the issue be referred to staff for further research and a response report, obtaining information in terms of aesthetics, locations, and costs, coordinating all information with Attorney Randolph in terms of regulations.

President Pro-Tem McLendon moved acceptance of the recommendation of the Ordinances, Rules, and Standards Committee regarding newsracks. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

Mr. McLendon then referred to the second item discussed by the Committee, the Historic/Specimen Tree Ordinance, and noted that the discussion on levying fines for violations resulted in the recommendation that the Town accept responsibility for maintaining the trees, and that the ordinance be amended to require developers to fence specimen/historic trees to protect them during construction work and leave the existing fine system as it was in the ordinance currently.

Councilman Wyett expressed concern over the amount of the fine currently ($500) and suggested that it be raised to the maximum legal limit, and suggested that all historic trees be replaced if removed or not cared for properly. He stated that he did not feel that it was the responsibility of the Town to maintain the historic/specimen trees on private property, with all of the incipient liabilities that the Town could incur.

Mr. McLendon replied that he believed maintenance by the Town would be more professional and consistent.

President Smith noted that the amount of the fine had been discussed at the ORS meeting, and $500 was the legal limit that could be assessed under State Statute. She also noted that the Town already entered private property for the care and maintenance of palm trees with the inoculation program on lethal yellowing.

Assistant Town Manager Peter Elwell clarified that this issue had been reviewed with the Town Attorney, and there was some concern regarding maintenance by the Town, with the suggestion that property owners grant permission for the Town to enter private property to maintain trees.

Town Attorney Randolph advised that his concern regarded the Town going onto private property in the face of objection in order to maintain trees. That would need to be reviewed before any ordinance was passed in this regard. He also noted that the current ordinance provided for replacement of a tree if someone removed it or it died.

Meredith Newton, representing the Garden Club of Palm Beach, suggested that the cost of maintenance by the Town should be passed onto the homeowner, in addition to whatever fines were due.

Councilman Wyett reiterated his concern regarding Town personnel entering private property.

Councilman McDonald moved that the Town Council accept the recommendation of the Committee regarding the fines (leave the current fine system intact), and that the recommendation regarding maintenance of the trees be accepted philosophically, but defer action until further review could be completed President Smith passed the gavel and seconded the motion.

In response to the query of Mrs. Smith, Mr. Dusey explained that staff had already looked at the trees that would require maintenance, with estimated costs to be between $20,000-30,000 per year for normal maintenance.

President Smith suggested that individual property owners be notified so that input could be received from the owners of the trees, after the 1st of October, when homeowners would be returning to Town.

Mr. McDonald agreed, and commented that part of accepting it philosophically, was that the Town Council could deal with trees on those parcels as a condition of any kind of approval for variances, special exceptions or site plans.

Mr. Dusey indicated that residents would be contacted to have the opportunity to consider participating in such a program. There were approximately 89 trees in total, with approximately 40 that would require maintenance by the Town.

Councilman Wyett suggested that the inoculation program be extended to all the Royal Palm trees in Town, and that residents would more than likely be willing to pay a portion.

On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

Mr. McLendon continued with the report, stating that there was a proposed amendment to the Commercial Motion Picture Making Ordinance, however, the recommendation was to take no action on this issue.

Councilman McDonald moved approval of the recommendation of the ORS Committee to take no action on the Commercial Motion Picture Making Ordinance. The motion was seconded by Mr. McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

Mr. McLendon stated that there had been lengthy discussion regarding the Noise Ordinance and the location of noise meter readings. The recommendation of the Committee had been to take the issue to the entire Town Council for interpretation of the Ordinance.

Town Attorney Randolph explained that currently the Ordinance read that measurement was taken from the property line of the offender. It would have to be determined if the Ordinance should remain as is, or if consideration should be given to amending the Ordinance.

After discussion, Councilman McDonald moved that the noise meter readings be taken at the complainant's property line, and that the Noise Ordinance be so revised. President Smith passed the gavel to second the motion. On roll call the motion carried 3/1, with Councilman Wyett casting a negative vote, and Councilman Shaw being absent from the meeting..

Mr. McLendon referred to the next item discussed at the ORS Meeting, related to jet skis and other motor craft used in the water. He commented that he understood that more than one person had come close to being hit by jet skis running too close to shore. The Committee had recommended that the ordinance be revised to include all water craft be at idle speed within a certain distance from the shore, with designated areas of restriction included in the ordinance, and enforcement per the non-criminal sections of Florida Statute 327.33.

Dr. Sten Lillja addressed the Town Council, commenting that he had written several letters of concern regarding the reckless and dangerous behavior of some water craft users, resulting in concerns of public safety, wildlife, noise and air pollution, disturbing the peace, as well as the potential liability of the Town. He urged passage of legislation prohibiting such activity, suggesting that rental agencies be included as responsible parties to violations of equipment rented out by them.

Dr. Lilja noted that restrictions should apply to all powered vessels, regardless of type or size. He suggested that the restricted zone extend to 1,200 feet from the shoreline.

Mr. Irving Wolfe addressed the Town Council, stating that he agreed with Dr. Lilja, and added that he had seen dangerous behavior on the water, and urged that there be some regulations applied.

