MINUTES OF THE TOWN COUNCIL MEETING HELD ON AUGUST 10, 1999

I. CALL TO ORDER AND ROLL CALL

The meeting of the Town Council was called to order at 9:30 a.m. by President Lesly Smith in the Town Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Allen Wyett, Councilman Jack McDonald, and Councilman Samuel McLendon. Councilman Leslie Shaw was absent from the meeting. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Finance Director Jane Skittone, Assistant Finance Director Cheryl Somers, Facility Maintenance Division Manager Joseph Ugi, Fire-Rescue Chief Ken Elmore, Police Chief Frank Croft, Assistant Police Chief Michael Reiter, Planning, Zoning & Building Director Robert Moore, Planner/Projects Coordinator Timothy Frank, Zoning Administrator Paul Castro, Public Works Director Al Dusey, Personnel Director William Crouse, Recreation Director Russell Bitzer, Town Engineer James Bowser, Town Clerk Mary Pollitt, and Deputy Town Clerk Susan Eichhorn.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

III. PRESENTATIONS

A. Retirement of James Santagate, Supervisor of Sanitation, Public Works Department - 10 Years and 9 Months

Mayor Ilyinsky presented a plaque to Mr. Santagate recognizing his years of service to the Town.

B. Recognition of Dr. Leon G. Schwartz, Code Enforcement Board - From 1995 to 1999

Mayor Ilyinsky presented a plaque to Dr. Schwartz recognizing his years of service on the Code Enforcement Board.

IV. COMMENTS OF MAYOR PAUL R. ILYINSKY

Mayor Ilyinsky thanked everyone for their participation in the annual Night Out Against Crime held on August 3rd at St. Edward's Church.

Mayor Ilyinsky urged everyone to take advantage of the CPR courses offered on a monthly basis at the South Fire-Rescue Station.

Mayor Ilyinsky cautioned Palm Beach residents to be aware of the potential for as many as eleven hurricanes before the end of the season; to be prepared, and to contact the Town Manager's office for information.

IV. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

DEFER Item XI.A.1. Resolution No. 15-99 - Revision of Rights-of-Way Standards Manual, to the September 14, 1999, Town Council meeting;

President Pro-Tem Wyett moved approval of the deferral of Item XI.A.1., Resolution No. 15-99, to the September 14, 1999, Town Council meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

DEFER Item XI.B.5. Hartman and Associates, Inc. Project Authorizations Regarding Water Supply Issues - Request for deauthorizations, to the September 14, 1999, Town Council meeting;

President Pro-Tem Wyett moved approval of the deferral of Item XI. B.5. (Hartman and Associates, Inc., Project Authorizations Regarding Water Supply Issues - Request for Deauthorizations), to the September 14, 1999 Town Council meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

DEFER Item XIV.A.1. Appeal of the Architectural Commission's Decision of May 26, 1999, concerning 740 Hi-Mount Road, to the September 14, 1999, Town Council meeting;

President Pro-tem Wyett moved approval of the deferral of Item XIV.A.1. (Appeal of the Architectural Commission's Decision of May 26, 1999, concerning 740 Hi-Mount Road), to the September 14, 1999, Town Council meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

DEFER Item XIV.A.2. Appeal of the Architectural Commission's Decision of July 28, 1999, concerning 242 Country Club Road, to the September 14, 1999, Town Council meeting;

Councilman McDonald moved deferral of Item XIV. A. 2. (Appeal of the Architectural Commission's Decision of July 28, 1999, concerning 242 Country Club Road), to the September 14, 1999, Town Council meeting. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

DEFER Item SIV.B.1. Special Exception No. 20-99 with Site Plan Review - Royal Poinciana Chapel Trustee, Inc., commonly known as the Seagull Cottage, to the October 12, 1999, Town Council meeting;

Councilman McDonald moved deferral of Item XIV.B.1. (Special Exception No. 20-99 with Site Plan Review - Royal Poinciana Chapel Trustee, Inc., commonly known as the Seagull Cottage), to the October 12, 1999, Town Council meeting. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

DEFER Item XIV.B.2. Special Exception No. 21-99 - Nikiforos Stoupas, 101 North County Road (Casablanca Restaurant), to the September 14, 1999, Town Council meeting;

President Pro-Tem Wyett moved deferral of Item XIV.B.2., (Special Exception No. 21-99 - Nikiforos Stoupas, 101 North County Road (Casablanca Restaurant), to the September 14, 1999, Town Council meeting. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

DEFER Item XIV.B.3., Site Plan Review No. 13-99 with Variances - CSC. P.B. Ltd. Partners; commonly known as the Dorset House, 190 Bradley Place, to the September 14, 1999, Town Council meeting; *(This was conditioned that plans be submitted at least one week before the September 14th meeting);*

Councilman McDonald moved deferral of Item XIV.B.3., (Site Plan Review No. 13-99 with Variances - CSC. P.B. Ltd. Partners; commonly known as the Dorset House, 190 Bradley Place), to the September 14, 1999, Town Council meeting, with the condition that plans be submitted at least one week before the September 14th meeting. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

ADD Item XII.D.6. Other - Consider the Issue of the town-Serving Requirement to be Addressed by the Planning, Zoning & Building Department Before the Item Comes Before the Town Council.

President Pro-Tem Wyett made a motion to add Item XII.D.6. Other - Consider the Issue of the Town-Serving Requirement to e Addressed by the Planning, Zoning & Building Department Before the Item Comes Before the Town Council. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

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

V. COMMUNICATIONS FROM CITIZENS

Mr. Joel Martino, former Shore Protection Board Member, requested to be heard regarding the Question & Answer Book on the Shore Protection Issues at this time, or perhaps later in the meeting when that issue would be discussed by the Town Council. President Smith clarified that Mr. Martino would be able to address that issue later in the meeting at the time that the item came up for discussion.

There were no other comments from citizens.

APPROVED AGENDA

VI. APPROVAL OF MINUTES OF JULY 13, 1999

VII. APPROVAL OF CHECK REGISTERS FOR JULY 1999

VIII. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF JULY 28, 1999

IX. OTHER

A. Reappointment of Mrs. Helen Hoffman to the Town's Public Employee Relations Commission, with a Term to Expire September 2003, per Memorandum dated July 6, 1999, from William C. Crouse, Director of Human Resources

B. Authorization for the Mayor to Execute Interlocal Agreement with Palm Beach County for the Municipal Public Safety Communications Consortium, per Memorandum dated July 15, 1999, from Frank A. Croft, Chief of Police

C. Request by Sailfish Club of Florida, Inc. for Approval of Amended and Restated Irrevocable Declaration of Unity of Title, Restriction, and Covenant Agreement for Divestiture of Development rights for Low Density Single-Family Residential Use or Any Use Other than the Generic Club Use Presently Applied per Letter dated July 30, 1999, from Town Attorney Randolph

President Pro-Tem Wyett moved approval of the Approved Agenda. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

REGULAR AGENDA

XI OLD BUSINESS

A. Resolutions

1. Resolution No. 15-99 - Revisions to Rights-of-Way Standards Manual *(Deferred from April 13, May 11, June 8, and July 13, 1999)* - **Request for Deferral to September 14, 1999, per letter dated August 9, 1999, from Mr. John C. Randolph**

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

2. Resolution No. 17-99 - Utility Pole Adjustment Policy *(Deferred from May 11, June 8, and July 13, 1999)*

Town Attorney Randolph read Resolution No. 17-99 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE DEPARTMENT OF PUBLIC WORKS ENGINEERING DIVISION STANDARD APPLICABLE TO PUBLIC RIGHTS-OF-WAY AND EASEMENTS WITHIN THE TOWN OF PALM BEACH, PROVIDING AN EFFECTIVE DATE.

