MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON JUNE 4, 1998

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting to consider Development Review applications for a proposed Neiman Marcus store at 137-155 Worth Avenue was called to order at 10:07 a.m. on Thursday, June 4, 1998, by President Leslie Smith in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: President Lesly Smith, President Pro-Tem Sam McLendon, Councilmen Jack McDonald, Leslie Shaw, and Allen Wyett. Mayor Paul Ilyinsky was absent from the meeting. Also in attendance for all or part of the meeting were: Acting Town Manager Peter Elwell, Fire-Rescue Chief Ken Elmore, Police Chief Frank Croft, Director of Public Works Al Dusey, Director of Planning, Zoning & Building Robert Moore, Zoning Administrator Paul Castro, Town Engineer Jim Bowser, and Town Clerk Mary Pollitt.

II. APPROVAL OF AGENDA

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

III. CONTINUATION OF CONSIDERATION OF THE FOLLOWING DEVELOPMENT REVIEW APPLICATIONS FOR NEIMAN MARCUS:

A. <u>SITE PLAN REVIEW NO. 3-98 WITH SPECIAL EXCEPTIONS & VARIANCES</u> - Murray H. Goodman, Evelyn N. Harary & Worth Avenue Associates LTD, 137, 139-151, 152, 155 Worth Avenue; located in the C-WA & R-C Zoning Districts:

1. A site plan review approval is required to allow construction of a 57,000 sq. ft. building, replacing six buildings totaling 15,457 sq. ft. Approximately 37,390 sq. ft. will be retail building and 3,827 will be accessory office.

2. A special exception approval is required in this C-WA Zoning District for uses exceeding 2,000 sq. ft. Special exceptions permitted under the Worth Avenue Guidelines are requested relative to 265' building length; 40' height of proposed 3-story building; and sq. ft. of 57,000 in lieu of 15,000.

3. A special exception is requested to provide required parking (underground) for commercial use in the R-C Zoning District.

4. A special exception is requested to construct a 220' long arcade along the road frontage.

5. A variance is requested from the off-street loading requirement providing one space in lieu of three.

6. A variance is requested from the parking space width requirement providing 155 underground spaces with a portion of a building column protruding into the parking space width.

7. A variance is requested from the parking garage drive aisle width requirement of 25' by providing 21.5'.

8. A variance is requested from lot coverage requirements allowing 77% (first floor) in lieu of 75%, allowing 77% (second floor) in lieu of 65%, and allowing 33% in lieu of 30% maximum allowed.

9. A variance is requested from the 3' required setback, providing no setback for the arcade roof overhang.

Mrs. Smith stated the meeting will be quasi-judicial and requested anyone who would be testifying to be sworn in.

The Town Clerk swore in all of the witnesses who would be giving testimony during the procedure.

Mrs. Smith noted that when the last Special Town Council meeting was adjourned and reconvened at this meeting, the Town Council was in executive session, and the Town Council will remain in executive session during this meeting; however, any member of the public who wished to speak on new information will be permitted to do that.

Attorney James Brindell, on behalf of the applicant, summarized that at the end of the last meeting the Town Council had expressed a list of concerns regarding the project and he had presented a revised project for 52,000 square feet which was reduced from the original presentation of 57,000 square feet. He said the deferral from the last meeting was to allow him to comment in greater detail on the aforementioned issues.

Mr. Brindell said the revised project is now 48,661 gross square feet. The result is that the variance request which is listed as number 8 under "A" is withdrawn because the coverage limitations of the guidelines have been met with the 48,661 sq. ft. plan.

Mr. Brindell said that the traffic issues that were raised at the last meeting resulted in the proposal of additional mitigation features regarding that issue. Many, if not most of them, are based on the meeting he had with Mr. Goodman and Police Chief Croft. He outlined the following additional commitments that the applicant would make:

(All of the following are based upon the assumption of the development of the Worth Avenue site, the donation of the 400 S. County site to the Town–with no necessity for required parking on that site.)

1. At the direction of the Chief of Police, the Applicant would be responsible for the expense of a mobile on or off-duty police officer to manage traffic flow on Worth Avenue during the months of December, January, February, and March of each year.

2. All Neiman Marcus employees, estimated at 65-80 during the season, would be allowed to self-park in the garage at Neiman's expense under the proposed store as well as the 20 spaces on the Peruvian lot. Neiman's would also prohibit their employees from parking on the street. The Peruvian lot would be for employee parking only.

3. No deliveries will be made to the store via the Peruvian lot.

4. No exit stairs or exhaust fans from the parking garage in the Peruvian lot.

5. Access to the Peruvian lot from the building will be limited to store employees.

6. Deliveries of merchandise to the store will be restricted to the hours of each day as prescribed by the Town.

7. Neiman's will provide a valet traffic control supervisor during normal store hours during the months of December, January, February, and March of each year to ensure the proper operation of the valet service at the building garage.

8. To encourage parking in the garage, the parking rates will be 15% less (than the existing parking lot located at Hibiscus & Peruvian) at the Neiman garage during the months of December, January, February, and March .

9. Neiman's will validate parking tickets for its customers who park in the garage.

Mr. Brindell made the following commitments on behalf of his client, Mr. Goodman: that at the direction of the Police Chief, an on or off-duty police officer will be provided at no cost to the Town to direct traffic in the 100 block of Worth Avenue during the permitted construction period; a delivery coordinator will be provided to coordinate all deliveries and related matters to the construction site (that person will be in addition to a resident inspector); construction workers will be parked outside the Town and bused to the site until the garage is completed on the site at which time they will be allowed to park inside the garage; management personnel will be parked in the Esplanade garage or on site when the garage is completed; in addition to the H. S. G. Gould report submitted to the Town, the hours of operation will be consistent with the majority of Worth Avenue merchants, but not less than 10:00 a.m. - 6:00 p.m. Monday through Saturday; Neiman Marcus would agree not to advertise this store in the Palm Beach Post or the Sun Sentinel during its first year of operation; a scholarship fund will be created for needy Townpersons from a portion of the rents received from Neiman Marcus (administered by the Chamber of Commerce); a covenant will be issued limiting the parking in the garage to valet only with the exception of the employees who may self-park; and Neiman Marcus will entertain shared parking proposals for the use of the garage after store hours (not to include the Peruvian lot).

Mr. Brindell referred to some of the design issues that were raised by the staff related to the revised plans. The valet stacking spaces were increased to six. The driveway lanes were reduced from four to three. A twenty foot high hedge will be provided at the rear of the building, replacing the proposed trees. A second loading dock was provided. A separate refuse dumpster area was provided. State of the art baffling for the AC equipment will be provided. The loading dock gates will either swing in or roll up and will not open onto the street. By eliminating the parking under the Peruvian lot, it will not be necessary to relocate any of the existing utilities from the rear of the property. Additional data was presented to the Public Works Department regarding data and analyses on the de-watering and storm water disposal issues which demonstrate that no significant problems will arise as a result of the work.

Mr. Brindell said the variance request was reduced for the arcade roof overhang from two roofs to one. That was the roof overhang that was forty-two feet up in the air that intruded in the three foot setback from the curb. The arcade face needs to be out to that three foot line to have the appropriate width underneath. One tower was moved back, but a second architectural tower has a small overhang at forty feet up in the air that intrudes into that space. He recalled that the intention of the three foot required setback was intended for cars parked at the curb, at street level, so the persons could leave and enter the car without hitting their car doors.

Mr. Brindell said the number of parking stalls that have the column intrusions were reduced from 155 to 133.

Mr. Brindell said he believed that his remarks responded to all of the questions that were raised by the Town Council previously. He noted that his client did have a request regarding an extension for the construction work hours, but deferred to a more appropriate time when he returned to the Town Council with a construction management program.

Mr. Brindell mentioned the release of the unity of title between the Esplanade and the existing park on Worth Avenue across the street. The reason for the park was to provide future parking for the Esplanade, if it were ever needed. Mr. Brindell said the submitted date proved that parking was not needed. He noted that the proposed donated property to the Town at 400 S. County Road has more that twice the square footage of that existing park on Worth Avenue.

