

MINUTES OF THE TOWN COUNCIL MEETING HELD ON MAY 12, 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 May 12, 1998 in the Town Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem 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, Chief Code Compliance Officer Brian House, Facility Maintenance Division Manager Joe Ugi, Finance Director James Demming, Fire-Rescue Chief Ken Elmore, Planner/Projects Coordinator Tim Frank, Planning, Zoning & Building Director Robert Moore, Zoning Administrator Paul Castro, Personnel Director William Crouse, Police Chief Frank Croft, Public Works Director Al Dusey, Recreation Supervisor II Alan Brown, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Rabbi Moshe Scheiner of Palm Beach Orthodox Synagogue. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS

A. Recognition of Yvelyne de Marcellus Marix, Charter Review Commission From 1997 - 1998

Mayor Ilyinsky presented a plaque to former Mayor Marix in recognition of her service to the Charter Review Commission.

B. Recognition of Harrison M. Robertson, Jr., Landmarks Preservation Commission, From 1996 to 1998

Mayor Ilyinsky presented a plaque to Mr. Robertson in recognition of his service on the Landmarks Preservation Commission.

IV. COMMENTS OF THE MAYOR

Mayor Ilyinsky recognized the 50th anniversary of the birth of Israel as a nation.

The Mayor issued the following proclamations for the month of May:

May 15, 1998, as "Police Memorial Day" during which the flags at Town Hall and the Police Department would be flown at half-mast. He encouraged all citizens of the Town to pay tribute to police officers and honor the memory of those who have lost their lives while protecting their fellow citizens and communities.

May 17-23, 1998, as "National Emergency Medical Services Week." Mayor Ilyinsky urged all residents of the town of Palm Beach to pay tribute to the men and women of the Fire-Rescue Department of the Town of Palm Beach for providing the highest level of emergency medical services and to join them in their continuing efforts to promote health and safety in the community.

May 17-23, 1998, as "National Public Works Week." The Mayor urged all the residents and civic organizations in the Town of Palm Beach to join in recognizing the contributions made by the Department of Public Works to the health, safety, comfort, and quality of life.

V. APPROVAL OF THE AGENDA

The following changes were made to the agenda:

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DEFER: Item XIII.D.4., Consideration of the Risk Management Function, to the June 4, 1998, Town Council Meeting, requested by staff per memorandum dated May 6, 1998, from Acting Town Manager Peter Elwell.

Councilman Wyett moved approval of the deferral of Item XIII.D. 4 to the June 4, 1998, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon.

WITHDRAW: Item XV.C.3., Special Exception 34-97, 2875 S. Ocean Blvd., per letter of request for withdrawal dated April 13, 1998, from Attorney Kino.

Councilman Wyett moved approval of the withdrawal of Item XV. C.3. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

DEFER: Item XV.C.4., Special Exception 40-97, 375 S. County Road, The Gingerman Restaurant, to the September 8, 1998, Town Council Meeting per letter dated May 8, 1998, from Attorney Brindell requesting deferral.

Councilman Wyett moved approval of deferral of Item XV.C.4 to the September 8, 1998, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

WITHDRAWAL: Item XV.C.6., Special Exception 1-98, 2875 S. Ocean Blvd., per letter dated April 24, 1998 from Mr. Hardman.

Councilman Wyett moved approval of the withdrawal of Item XV.C.6. from the Agenda. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

DEFERRAL: Item XV.C.11., Special Exception 9-98, The Poinciana Club, Inc., to the June 9, 1998, Town Council Meeting per letter dated May 7, 1998 from Attorney Brindell.

President Pro-Tem McLendon moved approval of the deferral of Item XV.C.11 to the June 9, 1998, Town Council Meeting. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

ADDITION: Add Item XIII.D.8., Consideration of Installing Water Meters to Measure the Flow of Water from West Palm Beach.

President Pro-Tem McLendon moved that Item XIII.D.8. be added to the Agenda. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

ADDITION: Add Item XIII.D.9., Consideration of Attending the National Coastal Summit Workshop in Washington, D. C.

Councilman McDonald moved that Item XIII.D.9. be added to the Agenda. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

ADDITION: Add Item XIII.D.10., Consideration of Writing a Letter to the City of Lake Worth regarding bridge openings for the Lake Worth Bridge.

Councilman McDonald moved that Item XIII.D. 10. be added to the Agenda. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

ADDITION: Add Items A. and B. under Item XII. C. 6., to schedule meetings for a special Town Council meeting to discuss a response to the City of West Palm Beach regarding recent actions related to the water supply issue and to schedule a Special Town Council meeting to discuss the results of the Water Workshop meeting held on April 29, 1998.

Councilman Wyett moved that Items A. and B., under Item XII. C. 6., be added to the Agenda. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

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

VI. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE

Mr. Eric Gilbertson, 151 Chilian Avenue, addressed the Town Council, commenting on the "unbearable" taxes paid by the residents of Palm Beach.

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF JANUARY 6, 7, AND 9, 1998, AND APRIL 14, 1998

VIII. LICENSES AND PERMITS

A. Charitable Solicitations

1. The International Society of Palm Beach; No. 232-99
2. Adam Walsh Children's Fund; No. 314-99

IX. APPROVAL OF CHECK REGISTERS FOR APRIL 1998

X. OTHER

- A. Landscaping Alternatives for Town-Owned Property at Sixth Street and North Olive Avenue in West Palm Beach
- B. Authorization for Acting Town Manager to Execute the Local Mitigation Strategy Interlocal Agreement between Palm Beach County and the Town
- C. Request by Royal Poinciana Theatre for an Additional One (1) Year Extension of Lease Agreement to Continue Wednesday Matinee Program from November 11, 1998, through April 7, 1999

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

REGULAR AGENDA

XI. PUBLIC HEARINGS

A. Landmark Designation of 710 South Ocean Boulevard; Resolution No. 19-98 (*Deferred from April 14, 1998*)

Planner/Projects Coordinator Tim Frank addressed the Town Council, verifying proof of publication, and stating that the representative of the owner had been contacted personally by staff to inform him of the meeting. The subject property at 710 South Ocean Blvd. had been studied by the Landmark Preservation Commission, and been found to meet the following criteria for designation: Criterion A: exemplifies or reflects the broad cultural, political, economic, or social history of the nation, state, county or town. Criterion C: embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship. Criterion D: representative of the notable work of a master builder, designer, or architect whose individual ability has been recognized or who influenced his age. In this case the Landmark Commission recognized Mrs. Alfred Kay, Marion Sims Wyeth, and Gustav Maass.

Town Clerk Pollitt administered the oath to all those who would be giving testimony in the following proceedings.

Historic Preservation Consultant Jane Day addressed the Town Council, stating that the property at 710 South Ocean Blvd. had been constructed in 1924. Typical of the time period, the house was built in the Mediterranean Revival style. Mrs. Alfred Kay had been the architect for her own house on the property, with additions made in 1941 by Marion Sims Wyeth, and in 1960 by Gustav Maass.

President Pro-Tem McLendon moved approval of the report. The motion was seconded by Councilman Shaw.

At the request of Town Attorney Randolph, Mrs. Day indicated that she would furnish her curriculum vitae. She explained that she was a graduate of Goucher College in Maryland, with a Masters Degree from Florida Atlantic University. Her company, Research Atlantica, had been in business since 1989. She had placed many properties on the National Register for Historic Places, had worked for the Town of Palm Beach, as well as for Boynton Beach, Pompano, and Ft. Lauderdale. Presently she was updating the survey in Key West.

President Pro-Tem McLendon asked if the position of the owner, Mr. Franklin Franks, was still against the landmarking of this property?

Director of Planning, Zoning & Building Moore replied that a letter of objection had been received. Mrs. Day

confirmed that the secretary of Mr. Franks had told her that he was against the landmarking.

President Smith noted that it was not clear to her whether the entire property would be landmarked, or just the house.

Mrs. Day replied that it was the entire property.

President Smith asked the reasons for doing the entire property?

Mrs. Day explained that it was typical with the Department of the Interior standards that the original property as platted by the original owners was used. There was no other indication, nor had anyone suggested, that the landmarking be reduced to the structure only.

President Smith cited the indications from the owner, who did not want to see the property landmarked.

Councilman Wyett asked how much land was involved?

Planner/Projects Coordinator Tim Frank replied that the property was approximately one-half acre.

Councilman Shaw asked if a buildable lot could be carved out of the property as it stood today?

Director of Planning, Zoning & Building Moore replied that there could be a division of the property with one frontage on County Road and one frontage on South Ocean Blvd.

Councilman Shaw asked if the house only was landmarked, and not the surrounding property, if there would be a buildable lot available that would not encompass the main house?

Director of Planning, Zoning & Building Moore replied affirmatively.

Councilman Shaw suggested that the landmarking apply only to the structures (house and attachments), but not the property, and moved that the Resolution be so modified. President Smith passed the gavel and seconded the motion.

Director of Planning, Zoning & Building Moore explained that if the property was landmarked with the property divided into two parts, the main structure and attachments would still be protected, with the remainder of the vacant land available for development. He pointed out that there was approximately 90,000 square feet, however, in order to get two additional lots there would be the necessity for specific calculations to be made. He guessed that the practical division of the property would be two lots, not three.

Mrs. Day pointed out that there was a structure, formerly the gymnasium, that was on the County Road section of the property, although she had not seen it.

Director of Planning, Zoning & Building Moore noted that landmarking would be to the advantage of the owner, as it was not conforming currently.

Town Attorney Randolph questioned if the motion was intended to landmark the structures, including the land to the east?

Councilman Shaw clarified that the landmarking would for the house and the land to the east of the house, excluding the area marked as 2-19. The map was marked accordingly for the record.

Mr. Moore pointed out that even if the entire property was landmarked it would not preclude building on that property if approval was sought through the Landmarks Commission, rather than the Architectural Commission.

President Pro-Tem McLendon asked Mrs. Day what specific conditions overrode the homeowner's objection to landmarking?

Mrs. Day replied that the house was very interesting because there had been an owner, builder, designer, Mrs. Alfred Kay, who was a woman of substance in the Town of Palm Beach, who served on the Airport Commission with John Volk and Maurice Fatio, and was well known in Palm Beach society. Her first home had been built with Addison Mizner and Cooper Lightbown as the builder. When her larger home was built in 1924 she took it upon herself to do the design work herself, using Mizner's contractor, which was remarkable for the age. In addition Barbara Hoffstot, in her book about landmarks of Palm Beach, alluded to the importance of Mrs. Kay. It was also important because it was one of the typical boom time estates from the 1920's, which were being rapidly lost for re-development.

Councilman Shaw amended his motion that Resolution 19-89 be adopted as amended, designating the property at 710 S. Ocean Blvd. as a landmark in the Town of Palm Beach, as it met criteria A, C, and D, and that the property as indicated in the Resolution be modified to indicate the eastern half of the property with all structures thereon. President Smith, who had passed the gavel to second the motion, agreed with the amendment.

Town Attorney Randolph read Resolution 19-89 by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM

BEACH COUNTY, FLORIDA RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE 3 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE 3 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

Town Attorney Randolph noted that he had amended the Resolution at Section 2, to indicate that it would only be the eastern half of the described property that would be landmarked.

On roll call the motion carried unanimously.