Mr. Randolph noted that the Public Works Department had originally proposed language which had been objected to by several of the utility companies. He explained that he had drafted language which attempted to meet the concerns oft eh Town in regard to the relocation of utility facilities, and had submitted that to representatives of Florida Power & Light (FPL), and BellSouth, as well as to the Public Works Department. The Public Works Department had indicated that the language was satisfactory to them, and FPL and BellSouth had indicated that the language met with their approval as well. Mr. Randolph reviewed the language included, and recommended the amended Resolution No. 17-99 for the consideration of the Town Council.

Mr. Rod Macon, representing FPL, commented that a pole could only be placed in a public right-of-way or in a utility easement.

Mr. Sid Poe, Regional Manager, BellSouth, commented that nothing would be arbitrarily or unilaterally done that would interfere with the intentions of having good customer relations.

Resident Nancy Douthit commented that perhaps the utilities could be put underground.

Mr Macon responded that if a customer preferred underground facilities, there was a differential cost paid by the customer.

President Pro-Tem Wyett moved approval of Resolution No. 17-99. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

B. Other

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

Mr. Mario Echagarrua, E. C. Driver and Associates, reported regarding the temporary bridge: that PCL Civic Constructors had a twelve-month completion date, and were scheduled to complete by January 2000; there was a $600,000 incentive to finish 3 months early. He reported that the approaches were almost constructed. Once traffic was on the temporary bridge, a notice to proceed would be issued to a contractor to demolish the old bridge. The plans were scheduled to be completed by the end of August, with a 6-month bidding process, and 1 year for demolishing the existing bridge. The preliminary design of the permanent bridge was being worked on, and plans had been submitted to all agencies and reviewers for comments. The final plans, design and permitting of the permanent bridge would be finalized by mid-year 2000. There would be an 8-month advertising and bidding process, and a 2-year construction process, with the permanent bridge expected to be opened to traffic in 2003. He explained that the design team went before the Landmarks Preservation Commission on March 17th, covering the topics of span lengths, arch shapes and types, and the bridge width. Mr. Echagarrua discussed the bridge width, noting that certain issues had been involved with the width: the existing median on Royal Palm Way; accommodation of the left turn onto Flagler Drive; compliance with current design standards; and providing for pedestrians and bicycles. He noted that the present bridge was 68' wide, with the proposed bridge being 100' wide. Mr. Echagarrua requested direction regarding the bridge width, so that the schedule could be met.

President Smith expressed concern regarding the width of the proposed bridge, and gave the following comments: she was opposed to the 16' median; she would rather have the barrier wall in the middle, and a barrier wall putting the bicycles with the pedestrians and in-line skaters. She commented that there was the opportunity to create a landmark of the next century with the design, and that she believed there should be more details to the pillars at the entrance to the bridge, as well as the restoration of the right turn lane going onto Flagler.

Mr. Paul Cherry of Kimley Horn, commented that there were some safety concerns with putting in the same type of right turn lane as had previously existed. There was now planned an exclusive right turn that would occur at the intersection so that it was safer for pedestrians and also accommodated some of the wishes of the City of West Palm Beach. He explained that there were visual and aesthetic advantages to the 16' median, and that the width of the bridge was <u>not</u> an ulterior motive to create a 6-lane bridge, as the bascule components of the bridge were designed to handle only two traffic <u>lanes</u>; there was a difference between multi-modal bikers, which were considered commuter bikers and recreational bikers; recreational bikers would be using the same path as the in-line skaters – that was why the sidewalk was made wider for the recreational bikers, with the bike lane provided to meet the legislative requirement of the State. He noted that he thought the 2'8" wall gave tremendous flexibility in what the outside rail would like. He referred to areas for fishing, and noted that design details in this regard were currently being considered. Mr. Cherry advised that the right turn lane onto Flagler would be re-considered.

Mr. Joe Borello, Florida Department of Transportation (FDOT) commented that the representations seen today were the concepts developed since the public hearing process, and it was the intention to get feedback and proceed. The issues discussed today would be considered, and would be discussed again at the September 14, 1999, Town Council meeting.

Ms. Gail McKenna, PCL Civic Constructors, gave an update on the bridge activities for the next month: drainage construction would begin on Monday; the dirt on the east side of the old bridge approach would start to disappear by next month; the next concrete pour was scheduled on the west side for Tuesday; by the end of the month the first bascule frame would be delivered to the job site and pile driving would begin. She noted that it was her understanding that there was no problem with pile driving on Saturdays during off-season months, and requested confirmation of that.

Director of Planning, Zoning & Building Robert Moore responded that pile driving was permitted from 8:00 A.M. to 6:00 P.M. on Saturdays.

Ms. McKenna continued with her report, stating that there had been some design issues that had slowed progression, and the November 30th date would not be met, although two lanes of traffic would be flowing on the temporary bridge well before Christmas, with a completion date in mid to late February for 4 lanes of traffic. All of the pile driving would be complete before the start of next season.

In response to the concerns of Mayor Ilyinsky, Police Chief Croft stated that there were no easy solutions for the competing interests (fishermen, pedestrians, bicyclists, in-line skaters) of the pathway on the bridge, however, the design plan seemed to provide as much space as possible. He suggested that the section set aside for multi-modal biking also be used by recreational bicyclists.

2. Report by Fire-Rescue Chief Elmore Regarding the Fire-Rescue Department's Procedures for Monitoring Fireworks Displays and Related Code Requirements

Fire-Rescue Chief Elmore reported that there had been only one request for a fireworks display received from Palm Beach Country Club, although he had received a telephone call from The Breakers asking about the possibility of a barge for fireworks. He noted that it had been determined that all requests would be received by August 30, 1999, and that discussion of requests and conditions of approval would be held at the September 14, 1999, Town Council meeting.

3. Update Regarding the PBIA Interconnect Lawsuit by the Vedado Neighborhood Association and the City of West Palm Beach

Assistant to the Town Manager Jakubiak reported that a compromise had been reached between the State and Vedado Neighborhood Association to eliminate Pond 1-A, and the situation was continuing to be monitored by staff.

Attorney Randolph reported that, to date, approximately $5,000 had been spent on this issue.

President Smith commented that it had been her understanding that, originally, there was not only the safety issue of the pond, but the fact that the pond might involve withdrawing the permit for the I-95 interconnect, which had been the reason the Town became involved. She stated that she saw no reason for the Town of Palm Beach to continue to monitor the placement of the pond if the issue of the I-95 interconnect permit was no longer being considered for withdrawal.

Attorney Randolph commented that discretion would be used regarding attendance of the meetings connected with the project.

4. Comprehensive Coastal Management Plan Update *(Deferred from May 11, 1999)*

A. Question and Answer Document

Public Works Director Al Dusey reported that a Question and Answer Booklet had been assembled, with the intent to have it available for the public at the next public meeting.

