MINUTES OF THE TOWN COUNCIL MEETING HELD ON JUNE 9, 1998

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Lesly Smith at 9:30 A. M. on Tuesday, June 9, 1998. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Samuel McLendon, Councilmen Jack McDonald, Leslie Shaw, and Allen Wyett. Also in attendance for all or a portion of the meeting were: Acting Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Fire-Rescue Chief Ken Elmore, Planning, Zoning & Building Director Robert Moore, Zoning Administrator Paul Castro, Police Chief Frank Croft, Public Works Director Al Dusey, Public Works Facility Maintenance Division Manager Joe Ugi, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The Reverend Dwight Stevens from the Paramount Church gave the invocation. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS

1. Presentation to Mrs. Anne Keresey in Recognition of Thomas Keresey's Service on the Town's Charter Review Commission From 1997 to 1998

Mayor Ilyinsky presented a plaque to Mrs. Keresey in recognition of the late Mr. Keresey's service to the Town.

2. Retirement of Judy Seadorf, Parking Enforcement Officer, 20 Years

Mayor Ilyinsky recognized Mrs. Seadorf's twenty years of service to the Town and presented her with a ring.

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky asked that all residents remember Sunday, June 14th, which is Flag Day, and observe that day.

The Mayor announced the Town's 4th of July Celebration will take place at Bradley Park between the hours of 6:00 and 8:00 p.m.

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

ADDITION to Page 4, Item XIV.C.4 - Proposed Settlement of Town of Palm Beach vs. Rose Pierce;

President Pro-Tem McLendon moved approval of the addition of Item XIV.C. 4. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

DEFER Item XVI.A.5, Page 5 - Special Exception No. 9-98 - The Poinciana Club, Inc. to the July 14, 1998, Town Council meeting;

President Pro-Tem McLendon moved approval of the deferral of Item XVI.A. 5., Special Exception 9-98. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

WITHDRAW Item XVI.A.9, Page 6 - Variance No. 24-98 - Barry, Charles & David Leiwant, Charlies's Crab, 456 S. Ocean Blvd.;

President Pro-Tem McLendon moved approval of the withdrawal of Item XVI.A.9., Variance 24-98. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

DEFER Item XVI.A.2., Page 5 - Special Exception No. 43-97 - Testa's, 219 & 221 Royal Poinciana Way, to the October 13, 1998, Town Council meeting;

Attorney Frank Lynch, on behalf of Testa's, addressed the Town Council, stating that the approval granted at the November meeting had not yet been implemented. The purpose of the review was to give an update on the operations, however, since there were no operations to review at this time he requested deferral of this item. He estimated that approval would be implemented sometime between now and October.

President Pro-Tem McLendon moved deferral of Item XVI.A.2., Special Exception 43-97 to the October 13, 1998 Town Council Meeting. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

MOVE Item XVI.A.11., Page 6 - Variance No. 27-98 - P. Eugene Dixon, 320 El Vedado Road, to be heard as the first item after the lunch break under XVI. DEVELOPMENT REVIEWS A. Variances, Special Exceptions, and Site Plan Reviews;

Attorney Frank Chopin, on behalf of P. Eugene Dixon, requested that he be allowed to be heard earlier on the Agenda, as there was a conflict in his schedule.

Councilman Wyett moved approval of assigning a time certain to Item XVI.A. 11., Variance 27-98, to be heard immediately after lunch, under XVI. Development Reviews, Item A. President Pro-Tem McLendon seconded the motion. On roll call the motion carried unanimously.

ADDITION of Item XIV.C.5, Page 4 - Consideration of a presentation of the AED equipment by the Fire-Rescue Department at the July 14, 1998, Town Council meeting;

Councilman McDonald moved that Item XIV.C.5, Consideration of a presentation of the AED equipment by the Fire-Rescue Department, be added to the Agenda. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Eric Gilbertson, 151 Chilean Avenue, said he had spoken to Mike Wright from the City of West Palm Beach regarding the water issues. He complimented President Smith and the Town Council on their stand regarding the water issue.

Adrian Winterfield made four suggestions to the Mayor and Town Council:

1. Consider the elimination of parking in the 200 and 300 blocks of Worth Avenue and make it a pedestrian walking area;

2. Consider the construction of an employee parking lot on Quadrille in West Palm Beach (the site of the recent demolition) with a shuttle bus for Town employees–the current employee parking lots could be rented;

3. Consider the elimination of the Mayor's ombudsman function as defined in the Town Charter (Charter Review Commission);

4. Consider defining a length of time for disability leave for the Town Manager in the Town Charter (Charter Review Commission).

<u>APPROVED AGENDA</u>

VII. APPROVAL OF MINUTES OF APRIL 16 AND 17, AND MAY 6, 1998

VIII. APPROVAL OF CHECK REGISTERS FOR MAY 1998

IX. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF MAY 27, 1998

X. LICENSES AND PERMITS

1. Charitable Solicitations

    1. Planned Parenthood of Palm Beach & the Treasure Coast; No. 120-99
    2. Hospice Guild of Palm Beach; No. 205-99
    3. Center for Children in Crisis; No. 341-99

XI. OTHER

1. Authorization for Acting Town Manager to Execute Easement Deed in Favor of Osceola Farms Co. per Memorandum dated May 26, 1998 (with attachments) from Public Works Director Dusey

2. Selection of an Electrical and Mechanical Engineering Consultant in Accordance with the Consultants' Competitive Negotiation Act per Memorandum dated May 26, 1998, from Public Works Director Dusey

3. Appointment of Selection Committee to Review Proposals from Public Relations Consultants Related to the Comprehensive Coastal Management Plan per Memorandum dated May 26, 1998, from Public Works Director Dusey

The Approved Agenda (Items VII. Through XI.) was approved through motion of Councilman Wyett, seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

REGULAR AGENDA

XII. PUBLIC HEARINGS

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

Attorney Frank Chopin, representing the owner of the property at 445 Antigua Lane, addressed the Town Council, stating that permission had been granted for the client of Attorney Lynch to have an expert come on the property, dig holes, and examine the situation. He had been asked to fill in the holes and submit the report in time so that it could be examined by the Town expert and the expert of the homeowner. Unfortunately the report had not been submitted in a timely fashion, and for that reason, Mr. Chopin requested a deferral so that the various experts could review the report. He also requested that the holes that were dug be filled in.

Attorney Lynch responded that the only reason the holes had been left was because a decision today could have resulted in re-excavation, and his client was prepared to fill them.

Councilman McDonald moved that this item be deferred to the September 8, 1998 Town Council Meeting, with the condition that the holes would be filled in. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

2. De-designation of an Historic/Specimen Tree at 151 Via Bellaria; Resolution No. 28-98

Public Works Director Al Dusey reported that the tree at 151 Via Bellaria was in poor condition, and horticulturist Mr. Robert Haley had recommended that the tree be removed from the Specimen Tree List. The property owner had been advised, indicating that a request for removal would be supported by staff. The request had now been received, and staff recommended de-designation.

Councilman Wyett moved deferral of this item, in order to give the owner the opportunity to replace the tree with a younger tree of similar nature. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

XIII. OLD BUSINESS

A. Ordinances - Second Reading

1. Ordinance No. 6-98 - Adoption of 1997 Building Code with Amendments

Acting Town Manager Elwell read Ordinance 6-98 by title:

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE I-A, BUILDING CODE OF THE TOWN OF PALM BEACH CODE OF ORDINANCES, SECTION 5-21, ADOPTING BY REFERENCE THE 1997 EDITION OF THE STANDARD BUILDING CODE, INCLUDING THE ADMINISTRATION SECTION, PROVIDING FOR AMENDMENTS TO SAID 1997 CODE AMENDING SECTION 5-22, AMENDMENTS TO THE ADOPTED BUILDING CODE; PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES, OR PARTS OF ORDINANCES, IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Shaw moved approval of Ordinance 6-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Ordinance No. 7-98 - Amending the Adopted 1994 Plumbing Code

Acting Town Manager Peter Elwell read Ordinance 7-98 by title: (second reading)

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY FLORIDA, AMENDING CHAPTER 5, ARTICLE 4, PLUMBING, OF THE TOWN OF PALM BEACH CODE OF ORDINANCES, SECTION 5-164, ADOPTING THE 1995-1996 REVISIONS TO THE 1994 STANDARD PLUMBING CODE, AMENDING SECTION 5-165, TOWN AMENDMENTS TO THE ADOPTED STANDARD PLUMBING CODE, EXCLUSIVE OF CHAPTER 1, ADMINISTRATION, AND APPENDIX H, PERMIT FEES; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Shaw moved approval of Ordinance 7-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

3. Ordinance No. 8-98 - Adoption of 1997 Mechanical Code with Amendments

Acting Town Manager Peter Elwell read Ordinance 8-98 by title: (second reading)

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE 5, MECHANICAL REGULATIONS OF THE TOWN OF PALM BEACH CODE OF ORDINANCES, SECTION 5-175, ADOPTING BY REFERENCE THE 1997 EDITION OF THE STANDARD MECHANICAL CODE, EXCLUSIVE OF CHAPTER 1, ADMINISTRATION, AND APPENDIX B, PERMIT FEES; AND AMENDING SECTION 5-176, AMENDMENTS; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Wyett moved approval of Ordinance 8-98. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

4. Ordinance No. 9-98 - Adoption of 1997 Gas Code with Amendments

Acting Town Manager Peter Elwell read Ordinance 9-98 by title: (second reading)

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE 4.5, GAS CODE, OF THE TOWN OF PALM BEACH CODE OF ORDINANCES, SECTION 5-171, ADOPTING BY REFERENCE THE 1997 EDITION OF THE STANDARD GAS CODE, EXCLUSIVE OF CHAPTER 1, ADMINISTRATION, AND APPENDIX B, PERMIT FEES; AMENDING SECTION 5-172, AMENDMENTS TO SAID CODE, PROVIDING FOR ADDITIONS, DELETIONS, AND CHANGES TO THE 1997 STANDARD GAS CODE ADOPTED HEREIN; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

President Pro-Tem McLendon moved approval of Ordinance 9-98. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

5. Ordinance No. 10-98 - Amending Town's Swimming Pool Code

Acting Town Manger Peter Elwell read Ordinance 10-98 by title: (second reading)

AN ORDINANCE OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE 8, SWIMMING POOLS, OF THE TOWN OF PALM BEACH CODE OR ORDINANCES, SECTIONS 5-248 THROUGH SECTION 5-371; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilman Wyett moved approval of Ordinance 10-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

B. Other

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

Mr. Dusey reported the public notification process has begun by letter dated May 28th, which was the start of the environmental assessment process and a notification to all of the agencies that may have a concern. A field survey was recently completed, and the surveyors were currently doing some extra shots, but the basic survey had been completed. Negotiations should have been finalized on Monday, June 8th. It would take approximately three weeks for processing through the Florida Department of Transportation (FDOT) offices for execution.