B. De-designation of an Historic/Specimen Tree at 445 Antigua Lane (*Deferred from April 14, 1998*)

Public Works Director Al Dusey reported that he had been approached by Mr. George Milidrag, the owner at 445 Antigua Lane regarding a Kapok tree that was damaging his structure. The horticultural consultant, Robert Haley, had been asked to inspect the tree, and it was viewed from the standpoint of some sort of mitigation to stop the structural damage. Mr. Haley believed that if the roots were cut sufficiently to prevent the damage from continuing that the tree would become unstable, and would likely fall over, causing serious structural damage. Therefore, the recommendation was to remove the tree.

Attorney Frank Chopin, representing Mr. Milidrag, addressed the Town Council, stating that damage had been sustained at the structure for some period of time, and Mr. Milidrag had learned that the foundation and wall structure were being damaged. The process would continue to a point where the damage would be much more serious, and the house would ultimately be destroyed. Mr. Milidrag did not want to cut the tree down, however, he had retained an expert to determine any alternative middle ground possible. That expert had concluded that if the root structure was pruned, the tree would become unstable and could fall over and destroy the house, as well as risk human life. Two independent expert opinions had advised that if the tree was pruned away the root structure would be destroyed, and the tree would become unstable. Attorney Chopin explained that it was the responsibility of Mr. Milidrag to deal with the facts and the expert testimony, and he did not have the option to ignore his responsibilities.

Attorney Frank Lynch addressed the Town Council, on behalf of Mr. and Mrs. Guild, providing a copy of a survey of the area in question, noting that the tree was shown to be equally upon the Guild property as well as the Milidrag property. The Guilds had spoken with an expert in the field, Mr. Derrick Birch, of Horticultural Masterworks Company, who had inspected the tree and gave the opinion that the direction of growth of the tree roots was such that the amount of cutting necessary would have little affect on the tree. Mr. Birch had noted that he would need to do some digging to follow the course of the roots, and permission had been asked for access to the property, however, the opportunity had not yet presented itself. The Guilds would like to see the tree remain, were prepared to expend their own funds to do that, and were prepared to address any liability issues. He suggested that the matter be deferred until more information could be gathered, with the findings reported at the July Town Council Meeting.

Attorney Chopin responded that this matter had already been postponed from the last meeting because the Guilds were not available. He noted that he would not be available in July, and suggested that the matter be resolved. He maintained that the prudent action would be to have the tree removed, according to expert advice.

Councilman McDonald moved deferral of this item to the June 14, 1998, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon.

Attorney Chopin requested that any report be furnished to Mr. Milidrag prior to the time of the June Town Council Meeting.

Councilman McDonald noted that implicit in the motion was the approval of Mr. Milidrag to allow access to the property and that after the work was accomplished, the property was restored to its current condition.

Councilman Shaw requested that any financial considerations be a part of the report presented at the June 14, 1998, Town Council Meeting, which was agreed to by Attorney Lynch.

On roll call the motion carried unanimously.

XII. OLD BUSINESS

A. Ordinances - Second Reading

1. Ordinance No. 5-98 - Deferred Retirement Option Plan (DROP)

Town Attorney Randolph read Ordinance 5-98 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 15 OF THE CODE OF ORDINANCES RELATING TO

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AMENDING SECTION 15-10 TO ADD DEFINITIONS; AMENDING SECTION 15-20 TO PROVIDE DEFERRED RETIREMENT OPTION PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Councilman Shaw moved approval of Ordinance 5-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

B. Resolutions

1. Resolution No. 3-98 - Amendment to Rights-of-Way Standards Manual (*Deferred from March 10, 1998*)

Town Attorney Randolph read Resolution 3-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE DEPARTMENT OF PUBLIC WORKS ENGINEERING DIVISION STANDARDS APPLICABLE TO PUBLIC RIGHTS OF WAY AND EASEMENTS WITHIN THE TOWN OF PALM BEACH.

Town Engineer James Bowser reported that obstruction fees had been dropped, occupancy fees had been recommended to be added to the manual as an item to be addressed by the Town Council at a later date if desired; a degradation fee had been proposed, however, utility companies had pointed out that fees were not charged for construction permits, however, there were permit conditions to be complied with by the utility companies.

Mr. Marc Schneidermann, of Florida Public Utilities Company, addressed the Town Council, stating that there was concern regarding the requirement for flowable fill on small excavations, which was a very expensive process, requiring concrete trucks. Other concerns were regarding maintenance of roadway patches—if another utility, or the Town disturbed the patches he questioned the responsibility for the patches. The submission of a five-year plan from utility companies was required, and Mr. Schneidermann proposed a two-way exchange of information, with the Town also submitting a five-year plan. He noted that potential occupancy and parking fees were in the proposal of the Town. Currently Florida Public Utilities paid a franchise fee to the Town of approximately \$125,000 per year, and Mr. Schneidermann established that he expected that the occupancy fees or parking fees would not exceed that amount. He noted that there would also be extra administrative burdens, with a slow down in the completion of projects. He also requested that consideration be given to Florida Public Utilities regarding the proposed erosion control plans, as often work would not be anywhere near storm drains, suggesting that a standardized statement be included with permits.

Town Engineer Bowser noted that the Environmental Protection Agency required that the drainage system be protected from erosion and sediments. He noted that flowable fills were required on small trenches less than 12-inches in width. He explained that the Town generally re-surfaced its roads every 10 years, therefore, the responsibility for roadway patches would be passed. He would accommodate the request of Mr. Schneidermann concerning roadway re-surfacing, as well as the five-year CIP plan. He noted that the occupancy fee recommendation was for the future, and would not be initiated at this time. Utility companies had never been charged for permit fees, parking fees, etc., and there was no anticipation to do that in the future.

In response to the query of Mayor Ilyinsky, Town Engineer Bowser explained that some contractors did not apply or maintain roadway patches properly, and when asked to do repair work, the contractors asked where it was written that it was required. That was the reason for the additional language in the Right-of-Way Manual.

Mr. Larry Mayernik, of BellSouth, stated that he saw no problem with roadway patch maintenance, or with flowable fill after the modifications had been explained by Mr. Bowser. He did object to the requirement of a five-year plan, as there was not much new construction involved, and there was not a good feel where growth requirements would occur. He offered to give Mr. Bowser a briefing on what major projects would be done in the Town. Many small projects would come up because of the request for more phone lines. Another concern was with projects that would disturb more than 40% of the roadway, as there were many places in the Town where the right-of-way was really the back of the curb. The first choice would be to bury cables, however, that would involve re-paving all of the roads, which would be an excessive cost.

Mr. Bowser replied that BellSouth had generally done directional boring, avoiding long trenches and excavations. He explained that the Town would be reasonable on longer thoroughfares with milling re-surfacing.

Councilman Wyett moved approval of Resolution 3-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Resolution No. 24-98 - De-designation of an Historic/Specimen Tree at 1420 South Ocean Boulevard

Town Attorney Randolph read Resolution 24-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, EXCLUDING A CERTAIN ALREADY DESIGNATED HISTORIC OR SPECIMEN TREE LOCATED ON PROPERTY WITHIN THE TOWN OF PALM BEACH, PROVIDING

FOR THE RECORDING OF THE DE-DESIGNATION AGAINST THE LAND UPON WHICH THE TREE IS LOCATED, PROVIDING THAT A COPY OF THIS RESOLUTION BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

Attorney Randolph noted that the Resolution included the condition that the owner of the property donate a kapok tree, as large as possible, to be located on property designated by the Town and the Garden Club.

Councilman Shaw moved approval of Resolution 24-98. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

C. Other

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

Public Works Director Al Dusey reported that the consultant selection had been completed, and Kimley Horn & Associates, Inc. had formed a design team with E.C. Driver Consultants. Kimley Horn & Associates, Inc. would be doing the highway design portion, and E. C. Driver would be doing the bridge portion. The Florida Department of Transportation (FDOT) was negotiating the fee structure. Survey work would be completed by July 1, 1998. FDOT was also investigating emergency repair plans, in order to do temporary repairs should one of the support structures show a failure. If it was not a substantial failure, they were investigating ways to shore the structure up on a temporary basis in order to keep four lanes open throughout the entire design period, up until the time construction would begin. FDOT expected that the City of West Palm Beach would meet on May 18th to consider a resolution in support of the bridge replacement, and FDOT had requested time on the July Town Council Agenda to bring in the design team. The first meeting of the Technical Advisory Committee was scheduled to be held in early July.

The Town Council was in agreement that the FDOT would be placed on the July Town Council Agenda, to be heard at a time certain as the first item after lunch.

2. Consideration of BellSouth Franchise Fee and Public Service Tax Audit (*Deferred from March 10, 1998*)

Assistant to the Town Manager Dave Jakubiak referred to his memorandum dated May 7, 1998, wherein he had noted a letter of protest that had been received from BellSouth, requesting that the Town provide statutory authority for the audit findings of \$33,675 due to the Town. He explained that Town Attorney Randolph would respond to BellSouth in the statutory time period.

Councilman Wyett complimented Mr. Jakubiak on the excellent job he had done in this regard.

3. Status Report from Town Staff on Implementation of Actions Directed by Town Council Regarding Parking Meters on South Lake Drive

Finance Director James Demming referred to his memorandum dated May 6, 1998 referring to the South Lake Drive Parking Program. He explained that revenues generated through the placard program on South Lake Drive since November 1, 1997, had included \$25,200 from the sales of the placards to date; \$28,774 as total revenues collected from the South Lake area this fiscal year through April 30, 1998 (compared to \$14,000-\$16,000 for the previous two years). The only item that would be reviewed for next year was the possibility of issuing more than 62 permits. There were only 62 parking spaces, and the placards had been limited to 62 at any given time. Review could be conducted because there had been 5-10 available spots at any given point in time.

Councilman Shaw commented that the program was excellent and should be expanded Town-wide.

President Pro-Tem McLendon commented that all of the spaces were not utilized consistently, and suggested that "over-booking" the spaces be implemented, as long as some sort of a bonus was provided for someone denied the right to park as a result.

Acting Town Manager Elwell agreed with the "over-booking" concept, however, he expressed concern regarding accommodations for the person denied a parking space. He suggested that the "over-booking" process be conducted very slowly, perhaps with the use of 3-5 spaces initially.

Councilman Wyett commented that he did not believe enough emphasis had been given to encourage Worth Avenue employee parking, according to comments received from the Worth Avenue Association.

President Smith suggested that the Finance & Taxation Committee could consider the implementation of placard parking in other areas of the Town.

Acting Town Manager Elwell responded that staff would review all meter parking in Town and make recommendations about expanding the program.

4. Status Report from Town Staff on Implementation of Actions Directed by Town Council Regarding Concerns by Residents on Park Avenue Relating to Commercial Establishments on Sunrise Avenue

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Director of Planning, Zoning & Building Robert Moore reported that there had been code enforcement action taken in the Park Avenue area. A separate zoning problem was associated with the 251 Restaurant, which was being handled separately, under advice from Town Attorney Randolph. There were additional zoning issues regarding the interior commercial space at 251, and the use of the north/south easement to get to the back side of the Palm Beach Hotel. There were ongoing discussions with the Palm Beach Hotel Condominium Association, with the owner of the commercial space, and the tenant of the commercial space, C.J.'s/Ann Z. King.

Chief Code Compliance Officer Brian House reported that the hotel itself had taken care of two problems: the exhaust and intake fans had been quieted so that the ordinance was met; the cooling tower on the northwest corner of the property had also been quieted so that the noise ordinance was met. Garbage and recycling pick-up from 251 was being accomplished through the front.

Councilman Wyett commented that there had been some question as to where garbage and bottles could be stored before going outside; one of the problems had been that it was being stored in the rear of 251, contrary to the operating agreement.