Mr. Joel Martino addressed the Town Council, stating that he was a former member of the Shore Protection Board, and urged that proper documentation of all anticipated costs regarding the comprehensive Coastal Management Plan Update (CCMP) be supplied, as well as complete disclosure of the expected problems that all beach restoration programs share. He maintained that the Q & A booklet had distorted and omitted several important and clearly stated questions that were submitted by the public, as well as the fact that many questions were not properly addressed in a thorough and itemized format describing the range of probable and possible costs. He gave some examples: the tables based on 1997 dollars, which would not allow people to get a clear understanding of the probably costs, which should be explained in the expected year when the cash flow would start; there was no discussion or estimate for unscheduled renourishments due to large storm events; there was no range of probable values for extra staff and overhead to manage the 34-year program; there was no financial accounting of the 3-year initial construction phase, which was recommended by the Shore Protection Board; there was no discussion of alternative forms of tax revenue, such as the possibility of impact fees or surtaxes; there was no mention of the possibility of reasonable design alternatives; there was no range of legal costs or bond underwriting fee estimates; were the mobilization/demobilization costs include in the original $108 million figure; why was the new table no. 3, which was a 30-year estimate now $175 million, which did not included financing and other large costs, versus the original figure of $108 million which supposedly included maintenance and financing; what effect does the new $175 million estimate have on the desirability of low cost benefit Reaches Nos. 2 and 5; why are there no estimates for the increased costs greater than 5%, or interest costs, or increased inflation costs greater than 3%; what is the status of the Kate Goodherham public relations document and the Shore Protection Board recommendations – an explanation is needed to identify if they are to be considered integral parts of the plan. Mr. Martino maintained that cost information must be made available <u>before</u> decisions could be made.

Dr. Sanford Kuvin addressed the Town Council, stating that the Town Council passed Resolution 16-99, which enabled the Town to seek State and County funding for the entire proposed CCMP, however the CCMP update Q & A booklet opened up more questions about the lack of answers to questions asked during the 3 workshops conducted earlier in the year. He asserted that the booklet did not adequately address the 3 main problems affecting the proposed plan: 1) the plan was without merit in its current form because it was untried, untested, and unengineered; 2) the costs of the plan were outrageously expensive and underestimated; 3) the outcome of harm, which may come from the expensive concept plan was significant, and could change the physical, social, and legal quality of life on the Island forever. Dr. Kuvin referred to the Aubrey Consulting Peer Review document wherein the CCMP was called "a plan whose magnitude is essentially unprecedented." He referred to the joint letter, dated August 25, 1998, signed by both Aubrey Consulting and Applied Technology Management (ATM) stating that " it should be emphasized that the updated CCMP is a planning document, which relies on numerous assumptions and available data presented in historic studies and reports." He noted that the Z Y A booklet, on page 5, stated "the proposed improvements in the CCMP update are proven, science based, modern recommendations in conformance with sound coastal engineering principles and practices." He maintained that the statement was simply not true, and that the issues of contention should be recognized in the booklet. He referred to the costs of the plan, which he considered incomplete. He asserted that there would be several serious consequences resulting from implementation of the proposed plan, such as the establishment of a debt of hundreds of millions of dollars to the property owners; the conversion of all sand east of the newly established erosion control line as public beach; the adding of sand east of the erosion control line would open up a Pandora's Box of public abuse, including the potential for advertised public accesses through private beaches to gain access to miles of new public beaches.

In response to President Pro-Tem Wyett, Dr. Kuvin explained that there was already a plan that worked, but needed help. The Sand Transfer Plant was an acknowledged success, and the Army Corps of engineers dredging accumulated about 100,000 cubic yards every year, and all agreed that there were certain areas of the shoreline that need attention, however, it would not amount to $175 million. HE noted that most beach destruction came from unexpected storms, none of which had been factored into the inlet to inlet management plan. What was being done now was very much akin to what should be done with the improvement from the engineering aspects. He stated that sand would have to be pumped onto the shores of Palm Beach forever in order to maintain the barrier island.

Dr. Sten Lilja addressed the Town Council, beginning with a quote of one of the basic rules of prudent accounting: "Always anticipate expenses, and never anticipate revenue." He commented that the information in the Q 7 A booklet brought one positive conclusion, the need for re-starting the process rom the beginning, after the Town first provided guidelines for acceptable extent of and need for action. He stated that the figures presented, when corrected to apply to the entire Island of Palm Beach, and to comply with a 34-year schedule would amount to $262 million, with the portion applicable to the Town of Palm Beach being $224 million, which still would not include the additional amount of $80 million for items left out in the update, for a total of $300 million for the Town of Palm Beach alone.

Mrs. Nancy Douthit addressed the Town Council, commenting that the Palm Beach Civic Association was encouraging the Town Council to deny a referendum vote on the CCMP, and that a denial would invite colossal threat to the personal liability of the Mayor and individual Council members. She referred tot he Q & A booklet, page 9, where it was stated that: "The Army Corps of Engineers believes there is sufficient off-shore sand for the proposed project. The sand shore study should be completed in October or November of 1999. The question is the quality of the sand. Until the quality is determined, speculation as to the costs and amounts are premature." She referred to page 32 of the booklet, stating the amounts of reimbursements of $2,630,000 from the Federal Government, $34,802,000 from the State, and $8,472,000 from the County, for a total of $45,904,000. She questioned whether there were letters of financial commitment from any of the upper level governments. She referred to page 24, where a small State contribution was shown only. Other Federal and State reimbursements were nonexistent, and in 1997 dollars the County was planning $9,825,000. She stated that it appeared that the citizens of the Town were being victimized by politically correct irresponsible.

Mr. William Cooley addressed the Town Council, stating that he had attended two of the three workshops held in March and April, and had sent a series of questions over the past months regarding the proposed beach renourishment project. He thanked the staff for the responses he had received. He maintained that the Q & A booklet was an important document because of the questions that were answered, a well as from the questions that were not answered. He noted that the cost estimates had grown from 17-20% over the last set of estimates that were presented, so that cost and scope of the project was still a subject for discussion, as well as the need for the project. He maintained that the cost projections had not included any additional costs to be incurred by the Town for the acquisition and installation of parking spaces that would be required by the State that would be involved wit the funding of State monies. He referred to property rights of beach front property owners, noting that when a new beach front was created it would become public beach, and private beach front could be subjected to use rights by the public, which meant that currently existing private property would be subject to use rights, which then raised a question of liability. He commented that it was well established that the cause of the problem was the inlet created by the Federal Government, and questioned why no demand had been made on the Federal Government to solve the problem they had created. The answer in the Q & A booklet was that the Shore Protection Board recommended against the lawsuit; a lawsuit could be very lengthy, expensive, with no guarantee of success. He suggested that the Town continue to study the project, obtain more answers, and when a consensus on the scope of the project was reached, request that the Federal Government pay for its share of the costs of the repairs.

Mr. Gary Lickle addressed the Town Council, stating that the scope and total costs of the project seemed to be the main issues of concern. He maintained that the numbers had remained the same, and the cost of the project had gone down, and were continuing to go down as State and County funds were included. He noted that the Shore Protection Board had considered the issue of a lawsuit with the Federal Government, and much discussion had taken place. He maintained that the State now recognized and understood for the first time that there was an obligation to reimburse the Town for a renourishment project as a result of the damages caused by the inlet. That was why additional State funds would be offered, above and beyond what would normally be available, and there would be no need of reproducing additional parking in the private areas that were anticipated. The percentage of the reimbursement would go up and down based upon access issues that were either already there, or that the Council may want to provide. The plan could be used as a mapping tool, with the Council making the decision of what access should be provided, versus the trade off of how much they would pay for not giving that access. He stated that the CCMP was a good plan that was well engineered, the best available advice, and was a map to use to go forward.

President Smith asked if there had been any cost estimates regarding a lawsuit with the Federal Government in this matter?

Mr. Lickle responded that research had been done on the claim against the Federal Government for this type of reimbursement, and the Town had apparently, in the past, made an attempt at a claim, and had a Special Act of Congress passed specifically for the Town, to allow the claim process to go through. Other claims had also been reviewed, and it had been determined that several hundred thousand dollars would be needed to begin the process against the Federal Government.