Mrs. Smith asked Mr. Moore to speak regarding the May 27th Adley Brisson Report.

Mr. Moore said in addition to Mr. Brindell's comments, the Town Council requested the staff provide information regarding what could be built on the site, i.e. multiple units, multiple uses vs. a single user. Mr. Phil Tokich from Frederic R. Harris and Bill Brisson from Adley, Brisson, Engman were asked to provide information. Mr. Moore asked Mr. Brisson for his comments regarding the report.

Mr. Brisson said he reached a very simple, brief conclusion after analyzing a series of factors and comparing the hypothetical multiple shop scenario and the modified Neiman Marcus proposal. The modified Neiman Marcus proposal was larger and contained more square feet than the current presentation. Mr. Brisson said when all the factors are considered–size of structure, gross leasable floor area, numbers of employees, provision of the park, number of tenants, control factors, traffic flow–in general, the modified Neiman Marcus proposal as originally discussed in his memorandum would provide a greater overall benefit and a lesser negative impact to the Town than would an alternative development that could hypothetically be built under the Town's current regulations with a series of small shops of less than 2,000 square feet.

Responding to Mr. McLendon's questions regarding the basis for Mr. Brisson's report, Mr. Moore recalled that Mr. Brisson's instructions from the Town Council were to look at the Code, analyze the current zoning, and under a multi-retail office use compare that as one end of the spectrum to the other end which is the Neiman Marcus proposal. Mr. Moore noted that Neiman's has been reduced from 52,000 square feet to 48,600 square feet. Mr. Moore said that Mr. Brisson's report has attempted to look at the hypothetical multiple stores vs. the Neiman Marcus project.

Mrs. Smith requested that Mr. Moore read the numbers from Mr. Brisson's analysis into the record.

Mr. Brisson said the hypothetical multiple shop scenario involved the building on Worth Avenue of approximately 58,438 square feet of gross floor area with a total of 45,600 square feet of high end retail space and that would be in about twenty-three individual tenants. That scenario also included development of the Boynton Landscape property which would have approximately 11,000 square feet–1/2 retail and ½ office on the second floor. The modified Neiman Marcus proposal that was analyzed in this report involved the 52,000 square feet of gross floor area and would have been the one shop as reviewed previously. The Boynton Landscape property would have been a park.

Mr. McLendon asked if the Neiman Marcus site included four separate land parcels?

Mr. Brindell replied the site included two lots plus the park lot for a total of three lots.

Mr. Brindell said he wanted to add the statement that if the queuing of cars at the garage entry extends into Worth Avenue–if it becomes a regular occurrence–his client would consider the temporary relocation of the valet station to the first level of the garage and other remedial actions.

Mr. Wyett said he appreciated Mr. Brindell's offer and expressed his concern with the potential back up of traffic extending to the 200 block of Worth Avenue and the intersection.

Mr. Wyett asked how many valet parkers would be needed to handle six cars during a 200 car peak hour period and how would it be handled.

Jerry Wentzel, Vice President of DKS Associates, said an analysis regarding the valet operation was submitted to the Town approximately one month ago. He noted that the peak hours were identified and the number of cars stacking is a function of the service time, the number of attendants, and the peak departure and arrival rates. Based on the information, the analysis called for 3 to 4 spaces maximum needed for stacking, and he was confident that five spaces would be more than sufficient for a 57,000 square foot operation. With the identification of six stacking spaces for a much smaller store, Mr. Wentzel was confident that the number of times the six stacking spaces would be exceeded would be very limited. In the event that would ever happen, Mr. Brindell offered to have a person who would be in charge of that activity to make sure that the night number of parking attendants would be present at the right time. Mr. Wentzel stated that four parking attendants taking an average service time of two minutes per vehicle should never exceed the five stacking spaces.

Mr. Wyett suggested that the scenario was optimistic. He said he was still concerned about the valet parking.

Mr. Wentzel replied the numbers were based on the maximum Institute of Transportation Engineers' Report that was used for Palm Beach County and the Town. The numbers are based on a typical shopping center that has a grocery store and a fairly high turnover type tenant. The actual numbers were obtained from a survey at the Esplanade during a peak shopping time and those numbers indicated less than one hundred cars total – in and out. Mr. Wentzel said the numbers in the reports represent the worse-case standard numbers that were verified through the surveys they conducted at the Esplanade.

Mr. Wyett said if the standard numbers applied to the Town of Palm Beach, the Town would probably be landlocked.

Mr. Wyett said he did not believe the reduction in the square footage for the store represented a decrease in customers coming to the store although it may affect the operation of the store. He noted that the technical reports were drawn for another time, another town, and another type of store.

Mr. Wentzel concurred that the number of cars coming to the store may not be affected by the reduction in square footage.

Mr. McLendon asked if valets from the Esplanade and the Neiman Marcus store could interact if the traffic demands were greater at one place.

Mr. Brindell responded that was certainly possible.

Mr. Shaw said he was not too pleased with what had transpired with the Peruvian Avenue aspects of the application. He thought it was inappropriate for one neighbor's interests to take what was supposed to be a transfer of a passive park and turn it into an active parking lot although that is what it is today. Mr. Shaw noted that the Franks' property on Peruvian is either up for sale or under contract. He said it may be inappropriate for the Franks to object to parts of the project and then leaving; however, the issue is the land and not just one neighbor.

In the interest of swap of a park that was meant to be a passive park, he asked the Town Council to seriously consider allowing this project to go forward without the parking lot for the employees being placed on Peruvian and that it be kept as green space under the same terms as the green space park across from the Esplanade was granted in that in the event that it is needed, it be converted to a parking lot. Rather than starting off with a parking lot, Mr. Shaw said he would rather see that turned into green space. It may involve an additional variance based on this application by eliminating those spaces, but he thought that was a positive exchange. He suggested the eleven parking spaces could be on the Boynton Landscape lot as originally offered by Mr. Goodman. Mr. Shaw said he was very upset to see additional surface parking especially when an applicant came forward to remove it all from the surface, and he admired and appreciated those concerns. He thanked the developers and contractors in Town who have gone to underground parking.

Mr. Moore, confirming what Mr. Shaw stated regarding a variance, said it would take a variance for the parking requirement for twenty spaces which had not been advertised. That would need a separate hearing.

Mr. Wyett, referring to item 10 in the conditions presented by Mr. Brindell, questioned the times for the deliveries.

Mr. Brindell responded his client had no problem with working out the delivery times with the Town.

Mr. Wyett expressed concern regarding the statement, "There would be no advertising for the first year in the Post or the Sentinel." He suggested there should be no advertising in the Post or the Sentinel ever. The Shiney Sheet, the national magazines, and various local magazines should be enough. He said he was concerned about mass advertising that could occur during the second year under this agreement.

Mr. Brindell replied the entire issue of advertising was "tricky" and had some legal issues associated with it. He said Neiman Marcus was offering the stated terms; however, the issue is probably a broader issue with others in Town. Mr. Brindell said he did not think a perpetual limitation of advertising on this one store when other stores do not have the same restrictions is patently unfair. Mr. Brindell stated he thought it was illegal, but on the other hand if the Town Council thought that was an important vehicle the Town ought to have relative to insuring Town-serving from a variety of establishments, then a level playing field should be established. After the Town evaluates the legal issues, the Town should establish a policy that treats all people fairly who are in similar categories.

Mr. Moore referred to Mr. Brindell's item 10 regarding delivery of merchandise, restricting the hours of delivery from 9:00 a.m. to 12 noon. Mr. Moore said he had subsequent discussion with Police Chief Croft, and the two concerns expressed were the noise associated with the deliveries and the traffic patterns on the Avenue. He suggested a possible compromise of delivery times would be 9:00 a.m. to 11:00 a.m. Mr. Moore said if those times are not acceptable, Neiman Marcus could return to the Town Council at a later time to request a change in the times.