Mrs. Nancy Douthit addressed the Town Council, stating that the entire ocean shoreline should be protected by a 1,200 foot safety zone because 99% of the shoreline was swimming and snorkeling heaven. She cited newspaper articles concerning the hazards of operating personal watercraft, noting that the unusual steering mechanism made it difficult to turn when the driver released the throttle, which was a factor in many accidents. She urged the application of more strenuous regulations.

Mr. Joel Martino commented that he agreed with the comments of Dr. Lilja, and observed that water craft was indeed a danger to swimmers.

Mr. Ed Auditore commented that he was an ocean swimmer, and that the unique situation with jet skis was that they could not be heard while one was swimming. He maintained that personal water craft often came too close to the shoreline, swimmers, and wildlife, which presented a dangerous situation. He suggested an education program, as well as contact with rental agencies.

In response to President Smith, Town Attorney Randolph commented that any enforcement of Town regulations would have to be done through the Police Department, and through Florida Statute. The State would have to be notified and advised of what the Town wanted to do, as, even though this was within the jurisdiction of the Town, the waters did not belong to the Town. The State would then give approval or disapproval.

President Smith commented that she had taken a bird hit by a jet ski out of the ocean near her home, and the bird had died from the trauma. She noted that Palm Beach had been designated a bird sanctuary, and questioned if that extended to the water, and if fines could be assessed for the killing or maiming of birds.

Town Attorney Randolph replied that the Police Department would have to observe the offense in order to issue a citation.

Mr. Larry Millman commented that he was a Town resident, and agreed with the comments made today. He also agreed with the comments of Mayor Ilyinsky relating to the placement of buoys and a system of fines.

Town Attorney Randolph explained that the Town did not have liability in this regard, as had been suggested by several residents. The Town had sovereign immunity in this regard, and a decision should not be based on liability to the Town, but on the protection of residents.

Police Chief Croft commented that guarded and designated public beaches currently had a 400' safety zone, and no vessels were allowed within that 400' of shore. That was the only area where the Town would have a liability question. He noted that there were at least 100 residents owning jet skis, as well as rental areas in the Town of Palm Beach, throughout Riviera Beach and Singer Island. He suggested that the public be educated, including literature to be passed out at all rental areas. He added that he did not believe that it was necessary to ban jet skis, as long as there was an ordinance in place for the entire 12 miles of the Atlantic side of Palm Beach, which required all vessels to operate at an idle speed, which would take care of public safety concerns. He noted that there was also a 300' manatee zone in effect 12 months of the year, which extended from the shore of the Intracoastal westward. The skis operated within that area at anything other than an idle speed, they were cited.

Councilman McDonald moved approval of the recommendation of the ORS Committee that the Ordinance be revised to include all water craft and the enforcement of the non-criminal sections of the Florida Statute 327.33, with staff designating the areas and recommending restrictions for those areas that should be included in the Ordinance. The motion was seconded by Councilman Wyett.

Town Attorney Randolph commented that the State would have to be contacted in order to adopt the provisions of the State Statute so as to allow the Town to issue citations pursuant to the Statute, and the State would have to be satisfied with the marking and notification system.

Mr. Larry Milkman commented that Boca Raton and Deerfield Beach had 1200 ft. limits, and suggested that contact be made with them for advice in this regard. He stated that he was of the opinion that a 400' limit was too close.

On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

This concluded the report of the ORS Committee.

XIV. OLD BUSINESS

A. Other

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

Public Works Director Al Dusey reported that he had met with the U.S. Coast Guard and the Florida Department of Transportation (FOOT), and he was pleased to report that a high ranking individual from the Coast Guard agreed to the 21-25 foot clearance that had already been approved by the Town Council, and the 1251 horizontal clearance as well. The consultant was continuing to look for ways to maintain four lanes of traffic through most of the construction period.

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

Public Works Director Al Dusey reported that Phase I of the proposal was to do a feasibility study on placing a water plant in Phipps Park that would provide irrigation quality water via the reverse osmosis process to supply the Par 3 Golf Course, and then the south end of Town. The cost of the study was $18,800, and Mr. Dusey requested an allocation of $20,000 if the Town Council chose to proceed.

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, which he did not believe was needed. The water would normally come out of a major plant for the whole area south of Sloane's Curve. The differential cost of irrigation water versus drinking water was approximately $.03. There were complications of the potential of differential in design, performance, and bidders on a small plant versus a large plant.

Councilman McLendon commented that he was reluctant to spend money for a water plant with distribution only in the south area of Town. Any attempt to put in a separate reverse osmosis plant in Phipps Park would make it more difficult to justify going to a Town-wide reverse osmosis system. He stated that he saw no problem in considering a reverse osmosis unit located in the maintenance area of the Par 3 Golf Course, having design features in the plant the ability to relocate those units and incorporate them into an reverse osmosis plant in the future.

Councilman McDonald expressed concern about costs, if a major water plant was to be considered in the future. He suggested that, even though the idea had merit, it be deferred until there was more information concerning a reverse osmosis system.

Councilman Wyett declared a conflict of interest, on the basis of his involvement with a potential bidder on the project.

Director of Planning, Zoning & Building Robert Moore pointed out that the study of the feasibility of the use of a reverse osmosis water plant for irrigation quality water on golf courses was an obligation of the Comprehensive Plan.