Mr. Dusey said that an inter-agency coordination meeting was scheduled for Monday, June 15th, to be attended by the Mayor and Mr. Dusey. Representatives would be there from Representative Shaw's office, Sharon Merchant's office, U. S. Coast Guard, and a number of other agencies had been invited. The purpose of that meeting was to make sure there are no "big bumps in the road". Mr. Dusey said he expected the meeting to be very positive.

2. Progress Report Regarding Independent Potable Water System

Public Works Director Dusey requested authorization for funding in the amount of $100,000 to pay the consultant fee for water resource engineering, with funds being taken from the Designated Reserves in the General Fund and placed into the Capital Improvement Program fund. He explained that the Town was launching a substantial effort in order to become water independent, and the consultant had mentioned that the work could cost as little as $25,000 or as much as $100,000.

Councilman Wyett commented that he had read the Hartman report, which looked as though it was picked up by a computer and printed out with the Town of Palm Beach name on it. He explained that nine years ago the Town had a $500,000 report on the subject, with most of the information available from private vendors, at no cost. The scope of the work had not yet been defined, and if the engineer was to proceed on the Hartman document, the $100,000 would be a drop in the bucket. Every water company that had appeared at the workshop, and others who might appear for bidding, could provide a good piece of the work. An engineer would be needed for many aspects, but not for the aspect of how to build a Water Plant, or how much water the Town needed. He suggested that the money should be spent in the areas where the data was not free, or was part of the service of a bid; a good many of the items in the Hartman document could be accomplished by bid. He suggested that it was premature to ask an engineer to do anything until the scope of work was defined by the Town Council, based on advice received.

Mr. Dusey replied that the intent of the funding for the consultant was so that at the meeting of July 9, 1998, the Town Council could decide on the issues it wanted to control, or the position of the Town. It did not mean that the engineer was going to do a single thing on any one of them, however, there was some level of work that would have to be done if the Town Council wanted to exercise some measure of control. Staff would follow instructions issued by the Town Council.

Councilman Wyett suggested that the Hartman report be sent to all people who were interested in making a bid, requesting comments as to what portion of the report would be a mere proposal, or would have to be done anyway in order to be a bidder.

Councilman McLendon commented that his first reaction had been similar to that of Mr. Wyett, however, only those things that would be requested would be studied and implemented. Before serious consideration could be given to obtain a permit for a separate water system, there would have to be a basic engineering report. He suggested that the funding should be supplied to do certain segments of the work, and that the issue be addressed on July 9, 1998 at the special meeting.

Councilman Shaw moved approval of the recommendation of $100,000 as authorized funding for the study, to be taken from the Designated Reserves in the General Fund. President Pro-Tem McLendon seconded the motion, commenting that he was interested in seeing the issue pursued rapidly.

Councilman Wyett agreed that there was an urgency to the matter, and commented that the Town would have to decide who was going to do the work on the distribution system. Until that decision was made, an engineer could not be asked to supply one report versus another. A hydraulic study and the time to put new pipes in would be 3-4 years. Water Plants could be installed in 6-18 months. He suggested that bids be requested both ways.

Acting Town Manager Elwell clarified the intention of the preliminary list received, and the more complete narrative that would be received prior to the July 9, 1998, meeting that would give additional context to each of the bulleted items on the list provided today. It was not intended to be an engineering report, or to steer the process to any particular direction. The engineering would need to come later after direction had been received. The Town Council would determine the process on July 9, 1998.

President Smith commented that she was hesitant to stampede ahead on the basis that this was something that was definitely going to happen. She expressed concern about the cost of the project, and her recommendation had been that it should go to the residents of the Town in the form of a referendum once the cost for the project was ascertained. She would like to move forward as aggressively as possible, without going on the basis that it was a "done deal." It would have to be determined if the people of the Town were supportive of a major commitment.

President Pro-Tem McLendon commented that he had not clarified in his own mind whether an outside vendor could offer the Town a savings, however, he was convinced that nothing was going to change the direction of the City of West Palm Beach in their attitude toward the Town about water. They had announced that they would charge whatever they could. They did not believe that the Town would do anything, and he would like to see how the value of their pipe system was affected once they saw the Town laying its own pipes.

Councilman Wyett commented that the new source of water, commonly called desalinization, and the new piping system would be at no cost to the residents of the Town. It would actually be a decrease in costs, as projected by all three potential bidders who had attended the workshop, assuming that the Town owned 100% of the system. The total cost would be more than covered by the current water rates, projected out four years.

President Smith commented that the Town would then be going into the water business, and after the system was built, a separate department with additional staff would need to be implemented. Perhaps there would then be a cost to the resident. She noted that she did not want the people to think that there would be no costs at all, because she truly believed that there would be some costs involved.

Councilman Wyett clarified that the estimates that he had seen included administration, repairs, maintenance, etc., and that 2-3 people could run the whole water department. The first five years of a brand new water system would be maintenance free. The Town would most likely experience a savings in water expenses. He suggested that proceeding slowly would cost the Town money, aggravation, and big legal bills with West Palm Beach.

President Pro-Tem McLendon commented that the life expectancy of a water system varied considerably, and after 25-30 years the Town would own the water pipe system.

On roll call the motion of Councilman Shaw to approve the funding carried unanimously.

Acting Town Manager Peter Elwell stated that the other related item that was being considered today was the suggestion of President Pro-Tem McLendon about placing water meters on the main lines coming from West Palm Beach.

Town Attorney Randolph commented that the question was whether the Town had the right to install meters on the water lines, absent the approval of the City of West Palm Beach. He advised that in this particular instance he did not believe the Town would have the unilateral right to attach flow meters to the pipes belonging to the City of West Palm Beach. It could involve an engineering question, and Attorney Randolph suggested that Mr. Hartman be consulted in this regard.

After discussion, the Town Council agreed that this issue would be discussed at the Special Town Council Meeting scheduled for July 9, 1998, as well as the memorandum of President Pro-Tem McLendon relating to reverse osmosis sites.

3. Consideration of the Risk Management Function *(Deferred from May 12, 1998)*

Acting Town Manager Peter Elwell reported that the Town Council had discussed this matter briefly at a previous meeting. He referred to his memorandum dated June 1, 1998, describing the function of the Risk Management Office on an interim basis, and the plan to move forward with a more permanent arrangement.

Councilman Shaw moved that the memorandum be accepted, and approval be granted to the recommendations of Mr. Elwell. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

XIV. NEW BUSINESS

A. Ordinances

1. Ordinance No. 11-98 - Regulations Relating to the Placement of Tents on Private Properties Within the Town

Town Attorney Randolph read Ordinance 11-98 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH

COUNTY, FLORIDA, CREATING A NEW CHAPTER 24, TITLED "TENTS"; PROVIDING FOR REGULATIONS RELATING TO THE PLACEMENT OF TENTS ON PRIVATE PROPERTIES WITHIN THE TOWN; PROVIDING A FEE; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Mr. Randolph noted that he had prepared the ordinance to incorporate the regulations recommended by Council in regard to the placement of tents, in items A-F, including an exemption (Item G) which had not been discussed, so as to attempt to make it clear that the regulation would not apply to recreational tents, such as a child who wanted to sleep outside at night.

Councilman Shaw commented that he believed the size of 50 sq. ft. was impractical, and that 200 sq. ft. was more practical.

Director of Planning, Zoning & Building Robert Moore replied that the basis for permitting was for inspection, and an inspection was needed on the tie down and any electrical hook-ups. Without the permit there would not be the ability to inspect the tent. Item G had been intended to eliminate the necessity for a permit for the small child wanting to camp outside. He suggested that 100 sq. ft. may be more appropriate.

President Pro-Tem McLendon moved approval of Ordinance 11-98 as written. The motion died for lack of a second.

Councilman Wyett suggested that a specific definition of a recreational tent be included. He suggested that Item G be left out of the Ordinance.

President Pro-Tem McLendon moved that Item G be excluded from the Ordinance. The motion was seconded by Councilman Wyett.

Councilman Shaw suggested that the definition of tents be kept in, and the "." be after ...such material (.) And that the rest of the language be taken out.

President Pro-Tem McLendon accepted that modification to his motion [(that item G be excluded from the Ordinance, and that the "." be after...such material (.), in Section 24-1 (c)], as did the seconder of the motion, Councilman Wyett. On roll call the motion carried unanimously.