President Smith stated that she believed Mr. Dusey had done a fine job in weeding through the questions presented at previous meetings in compiling the Q & A booklet. She noted that there were other questions raised today that were not included in the booklet, and that it would be expanded to include all needed information. She requested that the members of the Town Council determine how to proceed in this matter.

Councilman McLendon agreed that more input was needed and the booklet should be expanded. He commented that he believed that the reason that the Federal Government had made a commitment to build a new expanded sand transfer plant was recognition that the inlet had been a major problem.

President Pro-Tem Wyett commented that he believed there were a number of questions raised that merited a response.

Councilman McDonald commented that he would like to schedule an October workshop regarding this matter, and everyone could submit in writing any questions that were not addressed in the Q & A booklet to be considered at the workshop.

Mr. Norton Rosenberg, 3170 South Ocean Blvd., addressed the Town Council, stating that he had previously presented information regarding the financing of the 10-year plan that came from information supplied by the Florida Department of Environmental Protection (FDEP) and the Bureau of Beaches and Coastal Systems. They had come up with a 10-year plan, which was then broken down to determine how much it would cost the residents of Palm Beach to meet the obligations. He explained that he had presented it on the basis of a 7-year payout, because it worked out to be approximately $70 per hundred thousand dollars of assessed valuation. Afterwards, a 10-year plan without the aid of the State and County was determined to be $75 per hundred thousand dollars of assessed valuation for a $48 million debt. He explained that he was treasurer of Save Our Shoreline (SOS) and that the group believed that both State and County aid would be available, and had come up with a 10-year plan with State aid, a $53,700,000 project with monies contributed by the State in the amount of $25,477,000; current costs for the town of Palm Beach for the nourishment of the beaches would be $3,000,000; the County of Palm Beach would contribute $2.1 million; the ad valorem tax at the rate of $52.50 per hundred thousand dollars of assessed valuation at the present level would be $25,200,000. The total sources of funds was $55,777,000, or more than $2 million in excess funds raised.

President Pro-Tem Wyett commented that Mr. Rosenberg had done a very admirable study, however, it was all based on the projections of the Shore Protection Board of $53,000,000. He asked if it would be possible for the projections to reflect increasing costs if necessary?

Mr. Rosenberg replied that the projection could be revised with any figures that were available. He explained that the information he had presented came from the FDEP and the Bureau of Beaches and Coastal Systems – the figures were what they and the State came up with as to what costs would occur over the 10-year period.

President Smith suggested that all cost figures would be presented prior to the workshop, so that they could be analyzed. She requested that all comments or concerns be submitted in writing.

The date for the Special Town Council Meeting was scheduled for October 26, 1999, at 9:30 a.m. All questions would be submitted in writing prior to the meeting.

Mr. Martino commented that he would meet with Mr. Lickle prior to the meeting in order to come to some conclusions on how the costs would be measured, and provide the information to the Town Council prior to the scheduled meeting.

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At this time, town Attorney Randolph advised that Item X. Other C. on the Approved Agenda needed to be addressed. (Request by Sailfish Club of Florida, Inc. for Approval of Amended and Restated Irrevocable Declaration of Unity of Title, Restriction, and Covenant Agreement for Divestiture of Development Rights for Low Density Single-family Residential Use or Any Use Other than the Generic Club Use Presently Applied per Letter dated July 30, 1999, from Town Attorney Randolph). He explained that Attorney Terry Dytrych had noticed a housekeeping matter that needed to be changed in paragraph 5 of the Agreement. Two recorded documents would need to be added to that paragraph.

Attorney Dytrych commented that the only change he had made was to included a previously filed Amended Declaration (filed on June 1st) which was re-recorded this morning. He requested that the acceptance document be substituted for the re-filed book and page number, which he would provide to Attorney Randolph after the luncheon recess.

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b. Additional Special Town Council Meeting(s) in October 1999

The Town Council scheduled a Special Town Council Meeting for October 26, 1999, at 9:30 a.m. to discuss the issues related to the CCMP.

Former Shore Protection Board Chairman Gary Lickle and former Shore Protection Board member Joel Martino agreed to meet to attempt to provide additional information for inclusion in the Q & A Document.

5. Hartman and Associates, Inc. Project Authorizations Regarding Water Supply Issues - Request for Deauthorizations *(Items 1, 2, and 4 of the memorandum dated June 18, 1999, from Mr. Albert Dusey was deferred from July 13, 1999)* **- Request for Deferral to September 14, 1999, per memorandum dated July 29, 1999, from Mr. James M. Bowser**

This item was deferred to the September 14, 1999, Town Council meeting earlier in this meeting.

*********The luncheon recess was taken at 12:55 p.m.*********

*********The meeting was reconvened at 2:25 p.m.*************

6. Establishment of a Performance Evaluation System for the Town Manager *(Deferred from April 16, May 11, and July 13, 1999)*

Mayor Ilyinsky suggested that each member of the Town Council spend time with Town Manager Doney between now and the evaluation day of September 14, 1999, to review his performance. He explained that any other decisions regarding the evaluation system could be made at a later time. He requested that the President of the Town Council call a vote on his suggestion.

Councilman McLendon moved that the Town Council accept the suggestion of the Mayor, incorporating the fact that there would be a meeting in the next 3-4 months finalizing the review. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

XII. NEW BUSINESS

B. Resolutions

1. Resolution No. 23-99 - Beautification Project Agreement with the Florida Department of Transportation for Maintenance of Median on South Ocean Boulevard North of Lake Worth Road

Public works Director Al Dusey reported that the Citizens Association of Palm Beach had approached staff some months ago to request consideration of re-landscaping the median north of the Howard Johnson's hotel on South Ocean Boulevard, as well as replacing the signage for the entrance to the Town of Palm Beach on South Ocean Boulevard. Staff had met with the Florida Department of Transportation (FDOT) and they had offered reimbursement. Facilities/Maintenance Division Manager Joseph Ugi had designed an appropriate system for the area, which would cost approximately $750.00 to maintain. Resolution No 23-99 authorized the Mayor to execute the Agreement on behalf of the Town, and committed the town to long term maintenance. The signs would cost approximately $200.00.

Councilman McDonald suggested that in the future, staff depict any suggested plants for landscaping projects for review of the Town Council.

Town Attorney Randolph read Resolution No. 23-99 by title

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT FOR INSTALLATION AND MAINTENANCE OF LANDSCAPING WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION.

President Pro-Tem Wyett moved approval of resolution No. 23-99, incorporating an allocation of $15,000 from the General Fund Contingency, which would be reimbursed upon completion. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

President Pro-Tem Wyett moved approval of the signs with green letters on white background with the top being solid green. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

B. Ordinances

1. Ordinance No. 5-99 - Amendment to Sea Turtle Protection Ordinance

Town Attorney Randolph read Ordinance No. 5-99 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE TOWN CODE OF ORDINANCES AT CHAPTER 74 "PARKS AND RECREATION" ARTICLE 4, BEACHES AND AQUATIC ACTIVITIES, DIVISION 4, SEA TURTLES AT SECTION 74-223, SO AS TO EXTEND THE EFFECTIVE DATE OF SAID SECTION TO MARCH 1 THROUGH OCTOBER 31 OF EACH YEAR; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION' PROVIDING AN EFFECTIVE DATE.

Mr. Randolph explained that in order to receive State funding for this project, the State required that the town be as strict or stricter than the ordinance of Palm Beach County. The Town ordinance had originally been April 1 through October, and thus was not as strict, and the change simply made the Town ordinance in accord with the ordinance of the County.

Councilman McLendon commented that more could be done for the turtles if there was some alternative means of improving their survival of getting back into the ocean.