President Smith explained that the project had been broken down into six phases. The Town Council was looking at the Phase I part of the Hartman & Associates proposal, which was a feasibility report. She noted that it said: that the feasibility report would involve data collection, utilization of information from the Water Management District, the Florida Department of Environmental Protection, the U.S. Geological Survey, the Everglades Club, the Palm Beach Golf Course, and the Breakers Golf Course. The primary data source would be data concerning the Par 3 Golf Course, involving the irrigation use, with a three year irrigation use summary at that facility. The estimate of irrigation use in the south end, utilizing the Hutcheon Engineers report, as well as the billing records of the City of West Palm Beach, and the hydraulic analysis study by CHTM Hill will be integrated together for full potential identification of such independent use. An estimate at this juncture would be appropriate for the options that need to be analyzed. The records concerning payments to the City will be utilized for the option of solely the Golf Course, and the simulated billing records for the customers at the south end of Town will be utilized for alternate costing.

Councilman McDonald moved deferral of this item until next month, when more information would be available, such as the size of the facility that would be necessary. The motion was seconded by President Pro-Tern McLendon. On roll call the motion carried 3/0, as Councilman Shaw was absent from the meeting, and Councilman Wyett had recused himself.

XV. NEW BUSINESS

A. Ordinances (First 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:

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, PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman McDonald moved approval of Ordinance No. 12-98. The motion was seconded by President Pro-Tern McLendon. On roll call the motion carried 3/0, as Councilman Shaw was absent from the meeting, and Councilman Wyett was temporarily out of the room.

B. Resolutions

1. Resolution No.31-98 - Establishing an Application Fee for Obtaining Voluntary Landmark Status

President Smith explained that she had received a letter from the Preservation Foundation requesting deferral of the discussion on the fee for voluntary landmark status, on the basis that they were conducting studies and could not be present to speak.

Councilman McDonald moved deferral to the September 8, 1998, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

2. Resolution No.32-98 - Interlocal Agreement with Palm Beach County for the Regulation of Locally Licensed Contractors and Unlicenced Construction Activity

Town Attorney Randolph read Resolution No.32-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN AND THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY RELATING TO THE REGULATION OF LOCALLY LICENSED CONTRACTORS AND UNLICENCED CONSTRUCTION ACTIVITY, AUTHORIZING THE EXECUTION OF THE INTERLOCAL AGREEMENT BY THE APPROPRIATE TOWN OFFICIAL, PROVIDING AN EFFECTIVE DATE.

Councilman McDonald moved approval of Resolution No.32-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

C. Other

1. Update Regarding Florida Department of Transportation's Adopt a Road Program

Assistant Town Manager Peter Elwell reported that information had been obtained from the Florida Department of Transportation (FDOT) that there had been requests by other communities to relocate sponsors of adopted highways, because there were areas that were cleaned on a regular basis by the local government. The Town would be free to request FDOT to have sponsors relocated to other highways.

Councilman Wyett moved that the Town be made exempt from the FDOT Adopt a Road Program, requesting that the existing signs be removed. President Smith passed the gavel to second the motion. On roll call the motion failed 2/3, with Mayor Ilyinsky breaking a tie vote. (Councilman Wyett and President Smith affirmative; President Pro-Tem McLendon and Councilman McDonald negative).

2. Proposed New Drawbridge Regulations for Flagler Memorial, Royal Park, and Southern Boulevard Bridges

After brief discussion, no action was taken by the Town Council on this matter.

3. Renewal of Agreement with AT&T for Intercontinental Cable Crossing -Staff Request to have Property Appraisal Conducted

Assistant to the Town Manger David Jakubiak recommended that a property appraisal of the property in question needed to be obtained for the following reasons:

To update the existing appraisal which had been done five years ago.

The Telecommunications Ordinance required methodology to determine whether a company can utilize the rights-of-ways. The Telecommunications law also provided that any provider needed to be treated in a competitively neutral fashion, so the license agreement with AT & T could establish a precedent on this type of license agreement.

In the original agreement there was a $50,000 application fee that the Town recovered from AT & T. Their revenue is not based on how much revenue they generate for using the cable, and the Town may want to review the established fee, and costs associated with the Town review of this agreement (legal fees, property appraisal).

Councilman McDonald moved approval of the recommendation to obtain a property appraisal of the subject property at an estimated costs of $3,500 to be funded from the Designated Reserves in the General Fund, and that the other issues raised be deferred to next month. Councilman Wyett seconded the motion. On roll call the motion carried 3/0, as Councilman Shaw was absent from the meeting, and President Smith had temporarily left the room.

4, Bell South Petition for Reconsideration Regarding Franchise Fee/Issuance of Decision by Town Council

Town Attorney John Randolph reported that BellSouth had an opportunity to file for a Petition for Reconsideration from the last decision of the Town Council, pursuant to Statute. He recalled that the Town had issued a Notice of Decision, basically incorporating the comments of Public Resources Management Group, (PRMG) Inc. Pursuant to Statute, BellSouth then had an opportunity to file for a Petition for Reconsideration. The Town would then have 30 days within which to enter a Notice in regard to the reconsideration. At that point, BellSouth would have 60 days to challenge.