Councilman Wyett pointed out that Item E of the Ordinance stated that no tent should remain in place for a cumulative period of more than six months during any one calendar year, and he considered that excessive. He moved that there be reconsideration of a reduction in the six month period. The motion died for lack of a second.

Councilman Shaw moved approval of the Ordinance 11-98 (first reading) with the exclusion of item G, and the "." after ...such material (.) in Section 24-1 (c).["For purposes of this ordinance, a tent is defined as any free standing structure of a temporary basis usually composed of canvas, plastic or other such material."] The motion was seconded by Councilman McDonald. On roll call the approval carried 4/1, with Councilman Wyett casting a negative vote.

B. Resolutions

1. Resolution No. 29-98 - Code of Ordinances Update

Town Attorney Randolph read Resolution 29-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, PROVIDING FINAL APPROVAL OF CERTAIN CHANGES TO THE TOWN CODE OF ORDINANCES, AND AUTHORIZING THE MUNICIPAL CODE CORPORATION TO PROCEED WITH PRODUCTION OF THE TOWN REFORMATTED CODE.

Councilman Shaw moved approval of Resolution 29-98. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

C. Other

1. Request by Attorney W. Trent Steele for Review of Requirement to Upgrade Town's Storm Drainage System in Conjunction with the Development of 88 Middle Road

Attorney W. Trent Steele addressed the Town Council, stating that he hoped to reach some resolution of a problem that he had been trying to resolve with the Public Works Department, involving the interpretation of the intention of the Town Council in 1995, with respect to a requirement concerning storm drainage improvements to the subject property. The property included four homes; two had been removed to create gardens and open space. The property had been developed with the drainage problems in mind in order to minimize any adverse impact on the drainage system. Part of the process had been to come before the Town Council to obtain the abandonment of approximately 200' of Middle Road, which at that point was a dead end, which had been approved with the conditions that the owner would be responsible for making sure that the storm drainage system was extended to the new cul-de-sac at his expense, and that the existing system would be analyzed for accuracy, and upgraded if so directed by the Town Engineer. It was the understanding that the requirement of extension of the drainage system up through and into the Everglades Club, where it drains out, would only be required if the property owner adversely impacted the Town drainage system by his improvements. There now seemed to be some misunderstanding as to whether or not the improvements had any impact on the Town drainage system. According to Ron Bucina, P.E., of the firm of Keshavarz & Associates, Inc., Consulting Engineers, there had been no impact on the drainage system, and because of the efforts of the owner "since there was no actual increase in the land use intensity associated with the renovations made to the properties there were no adverse impacts to the existing Town of Palm Beach drainage infrastructure." Accordingly, Mr. Steele did not believe his client would be required to pay for the improvements to the drainage infrastructure, since it had not been impacted. The drainage infrastructure involved actually covered over 40 other homes in the area that his client would be expected to pay for. It was not just the drainage for his home, but for 40 other homes, plus the roads, for which the Public Works Department was requesting payment. Attorney Steele pointed out that his client had gone the extra mile, in that Middle Road had been re-built at his expense. He had also paid for the extension of the new drainage system to the new cul-de-sac, and had also paid a privilege fee to do the work, in the amount of $237,000–the actual costs for the improvements had been $121,000, and the remainder had been donated to the Town. Mr. Steele maintained that it was unfair to expect his client to now pay for the additional drainage work, and questioned the necessity of the work.

Public Works Director Al Dusey responded that the privilege fee was because of the abandonment of 200' of Middle Road, not to pay for improvements. He noted that the Code of Ordinances on concurrency management stated that a development order would be issued only if the proposed development did not lower any adopted level of service. The only way a development order, which was a building permit, could be issued was if necessary facilities would be in place when development occurred, or necessary facilities were under construction when development occurred. The owner of property that was impacting a system, whether it be deficient at the time or not, was responsible for improving the system, and could not make it worse. It was a question of concurrency–if a bad system was being made worse, then it would need to be improved according to Town rules and regulations.

Councilman Shaw referred to the minutes of the June 13, 1995 meeting, where it was stated that "The storm drainage system is to be extended from the terminus of Middle Road to the Town system, and the existing system should be analyzed for upgrade... the Town storm drainage system be extended at the owner's expense to the new cul-de-sac, and the existing system be analyzed for adequacy and be upgraded if directed by the Town Engineer." He submitted that he questioned the extent and scope of the distance required for the improvements. He had not anticipated that the applicant would be required to improve facilities past Middle Road, down to the Everglades Club, across County Road, and then on to another piece of property.

Mr. Dusey responded that the requirement had not been specific, other than extension of the drainage system to the south end of Middle Road. There had not been drainage there to start with; water flowed south onto private property, and then disbursed. When the cul-de-sac, with the turn around was formed, there would have been a flooding problem unless the drainage area was extended. Then, because the drainage study had not been completed, the requirement was imposed that the drainage system be reviewed, and improved if necessary. Downstream there would be flooding caused by the additional flow from the new property, which was of concern.

Councilman Shaw replied that he was concerned, however, he was not sure who would be responsible for it, or where the responsibility would extend. He questioned the extent of responsibility for any applicant, not merely the one in question.

Mr. Dusey responded that the concurrency law said that the developer was responsible, with re-development specifically included. The property had changed in that there was now a T-head, exfiltration trenches that stored the first one-inch of water, and the overflow connection to the Town system. After the first inch was retained, the overflow would go to the Town system, reducing the level of service downstream.

Mr. Steele pointed out that the trenches stored 1.6 inches, which was above and beyond requirements. It had been the understanding that extended improvements would be required only if the drainage system was adversely impacted. The problem was that the storm drainage system was inadequate to begin with, and now his client would be made to pay for something that had been a problem. He maintained that it did not seem fair for his client to be subjected to this kind of unlimited liability.

Councilman Wyett commented that he believed there was no choice because of the way the law was written. He suggested that the applicant consider forfeiting the bond of $90,000, or make a check out to equal the bond.

President Pro-Tem McLendon asked for further clarification of the privilege fee paid by the applicant?

Attorney Steele responded that the privilege fee was $237,021 for the abandonment of the 200' of Middle Road. The costs associated with the abandonment were $121,111.24.

President Pro-Tem McLendon asked if there had been any attempt to allocate responsibility to the property as opposed to the other 15 other houses on Middle Road?

Public Works Director Dusey responded that there had been no attempt to distribute costs or benefit, because that was not what the concurrency ordinance required. Anyone coming in to build something could not make it worse; they would have to fix it before building. The street used to drain to the south, and would disburse onto private property. There was no drainage on the south, and that water had to be collected when the improvement was made and the abandonment occurred, adding storm water to the system, making the system worse. In addition, there was an overflow coming from the property from the exfiltration trenches, which drained into the system; the system was under capacity as it was. The concurrency ordinance required that the system would then have to be improved before building.

Councilman McDonald moved that the request of Attorney Steele be denied, because at the time the applicant entered into the agreement there was no limit of exposure. The motion was seconded by Councilman Wyett.

Engineer Ronald Bucina addressed the Town Council, stating that the exfiltration trench on site would hold the first 1-1 ½ inches of run off. When it did discharge to the Middle Road system it would not discharge at the same time as the peak discharge from Middle

Road was occurring. It would be an hour or so behind; it would not impact the peak of Middle Road, as it would not occur at the same time. The south end of Middle Road did not have any drainage when the applicant started the project; water drained to the south where it formed a great big puddle. He had not analyzed exactly where that puddle then went. The exfiltration trench on site prevented the property of the applicant from discharging its discharge at the peak time with the road. There was a time of concentration for a rain storm event, which was the time it would take for a drop of rain to get to a catch basin. On Middle Road that time was 10-minutes, which was the standard time for a road where there were no unusual conditions. The property of the applicant had 1.5 inches of retention on site, and would not even discharge until an hour or two later, and would not discharge at the peak of Middle Road discharge. He stated that he did not believe that the on site was adversely impacting the storm drainage system of the Town of Palm Beach. He agreed that the storm sewer had been extended south on Middle Road, which was connected to the storm sewer system. At the time he had completed his initial calculations he had not analyzed where the big puddle at the south end of Middle Road went. It could have gone north or south.

In response to the query of President Pro-Tem McLendon, Mr. Dusey explained that there had previously been collection basins at Middle Road and Via Marina, and the water went westward into the Everglades Golf Course property.

President Smith referred to the June 13, 1995, Town Council minutes, and commented that she had not seen any mention by the engineer of the applicant that the Town drainage was inadequate. Her concern was that the condition of the property had been accepted with no qualifications that the drainage was inadequate. It was her understanding that in order to get the approval the owner was willing to accept the existing conditions.

Attorney Steele replied that it was his understanding that what was missing from the sentence on page 10 of the minutes of June 13, 1995, and what had been understood, was that the applicant would be willing to pay for upgrading the existing system, if he adversely impacted it in any way. According to Mr. Bucina there had been no adverse impact; if anything, the impact was lessened and made better, not worse.

President Smith responded that the minutes stated that the existing system would be analyzed for adequacy, and be upgraded, if directed by the Town Engineer, and the Town Engineer had recommended that it be upgraded. That had been accepted by the applicant.

Councilman Shaw commented that no one had declared the limits of the upgrade, and he did not know what was considered reasonable. He suggested that historical data also be taken into consideration, and rather than forfeit the bond, if there was no adverse affect seen on the street, it would be reasonable to take the position that the street was adequate in fact if not by engineering standards. He asked why someone should be required to pay for something that was not necessary?