Mr. House responded that the agreement was that it would be picked up from the street, and nothing in the agreement had required them to store it anywhere. It was being stored outside in front. The Condominium Association had then refused to allow them to do that.

Councilman Wyett replied that he understood that 251 was noisily putting out bottles and trash late at night and storing them there until the next morning in the rear of 251. He recalled that special conditions had been imposed on other restaurants to store the bottles and trash inside and put it out in the morning. He expressed that there was no reason why neighbors in the Park Avenue area should be disturbed by such noise.

President Smith noted that she had understood that there was no place inside to store garbage, but the agreement had included the condition that nothing would be put out after 8:30 P.M. or before 8:00 A.M.

Mr. House replied that there was a small storage area, and he had been in the restaurant as early as 9:00 A.M., and bottles were stacked inside. As a matter of fact, he noted that the restaurant was not even cleaned up until 1:00 P.M. There were two storage areas for recycling—one was for C.J.'s/Ann Z. King, and the other for the 251 Restaurant.

Director of Public Works Al Dusey reported that 251 was being serviced from the front for both recycling and garbage. The hotel was serviced from the rear, as previously agreed.

Acting Town Manager Peter Elwell reported that the Fire-Rescue Department had been inspecting the premises of establishments in Town, and had found compliance in most instances. There was a small handful of locations where there were continuing problems in Town, including the 251 Restaurant. The concern of the Fire-Rescue Department was that when they arrived at the few locations, the conditions were very over-crowded; the condition would be rectified while they were there, however, the next time they arrived at the same location it was over-crowded again.

Police Chief Frank Croft reported that it had been very quiet in the Park Avenue neighborhood for over six weeks. He had reviewed all correspondence from citizens, who seemed to be fairly satisfied.

Councilman Shaw asked if moving trucks were a violation of the commercial use of Park Avenue?

Chief Croft replied that moving trucks servicing residents could receive special exemptions for parking through contacting the Police Department.

Town Attorney Randolph reported that he had been approached by attorneys representing interests in the hotel, who had indicated that there had been complaints regarding several matters; the sign stating "no commercial vehicles" that had been placed on the street was said to have a detrimental effect upon the operation of businesses within the hotel, and the hotel itself, with the result being the preparation of a lawsuit naming the Town and perhaps others. They had come forward in the spirit of cooperation in an attempt to resolve issues of concern. The basis of the lawsuit would be allegations that the Town was being discriminatory in the way it handled posting of streets, as other residential streets adjacent to commercial areas were not posted in the same way. It had been proposed that the sign be removed to allow certain vehicles to use the back easement on Park Avenue for deliveries on the property during certain limited times, and under certain limited conditions, in order to preclude involvement in litigation.

Attorney Ray Royce, on behalf of Mr. Jack Grace, addressed the Town Council, stating that Mr. Grace owned the commercial unit in the Palm Beach Hotel that was occupied by C.J.'s Catering Service, as well as a number of other units in the hotel. Mr. Royce noted that he had reviewed the site, met with the Condominium Association and Attorney Hickman, and had suggested that, rather than fight, a resolution to the issues could perhaps be found. With that in mind, Town Attorney Randolph, Mr. Moore, and Mr. House had met with Attorney Royce in order to find a solution that was acceptable to all concerned. He explained that the commercial uses in the Palm Beach Hotel had been there since the commencement of the hotel in the 1920's. The alleyway that ran north and south from Park Avenue had been used for approximately 75 years or more for commercial deliveries to the rear of the hotel. Service elevators and service doors were at the rear, and it was only natural and ordinary that the entrance in the back of the hotel had been used for commercial purposes; the access had been over that alleyway and was clearly a prescriptive and written easement recorded in the public records. Attorney Royce proposed that the sign could come down so that reasonable commercial deliveries could be made to the rear of the hotel, and that Town staff meet with him to find a mutually agreeable solution to the issues involved.

Ms. Amy Shaugnessey, president of the Board of Directors of the Palm Beach Hotel Condominium, addressed the Town Council expressing concern that the restriction of commercial traffic on Park Avenue had presented safety hazards for those within the hotel. Because trucks could not unload at the rear they had to park in the front in a limited amount of loading space, with no alternatives for emergency vehicles, taxi cabs, etc. She hoped that the needs of those in the hotel could be accommodated.

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Attorney Ron Kolins, representing the residents of Park Avenue, addressed the Town Council stating that today was supposed to be the day for a status report on the results of the actions taken by the Town Council several months ago. He submitted that the actions taken to limit commercial traffic on Park Avenue had gone a long way to improve the quality of life of residents, although it did not resolve all of their problems with noise, odor, etc., from the hotel. In addition, today he had learned that various hotel interests had hired additional attorneys to attempt to go back to the way things had been before. He maintained that under both the Florida Statutes, and the Code of the Town of Palm Beach signs could be put up where it was felt necessary in the best management of the streets of the Town. He expressed that it was preposterous to read those signs in such an exclusive and unreasonable way as to suggest that an emergency vehicle could not go down the street, or occasionally a moving van/delivery vehicle serving residents on that street. He urged that there be no change in the prohibition regarding commercial vehicles on Park Avenue.

Mr. Banks Clark, noise consultant, representing clients Gilda Beane and Rhonda Nasser, stated that he had performed noise monitoring in February over a four day period. He distributed a report of his findings, when noise monitoring had indicated that noise exceeded levels as defined in the noise ordinance on an on-going basis. His conclusion was that the ordinance had been violated persistently, both day and night, over the four day period of time, with the preponderance of noise source being the transfer and pick-up of refuse.

Councilman Shaw noted that the information in the report had been accumulated prior to the changes that had been recommended by the Town Council, and he did not believe the information was now relevant.

Mr. Clark replied that his purpose was two-fold; to illustrate the gravity of the noise levels and to provide a reference point for improvements.

Councilman Wyett commented that the residents of the Palm Beach Hotel had rights, the residents on Park Avenue had rights, the historical use of the property had been interrupted, and he suggested that the causes could be attributed to the 251 Restaurant, and the commercial use of the hotel by C.J.'s Catering, which was creating an intensity of use that had not been part of the original hotel. He questioned the Town-serving capacity of C. J.'s Catering. He suggested a middle ground, that would leave the residents of Park Avenue with peace and quiet, and the residents of the Palm Beach Hotel with peace and quiet.

President Smith asked Chief Code Compliance Officer House if the noise complaint on the air conditioner for the hotel had been taken care of?

Mr. House replied that he had taken a noise meter reading three days in a row--the first two days the birds in the trees above had been so loud that it was not possible to get an accurate noise reading; the third day the noise meter reading had been 56 decibels at the property, which was two decibels below the allowable. He would return in the near future to re-check the area.

Attorney Royce stated that there was clearly a prescriptive right to use that alleyway, however, hours could be limited. He commented that C.J.'s was a full service restaurant for many years, with a great deal of kitchen equipment, and if it still operated to its full extent, as it was designed, deliveries trucks would be profusely backed up. The use by C.J. was much less than the original intended use.

Attorney Kolins responded that the noise ordinance required exhaust fans to be muffled, and he suggested that Mr. House check on the fans when they were all running at once, as frequently occurred. He suggested that the doors housing the receptacles for the trash made a terrible racket, and should be replaced with something quieter, as well as rubber wheels placed on the trash containers. He suggested that C.J.'s may well be an unlawful nonconforming use. The question was whether it was legal or illegal? It may have been legal at one time, but the change in the intensity of that use may render it as an illegal nonconforming use. He would continue researching the issue and discuss it with staff. He urged that this matter not be left open for negotiations, with an ultimate determination by staff, and that jurisdiction remain with the Town Council.

Councilman Wyett commented that no one had complained before C.J.'s and the 251 Restaurant moved in. In the absence of any other evidence, he suggested that the intensity of use by C.J. and by 251 had caused the problem.

Attorney Charles Hickman, representing the Palm Beach Hotel Condominium Association, stated that C.J. had been in the space for six years, and he suggested that the people on Park Avenue had started the problem, rather than it being started by C. J.

Fire-Rescue Chief Ken Elmore reported that he had not been aware of the 911 medical incident that he was hearing about today on Sunrise Avenue. He explained that traffic, nor signs prohibiting trucks would not stop an emergency vehicle. Regarding the 251 Restaurant, numerous instances of overcrowding had been noted, and citations had been issued to them.

Police Chief Croft reported that it had been fairly quiet for the Police Department with regard to the 251 Restaurant. The crowding problems continued, usually on Saturday nights. There had been a few times when the workers were not cooperative about getting people out upon the order of the fire inspector, however, that had not occurred for approximately two weeks.

Councilman Wyett commented that Chief Croft had indicated that there had been very little activity in the last six weeks, and pointed out that it was no longer the season. He noted that Fire-Rescue Chief Elmore had indicated that there had been violations of ordinance, and if the laws and regulations were not enforced there would be more and more problems; fire rules and regulations for occupancy were for safety reasons.

Chief Elmore responded that most of the overcrowding had occurred prior to Easter. Since then there had not been a great deal of overcrowding. Last Saturday they were at the limits, but were not overcrowded. Management had worked with the Fire-Rescue Department for the most part, and had been notified that when they were asked to reduce the numbers, and 30-minutes later the numbers were back up, the Fire-Rescue Department would not stand for that. Next season, if it was overcrowded, and management did not work with the Fire-Rescue Department, the ordinance would be invoked and the restaurant would be shut down.

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Councilman Wyett recommended that the two sides come together with staff in order to try to resolve the problem in a satisfactory manner. Both sides were entitled to peace, quiet, and the enjoyment of their property.

President Pro-Tem McLendon moved that the two sides and staff come together to discuss the problem. The motion was seconded by Councilman Wyett.

Acting Town Manager Peter Elwell noted that there had originally been an explicit statement that the motion would move all commercial activity off of Park Avenue. Staff action to place the sign stating "no commercial vehicles" was consistent with that action. It was important for the Town Council to understand that because of the legal issues involved it may be necessary to modify the removal of all commercial activity from Park Avenue.

Attorney Kolins stated that the action being discussed suggested that the action decided by the Town Council at the last meeting was somehow not fair or right. It seemed to him that it was perfectly fair and right, and that the hotel must bear the burden of the activities that it created. He referred to the minutes of the Town Council Meeting from December 1997, and noted that Councilman McDonald has stated that the commercial activity ought to be on Sunrise where it belonged. He urged the Town Council not to change their decision.

Attorney Royce replied that he did not think the action taken by the Town Council had been fair, right, or legal, and should not continue. He believed the action was discriminatory, and noted that the ordinance did not give the Town authority to pick and chose what people could use certain streets. He urged that the historical perspective be taken into consideration, that the laws be fair and equal for all concerned, and that the Palm Beach Hotel residents and owners recognize that they could not conduct themselves in such a way as to be a nuisance to their neighbors. He urged that the Town Council give the two sides and staff the opportunity to meet and find a solution.

Councilman Shaw commented that he believed the issues were the difference between the residential apartment owners and that of a specific commercial use of the property. The property had changed from when it was truly a hotel to a residential property. He considered that if the commercial use was changed, and the way in which the property was being used was changed there may be some sort of resolution between the residents of the hotel, and how the incompatible space of C.J.'s was impacting them. He stated that he did not think it was the position of the Town Council to solve the problem of compatible commercial uses and its impact upon residents of the hotel, and was adamantly opposed to re-addressing what had been established previously.