Mr. Wyett concurred with Mr. Moore's statement.

Public Works Director Al Dusey said garbage is picked up on Worth Avenue beginning at 9:30 a.m. because the stores have to open, and the merchants have to have time to put the garbage out on the street. Mr. Dusey expressed concern regarding the facilitation of picking up garbage when deliveries were being made at the store.

Chief Croft said he still had concerns regarding the amount of traffic that will be generated especially considering the information contained in Mr. Brisson's report. Chief Croft said the Town Council had to make the final decision on the impact any additional traffic would have
on Worth Avenue. Chief Croft noted that Mr. Goodman and Mr. Brindell made good faith efforts to resolve the issue during discussions with him. Mr. Goodman accurately described the details of that discussion in a letter. Chief Croft said that Mr.

Goodman gave his word that whatever mediums are necessary or whatever his company or he had to do to make things smoother or right, he would do.

Chief Croft said he tried to take a common sense approach to the issue and what might happen. He said there will be an impact, and the issues he saw were the valet parking issues and the underground parking garage. After meeting with Mr. Goodman, he thought it was better that the employees would park their own cars as that would overcome the problem of 70 - 80 employees arriving at the same time with valet parking.

Mr. McLendon said one of his main concerns was the management of traffic in the 100 and 200 blocks of Worth Avenue and asked Chief Croft to express an opinion regarding the proposed manager to oversee that traffic.

Chief Croft, after referring to several items in the Brisson report, replied police officers can help resolve traffic problems, but there are many different situations that may lead to traffic problems that may or may not be helped with the addition of police officers.

Mr. McLendon said his basic feeling was that the designation of a traffic manager would improve the traffic situation.

Mr. Brindell clarified that Mr. Goodman committed to hiring a traffic manager to manage traffic in the 100, 200, and 300 block during the season. During the construction of the project, focused primarily in the 100 block, a police officer will be hired to control that traffic. One was permanent during the season when the store was open, and one was temporary during construction.

Responding to Mr. Wyett's concerns regarding the Worth Avenue traffic issues, Chief Croft suggested that, as time goes on, a meeting could be held to work out the issues that would be and would not be related to the 100 block of Worth Avenue.

Mr. Wyett suggested the impact of the "season" may be closer to the dates listed in the Worth Avenue Guidelines, November 15th to April 30th.

Mr. Wyett questioned the convenience of customer validation of tickets at Neiman Marcus.

Mr. Wyett asked Mr. Dusey if he were satisfied with the provisions that the applicant would not be encroaching into the right-of-way or did he have concerns about re-piping that area?

Mr. Dusey replied that the elimination of the underground parking on Peruvian eliminated the need to relocate any of the utilities, and there are no longer any concerns regarding that issue.

Mr. Wyett asked if the busing in of construction people is an option for the entire length of the project or should the construction people be allowed to park in the garage when it is finished?

Mr. Moore replied the request for construction people parking in the garage will be during off season and should not be an additional burden for the off street parking at that time of the year. He explained this plan would not work if construction were allowed on a year around basis.

Mr. Wyett said he had concerns regarding the advertising after the first year of operation, and he thought the Town Council should look at the issue, although the Town Council may not be able to legislate the advertising. He noted that high end items advertised in magazines may also create a draw to the island.

Mr. Shaw said his greatest concern regarding the application was the Town-serving issue. He said Neiman Marcus indicated they were coming to Palm Beach to be a local store and not a regional store. He agreed that the advertising standard applied to Neimans should be applied to everyone. He thought a standardized marketing approach should be used by the Town Council when future applications for variances are heard. He suggested specifics used as part of a standardized approach should include no radio or television advertising, limited print media advertising to local publications where locals are defined as 50% or more distribution to Town persons, and refrain from direct mail marketing to potential clients except within the local area as defined by the 33480 zip code. He said he would not object to national image ads where the shops multiple stores were listed equally or mail solicitation to bonafide clients of a store taken from the client list. These standards would not be solely imposed on Neiman Marcus but would be standards that could be agreed to by all applicants from here forward. He said the one year restriction would be a fair condition until all the standards were more wide spread. Mr. Shaw suggested this may become an annual review as additional special exceptions are seen by the Town Council. Mr. Shaw said he did not think the burden can be placed on the merchant to tell people they cannot come into Palm Beach because the quantity has gone over, but he did believe the merchant can control how they market their services. He said if these points would be acceptable to the applicant with the understanding they were not the singular user of these standards, he would be comfortable with the issue of the applicant attempting to meet their goals of Town-serving as strictly a local store.

Mr. Shaw referred to item 5 on Mr. Brindell's list and requested that all employees must either park in the underground garage or off-island. He suggested the delivery times may be adjusted to begin at 8:30 a.m.; however, the times could be worked out with the Police Department and the Public Works Department, and the times need not be specific.

Mr. Brindell said he did not have a problem working out the hours with all of the departments.

Mr. Shaw requested the items be considered by the Town Council one by one.

Mrs. Smith asked the Town Attorney what the proper procedure should be?

Attorney Randolph replied each item could be considered as long as the Town Council referred to the applicable ordinance. He offered to review the list of items to be considered.

Mr. Randolph noted that the first issue was the Special Exception. In determining whether to grand a Special Exception, the Town Council needs to make a determination as to whether or not all of the conditions set forward in the ordinance have been met. In other words, all of the criteria have been met. Under 6.40 is a list of those conditions. In addition, in determining whether or not to grant a special exception, a site plan review procedure is determined under 9.60 of the Ordinance. The Town Council has to make a finding during the site plan review that the provisions of the ordinance have been met. The Town Council can, under the statute approve, approve with changes, deny, or approve with conditions the application. The Town Council must make a finding that the approval will or will not adversely affect the public interest. The Town Council is authorized under the ordinance to have the applicant enter into a Declaration of Use Agreement with certain conditions the Town Council thinks appropriate. In the event, the Town Council were to approve the application, consideration could be given to whether or not the applicant should come forward with a Declaration of Use Agreement which would incorporate all of the conditions. Mr. Randolph said that would come back to the Town Council for final approval once it was presented.

Mr. Randolph said that since this is a quasi-judicial hearing the Town Council's determination has to be made on the basis of the evidence that has been presented before the Town Council. Findings must be made to support that position.

Mrs. Smith asked the members of the Town Council if they would like to move ahead with the idea of a Declaration of Use Agreement that would have to come back to the Council?

Mr. Randolph clarified that although the Town Council did not have to go through each one of the specific items on the agenda, he thought the Town Council needed to make a distinction between the Special Exception applications, and the Variances because the criteria are different for each one. In the event the motion would be to approve, it would have to have findings to support it and if (2) the Town Council were to impose conditions, those conditions should be specified as they would relate to the Special Exception. When dealing with the Variance, separate criteria will be addressed, and under the Variance, there is a proviso that the applicant has to show there is a hardship and it has to meet those criteria. He suggested the Town Council should at least separate the issue regarding the special exceptions and the variances.

Mr. McDonald said he was not sure the agenda items were correct because the building is no longer 57,000 square feet.

Mr. Moore said that Mr. Brindell modified the application during the meeting and offered to review those modifications.

Mrs. Smith clarified the listing on the agenda was advertised as such because of the original application.

Mr. Shaw noted that the agenda was not the same as the application in that the application had (A) Site Plan, (B) Special Exception, and (C) Variances and asked for some guidance from Mr. Randolph.

Mr. Shaw made a motion to approve, under the application, page 2 of 16, Item B, (A) Site Plan Review - request for site plan review is required by the Code - that the Site Plan has been reviewed by the Council. It has been reviewed through a memorandum provided by Adley, Brisson, looking at the impact of this particular project as defined by the Code and what is permitted under the Code, and with that change in building size to 48,660 gross square feet that the Site Plan Review be approved.