Mr. Dusey responded by reading from a letter from Mr. Bucina to Attorney Prosperi, dated April 26, 1995, "Without actually doing a study on the drainage system, I can say that most likely at least part of the system, is going to be undersized. The 12-inch pipe in Via Marina will probably be undersized. Drainage for public roadways is typically required to be a 15-inch diameter. We are adding approximately .36 acres of roadway drainage to the system, plus some overflow drainage from private property, which currently does not drain to Via Marina. If upgrading of the existing drainage system is necessary, Mr. Bowser indicated that the Town Council may require the owner to fund the upgrading." He explained that there had thus been an expectation in April that the pipe on Via Marina was too small, and the attorney of the applicant was told that.

Councilman Shaw commented that the client, nor the staff, had made any statement at the time that the system was undersized and inadequate. Now the same firm that had written the letter referred to by Mr. Dusey was saying that there did not appear to be a problem as a result of the improvements on the property. He stated that he was not concerned about the way it should have been, but the way it actually happened, and whether or not there really was an anticipation of rebuilding to the extent now being discussed.

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

Councilman Wyett asked if the Town Council would accept a check in the amount of the bond, should the applicant be so inclined, rather than have a forfeiture?

Town Attorney Randolph advised that he did not believe the Town Council needed to be involved in that decision. The determination could be made by the applicant if he wished to pay the Town in lieu of forfeiting the bond.

Town Engineer Bowser commented that he would like the check in a timely manner, and if not, he would like to move on the bond. The Town needed to move forward with the improvement so that the road right-of-way was not interrupted during the season. He was now ready to move forward, and did not want to be in a long drawn out discussion with the attorney over collecting the money. He could move on the bond tomorrow, and had the legal right to do that, and would instruct Town Attorney Randolph to do so if necessary.

2. Schedule Date and Time for an Ordinances, Rules, and Standards Committee Meeting

The meeting for the Ordinances, Rules, and Standards Committee was set for Thursday, July 30, 1998, at 10:30 a.m. - to follow the Special Town Council meeting to set the tentative tax rate.

3. Schedule Date and Time for a Public Works Committee Meeting

The meeting for the Public Works Committee was set for Tuesday, June 16, 1998, at 10:00 a.m.

4. Consideration of a Proposed Settlement of the Town of Palm Beach vs. Rose Pierce.

Town Attorney Randolph reported that this matter had been pending for some time, and was a collection in County Court for a bill in the amount of $4,684.11. The Town had been billing for four units in an apartment complex as opposed to the 16 units that actually existed, and then found out at a later time that the full amount was not being collected. The property owner was then billed for the full amount, and she refused to pay. A settlement had been attempted before going to court, and finally a court action had been filed. The court dismissed the first complaint on the basis of the statute of limitations, indicating that the error should have been discovered earlier, and part of the statute had run. Since the statute had not run on the last year of the payments, the plaintiff had offered to make those payments, by paying $75 per month. Mr. Randolph recommended that the settlement be accepted.

Councilman Wyett moved approval of the settlement regarding the Town of Palm Beach vs. Rose Pierce. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

5. Consideration of a Presentation and Demonstration of the AED Equipment by the Fire-Rescue Department at the July 14, 1998, Town Council Meeting.

Councilman McDonald moved that the AED equipment of the Fire-Rescue Department be demonstrated at the July 14, 1998, Town Council Meeting. President Smith passed the gavel to second the motion. On roll call the motion carried unanimously.

XV. COMMENTS OF THE TOWN COUNCIL MEMBERS

There were no comments from the Town Council Members.

XVI. DEVELOPMENT REVIEWS

At this time, Town Clerk Pollitt administered the oath to all those who would be speaking to matters included in the following portion of the Agenda.

1. Variances, Special Exceptions, and Site Plan Reviews

(Item 11. Variance No. 27-98 was heard as the first item. See item 11 for results.)

Old Business - Major

1. Declaration of Use Agreement for Site Plan Review No. 3-98 with Special Exceptions and Variances; 137, 139-151, 152, 155 Worth Avenue, Murray H. Goodman, Evelyn N. Harary & Worth Avenue Associates, LTD

Attorney Jim Brindell, on behalf of Murray H. Goodman and Neiman Marcus, addressed the Town Council, stating that the he had received comments from Town staff and Town Attorney regarding the proposed Declaration of Use Agreement, and distributed a version of the Agreement reflecting the latest conversations.

After review of the Declaration of Use Agreement, the Town Council addressed questions on a page by page basis:

Page 1: Councilman Shaw asked what would happen to the Agreement if the tenant changed?

Director of Planning, Zoning & Building Robert Moore explained that a new tenant would need to come back to the Town Council for a special exception.

Councilman Wyett asked if there was any grandfathering involved?

Director of Planning, Zoning & Building Moore replied that there would be none whatsoever.

Town Attorney Randolph explained that the Code was written in a way that if the tenant changed, the new tenant would be required to come back for a special exception.

Page 2: There were no questions.

Page 3: Councilman Wyett referred to Item 1, where he suggested the addition of the wording: "surface parking on adjacent Peruvian lot, if required by the Town."

Page 4: Item 2: Councilman Wyett observed that many people were coming back from the north early, or living in the Town year round, and suggested that the date of November 1st would be a better date than November 15th as the beginning of the season.

Mr. Moore explained that the reason for using the date of November 15th was because the construction ban started from November 15th to April 30th.

Item 2: Mr. Wyett suggested that the section in reference to parking meters be deleted, however, this requirement shall cease if the Town reduces the number of on-street parking spaces available to customers on Worth Avenue by 30%, or adds parking meters to the Avenue. The current number of parking spaces on the Avenue was 119.

Attorney Brindell explained that the concern of Mr. Goodman was that the conditions on the street could be improved, which would not make the requirement necessary, or the street could be made worse, which would increase the expense he would have to absorb.

Mr. Wyett noted that this had not been agreed to by the Town Council, and he found it difficult to accept.

President Pro-Tem McLendon asked for a definition of out-of-pocket expenses?

Attorney Brindell explained that it was assumed that the intention for an off duty police officer would be a Town police officer.

Acting Town Manager Elwell explained that there was a fixed hourly fee charged by off duty Town police officers. He noted that the Town would not incur any additional charge if the police officer was an on duty person, so there would be no out-of-pocket expense, however, he believed that the proper action would be for a special detail assignment.

President Smith noted that the language said "on or off" and she objected to pulling a Palm Beach Police Officer off of something more important than directing traffic on Worth Avenue.

Town Attorney Randolph suggested that the language "out of pocket" be removed, and that the language "the owners shall be responsible for the actual expense of providing an off duty police officer," be substituted.

President Smith noted that she also had concern about the qualification on the requirement for the parking spaces, and would not agree with it.

Councilman Shaw referred to paragraph 7, and questioned the charge of 15% less for parking, as compared to other lots.

Attorney Brindell responded that was what Mr. Goodman had decided in response to the concerns of Police Chief Croft.

Councilman Wyett commented on No. 7 - the 15% discount, and stated that he saw no reason why it should not be year round.

Councilman McDonald expressed concern, as he felt it may not be fair to the other parking lot operators.

Director of Planning, Zoning, & Building Moore explained that in discussions with Chief Croft, he had wanted to encourage the circulating traffic to stop and park because of the better price.

Acting Town Manager Elwell clarified that the November 15th date would be made November 1st throughout the Declaration of Use Agreement.

In response to the concerns of Councilman Wyett relating to convenient locations for validation of parking within the store, Mr. Moore noted that it would be worked out with the architect during plan review; it did not need to be included in the Declaration of Use Agreement.

Page 5: Attorney Brindell referred to paragraph 9, and noted that staff had requested a change that would be inserted, which was the time of merchandise delivery to be from 8:30 - 10:30 A.M., rather than 9:00 - 11:00 A.M.

Councilman McDonald referred to paragraph 11, and suggested that the word "local" be defined, as it was used differently in both in the second line from the top and in the middle of the paragraph.

Attorney Brindell agreed that the word "local" would be removed from the first sentence: "Neiman's shall not advertise its Town store in the Palm Beach Post, Fort Lauderdale Sun Sentinal, or ~~local~~ radio or television during the first year of operation ("First Year")."

In reference to the restriction of advertising, Town Attorney Randolph explained that the burden of the applicant was to prove that the store would be Town serving, pursuant to Item L of the Town Code, which was the purpose of the applicant in this regard. Absent the agreement of the applicant to limit the advertising, Mr. Randolph stated that he would have concern imposing such language, when it had not been imposed in the past on other applicants. Even without this condition, the applicant was required to operate the store in a Town serving manner, as defined by Town Code, which indicated that advertising should be done in a manner so as not to attract the principal portion of its clients from off Island locations.

Councilman Shaw suggested that the names of the Palm Beach Post, and Fort Lauderdale Sun Sentinal be eliminated from the first sentence in item 11, and also questioned the Town-serving percentage of fifty-two percent used in the fourth line.

President Pro-Tem McLendon commented that he saw no need for Item 11.

After lengthy discussion, Councilman McDonald moved acceptance of the alternate language regarding Item 11, substituting it for that which currently appeared in Item 11. The motion was seconded by Councilman Wyett. On roll call the motion carried 3/2, with Councilman McDonald, President Pro-Tem McLendon, and Councilman Wyett casting affirmative votes; President Smith and Councilman Shaw casting negative votes.

Acting Town Manager Elwell noted that the language "on or off duty police officer" had previously been changed to "off duty" exclusively, and suggested that it be done on page 5, 12.a. for consistency.

