

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETINGS
HELD ON APRIL 16 & 17, 1998**

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON 4/16 & 17/98 TO CONSIDER THE
DEVELOPMENT REVIEW APPLICATION FOR NEIMAN MARCUS**

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting to consider the development review applications for Neiman Marcus was called to order at 10:05 a.m. on April 16th in the Town Council chambers by President Lesly Smith. On roll call, the following elected officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro Tem Sam McLendon, Councilmen Jack McDonald, Leslie Shaw, and Allen Wyett. Also present for all or part of the meeting were: Acting Town Manager Peter Elwell; Town Attorney John C. Randolph; Police Chief Frank Croft; Fire-Rescue Chief Ken Elmore; Fire Marshal John Wandell; Public Works Director Al Dusey; Town Engineer Jim Bowser; Planning, Zoning and Building Director Robert Moore; Zoning Administrator Paul Castro; Parking Control Manager Henry Marchman; and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

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

Mrs. Smith announced the lunch break would be at approximately 12:30 p.m. or 12:45p.m. The meeting would continue until no later than 5:30 or 6:00 p.m. and continue, if necessary, on April 17th.

Mrs. Smith clarified that the order would be to have Attorney James Brindell's comments and presentation, followed by public and staff comments before the Council's decision.

III. APPROVAL OF AGENDA

Mr. Wyett made a motion to approve the agenda. Mr. McLendon seconded the motion which carried unanimously.

**IV. CONSIDERATION OF THE FOLLOWING DEVELOPMENT REVIEW APPLICATIONS FOR NEIMAN
MARCUS:**

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

1. A site plan review approval is required to allow construction of one 57,000 sq. ft. building, replacing six buildings totaling 15,457 sq. ft. Approximately 41,495 sq. ft. will be retail building and 7,274 will be accessory office.
2. A special exception approval is required in this C-WA Zoning District for uses exceeding 2,000 sq. ft. Special exceptions permitted under the Worth Avenue Guidelines are requested relative to 265' building length; 40' height of proposed 3-story building; and sq. ft. of 57,000 in lieu of 15,000.
3. A special exception is requested to provide required parking (underground) for commercial use in the R-C Zoning District.
4. A special exception is requested to construct a 220' long arcade along the road frontage.
5. A variance is requested from the off-street loading requirement providing one space in lieu of three.
6. A variance is requested from the parking space width requirement providing 155 underground spaces with a portion of a building column protruding into the parking space width.
7. A variance is requested from the parking garage drive aisle width requirement of 25' by providing 21.5'.
8. A variance is requested from lot coverage requirements allowing 77% (first floor) in lieu of 75%, allowing 77% (second floor) in lieu of 65%, and allowing 33% in lieu of 30% maximum allowed.

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

Attorney Randolph explained that this was a quasi-judicial procedure. All witnesses would need to be sworn in and ex parte communications would have to be declared.

The witnesses were sworn in by Town Clerk Pollitt.

Ex parte communications:

Mr. McDonald declared he had listened to comments from many, many people and specifically, he has responded to comments from Jesse Newman. Mr. McDonald said the nature of his conversation with Mr. Newman was that he (Mr. McDonald) asked Mr. Newman what the feelings of the Worth Avenue merchants were regarding the proposed Neiman Marcus store.

Mr. Shaw said he had casual comments with many members of the community and lengthy conversations with Mr. Brindell, Mr. Lawrence, and Mr. Goodman in one meeting. Mr. Shaw stated the purpose of the meeting was to review the proposed building, to discuss the design, to look at the traffic issue and the Town-serving issue and to discuss Mr. Shaw's thoughts on the application.

Mayor Ilyinsky said his contacts were much the same as Mr. Shaw's. In addition, he talked to "the Town of Palm Beach"—over 1,000 people regarding this issue.

Mrs. Smith said she had spoken to Mr. Brindell, Mr. Lawrence, and Mr. Goodman in a meeting. They obviously presented the project to her. Mrs. Smith said she had spoken to everyone who had spoken to her regarding the issue in many different Town locations.

Mr. McLendon said his experiences were similar to Mrs. Smith's with the addition of a conversation with Ed Kassatly regarding a presentation about the size of the project.

Mr. Wyett reported he had spoken to Mr. Brindell, Mr. Goodman, and Mr. Lawrence regarding the size of the building, traffic, etc. He added he had also spoken to many Town residents, both pro and con.

Attorney James Brindell said he represented Mr. Murray Goodman and Neiman Marcus. He said he wanted to present a comprehensive presentation on the proposed Neiman Marcus project.

Mr. Brindell said that Mr. Goodman, Tom Lehen from Neiman Marcus, Architect Gene Lawrence, and Attorney Lou Mrachek were present and would be addressing the Town Council at the appropriate time.

Mr. Brindell said the package he was proposing represents a unique opportunity for the Town to obtain a special store focused on the needs of Town persons—to be done by one of the world's premier retailers and one of the highest quality developers who is a resident of the Town. The result will be, perhaps, the opportunity to obtain the most significant architectural contribution to Worth Avenue since Mizner's work was done some seventy years ago. Mr. Brindell said it his client's hope to emulate those good qualities and carry them into the 100 block (of Worth Avenue).

Mr. Brindell mentioned that several applications were filed, and he requested that the filed applications for Neiman's and the Esplanade be included in the record as Applicant's Exhibits 1 and 2.

Mrs. Smith agreed to that request and noted that letters from the general public regarding this application were being received in Town Hall and would be made part of the record.

Mr. Brindell said it was very clear from the hearings held on the issue of the Worth Avenue Guidelines, that the Town Council was interested in seeing a project that was smaller than 57,000 square feet. Mr. Brindell said the application was filed for 57,000 square feet for the reason they are on a very tight construction time schedule because of the Town's construction black out period. This project becomes a two construction season project. It is important from the applicant's point of view, if the project is approved, to start this season with a certain amount of the project that could be sealed off during the down time. Because of the tight time frame, the project was filed at a 57,000 sq. ft. level because those plans had already been prepared. Neiman Marcus has certain requirements to present to their customers what they expect from Neiman Marcus. It is not in the interest of Neiman Marcus to do a project that does not meet the standards expected by their customers.

Mr. Brindell said the objectives were to achieve certain design objectives encouraged by the Worth Avenue Design Guidelines as will be presented by Mr. Lawrence. The presentation will try to enhance the pedestrian comparison shopping character of Worth Avenue which is the way Worth Avenue is described in the Zoning Code. Worth Avenue is obviously different and distinct from the other commercial districts in Town. It is obvious, as well as the quality of the retailers on the street, that makes Worth Avenue a unique street in the world. Mr. Brindell said that Neiman Marcus also wants to provide Town Serving goods and services and wants to enhance the economic strength and future of Worth Avenue.

Mr. Brindell suggested that sometimes something as good as Worth Avenue needs to have some new element to help reinvigorate it and help propel it forward with that same quality into the future. Neiman Marcus is very important to the

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long term viability of Worth Avenue and therefore important as one of the key elements of the Town.

Mr. Brindell said the efforts since the last meeting regarding the Guidelines have been to come up with a reduced project that have resulted in a program that Mr. Lawrence will explain for a project of 52,000 square feet. Mr. Brindell presented photographs to the Town Council—the first one was taken in the 200 and 300 blocks of Worth Avenue. Mr. Brindell explained that the 300 block of Worth Avenue, the old “Mizner” block, had buildings that had three, four, five, and six story elements that are on the street with arcades on the street. They have towers, multi-levels, roof overhangs, and the type of architecture that the Worth Avenue Guidelines encourage re-development to achieve.

Mr. Brindell presented photographs of structures in the 100 block of Worth Avenue showing existing buildings with significant height and mass—the Winthrop House and the Kirkland House that are several stories high and the Palm Beach National Bank Building. Mr. Brindell identified pictures 5 and 6 as viewed from Peruvian Avenue looking toward the Kirkland House as it looms over the Peruvian structures. Mr. Brindell said that Peruvian is a multi-family district and is comprised mostly of multi-family buildings.

Mr. Brindell presented a photograph from the site between the bank building and the drive-in teller lines on the west end of the building. Mr. Brindell identified the park on Peruvian that was part of the arrangement with the Esplanade relative to parking for restaurants some years ago. He said the purpose of the photograph was to provide some context for Mr. Lawrence’s presentation that will show the proposal is within the existing scale and certainly within the scale of what exists in the 300 block of Worth Avenue which is the most revered architecture on the street.

Mr. Brindell said the proposed retail and office uses that are being proposed are consistent with the future land use element of the Comprehensive Plan and the zoning and are permitted within the Worth Avenue District. Mr. Brindell said the applicant was before the Town Council because the proposed size requires a special exception. Part of that is under the “Special Allowances” provisions of the Guidelines. Mr. Brindell went through the key elements of the revised plans: He introduced a document (Applicant’s Exhibit 3) summarizing Worth Avenue building characteristics relative to lot coverage, building height, and building facade lengths, the point being that a number of the buildings on Worth Avenue had more stories than what was being proposed, more coverage than what was being proposed, and had more continuous street building frontage than what was being proposed. What was being proposed was entirely consistent with what was currently on Worth Avenue. He noted that in the R-C District, on Peruvian Avenue, which immediately abutted the site, structures of three stories, up to 35' could be built with a Special Exception. The proposed plan had a 33' height to the top of the beam at the rear of the building, which was consistent with what was allowable in the abutting residential zone. The design was Mediterranean, multi-level, varied roof line, tower elements, with an arcade (which was encouraged by the guidelines), an upper floor residential appearance (consistent with the guidelines), with parking being provided on site to include 220 spaces. He pointed out that there were almost no commercial facilities on Worth Avenue that provided customers parking on site. The project had been reduced to meet the 40' limit to the top of the beam; the original project was 44' to the top of the beam. What had been done was to reduce the third floor by 3' in height, as the first two floors in retail needed a certain height to work well. The third floor was approximately 75' from the rear property line. The mechanical equipment had been moved further toward Worth Avenue. The valet parking and loading dock positions had been reversed in order to create more stacking spaces in the garage, and addressed the concern of neighbors that the drive-in would be too close to their entry/exit garage scheme. A terrace had been eliminated, architectural features to the rear and sides had been added, and store windows had been added to the first floor.

Mr. Brindell asserted that what had been planned and proposed facilitated and enhanced the pedestrian comparison shopping nature of Worth Avenue. Currently there were six little buildings, with parking areas in front. He requested that Architect Gene Lawrence address the Town Council.

Architect Gene Lawrence addressed the Town Council, mentioning that as comments had been received changes had been made. Today he would show the comparison of the original presentation and how the changes had been made. The valet parking entry was to the east of the property. None of the shoppers would be driving into the basement. The only people who would be going into the basement were the valets and employees. All shoppers would be dropped off at the valet. A comment had been made that there may be people on the Peruvian lot coming out of the garage. The only exit there was an emergency fire exit for the people who would be in the garage in the event of an emergency. No shoppers would be there, and the only time that exit would be used would be if there was an emergency. In order to alleviate traffic concerns, the automobile access was changed to the west, the loading dock was changed to the east, and the park stayed where it was. This gave six stacking spaces on the property for the facility. Comments had been made that the Esplanade seemed to work fairly well in terms of the stacking, and the proposed plan had slightly more stacking space.

There would be no automotive entrances, trash, parking, or commercial coming off Peruvian at all. Everything worked from Worth Avenue. Mr. Lawrence exhibited the garage plan, pointing out ramps, and ingress/egress schemes. The issue of the variance for columns or protrusions in the parking places were indicated on the exhibit, with a column at every three parking spaces, with one-third of those having a protrusion of six to eight inches. There was another variance for the total depth. He exhibited the reverse plan, showing a smaller facility under Peruvian. Some of the neighbors on Peruvian objected to having the underground parking there, and Mr. Lawrence said that it could not be eliminated, but it could be reduced by 17 spaces.

Mr. Lawrence noted that the first floor plan, with the valet parking to the east, the loading dock to the west, and the entrance off Worth Avenue showed the preliminary marketing plan, and the dimensions were very critical in accommodating the departments provided. There was cosmetics and fine jewelry, with the men’s department in the back, escalators in the center, and leather goods.

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Mr. Lawrence exhibited the reverse of the second floor which was essentially ladies wear. He explained that most of the reduction work had been done in reducing the third floor. He exhibited the third floor as originally submitted, and explained that it had been reduced from 9,150' to 4,150'. That enabled one air conditioning unit to be moved into the tower, and two units to be moved back. The whole third floor had been moved away from the residential property.

The roof plan was to have all roof top equipment concealed so that no one would be looking at mechanical equipment. All equipment would be screened with a trellis, be in a specific structure, or be in the tower.

Mr. Lawrence pointed out that comments had been given on using less space visually and physically, and exhibited the revised street elevation, with reversal of the building. Substantial reductions had been made, and the larger tower had been moved back from the sidewalk to the base of the building in order to reduce that mass visually. The east elevation had been modified to eliminate some of the second floor space, with fenestrations added.

Mr. Lawrence referred to an exhibit of the Esplanade, noting that the second application asked for permission to put an arcade along the facade of the Esplanade, so that there would be compatibility of the two arcades on each side of the street. Mr. Lawrence requested that Mr. Blakely address the bumpers and screening.

Landscape architect Jeff Blakely presented the proposal for the landscape plan, which consisted of three parts: a new park, screening for the residential properties to the north, and embellishments for both east and west facades. He explained the plan in detail according to exhibited materials.

Mr. Lawrence commented that the intent had been to listen to staff and others, and to respond to those comments, as reflected in the plan presented today. The building was reduced in size, both visually and physically, the building was reversed in order to address the traffic situation, still completely parked, and within the Worth Avenue design guidelines. The HVAC equipment had been moved back, and decibel levels would meet Town Code.

In response to the query of Mayor Ilyinsky, Director of Planning, Zoning & Building Moore responded that it was not unusual for applicants to request variances and special exceptions on new construction.

Mr. McLendon asked what attempts had been made to get back into the allowed lot coverage?

Mr. Lawrence replied that there was more than enough green space and the property was well under the land coverage. If the park was not considered a part of it, they would be 2% over, but that percentage was very critical to developing the sales spaces. If the ground cover was figured with both parcels of land, which were included, the figures were way under Code requirements.

Mr. Brindell commented that because parking was provided on site, it was required that it be underground. If surface parking was used it would contradict the guidelines and the pedestrian/comparison shopping nature of the street. Underground parking required ramping down, curvature, stacking spaces and loading areas. The valet and loading areas on the first floor took up 13.3% of the lot coverage. The reality was that the second floor would then have to be larger to make up for what could not be included on the first floor. The third floor had only about 12% of the lot coverage in habitable area. The remaining 21% of that coverage was comprised of screening for mechanical equipment and the required exit stair. Mr. Brindell explained that it was a function of the way calculations were done to try to achieve multiple objectives.

In response to Mr. Wyett referring to the area under the arcade, Mr. Lawrence explained that there was 8' clear under the arcade, as the planting strip had been relocated.

Mr. Brindell noted that there would be no restaurant proposed in the building. He pointed out that the Peruvian lot had been in existence and used as a parking lot for each of the preceding five years, and the applicant would certainly be willing to enter into a Unity of Title between that property and the other pieces of property that were currently owned as one, and had functionally operated that way for a number of years.

Mr. Wyett referred to the garden effect on Worth Avenue closely adjacent to 125 Worth Avenue, and asked what had happened to the agreement between the Town and the Esplanade relative to that purpose?

Mr. Brindell replied that one of the things being requested in the application was for the release of that Unity of Title, since, based on the parking studies done at the Esplanade this year, there were never fewer than 80 parking spaces vacant at any one time in the Esplanade. The Town had never had a complaint that there had been inadequate parking there. The reality was that the spaces at the Esplanade were never full, and Mr. Brindell advised that he saw no purpose in continuing that Unity of Title.

Mr. Brindell introduced Tom Lehn, from Neiman Marcus to make a presentation to the Town Council. He explained that Mr. Lehn had extensive experience in the planning and development of new facilities of this type. He was the Senior Vice President of Real Estate Properties and New Store Development at Neiman Marcus, with an unusually broad range of responsibilities.

Mr. Wyett noted that there was concern about the underground exit on Peruvian from the underground garage, and asked if it would be an active exit?

Mr. Lawrence responded that one would not be able to get into it. There was a Code requirement that there had to be two

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means of exit, and there was a minimum distance of separation between the two exits. The only people that would be down there would be the valet parkers and the employees, and the exit would only be used in an emergency.

Mr. Brindell pointed out that in the Neiman Marcus operation they did not allow employees to park themselves—they were valet parked also, so in reality the only people that would be down there would be valet parkers.

Mr. Tom Lehnert addressed the Town Council, stating that he was Senior Vice President of Real Estate, Properties, and New Store Development at Neiman Marcus. Responsibilities related to that included real estate functions, and capital planning and financial investment analysis associated with all of the store buildings and interiors. He noted that on an annualized basis Neiman Marcus invests anywhere from \$50-70 million dollars in capital improvements. All of that management analysis and investment was his responsibility. He was also involved in store planning and design, building design and construction, visual merchandising and display, property management, post-opening, and purchasing of all manner of things not marked for re-sale. He graduated from University of Illinois School of Fine and Applied Arts, with a major in architecture and a minor in music, as well as a degree in structural engineering. He had been one of three principals in an architectural firm from 1962-1975, and then joined Federated Department Stores through 1988. Late in 1988 he moved his career to Neiman Marcus and continued with that career to date.

Mr. Lehnert advised that Neiman Marcus wanted to be a retailer serving the town persons in Palm Beach with the same quality of service and merchandise that Neiman Marcus served in its other 32 markets. The Palm Beach store would be quite different in one respect— it would be much more specialized, and much more narrowly focused. The store would in no way be operated as a regional serving store. Other developers in the neighborhood had encouraged regional stores in other areas of Palm Beach County, but after careful analysis of market opportunities, the conclusion was that a small store focused on the Town of Palm Beach would make the most sense. As a consequence, the store would be much smaller than the other stores, and would be the most seasonal of all of the stores. The proposed store would complement the existing retail opportunities on Worth Avenue, and strengthen the economics of all of the stores on the Avenue. Experience indicated that the store would result in town persons spending more dollars on Worth Avenue in the stores beyond Neiman Marcus than they would otherwise have spent absent the presence of Neiman Marcus. He read the mission of Neiman Marcus: Neiman Marcus was a renowned specialty store dedicated to merchandise leadership and superior customer service. He noted that the finest fashion of quality products would be offered in a welcoming environment. In order to accomplish that mission, 52,000 square feet was needed. Normally, in the full line stores there would be 29 departments, requiring anywhere from 145,000 - 200,000 gross square feet. The size was dictated by the number of departments offered, and by the depth and breadth of the assortment of merchandise carried in each department. The visual presentation standards also played an extremely important role in space allocation and utilization. The only way a normally sized Neiman Marcus store could be reduced in size was to eliminate total departments, and then downsize the remainder. That was precisely what had been done to get to 52,000 square feet. Departments that had been excluded included such things as childrens, ladies suits, ladies casual collections, dining rooms, espresso bar, and stationary, which was a 31% reduction in the number of departments, representing a 32% reduction in area, based on the prototype store size. He produced an exhibit which he distributed to the Town Council, Exhibit 2, showing the minimum size of each department in the proposed store, depicting the departments, area of each department, the prototype size of each department in a full line Neiman Marcus store, and a generic description giving an idea of the content of each department. There would be a total selling area of 32% of the typical regional serving store. Clearly the Palm Beach store would be the smallest store, but be very appealing to the Town of Palm Beach.

Mr. Lehnert displayed visual material, as Exhibit 5, exhibiting merchandise and presentation of it as compared to other stores, indicating the use of space and display material. He submitted that the merchandise in Neiman Marcus needed to be presented in a fashion where it could breathe, which spent real estate square feet.

Mr. Lehnert displayed visual material of the exterior of the proposed store, (Exhibit 6) demonstrating the difference in architecture from other Neiman Marcus stores. The regional service center would be located 70-80 miles from Palm Beach, and would perform the whole receiving/marketing function, so that merchandise would come to the store “store ready.”

Mr. McLendon commented that there seemed to be too many dressing rooms, and suggested that they could be moved to save space.

Mr. Lehnert replied that selling associates operated like business people, having a specific clientele. The fitting room was also a mini office for the selling associate, each of whom was assigned a fitting room. There was much more salesmanship that went on in the fitting room than on the selling floor, and the relationship with the customer and selling associate was very unique. Reducing the fitting rooms would cramp the ability of sales associates to service the customer consistent with the mission of Neiman Marcus.

Mr. Brindell submitted as Exhibit 7, a report by H. S. Gould Associates, which supported the Town serving requirement, and was a more typical marketing analysis, concluding that at least 55% of the customers in the first year would meet Town serving criteria.

Mr. Brindell noted that the concurrency letter obtained from Palm Beach County for a 57,000 square foot store accepted a distribution of traffic of 75% on Island, 25% off Island, which was included in the traffic report. He then requested Henry Skokowski, Urban Design Planner, to give his views of the project relative to the uses proposed, the nature of the mid-Town area, adjacent residential, and the Worth Avenue character.

Mr. Henry Skokowski addressed the Town Council stating that he had a company based in West Palm Beach called Urban Design Studio, and that he had a degree in architecture from the University of Illinois and a Master's Degree in Urban

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Design from North Carolina State University. His background was principally in design, and his business practice was principally in the area of development consulting for private developers, as well as communities in redevelopment planning efforts. He had reviewed the Worth Avenue Design Guidelines, and noted that evaluating the project with respect to the design, style, and elements that had been incorporated indicated that they were clearly present in the architecture submitted. The building had been scaled down to be consistent with the area. In the guidelines there was a very clear statement of Worth Avenue urban design goals:

- Being consistent and compatible with street spaces: Emphasis on individual expression was discouraged, and relating to the historic character of Worth Avenue was encouraged. He advised that it was his opinion that had been accomplished.
- Development continuing to reinforce the pedestrian orientation with arcades and display windows: Clearly that had been accomplished
- The quality of architecture in reducing the apparent bulk and taking the building and making it look like it was composed of smaller parts incorporated shadow patterns and interesting visual elements.
- Creating a diverse mix of activities that continue to attract quality development to Worth Avenue: The design guidelines not only speak to design, but the whole purpose of design is really to accomplish some large objectives: to create a town center, to create a main street, to create a Worth Avenue which has a certain function, image, and will be used in a certain way by people.
- Pedestrian character: The pedestrian extension of Worth Avenue was the most significant change.
- Unique character of the older area and promoting continuity: referencing new projects respecting the existing development scale and architecture. The character in scale was being accomplished.
- The number one goal in the guidelines was to protect and enhance the Avenue's market appeal for the benefit of the residents of the Town. That was being accomplished.