President Pro-Tem Wyett moved approval of the first reading of Ordinance No. 5-99. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

C. Appointments

1. Code Enforcement Board - One member, Three-Year Term to Expire April 2002

Present Code Enforcement Board Alternate Scott Sloane was appointed to fill the three-year term; Max Shorr was appointed as an alternate member. *(Mayor Ilyinsky broke a tie vote between Mr. Scott Sloane and Mr. David Thomas, resulting in Mr Sloane being appointed to fill the three-year term).*

D. Other

1. Request by Preservation Foundation of Palm Beach for Landmarks Preservation Commission Members to Attend the 1999 National Preservation Conference in Washington, D.C., October 19-24, 1999

Preservation Foundation President Polly Earl suggested that the Town Council consider allowing Landmarks Preservation Commission Members to go to pertinent outside meetings, by allowing attendance at such meeting as an excused absence from the Landmarks Preservation Commission Meetings.

Councilman McDonald moved that any Landmarks Preservation Commission member, as well as members of any other Town Commission or Board, be allowed excused absences when members attended professional meetings. He suggested that the matter be added to the Ordinances, Rules & Standards (ORS) meeting scheduled for August 11, 1999, for further discussion regarding any possible ordinance change. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

2. AT&T Rooftop Lease Agreement for the Provision of Wireless and Personal Communications Services (PCS), with AT&T Facilities Located on Town Hall

Assistant to the Town Manager David Jakubiak reported that it was his understanding that AT & T had applied with the Town Building Department to appear at the Landmarks Preservation Commission meeting, and the Agreement today was the second agreement with AT & T over the course of two years. In the first Agreement AT & T reimbursed the Town $5,000, and a new Agreement was started. The new Agreement was for a term of 5 years, renewable at the option of AT & T for an additional 5 year period. The standard Agreement for this type of concept was usually 20 years. AT & T had originally requested a 25 year agreement, however, staff had believed the short term Agreement was more appropriate at this time.

Councilman McDonald moved approval of the AT & T Rooftop Lease Agreement, with the condition that the notification period of non-renewal of the Agreement be changed to six months. The motion was seconded by Councilman McLendon.

In response to President Pro-Tem Wyett, Attorney Brindell, representing AT & T, assured him that the parapet wall would remain permanently in place on the rooftop.

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

3. Report by Digby Bridges, Marsh & Associates, P.A. Regarding Town of Palm Beach Program and Space Requirements for Additions and Renovations to Existing Town Hall, New Fire Station, and New Parking Garage

Town Engineer James Bowser reported that staff had been directed to conduct a needs analysis of Town Hall, as there were critical space needs for both the Building Department and the Fire-Rescue Department. The needs analysis focused on a new Fire-Rescue building on the Beaumont Parking Lot, both with and without underground parking; alternate parking facilities were reviewed on the Australian Avenue employee lot; a conceptual floor plan was developed for Town Hall if Fire-Rescue moved out of the building. Mr. Bowser introduced Mark Marsh, with Digby, Bridges, Marsh & Associates, who had prepared the report.

Architect Mark Marsh added specific details to the report submitted by Digby, Bridges, Marsh & Associates, pointing out the three available options: renovation of the existing Town Hall, construction of a new Fire-Rescue Station in the Beaumont Parking Lot, and a new parking garage on 217 Australian. He reviewed the plans contained in the report submitted to the Town Council. He noted that the had also been asked to look at the "Boynton Lot," which was on the corner of Peruvian and South County Road as an option to house approximately 8,000 sq. ft. of a potential Building Department, a park, and a parking structure below. He reviewed the costs associated with such a project.

Town Manager Doney commented that the costs involved with all of the proposals would need to be re-examined, and all alternatives explored.

In response to President Smith, Police Chief Croft estimated that the total number of parking spaces needed for the Police Department would be 60 spaces during the day, and that currently there was a problem with Police staff parking, as approximately 15 employees were required to park on the street.

Fire-Rescue Chief Elmore estimated that the Fire Department would need approximately 12-14 parking spaces.

Director of Planning, Zoning & Building Robert Moore commented that some remodeling was necessary in the Town Hall in order to meet the needs of staff, including the renovation of jail cells on the west side of Town Hall, which were currently being used for storage. He requested authorization to go forward with the renovation of the jail cells in an amount not to exceed $25,000.

Councilman McDonald moved deferral of consideration of the Digby, Bridges & Marsh report to the November Town Council Meeting; appropriation of an additional %10,000 for additional planning; and the appropriation of a not to exceed amount of $25,000 to renovate the jail cell area to come from the Fund Balance of the General Contingency Fund. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

4. Report on Legislative Revisions Affecting Chapters 175 and 185, Florida Statutes, Regarding Police and Fire Pensions - Schedule a Special Joint Town Council and Retirement Board Meeting

Director of Human Resources William Crouse reported that the Retirement Board had requested a Special Joint Town Council and Retirement Board Meeting regarding some legislative changes, namely House Bill 261, and its impact on the Town retirement system. He explained that compliance with the legislation on a timely basis was an issue of concern. He commented that two sections of the Florida Statutes, 175 and 185, pertained to the Fire Fighter and Police Officer Pension Plans, and distributed tax monies to the municipalities to help pay for benefits for those groups. As an example, he noted that the latest monies received by the Town were $401,000. In March of this year, the Governor passed House Bill 261, which made significant changes to 175 and 185, and the major impact to the Town was the requirement that the Retirement Board break up into separate boards, namely a board for the Police and Fire, or, if the employees chose, a separate board for Police and a separate board for Fire; a board would then need to also exist for the general employees. Mr Crouse noted that the costs (actuarial reports, money management, legal expenses) of operating the $122 million pension system over the last twelve months had approximated $408,000, and that additional costs to the Town would be incurred with the splitting of the board, as well as the necessity of compliance to legislative requirements, which would be tied to the monies accepted through the process of Florida Statutes 175 and 185. He estimated that the costs for three boards would be approximately an additional $300,000.

Town Attorney Randolph commented that the issue that was coming before the Town Council was whether to accept the monies from the State, and if the monies were accepted the Town would then have to comply with the legislation. If the monies from the State were given up, the Town would not necessarily have to split the Retirement Board.

Councilman McDonald moved approval of a Special Joint Town Council Meeting and Retirement Board Meeting on the date of September 29, 1999, at 1:00 p.m. 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.

5. Status of Circuit Court Decision Regarding Ryan Incorporated Eastern v. Town of Palm Beach and Consideration of Appeal

Town Attorney Randolph reported that the Town had contracted with Ryan Incorporated Eastern in regard to the Jungle Road/El Vedado storm drainage improvements, and there had been overruns in the contract of approximately $361,000 according to Ryan Incorporated Eastern. A breach of contract lawsuit had been submitted for damages in the amount of $361,000 by Ryan Incorporated Eastern, and a jury had found an award of $310,000. The Town had filed a motion for a new trial, and the motion was denied by the Court; there were also several other pending motions setting forth errors in the trail, which had not yet been heard. Attorney Randolph recommended that the matter be appealed, which must occur within 30 days.

Councilman McDonald moved approval of authorization for Attorney Randolph to file an appeal in the case of Ryan Incorporated Eastern v. the Town of Palm Beach. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

6. Consideration of the Issue of the Town-Serving Requirement to be Addressed by the Planning, Zoning & Building Department Before the Item Comes Before the Town Council

After discussion of placing Town-serving related issues on the "New Business - Minor" portion of the Agenda, Town Attorney Randolph advised that he had some concerns regarding the Town Council delegating authority to staff in these matters, as there were certain criteria that were required to be met under the Code upon which the Town Council made determinations. He explained that in the past the Town Council had not relied upon the staff to determine whether there was a hardship, for example, in these quasi-judicial matters. He observed that he believed that the Town Council could place such things under minor matters, however, action would still be needed, rather than merely approval of a recommendation made by staff. He advised tat he would research the question of staff approval for quasi-judicial matters and report back at the September 14, 1999, Town Council meeting.