Mrs. Smith asked for a second to the motion. Mr. McLendon seconded the motion.

Mr. Randolph said he assumed Mr. Shaw, in making that motion, incorporated a finding that the approval will not adversely affect the public interest and that it otherwise meets the criteria set forth in the Town's ordinance.

Mr. Shaw replied it did and that was the reason he included the Adley, Brisson Report, dated May 27th, to be incorporated into the motion. That was the substantiation that both they and the Town reviewed this application and accepted the impact that it will have, will not be a detriment to the Town as defined under 9.60 of the Code.

Mrs. Smith asked for further discussion or public comment.

Robert Grace, 151 Seagrape Circle, asked if as a point of information, would it not be like Alice in Wonderland to approve a site plan and then give serious consideration to whether or not the Town Council would approve a special exception? He said it seemed to him that if the Town Council did one, the Town Council had committed itself to do the other.

Mr. Grace said he had serious reservations concerning the whole procedure the Town Council was following. It did remind him, somewhat, of Alice in Wonderland.

Mrs. Smith asked Mr. Randolph to address Mr. Grace's concern regarding the splitting of the Site Plan Review and the Special Exception request?

Mr. Randolph responded he did not think the Town Council had to divide the Special Exception from the Site Plan Review. The ordinance established that in passing upon a Special Exception, the Town Council must conduct a Site Plan Review. In essence, when the Town Council approves the Site Plan, the Special Exception is being dealt with. Mr. Randolph said his intention was to advise the Town Council that they should separate the Special Exception from the Variances.

Mrs. Smith asked Mr. Shaw what he was reading from when he made the original motion?

Mr. Shaw replied he was reading from the application. He said if the Town Council merged the two together, a lot more time will be necessary. This is the item that has multiple subsections of which some are referenced in the approval.

Mrs. Smith asked why the items were listed on the agenda as they were when she read the agenda earlier in the meeting?

Mr. Moore replied that the original application is still before the Town Council under the original advertising and was voluntarily reduced during the meeting process.

Mrs. Smith responded that she understood that; however, the eight or nine items that appeared on this meeting's agenda are different from the original application as read by Mr. Shaw.

Mr. Shaw explained the list had changed when modifications were made to them.

Mrs. Smith explained if the Site Plan were approved, the Special Exceptions would be approved, and they were not modified under Mr. Shaw's motion.

Mr. Shaw said the list would have to be considered one by one.

Mrs. Smith asked Mr. Shaw, as the maker of the motion, and Mr. McLendon, as the seconder of the motion, if they would accept the changes that Mr. Shaw was about to make?

Mr. Shaw reviewed the modifications. Mr. Shaw said this was a request for a Special Exception approval in order to construct a retail establishment consisting of a total of (modified) 48,661 gross, leasable, square feet which includes approximately 37,390 square feet of retail space and a reduction from 7,274 square feet of office space to 3,837 square feet which exceeds the 2,000 square feet limitation. The proposed building is replacing six existing structures which did total 15,457 square feet.

After discussion about the agenda and the application, Mr. Randolph said the agenda has to reflect the application and presumably it does with the modifications that were made at this meeting.

Mr. Elwell explained that the agenda was listed as it was originally listed prior to the first Special Town Council meeting on this matter. As Mr. Moore indicated, it needed to be listed that way again because of the advertising. There was no change in the advertising of the application in between the two meetings. The agenda is as it was in the beginning; however, modifications were made to the application even before the applicant arrived for the first meeting as well as additional modifications up to the present. Mr. Elwell said there needs to be some focus upon the application, as it has been modified, and steer away from the wording as it is reflected on the agenda.

Mr. Brindell offered to simplify the situation and explained the changes as listed under item III. CONTINUATION OF CONSIDERATION OF THE FOLLOWING DEVELOPMENT REVIEW APPLICATIONS FOR NEIMAN MARCUS:

1. <u>SITE PLAN REVIEW NO. 3-98 WITH SPECIAL EXCEPTIONS & VARIANCES</u> - Murray H. Goodman, Evelyn N. Harary & Worth Avenue Associates LTD, 137, 139-151, 152, 155 Worth Avenue; located in the C-WA & R-C Zoning Districts:

    1. A site plan review approval is required to allow construction of a one ~~57,000~~ 48,661 sq. ft. building, replacing six buildings totaling 15,457 sq. ft. Approximately ~~41,495~~ 37,390 sq. ft. will be retail building and ~~7,374~~ 3,827 will be accessory office.

    2. A special exception approval is required in this C-WA Zoning District for uses exceeding 2,000 sq. ft. Special exceptions permitted under the Worth Avenue Guidelines are requested relative to 265' building length; 40' height of proposed 3-story building; and sq. ft. of ~~57,000~~ 48,261 in lieu of 15,000.

    3. A special exception is requested to provide required parking (underground) for commercial use in the R-C Zoning District. *This request is no longer necessary because underground parking will not be used in the Peruvian lot. The parking will be required parking in an existing parking lot for a commercial use in the R-C Zoning District.*

    4. A special exception is request to construct a 220' long arcade along the road frontage.

    5. A variance is requested from the off-street loading requirement providing ~~one~~ two space(s) in lieu of three.

    6. A variance is request from the parking space width requirement providing ~~155~~ 133 underground spaces with a portion of a building column protruding into the parking space width.

    7. A variance is requested from the parking garage drive aisle width requirement of 25' by providing 21.5'. *(Stays the same)*

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8. A variance is requested from lot coverage requirements allowing 77% (first floor) in lieu of 75%, allowing 77% (second floor) in lieu of 65%, and allowing 33% in lieu of 30% maximum allowed. *(Withdrawn)*

9. A variance is requested from the 3' required setback, providing no setback for the arcade roof overhang. *(For one tower only–not two towers.)*

Mr. Brindell explained that item B. SITE PLAN REVIEW NO. 4-98 WITH SPECIAL EXCEPTION & VARIANCE was approved at the last meeting; however, the issue of the Unity of Title needs to be addressed.

Mr. Wyett suggested that various items had a few things open that individual members of the Town Council may wish to address.

Mr. Shaw withdrew his previous motion.

Mr. Wyett referred to the parking on Peruvian Avenue and a letter that was received from a Peruvian resident. The resident noted that the post office relocation to the corner of S. County Road and Peruvian will result in additional traffic on Peruvian. Mr. Wyett expressed his concern regarding a possible increase in traffic and how it would be handled.

Mr. Shaw said he understood Mr. Wyett's concerns, and he did not disagree with him; however, his issue was not traffic but aesthetics. The twenty-one parking spaces on Peruvian will generate forty-two trips–one in and one out for employees but will not impact traffic any more than presently.

Mr. Shaw said he wondered if the Town Council would agree, since the underground parking has been eliminated, to eliminate the surface parking on Peruvian Avenue, remove the asphalt, and turn it into a park In the event parking is needed in the future, the parking would then be replaced or an alternate parking arrangement be found.

Mr. Moore responded that re-advertising would be necessary if Mr. Shaw's suggestion were accepted–either for granting a variance for the twenty spaces that were now provided for on Peruvian or to move them to the Boynton Landscape land.

Mr. Brindell replied his client did not wish to have another delay and offered an alternative of the Town Council's approving the twenty spaces on the Peruvian lot and delayed the construction of the Peruvian lot until such time as the Town Council deems it necessary. In the interim period, the lot would remain green space. This would avoid a variance request and a delay of time but would give the Town Council that option.

Mr. Wyett asked if the twenty spaces could be transferred to the Esplanade and keep more green space?

Mr. Brindell offered to have the Neiman Marcus employees park in the garage and allow the parking to spill over into the Esplanade garage if necessary. Mr. Brindell said he did not want to have to fill out another application for an alternate parking location and lose a month or two in the process.

Mr. Shaw requested that Mr. Randolph be satisfied from a legal point that the green space requirement be met.