Likewise, under Article IV, Item 2., the language would be amended to read "Owner shall be responsible for providing, at no cost to the Town, a mobile, off-duty police officer to manage traffic flow..."

Page 6: President Pro-Tem McLendon commented that he did not believe Item 16, referring to the establishment of a college scholarship fund to assist the children of "Town Persons", should be included in the agreement.

Councilman Wyett agreed with Mr. McLendon, and suggested the inclusion of the word "trees" in Item 13, where the landscaping of the Peruvian Lot was discussed–"...lot shall be landscaped with grass, hedge, and trees along the...."

Attorney Brindell clarified that the purpose for the donation of the property had not been for another park, but for the purpose of the abatement of the twenty parking spaces.

Councilman McDonald commented that he believed Item 16 should remain as part of the document, as it was volunteered and was a gracious offer, as well as an obligation and commitment.

Attorney Brindell suggested amending the language to read: "The Town accepts the owners offer to establish...". The amended language was agreed upon by the entire Town Council.

Attorney Brindell noted that staff had requested the addition of Item 17: "Owner shall plant a twenty (20) foot high hedge along the north side of the building to buffer and screen Neiman's from the neighboring residential properties to the north. Owner shall maintain said hedge at a height of twenty (20) feet in perpetuity."

Mr. Moore explained that this point had been raised by neighbors, and the staff had assured them that the landscaping at twenty feet would be part of the agreement.

Councilman Wyett suggested the addition of Item 18, to include language that the developer and Neiman Marcus would hold the Town harmless from any lawsuits that may result from the permission granted.

Attorney Brindell noted that the Town had requested an indemnification and a hold harmless with regard to the variances and with regard to the use of the Town space for a portion of each of the arcades at the Esplanade and Neiman Marcus.

Town Attorney Randolph advised that the Town Council had the obligation to follow the criteria set forth in the Town Code, and were bound and responsible for doing that. He did not believe the responsibility could be cast upon a petitioner. The responsibility would rest with the Town Council, and a petitioner could not be asked to indemnify the Town for anything which may be determined by a court of law at a subsequent time.

After discussion, Councilman Wyett withdrew his suggestion.

Acting Town Manager Elwell referred to Item 14 the language "temporary relocation of the valet station to the first level...", and questioned the use of the word "temporary." Councilman Wyett requested that the word "temporary" be removed.

Acting Town Manager Elwell referred to Item 15, and questioned the reference to Town uses of the property at 400 South County Road.

Attorney Brindell explained that Mr. Goodman was not interested in giving the Town a piece of property that had a very good commercial location, and then have the Town turn around and sell it to another private developer for commercial or residential purposes, or to establish a parking lot for a commercial or residential interest. That was the purpose of the caveat referred to by Mr. Elwell.

Councilman Wyett expressed concern that if the Town had need for additional office space, it would have to wait until the Certificate of Occupancy was issued before using the property for office space.

Attorney Brindell replied that the Town could request the use of the space from the applicant at that time.

Mr. Moore added that the space could be leased, or the agreement could be revisited.

Town Attorney Randolph referred to Item 11, and noted that he had proposed similar replacement language: "Neiman's use of the property and marketing efforts relating to said use shall be conducted in a manner so as to preserve the Town serving nature of the property as defined by the Town Zoning Code. Annually, Neiman's shall provide a certification to the Town pursuant to the Town Code, as to the Town-serving nature of its store." He noted that the language regarding percentage of customers, etc., would not be included, and that it simply reflected the Code.

Attorney Brindell stated that he did not have a problem with the language as stated by Town Attorney Randolph.

Councilman Wyett moved approval of the first four articles of the Declaration of Use Agreement by The Town of Palm Beach and Worth Avenue Associates, Ltd., with all modifications, to include approval of all items through Item 10, and Items 12 through 17, with the exclusion of Item 11.

Town Attorney Randolph suggested that all changes should come back to the Town Council for a final reading.

Acting Town Manager Elwell suggested that a Special Town Council Meeting be held at 10:00 A.M. on June 11, 1998, for final approval of the document, prior to the Finance & Taxation Committee Meeting. The Town Council agreed upon that date.

On roll call the motion carried unanimously.

Articles V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, & XVII:

Councilman Shaw commented that he had no problem with the rest of the document.

Councilman McDonald commented that he had no objections to the rest of the document.

President Smith commented that Article VIII, INDEMNIFICATION, was not clear.

Attorney Brindell explained that Worth Avenue Associates, Ltd., and the property they own would have liability, as opposed to the personal bank account of Mr. Goodman.

Councilman Shaw suggested that the word "Owner" preceding the name Murray H. Goodman, be deleted, as owner referred to the owner of the property, Worth Avenue Associates, Ltd.

Attorney Brindell agreed with the modification.

There were no remaining objections to the Agreement.

Councilman Shaw moved approval of pages 7 - 11, Articles V through XVI, subject to the removal of the word "owner" in Article VIII.

Mr. Moore noted that the name of the person to execute the document for the Town was listed as Robert J. Doney, and suggested that the name of Mr. Elwell, as Acting Town Manager be listed.

Attorney Brindell agreed with that modification.

On roll call the motion carried unanimously.

It was agreed upon that Mr. Brindell would discuss the construction hours regarding Neiman Marcus at a point later in the meeting.

The Town Council approved the substitution of item 11 in the Declaration of Use Agreement as presented by Attorney Jim Brindell at the June 9th Town Council meeting. Items 1 through 10 and 12 through 17 (item 17 was added by the Town Council) were approved by the Town Council.

Articles V through XVI were approved by the Town Council with the deletion of the word "Owner" in the eighth line of the last paragraph on page 7.

The revised, completed Declaration of Use Agreement will be presented to the Town Council at 10:00 a.m. on Thursday, June 11th, prior to the meeting of the Finance and Taxation Committee, for final approval.

Later in the meeting, Attorney James Brindell reported that he would like to meet with the Town's staff regarding the request for the extension of construction hours on Worth Avenue before presenting that request to the Town Council. The Town Council agreed with that suggestion and approved hearing Mr. Brindell's request at 9:30 a.m. on July 9th, prior to the already scheduled 10:00 a.m. Special Town Council meeting regarding water issues.

2. SPECIAL EXCEPTION NO. 43-97 - Testa's, 219 & 221 Royal Poinciana Way; located in the CTS Zoning District; to allow live music in the restaurant, thereby establishing a "night club" within the definition of same set forth in Section 4.10, Schedule B, of the Town zoning code. - *(Condition of approval at the November 12, 1997 Town Council meeting was to return before Town Council to discuss any issue or concern that may have arisen from the issuance of the nightclub license. To date, the applicant has not implemented this Special Exception approval.)*

This item was deferred to the October 13, 1998, Town Council meeting.

3. SPECIAL EXCEPTION NO. 6-98 - Palm Beach Hotel, L.P., 230 Sunrise Avenue; located in the CTS Zoning District; to allow outdoor seating at a restaurant in accordance with Section 6.61 of the Town zoning code. - *(Condition of approval at the March 10, 1998 Town Council meeting was to return before Town Council to review whether the conditions have been met and if there are any other concerns that need to be addressed.)*

Zoning Administrator Paul Castro explained that the purpose in having the applicant return to the Town Council was to determine whether the applicant had met all conditions placed on the original approval at the March 10, 1998, Town Council Meeting. He reiterated the conditions:

1. The applicant would resolve the valet parking issues on Sunrise Avenue.
2. The service to the outside seating area would cease at 11:00 P.M., and the French doors closed at the same time.
3. The restaurant would have last call of alcohol at 1:00 A.M., and close at 2:00 A.M., each night, except Wednesday. On Wednesdays, last call would be at 1:30 A.M., and closing at 2:30 A.M.
4. The applicant would return to the Town Council to determine if the conditions had been met, and to note any other concerns that may need to be addressed.
5. The applicant would provide Town-serving documentation acceptable to the Town each year at the time of renewal of the Occupational License.

In response to Councilman Shaw, Mr. Castro explained that the conditions would apply to any other applicant under the Special Exception approval. The new applicant would also be required to demonstrate Town-serving, and address any other issues relative to the operation.

Mr. Joseph Ramono, owner, agreed that all conditions had been followed.

Councilman Wyett reminded the applicant that there must be conformance to the conditions.

The Town Council took no action on this item but instructed the applicant to return to the Town Council in one year to review the compliance to the conditions.

1. VARIANCE NO. 22-98 - John F. Joyce, 325 Seaspray Ave; located in the R-B Zoning District. A variance to Sec.6.21(F) to allow the elimination of garage parking by conversion of a one car garage to habitable space. *(Deferred from May 12, 1998)*

President Smith noted that Mr. Joyce was not present. Zoning Administrator Paul Castro noted that there had been no contact made by the applicant since last month.

Councilman McDonald moved denial of Variance 22-98. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

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, 1998)* - **Request for Deferral to July 14, 1998, per letter dated June 8, 1998, from Mr. James R. Brindell**

This item was deferred to the July 14, 1998, Town Council meeting.

3. SPECIAL EXCEPTION NO. 10-98 with Variance - Dr. John Whelton, 285 Sunrise Ave; located in the C-TS Zoning District; to allow new applicant, Wachovia Bank, formerly 1st United Bank, to continue approved Special Exception financial use; to allow construction/installation of a drive-through ATM addition; and to allow an access drive of 8' in lieu of 10' required. *(Deferred from May 12, 1998)*

President Smith, as a member of the Board of Wachovia Bank, recused herself.

Ex-parte communication was declared by Councilman McDonald with Warren Orlando; by Councilman Shaw with Attorney Broberg; by President Pro-Tem McLendon via telephone with Attorney Broberg regarding the application.