Councilman McDonald moved denial of the Petition for Reconsideration from BellSouth, including a Notice of Reconsideration, authorizing the Mayor to execute the Notice and serve it upon Bell South. The motion was seconded by Councilman Wyett. On roll call the motion carried 3/0,as Councilman Shaw was absent from the meeting, and President Smith was temporarily out of the room.

XVI. COMMENTS OF THE TOWN COUNCIL MEMBERS

There were none.

XVII. DEVELOPMENT REVIEWS

A. Time Extensions

1. Request for a One-Year Time Extension for Variance No.26-97, 3 Pelican Way by Mr. Ronald K. Kolins

Attorney Chuck Millar, of Moyle, Flanigan, et al, on behalf of Attorney Kolins, addressed the Town Council, explaining that the applicant had recently purchased the property, and was making a few adjustments in conjunction with an interior designer and architect. A time extension was being requested in order to evaluate the situation. He noted that the request had been for a one-year time extension, however, he believed that six months would be appropriate.

Councilman Wyett made a motion to grant a three month time extension with the condition that all requests for variances on this property would be submitted at one time, since there had been variances granted prior to this request, and there would be variances requested in the future as well. The motion was seconded by President Pro-Tern McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

B. Appeals

1. Appeal of the Administrative Decision of the Building Department that a Variance is needed for the construction of a Beach Access Tunnel at 810 South Ocean Boulevard by Mr. Robert E. Deziel

Attorney Robert Deziel, representing Howard Acquiring Corporation, addressed the Town Council. He distributed a letter describing the presentation he would give. He explained that he had submitted a survey, title policy, and a copy of the deed indicating that Howard Acquiring Corporation owned the home on South Ocean Blvd. subject to the right-of-way and the beach cabana property. He referred to the fact that approximately 15 beach access tunnels existed in Palm Beach. The tunnels had been constructed from 1920-1970. He could not find any variance applications filed in this connection, and could not find any information indicating that the Zoning Code adopted in 1974 incorporated the concept of beach access tunnels. The current Zoning Code also did not address beach access tunnels, and the topic of beach access tunnels was not brought up for discussion during the hearings when the Code was adopted. Mr. Deziel maintained that he had checked with Palm Beach County, and the Florida Department of Transportation, and the only governing authority with jurisdiction for approval in this regard was the Town of Palm Beach. He added that he had spoken with Public Works Director Al Dusey, who said that he had no objection to the tunnel proposal, subject to his review of the plans, and subject to a satisfactory condition with utilities located in the right-of-way.

Attorney Deziel referred to the memorandum distributed by Zoning Administrator Paul Castro on this subject, stating that he interpreted it as saying that the conclusion was that the structure would be an allowed accessory structure to a main structure. He proposed that the front yard set back requirements should not apply to this type of structure, as those type of requirements were for a vertical construction. He acknowledged that there were several provisions in the Zoning Code that did address subterranean structures, and the fact that some of these structures were allowed to be in yard areas, however, none of those provisions addressed the type of structure in question.

Attorney Deziel explained that Mr. Castro had acknowledged that the structure would be allowed, however, he interpreted the Code as saying that the front yard setback requirements would apply. He contended that the Zoning Administrator was interpreting Zoning Codes which did not address a particular issue. He maintained that the front yard setback requirements for this type of structure would not apply until the most easterly point of the property owner's ownership, or that the front yard setback requirements in entirety would not apply, since neither of those set back issues had been applied in connection with all other tunnels that had been constructed.

Zoning Administrator Paul Castro advised that he had outlined the position of the Building Department in his memorandum of July 29, 1998, to the Mayor and Town Council. He explained that he had looked at the Zoning Code both prior to 1974, as well as after 1974, and considered the tunnels in existence as well. He noted that it was necessary to rely on the literal interpretation of the Code. Since there was no information available addressing tunnels under South Ocean Blvd., or in the front yard setback, he had looked at the definition of accessory structures, the intent of the residential district, and the intent of using a pedestrian tunnel to connect buildings within the residential districts. He had come to the conclusion that a pedestrian tunnel could be considered an accessory use to a principal structure. From that point, he had looked at how that accessory structure would be allowed within the front yard setback, considering what the Code stated, while understanding that 15 tunnels had been permitted in the past. He stated that he could not understand how tunnels had been permitted in the past without a variance or relief from the Town, citing Section 5.51(a) of the Zoning Code stating that no accessory structure could be within the front yard setback, and would have to meet the same setbacks as the principal structure. He had come to the conclusion that the only way such a structure could be built would be through requesting relief from the Zoning ordinance. The relief necessary would be relief from the front yard setback of the principal structure.

Director of Planning, Zoning & Building Robert Moore stated that he understood that the previous tunnels had been constructed as a matter of right when the plans to build the properties were submitted. They were a permitted use at that time, and Town staff was now questioning whether the structure itself needed a variance because of its positioning in the front yard. It was his belief that in the Code prior to 1974 the main intent of regulating structures were those that were above ground. He explained that Attorney Deziel was appealing the need for a variance, as he would find it difficult to determine a hardship in order to allow the structure.

President Smith asked Attorney Deziel if it would be possible for him to go to the State to get the necessary permission and approval for the tunnel, and then come back to the Town Council for a variance?