Mr. Brindell said anyone, including Neiman's employees, has the right to go to the Esplanade parking lot and pay for parking, and, of course, Neiman's would pay for the parking. As a practical matter, if the Peruvian lot were kept as green space, and if there were a need for the twenty spaces, the problem would take care of itself if the Neiman employees would be allowed to park in the Esplanade garage.

Mr. Shaw said he understood the application could be modified so the twenty spaces provided on Peruvian would be delayed until such time as needed.

Mr. Brindell said it was not a matter of modifying the application but a condition that would be imposed on the implementation of the Peruvian lot.

Mr. Moore said the need for the twenty spaces is not eliminated, but the Town Council could act on Mr. Brindell's suggestion.

Mr. McLendon asked Mr. Moore if the project would be non-conforming until some indefinite future date?

Mr. Moore replied the parking spaces will exist and if they were to be turned into green space, another application would be necessary at a future date.

Mr. Brindell said he misunderstood the request, because the lot will be used during the construction period and will have to be physically reconstructed. At that time, under Mr. Shaw's proposal, it would be reconstructed as green space subject to the Town Council's decision at a later time if parking is needed.

Mr. Moore said if that were the condition that Town Council would impose, he thought it could be done.

Mrs. Smith said the Town Council moved ahead without approving the project and making conditions for it.

Mr. Randolph said a list of conditions were presented to the Town Council and if other conditions need to be added or refined, the Town Council can do that. He thought the best way to deal with the situation was to ask the question, "Is the Town Council in favor of granting a Special Exception accompanied by a site plan with conditions?"

If so, in the event the Town Council's motion is to approve a Special Exception and site plan with conditions, the motion must be made, based upon the findings that it is not adverse to the public interest and it meets the criteria set forth in the Code. The submitted list of conditions and any other conditions could be attached to that motion and placed in a Declaration of Use Agreement. Mr. Brindell could prepare that agreement and submit it to the Town Council for final approval.

Mr. Randolph noted that the Town Council would essentially be approving those conditions today, subject to the final approval of the Declaration of Use Agreement. He said that would take care of the Special Exception and the Site Plan. The Variances would have to be dealt with separately.

Mr. Shaw made a motion to approve Special Exception 3-98 with Special Exceptions:

Item 1 Site Plan Review - modified on the floor to be a total gross square footage of 48,661 with approximately 37,390 sq. ft. of retail and 3,837 sq. ft. of accessory office space;

Item 2 To allow for a store to exceed 2,000 sq. ft. under the Guidelines of Worth Avenue permitting a building of 265' in length and 40' in height;

Item 4 A Special Exception to construct a 220' long arcade along the road frontage;

In addition, the items presented with the application entitled Proposed Neiman Marcus Approval Conditions to be presented to the Town Council in the form of a Declaration of Use Agreement to include the following items:

1. The building is approved for 48,661 gross square feet with three stories and the floor plate square footages and configurations as shown on the plans prepared by The Lawrence Group architects dated May 27, 1998;

2. The building owner shall be responsible for the expense of a mobile on or off duty police officer to manage traffic flow on Worth Avenue at the direction of the Chief of Police during the months of November, December, January, February, March, and April of each year;

3. Neiman Marcus shall provide a valet traffic control supervisor during normal store hours during the months of November, December, January, February, March, and April of each year.

4. Neiman Marcus employees shall be prohibited from parking on the streets in the Town. In furtherance of this condition, parking for building employees shall be provided at no expense to the employees.

5. Neiman's employees will be required to park either with self-parking within the building, across the street at the Esplanade, or off-island.

6. The building garage shall be subject to a deed restriction providing for valet parking only except for building employees.

7. The valet parking tickets of Neiman's customers who park in the building garage shall be validated by Neiman's.

8. The hourly parking rate at the Neiman's garage and the Esplanade garage shall be 15% less than that charged at the existing parking lot located at Hibiscus and Peruvian Avenues during the months of November through April.

9. Shared parking proposals will be considered by Neiman's for the use of the building garage after store hours.

10. Deliveries of merchandise to the building shall be restricted to the hours of 8:30 a.m. to 10:30 a.m. unless modified by the Police Chief and as long as the hours meet the needs of the Public Works Department.

11. The hours during which Neiman's will be open to customers shall be consistent with the practice of the majority of Worth Avenue merchants, but not less than 10:00 a.m. to 6:00 p.m. Monday through Saturday.

12. Neiman Marcus shall limit its advertising to exclude all radio and television. Neiman Marcus, within the first year of operation, not have any advertising in the Palm Beach Post or the Fort Lauderdale Sun Sentinel. The advertising will be limited to local media as defined as media that reaches 50% distribution to the Town's persons. Neiman's will refrain from direct marketing to prospective clients outside the 33480 zip code.

Mr. McLendon said he would second the motion but without the severe restrictions on the advertising.

Mr. Moore questioned if the Town Council would like to consider discussion on item 13 concerning the construction period?

Mr. Shaw said he left that out but said he would include it in his motion:

Mr. Moore questioned if the Town Council would like to consider discussion on item 13 concerning the construction period?

Mr. Shaw said he left that out but said he would include it in his motion:

There will be an off-duty policeman provided to direct traffic during construction; there will be a yard manager in addition to the resident site inspector; and that the construction workers will be required to park off-island until such time as the garage is completed. Management will be able to park at the Esplanade.

Mr. Moore said there were two additional items mentioned by Mr. Brindell. One dealt with the issue of the review of the parking stacking on the inside of the building. The other was the addition of the scholarship for townspersons.

Mr. Shaw said those would be items 14 and 15 of the agreement.

Mr. Brindell said he had no problem with any of the items but he would like to review the advertising. He said that Neiman's would agree not to advertise during its first year in the Palm Beach Post or the Fort Lauderdale Sun Sentinel. Mr. Brindell said he understood Mr. Shaw to say that he would like to impose a perpetual requirement that the only print advertising that Neiman's would be able to do forever would be in "local" media which was defined as being one in which 50% of their customers (subscribers) are townspeople which basically means only the Shiney Sheet.

Mr. Shaw replied there are other publications. Mr. Shaw said his motion was for one year.

Mr. Brindell asked Mr. Shaw if he said "other print advertising" would be limited to local media except for national advertising campaigns?

Mr. Shaw responded national image advertising would be permitted, and other print advertising would be only to the local publications.

Mr. Brindell said the limitation to the Post and Sun Sentinel is only for the first year, because the Town Council will do something, perhaps, on a broader basis.

Mr. Shaw said it would be reviewed in one year.

Mr. Brindell asked if the restriction on radio and television advertising was for the first year or forever?

Mr. Shaw replied he thought that "one year" was at the end of the clause. He said that Neiman's will be providing information regarding their town-serving status on a yearly basis. When Neiman's comes back every year to prove they are town-serving, the Town Council can re-address those issues.

Mr. Brindell clarified that did not preclude Neiman's from sending anything to their existing customers, to anyone in the 33480 zip code, or anyone who requests information.

Mr. Shaw concurred with that statement.

Mr. Brindell said he would detail that more carefully when the Declaration of Use Agreement is prepared and presented to the Town Council. He added that these restrictions will not affect their national advertising including the catalogs.

Mr. Wyett clarified that the first year would begin with the opening of Neiman's. Mr. Shaw concurred with that statement.

Police Chief Croft said that there was mention of Mr. Goodman's offer for a scholarship for employees' children. Chief Croft said he wanted to make it clear that he was not familiar with any details of that offer (which was a verbal representation), and it did not take place during his meeting with Mr. Goodman.

Mr. Brindell said the advertising, as discussed, was acceptable to his client, and the details will be provided in the Declaration of Use Agreement.

Mr. McDonald asked Mr. Shaw to re-read item 12, regarding advertising, before the vote was taken.