Councilman Wyett stated that he had received the impression from Attorney Kolins that residents of Park Avenue had no objection to having trucks service the condominium/hotel living areas, although he did believe that the issue was one of commercial use, which was C.J.'s constantly using vans coming in and out morning, noon, and night, with the resulting noise. He noted that he believed the problem of traffic was self-imposed by the approval of the Town Council at several different levels: first, Mr. Grace wanted a new building with parking above, which had seemed like a good idea, and was a good idea; second, when the restaurant on that property was approved, the Council should have been aware that the intensity of use of the street would substantially increase; third, the 251 Restaurant was the straw that broke the camel's back.

President Pro-Tem McLendon clarified his motion: he had moved that staff review the issues to try to get both sides together to discuss the issues and determine if there was any common meeting ground.

Councilman Shaw suggested that the two sides could get together and decide upon an operating procedure, without staff involvement.

Councilman Wyett had originally seconded the motion and agreed with the clarification by President Pro-Tem McLendon.

Acting Town Manager Elwell clarified that the motion sounded as if the Town Council was suggesting that the staff mediate between the two parties with divergent views. He suggested that the involvement of staff be to enforce the laws of the Town and State in an equitable manner, and that he would be uncomfortable with the direction to resolve the matter in a manner where everyone would feel equally satisfied.

President Pro-Tem McLendon replied that he wanted to be sure that the sign was taken care of regarding changes that may be needed. He believed that staff, as unbiased observers, could perhaps steer the negotiations to an agreement.

Mr. Elwell responded that his concern was that conducting negotiations between two private parties would put staff and attorney in an extremely difficult position, rather than looking at the responsibility and authority of the Town to take the necessary actions to enforce the laws of the Town and the State.

President Smith replied that the Town Council set policy, not the staff, and her thought was that if the parties wanted to get together and talk with staff that would be fine, without the mediation of any negotiation; the Town Council had taken action, and that action was not being changed.

President Pro-Tem McLendon withdrew his motion.

Councilman McDonald suggested that no further Town Council action take place.

Town Attorney Randolph would review the matter of the sign, and would address it if necessary.

5. Consideration of Date and Time for a Town Council Workshop Regarding Long Range Planning (*Deferred from March 10, 1998*)

Councilman Shaw suggested that consideration of the date and time for the Long Range Planning Workshop be deferred to the October Town Council Meeting, which was agreed upon by the entire Council.

6. Consideration of Date and Time for a Special Town Council Meeting Regarding Water (*Deferred from April 29, 1998 Council Workshop*)

A. Special Town Council Meeting Regarding Water - Town Attorney Randolph explained the parameters regarding the notice that was required to be given to the City of West Palm Beach concerning the removal of the lines. The Town must allow the City of West Palm Beach not less than 20, nor more than 30 days to respond after giving notice that the lines must be moved. It was determined that the water issue would be heard at the Special Town Council Meeting on June 4, 1998, 9:00 A.M., immediately preceding the Special Town Council Meeting regarding Neiman Marcus.

B. The Special Town Council Meeting regarding water workshop results was scheduled for May 29, 1998, at 10:00 A.M.

7. Consideration of Date and Time for an Ordinances, Rules, and Standards Committee Meeting (Agenda to Include Newsracks and Amendment to the Architectural Review and Procedure Ordinance)

The Ordinances, Rules, and Standards Committee Meeting was scheduled for July 8, 1998, at 2:00 P.M.

Councilman Shaw moved that XII. Old Business, D. Other, Item 5 (Consideration of Proposed Amendment to Article II, Sections 23-14 to 23-18, of the Town Code of Ordinances, Preservation of Historic and Specimen Trees) and XII. Old Business, D. Other, Item 7 (Consideration of Proposed Amendment to Article XVI of the Town Code of Ordinances, Commercial Motion Picture Making) from the Agenda be heard at the ORS Meeting scheduled for July 8, 1998. Councilman Wyett seconded the motion, which carried unanimously on roll call.

XIII. NEW BUSINESS

A. Ordinances

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

Town Attorney Randolph read Ordinance 6-98 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AMENDING CHAPTER 5, ARTICLE 1-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 PENALTY; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

Director of Planning, Zoning & Building Robert Moore explained that the State required that the building codes be updated, with the exception of Ordinance 7-98, which the State prohibited from adoption. The Swimming Pool code had been updated to track the code of Palm Beach County, which was Ordinance 10-98. The fee procedures were being changed, increasing the minimum fee from \$40 to \$50, and changing the methodology of charging for large projects that involved subcontractors and general contractors.

Councilman Wyett 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

Town Attorney Randolph read Ordinance 7-98 by title: (first reading)

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

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COUNTY, FLORIDA AMENDING CHAPTER 5, ARTICLE 4, PLUMBING, OF THE PALM BEACH CODE OF ORDINANCES, SECTION 5-164, ADOPTING THE 1995-96 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 Wyett 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

Town Attorney Randolph read Ordinance 8-98 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL 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 President Pro-Tem McLendon. On roll call the motion carried unanimously.

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

Town Attorney Randolph read Ordinance 9-98 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL 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 8-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

Town Attorney Randolph read Ordinance 10-98 by title: (first reading)

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 5, ARTICLE 8 SWIMMING POOLS, OF THE TOWN OF PALM BEACH CODE OF ORDINANCES SECTIONS 5-248, THROUGH 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. Bid Awards

1. Sealed Bid No. 98-05 - A-4 Sanitary Sewer Pump Station Renovation; Resolution No. 25-98

Public Works Director Al Dusey reported that bids had been received for rehabilitation of the A-4 Sanitary Sewer Pump Station, which was located on The Breakers' property. Award was recommended to DACA Environmental Incorporated, via Resolution 25-98.

Town Attorney Randolph read Resolution 25-98:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA AWARDING A CONTRACT TO DACA ENVIRONMENTAL, INC. FOR THE A-4 SANITARY SEWER PUMPING STATION REHABILITATION.

Councilman Wyett moved approval of Resolution 25-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Sealed Bid No. 98-06 - Seaview Park Athletic Field Renovation; Request for Rejection of All Bids

Public Works Director Al Dusey reported that bids had been received for renovation of the Seaview Park Athletic Field. The bids had been substantially higher than the budget for the project. It was the recommendation that the project not be awarded, and that additional monies be budgeted during the next fiscal year for the project.

Councilman Wyett approved rejection of all bids received for the project. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

3. Sealed Bid No. 98-08 - Everglades Island Bridge Rehabilitation; Resolution No. 26-98

Public Works Director Al Dusey reported that the Everglades Island Bridge was in need of minor renovations. Bids had been received, with award recommended to CEM Enterprises, Inc., d/b/a Sunshine Painting in the amount of \$84,306.00. He requested an additional allocation of \$11,706 from the Capital Improvement Fund balance to help fund the project.

Councilman Wyett moved approval of Resolution 26-98, and the additional allocation of \$11,706 from the Capital Improvement Fund balance to help fund the project. The motion was seconded by President Pro-Tem McLendon.

Town Attorney Randolph Read Resolution 26-98:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO CEMENTERPRISES, INC., D/B/A SUNSHINE PAINTING FOR THE EVERGLADES ISLAND BRIDGE REHABILITATION.

On roll call the motion to approve carried unanimously.

4. Sealed Bid No. 98-11 - Historic Loop Street Lighting; Resolution No. 27-98

Public Works Director Al Dusey reported that bids had been received for the installation feature of the Historic Loop Street Light System, which was being funded by the Preservation Foundation. The low bidder was American Lighting and Signalization, Inc., in the amount of \$79,901.00. This was only for installation; the lights and hardware had been ordered separately.

An alternate bid was requested to install poles, fixtures and underground conduit and wire for South County Road, between Royal Palm Way and Seaview Avenue. The alternate bid price was \$25,864.00, and Mr. Dusey recommended that be included, for a total award of \$105,655.00, subject to authorization of the Preservation Foundation to proceed with the alternate bid. He explained that the Florida Department of Transportation (FDOT) was proposing to do that section of street next year, and negotiations were on-going to install the same kind of lights; therefore, it would be the decision of the Preservation Foundation whether to proceed at this time, or wait for FDOT.

Ms. Polly Earl, Executive Director, Preservation Foundation confirmed that the Preservation Foundation would authorize the proposed funding for the project.

Town Attorney Randolph read Resolution 27-98:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO AMERICAN LIGHTING AND SIGNALIZATION, INC. FOR THE HISTORIC LOOP STREET LIGHTING.

Councilman McDonald moved approval of Resolution 27-98. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

C. Appointments

1. Landmarks Preservation Commission - One Regular Member Term to Expire March 1999

The Town Council appointed Jacqueline Albarran de Mendoza for the regular member term to expire in March 1999. All alternate members would remain the same.

D. Other

1. Consideration of Appeal by The Breakers Regarding Commercial Yard Trash Fees

Attorney James Brindell, on behalf of The Breakers Hotel, addressed the Town Council, stating that The Breakers had provided a transfer facility site to the Town for many years at virtually no cost, although The Breakers was assessed approximately \$1.8 million in ad valorem taxes, paying approximately \$36,000 of those taxes on the transfer station site itself. He noted that The Breakers deliver all of their own yard trash to the transfer site. Meanwhile, they were being billed for yard trash removal (for example, through December 1997 they had been billed \$17,945, and paid \$5,365 of that). It had occurred to them that the situation seemed a bit inequitable, inasmuch as the site was being provided to the Town. Under Town Ordinance commercial enterprises got one "free" delivery per month, which is worth \$185 per load. Attorney Brindell requested some relief for The Breakers from the situation.

Mr. Gerald J. Wygant, Vice President of The Breakers, addressed the Town Council, stating that there was an organic pile in the transfer station site, where all of the organic trash generated on The Breakers property was delivered. He did not know if the condominium trash was included.

Public Works Director Al Dusey summarized that during the last full year approximately \$32,745 had been billed in yard trash, with the predominant billing applied to The Breakers of approximately \$21,000 (the biggest time period was October/November/December when a large amount of material had been removed, most likely ; Palm Beach County Club was approximately \$6,000; Four Seasons was approximately \$550; Everglades Club was approximately \$3,900; Mar-A-Lago had one load @ \$185; 2875 South Ocean Blvd. had three loads for \$555. The transfer facility site at The Breakers was very valuable to the Town, as all garbage trucks dumped into a large packer at that location. It saved many man hours, time and money for the Town. After discussion with Acting Town Manager Elwell, Mr. Dusey suggested that The Breakers be granted a credit of five loads of yard trash per week, which would cover most of the bill, however would involve some management of their own yard trash in order to not pay anything for the year. That would translate to approximately \$1,000.

In response to Councilman Shaw, Attorney Brindell indicated that The Breakers would investigate the possibility of seeking future tax relief on Pine Walk from the Property Appraiser

Councilman Shaw moved that the remaining \$12,580 of the previous billing to The Breakers for yard trash be recalculated according to the formula established by Public Works Director Dusey for 1998, and that formula would be used for the future; however, The Breakers would also attempt to have the property reclassified as municipal property, tax exempt under the County guidelines, in which case the standards fees for yard trash would be re-implemented effective at the point that the exemption would take effect. President Pro-tem McLendon seconded the motion.

Councilman Wyett expressed concern regarding other commercial users making similar types of claims, and reminded the Town Council that the commercial yard trash fees had been implemented to relieve the average residential taxpayer of subsidizing payment for heavy trash removal on all commercial properties.

President Smith responded that she believed that the situation with The Breakers was totally unique.

Mr. Wygant noted that efforts would be made to reduce the number of loads, with chipping, etc., which would be written into the annual contracts with tree trimmers. They would then haul the trash away and it would not be dropped into the organic pile at the transfer station.

On roll call the motion carried unanimously.