Attorney Deziel responded that he believed it would not need a variance, since the tunnels had been built in the past without a variance. The only hardship was that the Building Department changed its interpretation of the Code. He suggested that construction of beach access tunnels be made a special exception item in the future. He noted that in his conversations with the State he had received the impression that approval was going to be to determine if the plans were correct. He was coming to the Town Council because he needed to know how it would be dealt with by the Town.

Public Works Director Al Dusey explained that the plat information did show ownership running to the middle of the side streets, but did not indicate that ownership ran to the middle of South Ocean Blvd. There was some question in his mind as to ownership, even given the Warranty Deed.

Attorney Deziel responded that the property owner owned the South Ocean Blvd. property, subject to the right-of-way for pedestrians and vehicular traffic. He explained that the owner had a Warranty Deed, a survey, and title insurance indicating that they owned the property.

Town Attorney Randolph advised that it was his opinion that even if a property owner owned the land underneath a road, he would not be allowed to build a structure above ground within the front yard. Under that scenario, he did not believe the ownership issue was relevant; it would need to be determined whether the Town Council thought the Ordinance was properly interpreted by Mr. Castro.

Councilman Mc Donald commented that he believed the proposed tunnel should be treated like a special exception, and that as he interpreted the Code it would not require a variance.

Attorney Deziel requested approval to allow the appeal with the condition that the applicant abide by all the provisions of a special exception, as well as any further requirements of the Town. He explained that the applicant would not be able to come back to the Town Council until zoning regulations were amended to include such provisions.

Town Attorney Randolph advised that the only way the applicant could come back for a special exception was if the item was put on the Zoning Agenda for study, and determined that tunnels were a special exception under the Zoning Code.

Mr. Castro pointed out that there were 15 tunnels built years ago, however, land development was not as sophisticated at that time. He maintained that even though things had been done previously did not necessarily mean that they would be allowed to be done today in the same fashion.

Councilman McDonald commented that his interpretation of the Zoning Code was that this issue would not necessarily require a variance.

Town Attorney Randolph commented that Mr. Deziel was suggesting that he would accept a restriction which would require him to come back and go through the special exception process, even though the Zoning code did not now contemplate that. That would require him to come in and prove the ownership issue.

Councilman McDonald asked if that would create problems for the Town on a similar application in the future?

Town Attorney Randolph replied that another applicant desiring a tunnel could come in as a matter of right and get it if the Town Council ruled in favor of the appeal of Mr. Deziel. The interest of the Town could be protected, however, by granting the appeal and then state that because of the fact that the situation was not entirely clear, a requirement would be set forth that the applicant would meet all criteria set forth under the special exception provisions of the now existing Code. That would require anyone else coming in the future requesting a tunnel to do the same thing. He cautioned that he would not leave it at that, but would add the item to the Zoning Study List.

Mr. Moore responded that the Zoning Study List was coming up under Any Other Matters.

President Smith asked Mr. Randolph to define the conditions for a special exception.

Town Attorney Randolph responded that the applicant would be required to go through the site plan review process, show ownership of the property, show that the tunnel did not adversely affect the neighbors, and adhere to all of the items included under Section 6.40 of the Zoning Code.

Attorney Deziel replied that he would happily comply with any mechanism in place.

Mr. Moore commented that he wanted to make it clear that Mr. Deziel would have to address issues with the Department of Environmental Protection before coming to the Town Council with the application.

Mr. Deziel replied that he would do that.

Councilman McDonald moved that the appeal be granted, with the condition that the applicant would meet all requirements/conditions of the special exception, and that the item be put on the Zoning Study List for this year, and that the item be included under the Zoning In Progress items. Councilman Wyett seconded the motion for discussion.

Councilman Wyett asked what would happen if the Zoning Commission or the Town Council rejected the idea?

Attorney Randolph replied that the applicant would be granted the tunnel request, and no other applicant could make the same request. If there was no change made in the Zoning Ordinance, the Town Council would have interpreted the Zoning Ordinance today as allowing tunnels.

President Smith noted that even if the Zoning Commission decided against tunnels under the road, the Town Council could disagree, and say that it could be done through the special exception procedure; the Town Council had changed the recommendations of the Zoning Commission on several occasions in the past.

On roll call the motion carried 3/2, with President Smith and Councilman Wyett dissenting, President Pro-Tern McLendon and Councilman McDonald casting affirmative votes, Councilman Shaw absent from the meeting, and the Mayor breaking the tie vote with an affirmative vote.

C. Variances, Special Exceptions, and Site Plan Reviews

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

Old Business - Major

1. SPECIAL EXCEPTION NO.23-97 - Galaxy Grille, 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 - Approval granted at the August 12, 1997 Council meeting with condition that applicant return in six months with update of the parking situation with details regarding pick-up for valet parking. (Deferred from February 10, 1998)

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

Attorney James Brindell addressed the Town Council on behalf of Galaxy Grill, stating that under ordinance, shared parking required that the initial approval be an interim approval, with the applicant returning in six months. Since the original approval, the understanding between the applicant and the then owner of Gray's Mobil Station changed dramatically to the point that it was not feasible. Since that time there were new owners, and that shared parking agreement began approximately four months ago. He noted that one condition of approval was now precluded (coordination with gas station to ensure no conflict between fuel delivery and off-site shared parking) because parking was not being done in the front of the station, only in the back area. Per ordinance, the parking lot was cordoned off when it was being used, so that only parking attendants could gain access. The operation seemed to be working well, and Mr. Brindell requested a determination that the interim period had been satisfied, with approval to proceed forward in the future.