XIII. COMMENTS OF THE TOWN COUNCIL MEMBERS

There were none.

XIV. DEVELOPMENT REVIEWS

A. Appeals

1. Appeal of the Architectural Commission's Decision of May 26, 1999, Concerning 740 Hi-Mount Road by Mr. Ronald K. Kolins *(Deferred from July 13, 1999)* - **Request for Deferral to September 14, 1999, per letter dated August 4, 1999, from Mr. Ronald K. Kolins**

   This item was deferred earlier in this meeting, under Item V. "Approval of the Agenda," to the September 14, 1999, Town Council meeting.

2. Appeal of the Architectural Commission's Decision of July 28, 1999, Concerning 242 Country Club Road by Mr. Ronald K. Kolins

   This item was deferred earlier in this meeting, under Item V. "Approval of the Agenda," to the September 14, 1999, Town Council meeting.

B. Variances, Special Exceptions, and Site Plan Reviews

Old Business - Major

1. SPECIAL EXCEPTION NO. 20-99 with SITE PLAN REVIEW - Royal Poinciana Chapel Trustee, Inc.; commonly known as Seagull Cottage, a part of the Chapel, 60 Cocoanut Row; located in the R-B Zoning District. To allow construction of minor building additions and modifications to this previously approved special exception with site plan review *(Deferred from July 13, 1999)* - **Request for Deferral to October 12, 1999, per letter dated July 26, 1999, from Mr. John R. Banister**

   This item was deferred earlier in the meeting, under Item V. "Approval of the Agenda," to the October 12, 1999, Town Council meeting.

2. SPECIAL EXCEPTION NO. 21-99 - Nikiforos Stoupas, 101 N. County Rd.; located in the C-TS & R-C Zoning District. To allow a nightclub use at the Casablanca Restaurant; said nightclub would include a dance floor and stage for live entertainment. To allow a total of 150 seats (an addition of 85), a modification to Special Exception approval 23-94. To allow required parking, 30 spaces, on the adjacent lot located in the R-C Zoning District. *(Deferred from July 13, 1999)* - **Request for Deferral to September 14, 1999, per letter dated August 5, 1999, from Mr. James R. Brindell**

This item was deferred earlier in the meeting, under Item V. "Approval of the Agenda," to the September 14, 1999, Town Council meeting.

3. SITE PLAN REVIEW NO . 13-99 WITH VARIANCES - csc p.b. Ltd. Partners; commonly known as The Dorset House, 190 Bradley Place; located in the R-D(2) Zoning District. To allow modification to Site Plan Approval 2-99. Applicant proposes to reduce the number of units from 20 to 14, reduce parking from 46 to 39 spaces, increase the landscape open space, and add eight cabana awnings. Request to demolish by not maintaining 50% or more of the cubic footage at a given time. Variances requested are front, side and rear requirements for the proposed cabana awnings, providing no setbacks where 10' are required for the side and rear, and 25' in the front. *(Demolition Issue deferred from July 13, 1999)* - **Request for Deferral to September 14, 1999, per letter dated August 5, 1999, from Mr. James R. Brindell**

This item was deferred earlier in the meeting, under Item V. "Approval of the Agenda," to the September 14, 1999, Town Council meeting.

New Business - Minor

4. VARIANCE NO. 24-99 - Greg & Karen Golnick, 146 Seabreeze Ave.; located in the R-B Zoning District. To allow construction of pergola providing a west side yard setback of 6' in lieu of 12.5' required.

Director of Planning, Zoning & Building Robert Moore reported that Variance No. 24-99 had been reviewed and recommended for approval by staff.

President Pro-Tem Wyett moved approval of Variance 24-99, finding that all variance criteria were met, with the hardship running with the land as the property was of nonconforming size. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

5. VARIANCE NO. 25-99 - Bradford & Ashley Deflin, 235 Merrain Rd.; located in the R-B Zoning District. To allow construction of a one-story addition with an eave extending 30" into the required side yard, in lieu of 24" maximum allowed.

Director of Planning, Zoning & Building Robert Moore reported that Variance No. 25-99 had been reviewed and recommended for approval by staff.

President Pro-Tem Wyett moved approval of Variance No. 25-99, finding that all variance criteria were met, with the hardship running with the land as a nonconforming width. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

New Business - Major

6. VARIANCE NO.. 20-99 - George & Adele Merck, 1197 N. Lake Way; located in the R-B Zoning District. To allow construction of a single family residence using a point of measurement of 9.5' NGVD to establish building height, in lieu of 7.5' and 8.35' NGVD maximum allowed.

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

Attorney Maura Ziska addressed the Town Council, representing George and Adele Merck, stating that there were two different points of measurement for the property as defined under the Code. She explained that the applicant was planning to build a single family residence, and the hardship was the grade of the land. She noted that it would not cause any adverse impact on neighboring properties, and the variance had been mitigated by the excessive side yard setbacks on the south and north. She noted that there had been a concern from neighboring property owners, Mr. and Mrs. Bruno, and she had met with their attorney to explain the situation.

Director of Planning, Zoning & Building Robert Moore commented that Zoning Administrator Castro had visited the site, and had advised that the unique situation of the bike trail being higher than the road was a valid concern. He stated that staff had no objection to the variance request, however, construction codes required 18" above any right-of-way, and the bike trail was a right-of-way.

Mr. Al Bruno, 1230 N. Lake Way, addressed the Town Council, stating that he was currently involved in a similar situation with a neighbor, and believed that this matter should be put aside until a resolution was reached. He commented that there had not been a flooding problem in the house that had been on the property in question previously, and that a desire for a better view was not a hardship. He commented that there was no standard form for building in the Town, and that he had yet to see proof of a true hardship.

Mr. Moore commented that the Zoning Ordinance had been adjusted through the years, and when many homes were built they had been built with the proper setbacks of that date and era. Subsequently, restrictions had become more rigid, and th4erefore, certain property owners requested relief depending upon when their properties were originally built; the Town Council reviewed these requests on an individual, one-on-one basis.

Attorney Robert Deziel commented that the previous house on the property was at a finished floor elevation of 8.5', and that the house of Mr. Bruno had a finished floor elevation of 9.75'. He mentioned that there was a zoning provision under consideration for these types of property. He noted that the Ford estate had been used as an analogy in this matter to show that the Town Council had previously considered and approved a zoning in progress condition, and he requested consideration under the R-A zoning study item. He indicated that the hardship was the fact that the bike trail was higher than N. Lake Way, so that if the home was built at the 7.5' requirement, run-off from the bike trail would move towards the house.

Councilman McLendon moved approval of Variance 20-99, on the basis that the hardship was connected to the land, and related to the bike trail being higher than the street. President Smith passed the gavel to second the motion. On roll all the motion carried 4/0, as Councilman Shaw was absent from the meeting.

7. VARIANCE NO. 21-99 - Christine Gibbons, 433 Seaspray Ave.; located in the R-B Zoning District. To allow construction of an addition to a nonconforming two-story residence, adding to the second story providing a 6.8' side yard setback in lieu of 15' required.

Attorney Reginald Stambaugh, on behalf of the applicant, addressed the Town Council, submitting photographs and a survey of the property. He explained that there was a 6.8' pre-existing setback, and the applicant desired to continue building up. Most of the house was a second story house, with the exception of about 19' x 20' of building, which was a one story piece on the back side of the house. The applicant desired to add on, and make a second story, so that she could have her own room in the back of the house.