2. Consideration of Proposed Donation of 20 to 25 Phoenix Majool and Phoenix Zahedi (Date) Palm Trees by The Preservation Foundation of Palm Beach for Planting on Town-Owned Property

Ms. Polly Earl, Executive Director, Preservation Foundation, addressed the Town Council, stating that the Mr. George Nottingham, of the Groundworks Firm, a major supplier/contractor for palms and decorative trees throughout the country, had done a great deal of business with the Town of Palm Beach and now had excess inventory that he would like to donate to the Town. Mrs. Earl had spoken with Mr. Dusey, of the Public Works Department, the Citizens Association, and Dr. Harry Horwich in order to determine a site for the donated palms.

Dr. Harry Horwich, of the Beautification Committees of the Citizens Association and the Civic Association, addressed the Town Council, stating that the best position for the trees would be in the bare areas flanking the entrance to Ibis Island, and across from Phipps Park and the Fire-Rescue Station. He produced a diagram of the proposed grouping of the trees.

Councilman McDonald asked how many trees would be donated?

Mrs. Earl replied that originally several other locations had been chosen, which had proven to be unsatisfactory. Exact measurements on the proposed new location had not been done, so it would be difficult to specify exactly how many trees would fit in the location.

Councilman Wyett moved approval of the donation of palms. The motion was seconded by Councilman McDonald.

Councilman Wyett commented that this was the finest donation the area south of Sloan's Curve had ever received, and it would be a major improvement to the area.

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Ms. Earl replied that the Preservation Foundation was exceedingly pleased that they had been able to play a part in the venture.

On roll call the motion carried unanimously.

3. Consideration of Attendance at the Florida League of Cities' 72nd Annual Conference on August 13-15, 1998, at the Fontainebleau Hotel in Miami Beach

The Mayor and all Town Council members indicated they would be in attendance at the Florida League of Cities' 72nd Annual Conference on August 13-15, 1998, at the Fontainebleau Hotel in Miami Beach, Florida. Mayor Ilyinsky was designated as the voting delegate with President Smith the alternate voting delegate.

Acting Town Manager Elwell confirmed the voting delegate, alternate delegate, and that attendance would be at Town expense.

4. Consideration of the Risk Management Function - **Staff requests deferral to June 9, 1998, per memorandum dated May 6, 1998, from Acting Town Manager Elwell**

5. Consideration of Proposed Amendment to Article II, Sections 23-14 to 23-18, of the Town Code of Ordinances, Preservation of Historic and Specimen Trees

Through motion of Councilman Shaw earlier in the meeting, this item was moved to be included in the Ordinances, Rules and Standards Committee Meeting scheduled for July 8, 1998, at 2:00 P.M.

6. Consideration of Changing Annual Town Calendar to Fiscal Year Schedule

Councilman Shaw commented that the Town was run on a fiscal year beginning on October 1st, and suggested that the Town Calendar be brought out on a fiscal basis as well, in order to better serve the residents. In addition he proposed that all charitable organizations who had been permitted and filed all reports timely be eligible for listing of the primary event on the page of the month when the event would be held; in the event that filing was late the right to publish the event would be lost for the next year. He offered that dollars do not always motivate timely filing, and that the listing may assist in that regard.

Acting Town Manager Elwell commented that he believed the current calendar schedule was effective, since there were several months following the ending of the fiscal year to prepare the annual report; Town staff could attempt to issue the calendar at an earlier date, i.e., December 1st, if so desired. He noted that releasing the calendar on October 1st would make it difficult to accomplish the function of having the calendar serve as an annual report of the fiscal year activities.

Councilman Wyett and Councilman Shaw commented that releasing the calendar sooner would be appreciated.

Acting Town Manager Elwell clarified that staff would attempt to get the calendar for this year, as well as future years, out as close to December 1st as possible; everything else would be status quo according to consensus of the Town Council.

7. Consideration of Proposed Amendment to Article XVI of the Town Code of Ordinances, Commercial Motion Picture Making

Through motion of Councilman Shaw earlier in the meeting, this item was moved to be included in the Ordinances, Rules and Standards Committee Meeting scheduled for July 8, 1998, at 2:00 P.M.

8. Consideration of Installing Water Meters to Measure the Flow of Water from West Palm Beach.

President Pro-Tem McLendon commented that Mr. Dusey had estimated what it would cost to install water meters to determine the maximum day/hour of water use in the system in Palm Beach, which would require five meters on the five crossings from West Palm Beach. In order to know what was being supplied to South Palm Beach, which could be subtracted, two meters would be required. The costs were estimated at \$175,000 - \$200,000. Mr. McLendon noted that he believed it was information that the Town must have before being able to pinpoint what the load on the system would be on reverse osmosis plants. The total cost of the meters would not be sacrificed because half of them would be reusable when the plants were built. He moved that Mr. Dusey be authorized to proceed to get the meters designed and take bids. Councilman Shaw seconded the motion for discussion.

Public Works Director Al Dusey commented that facilities must be designed based on peak days, as it affected water storage and the size of plants, and that was the purpose for the study.

President Pro-Tem McLendon withdrew his original motion, as did the seconder of the motion, Councilman Shaw. Councilman Wyett then moved that this matter be put on the agenda for the May 29, 1998 Special Town Council Meeting on water, which was seconded

by President Pro-Tem McLendon. On roll call the motion carried unanimously.

9. Consideration of Attending the National Coastal Conference to be Held on June 24-June 26, 1998, in Washington, D. C.

Councilman McDonald commented that he believed this seminar would allow contact with politicians who would be involved with the financial support of beach restoration, and suggested that the Town Council consider having someone in attendance.

President Smith suggested that Acting Town Manager Elwell contact Shore Protection Board Chairman Lickle to determine attendance.

Mr. Elwell responded that each Shore Protection Board Member had been provided with the information.

Councilman McDonald suggested a follow up to Mr. Lickle, which Mr Elwell agreed to do.

Mr. Elwell asked if the Town Council would be willing to pay for the attendance by a Shore Protection Board member?

Councilman Shaw responded that he would be willing to pay for the attendance of the Chairman of the Shore Protection Board. He suggested that the State Legislators be contacted to request minutes of the meeting.

Mr. Elwell noted that a report from that meeting would be received as a result of sponsoring the American Coastal Coalition. He requested that a motion be made regarding the attendance of Chairman Lickle.

Councilman Shaw moved that an amount of \$250 be budgeted for the attendance of Chairman Lickle. The motion died for lack of a second.

After discussion, Councilman McDonald moved that the registration fee and airfare be paid for Chairman Lickle. The motion was seconded by President Pro-Tem McLendon.

Councilman Wyett commented that he was interested in knowing if a representative from Applied Technology & Management (ATM) was going to attend, as the agenda was very highly technical.

Councilman McDonald explained that the purpose for designating someone to attend was to talk to the political people who would be making the actual appropriations.

Mayor Ilyinsky suggested that all contact regarding this conference be made by the Town through State Legislators, who could contact fellow Congressmen and Senators.

In view of the comments of Mayor Ilyinsky, Councilman McDonald withdrew the motion, as did the seconder, President Pro-Tem McLendon.

10. Consideration of Writing a Letter to the City of Lake Worth regarding bridge openings for the Lake Worth Bridge.

Councilman McDonald commented that he would like to learn the reasons the Lake Worth Town Council did not pursue the timing of bridge openings.

Mayor Ilyinsky commented that there was no reason for the City of Lake Worth, the Town of Palm Beach, or the Florida Department of Transportation (FDOT) to discuss the matter, since it was all governed by the Coast Guard, and that the bridge was not in the jurisdiction of the Town.

After discussion, Councilman McDonald moved that a letter be written to the City of Lake Worth from the Town Manager asking for an explanation. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

XIV. COMMENTS OF THE TOWN COUNCIL MEMBERS

There were no comments.

XV. DEVELOPMENT REVIEWS

- E. Major Matters Previously Considered by the Architectural Commission at Its Meeting of April 22, 1998 - Minutes Available in Town Manager's Office

DEFERRALS AND CONTINUATIONS - MAJOR PROJECTS

- B1-98 Application by the Breakers, One South County Road, for new 20,000 s.f. facility comprised of a fitness center, 400 sets indoor/outdoor dining room - approved.
- B11-98 Application by Arturo Burrigato, 6 Via Vizcaya, for additions and alterations to existing residence - approved.
- B17-98 Application by Robert Fessler, 1430 North Lake Way, for new two-story Mediterranean style residence with four car garage and pool - approved.

NEW BUSINESS - MAJOR PROJECTS

- B22-98 Application by the Clarendon Estate, 120 Clarendon Avenue, for new two story Mediterranean Revival residence - deferred.
- B23-98 Application by Worth Avenue Associates, 150 Worth Avenue, for new sidewalk arcade at the existing Esplanade building - deferred.
- B24-98 Application by Indian Mound Corporation, 214 Worth Avenue, for new stone and stucco facade - approved.
- B25-98 Application by William M. Matthews, 380 North Lake Way, for addition of second floor over existing one story north wing - deferred.
- B26-98 Application by Boston Homes, 711 Hi-Mount Road, for demolition of existing home and new two-story residence - demolition approved; new residence deferred.
- B27-98 Application by Mort Brous, 150 Brazilian Avenue, for demolition of existing residence, and construction of new two-story residence - demolition approved; new residence deferred.
- B28-98 Application by Adolfo Holtschlag, 2269 Ibis Isle Road West, for new story single family residence - deferred.
- B29-98 Application by County Road Corporation, 710 Island Drive, for demolition of existing residence, pool, patios and driveways - approved.
- B30-98 Application by Mr. and Mrs. Robert Lloyd George, 346 Crescent Drive, for partial demolition of westernmost structure and driveway facing Coral Lane - approved.
- B31-98 Application by Mr. and Mrs. Peter Debus, 255 Angler Avenue, for second floor addition to one story home - deferred.
- B32-98 Application by Jeffrey Fisher, 146 Seminole Avenue, for new two-story Mediterranean style home - deferred.

The Major Projects considered by the Architectural Commission, and the report of the meeting held on April 22, 1998, were approved through motion of Councilman Wyett, seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

B. Time Extensions

1. Consideration of Request for a Three-Year Time Extension for Special Exception No. 13-86, The Colony Hotel, 155 Hammon Avenue, by Mr. Raymond W. Royce

Attorney Ray Royce, on behalf of The Colony Hotel, addressed the Town Council seeking an extension to complete the few remaining items in the hotel improvements. There had been much accomplished since the original approvals had been granted, however, a parking structure and an eight unit building still remained. He noted that a twenty-three hotel room addition to be built on the north side of the street had been previously approved by the Town Council, and pursuant to Council directions, it could not be built until the parking structure on the south side was built. He concluded that the Colony Hotel had proceeded in a responsible, conservative, and prudent manner. The real estate business and hotel business had not been such as to make it feasible to do everything as quickly as the Colony Hotel would have liked.

Director of Planning, Building & Zoning Robert Moore commented that Mr. Royce had accurately related the history of the property, and the Building Department recommended that the requested extension be the last of extension requests so that the job would either be completed or the applicant would file a new application.

Councilman Wyett expressed concern regarding the length of three years, as additional controls and new conditions could come about during that time, and commented that he preferred the period of one year for the extension.

Councilman Shaw agreed with Councilman Wyett, noting that when the original application had been granted in 1994 circumstances were such that the requests were applicable at that time, although he did not know if they were applicable today, or would be applicable in three years. He moved that the extension be granted for a period of one year. Councilman Wyett seconded the motion.