Zoning Administrator Paul Castro commented that there had been no problems reported on this matter.

Councilman Wyett moved approval of Special Exception 23-97. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

2. 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 2, and July 14, 1998) - Request for Deferral to September 8, 1998, per letter dated July 27, 1998, from Mr. James R. Brindell

(This item was deferred to the September 8, 1998, Town Council meeting,)

3. 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 sideyard setback; 2) reduces the existing landscaped open space from 21.1% to7.7%, in lieu of 50% required by Code; 3) increases the floor area ratio from41% 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, and July 14, 1998) - Request for Deferral to September 8, 1998, per letter dated July 28, 1998, from Mr. Ronald K. Kolins

(This item was deferred to the September 8, 1998, Town Council meeting.)

4. 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' sideyard setback in lieu of 15' required. (Deferred from July 14, 1998) - Request for Deferral to September 8, 1998, per letter dated July 28, 1998, from Mr. Ronald K. Kolins

(This item was deferred to the September 8, 1998, Town Council meeting.)

5. VARIANCE NO.31-98 - Maya Langes-Swarovski, 1676 South Ocean Blvd.; located in the R-A Zoning District; to allow an abandonment of a required Unity of Title Agreement, and to allow Lot 1 to be reconfigured at an 88.64' width in lieu of 125' required. (Deferred from July 14, 1998)

Ex-parte communication was declared by Councilman McDonald with the applicant; by President Smith with several people via phone; by President Pro-Tem McLendon with a single phone call.

Attorney James Brindell, on behalf of the applicant, addressed the Town Council. He began with historical background information, explaining that the issues of creating the amount of landscaped open space, and having the appropriate setback from the lot line with regard to the retaining wall could better be achieved by moving the lot line somewhat, rather than with the Unity of Title that had been previously required. The result would be two lots that far exceed the minimum area for lots in the Zoning District. He maintained that the Unity of Title was overkill in this situation, and not the best solution for the issues involved (for purposes of counting setback and landscaped open space). A Unity of Title was not needed to accomplish the purposes if the lot line could be adjusted to maintain two lots that met the area requirements and basic dimension requirements.

Attorney Brindell explained that the applicant wished to tear down the nonconforming guest house on the western lot, dispossess herself of the house on the eastern lot, and build a new home on the western lot. He requested that the applicant be allowed to move the lot line and abandon the Unity of Title Agreement, which he considered a fair solution, and within the intent of the Zoning Code.

Director of Planning, Zoning & Building Robert Moore commented that there was a definition in the Ordinance regarding where the front yard was measured from, and it was measured from the building setback line, rather than the cul-de-sac itself. Attorney Brindell did not represent the property owner at the time of that variance, and what had been represented was a variance for the main house, and one of the considerations in granting the variance for the main house was that the property remain intact as one piece of property. The guest house was to remain the guest house and the property would remain an ocean to lake property. That had been part of the consideration given in granting the variance, which involved the addition of what amounted to be a third story on the principal house. Mr. Bennett had been asked if he could adjust the placement of the wall line on the west side of the third story, even though it would not be placed over an existing wall. Mr. Bennett had answered that this was Palm Beach, and with money you can do anything you wish to. This same application was now requesting to change the deal, and staff could not recommend approval of a variance which involved leaving a property in its entirety as a condition of granting that variance, and then turn around and represent that it would be prudent to remove the Unity of Title.

Attorney Brindell pointed out that the reason for the Unity of Title had been for the purpose of dealing with the setback issue from the lot line, and the issue of landscaped open space. He maintained that those issues were resolvable by moving the lot line, particularly when there was plenty of area to create an adjusted lot line that would meet R-A District zoning requirements.

Councilman McDonald asked who had made the motion to approve the variance and what the hardship had been?

Mr. Moore replied that Councilman Shaw had made the motion, which had been adjusted several times during the meeting. Mr. Shaw had indicated the hardship ran with the land. The vote had been 4/1 One of the conditions of the motion had been the request that Mr. Grace had put on the record that there be no construction on the lake lot whatsoever.

Councilman McDonald responded that he wanted to believe the variance was granted because of the hardship, and not because of any Unity of Title.

Mr. Moore replied that the Unity of Title was a condition, and at least one neighbor had appeared at the time.

Attorney Brindell commented that he had heard from Mr. Grace, who had left a voice mail message stating. "I spoke with the lady who owned the property and I told her I would not object to her variance, and that's my position. I'm not going to object to it, so I don't think you need anything from me, but if you do, you can try calling me later this afternoon." Mr. Brindell explained that he had tried to send a letter to Mr. Grace, however, the address was not correct. He then obtained a phone number and contacted Mr. Grace, who then sent the message as stated above.

Councilman Wyett remembered that the variance had been granted almost four years ago, and that a deal was a deal. The Town Council had made the Unity of Title a condition of granting the variance, and to reverse it today would be to negate the original situation. He noted that the representations had been made in order to induce the Town Council to vote yes. He expressed concern now as to the precedent a reversal would set.