Mr. Skokowski commented that in regard to the residential character and compatibility issue, the upper floors were not used as residential, but were designed to appear as residential and to be compatible visually with the abutting development. Providing for the parking underground needed to be accommodated physically some way, and was a compromise that would have to occur. The textured paving character of the pedestrian area in front of the store would be continued into the valet drop off area, and would be a very pedestrian-friendly type of environment, as was the valet service.

Mr. Brindell submitted the curriculum vitae of Mr. Skokowski for the record. He then introduced Anna Cottrell.

Ms. Anna Cottrell, Planner, addressed the Town Council, stating that her background included a B.A. in Urban Planning, and graduate studies at Virginia Commonwealth University in Urban and Regional planning. She had been a planning consultant for the last 13 years, and was now president of a planning/consulting firm in West Palm Beach primarily doing development consulting. She had been asked to review the Neiman Marcus application and formulate some conclusions about the proposal relative to the planning issues. She stated that she concurred with the conclusions of Mr. Skokowski, particular relating to the building design and their consistency with design guidelines. She had considered two very specific issues relative to the proposal, which were the same issues that would be looked at by a planner for every development proposal: is the use proposed permitted and appropriate, and is the building or structure permitted and appropriate? After reviewing the requirements of the Town and the specifics of the application, the existing development on Worth Avenue and the surrounding development including the surrounding mix of uses, the answer was an unqualified yes. The specific proposal included some unique features that were consistent with a high-end retail comparison shopping experience, relative to the parking that was provided, where the loading was provided, the complementary nature of this to other uses on Worth Avenue, and the provision of a pedestrian shopping experience. It also related to its definition as Town serving. In this case testimony had confirmed that this was not a region serving retail commercial business. This was specifically Town serving and the proposal had been tailored to meet that requirement of the Comprehensive Plan. The proposal met the test of concurrency. It did not present undue impacts on Town services and facilities, and it met the requirements and the criteria for approval for Special Exception. It was important to note that the specific site presented for development was noted as the only area on Worth Avenue that was ripe for redevelopment; where redevelopment was desirable because existing conditions did not represent the quality or the type of the development that was desired or was consistent with what was existing. In this case it would replace some undesirable conditions. The particular use was compatible with existing uses on Worth Avenue and it was compatible with the surrounding uses. There were no interior types of services that would capture the customer within the store. The proposal lent itself to having a car parked and shopping at this particular store, but also being drawn to shopping for comparison purposes at other stores on Worth Avenue. The waivers that were being requested to allow the building were very, very minimal. The proposal was substantially in compliance with the Code, and the waivers produced no negative impacts, and allowed the building and the development to meet the intent and purpose of the Worth Avenue guidelines and other development regulations which applied. In reviewing the appropriateness of any structure that was being presented it was always important to look at it in the terms of context. Mr. Skokowski had given testimony relative to its consistency with what development was occurring in the 300 block of Worth Avenue. That development in the 300 block was seen as the very nature of what makes Worth Avenue special. The proposed building was entirely consistent with that, and provided an anchor.

Ms. Cottrell noted that it was also appropriate to look at whether the development was appropriate for the site conditions that were presented, and in this case there was no question that it was. The level of development was physically possible.

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It could be achieved with conventional construction methods, and it was at a moderate intensity. This was consistent with the traditional mid-Town area. The building provided a number of breaks in the facade so that it was not one massive block. There was an interest generated by the window treatments, that encouraged the pedestrian to continue to walk down the sidewalk. Some unique features of the proposal that were important were the fact that there was no restaurant in the store, the range and type of goods contributed to a comparison shopping experience and complemented other retailers in the area—that was the very definition of Town serving as indicated in the Comprehensive Plan. The valet parking also contributed to the continuous facade with no breaks for parking, as well as the safety aspect for pedestrians. The architecture was absolutely consistent with what was represented as the best of Worth Avenue.

Mayor Ilyinsky commented that Palm Beach would always remain a single and multi-family town. Ms. Cottrell had not mentioned the effect of the proposed construction on citizens living on Peruvian Avenue. Urban planners had not mentioned people one single time, and Worth Avenue was a lovely street in a single and multi-family area. Essentially, he noted that he had nothing against the Neiman Marcus project, but stressed that the people living on the streets behind it must be considered. He asserted that the citizens were the single most important element in any planning that went on in Palm Beach.

Ms. Cottrell noted that she had alluded to it, and one of the things she had reviewed was whether there would be impacts on the adjacent property owners, and she had concluded that there were no adverse impacts on adjoining properties in the surrounding areas.

Mr. Wyett disagreed that there would be no adverse impacts, as there were two private homes behind the building, and other properties on Peruvian. He maintained that there would be an impact on these properties, as well as on the amount of traffic coming in off the bridges. Worth Avenue was not directly connected to the egresses of the Town, which would mean vehicles coming down one of several residential streets. He expressed that he had a great respect for Neiman Marcus, and would like to see the store in Town, but was greatly concerned regarding the traffic studies.

Ms. Cottrell explained that, in her review as a planner, what she had concluded was that there were no adverse impacts, and that there were no impacts that could not be anticipated from the adjacency of commercial to residential, which occurs. It was very much in the vein of a traditional Town mix-used concept, where there was adjacency of residential with commercial. There was no direct negative adverse impact on the adjoining properties because of the way the building had been designed with respect to the setbacks, buffering, and the moderation of the intensity.

Mr. Brindell submitted the curriculum vitae of Ms. Cottrell as Exhibit 9. He recalled that there had been an affidavit, at the other hearings, from John Bell, an architect in New York, who had also reviewed the project, and concluded that he believed it emulated the strong stylistic qualities of Worth Avenue epitomized by the original Mizner architecture, and maintained the original scale in the building. He introduced that affidavit as Exhibit 10. He submitted the letter from Mr. Duany commenting on the project as Exhibit 11. Mr. Brindell then introduced Mr. Wentzel, traffic consultant.

Mr. Jerry Wentzel, Vice President with DKS Associates, transportation consulting firm, addressed the Town Council, stating that his background included a Bachelor's Degree in Civil Engineering, a Master's Degree in Transportation Engineering, and practice as a transportation engineer for 30 years. He had worked on development projects throughout the U.S. and overseas, with a good deal of his experience being in Palm Beach County. He explained that work on the traffic study for Neiman Marcus had been started last summer. The first task had been to address the Palm Beach County Traffic Performance Standards. He explained that those required using standard rates from the Institute of Transportation Engineers, which typically referred to a free standing store in a suburban area, with a small grocery store or drug store. Obviously that was not what was being proposed by Neiman Marcus, but that was the type of traffic rate that had been used as a standard. In looking at those, excessive traffic from that type of generation rate was recognized, but analyzation had to take place under those conditions. The Palm Beach County Transportation Department had determined that their traffic performance standards had been met. He believed that also had met the Town of Palm Beach traffic performance standards. Since then the opportunity had presented itself to measure characteristics of traffic and parking. The most comparable development had been the Esplanade. Starting in December, the cars going in and out had been measured, as well as the number of parking facilities. He explained that there had been approximately 72 hours of traffic counts, including the Friday and Saturday between Christmas and the New Year holiday. Traffic data had resulted in the finding that the Town of Palm Beach actually peaked in March, not in December, and the more detailed studies had been carried through March. It was found that the generation rates were about one-fourth of what was being assumed in traffic analysis. The generation was therefore a lot less than what had been assumed, since the project involved a high end retail establishment that generated higher sales per activity, with fewer customers. The analysis confirmed that approximately 75% of the traffic was coming from the Town of Palm Beach, with 25% coming across the bridges, with the highest percentage of that coming across the Royal Palm Bridge. That traffic, even during the peak hours, represented 20 cars in each direction during the highest one hour. Currently the bridge was carrying approximately 2,000 cars during that same hour. This was a very minor addition to traffic on the Royal Palm Bridge. The analysis had been carried through all the roadways in Palm Beach, and showed both on a daily and peak hour basis what the levels of traffic were currently, what was expected when Neiman Marcus opened, and how much traffic the development would contribute. In all cases, traffic was far below the capacity of those roadways. Intersections had been looked at in more detail, such as County Road and Worth Avenue, and data revealed that there was not a capacity problem, but traffic problems related to activity occurring, such as FedEx trucks, parking spaces, etc. Traffic never backed up for more than 5-10 minutes at a time however, and traffic from the valet operation at the Esplanade had never been observed. Parking data had been gathered, (the Esplanade had 90,000 square feet, 353 parking spaces) and the peak in March had been between 270-219, with an average of about 245. The 270 figure represents 3 spaces per thousand square feet. Code requirements for retail were 5 spaces per thousand square feet. There had never been less than 80 parking spaces available. The garage was never closed because of being full. Because of the unique nature of the project, more time had been spent than on a typical analysis. When there had been congestion at the intersection of County

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Road and Worth Avenue it had not been related to the volume of cars, but to the activity on all four corners. It would be difficult to control that. The highest hour counted on Worth Avenue had 325 cars westbound on the one way street. The contribution that was projected from the Neiman Marcus store would contribute 73 cars.

President Smith asked if two-way traffic had been considered on the 100 block of Worth Avenue in an effort to alleviate traffic from South Ocean Blvd?

Mr. Wentzel replied that he had looked at the possibility of having two way traffic on Worth Avenue and it would involve parking movement problems, and add conflicts that currently do not exist. The benefit of two-way operation would be that it would reduce circulation. Currently people driving to Worth Avenue have to go to Ocean Blvd. Two-way operation would relieve some conditions on Peruvian and the parallel roads. Overall, he considered the current one-way operation was better.

Mr. Wyett commented that he had observed traffic on Worth Avenue in March, and had noted a back up of traffic. While the street may be designed for 1,000 cars per hour, it could not handle that volume at peak times. He expressed concern about keeping the quality of Worth Avenue. He noted that he took exception to the figures of Mr. Wentzel that 75% of the traffic was generated by Palm Beach, which seemed extremely high to him.

Mr. Wentzel replied that he agreed that the capacity of Worth Avenue of 1,000 cars would not work on that street, however, that had to do with the activity, not the volume. The real advantage of a development providing off street parking was that it would eliminate the additional hassle of cars moving in and out of parking spaces on the street. He noted that the traffic analysis on the bridge projected an increase of 11 cars in each direction in the highest one hour out of a total of 2,000 cars. Even if that figure was doubled, the impact would be minor on the bridge crossings.

In response to Mr. Shaw, Mr. Lehnlen replied that his forthcoming comments would be based on experience, not on statistics or reports. Neiman Marcus had two extremes of types of stores—curbside, and major metropolitan regional shopping center servicing a huge area of a community. A specific example of a curbside extreme was in Los Angeles, where there was a similar Neiman Marcus store as that proposed. That store would generate \$110 million in sales in this fiscal year. Parking was located adjacent to that store, providing parking at the ratio of 1-1/2 to 1. That was 1.6 cars per 1,000 square feet. It was fully valeted, and business was generated by a combination of pedestrian traffic and motor car arrivals.

Mr. Shaw responded that he was trying to put a number on what was expected, from the standpoint of an even flow of traffic, as to how many cars would be expected to come to the store on an average hourly basis, from the hours of 10:00 A. M. - 5:00, P.M.

Mr. Lehnlen replied that analyses were generated from gross sales volumes, not from the customer count. He did not have statistics for per customer amounts, as numbers were not analyzed that way. The total number of cars, or customers, was not analyzed. He did not expect that it would be any different in density or intensity than the Esplanade currently represented.

Mr. Shaw expressed concern over the 25% figure given of people coming across the bridges, and asked how the Town could be assured that more off-Island people were not attracted, and how the marketing could be governed to be a Town-serving market?

Mr. Brindell explained that the detailed explanation provided by Mr. Lehnlen had explained how they had narrowly edited the store, and made it clear that there would be narrow appeal. It would be very unattractive to most people off-Island, and the decision had been made that the market to serve would be the Town of Palm Beach. Real data had been collected from the Esplanade, and it was estimated that the proposed store would not generate any more traffic than the Esplanade.

Mr. Shaw replied that there were a number of other Saks Fifth Avenue stores within a 20-30 mile range, which was not the case with Neiman Marcus. He asked how the store would not attract more off-Island people?

Mr. Brindell responded that the Town Code defined Town-serving, which was 50% or more, and the store would meet that test. The transportation analysis and data had been provided, however, it was not possible to enumerate how many trips would be made or exactly how many off-Island people would use the store.

The meeting was adjourned for a luncheon break. After being reconvened, Mr. Brindell noted that Mr. Wentzel had commented regarding the 75%/25% figures for Town and off-Island people in the market study, remarking that figures for trips versus customers could not be interchanged, because typically people who live closer to a place to shop would go there more often than people who lived further away. Evaluating the number of trips would involve taking into account the location of residents as relative to the site being studied. While 45% of the customers could come from off-Island, they would not represent 45% of the trips—that connection could not be made. He explained that Mr. Wentzel had taken the Esplanade data, applied it to Neiman Marcus, and determined new trips on the street in peak hours and peak season. Mr. Lehnlen had then been asked to determine whether he believed the Neiman Marcus store would fall into line with those figures.

Mr. Wentzel stated that, based on in-season data, the Neiman Marcus store could be expected to add 22 cars coming from Ocean Blvd. towards the driveway going into Neiman Marcus, and 22 leaving the driveway going toward County Road in an average hour. In the highest hour, in a peak time, that number could be 46 cars coming from Ocean Blvd. towards the driveway going into Neiman Marcus, and 31 leaving the driveway going toward County Road.

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Mr. Brindell introduced Diane Jenkins, Appraiser, placing her resume as part of the record as Exhibit 13.

Ms. Diane Jenkins, Jenkins Appraisal Services, addressed the Town Council, stating that she was a state certified general real estate appraiser, which was the highest designation through the State of Florida, and held a degree in Business Administration from the University of Florida, was a member of Association of Eminent Domain Professionals, and the Right-of-Way Association, and had been in the business for over 24 years specializing in eminent domain work. She had reviewed the condominiums at the end of the street to see what had happened in the past years to those condominiums in relationship to their general appreciation, as compared to other condominiums which were not adjacent to a commercial street/area, because if there was less of an appreciation found in those buildings than in other condominiums that would help indicate that they were being impacted negatively. She had not found a difference in the appreciation of those condominiums as compared to other condominiums. She had reviewed market research to determine what kind of trends were taking place, and one trend had been that there had been several situations where single family homes had been purchased, and demolished after being purchased, with multi-family buildings being developed. In a multi-family neighborhood such as this, that was not an unusual situation. Property values of residences adjacent to taller buildings, with more intensity of use, had not been found to be affected, and there had not been a negative impact. One of the reasons for this was because the buffering had been excellent, and people were well-buffered from the surrounding commercial use. Additionally, the neighborhood was in town and near restaurants, shopping, etc., which was considered a benefit to some.

Ms. Jenkins commented that she wanted to give special attention to the properties immediately adjacent to the subject property, noting that she had walked in that area and noted that the buildings were very close to the property lines and were in a terrible state of disrepair, with air conditioning compressors directly adjacent to the existing single family houses. She noted that she had looked at the proposed project to see how the properties would be impacted afterwards. The houses that were there now were two-story, although not in very good condition. The portion of the subject building abutting the properties was also two-story in nature. The fact that the north face of the proposed building was designed to have a residential look made a big difference. If this was a case where there were functioning windows, doors, dumpster, etc., that would be a different situation for the adjacent properties. The fact that there would be one owner coming in with a proposed project on Worth Avenue was a plus for surrounding property owners and carried less of an impact for them. She noted that currently the surface level parking lot was often full, and if that area became a park area that would be a better scenario for surrounding property owners, and that she had not found the underground parking to be detrimental in any way.

Mr. Brindell observed that one of the streets that abutted Worth Avenue was Golf Road, and almost all of the homes there had been landmarked and seemed to appreciate in value quite well, even though they abutted the commercial area on Worth Avenue. He concluded the presentation, offering to hear comments for response.

Mr. Brindell submitted additional documents for the record: The resume of Mr. Wentzel, as Exhibit 14; the traffic study and concurrency letter from the County, as Exhibit 15; the report summarized by Mr. Wentzel on the parking and valet operations at the Esplanade, as Exhibit 16; copies of the letters sent to Mr. Bowser that had been received from the utility companies, as Exhibit 17.

Mr. Shaw commented that there were a number of construction related issues that were part of the application that would fall under the jurisdiction of Building Department, Public Works Department, Police Department, Fire-Rescue Department, etc., and asked if all standards would be met both from a code and industry standards of operation.

Mr. Brindell stated that the applicant believed all of the issues could be worked out appropriately.

President Smith stated that public comment would now be heard.

Mr. Louis Pryor, resident of Palm Beach, and Co-Chairman of the Palm Beach Civic Association addressed the Town Council, stating that the approval by the Town Council of the Revised Worth Avenue Guidelines was a prelude to Neiman Marcus applying for a Special Exception. At that February 9, 1998, Town Council Meeting held to discuss the proposal to change those guidelines, the Palm Beach Civic Association addressed a statement to the Town Council, expressing the concerns of residents about the potential negative impact of the Neiman Marcus store in the community. The statement specifically called attention to the inevitable influx of non-resident shoppers or strollers from greater Palm Beach County. The closest other Neiman Marcus store was in Fort Lauderdale, and Mr. Pryor stated that it was difficult to assume that Neiman Marcus could prevent large numbers of curious people from coming to Palm Beach to shop or to browse. There was a widespread fear in the community that the store would draw an inordinate amount of traffic toward the center of Town, even though the traffic study submitted concluded that the proposed Neiman Marcus store would attract only negligible traffic to Worth Avenue. He called attention to the Town serving requirement of the Town Code, which said "that the proposed use will not attract the principal portion of its customers/clients from off-Island locations." He noted that the Frederic R. Harris report said that 75% of Neiman Marcus patrons would come from the Town of Palm Beach. Importantly enough, the Harris report was based upon another prediction, Neiman Marcus' own marketing forecast, and the distribution of credit card holders. The prediction of the mix of customers was as unreliable as isolated traffic impact studies. He asserted that, despite current affirmation procedures, many commercial establishments in Town were not really Town-serving.

He then referred to the mid-Town bridge problem. In the two months since the February 9th Town Council meeting it was discovered that the mid-Town Royal Park Bridge would have to be completely re-built, and that had deepened anxiety about traffic problems in mid-Town. He maintained that if the Neiman Marcus application was approved, the store would probably open just as the Florida Department of Transportation (FDOT) started construction on a new bridge, closing off

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two of the four lanes on the existing bridge. No doubt, off-Island customers would decide to use the directly connecting roads from I-95, and would find the Okeechobee access to the bridge a bottleneck, thus using the alternative bridges, just as Town residents would, resulting in gridlock on north/south roads. The Palm Beach Civic Association once again wished to register its serious reservations about the Neiman Marcus application, as the Town was first and foremost a residential community. The Town-serving ordinance was intended to protect the residents from excessive off-Island traffic, but in practical effect, sometimes that ordinance lacked teeth. He suggested that a traffic study should be conducted on a 50% reduction in the use of the mid-Town bridge, which he was sure would show traffic congestion. He submitted that universal inspection procedures should be established to ensure that all commercial establishments in the Town were truly in compliance with the Town-serving Ordinance. A graduated structure of penalties should apply uniformly to all violators. In conclusion, Mr. Pryor urged the Town Council to either take extra measures to preserve the residential quality of life on the Island, or (if the traffic study on the impact of the 3-year minimum interruption of the mid-Town bridge raises any alarms) declare a general moratorium on all applications for projects that would increase traffic on the Island during the minimum 3-year mid-Town bridge use reduction.

Attorney Karen Roselli, with the law firm of Becker & Poliakoff, addressed the Town Council, representing the Winthrop House Condominium Association, 100 Worth Avenue. She submitted that the Town Council was sitting in a quasi-judicial capacity, deciding whether or not to grant the numerous variance and special exception requests of Neiman Marcus. The substantive burden was on Neiman Marcus to prove that each and every one of its requests was consistent with the Comprehensive Plan, and met all of the criteria for a variance or a special exception, depending upon the request. With each application, the decision must be supported by substantial and competent evidence. The Winthrop House Condominium Association had identified four aspects of the zoning requests of Neiman Marcus, which it strongly objected to:

- The approval of the site plan as presently proposed. The opposition to the site plan was primarily based on the square footage, mass, and lot coverage of the building, and the resulting negative effect that this would have on traffic in the area.
- Special Exceptions items B.1, and B.2, requesting the allowance of a retail establishment of 57,000 square feet, reduced to 52,000 square feet, which was 50,000 square feet in excess of the 2,000 square foot maximum for retail establishments in the Worth Avenue Zoning District. Notably, the 5,000 square feet scaled back was not in the selling space area of the store, but was on the third floor, which was primarily administrative area.
- The Variance Request pertaining to existing lot coverage requirements for each of the three floors of the proposed three-story building.
- The Waiver of Construction Times and Hours, which would extend construction up to Christmas Eve, December 24, 1998, with work hours beginning as early as 8:00 A.M. and extending as late as 7:00 P.M.