Mr. Bob Wetenhall, one of the owners of the Colony Hotel, addressed the Town Council, stating that the hotel was 50 years old,

had been Town serving, and had tried to integrate what had been built to date. At the present time they were on course to do what they had started out to do, but wanted to do it on a conservative basis, rather than a non-conservative basis. He suggested that a two-year extension be given, in order to give time to accomplish the work. As an example, he noted that townhouses were being built on Hammon Avenue, across the street from the hotel; therefore, the hotel could not do work right now anyway. The hotel wanted to see what the block would look like when the townhouses were completed, so that the hotel would have a coherent plan when it completed the work. It was important to have architectural symmetry in the block.

Mr. Moore commented that he understood the concerns of the Town Council, and suggested that from a simple planning aspect, two years may be appropriate, if the Town Council was not comfortable with three years. He suggested that a condition be that there be no more extensions.

Attorney Royce added that he believed the direction had been that one of the buildings had to be built before the other, and for that reason alone he thought that two years were needed.

After discussion, Councilman Shaw modified his motion to approve a two year extension, with no renewal of the extension. Councilman McDonald, who had seconded the motion, accepted the modification to the motion.

Mayor Ilyinsky commented that he was somewhat at a loss to have one of the great institutions of the Town, who had been a good neighbor for years and years, suddenly brought up short by a Council who had not been within twenty miles of the Town at the time when the arrangements had been originally made. He added that he found it moderately outrageous, and did not understand why the three years could not be granted.

President Pro-Tem McLendon agreed with the Mayor.

Councilman Wyett commented that he would like to see the garage built because it would alleviate parking problems. However, in the event it was decided not to build the garage, he asked what plans were made for the vacant lot?

Mr. Wetenhall replied that most of that land was utilized for parking.

Attorney Royce replied that when the building was torn down, more parking was put in; there was plenty of parking available for the Colony Hotel, and there was no parking problem—certainly not any problems caused by the Colony Hotel.

Director of Planning, Zoning & Building Moore clarified that the eight units that could be built where the current parking lot was located, and the twenty-three hotel units would require underground parking, so one could not be built without the other. The parking impact on the east end of the street was caused by Charley's Crab.

On roll call the motion carried 4/1, with President Pro-Tem McLendon casting a negative vote, commenting that he would prefer to give the three year extension.

2. Consideration of Request for a One-Year Time Extension for Special Exception No. 20-97 with Site Plan Review, Mar-a-Lago Club, 1100 South Ocean Boulevard, by Mr. Raymond W. Royce

Councilman Shaw moved approval of the one-year time extension for Special Exception 20-97. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

3. Consideration of Request for a 90-Day Time Extension for Special Exception No. 15-97, 974 & 975 South Ocean Boulevard, by Mr. Doyle Rogers

Councilman Wyett moved approval of the 90-day time extension for Special Exception 15-97. The motion was seconded by President Pro-Tem McLendon.

Councilman McDonald asked if Mr. Koch would make any effort to save the house?

Attorney Rogers replied that the plan was to demolish the house.

Director of Planning, Zoning & Building Moore explained that the request was technical, and because of the bureaucracy of issuing the permits, the permit period would run out. There was no exception to the extension request by the Building Department.

On roll call the motion carried unanimously.

4. Consideration of Request for a One-Year Time Extension for Special Exception No. 19-97, by Dr. Marvin M. Rosenberg, 125 Chateaux Drive

Director of Planning, Zoning & Building Moore commented that there were no objections to the time extension.

~~MINUTES OF THE TOWN COUNCIL MEETING HELD ON MAY 12, 1998~~

Councilman Shaw moved approval of the one-year time extension for Special Exception 19-97. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

A. Variances, Special Exceptions, and Site Plan Reviews

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

Old Business - Minor

1. SITE PLAN REVIEW NO. 5-98 with Variances - Ogden Edwards, 179 E. Inlet Drive; located in the R-B Zoning District; to allow construction of a single family residence on a lot 94' deep in lieu of 100' minimum required. A variance is requested to allow for a 15' street side yard setback in lieu of 30' required. (*Deferred from April 14, 1998 Town Council Meeting*)

Director of Planning, Zoning & Building Moore explained that this application had been filed last month for a side yard variance, and was a minor type of variance because of the issue of the Town Docks. It was not a right-of-way that was used, therefore, the applicant had an unusual burden to meet with the 30 foot setback, and the Building Department recommended approval.

Councilman Shaw moved approval of Site Plan Review 5-98 with variances. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Old Business - Major

2. SPECIAL EXCEPTION NO. 14-97 - Palm Beach Hotel, L.P., 230 Sunrise Avenue; located in the C-TS Zoning District; to allow a restaurant to occupy 4,585 sq.ft. in lieu of 2,000 sq.ft. maximum. (*Condition of Approval at the May 13, 1997 Town Council Meeting was to return in one year to demonstrate how the restaurant meets the Town-serving requirement.*)

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

Director of Planning, Zoning & Building Moore stated that a letter had been provided from Mark S. Ford, CPA, stating that the information submitted had been examined and that more than 50% of the customers of Aquaterra were Town persons.

There was no further action taken by the Town Council at this time.

3. SPECIAL EXCEPTION NO. 34-97 - 2875 Ocean Corp., 2875 South Ocean Blvd., Suite 208; located in the C-TS Zoning District; to allow occupancy of financial consulting and brokerage firm; and to allow a variance from the Town-serving requirement. (*Deferred from September 9, 1997 Town Council Meeting*) - **Request for Withdrawal per letter dated April 13, 1998, from Mr. Gregory S. Kino**

This item was withdrawn per motion of Councilman Wyett under "V. Approval of the Agenda."

4. SPECIAL EXCEPTION NO. 40-97 - The 375 South County Association, 375 South County Road, The Ginger Man Restaurant; located in the C-TS Zoning District; to allow a tenant change under Schedule of Use Regulations Footnote 3, which requires Town-serving to be demonstrated by the new tenant, to continue as a 150 seat restaurant, and to allow an occupancy of 5,000 sq.ft. (*Condition of Approval at the October 14, 1997 Town Council Meeting was to return in six months from date of opening to review compliance with all conditions of approval.*) - **Request for Deferral to the end of summer (Staff suggests September 8, 1998) per letter dated May 8, 1998, from Mr. James R. Brindell**

This item was deferred per motion of Councilman Wyett, under "V. Approval of the Agenda."

5. VARIANCE NO. 14-98 - The Henry Morrison Flagler Museum, One Whitehall Way; located in the R-B Zoning District; to allow construction of 15.83' high architectural columns/gateposts, in lieu of 8' maximum allowed, at the museum entrances, setback 21' in lieu of 30' required. To allow a 6 square foot double-sided sign in lieu of a 3 sq.ft. double-sided or a 6 sq.ft. single sided maximum allowed. To allow the sign to be located 1' from the property line in lieu of 10' required. (*Deferred from April 14, 1998 Town Council Meeting*)

Mr. John Blades, of the Flagler Museum, addressed the Town Council, stating that last month there had been some concern on the requests contained in Variance 14-98 on the column height, and easements that might be involved; thus it had been deferred until the May Town Council Meeting. He explained that the easements had been reviewed, and there were no easements involved in this case. The variance request had also been modified from the original request for the sign to be located 1' from the property line—the request was now 5' from the property line.

~~MINUTES OF THE TOWN COUNCIL MEETING HELD ON MAY 12, 1998~~

Ex-parte communication was declared by Councilman Wyett with Mr. Sharf, by President Smith with Mr. Matthews, by Mayor Ilyinsky with Mr. Matthews.

Director of Planning, Zoning & Building Moore commented that there had been several misunderstandings regarding the issue of the easements. The drawing had indicated a 5' easement on the east side of the proposed wall, which actually did not exist.

Architect Gene Lawrence explained that there were no easements originally, and a 5' area had been set up for a future Town easement, and 10' for a designated easement for Florida Power & Light, Comcast, and Southern Bell. The museum was proposing to put the power lines underground at their expense, so the 5' would not be an easement, but would be reserved in the event that the Town needed something at some future time.

Mr. Moore commented that the Town had no interest in using the 10' easement, however, Town Engineer Bowser would like the existing poles on the north and the south to be used as the terminus points. In addition, Mr. Bowser had recommended that letters be obtained from Florida Power & Light, Comcast, and Southern Bell that there was no objection to having any type of structure in the 10' easement.

President Pro-Tem McLendon expressed concern regarding the 5' easement, as there could be interest in its use for water mains.

In response to the suggestion of Councilman Shaw, Mr. Blades agreed to discuss underground power line implementation with The Breakers.

Councilman McDonald moved approval of Variance 14-98, with the condition that the 5' easement be donated to the Town of Palm Beach, and with the modification of a 5' request for the location of the sign, rather than the original request of 1'. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

6. SPECIAL EXCEPTION NO. 1-98 - 2875 Ocean Corp., 2875 South Ocean Blvd., Suite 217; located in the C-TS Zoning District; to allow Hardman Financial Group, a financial consulting firm, to occupy the same space as a brokerage firm (*Deferred from January 13, 1998 Town Council Meeting*) - **Request for Withdrawal per letter dated April 24, 1998, from Mr. Ray A. Hardman**

This item was withdrawn per motion of Councilman Wyett under "V. Approval of Agenda."

7. SPECIAL EXCEPTION NO. 8-98 - Robert Sheetz, 180 Royal Palm Way; located in the C-TS Zoning District; to allow 1st United (Wachovia) Bank to expand a special exception use from 15,812 sq.ft. to 19,500 sq.ft., further exceeding the 2,000 sq.ft. limit in this C-TS District. (*Deferred from April 14, 1998 Town Council Meeting*)

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

President Smith recused herself, as she was a Board Member of the 1st United (Wachovia) Bank.

Attorney Peter Broberg, on behalf of 1st United (Wachovia) Bank, addressed the Town Council, stating that the Special Exception request was to add 3,688 s.f. The bank presently occupied the first floor, part of the second floor, and all of the third floor. The second floor was partially leased out, and as those spaces became available the bank would like to use those for its own purposes. He produced a Town-serving affidavit, clearly stating that the use of the bank exceeded 50% use by Town persons.

Councilman Wyett moved approval of Special Exception 8-98. The motion was seconded by Councilman Shaw.

Councilman Shaw asked Attorney Broberg how the bank intended to remain Town-serving, as it was now a national bank?

Attorney Broberg responded that the accounts that were from the Town of Palm Beach, based on the overall money that was in the bank resulted in the percentages arrived at for Town persons exceeding 50%.

Ms. Deborah Lawson, of 1st United Bank, which would now become Wachovia Bank, addressed the Town Council, stating that Wachovia Bank was considered a private bank, and would have other private banking areas throughout the County to assure that everything would remain as Town-serving in the Town of Palm Beach.

In response to the query of Planning, Zoning & Building Director Moore, concerning the Town-serving affidavit, Attorney Broberg noted that the same company had audited Island National, 1st United, and now Wachovia books, and had provided the same language to the Town every year, and it had been accepted every year.

After considerable discussion, it was determined that the bank would re-submit the Town serving documentation as proof that 50% or more of their accounts for the entire bank at that location were defined as Town person accounts, as a condition of approval. If the letter could not be acceptably produced, the bank would return to the July Town Council Meeting with their request.

Councilman Wyett agreed to attach the condition to his motion that the bank would submit Town serving documentation as proof that 50% or more of their accounts for the entire bank at that location were defined as Town person accounts. The seconder of the motion, Councilman Shaw, agreed with the attachment of the condition. On roll call the motion carried 4/0, as President Smith had recused herself.