Attorney Peter Broberg, on behalf of the applicant, stated that he hoped to accomplish several things today:

- Transfer the occupational license. Section 4.2 of the Town Code required that the applicant prove Town-serving only to transfer the Occupational License if there was a Special Exception granted on the property since 1980, which there was. He produced the Town-serving affidavit from Courier & Co., CPA's that had audited the books.

- Mr. Broberg noted that an ATM machine did not require approval of the Town Council, however, a drive-in ATM machine did require a Special Exception. That was the request today, as well as a variance as to the design of the ATM machine, the width of the median, and the base of the ATM machine. He exhibited photographs, which had been taken at night showing a car sitting in the north lane, with the high beams on, where the ATM machine would be placed. The lights did not impact any nearby residents, and the only time car lights would be shown into The Biltmore was in the daytime on a second floor corner window. The lighting proposed under the canopy had been revised to three poles, which had greatly reduced the candle foot power going off the property toward the community. A new light had also been proposed, which kept the light from expanding outward. The request to lessen the width of the right drive-in lane from 10' to 8' was because the width of the ATM machine required a larger base.

President Pro-Tem McLendon referred to the Town-serving document, which stated that at least 50% of the customers were Town persons, which he did not consider very convincing.

Attorney Broberg responded that the document corresponded to the language in the Town Code.

Planning, Zoning & Building Director Moore commented that was correct, however, the evidence must be satisfactory to the Town Council.

Attorney Broberg replied that the document could be modified if so requested.

Zoning Administrator Paul Castro commented that the applicant had attempted to demonstrate that the lighting from vehicles would not be shining in residential windows, however the lighting as a vehicle drove up to the facility would impact one or two of the windows in The Biltmore. Staff recommended that the lighting related to the ATM itself be referred to the Architectural Commission for review and approval. He noted that the drive out width was very narrow, especially for vehicles passing next to an ATM machine and the pillar.

Ms. Deborah Lawson, of First United (Wachovia Bank), addressed the Town Council, stating that all ATMs were at 8' drive-ins in most of the bank branches. The only other area abutting the building was a ramp area, and an ATM machine would be prohibited by the ADA. In addition there were building elevation factors to be considered.

Councilman Shaw suggested that the traffic flow on the ramp be reversed so that the ATM machine could be used only after hours; there would be no lights going near residential properties. In addition, he questioned the intent of the traffic flow in the parking lot, how it was being used, and when it was being used.

Landscape Architect Darryl McCann addressed the Town Council, stating that the photograph exhibited his car in the north lane exactly where the ATM machine would go, and showed exactly where the lights would hit.

Councilman Shaw responded that when the car was driving up, the lights would go right into a residential window, which was momentary, but still an annoyance.

Ms. Lawson stated that reversing the traffic would not be possible, since the commercial lane would then have to be used, and the problem would be that there would always be a time when someone was coming up both sides which would involve two cars facing each other. The drawer for commercial use could not be alleviated.

Councilman Shaw responded that the two signs that said "do not enter" would stay in place. After hours those signs would change and say "after hours ATM access only."

Ms. Lawson replied that the stacking issue would then need to be addressed. With the scenario proposed by Mr. Shaw, if one car was using the ATM, and one person in back of it, the rest of the cars would be in the street. There would be serious confusion with reversing the traffic. In addition the way the ATM was proposed to be situated would allow enough room so that a car could pull up to the deposit box, and another car would be able to use the ATM.

Attorney Broberg noted that only one window had been identified as affected by the car lights, and offered to place a tree in front of the window on the property.

Councilman Wyett moved denial of Special Exception 10-98, based on the width of the traffic lanes, the additional traffic that would be involved, and the lights reflecting on residential buildings.

Councilman Shaw commented that the applicant had not addressed the control factor on the parking lot, and suggested that the ATM machine could be installed in the parking lot.

Director of Planning, Zoning & Building Moore explained that the reason there was a request for special exception was because drive-in facilities for a bank were a special exception. The ATM machine itself was not the special exception, but the use of the drive-in facility was under discussion. He suggested that if the bank wanted the machine they should re-evaluate the situation, and look at all of the different aspects of where the machine could be placed.

Attorney Broberg responded that the proposed location was the most logical place to put the ATM machine, and locations where it was not possible had been identified.

Mr. Moore replied that staff comments had been that the machine was not in the proper place for the terms of the special exception and the variances that were needed. He recommended that Special Exception 10-98 not be denied at this point, allowing the applicant to come back with a different plan.

Zoning Administrator Paul Castro explained that there were two issues; the bank was a special exception, and did have to be approved by the Town Council and demonstrate that they were Town serving; the drive through facility was also a special exception, with an additional variance related to the aisle width. Therefore, there were two special exceptions and a variance related to this application.

Councilman Wyett withdrew his original motion, and made a motion to approve the name change and transfer from lst United Bank to Wachovia Bank. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as President Smith had recused herself.

Councilman Wyett moved denial of the request for the drive-through ATM addition, as he found no merit in the petition or arguments made by the applicant, as well as the fact that any activity at night would contribute to noise in the area, which was already a very sensitive area. The motion was seconded by Councilman Shaw.

Attorney Broberg noted that it had been suggested that the applicant study the situation and come up with a different plan, and suggested that the application be deferred so that the applicant could investigate the lighting issue, determine if a new configuration or an awning could be installed on the roof of the drive-through, and reconsider the width of the drive-through.

Councilman Wyett commented that he was opposed to deferral, and that the ATM could be placed in a legal location without the permission of the Town Council; he did not want to hear about temporary awnings, or re-landscaping at The Biltmore, as it was some of the most beautiful landscaping in the Town. He stated that he was very concerned about the noise in the area, especially late at night when young people all of a sudden needed more money because they spent all of their money at the various locales.

Councilman Shaw stated that he considered that there was unfair competition, as there were two ATM machines within 100 feet of the proposed machine. He therefore withdrew his second to the motion in order to give the applicant a deferral. Councilman Wyett agreed to withdraw his motion and agree with the suggestion of Councilman Shaw to defer.

Councilman Shaw then moved deferral of the portion of Special Exception 10-98 dealing with the drive-through facility, and the variance of drive width to the July Town Council Meeting so that the applicant could find an alternate location, or propose a better plan that would alleviate the concerns of the width of the drive, the impact on the area, and the dual use of a single lane. The motion was seconded by Councilman Wyett.

Mr. Moore suggested that a condition be attached that a traffic study be supplied.

Councilman Shaw agreed with that condition

Councilman Wyett noted that because of the noise problems, and traffic problems, he would still vote no in the future.

On roll call the motion carried 4/0, as President Smith had recused herself.

<u>New Business - Minor</u>

1. <u>VARIANCE NO. 23-98</u> - Marvin Schur, 1090 N. Lake Way; located in the R-B Zoning District; to allow construction of a 5' high wall in lieu of 4' maximum allowed per Section 5.45 of Town zoning code.

Director of Planning, Zoning & Building Moore explained that the reason for the variance was the height of the Lake Trail, and the requirement for a 4' high wall. The plans had indicated a chain link fence, however, staff would contact Mr. Schur, and did not believe there would be a problem in having a wall rather than a fence.

Councilman Shaw moved approval of Variance 23-98. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

2. <u>VARIANCE NO. 25-98</u> - John & Carol Merrill, 231 Southland Rd.; located in the R-B Zoning District; to allow construction of an addition providing a 12.04' east side yard, in lieu of 12.5' required.

Director of Planning, Zoning & Building Moore explained that the variance was a fill-in variance, squaring off the house with an existing side yard of 12.04' instead of the 12.5', and staff had no objection:

Councilman Shaw moved approval of Variance 25-98. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

New Business - Major

3. VARIANCE NO. 24-98 - Barry, Charles & David Leiwant, Charlie's Crab, 456 S. Ocean Blvd.; located in the R-C Zoning District; to allow construction of architectural site-screening on the roof of a nonconforming building requiring a variance from Section 8.21 of the Town zoning code. - **Request for Withdrawal per letter dated May 28, 1998, from Mr. Ronald K. Kolins**

Variance No. 24-98 was withdrawn earlier in the meeting.

4. VARIANCE NO. 26-98 - James & Jennifer Beqaj; 108 Mediterranean Rd.; located in the R-B Zoning District; to allow construction of second floor addition providing a 13.10' side yard setback in lieu of 15' required.

At this time Town Clerk Pollitt administered the oath to all those who had not yet been sworn.

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

Attorney Ken Huffman, on behalf of James & Jennifer Beqaj, addressed the Town Council, stating that there was an existing deck on the rear of the house on the second story, which had been constructed some time ago in accordance with the then existing side yard setback requirements. The Beqaj family had recently expanded, and they were now in need of additional bedroom space. They desired to enclose the existing second floor deck, which would create a non-conforming structure for a distance of 1.9' for a run of 10'. He produced an exhibit of the area in question for the review of the Town Council. There would be no expansion of the existing footprint of the building.

Director of Planning, Zoning & Building Moore explained that this was a second floor addition over existing construction, was a minor variance, and staff had no objection, with the hardship being that the existing construction to support the addition was built at a time when the 15' side yard was not required.

Councilman Wyett moved approval of Variance 26-98, with the hardship being that the lot was a deficient lot of 75', and that existing construction to support the addition was built at a time when the 15' side yard was not required. The motion was seconded by Councilman Shaw. On roll call the motion carried 4/0, as Councilman McDonald had temporarily left the room.