Mr. Shaw said item 12 referenced advertising and was as follows: "There will be no radio or television advertising. There will be a limit to print media advertising to local publications where 'local' is defined at 50% or more total distribution to townspersons. There will be a refrain from direct mail marketing to prospect clients, except within the local area as defined as the 33480 zip code not including national campaigns. This would be part of the Town-serving requirement of the special exception. Neiman's would be required to come forward at the end of one year after the opening of the store to prove the Town-serving at which time these items would be reviewed."

Mr. McDonald said that was fine.

Mr. Wyett said he did not think the Town Council could preclude Neiman's from sending mailers from the store to only 33480. He thought Neiman's should be allowed to mail anything from the store to any bonafide customer.

Mr. Brindell replied that was included plus anyone who <u>asked</u> for anything to be mailed.

Mr. Shaw said he also <u>precluded</u> existing, bonafide customers of Neiman Marcus.

came in because this was offered to the employees.

Mr. Randolph said the Town Council should not make the scholarship offer a condition of the agreement. It is something that can be referenced as being offered. He said he thought there was some confusion over the meaning of the word "townspersons" which includes employees within the Town, not employees of the government of the Town of Palm Beach.

Mr. Brindell concurred with that interpretation and said "townspersons", by definition in the Town Code, is a broad spectrum of people connected to the Town.

Robert Grace, 151 Seagrape Circle, addressed the Town Council. He said the view of the pictures of the former Town mayors from the audience is better than the view of the Town Council Members. Mr. Grace said he had been polling the mayors on how they would vote on this issue. He added that this was a result of his personal comments with the former mayors who are alive and his conjecture with those who are dead.

Mr. Grace said the mayors would vote as follows: Mrs. Marix - No; Mr. Ritchie - No; Mr. Cudahy - No; Mayor Smith - No; and further back. Mr. Grace said he thought those mayors would wonder where all of the traffic came from. He said that those mayors knew instinctively what was good or bad for the Town as a whole. Mr. Grace said it is a very fragile thing to be the absolutely the greatest residential community in the world to have as your place of residence, and that the number one killer of highest quality communities is that they become too overcrowded. The number one line of defense for a community is its Comprehensive Plan and its Zoning Ordinance. This application cannot pass muster with either one of them. The Comprehensive Plan speaks time and again about avoiding region serving commercial development while acknowledging the Town will face tremendous pressure for expansion for this type of use–the pressure the Town Council is now feeling. The best that the Town can hope for from this store is that it will be both region and Town serving, but, whatever, it will still be region serving.

Mr. Grace said that from a zoning point of view, the tremendous disparity between the allowable square footage and what is proposed at this meeting is insurmountable. That square footage stands for many things other than its size. It stands for a large advertising expenditure and that draws people who will not be coming by mass transportation. They will be coming in their cars, and those cars do not land on Worth Avenue by helicopter. They drive through the other streets. Much discussion has been heard about how the police and various donations by Mr. Goodman will help the situation on Worth Avenue. He asked how that would help the situation of getting across the Southern Boulevard Bridge between 3:30 p.m. and 5:15 p.m.? How does that help the situation when driving into Palm Beach over the Southern Boulevard Bridge between 8:30 a.m. and 10:00 a.m.? Mr. Grace said the backups are heavy during those times.

Mr. Grace said as far as the zoning ordinance is concerned, Section r. states "the proposed use shall not place a greater burden than would be caused by a permitted use on municipal police services due to increased traffic." Mr. Grace said studies were done, and he expressed concern over them. He asked if this proposed use would put a greater burden than would be caused by permitted use, in other words, a grouping of 2,500 or 5,000 square foot stores on municipal police due to increased traffic? It doesn't say increased traffic on Worth Avenue–increased traffic in the Town.

Mr. Grace said he did not think this project does not comply with either the Comprehensive Plan or the requirements of the zoning ordinance. The Town Council has been subject to an extremely well oriented public relations campaign for this development. He asked if the Town Council received a poll from the Worth Avenue merchants showing 80% were in favor of the project or anything from the South County Road Merchants Association showing approval of the project?

Mr. Grace said this will be the last time. He hoped that when the Town Council members vote this time, they will consider the voice of experience is not such a bad voice to listen to. He wished the Town Council luck and thanked them for listening.

Mr. Edward Kassatly said service to humanity is the greatest work of life. Together, the Town Council is to be congratulated on volunteering time to the community. With that goes along trust. Trust in the fact that the members have been duly elected by the community to serve the Town citizenry. Therefore, he implored the Town Council not to allow this project to go ahead. He said the feelings of a lot of community members and two of the largest Town-member oriented associations are against it.

Mr. Kassatly said he polled the 200 and 300 blocks of Worth Avenue, 33 stores selected at random. 17 stores were in favor of Neiman Marcus and 16 stores were opposed to Neiman Marcus.

Mr. Kassatly said he was President of the Worth Avenue Property Owners Association, and that group is also not in unanimous agreement with Neiman Marcus coming to the community.

He said that Mr. Goodman is a wonderful man who has done incredible things for Palm Beach and for Worth Avenue. He thought the property could be developed to a different extent to protect the people of Palm Beach. Once this project is passed and up and running, that will be the end of Palm Beach as it was. The Old Guard, which is a wonderful group of Palm Beach citizens who have lived here for years, is opposed to the project. He said he could not understand where this will lead, but Worth Avenue is a dream shopping street as it is. People come from all over Florida and the world to Palm Beach to shop on Worth Avenue. Once another major shopping store is on that street, the Genie will be out of the bottle and the Town will never be back again. The Town Council will have to face that, because the citizens of Palm Beach elected the Town Council to guard against this type of commercial development. The Town of Palm Beach is a residential community. The Town is not a bedroom community as traveling from another town to live in Palm Beach. The citizens selected Palm Beach because it is fantastic. The citizens did not select it because of the stores. Retailing is wonderful and strong in Palm Beach. The top quality stores in America are located in Palm Beach. To put in another huge store to serve Palm Beach, be careful.

because it is fantastic. The citizens did not select it because of the stores. Retailing is wonderful and strong in Palm Beach. The top quality stores in America are located in Palm Beach. To put in another huge store to serve Palm Beach, be careful.

Mr. Kassatly said the guiding rule of retailing is $2,000 per square foot, and a 48,000 sq. ft. shop in Palm Beach that is community serving would generate large figures. He said when the members of the Town Council are voting on this issue, they should think about the Town and the people and what is going to happen.

Wendy Victor, resident, addressed the Town Council and said she had two specific questions for the Town Council and staff. She asked Mr. Brisson to explain the usage for the area which he found to be fairly similar between one large store as opposed to a multitude of stores for that area. He stated there would be no negative impact for the Town. She asked Mr. Brisson if he considered the fallout of advertising and the draw of a store like Neiman Marcus vs. a number of small stores?

Mr. Moore replied that the analysis that the experts were asked to do was to look at a single user, high end retailer in that amount of square footage vs. what would be permitted under the ordinance with the ordinance changes on a multiple user–meaning a 2,000 sq. ft. retail and office complex. That was the analysis that was done. He did not believe the analysis said there was no effect. He thought it said there would be a higher impact on the Town with the multiple users vs. a single user.

Ms. Victor addressed her second question to Mr. Shaw. She asked if it would be entirely fair to Neiman Marcus to let them go ahead and build their store, and then a year from now, decide not to let them advertise freely?

Mr. Shaw replied Neiman Marcus was not building the store and then being told not to advertise. They are building the store on the basis that they will not advertise–not on the basis they are going to advertise for a year then withdraw it. They know the terms, if approved, are that they will not do that advertising.

Ms. Victor said she understood the ban would be for one year once they are up and running, and then the Town Council would review it.

Mr. Shaw responded the issue will be reviewed, and there is always the possibility it will be extended. Town-serving is still an issue and one that has to be supported and proven. If approving it on this basis, it will be better defined how they will be marketing their store in order to assure the residents that they will be Town-serving.

Nancy Douthit, resident and former Town Council member, addressed the Town Council and said she had one strenuous suggestion for Attorney Randolph. She suggested with all the undersized parking and the demolition derby that will be created, that should this be approved, please initiate "Hold Harmless Agreements".