Councilman Wyett moved denial of Variance No.31-98, based on the fact that a deal was a deal. President Smith passed the gavel and seconded the motion. On roll call the motion carried 3/1, with Councilman McDonald casting a negative vote.

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, 1998) -Request for Deferral to September 8, 1998, per letter dated July23, 1998, from Mr. Ronald K. Kolins

   (This item was deferred to the September 8, 1998, Town Council meeting.)

New Business - Major

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. -Request for Deferral to September 8, 1998, per letter dated August 10,1998, from Mr. James R. Brindell

   (This item was deferred to the September 8, 1998, Town Council meeting.)

8. VARIANCE NO.33-98 - Dudley Moore, Jr., 220 El Bravo Way; located in the R-AA Zoning District; to allow construction of a second tower in lieu of one permitted per Section 5.22(d) of the Town Zoning Code, and to allow the height plane setback at 45' in lieu of 70.5' required.

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

Director of Planning, Zoning & Building Robert Moore commented that the home was designated as an historic house, the tower was a restoration of an original, and there was no objection from the Building Department.

Councilman Wyett moved approval of Variance No.33-98 with the stipulation that the bell in the tower not be operable; the hardship was that the project was a restoration of an existing tower, which the ordinance had never contemplated. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as Councilman McDonald was temporarily out of the room and Councilman Shaw was absent from the meeting.

9. VARIANCE NO.39-98- Bayhill Development, 321 Brazilian Ave.; located in the R-C Zoning District; to allow construction of a two-story residence with detached garage on a lot 50' wide in lieu of 75' minimum required, providing 9,000 sq.ft. in lieu of 10,000 minimum required lot area, and providing a 7' and a 3' west side yard setback in lieu of 10' required.

Ex-parte communication was declared by Councilman Wyett with Franklyn DeMarco; by President Pro-Tern McLendon with Franklyn DeMarco; by President Smith with Franklyn DeMarco; by Councilman McDonald with Franklyn DeMarco.

Attorney James Brindell, on behalf of Bayhill Development, addressed the Town Council, displaying photographs of the property in question, and stating that the property was worthy of redevelopment. The house was being designed as a residence for Franklin DeMarco, on a very narrow lot. There were no objections from the property owner to the west; the property immediately to the north was commercial property.

Architect Harold Smith commented that he was designing a residence with two-stories, and approximately 5,000 sq. ft. of living area, with a detached garage and staff quarters above, and a swimming pool. Four options had been considered for the garage, and it was finally determined that the best solution would be to place the garage at the rear of the property with a side entry. In order to do that the main residence would need to be offset to the west slightly, which would gain adequate space for a comfortable driveway, landscaping, and a side entry into the kitchen. The proposed plan improved the existing nonconformities in the side yard situation.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: does not meet criteria for granting variances; should be designed with less nonconformities. Town Engineer: will not approve a driveway unless it is 6' off the property line; Building Department: no objection to granting the variance associated with the house, however, believed the variance for the garage was excessive.

Attorney Brindell replied that the driveway issue had been discussed, and the entrance on the west would be eliminated, and there would then be a entrance on the east side.

Councilman Wyett commented that the proposed structure was one of the best looking structures on a narrow lot that he had seen in recent years. According to the Building Department, the garage could be moved at least 2', to increase the setback, without disturbing the ability to get in and out.

Attorney Brindell responded that a variance would still be needed, but for less.

Zoning Administrator Paul Castro explained that staff believed the garage did not need to be 22' deep, and if the depth was narrowed 2' , and added a 2' setback, there would be enough room to back out.

Attorney Brindell expressed concern that the 20' depth would be tight for the size of cars used by people today. He did believe that it could be moved 2', and still have an adequate depth for the garage.

Councilman Wyett suggested that the garage be reduced 1' and moved 2'.

Attorney Brindell agreed that would work.

Councilman Wyett moved approval on the portion of Variance No.39-98 requesting a sideyard setback of 3' for the garage, with the reduction of a total of 3', making the side yard setback 6'(garage shall be 21' in lieu of 22', and a 2' setback) and the hardship being the narrow lot. President Smith passed the gavel to second the motion. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

Councilman Wyett then moved approval of the portion of Variance No.39-98, requesting a 7' side yard setback for the house. President Smith passed the gavel to second the motion. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

President Pro-Tem McLendon moved approval of the portion of Variance 39-98, allowing construction of a two-story residence with detached garage on a lot 50' wide in lieu of 75' minimum required, providing 9,000 sq. ft. in lieu of 10,000 minimum required lot area, with the hardship being the size of the lot. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

10. SPECIAL EXCEPTION NO.18-98 WITH SITE PLAN REVIEW - The Bath & Tennis Club, 1170 5. Ocean Blvd.; located in the R-AA Zoning District; to allow relocation of four required parking spaces (into the restriped parking lot) to construct an 1,800 sq.ft. addition.

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

Zoning Administrator Paul Castro commented that an addition would be added underneath the tennis court facility, and the parking lot would be restriped to pick up the spaces they were losing; staff had no objection to the proposal.

Councilman Wyett moved approval of Special Exception 18-98, with the condition that the Town-serving requirement be met on a yearly basis. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 3/0, as President Smith was temporarily out of the room, and Councilman Shaw was absent from the meeting.