5. VARIANCE NO. 27-98 - P. Eugene Dixon, Jr., 320 El Vedado Rd.; located in the R-A Zoning District; to allow construction of a second floor addition (on east building) providing a 35' front yard setback in lieu of 48.4' required for a 24.2' proposed maximum building height.

Ex-parte communication was declared by Councilman Wyett with Attorney Chopin regarding the plans for the variance request; by President Pro-Tem McLendon with Attorney Chopin to review the model and recommendations; by Councilman Shaw with Attorney Chopin to review the model and recommendations; and by Councilman McDonald with Attorney Chopin to speak about the variance request.

Attorney Frank Chopin addressed the Town Council, representing Rand and Jessie Araskos, purchasers of the property at 320 El Vedado Road. The application had been filed for a variance from the requirements of the building height plane, with the intention of remodeling and enlarging the home. It was an opportunity to allow them to preserve the existing Regency style house designed by Clarence Mack. He submitted a recent article for the record which attested to the background and experience of Architect Clarence Mack. He maintained that he believed a variance was not needed, if the law was interpreted correctly, and even if the Town Council did not agree, the variance should still be granted because of the fact that the owners had purchased a house which deserved to be preserved, and used for their home. Mr. Chopin stated that the hardships were that the lot was irregular, the law was ambiguous, and El Vedado was a unique street, with the west portion being a private street. The people on the west end of El Vedado were required to move back 15' in measuring the building height plane. Those living east of Pelican Lane on El Vedado live on a public street, requiring the measurement from the property line. Consequently two neighbors could have different standards applied to them. Interestingly enough, the private part of the street was wider than the public part of the street. Attorney Chopin exhibited a site plan and a model of the property in question.

Director of Planning, Zoning & Building Robert Moore gave the following staff comments: Comprehensive Plan: there could be alternatives. Building Department: no objection. There is a code clarification that should be made. The applicant would have to comply with the angle of height variance if the no angle of vision variance was granted. The hardship was directly related to an anomaly of the street being both public and private, and that the street was narrower in the public sector than it was in the private sector. The hardship ran with the land.

Councilman Wyett moved approval of Variance 27-98, finding that the criteria set forth in the Town Code were met, with the hardships being the irregular nature of the lot, and the nature of the street as public and private. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

6. SPECIAL EXCEPTION NO. 11-98 - P/A Florida Associates (Brooks Brothers), 225 Worth Ave.; located in the C-WA Zoning District; to allow a retail clothing store to occupy 6,000 sq.ft. in lieu of 2,000 sq.ft. maximum permitted.

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

Attorney Robert Deziel, representing the applicant, Brooks Brothers, Inc., addressed the Town Council, stating that the store was relocating. He submitted a drawing of the elevation which would be submitted to the Architectural Commission next month, and a Town serving letter. He explained that the store would replace three existing 2,000 sq. ft. stores, and combine them into one store where Brooks Brothers would relocate.

Zoning Administrator Paul Castro gave the following staff comments: Public Works Department: would like the opportunity to review the solid and liquid waste facilities for possible upgrade; Town staff had reviewed the Town serving letter, which appeared to be acceptable, and there were no objections to the request.

Councilman Wyett asked where the loading areas for the store were located?

Attorney Deziel replied that there were areas on Worth Avenue, which were painted red, which were loading areas.

Councilman Wyett moved approval of Special Exception 11-98. The motion was seconded by Councilman Shaw.

Councilman Shaw asked how the store did marketing in order to assure that the Town serving nature was maintained?

Attorney Deziel replied that he had been told that the marketing campaign consisted of advertisements in the Palm Beach Daily News and publications such as the New York Times, and other publications that were distributed nationally. He had been told that there would be no direct marketing mailings done outside of Palm Beach.

On roll call the motion to approve carried unanimously.

7. SPECIAL EXCEPTION NO. 12-98 - P/A Florida Assoc. (Dana Buchman), 225 Worth Ave.; located in the C-WA Zoning District; to allow a retail clothing store to occupy 4,000 sq.ft. in lieu of 2,000 sq.ft. maximum permitted.

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

Attorney Robert Deziel, representing the applicant, addressed the Town Council, stating that two existing store spaces would be combined to allow the Dana Buchman store to occupy 4,000 sq. ft. He incorporated the application submitted by reference. He distributed photographs of the two areas that would be combined, in comparison with the proposed space as delineated on a drawing which he also submitted for the record. Town serving documentation was also provided. He had discussed their marketing campaign with them, and the plans were to advertise in the Palm Beach Daily News, as well as on a national level.

Councilman Shaw moved approval of Special Exception 12-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

8. SPECIAL EXCEPTION NO. 13-98 - Thomas Campaniello, Smith Architectural Group, 206 Phipps Plaza; located in the R-C & C-TS Zoning Districts; to allow applicant to expand occupancy from 2,963 sq.ft. to 3,193 sq.ft. in lieu of 2,000 maximum permitted.

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

Attorney Robert Deziel, representing the applicant, as well as the landlord, Thomas Campaniello, addressed the Town Council. He incorporated the terms of the application by reference. He noted that the Town serving letter received from the Smith Architectural Group accountant indicated that 95% of the business related to Town persons.

Zoning Administrator Paul Castro gave the following staff comments: Public Works Department: would like to review the solid and liquid waste facilities for possible changes if needed; Town staff recommended that Town serving requirements be met to the satisfaction of the Town Council.

President Pro-Tem McLendon moved approval of Special Exception 13-98. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

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

Ex-parte communication was declared by Councilman Wyett with Attorney Ron Kolins, and by Councilman Shaw with Attorney Kolins concerning the application.

President Pro-Tem McLendon recused himself as he and his wife were members and shareholders of the Beach Club.

Attorney Ron Kolins, on behalf of the applicants, addressed the Town Council, stating that the application was very unique because the variances, if granted, would not change anything whatsoever on the ground, whereas usually a variance would result in a house being closer to a property line, etc. In this case nothing would move or change whatsoever. He produced an exhibit board revealing the property in question. He noted that the 50' landscaped strip of property between Lots 1, 2 and 3 of Ocean Lane owned by the Beach Club was totally unusable for the Beach Club. The strip of property was behind a two story structure and a wall, behind which was employee parking. The Beach Club did not use the property for anything. To the south of the property there were three residential lots (Lot 1, 2, and 3 of Ocean Lane) backing up to the 50' strip. One person now owned all three houses on those lots, which were the only properties abutting the 50' strip. The variance request was being made so that the owner of the three residences could buy the 50' strip of property that the Beach Club was willing to sell. Currently the property served the purpose of being part of the mathematical calculations necessary to decide whether the Beach Club met certain Town lot yard requirements. A result of the sale would be to make the Beach Club slightly nonconforming in three respects, and increase an already existing nonconformity (that relating to green space). Mr. Kolins explained that he did not think that the variances were necessary in order for the parties to consummate their sale because of the following reasons:

In 1971 an agreement had been created between the Town of Palm Beach and the Beach Club saying that the 50' strip of property must be maintained by the Beach Club as long as the cabanas and the wall of the parking lot were there, but that the third party beneficiary of that agreement were the homeowners to the south. In other words, the purpose of the 50' strip was to buffer them from the Beach Club. The document also said that if the three property owners wished to buy the 50' strip, and if the Beach Club wished to sell it, there could be a sale, and if there was, the Beach Club would be absolved of its obligation to maintain that 50' strip. Mr. Kolins maintained that the agreement said that the Beach Club could sell, and homeowners could buy. He therefore submitted that the Town was bound by the agreement, and could not preclude the sale, notwithstanding the nonconformity issues. He referred to paragraph 9 of the agreement, wherein it was stated that if the homeowners had not bought the property from the Beach Club, and if the Beach Club abandoned the cabanas and the parking lot, then the Beach Club could build single family homes there. The only caveat to that was that the single family dwellings must be built in accordance with the R-B Zoning District regulations in existence as of the date of the agreement. Mr. Kolins maintained that he believed no variances would be required for the sale of the property, pursuant to the agreement between the Town of Palm Beach and the Beach Club. He exhibited photographs of the 50' strip, the wall, and parking lot.

Director of Planning, Zoning & Building Robert Moore referred to paragraph 9 of the agreement, where it was specifically stated that if the special exception uses were abandoned by the Beach Club, and the buildings removed, then the 50' buffer established in paragraph 1 may revert to the Beach Club unless same has been conveyed as contemplated in paragraph 2, and the property may be developed as single family homes in accordance with R-B Zoning District regulations in existence at the date of the agreement. Mr. Moore was of the opinion that the only way that could be triggered was with the abandonment of the parking lot and the cabanas.

Town Attorney Randolph commented that he did not believe the 1971 Town Council could have contemplated what zoning regulations might be in effect in 1998, and therefore did not believe that the agreement would bind the Town Council to accept a provision which said that the property could be transferred no matter what the zoning regulations were in 1998. He therefore advised that he believed it was not the intention of the Town, in adopting the agreement, that a sale of the property could take place regardless of what zoning regulations were in effect, and he believed that variances were needed.

Attorney Kolins clarified that he was in agreement with Mr. Moore regarding paragraphs 9, and the reason for citing it was to show that when the agreement acknowledged that the Beach Club could build single family dwellings, it specifically referenced having to meet certain Town building requirements. In paragraph 2 where it said that the Beach Club could sell the property to the homeowners, it did not make any such reference. Since standards were referenced in one paragraph, it was presumed that the Town was aware of those standards, and that those standards could change; therefore, by not referencing them in paragraph 2, the Town did so intentionally, in effect saying that the Club could sell and the homeowners could buy regardless of what the Town building criteria was at the time.