Mrs. Douthit commented that by limiting the advertising to zip code 33480 that will include the Town of South Palm Beach which incorporates another community and is not Town-serving.

Mrs. Douthit said she would like to make sure that permitting a new store on Worth Avenue does not put the burden of paying for three or four additional policemen on the taxpayers' shoulders.

Mrs. Douthit said she foresaw buses that would be leaving off oodles of people. The traffic will be astonishing and this could be the death of Worth Avenue because it will be so frightful to go to Worth Avenue. People will not want to turn their cars over to valet parkers who park cars in undersized parking spaces.

Allen Manning, resident since 1980, addressed the Town Council and noted that a letter written to the editor of the Palm Beach Daily News stated that having a Neiman Marcus Store is bringing Palm Beach into the 21st century. That is correct, but he questioned if that was the right direction to go and should Palm Beach be the same type of town as Ft. Lauderdale, Pompano Beach, and Bal Harbor that are regional shopping centers? He said he supported what other residents said–this is a residential community. This is why the residents love the Town and why they came to the community. He said this issue is so important, because it will show what direction the Town is going to take in the 21st century. Mr. Manning said this should be a referendum issue placed on the ballot at the end of the year for the Town's persons to decide which direction they would like to go.

Mr. Manning suggested a compromise could be reached. Neiman Marcus would like an address on Worth Avenue. It is the prestige address of the world, because the people of Palm Beach have made it that way. Why not solve the problem by letting Neiman Marcus have a small boutique on Worth Avenue and run a shuttle to West Palm Beach. With the development of City Place, West Palm Beach would welcome Neiman Marcus.

Mrs. Elise McIntosh, resident of the Town, addressed the Town Council and expressed her opposition to the location of Neiman Marcus in the Town although she liked Neiman Marcus as a retail operation. She said the Town will turn into a tourist attraction, but the Town will lose its dignity.

George Shaloban, owner of Georgio's of Palm Beach, addressed the Town Council and said Worth Avenue has lost tenants over the years resulting in poor appearances of the buildings. He said he supported Neiman Marcus because it will be an addition to the Town and will not hurt other retailers. He said Saks already has traffic and shoppers, and those shoppers who visit Saks will visit Neiman Marcus also. Neiman Marcus will be offering a grouping of clothing that Saks does not carry. This will give the residents an option to shop at two major department stores. He said Worth Avenue needs a major retailer, not more art galleries.

Sam Boykin, resident of the Town, addressed the Town Council and said he detested the idea of a Ft. Lauderdale type of conditions in Palm Beach during the recent winter months. It was impossible to get around and it will become worse. If this project is approved, the Town will be put into an irretrievable program of becoming commercialized like Ft. Lauderdale. The next street that will go will be Peruvian Avenue. Police Chief Croft did not want to say it adequately, but he thought he was saying he could not police the Town properly on Worth Avenue, because people do not obey the officers.

Louis deCarlo addressed the Town Council in support of the Neiman Marcus project. He said it will help the Town of Palm Beach and add to the benefit of the community. He said that many of the people support the project, and no one has picketed against the project.

Mr. deCarlo compared the Town of Palm Beach to Newport Beach, California, and the Neiman Marcus store that was built there. He said the Esplanade valet parking is an excellent service and the Neiman Marcus parking will be just as good.

Mr. Randolph said he did not think the motion made by Mr. Shaw was a valid motion. The motion that was made was seconded on the basis that an item be removed from it. He thought that issue needed to be clarified.

Mr. McLendon said he did oppose the (advertising) restriction, and he did not see why the Town Council could not make it less severe and subject to the proving of Town-serving. It seems like an over-kill.

Mr. Shaw noted that Neiman Marcus agreed to the condition.

Mr. Brindell said he understood it was related to the Town-serving issue that has to be addressed yearly, and when that demonstration is made, the condition will go away.

Mr. McLendon said he thought there were parts of the item that Mr. Brindell did not agree with.

Mr. Brindell said after there were clarifications, his client did approve. Mr. Brindell added that in the mean time, the Town will be considering restrictions or requirements for Town-serving that will not single out just one operation.

Mr. Randolph said he could not advise the Town Council to make that a condition of any approval.

Mrs. Smith said that Mr. Randolph stated the Town Council did not have a valid motion because of Mr. McLendon's second to the motion. She asked if Mr. McLendon wanted to modify his second?

Mr. McLendon said he thought there was still one item that was not agreeable to the applicant as far as advertising stipulation that Mr. Shaw mentioned.

Mr. Brindell said they went over so many of them, but he thought there was a big discussion over catalogs and how they were distributed nationally. He thought that the focus was on store generated advertising that the store would be doing as opposed to whatever is their normal national advertising.

Mr. McLendon said he would second the motion as agreed upon.

Mrs. Smith said it was her understanding from what Mr. Shaw said regarding the advertising stipulation was that at the end of the year, if they proved Town-serving, this condition would be dropped. She asked Mr. Shaw if that is what he meant?

Mr. Shaw replied it was not. He said he intended that the Town Council would review the issue as part of the Town-serving at the end of the year. It could be dropped or it could be extended. It would not automatically disappear at the end of one year, and they would not automatically have free reign to all advertising.

Mr. Randolph asked if the decision would remain with the Town Council as to whether or not that would continue, or would it automatically be dropped at the end of the year?

Mr. Brindell responded that Mr. Shaw's clarification was acceptable to them. Mr. Brindell said he was assuming the issue of Town-serving will be reviewed and may well be dropped or it might not.

Mr. Shaw thought that if the Town Council felt the issue was very marginal, and take the position that they are at 50% Town-serving with these conditions, then it would be prudent for the Town Council to continue them as time goes on.

Mr. Randolph said the motion that was on the floor that had been seconded should incorporate the findings that all of the criteria under Sections 6.40 and 9.60 have been met, and that approval will not adversely affect the public interest. That finding should be included in the motion.

Mr. Shaw said he would include that finding and he wanted to include as part of that finding the documentation of the memo of Adley, Brisson, Engman, Inc. dated May 27, 1998.

Mr. Randolph said he did not know that the donation of the Boynton Beach Landscape property was included in the list and asked if it were the Town Council's intention to include it in this list or was it intended to be included in the subsequent motion regarding Unity of Title?

Mr. Shaw replied he was intending to incorporate it as part of the Unity of Title because there is no direct relationship between the two properties. It is part of the release of unity with the Esplanade and the replacement of a Town's park with another park.

Mr. Shaw replied he was intending to incorporate it as part of the Unity of Title because there is no direct relationship between the two properties. It is part of the release of unity with the Esplanade and the replacement of a Town's park with another park.

Mr. Randolph said that was fine. The relation to this could be the report that was received from Adley, Brisson which indicated that by donating that property, the traffic would be less than if it were not donated.

Mr. Shaw said if it is the advice of counsel to include the donation of the property, then he would include it.

Mr. Randolph said he wanted to make sure it was not forgotten.

Mr. Shaw responded it was not forgotten.

Mr. Brindell said it would be fine with them to include it in the list (as item 16.).

Mr. Shaw clarified that Item 16 will be the inclusion of the parcel of land that has been referred to as the Boynton Landscape property which includes the property frontage on S. County Road and Peruvian Avenue, combined with a single and two story building with some parking.

Mr. Randolph said he wanted to make sure that the Adley Brisson Report was included as part of the motion.

Mr. Wyett asked if there were any mention of time regarding the Boynton Landscape property being turned over to the Town?

Mr. Randolph said that would be addressed in the Declaration of Use Agreement and that upon final approval, a deed would be passed to the Town.

(The Town Clerk called the roll for the motion as listed starting on page 18 of these minutes.)

On roll call, the motion carried 4-1 with Messrs. Shaw, McLendon, McDonald, and Wyett voting yes and Mrs. Smith casting a negative vote.