Director of Planning, Zoning & Building Moore commented that staff had no objection to the request.

Councilman Wyett moved approval of Variance 21-99, with the condition that the request of Mr. Michael Byrd, owner of 435 Seaspray, be adhered to: that the Ficus hedge on the west side of the property of the applicant be allowed to grow to the height of the second story addition and be maintained by the applicant. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

8. VARIANCE NO. 22-99 - Anthony Thebault, 1 Golf Rd.; located in the R-A District. To allow construction of additions at a point of measurement of 11.6" NGVD to establish building height in lieu of 8.72' allowed; to allow expansion of non-conformities; to allow a roof to be raised retaining the nonconforming side yard setback of 10' in lieu of 15' required; to all ow a height plane variance providing a 38' setback from County Rd. in lieu of 50' required; to allow a front yard setback of 24.9' in lieu of 35' required; and, to allow a "tower feature" 533 sq. ft. larger than 1% of the maximum area allowed.

Ex-parte communication was declared by Mayor Ilyinsky with Architect Ames Bennett, and by Councilman McLendon with Architect Ames Bennett.

Architect Ames Bennett addressed the Town Council, stating that the property was a unique, odd-shaped piece of property on the corner of Gulf Road and County Road in the R-A residential district. The house on the property was built in 1950, and it was proposed to add a second floor, raise the present 8' ceilings to 10' on the ground floor, add a stair tower to the second floor. And an observation tower. Mr. Bennett exhibited photographs and a site plan of the property in question. He explained that in order to build two more feet of height in the nonconforming area, a variance for each of the sides of the house was necessary.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: should be designed in a manner which is more conforming to Code; Building Department: no hardship with the tower; no objection to setbacks on the second floor additions; no objection to point of measurement variance matching the existing floor level of the home for the additions; Town Manager: concurs with the above comments.

Councilman Wyett moved approval of the variance request to allow construction of additions on the house with a point of measurement for height and overall height of 11.6' NGVD, in lieu of 8.72' NGVD required, and the existing 12.6' NGVD finished floor elevation of the house [Sec. 134-843(a)(7)]. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/0, as Councilman Shaw was absent from the meeting, and Councilman McDonald had temporarily left the room.

Councilman Wyett moved approval of the variance request to allow expansion of a nonconforming element of a nonconforming house [Sec. 134-843(b)]. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/0, as Councilman Shaw was absent from the meeting, and Councilman McDonald had temporarily left the room.

Councilman Wyett moved approval of the variance request to raise the roof structure in the existing house with an existing nonconforming side yard setback of 10' in lieu of 15' required [sec. 134-843(a)(8)]. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/0, as Councilman Shaw was absent from the meeting, and Councilman McDonald had temporarily left the room.

Architect Bennett addressed the variance to allow a height lane variance to raise the second story elevation of the house providing a 38' setback from County Rd. in lieu of 50' required. He explained that there was a height angle involved, and the variance was necessary order to avoid intruding on neighboring property in order to match the elevation heights.

President Pro-Tem Wyett commented that the situation was unique in that the property was practically surrounded by streets, and anything that could be done to improve the property to make it liveable was worthwhile; the then moved approval of the variance request [Sec. 134-846(b)] to raise the second story elevation of the house providing a 38' setback from County Rd. in lieu of 50' required. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/0, as Councilman Shaw was absent from the meeting, and Councilman McDonald had temporarily left the room.

Architect Bennett addressed the variance request to raise the height of the house in the front yard, with a front yard setback of 24.9' in lieu of 35' required. He explained that the preference of the applicant was to have a tower feature.

President Smith suggested that an enclosed stairway be used instead, and asked Mr. Moore what could be built in the zoning district?

Mr. Moore replied that a third floor observation only area could be built in the R-A Zoning District.

Mayor Ilyinsky congratulated the new owners of the property on their desire to improve the property, commenting that he thought the tower was a wonderful idea, and commenting that Architect Bennett had accomplished a very handsome design.

Councilman McLendon moved approval of the variance request [Sec. 134-843(a)(5)] to raise the height of the house in the front yard, with a front yard setback of 24.9' in lieu of 35' required, to enlarge a first floor non-conforming condition [Sec. 134-844(a)(1)(2)], and to allow a "tower feature" 533 sq. ft. larger than 1% maximum area allowed [Sec. 134-846(b)], with the hardship running with the land. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

9. <u>VARIANCE NO. 23-99</u> - James & Susan Collins, 1085 N. Lake Way; located in the R-B Zoning District. To allow construction of an addition providing a 22' street side yard setback in lieu of 25' required.

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

Attorney Jim Paine, representing James & Susan Collins, addressed the Town Council, distributing exhibits of the property in question, along with a site plan, explaining that the position of the home and the pool required that the only position available for the addition was the southeast corner of the property, which would require a variance of 3'.

Director of Planning, Zoning & Building Robert Moore gave the following staff comment: Comprehensive Plan: it could be designed to conform with the Code; Building Department: no objection.

President Pro-Tem Wyett moved approval of Variance No. 23-99. The motion was seconded by Councilman McDonald. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

10. <u>SPECIAL EXCEPTION NO. 22-99</u> - Worth Avenue Associates Limited, the Esplanade, 150 Worth Ave.; located in the C-WA Zoning District. To allow a 2,739 sq. ft. spa/salon occupancy in lie of 2,000 sq. ft. maximum permitted.

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

Attorney James Brindell, on behalf of the Goodman Company and Georgette Klinger, explained that the Georgette Klinger salon was in the Esplanade from 1979 until this year, in space that consisted of 3,732 sq. ft., and the proposal was for a relocation within the Esplanade on the second floor of 2,739 sq. ft. Town serving documentation had been provided to the staff.

Director of Planning, Zoning & Building Robert Moore commented that the Town serving documentation proved 53% Town serving, and staff saw no problem with the application.

President Pro-Tem Wyett moved approval of Special Exception 22-99. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

11. <u>SITE PLAN REVIEW NO. 15-99 WITH SPECIAL EXCEPTION & VARIANCES</u> - Paul L. Maddock Jr., Trustee, 317 Peruvian Ave.; located in the C-TS Zoning District. Site Plan Review of a proposed 4,329 sq. ft. commercial building with a Special Exception for a second story. Variances requested are: to allow structural columns to encroach 6 inches into 12 parking spaces; to allow an architectural feature to extend one foot over required yard area without having 9' of vertical clearance; to allow a staircase to extend 3' into the required 5' side yard setback; and to allow a 4,000+ sq. ft. commercial building without providing a loading zone.

Director of Planning, Zoning & Building Robert Moore pointed out that the variance for the staircase to extend into the side yard had been withdrawn.

Ex-parte communication was declared by Councilman McDonald via telephone with Attorney Broberg regarding the merits of the project; by President Pro-Tem Wyett via telephone with Attorney Broberg regarding the merits of the project; by President Smith via a conversation with Mr. Maddock; by Mayor Ilyinsky via a conversation with Mr. Maddock and Attorney Broberg; and by Councilman McLendon with Mr. Maddock and Attorney Broberg.

Mr. Paul Maddock, Jr., Trustee for the trust which owned 317 Peruvian Ave., addressed the Town Council, producing an exhibit of the contemplated building which would house offices. He explained that planning for the parking spaces had resulted in a problem with the structural columns, which would require a variance , as well as the architectural feature, and the loading zone. He explained that the architectural feature had been copied from the east side of the Town Hall, and that it was desired to push the building as far on the Peruvian side as possible, which would allow more of a rear setback for landscaping. He noted that immediately across the street from the building were four red-striped loading zone areas, as well as four loading areas 150' to the west, and that he did not believe a loading zone was necessary in front of the proposed building, which would impact parking. He pointed out that the structural columns in the underground parking area would allow the maximum number of parking spaces.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Police & Fire: no comments; Comprehensive Plan: entry way may need to be increased in width (subsequently found not to be necessary); Public Works: solid waste and storage for service must comply with town codes; Building Department: hardship needed addressing on the front yard variance; no objection to the loading zone variance; Town Manager: concurs with staff comments.