President Smith noted that the first paragraph said that "The south 50' of said Lot 3 is hereby declared to be a perpetual and permanent buffer zone between the remaining portion of Lot 3 and the R-B residential district to the south."

Mr. Moore commented that if the thinking of Attorney Kolins was followed, then the real issue would become the question of the Beach Club selling the property to the homeowner, and he did not believe there would be an argument about that; however, the question would then become whether the new owners could use the buffer for anything other than a buffer. He considered that the critical issue.

Attorney Kolins again referred to the first paragraph referenced by President Smith, and noted that the end of the paragraph said

"Said buffer zone, being subject to defeasance, however, as provided in paragraph..." He maintained that it therefore said that the buffer zone could disappear in one of two ways, as stated.

President Smith asked if there would be a unity of title on the three lots owned by the same owner?

Attorney Kolins responded negatively, stating that there were no plans for that right now. The variances were being requested because the 50' strip, if sold, would change certain numerical calculations in relation to the Beach Club. Because of those changes, certain variances were needed from those numbers. What would change would be the numbers, but not what would happen on the actual property.

Mr. Moore clarified that there would be a change that would occur. The cabanas were currently 50' away from the property line. If the property would sell, the cabanas would be on the property line, so there would be a change in the placement of the property line.

Town Attorney Randolph pointed out that the issue was handled under part 1 of the variance request – from a 30' setback to no side yard setback.

Attorney Kolins clarified that when he had said that there would be no change on the actual property, what he had meant was what currently was seen on the property would be what was seen the day after a change of ownership occurred. Nothing physical would happen, although the property line would change. He noted that if any change was then contemplated to the property, such as building a new house, expanding the current house, etc., the owner would have to come to the Town for approval, and at that time the appropriate site plan considerations would be discussed.

Town Attorney Randolph disagreed, stating that once the decision was made for the Beach Club to divest itself of the property, the property would be in the hands of the property owner, and if a building permit was requested using the new property that would meet all provisions of the Town Code, the item may never come back before the Town Council; the applicant could just go to the Building Department with the property dimensions and lot coverage, and ask for a building permit. He stated that he did not believe the issue could be left to another time, however, he believed that the Town Council could place some sort of a condition on the property use as a buffer. He advised that he had considered that the buffer was to protect the property owners from the new additions that were going up, and now the purchase by the property owner would question the need for a buffer.

In response to President Smith, Mr. Moore advised that there was approximately 48,000 square feet involved in the three lots totally, and if the buffer of 22,900 was added to that it would bring the number to approximately 71,000 square feet. R-AA Zoning requirements would begin at that point. The Beach Club property was also large enough for R-AA requirements, and side yard requirements were 30' for the Beach Club.

Councilman Shaw commented that he did not feel that the Town could justifiably allow the transfer that would violate the side yard setback requirements.

Attorney Kolins proposed that Dr. Marder buy and own all 50', with agreement on a no-build zone between the back of the Beach Club buildings and the other property lines, so that structures would not be built right on top of the Beach Club. The Beach Club could have a perpetual easement on the property.

Mr. Moore commented that Mr. Kolins would have to define the no-build zone, and the ability to count that land toward lot coverage, etc. He noted that the property owner was requesting to buy property from the Beach Club lot coverage and green space, and be allowed to count it for the new property lot coverage calculations.

Councilman Wyett moved deferral of Site Plan 7-98 until the July Town Council Meeting. The motion was seconded by Councilman Shaw.

President Smith suggested that the Town Council define the problems so that Attorney Kolins would have full information.

Attorney Kolins suggested that rather than hear the comments of each Council member, he would prefer to remain flexible in what he would present at the next Town Council meeting.

On roll call the motion carried 4/0, as President Pro-Tem McLendon had recused himself.

1. Other

   1. Request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction, by the Palm Beach Day School, 241 Seaview Avenue *(Deferred from May 12, 1998, under Site Plan Review No. 6-98)*

Attorney Jim Brindell, on behalf of the Palm Beach Day School, addressed the Town Council, commenting that he had met with staff and Police Department, and a memorandum had been prepared reiterating what had been concluded. Work hours would be from 8:00 A.M. o 7:30 P.M., Monday through Saturday, with no holiday work. No construction deliveries would occur before 8:00 A.M. Police Department concerns had been that when school started again, construction traffic should not interfere with traffic. Therefore, the next provisions dealt with the commencement of school on September 8th. Workers could come 30 minutes early, but there could not be any construction work or deliveries between 7:30 and 8:00 A.M., and no deliveries before 7:30 A.M., and from the hours of 2:45 P.M. to 3:15 P.M. the same rules would apply. All construction deliveries would be thus scheduled. The lot at the east end would be the staging area for materials, which would be controlled so that there would be a place for trucks and materials to arrive. The project would hopefully be finished by the middle of November.

Mr. Moore gave the following staff comments: Staff had met with the applicant and Attorney Brindell and concluded the most advantageous conditions, and recommended approval of the waiver request.

Councilman Wyett moved approval. Councilman Shaw seconded the motion for discussion.

Councilman Shaw commented that he thought the Saturday hours were excessive, as the majority of people on the block worked, and would like to enjoy peace and tranquility on Saturday. He suggested that the Saturday construction hours be from 9:30 A.M. to 6:30 P.M. In addition, he noted that the public school at the west end of the street started prior to 8:00 A.M. in the morning, and there was a considerable amount of traffic on the street prior to school starting, as well at the end of the public school day. He also questioned the impact on the Recreation Department summer program.

Mr. Moore responded that the Recreation Center summer program began at 8:30 A.M., with drop-off prior to that at 8:00 A.M. Public School hours were from 8:00 A.M. to 2:07 P.M.

President Smith suggested that all construction deliveries be done only in the morning.

Mr. Joe Jurban, of the Weitz Construction Company, agreed to do that.

Mrs. Polly Earl asked if construction parking would flow onto adjacent streets?

Mr. Jurban, Project Manager, responded that a great deal of thought had been put into the parking area and staging, so as to lessen the impact on Seaview and on the residents. As part of the proposal, the eastern lot had been adapted with an entry and exit gates, so that deliveries would be able to get off of Seaview immediately. Parking spaces were also being provided in the lot for construction workers. He noted that parking would be restricted.

Zoning Administrator Paul Castro noted that staff had worked diligently to ensure that the traffic generated by the construction would not conflict with the operation of the schools, and Recreation Center. Staff also believed that the provision of an onsite employee parking lot and a construction staging area would help alleviate many problems related to parking.

Attorney Brindell responded that if there was any parking problem it would be communicated and addressed.

Councilman Shaw suggested that all deliveries be between 8:30 A.M. until 1:30 P.M., in order to avoid traffic problems.

Councilman McDonald moved approval of the request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction, by the Palm Beach Day School, with conditions as outlined in the memorandum from Assistant Project Manager Joe Jurban of the Weitz Company to Zoning Administrator Paul Castro. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

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Earlier in the meeting, it had been arranged that the construction hours for Neiman Marcus and the Esplanade would be discussed at this point. Attorney Jim Brindell advised that he would like to meet with Town staff regarding the request for the extension of construction hours on Worth Avenue before presenting the request to the Town Council. He suggested that, after meeting with Town staff, he appear at the already scheduled July 9, 1998, Special Town Council Meeting in order to discuss the issue.

Councilman Shaw moved that Attorney Brindell be allowed to appear at 9:30 A.M. on July 9, 1998 at the Special Town Council Meeting to discuss the construction hour issue. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

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2. 1998-1999 Zoning Calendar and Tentative List of Zoning Study Items *(These documents were approved at the May 12, 1998 Town Council Meeting; this item appears on this agenda for potential additions to the Tentative List of Study Items.)*

Director of Planning, Zoning & Building Robert Moore commented that Councilman Wyett had requested that some items be added to the Zoning List. He had met with Mr. Wyett, and the requested items were noted in a memorandum from Mr. Wyett to Mr. Moore dated June 9, 1998.

Councilman McDonald moved approval of the incorporation of the study items proposed by Councilman Wyett into the existing approved list of Study Items. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

XVII. ANY OTHER MATTERS

There were no other matters.

XVIII. ADJOURNMENT

The meeting was adjourned at 6:20 p.m.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk
E:\MINUTES\1998\980609.TCM.WPD

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

LAST NAME—FIRST NAME—MIDDLE NAME McLendon Samuel Cheney	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Town Council PB
MAILING ADDRESS 300 S. Ocean Blvd	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY: Palm Beach FL COUNTY: Palm Beach	NAME OF POLITICAL SUBDIVISION: Palm Beach Town
DATE ON WHICH VOTE OCCURRED 6-9-98	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE

RECEIVED JUN 10 1998 TOWN OF PALM BEACH

WHO MUST FILE FORM 8B

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

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

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

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

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

ELECTED OFFICERS:

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

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

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

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

APPOINTED OFFICERS:

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

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

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

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

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

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Samuel C. McLendon, hereby disclose that on June 9, 19 98:

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

✓ inured to my special private gain or loss;

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

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

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

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

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

My wife and I own one share membership in The Beach Club, 755 N. County Rd, Palm Beach

June 9, 1998
Date Filed

Samuel McLendon
Signature

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

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

LAST NAME—FIRST NAME—MIDDLE NAME Smith, Lesly Stockard	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Palm Beach Town Council
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☑ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY COUNTY	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED 6/9/98 SE 10-98	MY POSITION IS: ☑ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

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

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

ELECTED OFFICERS:

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

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

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

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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, Lesly S. Smith, hereby disclose that on June 9, 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 member of the board

6/9/98
Date Filed

Lesly S. Smith
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.