Mrs. Smith said the Town Council would consider Variances 5,6,7, and 9 (Variance No. 8 was withdrawn.)

Mr. Moore read the changes for the variances:

5. A variance is requested from the off-street loading requirement providing ~~one~~ two spaces in lieu of three as modified by the applicant at this meeting.

6. A variance is requested from the parking space width requirement providing ~~155~~ 133 underground spaces with a portion of a building column protruding into the parking space width.

7. A variance is requested from the parking garage drive aisle width requirement of 25' by providing 21.5'.

9. A variance is requested from the 3' required setback, providing no setback for the arcade roof overhang for one tower only as modified.

Mr. Moore said he was requesting that a "Hold Harmless" agreement be executed for No. 6. (above) regarding any deficiency in the width of the aisle space as well as the width of the parking space itself. He recommended that as a condition for the Declaration of Use Agreement.

Responding to a question from Mrs. Smith, Mr. Shaw said the Unity of Title will exist between the property on Peruvian Avenue and the property that abuts Worth Avenue. It will not be used for parking until such time as it would be necessary, and it will be converted to green space.

Mr. Moore said that Mr. Tokich advised that it would be necessary to relocate two columns on the entry way, and that should be a condition.

Mr. Randolph said ex parte communications were disclosed at the last meeting and asked that any additional communications be disclosed at this meeting.

Mrs. Smith called for ex parte communications from the Town Council members since the last meeting.

Mr. McDonald replied he had many, many conversations with people and had listened to many opinions during the last five weeks but had not offered an opinion to anyone.

Mr. Shaw said he had similar conversations, but he did have a meeting with Mr. Goodman, Mr. Brindell, and Mr. Lawrence to review the new application with a reduction in the size of the store.

Mrs. Smith said she had a meeting with Mr. Brindell, Mr. Lawrence, and Mr. Goodman and listened to opinions, both pro and con, from everyone she saw in Town.

Mr. Randolph asked if any vote any Town Council member made at this meeting would be based on what he or she heard at the public meeting and not on the ex parte communications?

Everyone answered, "Absolutely or yes."

Mrs. Smith asked Mr. Brindell to state his hardships for the variances.

Mr. Brindell responded the two loading spaces requested in lieu of three were based on the exhibit presented at the last meeting showing that Neiman's needs for loading were minimal. He said one would be enough; however, both loading docks would be internal although most of the loading docks on Worth Avenue were on the street. He said the literal interpretation which would require three loading docks would be inconsistent with the pedestrian and comparison shopping nature of Worth Avenue as set forth in the Zoning Code for the Worth Avenue District in that more lanes of access which people would have to cross and is not pedestrian friendly, and is excessive in terms of actual need as demonstrated. Granting of the variance will enable Neiman's to fulfill the objectives of the Guidelines and the pedestrian comparison shopping nature of the Avenue. The Code requirement is based on a multi-use facility and uncontrolled deliveries which had been shown to be different with one tenant and controlled deliveries. The bulk of the items brought to Neiman's are unloaded elsewhere–prepared there and then brought to Neiman's. Federal Express and UPS will have controlled delivery times.

Mr. Brindell said the matter of the column intrusions on the parking stalls is a function of the necessity to create adequate support for the building. He said none of the intrusions will impede the opening and shutting of car doors in those spaces. All of the parking will be done by valets.

Mr. Brindell said the reduced drive aisle widths related predominantly to the narrow depth of the property and the drive aisle width reduction does not create a safety problem, especially, when the parking will be valet only. It is a function of the lot configuration and does not create any adverse impacts as a result of that.

Mr. Brindell said the last issue addressed was the roof overhangs. The Town has a requirement or inducement in the Guidelines to create arcades on the street. The arcade must spread across the sidewalk to allow for a free area underneath as the Public Works Department has requested as a minimum. The face of the arcade will be three feet from the curb point, although the purpose of the code requirement was not to affect something 40 feet high in the air as this tower element will be. It was to prevent obstructions at the street level that would obstruct the opening of car doors onto the street.

Mrs. Smith requested a motion be made to include the four variances.

Mr. Wyett made a motion to approve the following variances:

> A variance is requested from the off-street loading requirement providing two spaces in lieu of three;
>
> A variance is requested from the parking space width requirement providing 133 underground spaces with a portion of a building column protruding into the parking space width;
>
> A variance is requested from the parking garage drive aisle width requirement of 25' by providing 21.5';
>
> A variance is requested from the 3' required setback, providing no setback for the arcade roof overhang (one tower only).

Mr. Wyett said the hardships were expressed by Mr. Brindell and should be incorporated in his motion as the application meets the criteria set forth under Section 10.13 of the Town Code.

The motion was seconded by Mr. Shaw.

Mr. McDonald commented that he hoped that, if this issue passed, the Town is contributing to Neiman-Marcus and their charitable contributions would hopefully be in the Town.

The inclusion of a hold harmless agreement was incorporated into the motion to hold the Town harmless in the event of any accidents that would occur in the basement area due to the granting of these variances.

On roll call, the motion carried unanimously.

Mrs. Smith confirmed that this project will be considered by the Architectural Commission at their next meeting.

Mr. Moore said a special hearing date, Tuesday, June 23, 1998, was set by the Architectural Commission to begin at 9:00 a.m.

Mrs. Smith asked Mr. Moore if it were correct that the Town Council had approved the site plan and the footprint and the building will be considered by the Architectural Commission for architectural detailing?

Mr. Moore concurred with that statement. He said a consultant has been hired by the applicant to assist in the design of the project as it will be presented to ARCOM.

Mr. Randolph said he assumed the Town Council wanted to see the Declaration of Use Agreement come back to the Town Council in its final form.

project as it will be presented to ARCOM.

Mr. Randolph said he assumed the Town Council wanted to see the Declaration of Use Agreement come back to the Town Council in its final form.

The Town Council agreed with that statement.

Mr. Brindell asked if the Declaration of Use Agreement could be presented to the Town Council at their regularly scheduled meeting on June 9, 1998?

Mrs. Smith said it would be heard as the first item under Development Review, Old Business.

B. **SITE PLAN REVIEW NO. 4-98 WITH SPECIAL EXCEPTION & VARIANCE** - Worth Avenue Associates LTD, The Esplanade, 150 Worth Avenue; located in the C-WA Zoning District; to allow construction of an arcade along Worth Avenue frontage. A variance is requested to have no setback in lieu of the 3' setback requirement for the proposed arcade roof overhang. Request to modify Special Exception No. 8-83, as amended by Special Exception No. 12-90, allowing a relocation of the existing park at 137 Worth Avenue (which was held to address parking requirements) to Peruvian Avenue above the proposed underground parking for Neiman Marcus. (*The arcade was approved at the April 17, 1998, Special Town Council Meeting; the relocation of the existing park at 137 Worth Avenue still needs to be addressed.)*

Mr. Brindell said the issue was that the Town Council had required a Unity of Title on the Peruvian lot with the Neiman's building. The Town Council has the condition of the timing of the construction of the parking spaces, i.e. the park until it is determined if the spaces would be needed on that lot. Mr. Brindell said his client has requested a release of the current Unity of Title between the Esplanade and the 137 Worth Avenue building–based on the data that was supplied to the Town Council regarding the actual parking that occurs in the Esplanade in the excess of existing spaces- even in the peak season. He requested the Unity of Title be released.

Mr. Shaw made a motion to allow a modification to Special Exception No. 8-83 to permit the release of the Unity of Title between the Esplanade and the property across the street for the reasons as defined by the Town Council. The motion was seconded by Mr. McDonald.

Mr. Randolph said that was acceptable.

On roll call, the motion carried unanimously.

IV. ANY OTHER MATTERS

There were no other matters.

V. ADJOURNMENT

The meeting was adjourned to a time certain: first item under Development Review, Old Business, Tuesday, June 9, 1998, Town Council Meeting.

The meeting was adjourned at 1:05 p.m.

Mary A. Pollitt
Town Clerk