New Business - Minor

8. VARIANCE NO. 20-98 - Arlene Schneiderman, 272 Sandpiper Dr; located in the R-B Zoning District; to allow construction of an addition to the garage providing a 22' front yard setback in lieu of 25' required.

Director of Planning, Zoning & Building Moore stated that staff recommended approval of Variance 20-98.

Councilman Wyett moved approval of Variance 20-98. The motion was seconded by Councilman Shaw. Councilman McDonald suggested that a condition of approval be that the second space would only be used for parking of cars, and not for storage purposes, and that the cars would actually be parked in the garage at night. Councilman Wyett agreed to amend his motion accordingly. Councilman Shaw, as the seconder of the motion, agreed to the amendment.

Architect Ken Spina, representing the Schneidermans, agreed with the condition, as that had been the original intent.

On roll call the motion carried 4/0, as President Smith was temporarily out of the room.

New Business - Major

9. VARIANCE NO. 19-98 - Gay Cinque, 3 Golf Rd; located in the R-A Zoning District; to allow construction of an addition (garage) providing a side yard setback of 4.6' in lieu of 15' required.

Ms. Gay Cinque addressed the Town Council, producing photographs of the area in question, and stating that she and her husband were now permanent residents in the house, which had no garage. The hardship was the fact that there was no garage currently, and lots in the area were 75' in length. There had been no concerns by neighbors, and the garage would not be visible from the street.

Zoning Administrator Paul Castro commented that the hardship must be addressed. In addition, Town staff had received a call from Mr. Douglas, the adjoining property owner to the west, who would be most affected, and he supported the application on the condition that the hedge between the properties, which was approximately 25' in height, be maintained at that height in perpetuity, or as long as the garage was there. Staff concurred with that condition, to be incorporated into some type of recorded agreement.

After lengthy discussion, Councilman Wyett moved approval, with the provision that the structure be for garage use only, and not for storage, and to incorporate the maintenance of the 25' existing hedges; the hardship was the small size of the lot.

President Smith suggested that the 8' wall facing the alleyway could be taken down, to park more in the back, so that the garage door would not be facing the front.

Ms. Cinque replied that the placement of the swimming pool prohibited that.

Councilman Shaw suggested that a serpentine approach be used for the garage, so that the garage would not be seen from the street.

Ms. Cinque replied that the problem with that was that she would be in the 25' setback, and the front setback off the street was probably more important than the side that was hidden away. In addition, the layout of the house would not be conducive to that.

After more discussion, Councilman Wyett clarified his motion to include two conditions; that the addition always be used for parking of cars, and not for any other purpose, and that the wall and hedge go with the land, and be so recorded; the hardship was the substandard lot size. The motion was seconded by President Pro-Tem McLendon. On roll call the motion failed 2/3, with Councilman Wyett and President Pro-Tem McLendon casting affirmative votes; Councilmen McDonald and Shaw, and President Smith, casting negative votes.

Councilman Shaw moved denial of Variance 19-98, based on the fact that there was no hardship unique to the property; it was evident at the time of the purchase. Councilman McDonald seconded the motion. On roll call the motion carried 4/1, with Councilman Wyett casting a negative vote.

10. 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.

Mr. John F. Joyce addressed the Town Council, stating that the hardship was the narrow driveway, which made it almost impossible for him to get a car in; in addition, there was no turnaround space.

Director of Planning, Zoning & Building Moore commented that staff had examined the request, and could not find a hardship associated with elimination of a garage to create living space, when two car garages were a requirement.

Mr. Joyce stated that the space had not been used as a garage for 50 years, and had been used simply for storage. He pointed out the area on the exhibit he provided, stating that he was trying to restore the house, and turn the space into green space.

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Councilman Wyett proposed that Mr. Joyce move the cabana and place the garage in such a way the he could get into it without having to infringe upon the street and the setbacks.

Mr. Joyce replied that he had space for six cars as off street parking.

President Smith suggested that perhaps Mr. Joyce could reconfigure his plans.

Councilman McDonald moved for a deferral of Variance 22-98 to the June 9, 1998, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

11. 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. - **Request for Deferral to June 9, 1998, per letter dated May 7, 1998, from Mr. James R. Brindell**

This item was deferred per motion of President Pro-Tem McLendon, under "V. Approval of Agenda."

12. 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.

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

President Smith recused herself, as she sat on the Board of 1st United Bank.

Attorney Peter Broberg, on behalf of 1st United (Wachovia) Bank, addressed the Town Council, stated that the name change of the bank was governed by footnote 3, at Section 420 of the Town Code, which required that the new occupant must be shown as Town serving in order to get a new occupational license. In addition, there was presently a drive through area of the bank, which was allowed by Town Code. The ATM was compatible with adjoining development. The ATM machine would not result in substantial noise or glare to adjoining properties, and was essentially an added service to bank customers. The base was now 2' wide, and in order to install and support the ATM machine there must be a 4' base; one lane would stay at 10' and the other lane would be 8'. Mr. Broberg produced a rendering of what the ATM machine would look like.

Landscape Architect Donaldson Hearing addressed the Town Council, stating that his company was doing the facility for Wachovia. Pictures had been taken where the car would be sitting for any period of time, where the transaction would take place. He noted that he believed there would be a very negligible impact regarding headlights, resulting from cars coming up the ramp on the approach to the ATM machine.

In response to Councilman Shaw, Deborah Lawson of Wachovia Bank, explained that drive-ups could not be on the building itself, as it would not allow cars to get close enough.

Councilman Wyett commented that he did not find that the request met the standards that were necessary. Since the facility would be used heavily at night, especially in the nightclub area, it would contribute increased noise late at night, as people needed money to go to the bars; it may encourage crime; there was a serious headlight situation. In addition, he noted that the addition of the ATM had limited Town serving purposes, because he believed that traffic would include mostly non-residents using the restaurants and bars, and it would be difficult to prove that the ATM machine was Town serving. He also suggested that the parking lot be chained at night so that cars would not use it for restaurant parking, etc.

Mr. Martin List, List Management Company, commented that Lis Management had been retained by the Weltons to manage the property. He noted that the lot was locked at night currently, and the other spaces had been leased out to one of the valet companies, to be used by businesses in the area. The bank parking lot was shut down at night and chained off. The parking lot being used for the valet service was on Sunset.

Councilman Wyett commented that there was a violation of the rules of the Town if there was a parking agreement made without permission, and suggested that this item be deferred until things were clarified.

Director of Planning, Zoning & Building Moore clarified that the only reason Attorney Broberg was present for the Special Exception was that the bank had chosen to use the drive-in facility for the location of the ATM machine. The ATM machine in itself was a permitted use in a commercial district, as long as it was on the building itself. If the ATM machine was located on the east side of the building there would be no need for the Special Exception.

Attorney Broberg noted that it would be agreeable to close the parking lot at a certain time that was agreeable to all.

Mr. Moore explained that the Town Zoning Ordinance did not permit interlocal agreements with a valet company to use required parking for one use without a shared parking agreement, and Mr. House, Chief Code Compliance Officer, would be in contact with the bank and management company.

Councilman McDonald asked if there was an ATM machine at the main office of the bank on Royal Palm Way?

Mr. Broberg responded that there was a proposal to do that.

Councilman McDonald asked why one would be needed there and at the branch?

Mr. Broberg replied that it was for the convenience of the customer.

Ms. Lawson pointed out that utilization of the east side of the building may involve ADA requirements, as it would be on the ramp that was used as the wheelchair ramp.

Councilman Wyett moved deferral of Special Exception 10-98, until an alternate plan for the ATM machine could be presented, and an explanation provided regarding the illegal parking agreement. Councilman Shaw seconded the motion.

Mr. Moore noted that the issue of the lighting would need to be identified, and advised the applicant that if the ATM machine was granted in the drive-in facility area, the acceptable standard could be found at the City Bank, which was on the corner of Coconut Row and Royal Palm Way.

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

13. SITE PLAN REVIEW NO. 6-98 with Special Exception and Variances - The Palm Beach Day School, Inc., 241 Seaview Ave; located in the R-B Zoning District; to allow construction of two additions totaling 4,638 sq.ft., and the placement and use of two temporary portable classrooms. Variances requested are 14+' front yard setback in lieu of 30' required; adding 4,638 sq.ft. to a nonconforming building; to allow 28.1% lot coverage in lieu of 25% max. allowed; to allow a variance to permit a height of 23.8' in lieu of 22' maximum allowed, and an overall height variance of 32' in lieu of 30'.

Ex-parte communication was declared by Councilman Shaw with Marty Pine, by Councilman Wyett with Attorney Brindell relative to approval of the site plan.

Attorney James Brindell, on behalf of Palm Beach Day School, Inc., addressed the Town Council, stating that private schools were special exception uses in R-B Districts, so the situation was not one of nonconforming use. The school had been built in 1921, and in 1990 the school voluntarily landmarked the site. Clearly the school had served a very important function in the Town of Palm Beach. Mr. Brindell exhibited photographs of the area and explained that there was a dire need to replace the roof and air conditioning system. Mr. Brindell then explained the allocation for space for the additions, and exhibited the site plan for review.

Councilman Wyett moved approval of Site Plan 6-98 with Special Exception and Variances. President Pro-Tem McLendon seconded the motion.

Councilman Shaw suggested that a condition of approval be that the certificate of occupancy not be granted for the cafeteria second story addition until the temporary portables were removed.

Attorney Brindell accepted that condition, and explained that the project would have to be done in stages, and would take 6-8 months. The students would be coming back before the project was finished, and they would have to be moved into the portables. He submitted that the hardships were that the facility was unique in the Town of Palm Beach, was a landmarked structure, and the lot dimensions were very narrow for a school requiring work to be done in an east/west direction. Attempting to put the chiller, air handlers, and mechanical room someplace else would involve creating a third floor. There was a need for additional classroom and cafeteria space because the current space was inadequate. One change made on the chiller structure was that the walls were lowered so that they would not exceed 13.6". Mr. Brindell made the request that the applicant be allowed to proceed with the staff and the building department relative to the issuance of building permits since most of the work to be done was not something that would be reviewed by the Landmarks Commission. They would review the facade of the extension, but most of the work was something that they would not normally look at. The school had also asked that the issue of extended work hours be discussed, preferably from 8:00 A.M. - 7:30 P.M., Monday through Saturday.

Director of Planning, Zoning, & Building gave the following staff comments: Police Department: no increase in enrollment, teachers, or students; traffic studies for the future should be produced; Comprehensive Plan: traffic study seems needed, as well as mitigation of air conditioning equipment for sound deadening on the north property line; Building Department: must demonstrate Town serving; the hardship had been addressed on lot coverage; the building height variance was to match existing; traffic study for future consideration should be required; all use of portable classrooms to cease after certificate of occupancy; Town Manager: concurred with comments.

At this Town Clerk Pollitt administered the oath to Jane Baker.

Ms. Jane Baker, 235 Coconut Row, addressed the Town Council, stating that her residence was on the corner of Coconut and Seaview; the only access to her residence was on Seaview Avenue. She exhibited pictures of the existing problem with congestion on the street, and hoped very much that everyone would consider her concerns with traffic congestion from both the public and private school, and children running out in front of cars. She stated that she was concerned as well with the expansion of the school. They had purchased the three homes adjacent to her home, and it seemed as if the character of the neighborhood of small homes was being affected. She urged

that this be considered. She submitted that the sewer construction had caused noise and inconvenience and hoped that consideration would be given to the residents regarding construction hours. She expressed that she was concerned with the zoning in the neighborhood. Mrs. Baker suggested that drive-in areas be created so that parents would not have to stop in front of the school, and traffic would flow.