11. SPECIAL EXCEPTION NO.19-98 WITH SITE PLAN REVIEW - The Everglades Club; 356 Worth Ave.; located in the C-WA & R-A Zoning Districts; to allow construction of a 400 sq.ft. addition.

Zoning Administrator Paul Castro commented that the request was for a 400 sq. ft. addition onto the ladies locker room at the Everglades Club. The applicant was required to demonstrate Town-serving every year at the time of renewal of their occupational license. Staff had no objection.

Councilman Wyett moved approval of Special Exception No.19-98. The motion was seconded by Councilman McDonald. On roll call the motion carried 3/0, as President Smith was temporarily out of the room, and Councilman Shaw was absent from the meeting.

12. SITE PLAN REVIEW NO.9-98 WITH VARIANCES - Via 313 Worth Ave. Ltd., 320 Peruvian Ave.; located in the C-TS Zoning District; to allow construction of a 2,000 sq. ft., one-story commercial building replacing the existing 2,982 sq. ft. two-story wooden building. Variances requested are: 1) to allow a 10' wide drive aisle in lieu of 25' required for two way access;2) to allow 2' of landscaping in lieu of 4' required between parking & west lot line; 3) to allow 7 off-street parking spaces in lieu of9 required; 4) to allow two parking spaces in a parallel configuration; and 5) to allow a 2.5' grass strip in lieu of 4' high hedge required between the parking and the south property line.

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

Attorney James Brindell, on behalf of the applicant, addressed the Town Council, stating that the property was located next to Via Bice, which the applicant also owned. The house had several parking spaces in front, which backed out over the sidewalk onto to the street, with a total of 7 parking spaces on the site, which were not conforming according to today's standards. The proposal was to tear the house down, create 7 conforming parking spaces, including a handicapped space, get the parking off the street, and physically incorporate it into Via Bice, so it would become accessible from the pedestrian via that ran all the way through to Worth Avenue. It would amount to an almost 1,000 sq. ft. reduction from the current square footage on the property. He explained that Architect Gene Lawrence would review the site plan with the Town Council, with the variances being requested minimal types of variances. Any redevelopment of this property would require variances, and Mr. Lawrence would demonstrate what would happen if all of the Code was met, without requesting variances.

Architect Gene Lawrence explained the details of the site plan, noting that the proposal was for three shops, and some storage that would enter directly opposite the Bice Restaurant. The parking would enter from Peruvian with three spots along the property line to the west, four across the back, with a handicapped space, a five foot handicapped ramp, and a handicapped ramp up to the Via to allow access to the shop. He displayed photographs of the existing buildings.

Councilman Wyett asked what would happen to the Via, as the Bice Restaurant currently used it for outside dining, and it would also be used for patrons of the three shops?

Architect Lawrence responded that there would be sufficient space cordoned off so that patrons could get by.

President Smith asked the purpose of the two storage areas, since they did not open into the shops?

Mr. Lawrence replied that the owners of the property would use it for storage.

President Smith suggested that the two storage areas could be eliminated, and the square footage put into the shops, take the square footage from the west side, and incorporate it into the space for the storage area, the drive aisle could be made wider.

Councilman McDonald moved approval of Site Plan Review Nol. 9-98 with Variances, with the condition that the two storage areas be eliminated and the drive aisle be made 12' in lieu of 10'. The motion was seconded by Councilman

Wyett. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

D. Other

I. Request for Waiver to Section 12-51, Hours of Construction, of the Town Code of Ordinances at 306 Worth Avenue by Mr. Dale R. Hedrick

Mr. Dale Hedrick, President of Hedrick Brothers Construction Company, addressed the Town Council, stating that the company would be building the Ralph Lauren Polo space in the former Brooks Brothers space on Worth Avenue. The job was very complicated, and there were many issues that had not been anticipated or foreseen, which had resulted in a four week delay in construction. In order to make up for that lost time, a waiver of construction hours was being requested for additional work hours in the evening.

Director of Planning, Zoning & Building Robert Moore commented that Mr. Hedrick had completed numerous jobs on Worth Avenue, and the problems he had encountered were not uncommon.

Councilman Wyett moved approval of the hours of 8:00 A.M. until 8:00P.M. Monday through Saturday, with the provision that the parking in the street be restored to the public no later than November. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

2. List of 1998-99 Zoning Study Items

Zoning Administrator Paul Castro commented that he had provided the Town Council with a list of the Zoning Study Items, which would include tunnels as a special exception in residential districts as of today.

Councilman McDonald moved that the issue of tunnels be added to the list of Zoning Study Items. The motion was seconded by President Pro-Tern McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

XVIII. ANY OTHER MATTERS

There were none.

XIX. ADJOURNMENT

The meeting was adjourned at 4:32 p. m.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk

XIV A.2. Par 3 Golf Course

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

LAST NAME—FIRST NAME—MIDDLE NAME Wyett, Allen	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Town of Palm Beach Town Council
MAILING ADDRESS 1145 N. Lake Way	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Palm Beach COUNTY Palm Beach	NAME OF POLITICAL SUBDIVISION: Town of Palm Beach
DATE ON WHICH VOTE OCCURRED August 11, 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).

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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.

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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, Allen Wyett, hereby disclose that on August 11, 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 a potential bidder on a town wide reverse osmosis system.

aug 11, 1998
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.