Ms. Roselli stated that Neiman Marcus had requested a Special Exception from the general zoning requirements to allow a retail use of 26 times the size currently permitted by the Zoning Code. The Town had authority to grant special exceptions only when the proposed use fully complied with the requirements of the Zoning Code. In this case, the purpose of the special exception provision was to permit limited special allowances, only to the extent that the allowances did not defeat the purpose of the Town Serving Zoning District, and were consistent with the Comprehensive Plan. The Town-serving establishment, as defined by the Code, was the building of approximately 2,000 square feet of interior gross leasable area, and one which did not engage in advertising designed to attract patrons other than Town persons. In order to attain a special exception for an increase in size, the applicant must prove, among other things, that not less than 50% of its customers would be Town persons. The Neiman Marcus application simply stated that the proposed use would be Town serving, and that not more than 50% of its customers would be from off-Island locations for the first year only. The application went on to repeat each and every special exception criteria contained in the Code, without any factual or legal support in the application stating that the criteria had been met. It was not until yesterday, that a report, prepared by H.S. Gould and Associates, on the Town-serving nature of the store, which was dated April 14, 1998, was transmitted to the Town Council, and made available to the public for review. After reviewing the report, Ms. Roselli stated that it was her opinion it was nothing more than a marketing study that identified the profiles and characteristics of the typical Neiman Marcus shopper. The report, like the earlier presentation by Mr. Lehnert, offered no documentary evidence to demonstrate that the store would be Town-serving. Mr. Lehnert and the H.S. Gould report noted that the proposed 52,000 square foot Neiman Marcus store was the smallest Neiman Marcus in the U.S., which did not prove in any way that the store was Town-serving, or that it should exceed the 2,000 square foot limitation of the Code on retail establishments. The focus today should not be on how small the store was, compared to other Neiman Marcus stores, but rather how large the store was in comparison to the other retail stores on Worth Avenue. Given its scale and mass in relation to stores on Worth Avenue, and the Code requirements, it was a stretch of the imagination to conclude that a 52,000 square foot store of a national chain of retail stores would be Town-serving. This store, like a major anchor in a mall, would draw upon the region from persons far beyond the Island. Neiman Marcus would make Worth Avenue a regional, rather than a local destination. The study also concluded that due to the small size of the store, the majority of its sales would come from the Town of Palm Beach. This conclusion overlooked the fact that a 52,000 square foot store was not a small store in comparison with the other stores on Worth Avenue, and the square footage requirements of the Code. Because a 52,000 square foot store was small in comparison to other Neiman Marcus stores did not necessarily mean that the majority of the store sales would come from Town persons. No one from Neiman Marcus could say how many customers they wished to attract to the store. A third conclusion of the study was that a vast bulk of sales of Neiman Marcus was derived from households with incomes of over \$100,000, and that because Palm Beach was a small, wealthy community, there was a predisposition of Town residents to

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shop at Neiman Marcus. This conclusion fails to relate how some unsubstantiated statistic demonstrates that this store will be Town serving. There are two other Neiman Marcus stores in the State of Florida, located in Ft. Lauderdale, and Bal Harbour, and it would be illogical to conclude that members of the numerous households with incomes in excess of \$100,000 through Palm Beach County would drive an extended distance to Ft. Lauderdale or Bal Harbour, and not shop at the Worth Avenue store because it had "edited its merchandise to target only the local Palm Beach market." This same reasoning held true for seasonal residents and out of Town visitors staying at hotels in Palm Beach. The report only demonstrates that wealthy people, meaning people with household incomes in excess of \$100,000, regardless of where they live, are the profile of a typical Neiman Marcus shopper, but it did not show why Neiman Marcus would be patronized primarily by the residents of the Town of Palm Beach. In summary, there was nothing in the report on the Town serving nature of the store to justify the position of Neiman Marcus that the store would truly be Town serving, as that term was defined by the Zoning Code. In addition, there were no reliable factual findings bearing on the actual effect this proposed Neiman Marcus would have on traffic, and the other special exception criteria to prove that an increase in square footage was truly in the interest of the public health, safety, and welfare. Neiman Marcus had also requested a variance pertaining to lot coverage on the three floors of the building. Obviously, this variance request was dependent upon the approval of the special exception for increased square footage. A variance, like a special exception, is relief from the enforcement of a zoning ordinance that permits the use of property in a manner otherwise forbidden when there was a finding that enforcement of the ordinance would inflict unnecessary hardship on the property owner. Unnecessary hardship meant difficulties unique to the parcel of property involved in the variance application. The hardships must be peculiar to the property, and not general in nature. The request for increase of lot coverage by Neiman Marcus was not occasioned by an unnecessary hardship, or practical difficulty with this particular property, but is requested solely for Neiman Marcus' own economic advantage. The variance request also failed to satisfy the mandatory requirements for a variance under the Town Zoning Code. The application for this variance, like the application for special exception related to square footage, contained only self-serving conclusions, which were unsupported by facts and evidence, and because the criteria for a variance are not met, this request, as well as the request for special exception, should be denied. At the series of public hearings held on the amendments to the Worth Avenue Design Guidelines and the Zoning Code, the Town Council repeatedly assured the citizens that when Neiman Marcus finally comes forward with an application for development, the Town Council would use the procedural safeguards of the Code to ensure that an adverse effect on the public interest would not result from any proposed plan for a Neiman Marcus store brought before the Council. Now was the time to protect the citizenry. She urged that the variance and special exception requests be denied to protect the Town serving character of Worth Avenue.

Attorney Alfred Malefatto, of the law firm of Greenberg, Traurig, addressed the Town Council, representing 125 Worth Avenue Limited Partnership. He stated that his clients were not in opposition to the application, and believed ultimately the proposed store would be an asset to the Town of Palm Beach, and to Worth Avenue, however, due to the proximity of their building to the proposed construction site, there was concern about the potential impacts to tenants and to the building itself. He displayed material exhibiting the area, and noted that construction would take place as close as 5' from the property line. He explained that he had sent a letter expressing concerns to the Town Council, which had been accompanied by a letter from Mr. Palmer of Livingston Builders, which he made part of the record.

Attorney Malefatto continued that one of the concerns was traffic circulation and parking, which had been addressed by modifications submitted by the applicant, however, now the loading entrance would be directly next to the property at 125 Worth Avenue. Concerns with that were related to hours of operation, and he addressed a question to Mr. Lehnhen in that regard, asking if hours of operation for loading and unloading would be between 6:00 A.M. and 7:30 A.M.?

Mr. Lehnhen replied affirmatively, however, that was subject to review. At this point in time, logistics suggested those hours would be appropriate, however, if there were better hours there could be adjustments.

Attorney Malefatto replied that early morning hours would be acceptable, however, he suggested that a commitment for those hours be presented. He noted that the Director of Planning, Building & Zoning had mentioned that was not part of Town Code, but was open to negotiation. He then asked if stock would be taken in on a daily basis?

Mr. Lehnhen estimated that stock would most likely be delivered three to four times per week, with the duration being approximately one to two hours.

Attorney Malefatto asked if there were plans for trash removal?

Mr. Lehnhen replied that it would be handled the same way it was handled at the Esplanade, although details had not yet been worked out.

Attorney Malefatto requested that his client be included in the process and planning so that input could be given.

Attorney Malefatto explained that 125 Worth Avenue was primarily an office building, and there were thus some unique concerns regarding noise during construction operation. He noted that representatives of the applicant had made commitments that they would do everything they could to work with his clients and to minimize construction noise and other disruption, and to use electric equipment as opposed to diesel power equipment where feasible. He suggested that these types of commitments be incorporated into the final site plan approval. Specifications were included in his letter and the letter of Mr. Palmer.

Mr. McDonald suggested that Attorney Malefatto enumerate all concerns in a list that he would provide to the Town Council for review.

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Attorney Malefatto agreed to do that.

Mr. Wyett noted that many of the concerns were technical, and he was sure that the Building Department would satisfy all those needs, as it protected any building adjacent to a construction site. He took exception to the request to specify the loading/unloading hours, as they would be geared to the needs of residents and condominiums.

Attorney Malefatto replied that the concerns of the neighbors were respected, however, he suggested that there needed to be a balance between all interested parties.

Mr. Wyett responded that it was his opinion that there would be no concessions to the needs of the residents as far as loading/unloading hours.

Attorney Malefatto expressed that another concern was the routing of utilities in and out of the building, and he echoed the concerns in that regard raised by Town Engineer Bowser.

Mr. Shaw noted that Mr. Brindell had indicated that the applicant would comply with all requirements and safety standards that were necessary.

Mr. McLendon asked the height of the building at 125 Worth Avenue?

Mr. Lawrence replied that the proposed structure was slightly below the 125 Worth Avenue building.

Mr. Wyett stated that this was not the proper forum in which to express concerns of the building at 125 Worth Avenue, and gave the assurance that the Building Department would protect 125 Worth Avenue just as they protected any other resident, and the proposed building was also being produced by very fine people.

Attorney Malefatto replied that he understood, and that this was a public forum offering the opportunity to express concerns, and concluded his presentation.

Attorney John Jorgensen, on behalf of Stanley and Christine Franks, 148 Peruvian Avenue, addressed the Town Council, explaining that their home was directly behind the proposed Neiman Marcus store. He requested the opportunity to make some brief cross examination of witnesses, and to add the testimony of two expert witnesses to the proceedings.

Attorney Jorgensen stated that Mr. and Mrs. Franks were opposed to the construction of the Neiman Marcus store relating to the scope of the project, and the manner in which it was to be constructed directly behind their single family home, as they would be directly impacted on the size and scope of the proposed structure. He submitted that it would not be Town serving whatsoever, and presented Larry Zabik, who would offer testimony concerning a market study, and Bob Basehart, Land Planner, who would offer testimony concerning whether the project was consistent with the Town Comprehensive Plan, and whether it met the Code requirements for special exceptions.

Attorney Jorgensen explained that Neiman Marcus would have to play by the rules, as would any other applicant, as did the Town Council, who were sitting in a quasi-judicial hearing. He explained that the rules were as follows:

1. Comprehensive Plan: The criteria for special exception required that any special exception use must be consistent with all of the elements of the Comprehensive Plan, specifically concerning the Town serving nature of the proposed use. The Plan also encouraged small scale retail, as well as language stating that there was an assumption that if a store was 2,000 square feet or less, it would be Town serving. Mr. Jorgensen submitted that there must be an assumption that a store the size of 52,000 square feet would not be Town serving, and be a regional attraction.
2. The Town Code: There were specific criteria that the Town Council must follow, and that the applicant must meet in order to obtain a special exception. There must be compatibility—a 52,000 square foot directly behind the home of Mr. and Mrs. Franks was not compatible with the neighborhood. It must be consistent with all of the elements of the Comprehensive Plan, which Mr. Jorgensen did not believe the applicant could meet, based on expert testimony.
3. The Town serving nature of the use: Expert testimony would be provided.

Attorney Jorgensen displayed several exhibits outlining what must be proved by the applicant:

- Must be Town serving. He commented that he believed the marketing experts for Neiman Marcus had been very hazy on where the customers would come from. Expert Larry Zabik would be very specific on that point.
- Must be consistent with the Comprehensive Plan.
- Must be compatible
- Hardship comes into play in two ways: for the variances (could not be self-imposed; could

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not be caused merely by economic advantage/gain); the hardship associated with the Comprehensive Plan, which stated that in order to get something larger than 2,000 square feet for Town serving the applicant must demonstrate a hardship that the applicant could not serve the Town if the store was 2,000 square feet or less. He submitted that Neiman Marcus could meet the needs of the Town persons by having a store less than 52,000 square feet. They must prove hardship.

- Must promote the health, welfare, and safety of residents.

Attorney Jorgensen then produced an exhibit illustrating what Peruvian Avenue would bear in this situation:

- Expert testimony would define that the project would be of regional commercial use, and would attract patronage from outside of Palm Beach far in excess of the number of residents from Palm Beach.
- Property values would be impaired
- Noise, glare and odors. The parking garage alone would cause a problem, and there would have to be some sort of an exhaust system in place.
- Security and safety problems.
- The loss of light, air and space. In the winter the sun would be in the south and would be blocked by the proposed building; there would be reduced light and air as a result of the monolithic building directly behind their house.

Attorney Jorgensen asked the following questions of witness Anna Cottrell:

JJ: You stated earlier that the applicant meets all other requirements of the special exception requirements found in the Code. Is that correct?

AC: Yes.

JJ: Did you have the opportunity to look at the special exception requirements for the underground parking garage, found in 621.d of the Code?

AC: Yes.

JJ: Do you have the Code with you?

AC: I may not have all of it. Is there a specific reference?

JJ: Well, there's a specific reference under 621.d.3, and I believe that's the provision that the applicant is falling under. What they're attempting to do per the Code is to use a residential parcel to provide required parking for an abutting commercial parcel. Would you agree with me that that's the Code provision that they're coming under?

AC: I'm sorry?

JJ: There was a provision—it's on page 2052 of my version of the Code, 621.d.3(f)—I'll get to sub (f) in a moment, but in general I guess what I need to know from you is what specific code provision is the applicant traveling under to build an underground two-story parking garage on the residential parcel that is adjacent to or abutting the commercial parcel. If you need a moment to look at the Code, that's fine.

AC: Looking at this I concluded that it is essentially part of the same lot, because it's going to be integrated within the parcel. There's going to be unity of title on there, so that fact that it is related, there's a zoning district boundary line separating two portions of essentially the same lot, did not cause me to conclude that this was going to be off-site parking. It's part of the same—it's integrated—functionally, it's integrated by unity of title, so that there really was no reason to conclude that there were two separate lots. It should be treated as one for purposes of evaluating this Code requirement.

JJ: So if the applicant's zoning application states that they were seeking this special exception under 621.d would you agree that they are still seeking a special exception under 621.d?

AC: To meet the literal requirements of the Code.

JJ: Yes. And I know you were looking at it as one parcel connected by unity of title, but is not the parcel on Peruvian Avenue residentially zoned?

AC: It is.

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- JJ: And is not the parcel on Worth Avenue to which it is abutting commercially zoned?
- AC: It is.
- JJ: And if you look at the Code—you may say literally—but, if you look at the Code under 621.d.3, is there not a list of criteria that must be met—all of those criteria that must be met for purposes of having off-street parking, if you will, in this situation?
- AC: Yes. That's what this section is about.
- JJ: And does not sub-section (f) state that the said parking area, which would be the parking area on Peruvian, does it not state that it shall be located at ground level, and shall not be located within any structure?
- AC: I think that what happens with this Code, and that's where the variances also come in, is that it didn't contemplate structured parking. This Code really addresses parking that is assumed to be surface parking, so the standards related to it are for surface parking, and it's a different function, it's a different structure when you do parking in a structure, particularly underground.
- JJ: Is there any particular provision of the Code that would, well, first of all—is the applicant seeking a variance for this parking garage?
- AC: There are some variances related to the parking, yes.
- JJ: For the parking garage on Peruvian?
- AC: For the special exception.
- JJ: But is there any particular variance that the applicant is seeking for this parking garage on Peruvian?
- AC: I don't recall.
- JJ: I looked at the application and I didn't see one. I'll defer to your opinion if you say there is, but I don't believe there is a variance that they're seeking for this parking garage. My next question is what specific provision of the Code is the applicant traveling under then, for purposes of building an underground parking garage on Peruvian Avenue? Is there a specific provision in the Code that you could point me to which would allow the applicant to seek a special exception for this parking garage?
- AC: No.
- JJ: So your interpretation is based on—correct me if I'm wrong—is your interpretation based on assumptions that you are reading into the Code?
- AC: Well, I don't think they are assumptions. I think they are logical extrapolations that can be made. If the Code doesn't really contemplate structured parking, and, in this case, there is clearly a benefit to considering an alternative to surface parking, I think there can be some extrapolation from this, and there are some variances directly related to the parking, but for purposes of determining this as whether or not it met the Code, I did not look at this as a separate lot for off-site parking—considered it as one lot.
- JJ: Is there any specific Code provision, then, that the applicant is traveling under, if, as you assume that it is not—that you are not looking at as a separate parcel, what provision of the Code would apply then, if this was one parcel?
- AC: The standards for parking.
- JJ: I also understand that they're seeking a unity of title to transfer the park from Worth Avenue over to Peruvian, is that correct?
- AC: I understand they're seeking a release of the unity of title that connects that park to the requirement for parking to the Esplanade.
- JJ: But are they not taking that parking requirement from Esplanade and transferring it over to the surface park on Peruvian?
- AC: No. I think they've determined that those parking spaces are not needed. These were what's referred to in the back-up as “ghost parking spaces,” and I think it's been demonstrated that they've never been required for the Esplanade.
- JJ: So is it you understanding then, that there is no longer—has the application been amended, because when I read the application it stated that there would be a transfer of this unity of title over to Peruvian, and I'll stand corrected, but has the application been amended to remove that?

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Smith: Perhaps Mr. Brindell would be the one to answer that question, since he's the attorney.

JB: I stated earlier that we have data now that supports, in addition to the fact that the Town has never had any call for requiring any additional parking for the Esplanade, we now have data that supports that we don't need it, and so we are indeed asking for the release of the unity of title, and we don't think there is any purpose in transferring it anywhere. Now, if Mr. Jorgensen wants to get into some legal debates about provisions of the rules, which I'm glad to do, perhaps I'll respond to some of those questions. I know the question he just asked about provision D is really a legal interpretation question that he's sort of fumbling around with our expert on, which I'd be glad to address directly, if that is something you want.

JJ: I'd prefer to cross examine witnesses, not lawyers, but I'll defer to you Madam President.

Smith: Go ahead, Mr. Jorgensen, if you want to—with Ms. Cottrell, or if you have the questions for Mr. Brindell, please address them to Mr. Brindell when she says she doesn't know, or she can't recall, because otherwise it's a waste of our time.

JJ: I'm done on that issue. I just want to move on with a few more questions of Ms. Cottrell, and then I'll go on from there.

Ms. Cottrell, you also testified that you believe that the store, as proposed, would be Town serving, is that correct?

AC: I have not made a conclusion on my own that it's Town serving. I've relied on the information that's been provided by Neiman Marcus, and made a conclusion that it does meet the Comp plan requirements for Town serving based on the data that was presented.

JJ: So you have no independent knowledge of whether it meets Town serving or not. You're just relying on the evidence, or the other testimony of the other experts?

AC: Based on the information of the data that was presented to me, I've concluded that those definitions of Town serving that I found in the Comprehensive Plan have been met by the evidence presented, but whether or not there was a test of Town serving is outside the scope of what I was asked to do.

JJ: That's all I have, ma'am, thank you.

Smith: Keep going. Mr. Jorgensen, I think we've had your letter, and we're going to get as some point to the conditions that you would like to impose upon us, and if we have to go through 15-20 minutes of testimony before I get there I'd appreciate it if you'd get to the bottom line a little bit quicker. Thank you.

JJ: I will. I just have some very more brief—I'll be brief cross examination, I promise. I'd like to ask Mr. Lehnen a few questions if I may.

One of the requirements of the Comprehensive Plan was that it encouraged small scale retail use in the Town of Palm Beach. Are you prepared to state that the Neiman Marcus store at 52,000 square feet is a small scale commercial operation?

TL: Yes.

JJ: You're coming in at a 52,000 square foot level. Could not other department stores, such as Bloomingdales or Macy's come in and do the same type of study—market studies, and build a 52,000 square foot store?

TL: Are you asking for my opinion?

JJ: Well, if Neiman Marcus comes in and can change or control its merchandise so as to attract Town serving residents, could not a Saks or a Bloomingdales, or someone else do the same thing, so there would be another 52,000 square foot store on Worth Avenue?

TL: I'm not sure I understand the question. If you're asking me whether they could physically do it, perhaps they could. If you're asking whether they could financially make it succeed, I think I know the answer to that. Which are you asking?

JJ: My point is that my clients have some concern, as I would think that the Town Council would as well, that if Neiman Marcus comes in and builds a 52,000 square foot store, 26 times larger than the threshold 2,000 square feet, that other stores would do the same thing. Do you not share that concern whatsoever?

TL: I haven't thought about it, quite frankly, but, as you mention, or as you talk about it, I don't have that concern, at least with the two examples you listed, because I know what they would face trying to do it, to an operation standpoint.

JJ: There was some testimony earlier about total sales, which you testified about, and there were some questions about customers—number of customers. Does Neiman Marcus not have information concerning the number

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of customers necessary to generate those sales?

TL: When we do marketing analysis we really look at the gross sales volume that can be generated based on zip codes. We don't specifically translate it to people or to head count, and really, I'm not a marketing person, so I suspect that I'm in dangerous water. I probably should be brief in my comments, but we aren't so interested in pure numbers of people. We're looking at disposable discretionary income that we can attract.

JJ: And you would agree that Neiman Marcus attempts to attract or draws its customer base from those households that have incomes of over \$100,000?

TL: For the most part, yes.

JJ: Has Neiman Marcus considered building boutique stores in its business plan?

TL: No. We have not.

JJ: That's all I have sir. Thank you.

I have a few questions of Mr. Lawrence if he's in the room, and again I apologize, but I hadn't seen the plans until this morning. In fact, I still really haven't seen them-- we got a not entirely recent version of the plans.

Good afternoon Mr. Lawrence.

GL: Good afternoon.

JJ: I had a few questions about the doors that are on the back of the store. I don't know if you have the plan handy.

GL: I have a memory of it. You can ask me the question.

JJ: How many doors are there in the back of the store?

GL: Four.

JJ: Okay, and are those for fire code reasons?

GL: Two are for fire code reasons, and two are for access to the parking.

JJ: Okay, and the two that are for access to the parking, is that to the--access for which parking?

GL: The park.

JJ: For the park.

GL: Ya.

JJ: And why does Neiman Marcus need doors accessing the park?

GL: They have the property. They need to get out to maintain it, to take care of it.

JJ: Okay. Could that not be done in another way without having those doors that are going out into the park?

GL: It might be, but I think this is the best way.

JJ: Okay. You talk about maintaining the park--that would be the landscaping and whatever else is necessary to maintain the--

GL: Or people would access from the store to the park.

JJ: Okay. Are those doors going to be used at all for delivery persons?

GL: No.

JJ: Concerning the other--is it another two doors is it? Those are fire doors?

GL: Yes.

JJ: When you leave those doors, where is the planter? Is there a four foot high planter that is going to be in the back of the..where is that in relation to the doors?

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GL: Two of those will come across the planter.

JJ: When you say across the planter, what does that mean?

GL: That means on top of the planter.

JJ: Okay, so the door will be above the planter, or at the surface--the same level as the planter?

GL: You will be able to access from the store across the planter. You only have two and one-half feet of property when you get outside the planter, so you will go from that either east or west off the planter.

JJ: Okay. So you'll walk out the door, you'll go over the planter, and what, down a couple of steps?

GL: No. Let's go back again. You have two and one-half feet in front of the planter wall to the property line, and two and one-half feet is not really enough space to do much of anything. That's an easement, so you would go across the planter to go anywhere you would go.

JJ: Okay, so you'd walk across the planter to go east or west?

GL: Yes.

JJ: Okay. Does that, and I'm not an expert in this, are there certain ADA requirements for fire doors when you exit?

GL: Well, ADA is the American Disabilities Act. Fire is a different code. We do comply with all of those. One of those exits is a fire control exit. It is not an ADA exit.

JJ: Okay. How about the other door, is that not an ADA exit?

GL: No, it isn't.

JJ: Okay. Are there still a number of columns that are in the parking spaces in the underground parking garage?

GL: Yes there are.

JJ: If the store were made smaller, would that problem, to the extent that it is a problem, alleviate itself?

GL: Not necessarily. You've got to have columns.

JJ: But if you had a smaller store, common sense would tell me that you'd need less columns and you wouldn't necessarily have those columns in parking spaces?

GL: No. I think that--you know, you might get the columns out of the parking spaces in some ways, but making the store smaller is not going to be a direct function of eliminating columns. There is a 125 foot property, and about 105 foot building, and you've got to have columns.

JJ: Okay. That's all I have sir, thank you.

And very briefly, the traffic expert Mr. Wentzel.

The traffic study that you submitted to the Town, is that based on the Neiman Marcus study showing that 75% of the customers will come from off-Island?

JW: No. The market study was input to our traffic study, but the market study did not indicate the 75% of the customers. It indicated, I believe, 50-60% of the customers would come off the Island. The trip production--where the trips were coming from, was the result of our study. You weight the distance these trips are coming from to determine how many times they would come over a period of time-- 75% of the trips would come from the Town of Palm Beach. That's our estimate that we submitted with the study to Palm Beach County and the Town, and was accepted by both agencies.

JJ: Does not your traffic study, though, make reference to the Neiman Marcus marketing study that shows that 75% of the customers would come from off-Island? I'm not saying that it was based on it, but does it not make reference to it?

JW: It does make reference, but I don't think 75% is the number out of the Neiman Marcus market study.

JJ: Well, there's been a more recent marketing study that was submitted today in evidence of 55%. Is that the one you're referring to?

JW: I believe it's 50-60%.

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JJ: Okay.

Shaw: Excuse me. Are you saying that they're saying that 75% of their clients will come from off-Island? I think it's the opposite.

JW: It's the opposite.

JJ: I'm sorry. You're right.

Shaw: It's 75% will be coming on Island.

JJ: You're right. It's 25% off-Island, their study says. But it does--that's all.

Your traffic study makes reference to the Palm Beach County traffic requirements, does it not?

JW: It responded to the traffic performance requirements of the County.

JJ: For the County. And does your traffic study in and of itself consider the standards for--the traffic standards for the Town of Palm Beach?

JW: Yes. It's in the document we've prepared for the County, that's not referenced. We provided information to the Town in reference to their specific requirements.

JJ: Okay. And the Town Engineer, or traffic engineer, wrote a letter stating that it complied?

JW: We've met with them, and I've heard that verbally. I have not seen their letter that says that.

JJ: Okay. But your report, in and of itself, you've made the analysis that it meets the Town of Palm Beach standards?

JW: Yes.

JJ: That's all I have, sir.

That's all I have as far as cross examination. I would like to present my witnesses, if you want to do that.

Smith: Let's get them up there please. If you'll move up to the front and be ready to speak, please.

JJ: The first witness is Larry Zabik.

Smith: And then your second expert, will they please be up there and ready to speak?

JJ: He's right here. Bob Basehart.

Smith: And then, Mr. Kassatly, are you speaking? Would you move over here on this side so that you'll be ready. I ask that we alternate the sides so as not to waste a lot of time, please. As you heard earlier, the Council would like to decide this today, if possible. Thank you.

Mr. Larry Zabik, principal with the firm of Zabik & Associates, addressed the Town Council, stating that he had been retained to look at the demographics of the Neiman Marcus store and specifically where the customers were going to come from. He explained that he had prepared a report and analysis on that and entered it into the record. As background information, he explained that he was currently completing his doctorate at Nova Southeastern University, and held a Master's Degree in Economics from the University of Oklahoma in 1982, and held a Bachelor's of Science DeGlee in Electrical Engineering from Norwich University in 1980. Last year he had founded the firm Zabik & Associates, which was a local consulting firm specializing in demographic analysis, private sector market analysis, cost analysis, and construction consulting. Major clients included Federated Department Stores, Arvida, the Broward and Palm Beach County School Districts, and America's Preferred Homes. Prior to incorporation, he had been the Assistant Superintendent of Support Services for the Palm Beach County School District. In that role he had directed and managed all of the non-instructional functions, including planning, demographic analysis, construction, and real estate acquisition, among others. He had also served two terms on the Royal Palm Beach Town Council as a Councilman, and as a Vice-Mayor, and had lived in Palm Beach County for the last ten years. He submitted a copy of his resume for the record.

Mr. Zabik said that he intended to walk through the customer and demand/analysis study prepared, and the methodology, and then would make comments based upon the testimony given today. He noted that a number of the questions raised by Council today were very valid, and he believed he could help answer some of those questions. He stated that he thought the reason that Neiman Marcus had not presented an answer to many of those questions was that they did not support the key issue being discussed, and that was whether or not Neiman Marcus would be a Town serving department store. Neiman Marcus would be a fine addition to Worth Avenue, if approved. Neiman Marcus would not receive 50% of its customers from the Town of Palm Beach, a conclusion he had reached based upon four different tests:

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- ✱ The retail demand factors: The Urban Land Institute publishes per square foot multipliers that allow individuals, counties, and towns to decide how many square feet of a particular type of retail, restaurant, or other square footage was needed. In this case, the Town of Palm Beach had more than an adequate supply of retail, restaurant and commercial space in the Worth Avenue area district. The addition of a 52,000 square foot Neiman Marcus to the Worth Avenue shopping district would be well in excess of what the Town requires, and well in excess of what a 50% requirement would be, given that the Code very specifically talks about shopping and entertainment and commercial being Town serving.
- ✱ The second type of analysis done was a purchasing power demand analysis, and he had looked at the dollars that were available in the Town of Palm Beach, and what could reasonably be expected to be spent on retail, commercial, fashion—the type of store such as Neiman Marcus. He said that Palm Beach had tremendous financial power, and the demand that was demonstrated for this type of space was about 350,000 square feet of retail commercial square footage. Currently, there was 500,000-600,000 square feet of retail commercial square footage in the Worth Avenue area. It failed this test as well.
- ✱ Sales per customer: He had looked at how often someone would have to come and shop at Neiman Marcus in Palm Beach, and how much they would have to spend on each of those visits to see whether it passed the straight faced common sense test. He gave several examples: If the threshold of 50% was assumed, and testimony today had revealed four different numbers for the market share coming from the Town of Palm Beach: 53%, 55%, 60%, and 75%-- if it was assumed that 50% of the sales, not customers, but 50% of the dollar sales of this Neiman Marcus store would come from the Town of Palm Beach, and that all of the people in the Town of Palm Beach go to Neiman Marcus (including the seasonal residents as well as the permanent population) —then everyone would have to spend almost \$1,000 per year at Neiman Marcus to meet the average of what Neiman Marcus expects to generate in all of their stores. It was clear that this would not be one of their average stores, but one of their best stores. A more reasonable number to expect in terms of customers on the Island of Palm Beach for Neiman Marcus would be between 2,500 and 5,000 residents becoming customers of Neiman Marcus. In that case, each of those customers would have to spend between \$3,000 and \$6,000 each at Neiman Marcus for them to achieve that 50% sales goal. If the sale threshold was raised to 75%, those numbers would go up by 50%.
- ✱ How the Worth Avenue shopping district was characterized in the media, how it was advertised on the internet, how newspapers characterized it, how the visitors and convention bureau characterized it. Worth Avenue was a regional shopping destination. During earlier testimony, Mr. Skokowski had said that Neiman Marcus would be an anchor to Worth Avenue, which was exactly what it was—a regional shopping anchor, a draw to the entire community. Specifically, the marketing strategy of Neiman Marcus was to target households of \$100,000 per year as the principal customer base. In Palm Beach County there were currently about 400,000 households. Of that number, 9% earn \$100,000 or more (35,000 households). In the Town of Palm Beach there were approximately 1,500 households that met that criteria. If that number was doubled for seasonal residents, there would be approximately 3,000 households in the above \$100,000 category—less than 10% of what the market would be for Neiman Marcus. It was clear from the review of the data that Neiman Marcus would target all of Palm Beach, because Palm Beach was a very affluent community and had the type of market that Neiman Marcus was looking for.

Mr. Zabik continued that in the Neiman Marcus presentation part of their description of marketing was to show why they were different than everyone else. For the reasons that they showed themselves as being different, they would attract families that earn more than \$100,000 from Boca Raton to Atlanta, because there was not a Neiman Marcus north of the Broward County line, and there was not one all the way to Atlanta. Their draw would be well beyond the Island of Palm Beach. The Island of Palm Beach would be an important part of their business plan, but it would not be 50%, but probably be in the 15-15% range, with the remainder coming from Palm Beach and visitors and seasonal residents.

Other comments made about Neiman Marcus had been that it would be a street of shops and a lot of very unique locations. This was exactly why people would get in their cars and drive five miles, or fifteen miles because those opportunities were not available elsewhere in the county. One of the major comparisons made was to Esplanade and Saks. The difference between Neiman Marcus and Saks was that Saks had two full scale department stores already located in Palm Beach County, and if someone was interested in going to Saks they would go to one of the larger stores, whereas Saks in Palm Beach was smaller and would attract primarily Island residents as opposed to people from a regional area.

Comments with regard to the traffic study had to do with the inverse relationship and the distance people would travel. Mr. Zabik said that type of analysis would apply when building a Publix, Winn Dixie, or chain department store, but when something unique and different was built people would travel long distances to come to that, which would be the case with Neiman Marcus. People would travel throughout the county from Palm Beach, as well as Martin County to come to Neiman Marcus. During Mr. Wentzel's testimony in regard to trips, Mr. Zabik noted that he had done an extrapolation from those numbers regarding people coming across the bridge—he estimated (if 50% of customers come from off-Island) how often Palm Beach residents would have to frequent Neiman Marcus to meet the other 50%. If all 20,000 residents of Palm Beach, permanent and seasonal residents, were to become customers of Neiman Marcus, then they would have to visit between 3-4 ½ times per year to meet this criteria. If 2,500 - 5,000 residents of Palm Beach were customers of Neiman Marcus, they would have to visit between 12-25 times per year, which simply didn't pass the straight face test. Mr. Zabik estimated that

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Neiman Marcus would do very well as a strong upscale retailer, but their business would not come primarily from the Island of Palm Beach, but from the County of Palm Beach.

Mr. Zakik addressed the comments of Ms. Roselli regarding the Gould analysis, stating that they were very accurate. He noted that he had tried to use current data in his analysis, that was also available to them, and he maintained that the reason that type of analysis was not included in the Gould study was that they would come to the same conclusion that he had: that the business for Neiman Marcus would come from well beyond the Island of Palm Beach.

Mr. McDonald asked Mr. Zabik where he had obtained his data?

Mr. Zabik replied that he had obtained data from a variety of sources: U.S. Census Bureau, The Town of Palm Beach Comprehensive Plan, Palm Beach County, several national data sources, and income data from CACI, publishers of an annual distribution by zip code.

Mr. McDonald asked Mr. Zabik why he felt only 25% of residents would come to Neiman Marcus during the season?

Mr. Zabik replied that he had tried to look at it on an annualized basis, and as he had looked at the business plan of Neiman Marcus, and what it was going to take for them to generate the sales they were looking for per square foot, and the number of customers it would take to generate that, and the seasonal influx as well as their target market, he had felt comfortable that would be a reasonable assessment of how many people in Palm Beach could expect to become customers of Neiman Marcus, with 75% of it coming from off the Island.

Mr. McDonald asked Mr. Zabik what percent of business would be done during the season?

Mr. Zabik responded that he had not broken it down that way, but had done it on an annualized basis. Last year, according to their 10K form, they had done just slightly under \$400 per square foot in sales, and that had been for their entire range of stores. He had used a range of \$400-\$500 per square foot in the analysis, so that it was straight lined across 12 months.

Mr. McDonald asked Mr. Zabik if his conclusions would be changed if they did 80% of their business during the season, which was probably 4-5 months?

Mr. Zabik responded negatively. Seasonal visitors would reside or visit in Palm Beach, however, seasonal visitors would also shop that would reside and visit in the County of Palm Beach, especially those who do not have access to a Neiman Marcus in their areas.

Mr. McDonald asked Mr. Zabik if he still felt that only 25% of Town residents would visit the store during the season?

Mr. Zabik stated that he believed that if the total customer base was looked at on an annualized basis, 25% of those customers would be Town residents.

Mr. Shaw asked Mr. Zabik where he had taken hotel residents into consideration, as well as those who worked on the Island, who would be counted within the Town serving category?

Mr. Zabik replied that he had used the higher numbers from the Town Comprehensive Plan, and the analysis was based upon the 20,000-22,000 population, not a 10,000 permanent population as listed by the Census Bureau.

Mr. Shaw responded that the people staying in hotels were a very transient number, so if there were 500 people at The Breakers, and 25% of them shopped on Worth Avenue, that would contribute to the count. He asked where that was in the report?

Mr. Zabik replied that he had included permanent and seasonal residents. He had not included hotel visitors.

Mr. Shaw responded that a major piece of information was then missing from the report.

Mr. Zabik replied that was something he could go back and look at quite easily, in order to see what the impact was. He did not suspect that the impact would be substantial enough to push it up over the 50% threshold.

President Smith commented that if one went to Neiman Marcus and spent \$3,000 it would possibly pay for a skirt and blouse. The amount was not a large sum, as Palm Beach people wear designer clothes, which were very expensive, and she was sure that Neiman Marcus had taken into account that they would drop \$3,000, \$6,000 or \$10,000 on a visit, and the visitors staying in hotels buy by the truckload. She noted that this was what had been considered, and Mr. Zabik perhaps was not aware of in his study.

Mr. Zabik replied that if they had, that information had not been shared in their marketing analysis, and he had looked at the impact to the Town and surrounding on an annualized basis. He stated that he believed, based upon Neiman Marcus' marketing strategy, which was outlined in their marketing report, they were coming to Palm Beach County because there were 35,000 household that earned more than \$100,000 per year, and that seasonal visitors spending a great deal of money were a bonus to them. For the customer from South America spending \$100,000 there were numerous people coming and visiting and not spending any money at all, because they merely want to see Neiman Marcus.

President Smith responded that people would say that Worth Avenue, with or without Neiman Marcus, had a world wide

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reputation, and people come from everywhere for Worth Avenue, long before Neiman Marcus had even thought of coming to Palm Beach.

Mr. McLendon referred to the figure of \$400 per square foot in sales, and asked if that had been based on gross area or selling area?

Mr. Zabik replied that he believed from their 10K that it was their gross area.

Mr. Wyett commented that he had listened with great interest to the report of Mr. Zabik, and had found parts of it very fascinating, however, he found a very deep fault. If Neiman Marcus was to depend on \$100,000 family income units to operate and become profitable, they would not be here. He did not know what the right number was, but he would guess that the mean average of their regular customers would be \$200,000-\$250,000 annual income. Neiman Marcus catered to the top 1-2% of income levels, and if the numbers were revised he stated that he believed Mr. Zabik would come up with tremendously different results.

Mr. Zabik replied that he agreed with Mr. Wyett, because it was indicated that a substantial number of sales came from a very small number of people, meaning that there were many people coming into the store who did not spend a lot, or nothing at all, and those would typically be the transients, and people coming from outside the Town of Palm Beach.

Mr. McDonald noted that Mr. Zabik had indicated in his report that Palm Beach was the 35th most affluent area, and asked if there were any more affluent areas in Palm Beach County?

Mr. Zabik replied affirmatively, and mentioned Jupiter Island.

Mr. McDonald responded that was in Martin County, and confirmed that Mr. Zabik was saying that Palm Beach was the most affluent area in Palm Beach County?

Mr. Zabik agreed.

Mr. McDonald responded that Mr. Zabik was saying that less than 5% of the people with an income of \$100,000 or more lived in Palm Beach, and questioned the numbers used by Mr. Zabik of 1,500 Palm Beach residents with incomes of over \$100,000, and 35,000 residents of Palm Beach County with incomes of over \$100,000, which would make \$100,000 incomes in Palm Beach households less than 5%.

Mr. Zabik agreed.

Attorney Louis Mrachek, on behalf of the applicant, questioned Mr. Zabik as follows:

LM: Sir, you used four methods, I noticed, in your report, but you only told the Town Council about three of them. Could we talk about the fourth one for a minute?

LZ: I thought I covered all four.

LM: Okay. And the fourth method, as I understand it, is a little bit, I guess not a standard analysis. What you did was you looked at some newspaper articles, and some journals, and you came to the conclusion, which is on page 21... after looking at some newspaper articles that mentioned the name Worth Avenue you decided that the Palm Beach County population can be expected to generate 50-60% of the customers for this Neiman Marcus. How did you tell that just from reading the fact that people now and then mentioned Worth Avenue, and you came to the 50-60% number?

LZ: The conclusion was independent of that fourth piece of analysis. That was just one piece of data that—I did four tests, and then based upon those four tests I prepared those findings.

LM: Well, one of the tests was reading the newspaper, right?

LZ: One of the tests was looking at the literature on marketing, and advertising of Worth Avenue, yes, and it included reading the newspaper.

LM: And I'm looking on page 21 where you summarized the result of the fourth test, like you did every test, and you came to 50-60% of the customers will come from Palm Beach County, and my question is, how can, and I don't have a Ph.D. obviously, how can you tell from reading the newspaper, and you see the name Worth Avenue mentioned, you come to the conclusion that 50-60% must come from outside the Town?

LZ: You're right. That better belonged on the next page, on page 22.

LM: Okay. And then I noticed, following up with what Mr. Shaw said, that you said that would leave the Town to generate 10-25% of the business, with the remainder coming from visitors, and what's the definition of Town serving, do you know that off the top of your head?

LZ: The Code is not specific. It, however, has been discussed today as being 50% of the customers—

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Smith: It's pretty specific.

LM: It's not specific in the definition section? You don't find a definition for Town persons?

LZ: The definition of Town person is there, yes.

LM: And what does it mean?

LZ: A resident, a seasonal visitor, or a hotel visitor, yes.

LM: Keep on going, you missed one. How about an employee who works within the Town, as Mr. Shaw told you, I think?

LZ: Certainly.

LM: Okay. And the remainder coming from visitors and seasonal residents. So, seasonal residents are Town persons, correct?

LZ: Yes.

LM: And part of the visitors must be Town persons, right?

LZ: Yes.

LM: And you don't even list the employees here, but they would be Town persons, right?

LZ: Yes.

LM: Okay. Let me talk about your third test now. This is this average spending per resident, and you came to the amazing conclusion that, in order to get 50% Town serving, 5,000 residents within the Town--now, let's talk about the Town populations for a minute during the season. How many seasonal residents do you think there are around here?

LZ: According to the Town's Comprehensive Plan there are 12,000 seasonal residents.

LM: Okay. And how many permanent residents?

LZ: About 10,000.

LM: And did you talk to anybody about what they really think about the seasonal resident number. Did you hear anyone mention numbers like 20,000; 25,000; 30,000 in actuality?

LZ: I have seen the Police Department here advertise a higher number, however, I used the Town's Comprehensive Plan as the basis for my analysis.

LM: Okay. So, if we take 22,000, you say, maybe of 25% of them--that's 5,000, spend \$3,000 annually, but you did that on the 57,000 square feet, right?

LZ: Yes.

LM: Okay. Knock that down to 52,000 square feet, and so that's about 91% of 3,000, so you came to the amazing conclusion that 5,000 residents each had to spend \$2,730 dollars in Neiman Marcus to make it qualify as Town serving, right?

LZ: Yes, if you looked at it on a per sales basis.

LM: Okay. Method two. Let's talk about method two for a minute. This is the one where you talk about the demand, and whether there's demand, and you take the estimated population--that's just seasonal and permanent residents. You threw out the visitors and you threw out the employees, right?

LZ: I used 22,000 residents as the population for the analysis.

LM: Right. But you didn't consider the visitors, and you didn't consider the employees.

LZ: No.

LM: Then you figured out their purchasing power, and then you came to the number--trade area purchasing power in millions--so, I guess that's \$1,638,000,000, is that right?

LZ: Yes.

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LM: And then for some reason you decided you'd take 41% of that, percentage spent on retail goods, and then you took 10% of that, and got down to 4%, right?

LZ: Yes.

LM: Okay. And then you said sales per square foot, \$200 per square foot, and you came up with the estimated justifiable square footage. What if I told you that your 4%, if it reflected standard statistics for what is spent by a standard household on department store type goods should have been 12.5 - 13%? That would make your number \$335,000, about one-third of what it should have been, right?

LZ: I'd have to see exactly what you're looking to do in terms of the numbers, but I used very conservative numbers in the analysis, and I used numbers that I believed reflected the character and the spending of the Town of Palm Beach.

LM: Right. And you used numbers that were very conservative, but were one-third less than the actual standard numbers.

LZ: The numbers I used came from the shopping center appraisal and analysis, and I used standard numbers. If you have some other data that you used, that's fine. This, again, was one test that I looked at as an indicator of whether or not this would be a Town serving department store.

LM: Let's look at the first test that you used. This is when you did the population to try to figure out if the Town had enough square feet. For 1996, what did you use for the population, sir?

LZ: The population data is on page 14.

LM: No. What did you use on page 16 when you calculated that chart there? You used 9,800, didn't you, the permanent population?

LZ: I'd have to look at the spreadsheet, but I believe that I used the permanent residents for this, yes.

LM: Right. So now you threw out 12,000 or 20,000 of 25,000 seasonal; you threw out all of the employees; and you threw out all of the visitors, and you came up with this number for total commercial of 577,000, and you said, well, the Town already has more than that, although you didn't bother to break it down by restaurant, retail, office or anything. You just compared commercial to commercial, and you decided that the Town already had enough commercial already and didn't need a Neiman Marcus building.

LZ: I used the Urban Land Institute standard methodology, and came to the same conclusions.

LM: I understand, but did you bother to break it down to retail to retail?

LZ: No.

LM: Okay. And you just compare all commercial to all commercial, and by your analysis, of course, what you're saying is that the Town ought to tear down about 400,000 square feet of commercial space, because they've got too much right now.

LZ: No. That's not what I'm suggesting. This was just one way of looking at it to see whether or not Neiman Marcus would meet a Town serving test.

LM: And as to the frequency of how often people visit stores like Neiman Marcus. Have you been reading the newspaper about how many times people go see the Titanic? Have you been catching that act?

LZ: Sure.

LM: Okay. Thank you for your time.

Wyett: I have just one comment I'd like to make. If we have enough retail space, why is it that the sales in Palm Beach, specifically Worth Avenue, are probably among the highest in the land? Saks Fifth Avenue, per square foot, is probably one of the most prosperous stores, and Neiman's probably noticed that. They usually go head to head in every city that they are both in, and just those numbers alone, plus the sales that Neimans would write with people wanting Neiman's type merchandise that is not in Palm Beach or the area probably go out of our area. If that brings sales back, it is a benefit to the Town, benefit to the County, and a benefit to the State.

LZ: I think the answer is the location of Worth Avenue. It is the premier location on the east coast of the United States, and that's why you see people like Saks, people like Neiman Marcus, wanting to locate here.

Wyett: My point is I don't find too much credibility in your report based on using \$100,000 income base, and not analyzing what is in Palm Beach itself. We are not numbers in a Statewide survey, or a Countywide survey. This is a very special place, and unless you understand it, your numbers have got to be meaningful outside

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of Palm Beach, not here.

LZ: The reason I used multiple methodologies was to address that issue, because I recognize that Palm Beach is a very different and very unique community, and that's why I looked at this in a number of different ways.

Wyett: Thank you.

Mr. Bob Basehart, Local Planning & Zoning Consultant, addressed the Town Council, stating that he was in agreement with the comments of Ms. Roselli, and with the testimony provided by Mr. Zabik. He progressed to discussion of the consistency of the application with the provisions, goals, objectives, and policies in the Comprehensive Plan. To a large extent the conclusions of whether these had been met involved which market study was believed. The Comprehensive Plan was full of references to the intent of the Town to have commercial development in the Town to be Town serving commercial. Based on the research, analysis, and conclusions reached by Mr. Zabik, the proposed Neiman Marcus store would not be Town serving, and based on that would violate numerous provisions of the Comprehensive Plan. The fact that the applicant was requesting not only a special exception to build a store that was 26 times the normal limit for the size of an individual tenant, but in addition asking for variances that were effectively intensity variances by requesting an allowance to go beyond the normal building coverage limits that the Code allows was clearly an indication that the proposed request was an excessive request for commercial space. Also, the application violates the section of the Plan related to policies regarding change. That section read in part.. "The Town will take all technical and administrative measures legally available, including the use of the Comprehensive Plan, to minimize the change or transition of existing low density areas, [which is what the property in question was], or structures to more intensive patterns, and thereby lower the pattern of density where possible, and minimize tourism inflow." The section in the land use objective 1, for compatibility and harmony says that future growth and development within the Town shall be managed to maintain and enhance the Town's unique physical and historic character, with emphasis on its visual qualities and compatibility and harmony among its diverse land uses. Clearly the proposal to build a 32' high, 267' long building directly behind the single family home of the Franks was excessive and incompatible with the established character of development, and would prevent them from the continued enjoyment of their home. That diminishment in value could be measured in economic terms, or in social terms.

Mr. Basehart referred to section 2.2 of the Comprehensive Plan, which related to the Town serving objective, as well as section 2.3. Section 2.4 related to intensity and scale of development. If the analysis of Mr. Zabik was acceptable, then all of those sections of the Comprehensive Plan were violated by the application before the Town Council today.

With respect to the special exception criteria, Mr. Basehart commented that most of the criteria were not met by this particular application, specifically, B, C, and D, because the proposed development was not compatible with the nature and the character of the single family home enjoyed by the Franks, as well as the other residential units in the neighborhood. Criteria E, relating to compliance with district regulations, was violated by the proposed underground parking structure, violating the section of the Code requiring parking to be at surface. Criteria F, providing that special exceptions should only be granted if they comply with the provisions of the Comprehensive Plan had been violated, as well as Criteria L, relating to the Town serving nature. There were also concerns with Criteria M, relating to adequacy of landscaping and screening, as he believed that what had been provided was inadequate for the size of the building, as it was impossible to mitigate the impact of the building by a 10' wide planting area, regardless of the size of the trees used. In addition, he asserted that there would be significant negative impact created by the location of the proposed entrances from the building into the park area that the parking was underneath. There were doors going into that building, although the applicant had expressed that they did not intend to use them for customer access or deliveries, but he maintained that would happen. Fed-Ex, and UPS, and other delivery companies would want to use Peruvian, and there would be significant problems with individuals attempting to use Peruvian parking. The addition of 52,000 square feet would only complicate the parking problems. Utilization of the valet parking under the building would involve charges that many visitors would not want to use, and Peruvian would be a prime target for those types of parkers, as well as people who simply did not like to use valet parking. That would have a negative impact on the character and quality of Peruvian Avenue and the homes in that area.

Mr. Basehart noted that he agreed with the conclusions of Ms. Roselli regarding the variances, with respect to the application not meeting the test of the variance. Clearly the need for the variances requested was created by the particular building program that was being proposed by the applicant, and there had been no demonstration that the program was necessary in order to achieve a reasonable use of the land. A much smaller amount of development on the property would result in the elimination of the need for variances, and there had been no demonstration that the level of development needed to eliminate those requests would render the property unusable.

President Smith asked what the permitted height would be without a variance?

Mr. Basehart replied that the applicant was not asking for a height variance; the height limit was not violated.

President Smith explained that she was talking about any store coming in and asking to build a store--what would they be permitted to build, as far as height was concerned?

Director of Planning, Zoning & Building Moore replied that under the guidelines it would be 40', and 10' from the property line.

Mr. Basehart commented that the point he was trying to make was that other development alternatives would not have as great an impact on the residential properties.

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Mr. Shaw asked what the maximum size of a building would be?

Mr. Basehart responded that he did not believe there was a floor area ratio limitation. If an applicant was 10' from the property line, a building could be 40' high. He did not know the square footage figures.

Mr. Shaw replied that it was 15,000 square feet, so four 15,000 square foot buildings would fit on the land, as it existed today, and still meet the Zoning Codes, without the need of any building variances. There would be setbacks or separations between the buildings, because there was a mandate of side yard setbacks. He stated that he was not sure that it was appropriate to look at the size of a building on the basis of what was being offered, and not to take into consideration what could be built on the property.

Attorney Jorgensen addressed the Town Council, submitting into evidence the letter he had sent to the Council members, and a list of items of concern to his client:

- ✱ The number one priority of concern was the parking garage on Peruvian. He submitted that the Code did not allow underground parking on Peruvian, and that Mr. Brindell had expressed that it was not really needed for parking.
- ✱ There should be no rear doors in the building. There was no need for it, and the concern was that visitors would come in and out.
- ✱ More landscaping in the back, as adequate screening, at least up to the level of the building in the back.
- ✱ Air conditioning units that are not buffered. Apparently there would be screening for all of the units, but he requested that they all be baffled to reduce the noise level, and move them up as far as possible to Worth Avenue.
- ✱ Adding as much architectural detail as possible in the back to break it up and look more attractive; perhaps some opaque windows, getting rid of the doors. He understood from the applicant that the terrace would not be used, and that was appreciated.

Attorney Jorgensen stated that he believed the Town Council had enough discretion, based on Mr. Brindell's perceived need of parking, and on the technical argument that the parking garage was not allowed, to do away with the garage.

President Smith reminded Mr. Jorgensen that if the project was approved, it would be going to the Architectural Commission, where specifics of building detail and landscaping would be handled.

Mr. Wyett commented that he did not totally understand the objection to the parking garage, as it was totally underground, with grass and trees above it, and customers would have to park somewhere. He expressed concern about the Peruvian residents, and noted that the third story could not be seen from Peruvian, although he believed most of the concerns had been addressed.

Architect Gene Lawrence explained that the parking garages were all over Town, and they had very low RPM fans; there was not a big air or fan noise. There were very few fumes coming out. He expressed that this was not a big problem, and could be dealt with technically.

Mr. Edward Kassatly, a 64 year resident of Palm Beach, with a family business in Palm Beach for over 75 years, which he expressed as the "Mom and Pop Shop of Palm Beach," addressed the Town Council. He stated that he was a board member of the Chamber of Commerce, the Worth Avenue Association, and President of the Worth Avenue Property Owners. He was not speaking for or against them, but as a resident of the Town of Palm Beach. He commented that he had heard very eloquent information and speeches today on what Neiman Marcus would do for Worth Avenue, which sounded wonderful as a merchant on Worth Avenue. As a Town resident, he questioned what would happen to the Town. Palm Beach was a residential community, with a very good blend of retailing, Town Council, residential homes, and a great Building Department. He questioned how Neiman Marcus would enrich the life of Town residents. As a Town resident, he really did not think the trade-offs were there for the people. Personally, he would rather see Neiman Marcus in a much higher density area. He expressed concerns regarding traffic. He noted that they had done an in-store survey of their clients, which represented a majority of Palm Beachers, and the percentage of those for and against Neiman Marcus, and he expressed that Neiman Marcus was way down on the poll. He urged that the Town Council think of what was good for Palm Beach, and not what was good for Worth Avenue. Worth Avenue would survive, and would continue to do extraordinary business.

Mr. Bob Grace addressed the Town Council, asking for specifics regarding building a three story building on Worth Avenue without getting any special exception or variance.

Director of Planning, Zoning & Building Moore responded that was not correct. A special exception would be required for three stories.

Mr. Grace then continued with his address to the Town Council, asking them to understand that they had been elected to office, and that residents had faith in them, asking that they use their own intelligence and common sense to make decisions as to what was best for the Town. He did not ask or expect them to be experts in all fields, and appealed to them to reflect on the matter themselves, and not be worn down by all the experts heard. He sincerely believed that the decision that would

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be made today was the most important one that would be made by the Town Council, as they were determining whether Worth Avenue would remain a street in the Town of Palm Beach, or become a destination in the County of Palm Beach. He commented that he agreed totally that the project did not comply with the Comprehensive Plan for the reasons already stated. With respect to the variances, according to law as he knew it, the applicant must show that he could not make a reasonable use of the property unless the variances were granted. The applicant seemed to have been very silent on the matter of justifying these variances, perhaps because it was realized that it was hopeless to justify them, but that did not change the law. In 30 years of zoning experience in the Town he had not seen an application which asked for so many special favors. He referred to reports of publically traded companies, stating that he believed most would know what he meant when he used the phrase "a forward looking statement" because that applied in all annual reports. He paraphrased "a forward looking statement" and especially the disclaimer that was made with regard to those statements as follows: "nobody can predict the future, and if you're stupid enough to pay attention to such a prophecy, it's your own fault." He maintained that this applicant had very cleverly used the Town serving provisions of the Town Zoning Code to serve his own purposes in this way: the applicant issues a myriad of forward looking statements about who the customers of Neiman Marcus will be, and bluffs the Town Council into believing these statements instead of doing their own thinking. He appealed to the common sense of the Town Council, stating that it was likely that the store would advertise in the newspapers of the Palm Beach Post and Palm Beach Daily News, and he expected to see their ads in the playbill at the Kravis Center in an effort to attract people from that general audience. Neiman Marcus, once opened, could not say to some people who appear at the door, "please do come in," and to others "sorry, you can't come in our store." If a store was made to be very exclusive and high class, the public would come to the store with more vigor and strength than ever, because that was what they wanted to do. He commented that residents had concerns about the use of residentially zoned property for commercial uses, which was a terrible precedent to set for the Town, a step on the way to making the Ocean block, the south side of Peruvian Avenue, commercial, just as the south sides of the other blocks. Perhaps that would suit the residents there fine because they could sell out to Mr. Handlesman, who already owned a lot there, and make a lot of money, but it would not be a good thing for the Town of Palm Beach. There were already traffic problems in the Town of Palm Beach, and they would only get worse, because Palm Beach County was the thirteenth fastest growing county in the United States. He maintained that Neiman Marcus would bring more people to Palm Beach, which he did not think was fair to people with homes along South Ocean Blvd. who could not get out of their entrances or side streets. He maintained that Palm Beach had been unique for a great many years, because it had resisted the ever present pressure to over commercialize. Super wealthy land owners could not be blamed for wanting to make more money. That was how they got so wealthy in the first place, but he was afraid that the citizens could blame the Town Council if it granted approval to the applicant. He cautioned that the applicant used a well worn strategy of asking for so many special favors, in the hopes that if the Town Council denied a few of the requests, it would feel that they had been cut down to size. He urged the Town Council not to be tricked; the strategy had always been to ask for much more than was wanted; let them cut it down some, and you'll still come out smelling like a rose. A Neiman Marcus store in the Town was not what citizens wanted or needed, and Mr. Grace asked the Town Council to bite the bullet and turn the entire application down.

Mr. DeCarlo, 125 Worth Avenue store owner, addressed the Town Council, stating that he had been in Palm Beach for 10 years. He said that no matter what the traffic would be, Neiman Marcus would be an enhancement to the Town, and would be a wonderful situation for all the merchants. Most of the people coming to his store ask when Neiman Marcus would be on Worth Avenue. He maintained that traffic would increase over the years whether Neiman Marcus was on Worth Avenue or not.

Mrs. Nancy Douthit commented regarding a unity of title, and recalled that the park existed because at the time the numbers of square feet of retail space demanded "x" number of parking spaces. There were two restaurants, with each four seats demanding a parking space. The park had been created for parking if necessitated, with a unity of title. The restaurants were still there; the square feet had not diminished; therefore, the parking should still stay available, even though it has never been needed. That was part of the original package, and now it was being shifted about with a park someplace else, and she questioned what would happen seven years down the line when someone wanted to build a house there because there was no unity of title, or anything else, and how would one shift a unity of title from one piece of property to another? She remarked that the parking building itself had requested all kinds of variations, and she hoped that they had super valets, and that the Town had all number of hold harmless clauses, because the fender benders could be incredible. She submitted that the people doing the traffic must be the same people who say that schools are not overcrowded.

Ms. Elise McIntosh addressed the Town Council, urging that the community remain as it was, and although Neiman Marcus had beautiful stores, she did not think they belonged here, just as some people did not belong here. She stated that she thought that dignity should be held onto, and if Neiman Marcus did come in they would kill little stores, which would not be fair. She urged that the Town Council not approve the application.

Mr. Arthur Palmer, a property owner of Winthrop House, observed that developers looking at Neiman Marcus were looking at a second anchor store for the purpose of trying to revive the Esplanade. He stated that he believed statistics given on the amount of traffic moving in and out of the Esplanade were obsolete.

Mr. Milton Klein addressed the Town Council, stating that Abraham Lincoln had reminded us that "it is for the living to be dedicated here to the unfinished work." He submitted that when the Zoning Commission and the Town Council had approved slight modifications to the Worth Avenue Guidelines it had begun the process of dedicating themselves to the unfinished work, the proper development of the 100 block of Worth Avenue. The thought was that a developer would come to Town, provide satisfaction for the special exception and variance process, that traditions would be respected, and the future provided for. The process would be reviewed, and a homogenous block, similar to the 200-300 blocks of Worth Avenue would be created. He maintained that the developer, Murray Goodman, had repeatedly demonstrated his love and concern for the Town. Gene Lawrence was one of the foremost architects in the country, and a person of impeccable integrity and character; a man who had designed many projects in Town, and who was aware of competing sensitivities,

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who had factored those into superb plans. He noted that he had a historical perspective spanning four generations in Palm Beach, which let him remember things as they were 35 years ago; at the same time he could see the future through the eyes of his 7 year old child, and he was happy about the future. In his judgement, the proposals today were good for the Town. The Zoning Commission, after hearing extensive testimony from town staff, consultants, and members of the public, concluded that the future of the Town could be enhanced and its heritage could be preserved by permitting certain limited development of the block. He submitted that the proposed project was a good project, by a caring developer, a respected architect, and a prominent merchant. Even though change was frightening to some, it could be ignored or made to work. The Zoning Commission sought to harness change for the good of the community when it concluded that the development patterns along the Avenue were not homogeneous; development of the east end of the 100 block, as contemplated by the slightly modified guidelines would be in keeping with the existing structures on the block. He agreed with the residential character of the Town, as the Mayor had emphasized, as that was what had attracted all residents, and it must be preserved. Neiman Marcus had testified that the proposed store had been reduced by 2/3, to approximately 30% of a normal Neiman Marcus, and now they had reduced it even further. In conclusion, Mr. Klein urged the Town Council to approve the requested special exception and variances with such modifications as deemed appropriate.

Ms. Patricia Murdock, resident of Winthrop House, addressed the Town Council, stating that traffic was terrible, and she could not get out now. She had been a resident since 1972, and the traffic had gotten worse, especially after the Esplanade had come in. She thought the same thing would happen when Neiman Marcus came in. She mentioned that when the bridges were out there had been terrible traffic; when construction of this project began heavy equipment would be coming over the very tender bridges, and she asked who would be responsible if a bridge broke when one of the trucks was on it? She maintained that there would be lawsuits involved, and urged that this point be thought about. She suggested that Neiman Marcus belonged in the new area near the Kravis Center.

Town Attorney Randolph noted that Attorney Malefatto, on behalf of 125 Worth Avenue, had submitted the requested list of conditions of approval that he would like considered by the Town Council, which he entered as part of the record on behalf of Mr. Malefatto.

President Smith announced that staff comments would now be heard.

Zoning Administrator Paul Castro addressed the Town Council, stating that Frederic R. Harris, Town Traffic Consultant, Adley, Brisson, & Engman, Town Planning Consultant had provided comments as well as staff had in cover memorandums dated April 9 and April 15, 1998. He would now review the site plan from the bottom floors going up. He stated that, based on the lot coverages that were allowed under the Worth Avenue Design Guidelines the gross floor area that could be achieved was approximately 52,000 square feet. Beginning with the basement, staff had some issues related to the design. The applicant was proposing variances from the minimum width of the parking aisle, as well as 155 of the parking spaces. If the applicant could demonstrate a hardship relative to those variances, the aspect providing valet parking for not only the customers, but the employees, in a controlled environment was something staff thought would help traffic circulation, as well as the achievement of a safe and adequate provision for parking in the basement areas that were hidden from the streets, and was adequate parking for the entire retail use of the store. However, in terms of the access into the site, and the stacking of vehicles for valet service, there appeared to be inadequate stacking to get the vehicles off the street when there was peak season traffic. Also, relating to the design of the access into the site, traffic consultants had stated that the design was such that it was very tight, and specifics were required as to how the separation of lanes occurred, as well as the wide expanse of the drive aisle on the west end of the building. The applicant had demonstrated to staff that they were adequately addressing issues relating to the residential properties behind the proposed Neiman Marcus store, and there were no windows or doorways that would provide access to the general public, or look down upon the residents to the rear. Staff had asked the applicant to provide the retaining wall to the rear of the property of a height of approximately 4' to provide adequate planting fill to provide the necessary landscape material to help buffer and soften the back of the building. There were comments related to the Worth Avenue Design Guidelines from Adley, Brisson, & Engman, which would be addressed by the Architectural Commission related to meeting the guidelines in terms of architecture and the intent of creating the appearance of upper floor residential uses not only on the front, but also on the back of the building.

In terms of the front of the building, and moving the air conditioner units to the front as much as feasible, except for the one that was under the entry feature, and entirely enclosed, staff believed that would significantly decrease the emitting noise level from air conditioning units. The screening and the height and location of the units would result in an acceptable noise level at that location.

The loading dock and the dumpster were in the same location, and staff did have concern relating to the service of the dumpster, as there was only a small dumpster area for the entire store, which was located within the loading space itself. With only one loading space, when three were required (variance was being requested for that), the applicant had attempted to demonstrate that, with the use of Fed-Ex, and smaller vehicles, and the times that they planned to service the store with their merchandise, that they would be able to adequately address those concerns with the Public Works Department. Staff did anticipate that the dumpsters would have to be serviced on a daily basis.

A variance was being requested for the setback for the arcade. The Code required that the arcade be set back a minimum of 3' from the inside of the curb. It could be located in the right-of-way. Staff had not seen the actual plan with the towers moved back, but the variance had been requested because the arcades themselves were set back 3' from the inside of the curb, however, the overhang to the towers was located right underneath the curb itself, and that was the purpose and intent for them applying for the variance. Staff believed that the reason for that setback was so that if someone pulled up to a parking space on Worth Avenue, and wanted to open a car door and get out, it would be almost impossible if the arcades were located any closer than 3' from the inside of the curb. With the overhang so high, over 40', that issue was moot in this case.

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There had been discussion related to ground level parking and the special exceptions relating thereto, and staff believed that the intent of that specific Code provision was not to allow parking to be above ground in a structure, and that by providing parking below ground the applicant was providing even more of a buffer and a provision for providing the parking for commercial use without impacting the neighbors. The only comment related to the garage in the R-C District on Peruvian was that the ventilation system in the original plans was approximately 5' from Peruvian, and it should be moved further back onto the property, closer to the commercial building if possible. In addition there was an emergency generator on the northeast side of the site, and noise and ventilation would need to be treated. Staff also did not know the location of drainage related to the basement in terms of injection wells, and where pumps would be located.

The construction itself, the scheduling of construction and hours would be worked out at a later date in pre-construction meetings, as well as working closely with the developer in addressing any comments from neighbors related to impacts created by noise, dust, or any environmental issues. The Building Code and the standards of the industry should provide adequate protection for neighbors. Staff would adequately address the staging of material, how employees would get to and from the site, and how construction vehicles would access the site, as well as times of access.

Mr. Bill Brisson, Adley, Brisson, & Engman Consultants, addressed the Town Council, referring to his memorandum of April 6, 1998, which listed a number of comments, most of which had been addressed by the applicant in some of the revisions. From the aspect of the design guidelines, he believed that the Worth Avenue frontage of the building definitely met the intent of the guidelines by emulating the 300 block, by breaking the building into what would appear to be numerous buildings, as opposed to one large building, and assuming that the windows had been added since the original design, which would enhance the pedestrian atmosphere. Some improvements in fenestration and detail work had been suggested on the east and west ends, which appeared to have been addressed by the applicant. He had given considerable comment about the lack of sensitivity of the rear of the building to the adjoining properties to the north, some of which had been addressed, although he still believed that the rear of the building had not been broken up into the appearance of numerous buildings from the rear, however, this aspect could be addressed under architectural review. The situation from the rear had been improved, however. With respect to compatibility of the adjoining properties to the north, the residential units, there were not many impacts now. The only real impact was the appearance of mass from the adjoining properties to the north. The third floor had now been pushed even further to the front, and had been reduced, which could not be seen from the Peruvian Avenue properties, so all that was left would be reducing of massing through architectural features, which could be handled by the Architectural Commission. Mr. Brisson noted that he had some concerns regarding traffic and parking, which would be addressed by traffic experts.

After Town Clerk Pollitt had administered the oath, traffic expert Phil Tokisch, Frederick R. Harris, addressed the Town Council, stating that the traffic study of the applicant had been reviewed, as well as their site plan. The conclusion from the traffic study had found that they had followed acceptable procedures for doing traffic studies. He pointed out that the traffic impacts they talked about were net impacts. In their study they were talking about a store of 57,000 square feet, which would replace existing development of over 15,000 square feet, so they were dealing with a net impact of about 41,000+ square feet. They had collected data for their trip generation from traffic surveys that they had done in the Esplanade at heavy use times, and had collected data from the market survey to decide how many people and where they would be coming from. The site plan had been reviewed, and comment had been made on access for stacking for the valet operation, and impacts to the public sidewalk and the public street. The building of the colonnade over the sidewalk was of concern. The Town was left with an area of about 3' from the curb to the face of the colonnade, which was not wide enough to be a sidewalk, but not narrow enough not to be a sidewalk. He expressed concern about the parking and aisle dimensions, which were not adequate for self-parking. Once the building was built in the proposed configuration, it would be limited to valet parking, which was an important consideration.

President Smith urged that all staff comments be given fully and completely, with no worries about time constraints.

Zoning Administrator Paul Castro added one comment related to the Police Department. They had talked about the parking arrangement provided in the plans, and felt that the underground parking was a much better way to handle parking for this size of store, than providing parking above ground. It was acceptable to them to keep the traffic circulation internal, rather than outside of the site, providing deliveries to the site were managed in a reasonable way also.

Director of Planning, Zoning & Building Moore commented that staff believed that a full hedge height of 20' to the top of the existing roof line of the second story of the building would be appropriate in the rear of the building, and recommended same, rather than the trees that had originally been shown and a shorter hedge. It was also recommended that the air conditioning units that had been shown on the roof system and moved forward to the south be equipped with state of the art baffling. The valet parking issue was major, and staff had made recommendations concerning the variances on the aisle width and parking spots with columns. If the Town Council granted those variances, staff recommended that it be conditioned that all parking within the basement area be valet parking, and that some sort of agreement, acceptable to the Town Attorney, be made that it would remain valet parking forever. Staff recommended that delivery times be between the hours of 8:00 A.M. and 10:00 A.M., rather than at 7:00 A.M. Public Works did control the times when dumpsters would be picked up. Staff recommended that all construction related activities that would be dealing with how the project would be built be discussed and deliberated at the next Town Council Meeting regarding this subject.

Mr. McLendon expressed concern regarding the reduced parking space dimensions, and questioned if it was feasible to sacrifice some spaces in order to increase the dimensions somewhat to allow for larger cars?

Architect Gene Lawrence responded that the module that had been established there was a 27' module, which was three 9' spaces—one space would have to be eliminated, which would be a pretty big elimination. He noted that once a valet group came into a garage they set up new more efficient ways to run it, and that every single space in the garage would most likely

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not be taken, so a practical way of parking could be accomplished.

Mr. McLendon asked Town Attorney Randolph if it was legal to put the underground parking in the Peruvian lot?

Town Attorney Randolph replied that it was based upon the intention of staff in regard to that section of the Code, which was 6.21(d)(3).

Mr. McLendon asked Town Attorney Randolph if the Town or the applicant had the legal right to take away the unity of title with the park that now existed?

Town Attorney Randolph replied that they had the right to ask, and the Town had the right to determine whether to release it or not.

President Smith asked the background of when the existing parking lot went into Peruvian Avenue?

Director of Planning, Zoning & Building Moore replied that he did not know the exact date, but that it was prior to January 1981.

Public Works Director Al Dusey addressed the Town Council, stating that there was a major concern regarding the utility easement which was being severed by the underground parking garages. There currently was a 5' easement, 2 ½ on either side of the rear property line, in which there was FPL, Comcast, BellSouth, the gas company, and the sanitary sewer. That was a lot to put in 5', but that was the way the Town was developed. That easement was being severed, and there had not yet been a resolution as to how those utilities would be accommodated. The sanitary sewer was being proposed to be located within a 5' setback on the east side in a heavily landscaped area, which was unacceptable. The Town would have to have access to that facility, and when there were trees and shrubs it would make it difficult to access for service. To date it was not known where the other utilities would be placed. He requested that the site plan not be approved until those questions were resolved.

Mr. Dusey reported that the 3' setback in the front for the colonnade had implications for the street light system, and the palm trees being proposed were inconsistent with the existing trees. There was currently a uniformity of planting on Worth Avenue.

Mr. Dusey noted that there was concern about the watering, which had been expressed in a supplemental memorandum. The applicant would need to remove about 4.6 million gallons per day for the term of the construction of the elements of the basement below water, which he suspected would take several months. There was concern about the impact on the water system in that regard. That water would be placed in the Town storm sewer system, and would take about 9% of the capacity of the system, which meant that if there was a good rainstorm there would be a 9% shortage.

Mr. Wyett asked where the water dumped into the storm system went?

Mr. Dusey responded that the storm sewer system went through a pump station and into the lake. The applicant had agreed to pay for the costs of re-pumping that.

Mr. Dusey noted that there was a concern that street flooding would result in water going down to the garage, which had happened in other facilities, and he wished to make it clear that there would be times when the garage would be flooded.

Architect Gene Lawrence commented that the garage slab was down below the water table, so it must be reinforced so it did not pop out of the ground. A relief fence would be in the walls, so that if the ground water came up beyond the design mode, it would automatically flood the basement. When there was a heavy flow of rain, there were sump pumps to pump water out of it very quickly.

Mr. McLendon asked how many underground garages were in Town?

Mr. Lawrence estimated that there were approximately 10-15.

Police Chief Croft addressed the Town Council, stating that the Police Department had concerns regarding the basement and garage parking. He was not sure it was a good idea to have sub-standard parking spaces, although the Police Department would not be responding to accidents, since it was private property. Beyond that, he believed that there would be more accidents than normal because of the sub-standard sizes, and suggested that perhaps there should be less parking spaces of a sufficient size. He noted that he had supervised the extra duty details for the Police Department when the Esplanade had been built and there had been much confusion with a lot of criticism from the public and the press. There had been loads and loads of material constantly being delivered, and many plans were used to try to expedite the flow of construction equipment, but none worked. Even though the present project was phased, he foresaw some real traffic problems, even during the construction phase. There had been some discussion with the contractor that perhaps they could park over in West Palm Beach. Routes would have to be planned for trucks getting to the construction site, and there would be a tremendous impact on Worth Avenue with traffic. He agreed with the statistical information of the traffic experts, however, he believed this required a more common sense approach. Many people could not afford to valet park, or did not trust the valets, and because of that, as well as the lack of a staging area, he foresaw some back up onto the street, blocking the sidewalk. He noted that the Police Department also responded to noise complaints, and when the Esplanade went up the Department had answered noise complaints from the condominium to the east and from the Colony Hotel regarding the on-roof air conditioning systems on the roof, which were too loud.

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Mr. Shaw asked if the traffic situation would be helped if there was a constant police presence for traffic control?

Chief Croft responded that the only way that would work was if it was a motorcycle officer who could respond quickly. He mentioned that there were delivery vehicles double parked, sightseers, gawkers, people who were lost, the elderly, all trying to find a space, and traffic backed up very quickly. The traffic surveys made it look as though Worth Avenue was an average road, which was not true. It would not take much to disrupt the flow of traffic. More personnel would be needed, and problems could not be fixed quickly. He explained that the Police Department could make it look like the problem was being fixed, however, the traffic problem could not be fixed. He suggested that there would be more of a problem on Worth Avenue than there was now.

Fire-Rescue Chief Ken Elmore addressed the Town Council, stating that the only relevant concern for the Fire Department was with the fire protection built into the proposed structure, and he was sure that Mr. Lawrence would provide a full sprinkler system in the building. Concerning the fire door on the north side of the building, Chief Elmore responded that it was appropriate; it was not necessary to have a handle on it from the outside, as it was purely an emergency exit door.

Town Engineer James Bowser addressed the Town Council, stating that he disagreed with the comment that utility accommodations could be handled after site plan review and approval. The Town of Palm Beach was unique in that it did not require conceptual utility plans and drainage plans with the applications. If the building was approved and there was not a way to provide utilities, there would have to be accommodations made. He called attention to letters submitted by the utility companies, citing that Florida Power & Light (FPL) had noted that negotiations with the Town and the affected customers would have to take place for any additional FPL facilities required in conjunction with the project. Mr. Bowser explained that the site was so fully developed that there may not be any opportunities for placement of equipment. The plan had not been developed to the point where the utility placement could be shown. Mr. Bowser noted that the gas company had stated that a separate easement must be granted to Florida Public Utilities within the referenced area. He also expressed concern regarding service to the line by the Public Works Department, taking into account the 5' space provided for easement. If the building was approved, and staff was faced with the problems of trying to accommodate utilities there could be legitimate concerns.

Mr. Wyett asked Mr. Bowser if he recommended that the project be subject to all utility concerns before being approved by the Town Council?

Mr. Bowser responded that he had discussed the problems with the consultants of the applicant early in the process, several months ago, urging that these types of questions should be identified and worked out, however that had not been done. Utilities were a very important issue, as was storm drainage. Geo-technical work had not been done, and Mr. Bowser established that he was not sure an injection well would work, nor an exfiltration trench. Town requirements for 1" storm water retention could not be met. He noted that he shared concerns with the parking garage, and would like to see the widths between the columns altered so that the full 9' between spaces could be accommodated. He explained that if the building was approved, there would be major disruption in the Town, requiring a great deal of effort from staff. The loading dock gates may block the whole sidewalk, and Mr. Bowser suggested that some accommodation should be made for that and the entry doors opening onto the sidewalk, which could conflict with pedestrian traffic.

Mr. Shaw asked Mr. Bowser when these types of issues would need to be resolved, on the basis of the two phases of the project?

Mr. Bowser replied that the underground footprint was as large, if not larger, than the above ground features, and if storm water and utility provisions had to be put underground, those items would have to be accomplished in the beginning of the project.

Mr. Wyett asked Mr. Bowser if this would be an ideal time for the Town to put in a water pipe in the area of the proposed structure?

Mr. Bowser replied that the building length along Worth Avenue was very small and he would not recommend segmenting a water pipe project.

Mr. Shaw asked Mr. Bowser if there had been any progress in utilizing the excavation sand?

Mr. Bowser replied that the applicant was pleased that there may be an on-Island disposal site, because they believed it could save them expenses with disposal costs. The borings had not yet been analyzed to ascertain whether there was beach quality sand in the area. Once that was determined, a disposal site could be discussed. The problem with disposal was that it was going to be in the turtle nesting season. In order to put sand directly onto the beach now, permits from the Florida Department of Environmental Protection (FDEP) would have to be obtained, which he was not sure was possible. There would be the option to stockpile the sand, and perhaps transfer it to the beach during the winter.

Town Attorney Randolph requested that all written comments of staff be made part of the record.

Mr. McDonald asked Attorney Brindell what witnesses he was planning on for tomorrow?

Attorney Brindell responded that Architect Lawrence, and Tom McCarthy would respond to issues that had been raised today. He would then present his summary, and he anticipated the entire proceeding would require several hours.

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VI. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

The meeting was adjourned at 6:45 P.M., to be reconvened at 10:00 A.M. on Friday, April 17, 1998

(The meeting was reconvened at 10:00 a.m. on Friday, April 17, 1998)

Mr. Brindell submitted a composite of all the revised plans that were shown by Gene Lawrence on April 16th as Exhibit 18. Mr. Brindell said the four aerial photographs would be Exhibits 19, 20, 21, and 22. The two street photographs on boards would be Exhibits 23 and 24; the letter from Jimmy Howell, Vice President for Transportation and Logistics for Neiman Marcus, to Tom Lehn was Exhibit 25 Mr. Brindell said that letter supported what Mr. Lehn stated to the Town Council on April 16th regarding the delivery times which were planned between 6:00 and 6:30 a.m. Mr. Brindell said he would address those times further, as Mr. Moore requested those times be different. He said that delivery time would occur each day and would not last more than one or one and one-half hours. No other regularly scheduled deliveries would be made to the store; however, UPS and Federal Express could be expected to deliver special orders two or three times per week or pick up packages two or three times per week. The conclusion was that one delivery dock was more than sufficient to handle the level of deliveries anticipated at the store.

Mr. Brindell said he would reply to staff concerns expressed previously. He said the first one was the size and aisle width of the parking spaces. Mr. Brindell explained that many of the parts of the project have to physically fit together. Design guidelines have to be set to achieve a certain type of design in exceptionally high quality design for buildings in mass, stepping, towers, and arcades in what is a pedestrian shopping street. Mr. Brindell said Worth Avenue does not have paved parking lots between shopping structures; however, pedestrians want sufficient parking on site and that equates to underground parking. The building requires columns to support the structure, and these columns can impinge on underground parking spaces. Valet underground parking would require a huge waste of space and loss of potential parking spaces if the columns are placed to accommodate the wider aisle width.

Jerry Wentzel said a typical dimension for a ninety degree parking layout would be 18,24,18—that is a fairly standard sixty foot module that is common. That standard was based on seventy-five to eighty percent of the people driving being able to maneuver in and out of a space with one maneuver. He said the Town's ordinance required a sixty-one foot module and he assumed the additional required foot in the aisle is based on the expectation the Town has larger cars and the drivers' skill level is not as high.

He continued that when his company is laying out parking garages, they are usually working with a combination of eight and one-half and nine feet. Eight and one-half could either be considered small car spaces or low turn over spaces, and the nine foot are for higher turn over, retail spaces.

Regarding the issue of columns, he mentioned that a building over an underground parking garage usually requires more columns. Most ordinances do not discount that protrusion into the space as being a substandard space or taking away from the width of the space. The columns come into play where they fall—if the column is in back of the space, it affects the driver's ability to turn in and back out. If the column is in front of the car, it does not affect the lining up of the car or the door opening. In the particular case of the proposed underground parking garage for Neiman Marcus, the columns are twenty-seven feet on center and not affecting the aisle width. The standard large car is six feet wide by sixteen feet long, and the longest car would be eighteen feet. The columns in this garage would be located mid way in the parking spaces and could possibly affect the door opening; however, most of them are between those points. Additionally, the valet operation would mean that only drivers get out of the car and no passengers are getting out of the car on the passenger's side. A valet operation could work with this layout very successfully, because the valets are used to maneuvering cars into different spaces.

Mr. Brindell said the other related issue had to do with stacking, and the original plan had three stacking locations as a automobile would drive into the valet area. The revised plan has six stacking areas, although based on data from the Esplanade valet parking, the Neiman Marcus plan would need five stacking areas to work. Mr. Brindell noted that five feet of clear space exists between the sidewalk and the rear of the closest car that would be stacked next to the sidewalk—there would be no interference with the sidewalk in terms of the stacking.

Mr. Brindell referred to Mr. Moore's comment regarding a preference for a twenty foot high hedge in the back in lieu of trees, and Mr. Brindell said that was all right.

Mr. Brindell said that the architect has tried to provide a residential look in the back of the building; however, if the Architectural Commission would want something different that could be dealt with at the time of the ARCOM review, and

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that should be the appropriate place to resolve that ultimately.

Mr. Brindell said that state of the art HVAC equipment is planned for the building which is considerably quieter than machinery was, even a few years ago. His client has no problem with using state of the art baffling around the equipment either.

Mr. Brindell said delivery times would not be a problem and the best times could be worked out for the area—probably between the hours of 6:00 a.m. and 10:00 a.m. He said the issue of one loading dock should be sufficient to handle Neiman Marcus's needs and more than one loading dock would be contradictory to the objectives of the Guidelines and the pedestrian comparison shopping nature of the street. The real needs of the dock loading have to be balanced with the objectives of the Guidelines, and the delivery needs have been reduced because of the off site management of most of the merchandise. Mr. Brindell said the opening of the loading dock gate onto the street can be addressed to either open in or roll up and will be changed to whatever is determined to be the best solution.

Mr. Brindell said there were a number of issues raised about construction management, and the Weitz Company has been retained to assist the applicant in developing the construction management program. The Weitz Company is a very large, successful company who has many years of experience in the Town of Palm Beach. Up-to-date construction techniques would be used in the construction of the building, and off duty police officers would be hired to help manage street traffic during the construction period.

Mr. Brindell mentioned the issues of relocation of utility lines. He said that those types of details are normally worked out during a pre-construction conference with the Building Department after approvals have been given. He understood that no building permits would be issued until those issues are resolved satisfactorily. Mr. Brindell said he did not think that the level of design at this point would allow the details to be developed, and these issues will be worked out later.

Mr. Brindell said the question of traffic on the Avenue was addressed in the traffic study and the review of it that were done by the applicant and the Town and showed clearly there was not a capacity problem on Worth Avenue. There is a time issue of traffic movement on the street as described, and that would appear to be a management issue with the Town and not a traffic standard compliance issue.

Mr. Brindell mentioned the roof overhang, and the Guidelines encourage building of an arcade and the face of the arcade needs to be out to the three foot area to allow enough clearing underneath for a sufficient sidewalk. Mr. Brindell explained the request for the setback was to provide adequate space for people to open doors and to provide space for a delivery truck to back up. The overhang does not impinge upon that space but is designed as an architectural enhancement under the Guidelines.

Mr. Brindell reiterated that if the Peruvian lot was included in the lot coverage calculations, there would be no need to request any variances for any coverage on any of the floors. The practical requirement to put parking underground in order to achieve the objectives of the Guidelines and retain the nature of the Avenue result in having to use a certain amount of the frontage and the actual, normal floor space for all the entry and loading areas. The valet and loading areas on the first floor take up approximately 13.3% of the lot coverage, but to provide parking underground and on-site, it has to be accessed and that counts against the lot coverage in the calculations. Mr. Brindell said the retail area of the first floor is only 63.7% of coverage and the habitable area on the third floor occupies only 4150 square feet now and is only 12% of the lot coverage — the other 21% of that coverage is comprised of roof coverage for mechanical equipment and the required exit stair. Mr. Brindell said it was necessary to provide functional floor sizes in terms of Neiman Marcus's standards. By granting the proposed variances, the objectives of the Guidelines can be achieved to retain the pedestrian comparison shopping nature; enhance those as Worth Avenue is defined in the Town's Zoning Code; and to accommodate one of the world's premier retailers with a ninety-five year history of excellence and its customers' expectations of what type of environment will be provided. Mr. Brindell continued that in addition to that, the second and third floors have been designed with a residential look as opposed to a commercial look. The proposed Worth Avenue Neiman Marcus store is not a typical Neiman Marcus store. Mr. Brindell said that all of those factors support the need for a variance in this case.

(This was the conclusion of Mr. Brindell's presentation.)

Mrs. Smith requested Mr. Brindell provide information on the total of variances being requested for the lot coverage, approximately 16%. Mrs. Smith asked what size of store could be built on the property without any variances?

Mr. Moore responded the total square footage allowable under the revised Worth Avenue Guidelines, without any variances, would be approximately 58,000 square feet.

Mr. Brindell pointed out the quality of the design of the building would not be the same.

Mr. McLendon questioned the possibility the building would have to be made shorter to allow for easements and Town Engineer Bowser's concerns as stated previously?

Mr. Brindell replied there were several solutions to Mr. Bowser's concerns depending on the ultimate construction design.

Architect Lawrence said there are literally hundreds of items that need to be shaped and configured in terms of the underground containment area and what type of sheet piling walls that are used around the bottom before deciding what solutions will work. Mr. Lawrence said he saw two or three solutions for any one of the utility systems, and he had no problem making the commitment to work that out with the Town before a building permit is issued.

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Mr. Wyett asked how Mr. Lawrence would address a hypothetical situation where the Town's sewer system and utilities required more space than was available on-site for this project?

Mr. Lawrence replied that a building permit would not be issued until the problem was resolved. Responding to further questions on the subject, Mr. Lawrence said they were committed to accommodate the utilities and would adjust the building if necessary. Mr. Lawrence replied that this would be one of a series of items that would be addressed at a further development stage.

Mr. Brindell said there are many inter-related design issues at this juncture and to have a number of those driven by the location of one feature, at this state, would not be the best way to address the issue as opposed to having the comprehensive plans available to see what the options are for a variety of things.

Mr. Dusey said the problem with the sanitary sewer, as it is presently shown, is that it is placed in a five foot setback on the east side at a depth of seven or eight feet. He said he did not believe the sewer could be maintained in that location. Mr. Dusey said if the applicant is willing to do something different than that and take care of it in a different location where it can be maintained, he would be willing to work those details out. As it is presented, it will not work, and Mr. Dusey said he could not maintain it in the future.

Mr. McLendon said it could be the subject of a use agreement if they are willing to take the responsibility for it.

Mr. Dusey responded he did not think that would be permissible since the sewer services Town residents further to the east of the proposed site. He did not think a private developer should be relied upon to maintain a sewer line that services the Town's residents.

Mr. Dusey said he thought there were alternative solutions; however, he did not know how willing the applicant was to address the situation. He said he did not want to end up with a site plan that cannot accommodate the situation and end up with something that would be inferior for the Town and a potential problem for the Town.

Mr. Brindell replied he did not think that would happen when his client knows that these needs must be accommodated but needed an opportunity to accommodate with the proposal. If it turns out this cannot be settled within the current proposal, then a different proposal would have to be submitted. Mr. Brindell said that a building permit cannot be issued until those issues are resolved, and they cannot all be addressed at this meeting.

Mr. Wyett said it was not just one issue, and he was very concerned with Mr. Dusey's comments. He said that the Town Council should not be guessing whether or not this problem can be resolved, because if the problem took away too much of the building, it may not be economically feasible to build the building.

Mr. Brindell replied that first of all, his group did not agree that there is not a solution within that five foot easement that works. Much time can be spent discussing alternative engineering solutions that work

Mr. Lawrence added that the sanitary pipe is in a four or five foot easement at the current time on the north property line which is obviously maintainable with several other utilities. Mr. Lawrence said he did not wish to engage in a public debate with Mr. Dusey and offered to accept the possibility of not obtaining a building permit until the problem is solved.

Mrs. Smith said she understood what Mr. Lawrence was saying; however, the way things were done sometimes in the Town for private residences was very different from the biggest project to hit the Town since the Esplanade, and the Town Council wants some assurance from the architect that the direction of the Town's Public Works Director is being followed. The Public Works Director represents the Town residents, and he said this would not work in the five feet. Mrs. Smith asked Mr. Lawrence if he had looked at another possible solution for this problem?

Mr. Lawrence replied affirmatively, and said they had considered encasing the line and channeling it across the building so that it would not have to be re-routed. Another possibility would be to look at the reasons why the eight inch line could not fit into a five foot easement.

Mrs. Smith responded she had concern that the Town Council would be backed into a corner after the project was approved if Mr. Dusey could not give permission to go ahead with the design the applicant wanted, and the applicant would threaten to sue the Town at that point. Mrs. Smith said the Town Council would like to see these issues ironed out ahead of time.

Mr. Lawrence offered to make a commitment that no building permit would be issued until these issues are resolved with the Town, and he thought that until the issue was settled regarding the issuance of a building permit, the owners would not have the right to return to the Town and ask for remediation.

Mrs. Smith asked who the arbitrator would be to decide that question between the Public Works Department, the Building Department and the architect?

Mr. Lawrence responded the Town has procedures to follow and relief can be sought from any one of them.

Mr. Wyett asked if the five feet for the utility easement is normally sufficient or do some of the utilities require more than five feet?

Mr. Dusey responded a gas company has demanded a private easement, and he did not know what the company meant by

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that. Mr. Dusey added that the gas company wanted an easement dedicated to them, and he did not know the extent of that easement.

Mr. McLendon said he was confident that between Mr. Lawrence and the Building Department, a solution could be found. He clarified that if Mr. Dusey did not think the situation could be resolved, the discussion about the building did not need to continue.

Mr. Lawrence replied he did think it could be resolved, and he was prepared to commit that if it could not be resolved, a building permit would not be issued. Mr. Lawrence said he will know what the underground configuration is and the issue can be resolved at that time.

Mr. Shaw said he agreed that the Building Department should be able to make the determination that what is there is sufficient to meet their needs and the other utility needs. He said this is not a major stumbling block, since Mr. Lawrence agreed to abide by the Building Department's decision. Mr. Shaw said he was not sure that if the Building Department and Public Works do not agree that five feet can hold everything in the easement, how would the architect work around it? Mr. Shaw said he thought the power, phones, and cable utilities are presently overhead and asked if that was correct?

Mr. Lawrence said the cable, the power, and the telephone are overhead on the north property line. He reported he has communicated with those utilities, and they are completely comfortable in encasing the lines in concrete and leaving it in the back. Responding to Mr. Shaw's questions, Mr. Lawrence said he was not considering the relocation of the lines on the north side, and the private companies have said if the lines are encased in a concrete duct, they can be left on the north side and run through the garage-taking them from above ground and putting them underground.

Mr. Brindell said the proposal was to relocate the existing sewer line that is presently on the north side of the building with the other private utility lines to the east side. The other utilities would stay in the rear. Presently all of the utility lines and the sewer line are in a five foot easement on the north side of the building.

Mrs. Smith asked the staff if this Neiman Marcus plan conflicted with the Town's Comprehensive Plan?

Planning Consultant Bill Brisson responded that if the Town Council found that the Neiman Marcus proposal met the Town's Town-Serving requirement of the Comprehensive Plan and the Land Development Code, there would be no conflicts with the provisions of the Comprehensive Plan. The Comprehensive Plan has language that encourages and enhances the Town-Serving approach and the Town-Serving style of commercial use in the Town. Mr. Brisson said it should be recognized that there is also a provision in the Comprehensive Plan that states the Town shall incorporate in its Land Development Code regulations for provision of location of commercial uses of greater intensity that are considered compatible with the future Land Use Plan and the character of the Town. (*Mr. Brisson referred to I-29, Policy 2.23.a.*)

Mr. Brisson said the Town has districts that are more intense and under this provision has the right to recognize that there will be situations that are more intense than what might have otherwise originally been considered appropriate. He said he thought that in this instance that is where the Worth Avenue Guidelines fit in. Mr. Brisson said the Town is considering allowing a larger scale of building that one might have normally anticipated, because there are other characteristics of the Town that are being encouraged. However, the Town Council needs to find that particular use, or any use that would be approved, is Town-serving, and if that is met, there are no conflicts with the Comprehensive Plan.

Mrs. Smith asked Engineer Tom McCarthy if the pumps, that would be used to remove water during the construction of the basement that is twelve feet below ground, would be running twenty-four hours a day, 365 days a year?

Mr. McCarthy replied they would.

Mrs. Smith asked how the noise would be muffled for the benefit of the residents on Peruvian Avenue?

Mr. McCarthy said that during the construction it would be necessary to de-water the basement to allow the placement of the concrete. The de-watering pumps that will be used are electric, and they do not generate a lot of noise. The pumps will run twenty-four hours per day during the time the basement construction is going on, although they could be shut down during times of storms, etc.

Mr. McLendon asked where the high water table will be in respect to floor between the two garage levels?

Mr. McCarthy responded the water table is four to six feet deep due to the east/west slope .

Mr. McLendon asked, after construction, how much up lift force, in terms of feet, is being built into the design of the floor and the walls?

Mr. McCarthy replied that this building would have a terrific volume of basement that would be below the water table, and he thought that up lift piling will be used to counter balance the effect of a "floating basement".

Mr. Shaw recalled that the de-watering will produce approximately four million gallons of water per day.

Mr. McCarthy said it is estimated to be 4.6 million gallons of water per day.

Mr. Shaw asked how far out from the actual well points will the de-watering affect the neighbors?

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Mr. McCarthy replied that auger piling will be installed, and holes will be drilled and pumped full of concrete. A curtain will be built around the area that will be excavated for the basement, and the de-watering system will be inside of that curtain. Mr. McCarthy said the auger piles cannot be drilled close enough together to stop ground water from entering although it can be diminished.

Mr. Shaw questioned the impact of de-watering on neighboring shallow wells that are used for swimming pools or ground water and requested an engineering opinion.

Mr. McCarthy responded that in his opinion, the de-watering would not affect salt water intrusion, and he doubted seriously if it would affect any small, shallow wells in the area. He added that the de-watering should not be allowed to affect any shallow wells in the area.

Mr. Shaw said he agreed, but the question was that 4.6 million gallons of water is probably as much water as the Town uses between irrigation and potable uses per day, and this water will be taken from one spot. Mr. Shaw said a major irrigation well on the Everglades Country Club site exists just south of the proposed project. The Everglades Club is using it on a modified basis to bring up enough irrigation water. Mr. Shaw said if the de-watering draw affects the lens that is obviously going out from the Everglades Club spot, that would be a major concern and an impact on the neighbors. Mr. Shaw said there needs to be more than, "I don't think it's going to be a problem." Mr. Shaw said the Town Council needs to know that it will not be a problem and have a safety plan that in the event that there is a problem, there will be a way to go with it.

Mr. Shaw, referring to the neighboring buildings, said if those buildings are balanced by the water table and the land under them would be dried out—would that be a negative effect? Mr. Shaw questioned the building at 125 Worth Avenue—if that building has been "floating" all these years and is dried out, what will happen if the land is dried out? Would the building be affected? Mr. Shaw said he remembered an incident when Phillips Point was constructed in relationship to the foundation of the church across the street that be might relevant to this project.

Mr. McCarthy said he could say with certainty that the de-watering for this project would not affect the irrigation water supply for the Everglades Club as that is definitely out of the cone of influence. Mr. McCarthy said a shallow well, 100 feet away, would be debatable if that well was affected by the de-watering. Mr. McCarthy said that outside a 200 foot range, there would be no influence, in his opinion.

Mr. Shaw asked Mr. Dusey if he agreed with that statement or if he could not answer, indicate that?

Mrs. Smith said that several large condominiums, large family dwellings, and single family houses exist within 200 feet of the project, and she thought that Mr. McCarthy would want to have a back up plan to assure the Town Council that the issue could be dealt with.

Mr. Moore questioned if any shallow wells existed on Peruvian Avenue?

Mr. Shaw said he was not sure there were any wells there. Mr. McDonald said it was just a hypothetical question. Mr. Shaw said he knew there were some shallow wells a little farther away.

Mr. Dusey responded that the question concerning the shallow wells was beyond his area of expertise, but suggested a geologist could answer that question very quickly based on soil samples. Mr. Dusey said the issue should be discussed during the design process as to what can be done to protect the water resources of the area.

Mr. McDonald asked Mr. Moore to review the variances and the suggested hardships for them.

Mr. Brindell said he had attempted to explain the variance requests during his presentation and offered to elaborate on the hardships.

Mr. McDonald responded that Mr. Brindell had given his explanation for the hardships, and he would like to hear Mr. Moore's comments. Mr. McDonald asked if Mr. Brindell had given a hardship for each requested variance?

Mr. Moore read as follows:

"Variances requested for approval of off-street loading requirement in order to provide one loading space in lieu of three spaces per code—his hardship that he identified, as I recall, was to the degree that their deliveries are on a one store basis rather than multiple stores was that they could control the times of the deliveries and therefore would not need a standard set of loading spaces for that size of square footage because they were the sole user.

"Request for variance approval to provide approximately 155 underground parking spaces. I think that has been modified since this original application when they came in yesterday morning with a revised plan. Building column protruding into parking spaces—I believe that the hardship they are addressing is that our standard space of 9' x 18' does not take into consideration traffic standard manuals that would permit them, based on the location of the actual columns, to intrude 6 to 8 inches into the space. I think that he addressed the hardship related to that this morning with his traffic engineer Mr. Wenzel as far as the 155 underground spaces that would be affected.

"There was an additional request for relief for 1 foot in aisle width. I believe they have addressed the fact that they will be using and imposing upon themselves with some sort of a deed restriction the use of valet rather than self

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parking for any future use of that space.

"Request for variance approval to provide a 21'6" aisle width parking garage instead of 25' aisle required by code. I believe I just addressed that.

"Request for variance approval from lot coverage requirements for three story building special exception requirements in the Commercial Worth Avenue District in order to provide lot coverage of 77% on the first floor, 77% on the second floor, and 33% on the third floor in lieu of 75%, 65%, and 30% respectively as required by code. I believe that he addressed that earlier in that if he were permitted to be able to count the land that was able to go with this project on Peruvian that he would not need that requirement. I believe additionally that he addressed the fact that if he were to build to the maximums permitted which would be the 75, 65, and 30 that he would be able to have additional square footage over and above what he is asking for under gross total.

"Request for variance approval to provide no setback from inside face of street curb to proposed roof overhang of the arcade in lieu of the 3 foot setback required. That, I believe, he addressed earlier in that the code anticipated and required the 3 foot setback from the curb in order to accommodate both vehicular for patrons and pedestrians as well as trucks. The fact that their overhang is on the tower and 40 feet in the air, I believe met the intent of the code."

Mr. Shaw asked if the variance for C.5 only applied to the single tower and not to the arcade?

Mr. Brindell responded that the arcade was not in that. It is just the roof overhang, and the only roof that is involved is on the tower. Mr. Brindell explained it is the same as what is on the Esplanade.

Attorney Jorgensen addressed the Town Council and stated he did not believe that the applicant had shown any hardship and the law is clear that self imposed hardships do not allow someone to come in and obtain a variance. The case law is replete with statements of that nature. All of these hardships, if they do exist, are self imposed. They are simply building a building which causes them to have a need for variances. Those are classic examples of self imposed hardships, and that is not a basis for a variance and unless Mr. Brindell can offer some other evidence, if the Town Council was inclined to prove the variances, it would be legally indefensible if someone should decide to challenge that. Mr. Jorgensen said he thought that the applicant had a serious problem with self-imposed hardships.

Mr. Jorgensen asked Mr. McCarthy what his comments or testimony would be concerning the structure and the swimming pool as well regarding the Franks' property on Peruvian?

Responding to a question from Mr. McDonald, Mr. Jorgensen said the Franks do not have a shallow well on their property.

Mr. McCarthy stated the Franks' home structure or swimming pool would have no affects from the project.

Mr. Jorgensen asked if there would be any particular way the Franks' home would be protected during the construction process -- would a dam be built around their portion of their property that abuts where the parking garage will be constructed?

Mr. McCarthy responded that there would be a curtain built around their entire basement site with auger piling that will provide lateral support. Responding to a question from Mr. Jorgensen, Mr. McCarthy said the ground water would have a slight effect on the Franks' property but very little. Structurally, there would be no effect; however, the ground water is at approximately 5 feet presently but during the de-watering process, the ground water may be at 6 feet.

Mr. Jorgensen said he had already addressed the hardship issue and unless Mr. Brindell could offer additional evidence, he did not think there was any evidence that had been presented for the proof of the hardships other than they were self-imposed and that creates a legal problem for the Council if it approves the variances. Mr. Jorgensen said the argument relating to the Comprehensive Plan comes down to the issue of Town-serving, and the expert witness, Larry Zabik who spoke earlier, had a methodology to his plan and went through the numbers and went through the standard methodology used by those in the field who determine where customers are going to come from when someone builds a store of the size that is being contemplated here. Mr. Jorgensen said that Mr. Zabik's numbers did include hotel guests but did not include employees, and the numbers are more accurate than what the Council may have been led to believe at yesterday's meeting.

Mr. Jorgensen said that in contrast the applicant submitted a marketing survey which makes a conclusionary statement that a majority of the patrons for the Neiman Marcus will come from the Town of Palm Beach, but there is no analysis, no methodology, no crunching of numbers--just broad statements and a broad conclusion that the majority of the customers will come from the island. The code is very specific on what type of evidence the Town Council can consider on the Town-serving issue. It is under Section 6.40, amended, Subsection 1. He quoted: "The submittal shall include a description of the types of information used and the methodology employed in arriving at the conclusion. Information used shall include but not be limited to lists of customer/client addresses or certification thereof by an independent C.P.A. approved by the Town, market studies prepared by independent professional firms, or data from similar operations under control of the applicant."

Mr. Jorgensen said the applicant had submitted a marketing survey, conclusionary, however, they did not bring the marketing person to the meeting. He thought the marketing person should have been present for a project of this size and subject to cross-examination. Mr. Jorgensen said the truth of the matter is the majority of the customers will come from off the island. If that conclusion is reached, there is a conflict with the plan. The whole issue of the conflict of the plan has to do with Town-serving. He did not think the applicant had met the burden of proof, and had not followed the proper

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methodology at outlined in the code and had reached conclusionary statements in the marketing study.

Mr. Jorgensen, addressing the parking issue, stated he had made it clear that his clients, the Franks, did not want the underground parking garage on Peruvian Avenue. He said if the Town is inclined to approve this project, his clients would like very much to do away with the Peruvian parking garage. He said he stood on his previous statement that the code is very clear that when the applicant is requesting a special exception on residential property that abuts commercial property to be used as a parking area, it must be ground level and cannot be contained in a structure. The case law is clear that the language be looked at and if the language is clear, it goes no further. Mr. Jorgensen said he was not threatening a law suit, but he was concerned about the legal basis upon which the Town will make a decision on the application.

Mr. Shaw asked Mr. Jorgensen if his client would rather have the 20 (maximum allowed) parking spaces with access from Peruvian Avenue with the flow of traffic than the park on Peruvian with no vehicular or pedestrian access rather than the underground parking? Mr. Shaw said he was trying to understand what would be gained by having an asphalt surface parking lot in lieu of trees, plantings, and no traffic on Peruvian.

Mr. Jorgensen said he understood there would only be emergency exits from the underground parking lot; however, there would be exhaust fumes, exhaust fans running, doors leading out to the park, and the underground parking lot is not compatible with a residential neighborhood. He said his clients were happy with a surface parking lot that was neatly hedged and had 18 or 20 parking spaces.

Mr. Shaw asked if the exhaust were not an issue, would the answer be the same?

Mr. Jorgensen replied he did not see how it could not be an issue.

Mr. Shaw said there are ways to make things happen so they are not issues.

Mrs. Smith said Mr. Jorgensen had already stated that his clients would rather have a parking lot rather than a park. Mrs. Smith said she was concerned, because she would rather have a park. She agreed with the residents that the underground excavation could be a problem; however, that is an engineering problem.

Mrs. Smith said one of the items that had not been dealt with is the park on Worth Avenue that is tied in, by unity of title, with the Esplanade. She understood that park existed if there were a necessity for additional parking for the Esplanade; however, she thought the Town Council agreed there was adequate parking for the Esplanade. The Worth Avenue park was going to be moved over to Peruvian where it would have been for the benefit of only the Peruvian residents.

Mrs. Smith said it occurred to her that if Mr. Goodman and Mr. Brindell wanted to leave the parking lot there, and a location for a park was needed, perhaps Mr. Goodman could give the Town the Boynton Landscape lot (on the corner of Peruvian and South County Road) and turn that into a park. This is a highly visible area, a block away from the Preservation Park, where the building could be torn down, and the property given to the Town for use as a park.

Mrs. Smith asked if Mr. Goodman would like to discuss the idea with Mr. Brindell during a five minute break?

Mr. Goodman responded that the only thing he could say was that it is a property that he planned to develop, and he had never given a thought to another use.

Mr. Brindell said financial issues had to be considered and agreed to a fifteen minute break.

(The Town Council took a break at this point.)

Mrs. Smith said she would like to state that she was attempting to go "park for park". That was the only point in her discussion being the big advocate for the Garden Club that she was and having worked on the Worth Avenue park previously. Mrs. Smith said she was just looking for another park.

Mr. Brindell complimented the Town Council on its continuous ingenuity. Mr. Brindell said that while Mrs. Smith was looking at this as a "park for a park", Mr. Goodman was taking a slightly different look at it, because he was offered \$2.5 million for that property very recently. That piece of property has an old building on it that will come down, and the \$2.5 million is the price for the land. Mr. Brindell said that at least 14,000 square feet (of that property) could be developed which would translate at least to another \$1 million in value because the new building could either be sold or leased out. Mr. Brindell said he understood why the Town Council is considering this from a green space point of view while Mr. Goodman is considering a real piece of property with a real money value. The result of converting that property to a Town park would be the addition of \$3.5 million to the Neiman Marcus project.

Mr. Brindell said the proposed underground parking area under the Peruvian property would cost an estimated \$20,000-\$25,000 per each of the proposed 52 parking spaces for an approximate total of \$1.3million. 189 parking spaces are planned underground for the main part of the building. Mr. Brindell proposed that the remaining eleven required parking spaces be located on the Peruvian/S. County Road site to be used for employee parking only. This site abuts the Taboo parking lot.

Mr. Brindell reported that the proposed Peruvian/S. County Road site contains approximately 3+ times the square footage as does the existing parking lot on Peruvian Avenue next to the Franks' property. He also noted that if the subject property would not be developed but remain as a park, a benefit would be derived from not having additional traffic generated by

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the building. Mr. Brindell added that Mr. Goodman would receive no charitable deduction for this.

Mr. Brindell said conceptually there is a logical connection. Mr. Goodman said the bottom line is that he is prepared to donate the property to the Town of Palm Beach if some of the smaller issues that Mr. Brindell mentioned can be resolved.

Mr. Jorgensen said if the parking details were worked out with the Town that resulted in the underground garage not being built under the Peruvian parking lot and the existing lot on Peruvian would remain landscaped adequately, that would be fine with his clients.

Mr. Wyett said he was unhappy with the loading situation but more specifically with the ramping. The ramping does not work at the Everglades and backs up at certain times of the day, and with the under use of the 100 block of Worth Avenue, the back up has not caused too many problems. However, with the advent of the Neiman Marcus store and their back up, Mr. Wyett expressed additional concern. Mr. Wyett suggested the valet system could be moved from the surface entry, two cars deep, three cars across, to the basement level with a long internal stacking position that does not affect travel on the street. Mr. Wyett said with the proposed increase in traffic on Worth Avenue, consideration should be given to any controls that would help the situation. Mr. Wyett suggested that two elevators would be needed at the basement level with perhaps service stores at the lower level. He said this would be a far superior way to conduct valet parking.

Mrs. Smith said the Council will be going into executive session and Mr. Wyett's remarks should be considered part of that. The public comment portion of the meeting is over. Mrs. Smith asked Mr. Randolph for his comments at this point.

Mr. Randolph said he wanted to make a determination that indeed the public comments are over and no one from the public had any questions regarding Neiman Marcus before the Council goes into executive session.

Mr. Jorgensen said he wanted to make sure that if surface parking will be on Peruvian Avenue that the parking would be used exclusively by Neiman Marcus and not other restaurants, etc.

Mr. Brindell said it would be employee parking only.

Mr. Randolph said to complete the record from the Town's standpoint, he wanted to make sure all of the various letters that were received by the Town Council are incorporated as part of the record and have been available to everyone. Mr. Randolph said the Town Clerk reported 22 such letters were received in addition to the curriculum vitae from Mr. Brisson and Mr. Tokisch. The applications and the staff files related to the application will also become part of the record.

Mr. Randolph said that before the Town Council deliberated, he wanted to review the sections of the code that are applicable to the application. As a result of this meeting being quasi-judicial, any determination made must be made upon substantial, competent evidence which has been presented at the hearing and not on the basis of any evidence or conversations that may have occurred outside of the hearing. Mr. Randolph said the reason for that was the Council's deliberations must be in public and must be based upon the evidence that was received at the hearing.

Mr. Randolph said that at least three things were requested and perhaps a fourth. First, an application has been made for a special exception, and in order to grant or consider a special exception, the Town Council must also give consideration to a site plan review. Additionally, variances have been requested. Mr. Randolph said that in order to grant a special exception, the applicant must address all of the criteria set forth in the Town's ordinance, and any determination that is made in regard to granting a special exception must be based upon the evidence that has been heard in regard to it.

Mr. Randolph said that in regard to the site plan review prior to the Town Council approving, approving with changes, or denying the site plan review, the Town Council shall make findings that the approval of the site plan will or will not adversely affect the public interest, and (2) the Town Council must certify that the specific zoning requirements governing the individual use have been met and that satisfactory arrangement has been made concerning those items set forth in the code. Those items are listed in (a) through (k) of the code, and in addition criteria are set forth in the special exception ordinance that are required to be addressed and met before the Town Council makes a finding.

Mr. Randolph pointed out that Section 10.13, which deals with variances and special exceptions, provides that the Town Council must find that the criteria have been met in regard to the special exception and the site plan review prior to making any kind of motion for approval. Mr. Randolph said it was very important because this was a quasi-judicial hearing, even if the ordinance did not require findings, that the Council make findings based upon the evidence so that any reviewing authority could look at the record and make a determination based upon the Town Council's statement of findings whether or not the findings were supported by the evidence that is in the record.

Mr. Randolph said that in order to grant a variance, the ordinance provides that the Town Council must and shall find that the applicable criteria set forth in the code have been met. He said that it seemed to him that it may make sense for the Town Council to address the variances at the out set, because the site plan and the special exception that were presented assumed that certain things can be done under the Town's code. One of the findings the Town Council would have to make in order to grant a site plan, is that the code provisions have been met. Mr. Randolph suggested that the Town Council would first have to make a determination as to whether or not the variances would be granted and then make a determination in regard to the site plan review and the special exception.

Mr. Randolph said the Town has a unity of title that is in place, and the Town Council must make a determination to release or not release the property that is now tied together with the Esplanade by unity of title in order to allow this project to go forward.

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Mr. Shaw asked if the unity of title were to be removed, would it have to be advertised?

Mr. Randolph responded it would not have to be advertised.

Mr. Shaw asked if the Town were going to make a change on the use of the above ground or below ground space on Peruvian which is part of the application and within the application itself, item B1., it clearly states the vehicular access will be eliminated, surface parking will be replaced by underground parking out of the public view, and since the variance has been modified to such a degree, should it be advertised again?

Mr. Randolph replied that he would say "yes" if indeed the access is tied to a provision within the ordinance that has not been advertised. If, however, the Town Council is imposing different conditions than what the application was seeking, Mr. Randolph saw nothing that would require re-advertising in regard to any additional conditions the Town Council may impose.

Mr. Shaw asked if the Town Council were to grant the transfer of eleven parking spaces to what has been referred to as the Boynton property, would that pose a problem for advertising?

Mr. Randolph responded he would have to have a better understanding of what the results may be before he could answer that question. He said if the question is whether they would need a variance to relieve them of having eleven spaces that are required under the code, then it may well be that advertising would be necessary.

Mr. Moore said, based on what he heard earlier, he thought the applicant would either need a variance for eleven spaces or a special exception to relocate them within 500 feet of the existing site on the Boynton Landscape property. Mr. Moore said either way an additional meeting would have to be scheduled to deal with that aspect.

Mr. Shaw clarified that this would not preclude the Town Council from going forward but it would require another step.

Mr. Moore said that was correct in his opinion.

Mr. Wyett said he had concerns with the loading dock, and thought the applicant was optimistic to have only one loading dock. He added that UPS and the other small parcel delivery services would probably all arrive about the same time every afternoon for pick ups. Mr. Wyett suggested two loading docks be provided because one loading dock may not be sufficient and the code requires three.

Mr. Wyett reiterated he was still interested in seeing the valet parking occur in the basement because he did not want to see the traffic backed up into the street, and the Council should try to avoid the back up that close to the corner.

Mr. Wyett said some of the seventeen parking spaces that have been taken away because the size of the building was reduced may have to be added back into the plan to off set spaces for underground valet parking.

Mr. Wyett deferred to Mr. Moore on the size of the parking spaces and said he had no problems with the variances, but he requested additional information regarding the required arcade setback

Mr. Moore responded that Phil Tokisch would comment on the size of the parking spaces.

Mr. Tokisch said he originally commented on the size of the parking spaces in the driving aisle before he realized it would be an all valet operation. Mr. Tokisch said no self parking could ever take place in the underground area, because it would be too difficult for the general public to use. He emphasized valets would always have to park the cars and that would take care of the problem—but "always" is a long time.

Mr. Moore added that any future tenant would have to come before the Town Council for a special exception prior to occupying the building. Mr. Moore said he thought Mr. Brindell volunteered to have a deed restriction regarding valet parking on the property, and he requested that any approvals by the Town Council restrict the property by deed so any subsequent owner of the property would be aware of that requirement.

Mr. Wyett said some of the conditions he would like to address later after hearing from others.

Mr. McLendon commented that he thought the extent of the requested variances was relatively minor, but he requested additional information relating to the hardships for those variances. He said he did believe the permanent use of valet parking would impact the amount of traffic to and from the store—the valet parking requirement would reduce the amount of attendance.

Mr. McLendon said he would have preferred the shifting of square footage to minimize or eliminate the variances. He suggested some of the operations could have been shifted to the third floor, and square footage could have been reduced on the other two floors. Mr. McLendon said he thought the project was fine and looked forward to the termination of this hearing.

Mrs. Smith said she heard the discussion regarding the underground parking spaces, and questioned if the employee parking would take place underground? Would the employees be valet parked?

Mr. Brindell responded that all employees would be valet parked, and that was stated previously.

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Mrs. Smith asked if Neiman Marcus would employ 150 - 200 employees? She questioned how many parking spaces would be left for customers? Mrs. Smith said she was also concerned about the loading docks as addressed earlier by Mr. Wyett, and she would like to see them build to the code rather than exceeding it as far as the variance for lot coverage.

Mayor Ilyinsky said this was his final summation on the issue. The Town Council heard from a great many people including professionals and amateurs, and the problem that exists in the Town of Palm Beach when (the Council) is on the "Wings of Dilemma" as it is now, is that the Council is usually dealing with people whom the Council admires, likes personally—Murray Goodman, Jim Brindell, Gene Lawrence, and Neiman Marcus, one of the great merchandisers of the world. After putting all of those thoughts together, Mayor Ilyinsky said he had swung 360 degrees about three times on this issue, but the bottom line was that he did not believe there was any way this store will be Town-serving nor any way to come up with figures to prove that it would be. He continued that many people's ways of life will be altered by these proceedings including construction.

Mayor Ilyinsky said the Town Council should protect what is left of Palm Beach as expressed by some residents. He said he was impressed by the Chief of Police's remarks regarding the traffic on Worth Avenue. He said the traffic and the Town-serving issues are the bottom line. The project is lovely, and he was sorry to say that he found himself in opposition to this project as it is presently being presented. He hoped that Neiman Marcus would build something a little farther away from Worth Avenue in a place he could visit.

Mayor Ilyinsky said he could not say much more, and he had expressed his philosophical view regarding the project. His views were based on everything he has heard, and he was swayed in this direction because he sincerely believes the future of the Town can be severely jeopardized by the presence of an enormous retailer regardless of how good that retailer may be.

Mr. Shaw said the issues of variances and special exceptions were presented to the Town Council, and he thought that in fairness, before the Town Council attempted to redesign the project, the issues should be considered and decided if they have been met. If they have not been met, he was not sure how the Town Council could go forward. Mr. Shaw said he was not comfortable with the idea of only one loading space and felt that the applicant would have to come up with a solution.

Mr. Shaw said the request for columns that intrude into the parking spaces, as it was presented, appears that it is a standard that is accepted even if it is not necessarily within the guidelines of Palm Beach's standards, but is a national standard. Mr. Shaw said he did not have a problem with that request.

Mr. Shaw said he would not like to see any of the ramping for the valet parking on the surface if it could be avoided and all of the cars brought below. Obviously, if all of the cars are moved down, the dynamics become what is in the basement. The double width in the center section of the first tier may become a moot point, and these are issues that should be addressed. Mr. Shaw said he was not sure that a deed restriction for valet parking was a reasonable situation. He cited the example of a building where an employee could only get to his/her car by means of a valet. He said he was not comfortable with C.3.

Mr. Shaw said the lot coverage was an interesting situation with mathematics, and he had never been a proponent of lot coverage as a guide line to say "yes" or "no" and thought the overall package should be considered. He said if Mr. Lawrence had designed a building with a walkway that separated the two buildings with a via through it that would probably reduce the size by 5,000-10,000 square feet. The issue is where the perimeter walls of the building sit on the property. Mr. Shaw said he thought the rear setback should be fifteen feet, and that is why he voted "no" on the Worth Avenue Guidelines.

Mr. Shaw said the current utility lines in the Town are often difficult and may get worse as years go by, and he thought the required setbacks, as determined by the Town Engineer, should be resolved.

Mr. Shaw said the lot coverage is a numbers game. He said he did not have a problem with the percentages (for each floor coverage), but he did have a problem with the setbacks.

Mr. Shaw said the request for variance C.5. (on the application) was properly addressed, and he did not think it was an issue. He said it was the intent that had to be understood.

Mr. McDonald said he had not made his mind up on which way to vote, and he did not want his comments to be construed one way or another.

Mr. McDonald said he believed that the majority of the Town's residents want Neiman Marcus. In terms of inconvenience, he agreed with the Police Chief; however, the Miller House construction (on South Ocean Boulevard) creates great inconvenience each day for about 1/3 of the Town's residents, and no objections were raised for that project.

Mr. McDonald commented that the Town Council cannot make decisions based on reports (like Mr. Zabek's and Mr. Tokisch's) that were given to them one day before a meeting.

Mr. McDonald questioned the reconciliation of the two traffic reports, both the applicant's and the Town's, with the police report. He said the impression from the traffic report was that Worth Avenue could handle the traffic while the Chief of Police states the traffic will be horrendous. Mr. McDonald said he did not know how the applicant would address that issue.

On specific issues, Mr. McDonald said he thought the applicant had done a terrific job in pleasing the Peruvian residents,

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and he could not imagine much more could be done to lessen the impact. He said he thought the issues dealing with 125 Worth Avenue are important; however, he thought the applicant will deal with those issues satisfactorily to both parties.

Mr. McDonald said he had a problem with employee parking which is a current problem with Worth Avenue employees parking on the street, and he thought some sort of arrangements should be made for off premise parking for employees.

Mr. Wyett said the store needs approximately 200 spaces for employee parking. He asked, since parking space is at a premium on Worth Avenue, where the 200 spaces would come from? He said he did not want to see an additional 200 employees in Town taking up every available parking space.

Mr. Brindell said that 200 employees would not be working at one time and the staffing would vary from season to the off season and even within some periods within the season at certain holiday times.

Tom Lehnén said Neiman Marcus had not laid out a man-power plan at this point, but, based on experiences in other stores, the store will have approximately 200 to 220 full time employees; however, on site, at any point in time when the store is operating and open for business, other than the Friday after Thanksgiving and a couple of other days before Christmas, there will be approximately 100 - 120 employees on site.

Mr. Lehnén said employees generally work six to eight hours, and a full time equivalent for Neiman Marcus is six hours.

Mr. Wyett said that even 120 employees would leave only 100 spaces for customers coming into the store. He questioned if that would be enough or would it cause a traffic backup on Worth Avenue?

Mr. Wyett said that the quality of life in Palm Beach is the utmost factor in any decision and not if the Town should have one more store or any store. Mr. Wyett pointed out that the Mayor commented on the quality of life in Palm Beach and thought the Neiman Marcus store would adversely affect the quality.

Mr. Wyett said that the dominant store on Worth Avenue presently is Saks, because there are other Saks stores to the north and south which means anyone shopping at Saks does not have to come to Worth Avenue to shop. However, Neiman Marcus has been presented as a local store, and he said he did not accept that—Neiman Marcus will be a regional store drawing shoppers and creating traffic.

Mrs. Smith asked the Town Council members if they thought they had enough information to vote on the variances?

Mr. Shaw responded he had not heard answers to the questions he raised, but if the applicant was comfortable with the presentation, then the Council could consider the variances.

Mrs. Smith said she thought if this were handled as previous presentations were, the Town Council would be directing the applicant to respond to the questions that were raised, and the matter would be deferred to allow for those responses. Mrs. Smith said she, personally, was not prepared to vote on the project, and on the basis of what she heard at this meeting, she would vote "no"—the loading zones, how the employee parking would be dealt with—and her major concern at the moment was the Town-serving issue. Mrs. Smith said she was disappointed that Mr. Lehnén did not produce any numbers. She also questioned the disruption to the traffic. Mrs. Smith said the applicant should be given the opportunity to answer going back to the very beginning including Mr. Dusey's questions on the easement. She said these questions could be worked out and the applicant could return to the Town Council and work out these questions.

Mr. Shaw suggested the variances be considered item by item, and if the things are going to be deferred or turned down, the applicant will know where they are.

Mr. Brindell said his team could not redesign the project at this meeting, and the variances are important and affect design features. Mr. Brindell requested the Town Council grant a deferral at this time to give Mr. Lawrence and Mr. Lehnén an opportunity to see if there is some way to do some other designs and address some of the items that are critical to the Town Council.

Mrs. Smith said if Mr. Brindell was requesting a deferral and the Town Council would go along with that, she thought Mr. Brindell should hear other concerns the Town Council may have to allow time before the next meeting for responses to those concerns.

Mrs. Smith asked each Council member to comment on any other concerns about the project other than variances.

Mr. McDonald said his concern was with the on-site employee parking. He was not concerned with the public works issues or the next door neighbors—those issues could be worked out.

Mr. Shaw agreed that the employee parking needs to be established and how it will be handled. He referred to special exceptions, B.1. He said he did not have a problem as far as the request for the size of the building. B.2. Same thing. He did not think that was a critical issue. B.3. Parking spaces. He thought a lot of that was addressed. B.4. The Arcade has also been addressed.

Mr. Shaw said the one thing that he was not comfortable with, and he had not seen it, was the issue of Town-serving. Mr. Shaw said the position that had been made was the store was a local store and not a regional store. He was not sure how to keep it a local store. He suggested that under the Town-serving, an annual audit of sales receipts, broken down by zip

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codes, and Neiman Marcus will have to know who is at the Breakers or another hotel. He requested there be no print advertising for Neiman Marcus in any of the regional publications because it is a local store—if he were dealing with specifics, he suggested that there be no advertising in the Palm Beach Post, and advertising in the Shiny Sheet and any other local publications would be acceptable. He added that Neiman Marcus should maintain that any advertising be done in a direct mail piece to try to deal one on one with the residents of the Town of Palm Beach. He said that was the way he could see that Neiman Marcus would market itself to the Town. Mr. Shaw said it was one issue to say, “How do you assure us that they won’t come?”, and it is another to make sure that the store will not market so that they do come.

Mr. McDonald asked Mr. Shaw what he would do if Neiman Marcus was operating and did not meet the Town-serving requirement in one year?

Mr. Shaw replied that was a question no one wanted to ask because he had not known what is supposed to be done. Obviously, if they don’t make it, the answer is the restaurant would be shut down or the office would be closed.

Mrs. Smith said that Neiman Marcus would not be closed.

Mr. Shaw added he did not know.

Mr. McDonald said he was pointing out the problem because he was not sure that he agreed with Mr. Shaw’s comments. He offered the example if 49% of the customers are from off the island which still makes the store Town-serving, how could Neiman Marcus market only to the Town?

Mr. Shaw noted that other commercial ventures had mandated limited advertising. He said he was not addressing the issues of fairness or economic values, but he was saying if the store was represented as being a local store then it should be marketed only on a local basis, and that premise states that regional advertisements would not be run.

Mr. McLendon said he thought many of the issues that were discussed should be part of a declaration of use agreement which he assumed the Town Council would have before the project was “put to bed”.

Mr. McLendon said his concern was traffic; however, the experts have given good reports saying otherwise. He said the most detrimental issue for him was the Police Chief Croft’s strong, negative opinion on the traffic situation, and he wanted to mesh those issues together to arrive at a better consensus.

Mr. Wyett said he wanted to introduce a couple of new items and asked if this facility will be available for shared parking?

Mr. Brindell said Neiman Marcus would be willing to participate in the shared parking process under the normal terms.

Mr. Wyett asked if Neiman Marcus would indemnify the Town for a list of items that he would have at the next meeting? (Mr. Brindell said he would have to see the list.) Mr. Wyett repeated he was concerned about the number of parking spaces and where the employees would park. He said he was looking at the dumpster which he would like to label “compactor”, and he was also concerned about the traffic, and he leaned in the direction of Chief Croft’s assessment of traffic.

Mr. Wyett said he liked the idea of restriction of advertising, and word of mouth among affluent shoppers would be sufficient to bring them to Neiman Marcus.

Mr. McDonald asked if it would violate the advertising restriction if Neiman Marcus ran an ad in Los Angeles and listed a Palm Beach location?

Mr. Wyett responded national advertising would not. Mr. Shaw agreed.

Mr. Wyett said that in the event the Town would be sued by various parties for violation for what they believe are the Town’s rules and regulations under the Comprehensive Plan or any other plan, that Neiman Marcus and/or the developer would defend these suits at their cost.

Mr. McDonald said he would have a problem with that.

Mrs. Smith said she thought Mr. Wyett would have to provide a list of the items that he would want indemnified.

Mrs. Smith said her concerns were the employee parking, the Town-serving issue was major, and she would not approve things conceptually and needed numbers. She said that Chief Croft is the Town’s main traffic expert, and she received no degree of comfort on how the increased traffic on Worth Avenue would be dealt with. Mrs. Smith said she did not want to see the Palm Beach Police who should be protecting all the residents on the twelve mile island spending all of their time directing traffic on Worth Avenue. She stated she was opposed to hiring additional policemen to direct traffic on Worth Avenue.

Mrs. Smith recalled that Mr. Blakely said he could install a ten foot hedge, but she would like to have his guarantee that a twenty foot hedge would live and survive.

Mrs. Smith asked the Town Council members to decide when the requested deferral would be heard—the May 12th Town council meeting or a special meeting.

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Mr. Castro said he would need until at least May 5th to advertise the additional parking issue.

Mr. Randolph said the Town Council should keep in mind that the advertising is not required for issues that are on the table but it is just to make sure that in the event the Town Council would want to go forward with a different parking requirement, that it would be included.

After discussion, the meeting was scheduled for June 4th at 10:00 a.m.

Mr. Wyett made a motion to defer this meeting to June 4, 1998, at 10:00 a.m. Mr. McLendon seconded the motion, and it carried unanimously.

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

Mrs. Smith asked Mr. Brindell if this issue was tied to the Neiman Marcus project or did he wish to present it at this time.

Mr. Brindell replied he would like to proceed.

Mr. Brindell requested the issue regarding the unity of title which was tied to the Neiman Marcus project be deferred.

Mr. Wyett made a motion to defer the issue of the unity of title for the park at 137 Worth Avenue to the June 4, 1998, Town Council meeting. The motion was seconded by Mr. McLendon and carried unanimously.

Mr. Brindell said he would like to incorporate the testimony and the discussion regarding the roof overhang for Neiman Marcus. This is the same situation, and the face of the arcade does not go beyond the three feet, and the roof overhang is some 40 feet in the air.

Mrs. Smith said she would accept that testimony and discussion regarding the roof overhang.

Mr. Wyett asked if the roof of the arcade would be 40 feet above the sidewalk and questioned the protection for pedestrians from the rain.

Mr. Lawrence showed a rendering of the Esplanade and identified the tower portion which is about 15 feet across. Mr. Lawrence said the location of the walkway extends from the valet entry to Saks Fifth Avenue, past the front entrance.

Mr. Wyett said the 40 feet seemed high to him.

Mr. Lawrence explained the only place the 40 feet height existed was at the tower location and pedestrians would be under that--no rain would bother them at that point. The covered walkway is approximately 15 feet high--much lower.

Responding to questions from Mrs. Smith, Mr. Lawrence said an open terrace with a trellis was located on the top of the walk. Mr. Lawrence described rusticated arches that resembled Via Mizner with a new Esplanade entrance.

Mr. Shaw expressed concern regarding the possible interference with the arcade columns and car doors from cars that may be parked at the curb.

Mr. Lawrence said he did not know if it were possible to coordinate the parking spaces with the position of car doors, but he did know the palm trees that were planted on Worth Avenue were coordinated with car doors. Mr. Lawrence said he thought that the three feet would allow people to get out of cars without being hurt.

Mr. McDonald moved approval subject to Mr. Moore's comments. Mr. Wyett seconded the motion.

Mr. Castro said that most of the related issues to the site development plan for the Esplanade proposed changes were:

Architectural Commission - Issues related to meeting Worth Avenue Design Guidelines;

Staff comments - related to the width of the sidewalk--Public Works comments were related to providing an 8 foot wide sidewalk; however, because of the constraints of the building, staff was not sure how that could be accomplished and still provide 3 feet from inside the curb for cars parking on Worth Avenue.

Mr. Lawrence responded a total of 12 feet existed from the face of the Esplanade to the face of the curb and green

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space is directly up against the walk, and if they use the green space, the width of the sidewalk will be very close to 8 feet.

Mr. Dusey said he agreed with Mr. Lawrence, and he had no objections to that.

Mr. Castro said one of the comments related to the entrance that was located further to the east. Mr. Castro said the suggestions were that entrance may be lowered and redesigned or broken up so it is not as massive looking.

Mr. Moore said that comment or suggestion could be handled by the Architectural Commission.

Mr. Brisson said his review indicated that this proposal meets the intention of the Worth Avenue Guidelines; specifically adding that the entrance breaks up the buildings into more components than the one long building that was there originally. The arcade meets the intent of the Guidelines also. He said his review was positive.

Mr. Wyett said he wanted to make it implicit that although the Town Council was approving the facility improvement, the Council was not mandating the design of it whatsoever. He asked if the plan was to match this renovation to the Neiman Marcus design, and how could the Architectural Commission give approval to one project without seeing the other?

Mr. Lawrence responded he did not want them to match, and he thought they both should be different. He said the two should be coordinated, but he did not want to copy the other end of the street nor should these two be exactly the same.

Mr. Randolph said the motion should include a finding, pursuant to the terms of the ordinance, in regard to the approval of the site plan that the approval will not adversely affect the public interest and to certify that the specific zoning requirements, relating to the use, have been met. Mr. Randolph continued that the application should meet the requirements of the special exception ordinance, and that the variance meets the criteria set forth in the code relating to the granting of variances.

Mr. McDonald said he would incorporate those in his motion—it does meet the special exception requirements, and it does meet the hardship requirement for the requested variance.

Mr. Wyett, the seconder of the motion, accepted the inclusions.

On roll call, the motion carried unanimously.

ANY OTHER MATTERS

There were none.

ADJOURNMENT

The meeting was adjourned at 12:50 p.m.

Mary A. Pollitt, Town Clerk

Prepared by:

Susan Eichhorn
and
Mary Pollitt