Attorney Brindell responded that the school was in the process of developing a master plan, and had retained a company, Independent School Management Association, to look at the current school, and long terms needs. Traffic consultants (DKS) had been hired to look at parking and traffic. He anticipated coming back with some options at the end of the summer.

Mr. Martin List, Chairman of the Facilities and Technology Committee, commented that the entire process had been studied for several months, and by the time Independent School Management Association had been retained, the air conditioning and roof replacement system plans were well underway. They had made some recommendations, and some of the changes to the east end of the school resulted from their expert advice.

Attorney Brindell explained that there was a system in place to try to make traffic flow more evenly. There were also some options that were being evaluated, and a proposal would be forthcoming to try to improve the traffic situation.

Mr. John Thompson, Headmaster of Palm Beach Day School, commented that five years ago a significant change had been made regarding pick-up in the afternoon to try to alleviate the back up. Buses were dismissed at a different time, and the controlled dismissal in the afternoon had been effective. He noted that there would be no increase in teacher population, and the school had a cap on the number of students.

Councilman Wyett amended his motion to approve Site Plan 6-98 with Special Exception and Variances, to incorporate shielding the chiller, and incorporating that the portable classrooms be vacated upon the receipt of the certificate of occupancy; the hardship was the landmarked structure, and the narrow shape of the lot. He noted that he also found the school Town serving, and that it protected the children, promoting their welfare through education.

Director of Planning, Zoning & Building Moore noted the interest of the Police Department in not seeing an increase in teacher population, as well as the current student population cap. The applicant had mentioned that the traffic study would be supplied, and mitigation of air conditioning equipment would be accomplished.

President Smith suggested that the teachers park on site on the east field.

Attorney Brindell responded that the master plan study would evaluate that option, however, it would be addressed on a more immediate basis also.

Director of Planning, Zoning, & Building Moore suggested that approval of construction hours be postponed so that the Building Department, Police Department and the applicant could discuss the issue.

Attorney Brindell agreed to return to the Town Council for approval of construction hours.

On roll call the motion of Councilman Wyett carried unanimously.

Attorney Brindell asked if there was any problem with the applicant working with staff relative to things that could get started through the building permit process that would not require the approval of the Landmarks Commission?

After discussion, the members of the Town Council agreed that it would be no problem, as did Director of Planning, Zoning & Building Moore.

14. FLOOD INSURANCE VARIANCE NO. 1-98 - Horst Niehues-Paas and Rebecca Weerth, 250 Pendleton Avenue; located in the R-B Zoning District; to establish the base flood elevation at 7.1 NGVD, in lieu of 7.5 NGVD as required by code for an existing single family house undergoing primarily interior renovations.

Attorney James Brindell, on behalf of Mr. Niehues-Paas, addressed the Town Council, stating that the house at 250 Pendleton Avenue had been built in 1931, and the lowest finished floor elevation was 7.1, and relief was being requested from 7.5 NGVD to 7.1 NGVD, so that the renovations could be accomplished. There was no additional square footage being requested.

Director of Planning, Zoning & Building Moore commented that this request was unusual, although the Town used to receive such requests often in the '70's and early '80's, and had stopped granting them because of a problem with FEMA and eligibility for flood insurance. FEMA had agreed that they would consider granting of a variance if it was between 7.0 and 7.5. The Town used 7.5 in 99% of the Town for its flood elevation. The reason such requests were now not normally seen was because there were not many properties between the 7.0 and 7.5 category. If this variance was granted, it must be reported to FEMA, identifying that there was a hearing held, any hardships involved, and a finding by the Town Council that there was indeed a hardship. He noted that an alternative would be not to do as much work as the applicant was proposing--there was a five year sliding scale whereby at the end of five years work that was done in the first year was wiped off the books, and work could be started again. The second alternative would be to have an appraisal done on the property that would raise the value of the property sufficient to allow for the construction. The third alternative would be to have the property foundation jacked up 6". Staff had no particular recommendation. There was no construction hardship, and the request was from a homeowner that wanted to do renovations that did not comply with the Ordinance.

Director of Planning, Zoning & Building Moore suggested that the current owner could request that the house be considered for landmarking; if the house was put under consideration to do a study, and the house met the criteria for landmarking, there would be relief

in the FEMA requirements.

Attorney Brindell responded that he would withdraw the request for the variance.

B. Other

1. Consideration of the 1998-1999 Draft Zoning Calendar and Tentative List of Zoning Study Items

Director of Planning, Zoning & Building Moore stated that there were thirteen items listed on the Tentative 1998-1999 List of Zoning Study Items. Several of those items needed to be discussed:

Item 7: Study providing a provision for allowing auction houses.

Recommendation of staff was the same as it was last year, which was that auction houses be placed in C-PC, the Poinciana Plaza. There had been one person that was interested in seeing auction houses in C-TS as a special exception, but that would mean that it would be Town wide in C-TS.

Councilman Shaw moved that Item 7 be removed from the list of study items. President Smith passed the gavel and seconded the motion. On roll call the motion carried unanimously.

Item 8: Study provision for requiring CCR and FAR in the R-A Zoning District.

This item had been requested by a member of the public. This would take an extensive amount of research.

Councilman Shaw moved that Item 8 be removed from the list of study items. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Mr. Moore explained that Executive Director of the Preservation Foundation Polly Earl was present to speak regarding the ongoing studies in the R-B Zoning District, which was Item No. 7. He recalled that last year, after extensive study, staff had proposed that the CCR and FAR be reduced in the R-B Zoning District. During the Zoning Commission hearings there was no testimony heard from any member of the public regarding this item; two members of the Zoning Commission voted against the recommendation. When the item went to the Town Council, however, many members of the public attended to discuss the item. As a result, the item was deferred, and staff announced that workshops would be held with the Zoning Commission with public comment heard—all those who had appeared at the Town Council meeting would be notified, and an advertisement would be placed in the Palm Beach Daily News. He explained that Mrs. Earl would discuss an alternative plan that could be presented during the workshops, that the Preservation Foundation had very generously offered to fund.

Mrs. Polly Earl, Executive Director of the Preservation Foundation, addressed the Town Council, stating that the Preservation Foundation had recently sponsored a public talk by Andres Duany that had resulted in a great deal of comment. The value of the occasion was that it moved the debate to a different level. Mr. Duany had suggested that the UDA firm in Pittsburgh be contacted. This firm used the approach of a pattern book to try to get to better architecture, instead of trying to focus on the difference between 2 1/2' in a setback. It was an approach that the Town should hear about, and the Preservation Foundation would fund a demonstration of what a pattern book could look like for two streets in the Town. The work would be displayed at the Preservation Foundation, and Mr. Ginros would be available to speak to the Zoning workshops.

Councilman Wyett commented that Mrs. Earl had once again provided wonderful leadership, and suggested that the Town begin looking at some of the things suggested by Mr. Duany, in particular HVAC system area, an allowance for 600' for a two car garage, an allowance for a one-story covered terrace, and an allowance by ARCOM for a few hundred more feet as a bonus if the design was good and bulk was at a minimum. He explained that one of the problems in the Town was that people did not want to spend a great deal of money for an architect when the lots were small. He also expressed concern regarding the setbacks for corner lots that were large, however, on small lots he suggested that the garage be allowed to encroach on the setback. That would allow architects much more flexibility to design better homes.

Mr. Moore commented that this year all ideas would be concerned, and staff was looking forward to seeing the work of Mr. Duany. He then read the Tentative List of Zoning Study Items for 1998-1999.

Councilman Wyett commented that he had several items he wished to add for study: in areas where there were multi-family new homes going up, ARCOM had been having a lot of problems with bulk and size. He suggested that one way to solve the problem would be to increase the setback requirements, which would automatically reduce the size of the homes.

Mr. Moore replied that was included under Study Item 5.

Councilman Wyett then suggested that subdivided lots should have a requirement to be 125', rather than 100'. He suggested removing putting on variances as the width of the lot got bigger. He suggested reviewing rear setbacks.

Mr. Moore responded that the zoning season would be very difficult, and staff had planned on asking that some items be held off, because the R-B District would be very difficult. Most of the suggestions of Mr. Wyett would be in the R-B District, already being covered under Study Item 6.

He suggested that Mr. Wyett submit his suggestions to staff, who would review them and decide if they were already being covered. If

they were not, the Town Council would have the opportunity to vote on them next month.

Councilman Shaw moved that the Tentative Zoning Study Item List 1998-1999, with modifications made, be approved. Councilman McDonald seconded the question. On roll call the motion carried unanimously.

2. Consideration of Request for Waiver to Section 12-51 of the Town Code of Ordinances, Hours of Construction, by The Breakers Hotel and Beach Club, One South County Road

Attorney James Brindell, on behalf of The Breakers Hotel, submitted the Request for Waiver to Section 12-51 of the Town Code of Ordinances, from 6:00 A.M. until 11:00 P.M., seven days per week, in order to accomplish the construction at the Starlight Ballroom Beach Club.

Director of Planning, Zoning & Building Moore gave the following staff comments: the Building Department had completed a pre-work conference with The Breakers, and extensive discussion relating to conditions for the building permit. He suggested that there would be problems with the guests of The Breakers with the proposed schedule, as well as residents on Flagler Drive and Via Bethesda. He suggested that more appropriate hours would be 7:00 A.M. to 7:00 P.M., six days per week, Sundays and holidays excluded. A longer period of time could be considered if the residents on Flagler Drive and Via Bethesda would agree.

Project Manager Mark Meyer commented that the intent was to do light activities that were low level noise, after the main construction hours allowed by the Town. The heavy impact construction would be done during the main hours of the day. The construction vehicles would come across the Royal Poinciana Bridge, go down South County Road to Pine Walk. They would not be on Via Bethesda.

Councilman Wyett moved approval of the Request for Waiver to Section 12.51, with the condition that the hours be 7:00 A.M. - 7:00 P.M. with no Sundays or holidays; the applicant could come back with the request for longer hours for the inside work. President Pro-Tem McLendon seconded the motion. On roll call the motion carried unanimously.

XVI. ANY OTHER MATTERS

Town Attorney Randolph advised that it had become apparent that he would need to modify the notice to the City of West Palm Beach in regard to the water issue. That modification may require that the meeting not be scheduled on June 4, 1998, as scheduled.

Councilman McDonald moved approval of the rescheduling of the meeting, if appropriate. President Smith passed the gavel and seconded the motion. On roll call the motion carried unanimously.

XVII. ADJOURNMENT

The meeting was adjourned at 7:12 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk

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

LAST NAME—FIRST NAME—MIDDLE NAME <i>Smith, Lesly S.</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Palm Beach Town Council</i>	
MAILING ADDRESS <i>360 South County Rd.</i>		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY <i>Palm Beach</i>	COUNTY <i>1</i>	☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY	
DATE ON WHICH VOTE OCCURRED <i>Thursday, May 12</i>		NAME OF POLITICAL SUBDIVISION:	
		MY POSITION IS: ☒ ELECTIVE ☐ APPOINTIVE	

WHO MUST FILE FORM 8B

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

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

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

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

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

* * * * *

ELECTED OFFICERS:

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

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

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

* * * * *

APPOINTED OFFICERS:

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

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

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

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

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

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Lesly S. Smith, hereby disclose that on _____, 19 _____:

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

- ☒ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

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

I am a board member of First United.

Special Exception No. 8-98
Special Exception No. 10-98

5/12/98

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.