Councilman McDonald referred to a letter of concern from a neighboring property owner, Mr. John Ewing, regarding a wall across the rear of the property as a buffer, as opposed to a hedge, as well as a concern with evening parking.

Mr. Maddock replied that there were no plans for a shared parking agreement, and that a wall could be constructed to buffer Mr. Ewing in the northwest corner.

In response to Councilman McDonald, Mr. Maddock replied that two to four tenants could occupy the building, and that he anticipated that the building would be used in the evening hours.

Councilman McDonald moved approval of Site Plan Review No. 15-99 with Special Exception and Variances, with the condition that a wall be constructed in the northwest corner - 25' from west to east, that would buffer Mr. Ewing. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

C. Other

1. List of Zoning Study Items and Calendar for 1999/2000 Season

Zoning Administrator Paul Castro reported that the list of Zoning Study Items had been submitted with 14 items, as well as applications that had come in on the deadline date, which were applications by The Breakers for a proposed golf and tennis club on the west side of County Road, and The Brazilian Court Hotel, Inc. for several code amendments making hotels in the R-C Zoning District that were built by a certain date a permitted use, as well as a request for a new zoning district submitted by the Palm Beach Day School, in the area related to the recreation space owned by the Town, the public school, the Four Arts, and the Palm Beach Day School.

Councilman McDonald moved approval of the receipt of the Zoning Study Items, with authorization to send them to the Zoning Commission. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 4/0, as Councilman Shaw was absent from the meeting.

Zoning Administrator Castro pointed out two dates in the Zoning Calendar that would affect the Town Council–the recommendations and report of the Zoning Commission would be considered by the Town Council on Thursday, January 6, and Friday, January 7, 2000. The first reading of the Zoning Ordinance would be on Monday, February 7, 2000.

2. Neiman Marcus Project Construction Schedule

Attorney James Brindell, on behalf of the Goodman Company, addressed the Town Council, stating that the items to be discussed today related to the management of traffic and pedestrians during certain aspects of the construction process, and the revised day for the concrete pour. He distributed copies of the construction schedule, which he had previously reviewed with Town staff, and discussed it in detail. The mat pour date was proposed to be revised to the dates of: September 24-25; October 2-3; October 9-10; October 16-17.

Director of Planning, Zoning & Building Robert Moore commented that staff had met with Attorney Brindell in order to determine solutions that would be agreeable to Town staff and the contractor, which were outlined in the construction schedule presented today.

Councilman McDonald moved approval of the Neiman Marcus project construction schedule and the revised dates presented for the mat pour. The motion was seconded by Councilman McLendon.

Public Works Director Al Dusey asked for clarification on item No. 6 of the Construction Schedule, "Location of a Barricade Fence at the Centerline of Road After the Mat Pour," questioning the time period and how long the fence would be in the center of Worth Avenue?

Attorney Brindell responded that he estimated that it would last until February 11, 2000, however, the fence would be moved to the north side during the holidays, December 18- January 3, 2000. The completion date for opening of the store to the public remained at November 2000.

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

3. Reconsideration of Conditions in the Mitigation Plan outlined in the Town's letter dated November 25, 1998, for FH of Palm Beach, Inc. commonly known as C-15 and C-16 of the Palm Beach Hotel, 251 Sunrise Avenue *(Deferred from April 13, and June 8, 1999)*

Attorney Roy Watson reported that it was his understanding that the neighbors were satisfied with the mitigation plan.

Mr. Allen Heise, principal owner of 251 Sunrise, produced an architectural drawing of the club, pointing out that he met with several residents of Park Avenue and their attorney several weeks ago to determine a solution that would be agreeable with everyone. He explained that the plan of action was to enclose the area in the northwest corner of the building, leaving a door for an emergency exit, putting the recycling bins int eh area, and have the sound level approved by experts. He pointed out that the noise from the recyclables would then be reduced, as well as any noise leaking out from the building. The anticipated completion date was October 31, 1999.

Attorney Ron Kolins, representing residents of Park Avenue, stated that it was hopeful that the plan of action would resolve the problems with 251. He noted that agreement must be made that the design and materials for the enclosure be designed and approved by Mr. Dunn, who was a sound engineer. He requested that, if possible, the doors opening from the enclosure, which were now double, be made into a single door. He proposed that the matter be deferred so that the enclosure could be built and have a trial period so that the residents of Park Avenue could come back and report the results.

Councilman McDonald moved deferral of the mitigation plan for further consideration to the December 1999, Town Council meeting. The motion was seconded by President Pro-Tem Wyett.

Mr. Moore pointed out that a roof and the improvements on the new planned enclosure would require another variance from the Town Council in order to expand a nonconforming building.

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

At this time, Attorney Kolins brought another matter to the attention of the Town Council: the area behind Park Avenue that was owned, controlled, and allowed to be in a foul condition by the Palm Beach Hotel and/or various tenants of the hotel. He explained that conditions had deteriorated and were a health hazard. He distributed pictures of the trash in the area.

Councilman McDonald suggested that the matter go before the Code Enforcement Board

Attorney Kolins explained that complaints had been made and each time the area was usually cleaned up by the time Code Compliance Officer House arrived at the scene. He indicated that he was looking for a longer term solution to the problem.

Chief Code Compliance Officer Brian House reported that for several months last year he had visited the area every day, and after a period of time it was clean and kept clean. He noted that a citrus deodorizer/sanitizer was currently being used in the area, which had helped the problem. He would continue to monitor the situation.

Town Attorney Randolph referred to his letter dated July 23, 1999, to Police Chief Croft regarding the sign placed at the entrance of Park Avenue which currently prohibited all commercial trucks. He explained that the Palm Beach Hotel Condominium Association had requested that the signs be modified so as to prohibit trucks only during certain hours. He suggested that, as part of the compromises being made to resolve the disputed issues between the parties, that the Town give consideration to amending the sign to read "No Trucks Between 7:00 p.m. and 8:00 p.m.," as suggested by the Condominium Association.

Attorney Kolins suggested that the hours were too expansive, and recommended the hours of 8:00 a.m. to 6:00 p.m. to allow trucks on the street.

President Pro-Tem Wyett commented that the description of commercial vehicles specified vehicles of 10,000 lbs. Or more, and that was not the type of problem that he had heard complaints about. He explained that the catering vehicles were the problem, coming in the early hours of morning to empty the catering equipment after functions. He suggested that some way must be found to discourage this type of problem.

Mr House commented that the owner of the Park Avenue Inn, who actually owned the ingress/egress easement had put up two posts at the right of way line, and he was planning on putting a chain across it from 7:00 p.m. until 8:00 a.m. He suggested that would solve the problem in question.

Mr Moore noted that the Condominium Association was waiting for the Town to determine the wording of the sign before they addressed the moving of a fire escape and a gas main in the area, which would eliminate some of the trucks using the alleyway, and get them into the commercially zoned east/west alleyway.

Ms. Gilda Beane addressed the Town Council, commenting that the loading and unloading had been very unpleasant, and that it had worked out very well since it had been done from Sunrise Avenue.

XV. ANY OTHER MATTERS

There were none.

XVI. ADJOURNMENT

The meeting was adjourned at 6:10 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk