MINUTES OF THE TOWN COUNCIL MEETING HELD ON APRIL 14, 1998

I. CALL TO ORDER AND ROLL CALL

The Town Council Meeting was called to order by President Lesly Smith at 9:35 A.M. on April 14, 1998. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Samuel McLendon, Councilmen Jack McDonald, Leslie Shaw, and Allen Wyett. Also in attendance for all or a portion of the meeting were: Acting Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Finance Director James Demming, Fire-Rescue Chief Ken Elmore, Planning, Zoning & Building Director Robert Moore, Zoning Administrator Paul Castro, Police Chief Frank Croft, Public Works Director Al Dusey, Purchasing Agent Charles Boggs, Recreation Director Russell Bitzer, Town Engineer James Bowser, and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Reverend Robert Pollard of Bethesda-by-the Sea. President Smith led the Pledge of Allegiance.

III. PRESENTATIONS

1. Presentation of Mayor's Proclamation Declaring April 17, 1998, as "Gertrude Maxwell Day"

Mayor Ilyinsky presented a Proclamation to Mrs. Maxwell in celebration of her birthday, April 17, 1998, which was also the birthday of the Town. He extended best wishes from himself and all members of the Town Council.

Mrs. Maxwell addressed the Town Council, thanking them for proclaiming April 17th as "Gertrude Maxwell Day" in Palm Beach in honor of her birthday. She stated that she felt a spiritual kinship with the naturally beautiful, tropical Town of Palm Beach and considered it a dual destiny that both were born on April 17, 1911. She was proud that she had been found worthy of the special Proclamation, and appreciated the tribute in the Proclamation commending Save-A-Pet, of which she was the founder, president, and lifetime chairman in efforts to protect the rights of animals.

2. Presentation on Behalf of the Town of the January 31, 1998, 15th Annual Par 3 Pro-Am Benefit Proceeds to the Rehabilitation Center for Children and Adults

Mayor Ilyinsky congratulated the Golf Commission, and the more than 40 volunteers who helped make the 15th Annual Par 3 Pro-Am Benefit Tournament the most successful ever. He presented a check in the amount of $19,000 to be used for therapy at the Rehabilitation Center for Children and Adults.

President Smith extended special thanks to Mrs. Herman, and the Golf Commission for the wonderful job done.

IV. COMMENTS OF THE MAYOR

There were none.

V. APPROVAL OF THE AGENDA

President Smith announced the dedication ceremony for the Greater South County Road Association plaque for the Tree Planting Project would take place at 12:00 p.m. at the northwest corner of Brazilian Avenue and South County Road. A reception would follow at the Plaza Inn, 215 Brazilian Avenue.

DEFERRAL: Page 3, Item XII.C. - De-designation of an Historic/Specimen Tree at 445 Antigua Lane - Request for deferral to May 12, 1998, per letter dated March 27, 1998, from Mr. Thomas Mettler.

President Pro-Tem McLendon moved approval of the deferral of Item XII.C. to May 2, 1998. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

TIME CERTAIN: Page 3, Item XIII.A.3. - Consideration of Request by Commissioner Alfred Zucaro, Jr. of the City of West Palm Beach for the Town to Oppose the Draft Environmental Assessment Report for the Extension of Runway 9L-27R at Palm Beach International Airport.

Councilman Shaw moved approval of Item XIII.A.3. being heard at a time certain of 1:30 p.m., or as the first item after the lunch break. The motion was seconded by Councilman McDonald, and on roll call carried unanimously.

DEFERRAL: Page 5, Item XVII.C.1. - Site Plan Review No. 6-97 - Salomon Dayan, 476 South Ocean Blvd.; located in the R-A Zoning District; to allow construction of a new two-story residence on a lot 14,996 sq. ft. in lieu of 20,000 sq. ft. required - Request for deferral to July 14, 1998, per letter dated March 26,1998, from Dr. Salomon J. Dayan.

Councilman Shaw moved approval of deferral of Item XVII.C.1. to the July 14, 1998, Town Council Meeting. The motion was seconded by President Pro-Tem McLendon, and on roll call carried unanimously.

DEFERRAL: Page 7, Item XVII.C.13. - Special Exception 8-98 - Robert Sheetz, 180 Royal Palm Way; located in the C-TS Zoning District; to allow 1st Union (Wachovia) Bank to expand a special exception use from 15,812 sq. ft. to 19,500 sq. ft., further exceeding the 2,000 sq. ft. limit in the C-TS District. Request for deferral to May 12, 1998, per letter dated March 30, 1998, from Mr. Peter S. Broberg.

Councilman Shaw moved approval of deferral of Item XVII. C. 13. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

REMOVE FROM APPROVED AGENDA TO REGULAR AGENDA: Page 2, Item X. A. - Request to Use Remaining Funds from the Construction of the South Fire-Rescue Station to add Hurricane Bracing to Doors for All Three Fire-Rescue Stations - Request by Councilman McDonald to move to Regular Agenda for discussion.

Councilman McDonald moved approval of removing Item X.A. to the Regular Agenda for discussion under XIV. New Business, D. Other. 8. The motion was seconded by Councilman Wyett, and on roll carried unanimously.

WITHDRAWAL: Page 4, Item XIV. D. Other 7 - Consideration of Authorization for Attendance at the Florida Institute of Government Workshop for Public Officials on May 1, 1998, in Fort Lauderdale- Request for withdrawal by Councilman McDonald as he was not able to attend.

Councilman McDonald moved approval of withdrawing Item XIV. D. Other 7 from the Agenda. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

ADDITION: Page 4, Item XIV. NEW BUSINESS, Other D. 9- Discussion of Risk Management Position.

Councilman McDonald made a motion to add Item XIV. New Business, Other D. 9 - Discussion of Risk Management Position. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

ADDITION: Page 4, Item XIV. NEW BUSINESS, Other D. 10 - Discussion of Response from Lake Worth Regarding Timed Bridge Openings.

Councilman McDonald moved that Item XIV. New Business, Other D. 10 - Discussion of Response from Lake Worth Regarding Timed Bridge Openings, be added to the Agenda. President Smith passed the gavel and seconded the motion, which carried unanimously on roll call.

The Agenda was approved as amended through motion of Councilman Wyett, seconded by President Pro-Tem

McLendon, and carrying unanimously on roll call.

VI. COMMUNICATIONS FROM CITIZENS

Mr. Eric Gilbertson commented on the status of the groins in the Mid-Town beach area, and also suggested that Palm Trees be planted on the beaches.

Mr. Irving Wolfe, Citizens Association of Palm Beach, thanked the Public Works Department and Public Works Director Dusey for the terrific job being done in the cleaning of the beaches in Town.

Mr. Adrian Winterfield commented that two items had appeared in the press recently: an advertisement for entertainment at a private club for members only; a photo feature dealing with a reception at the same private club, for the celebration of the sixth anniversary of a commercial establishment. He suggested that action be taken against violations of Town ordinances.

APPROVED AGENDA

VII. APPROVAL OF MINUTES OF FEBRUARY 9, 13, 27, AND MARCH 10, 1998

VIII. LICENSES AND PERMITS

1. Charitable Solicitations

    1. The Arc (formerly The Association for Retarded Citizens); No. 443-98
    2. Middle School of the Arts; No. 445-98

    Other - Application Filed Late and $25 Late Fee Paid

    3. Hispanic Human Resources Council; No. 446-98

IX. BID AWARDS

1. Sealed Bid No. 98-13 - High Pressure Air Compressor for Fire-Rescue Department

X. NEW BUSINESS

1. Request to Use Remaining Funds from the Construction of the South Fire-Rescue Station to add Hurricane Bracing to Doors for All Three Fire-Rescue Stations

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

REGULAR AGENDA

XI. LICENSES AND PERMITS

1. Charitable Solicitations

    1. Palm Beach Public School; No. 37-98
    2. Alzheimer's Association; No. 256-98
    3. Historical Society of Palm Beach County; No. 289-98
    4. School of the Arts Foundation, Inc.; No. 363-98
    5. United Foundation for Aids/Kidzcare; No. 442-98
    6. Gary Player Foundation; No. 444-98

Town Clerk Pollitt reported that all of the charitable organizations were on the Regular Agenda, because of the fact that each had already had an event, and approval was pending for the issuance of permits. Representatives from the organizations (with the exception of United Foundation for Aids/Kidzcare, No. 441-98) were present today to address the Town Council.

Mrs. Marilyn Brady, Principal of Palm Beach Public School, addressed the Town Council, stating that she had not known of the necessity for a permit, and requested that the permit fee be waived in support of the public school on the Island of Palm Beach.

Councilman Wyett moved approval of Charitable Solicitation No. 37-98, with all charges being waived. The motion was seconded by President Pro-Tem McLendon.

Councilman Shaw objected to the waiving of fees, as he considered the other not for profit organizations conducting events, and did not want to set a precedent.

Councilman Wyett withdrew his motion, and moved that all fees be waived with the exception of the advertising fees. The motion died for lack of a second.

Councilman McDonald moved that the Charitable Solicitation be approved, subsequent to the event being held, but that the fee remain in place. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

Ms. Claire Staudacher, representing the Alzheimer's Association, Charitable Solicitation Application No. 256-98, addressed the Town Council, stating that the application had not been filed in a timely manner because of personnel turnover.

Councilman Shaw moved approval of Charitable Solicitation Application No. 256-98, with payment of all fees due. The motion was seconded by Councilman McDonald, and on roll call carried unanimously.

Mrs. Karen Borchers, representing the Historical Society of Palm Beach County, addressed the Town Council, stating that the application had not been filed timely because of communication problems, and the intent was to conform with Town ordinances.

Councilman Shaw moved approval of Charitable Solicitation Application No. 289-98, with payment of all fees due. The motion was seconded by President Pro-Tem McLendon, and on roll call carried unanimously.

Mr. John vanDalen, representing School of the Arts, addressed the Town Council, stating that it was his first year of involvement with the School of the Arts, and he had not known about the permit requirement. All fees had been paid, and he would make a note in the file for next year.

Councilman Shaw moved approval of Charitable Solicitation Application No. 363-98. The motion was seconded by Councilman Wyett. On roll call, the motion carried unanimously.

Town Clerk Pollitt explained that the representative from the United Foundation for Aids/Kidzcare was unable to appear before the Town Council because of an emergency. The Charitable Application had been received on March 16, 1998 for an event that had been held on March 28, 1998.

Councilman Wyett moved approval of Charitable Solicitation Application No. 442-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Ms. Michele Jaminet, representing the Gary Player Foundation, addressed the Town Council, explaining that she had not been aware of the necessity for a permit, and apologized for the error.

Councilman Wyett moved approval of Charitable Solicitation Application No. 444-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

XII. PUBLIC HEARINGS

At this time Town Clerk Pollitt administered the oath to all witnesses in the following matters.

1. Landmark Designation of 710 South Ocean Boulevard; Resolution No. 19-98

Mrs. Jane Day, Historic Preservation Consultant, addressed the Town Council, stating that staff had found that 710 South Ocean Blvd. fulfilled the following criteria for designation: Criterion A: exemplifies or reflects the broad cultural, political, economic, or social history of the nation, state, county, or town. Criterion C: embodies distinguishing characteristics of an architectural type, or is a specimen inherently valuable in the study of a period, style, method of construction or use of indigenous materials, or craftsman. Criterion D: is representative of the notable work of a master builder, designer, or architect, whose individual ability has been recognized, or who influenced his age. Additions to the property were made by Marion Sims Wyeth, and Gustav Maas.

Mrs. Day continued with the presentation, commenting that the house was an example of the Mediterranean Revival Style, and was a large, substantial oceanfront residence.

Councilman Shaw moved approval of the Landmark Designation Report. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

Director of Planning, Zoning, & Building Robert Moore explained that the owner of the property objected to the landmarking of this home, because the property was capable of being redeveloped.

President Smith noted that the owner, or his representative was not present, and she was thus not prepared to move ahead.

President Pro-Tem McLendon moved that Resolution 19-98 be deferred to the May 12, 1998, Town Council Meeting. Councilman Wyett seconded the motion with the provision that the owner be notified that if he did not appear, the right to object would be forfeited.

Mr. Moore agreed that the owner would be notified.

Town Attorney Randolph advised that before the matter was deferred, he would determine the possibility of a penalty to the Town for failing to act within a particular time frame in regard to the designation.

After discussion, it was decided that the matter would be deferred to be heard under Item XIII. Old Business. Mr. McLendon and Mr. Wyett agreed to proceed under those conditions.

2. Landmark Designation of 137 Root Trail; Resolution No. 20-98

Mrs. Jane Day, Historic Preservation Consultant, reported that staff had found that the property at 137 Root Trail fulfilled two of the criteria for designation: Criterion A: Exemplifies or reflects the broad cultural, political, economic, or social history of the nation, state, county or town. Criterion C: embodies distinguishing characteristics of an architectural type or is a specimen inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsman.

The home at 137 Root Trail had been built sometime between 1887 and 1915, when Captain Enoch Root and his wife, Victoria, had relocated from Chicago, and purchased a large tract of land north of the Flagler Hotel. The house was in the vernacular style, which was typical of all of south Florida, where individual pioneers used available skills and materials to build what was really basic housing for themselves and other people in south Florida. The house had been added to a number of times, was three stories tall, and was an example of a previous architectural style that had been important in the development of Palm Beach. Captain Root was also important, as he was a member of the first Town Council in 1911, and was one of the early postmasters of the Town in 1904. Captain Root was trained in art school in Europe, and built cottages along Root Trail to rent out to artists who came for the season, thus, it was the beginning of an art colony in the Town of Palm Beach.

Councilman Shaw moved acceptance of the Landmark Designation Report. The motion was seconded by President Pro-Tem McLendon, and on roll call carried unanimously.

After discussion, Councilman Shaw moved approval of Resolution 20-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

Town Attorney Randolph read Resolution 20-98 by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, RATIFYING AND CONFIRMING THE DETERMINATION OF THE LANDMARKS PRESERVATION COMMISSION THAT THE PROPERTY HEREINAFTER DESCRIBED MEETS THE CRITERIA SET FORTH IN ORDINANCE NO. 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, AND DOES HEREBY DESIGNATE SAID PROPERTY AS A TOWN OF PALM BEACH LANDMARK PURSUANT TO ORDINANCE 2-84, ALSO KNOWN AS CHAPTER 16, ARTICLE III OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

3. De-designation of an Historic/Specimen Tree at 445 Antigua Lane - **Request for Deferral to May 12, 1998, per letter dated March 27, 1998, from Mr. Thomas Mettler**

This item was deferred to the May 12, 1998, Town Council Meeting per motion passed under "Approval of the Agenda" earlier in the meeting.

4. De-designation of an Historic/Specimen Tree at 1420 South Ocean Boulevard

Public Works Director Al Dusey reported that he had been contacted by Attorney Robert Deziel, representing Ms. Sydell Miller, owner of 1420 South Ocean Boulevard, requesting de-designation of a Red Silk Cotton tree, also known as a Red Kapok tree. Horticultural consultant, Robert Haley, had determined that the tree had lost its specimen status because of its condition. Mr. Dusey recommended that the tree be de-designated, per Resolution 24-98.

Councilman Wyett moved approval of Resolution 24-98. The motion was seconded by President Pro-Tem McLendon.

Ms. Meredith Newton, on behalf of the Garden Club of Palm Beach, addressed the Town Council regarding the de-designation application, stating that the Garden Club considered the destruction of any large tree a tragedy, and the subject tree was one of only four Kapok trees on the Island. She noted that the tree had been designated a specimen quality, and questioned if it had deteriorated due to lack of attention, feeding, or pruning? She advised that she had not been able to find any Town correspondence from the last two years indicating a problem with the tree; the only correspondence she had found was a letter from 1995 indicating that the address had been changed from 1415 to 1420 South Ocean Blvd. She asserted that the application was the result of a Town Ordinance with no teeth, as there was no penalty for the neglect or destruction of a specimen tree, other than the possibility of a requirement to replace the tree. Therefore, the Garden Club was proposing the following:

1, That the application for de-designation of the Kapok tree at 1420 South Ocean Blvd. be deferred until the Town Council Meeting of May 12, 1998, in order to provide time for the Garden Club to obtain a second opinion from an independent tree service on its condition and the possibility for its recovery.

2. That the following changes be made to the Ordinance: No building, no foundation, no paving, and no parking of contractor trucks within a radius of 20 feet of a specimen tree. Specimen and historic trees and the radius of their roots must be noted as such on all plot plans, site plans, elevations, and applications for variances. Substantial monetary penalties should be incurred for failure to maintain a specimen tree, as recommended by the Town Manager's office, for unlawful pruning, for deliberate destruction, and for unlawful removal of either a specimen tree or an historic tree.

Councilman Wyett asked if the Garden Club believed that the tree could be brought back to full health?

Ms. Nancy Harrison, member of the newly formed Palm Beach Tree Society, confirmed that she had viewed the tree recently, and was shocked and appalled at the condition of the tree. Every effort had been made to clear the property–two houses had been torn down and one enormous house had been placed on the property. She advised that the tree had been neglected during the construction process, with the tree roots on the south side of the tree cut and exposed. The canopy on the north side of the tree had also been cut. The tree was valiantly trying to live, as there was new growth on the top of the tree. There had been no effort to take care of the tree, or incorporate it into the landscape design. She noted that she was hopeful that the tree could be nurtured in order to see if it could be saved, as there was no replacement tree available.

President Smith questioned why the tree had not been fenced off during construction, according to Town ordinance?

Director of Planning, Zoning & Building Robert Moore responded that the Ordinance was still in place, however, this particular tree had not been properly identified. Applicants would normally show it on the application submitted to the Architectural Commission, however, it had not been identified.

President Smith noted that years ago, the Architectural Commission had discussed that every plan that came in should identify the historic and specimen trees, and she was appalled to find out that was not being done.

Horticultural consultant Robert Haley reported he did an annual reporting of historic/specimen trees in the Town, and that the tree in question had been neglected for a good number of years. The tree was not salt tolerant, received a great deal of wind, and was all one-sided. The tree had not been cared for at all, for at least 4-5 years, and was not of specimen quality at this point in time. He had suggested de-designation because the tree was very damaged, and was becoming a hazard because of the enormous dead branches hanging that could fall and hit someone. He added that to his knowledge there was no plaque identifying the tree as historic/specimen.

Councilman McDonald asked where the annual report conducted by Mr. Haley was sent?

Mr. Haley responded that he forwarded it to the Department of Public Works. Last year the tree had been reported as in poor condition, with notation that dead branches hanging in the tree constituted danger.

Acting Town Manager Peter Elwell commented that the annual report received from Mr. Haley resulted in the preparation of letters by the Public Works Department that went to all property owners who had specimen trees, with explicit findings on the condition of the trees. If the letter identified that a tree was in distress, recommendations were made as to the type of work that would need to be done to bring the tree back to health. At this time, there was no penalty in the Ordinance, and no requirement for follow up by the Town to enforce action.

In response to Councilman Wyett, Mr. Haley commented that he thought the tree would survive, but its condition would be questionable. Environmentally, the tree was not located in the right place, as it was not salt tolerant. The tree was very old, and dated back to the turn of the century.

Attorney Robert Deziel stated that his clients had owned the property for one year, and when the property was purchased the tree was in a sickly condition, surrounded by other vines and trees that were not native vegetation, and needed to be removed. When the area was cleared, the tree became more exposed to the winds and salt air, however, an expert had noted that the tree was located in the wrong spot for its long term survival. He noted that he had inquired of the Public Works Department as to the relocation of the tree, and had been told that the tree was probably in a condition that was so far gone, that removal was the best action to take. A landscaper had been contacted to search for a replacement tree, and one had been located. The property owner was prepared to put a new, healthy, large Kapok tree on the property if desired. He urged that the Town Council take action today.

Mr. Keller of the Palm Beach Tree Society, addressed the Town Council, submitting a Petition for Denial of the request to cut down the two historic designated Kapok trees in Palm Beach. The Palm Beach Tree Society requested that the Town Council deny the removal of the Kapok tree at 1460 and impose severe fines for causing severe damage to the landmarked tree. He specified that the request should be denied for the following reasons: There had been a lack of proper and sufficient public notice; the decision would have far reaching ramifications throughout the community as to the practice, procedure, and precedent for handling these matters; fully documented research had not been presented showing the causes and remedies; a denial at this time, without prejudice, to investigate the tree was only prudent and reasonable.

Mr. Haley commented that replacement of the Kapok in the same location would be a waste of money, as the Kapok tree was not salt tolerant.

Councilman Wyett withdrew the motion to approve, and suggested that the owner of the tree replace it with a Kapok tree placed at another proper location which would be approved by the Town Council. In addition he suggested that the Town Council consider the recommendation of the Garden Club for additional ordinances to protect trees in Palm Beach. President Pro-Tem McLendon likewise withdrew his second to the motion to approve.

Attorney Deziel pointed out that the tree was a safety hazard because of the dead limbs on the tree. He noted that the Garden Club would be willing to go along with the proposal that a new location could be found for a replacement Kapok tree.

Mrs. Newton responded that was a very generous offer from the owner, and the replacement of the tree with another one someplace on the Island, where it was more protected, would meet with the approval of the Garden Club.

Councilman Shaw moved that the tree be de-designated, with the condition that the owner of the property would donate a Kapok tree, as large as possible, to be located on property suitable to the Town and the Garden Club. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

XIII. OLD BUSINESS

A. Other

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

Public Works Director Al Dusey reported that a letter, dated March 27, 1998, had been received from Florida Department of Transportation (FDOT) District Secretary, Rick Chesser, stating that FDOT was no longer pursuing a permanent repair alternative to fix the existing structure, and was in the process of hiring design consultants. Proposals would be received on April 20th, with oral presentations on April 27th and selection on May 4th. Funding would become available on July 1, 1998. FDOT had met with West Palm Beach City officials on April 6, 1998, to give them the status of the bridge replacement.

After discussion, it was decided that Mr. Dusey would report back to the Town Council at the May 12, 1998 Town Council Meeting.

2. Quarterly Update on Unpaid Assessments, Fines, Fees, and Other Monies Owed to the Town

Finance Director James Demming referred to his memorandum of April 8, 1998, concerning the unpaid monies due the Town, stating that a new category had been included–False Alarm Accounts, and those with unpaid fines had been turned over to Code Enforcement for action.

Town Attorney Randolph noted that a complaint had been served on the registered agent for the Solid Waste Assessment unpaid fee owed by Guest House American, with an answer due on April 14, 1998. The matter was now pending in the County court for collection. A complaint was filed regarding the Solid Waste Assessment fee for Rose Pierce in the County Court. Regarding the unpaid Solid Waste Assessment fee for Consolidated General Limited in the amount of $217, it had been decided that it would not be expeditious to pursue that amount. The current owner was being notified of the back amount due of $813.00, and negotiations were being attempted through letters.

Councilman McDonald moved the following:

- That the Status Report become a semi-annual report, starting from October, 1998.
- That action taken be action taken during the whole six month period, and not only the month before the Town Council Meeting.
- That the word judgement be spelled correctly.

The motion was seconded by Councilman Shaw, and carried unanimously on roll call.

3. Consideration of Request by Commissioner Alfred Zucaro, Jr. of the City of West Palm Beach for the Town to

Oppose the Draft Environmental Assessment Report for the Extension of Runway 9L-27R at Palm Beach International Airport

Commissioner Alfred Zucaro addressed the Town Council, stating that the City of West Palm Beach had engaged a Washington law firm (Winthrop, Stimson, Putnam & Roberts) to evaluate the Draft Environmental Assessment Report, and to look at the possibility of addressing the issue of the airport interconnect. The City of West Palm Beach was following its policy which had been in place since the mid-1980's, when through Resolution, the position of the City of West Palm was stated as opposing airport expansion. He referred to the Good Neighborhood Settlement document, which had b een created in the late 1980's by the City of West Palm Beach and The Town of Palm Beach, suggesting that it be used as a starting point. As the City of West Palm Beach developed its position, he expected that there would be an opportunity to bring the issues forward to the Town Council. He suggested that the Town of Palm Beach and the City of West Palm Beach agree in principle that a parallel track would be pursued, and that open dialogue between legal advisors take place.

Attorney Donald Carr, of the law firm of Winthrop, Stimson, Putnam & Roberts, addressed the Town Council stating that he was present to emphasize the degree to which interests were in congruence, and to urge consolidation in efforts with respect to the evaluation of the airport and its future growth plans. The process of creating an agreement with the County Commission and the Airport Director was beginning in order to open up a truly searching process of review, which would exhaustively evaluate all of the potential airport improvements and growth scenarios over the next decade. Mr. Carr enumerated three points:

- It was hoped that an agreement would be achieved over the next 120 days, in which there would be a highly visible, detailed analysis of each of the proposed actions at the airport anticipated to take place between now and 2011.

- A three member, neutral panel of noise experts from around the country who would produce an analysis of what the zones of noise impact were, given ways in which the airport may grow with the contemplated improvements.

- The creation of a Tri-Government Agreement on the limits and parameters of airport growth.

If, at the end of the 120 days, there was adequate information about what the airport planned, communities could make adequate decisions as to which course to take. Mr. Carr observed that he believed it was not the runway extension by itself that was the problem, however, it was the contribution of the runway extension to the rest of the airport improvement plans, and the capability to increase traffic and bring growth complications. He noted that he believed that at the end of the 120 day period there would be sufficient information in order to make choices.

In response to the query of Mayor Ilyinsky, Mr. Carr responded that the environmental assessment must be concluded before completing the application for an FAA grant for the monies to construct the runway. There were several sub-procedural steps, which included a new draft of the Environmental Assessment in response to the public comments received. The final Environmental Assessment would be submitted to the FAA Regional Office, then to the Washington FAA Office. Until the Environmental Assessment was signed off, it would be illegal for the FAA to allow construction to begin using Federal dollars at a Federal facility.

Commissioner Zucaro stated that he had no reason to believe that the County would stop efforts to expand the runway and move forward, and that the City of West Palm Beach fully intended to execute its legal options to protect its interests.

Councilman Shaw expressed concern that private funding, not associated with Federal funding, could be used to complete the airport construction.

Attorney Carr responded that he believed that the plan, as presently presented, was the course which the County would take, and that he did not think of a move to go forward without Federal funds as an immediate threat.

In response to Councilman Wyett, Attorney Carr responded that the reason the City of West Palm Beach wanted a concentrated, intensive, early, and detailed process to scrutinize airport plans was so that the range of improvement projects contemplated could be seen, and to make a judgment quickly about whether there was basis for agreement, or disagreement. The first four months of a process that was led by the agreement discussed would provide a very clear range of alternatives, and a very clear setting of the disputes. At the end of the four months, the City, and the Town, could elect to chose its course, and the County could go forward, or decide to reconsider. What would happen over the course of the remaining portion of the 18-months in the Master Planning process would be secondary, and more long term driven.

Councilman Wyett questioned the purchase of the land to the west by the airport with the intention of building warehouses for cargo needs. He explained that one fear was that cargo planes had noisy engines, and would be coming in at all hours of the night.

Commissioner Zucaro replied that he was aware of those actions. The short range process was about identifying what was truly in the best interest of the City of West Palm Beach, and hopefully that would stay consistent with what was truly in the best interest of the Town of Palm Beach. His concern was that there was a significant group of people inside the City of West Palm Beach that were directly and dramatically impacted by airport noise. The last City election showed that there was not a universal cry–there were many interest groups that had a stake in the outcome of the process. The effort on the part of the City of West Palm Beach was to identify those positions that were palatable, and those positions that could be brought forward as to the interests of the City of West Palm Beach. The long range make up of the committee proposed by Commissioner Aaronson was subject to negotiation in the future. The retention of Mr. Carr was specifically and exclusively to get to the point where issues could be discussed.

Councilman Wyett stated that it was his impression that the City of West Palm Beach Mayor and the Commission were on different sides of the fence regarding the airport.

Commissioner Zucaro replied that the public position of the Mayor had been opposition to airport expansion. The Convention

Center had been put into the matrix, and the Mayor had met with Commissioner Aaronson, and the next day the newspaper published that the Mayor now advocated expansion of the airport runways, and for the airport interconnect. It was thus a logical assumption that she was now in opposition to her Commission.

President Smith expressed that she had not heard Attorney Carr say anything that made her feel that the Town would succeed in the pursuit of opposition, and considered the $150,000 for the right to sit down at the table excessive.

Attorney Carr responded that he believed, as of today, that the Environmental Assessment was legally deficient for its failure to discuss cumulative effects. If that defect was not corrected in the final draft of the Environmental Assessment, he estimated that there would be a fair chance of prevailing on the merits. That would not necessarily obtain an overall agreement on limits, parameters, and growth at the airport. In order to improve chances of a consolidated challenge, all of the plans of the County must be on the table for consideration and examination.

Commissioner Zucaro explained that the City Commission of West Palm Beach believed that the money would be well spent, as it was money that should have been spent over the years in data gathering, etc. The $150,000 was a significant number, however, it would produce a result that would allow a forward movement in discussions with the County. It also was the prelude of money that would have to be spent if the day came when a vote for litigation took place.

Councilman Shaw expressed concern regarding the commercial/industrial application of the airport, and the representation of interests of the residents.

Commissioner Zucaro replied that residents came to the City Commission and stood up and said "no." The City Commission had twice agreed with the residents, and had retained Attorney Carr to develop its interests. The City Commission was in a data gathering mode, and was committed to take whatever action was necessary to protect its interests. Arguments against developing the airport into an international airport would be researched. The commission suggested by Commissioner Aaronson was an item that was looking toward the altering of the Master Plan of the airport. Commissioner Zucaro explained that he was present today as a representative of the City Commission to talk to the policy makers of the Town, to ask simply that the efforts of the City be acknowledged, that sharing information be a part of the process, and endorsement in principle of going forward in bringing to light the shortcomings of the current process.

Mayor Ilyinsky commented that he was in agreement with all of the reasons given to stop airport expansion, and that leadership would be provided by the proposed commission. He advised that he was willing to sit down and talk with the commission proposed by Commissioner Aaronson.

Commissioner Zucaro responded that he would like to leave today with the understanding that the attorneys from the City and the Town would have a mutual ongoing dialogue with regard to the interests of the City of West Palm Beach as they related to the interests of the Town of Palm Beach.

Mr. Harrison Robertson, resident, and Chairman of the Airport Committee of the Palm Beach Civic Association addressed the Town Council, stating that he had reviewed the expert studies commissioned by the airport in 1989 and 1993 to support the proposed expansion of the airport, and both documents stated that there was no expansion needed beyond the present facilities in order to accommodate the present business conducted at the airport. He noted that in order for the airport to expand it would need final approval in a process that was before the Treasure Coast Regional Planning Council. He commented that the I-95 interchange was also an issue of concern. He urged that the Town Council request Attorney Randolph to participate in opposing the extension of the runway and the overall expansion of the airport, as well as the Aaronson commission.

Mrs. Patricia High, Central Park Historic Neighborhood Association liaison for the Neighborhood Coalition, addressed the Town Council in opposition to airport growth. She commented on the airport issues in St. Lucie County, which were similar to those in Palm Beach County. She noted that an environmental study did not need to be conducted by the FAA. She urged that the Town of Palm Beach and the City of West Palm Beach work in cooperation with each other.

In response to President Pro-Tem McLendon, Town Attorney Randolph replied that he had not been actively involved in the airport opposition activities, however, he had kept up with what was going on, and had discussed the issues with Mayor Ilyinsky and Assistant to the Town Manager David Jakubiak.

Councilman Shaw stated that he was involved in the travel business, and that the number of flights that would come into the Palm Beach Airport would not drastically increase based upon the fact of airport expansion. The word "international" simply meant that there was a customs facility–international carriers would not be coming into Palm Beach, which he noted that he was aware of because of discussions with carriers as to future plans. The airport was regional and would never become an international airport. An airline could not afford to bring in one flight a day with 400 passengers going to 12 different European cities–it was just not going to happen. He explained that the airport wanted the residents to think that they were going to get passenger service, when in reality it was only freight service that was going to be expanded.

Councilman McDonald moved that Town Attorney Randolph be authorized to cooperate with Attorney Carr in this matter. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

1. Consideration of BellSouth's Request to Extend the Town's Telephone Franchise Agreement Which Expired April 8, 1998

Assistant to the Town Manager David Jakubiak reported that he had drafted a memorandum to the Town Council dated April 7, 1998, which explained the position of the Town regarding the Franchise of BellSouth. Mr. Sid Poe, Regional Manager, Corporate &

Manager, Corporate & External Affairs was present to address the issue. Mr. Jakubiak recalled that the Town had extended the Franchise Agreement with BellSouth for one year, which expired on April 8, 1998. He advised that after discussion with legal experts, it was believed that it was not in the interest of the Town to extend the Agreement for another year, but rather to apply for a Franchise.

Mr. Jakubiak referred to the memorandum from Maria Silveira of the Law Offices of Miller & Van Eaton, wherein the following was recommended as an option to the Town with regard to the expiring BellSouth franchise:

> The following course of action could be taken to protect the Town's rights:
>
> - refuse to accede to BellSouth's request to extend the term of the existing franchise; and
> - send written notice pursuant to Section 2(5)(b) of the existing franchise of the Town's objection to the continuation of the existing terms under the existing franchise; and
> - state the Town's position in writing that BellSouth's existing franchise has expired, that no application was filed pursuant to the Town's telecommunications ordinance, and therefore, the Town considers BellSouth to be in the public rights-of-way without a valid franchise and therefore BellSouth is an unlawful occupant of the Town's public rights-of-way.

Mr. Jakubiak pointed out the HB3291, dealing with rights-of-ways, would not be in the interest of the Town, and related to the franchise issue.

Town Attorney Randolph explained that in the event the Franchise Agreement was extended for another year, there may be a risk that BellSouth would take the position that they were already lawfully in the right-of-way, and if they were lawfully in the right-of-way when the legislation was passed, they would be grandfathered, and not required to get a franchise. He noted that there was a grandfathered provision within the new bill which indicates that telecommunications companies which were already in the right-of-way at the time of adoption of the bill would not be required to get a franchise. If representation was received from BellSouth that they would not take that position, consideration would be given to extension of the current Franchise Agreement.

Mr. Sid Poe, BellSouth Regional Manager, addressed the Town Council, stating that the position of BellSouth remained as stated in his letter of March 27, 1998:

> "After reviewing your letter, and with consideration to the significant progress that has been made by the Florida Legislature regarding HB3291, we suggest an alternative solution. We suggest that the Town, as provided by Section 1 of Resolution No. 29-97, extend the April 8, 1998 expiration date of the Resolution to April 8, 1999. At a minimum, we suggest that the Town extend the Resolution until, at least, the end of the current Florida legislative session. At that time, both the Town and BellSouth will be in a much better position to discuss renewal or a BellSouth telecommunications permission ordinance.
>
> We believe that this action serves the interests of both parties. Regardless of which course the Town takes, we agree that BellSouth will be lawfully occupying the streets and rights-of-way after April 8, 1998."

Mr. Poe noted that the position of BellSouth regarding the right to be in the right-of-way evolved from Chapter 364 of State Law, specifically Statute 337.2, which provided BellSouth, or any telecommunications company, the right to be in the right-of-way. He noted that, as a courtesy, for many years BellSouth had negotiated Permission Ordinance Agreements with municipalities to pay the 1% fees for recurring charges. At issue, of course, was the expired Permission Ordinance Agreement, which had been extended through April 8, 1998. BellSouth had requested, in good faith, that this ordinance be extended, at a minimum, to the end of the legislative session. He pointed out that he had not been aware, until this morning, of Attorney Randolph's suggestion that BellSouth provide some representation in writing of intent regarding right-of-way issues. He advised that he would share that with legal staff. He reassured the Town Council that an open dialogue would be continued, with the understanding that differing legal opinions would exist.

In response to President Pro-Tem McLendon, Mr. Poe advised that it was the view of BellSouth that Chapter 364, Statute 337.2 was in existence, and that BellSouth thus retained the right to be in the right-of-way. When the 1% fee was imposed these recurring local charges were passed along on telephone bills.

In response to Councilman Shaw, Mr. Poe explained that the motivation of BellSouth in negotiating Permission Ordinance Agreements with municipalities was to ensure that the municipality that has an existing Permission Ordinance Agreement in place was receiving the appropriate 1% reimbursement.

Town Attorney Randolph pointed out that there were municipalities where BellSouth did not have either Franchises or Permission Ordinance Agreements in effect, and questioned whether the 1% fee collected from customers was paid to the municipality while there was no Franchise or Agreement in effect?

Mr. Poe replied that to his knowledge, BellSouth was not paying the municipality in such a case, however, he stressed that he was not sure

Councilman Shaw asked if it was the intent of BellSouth not to charge the residents the 1% fee if the Agreement was not renewed, or basically effective as of April 8, 1998.

Mr. Poe responded that he would have to refer that to the legal staff for determination. Historically, in the absence of an agreed to Permission Ordinance, BellSouth continued to collect the fees.

Town Attorney Randolph explained that there was an argument on the side of the Town that BellSouth was not lawfully in the right-of-way, and if the Franchise was extended today, that argument would have to be given up–they would be grandfathered in the event the legislation passed, and the Town would be entitled only to the 1%, and not be able to assess the other fees established in the ordinance. It could be that the legislation would determine what fees could be assessed by the Town. He recommended that the matter of the extension of the Franchise be deferred until it could be determined that BellSouth would not use the extension as an argument that they were grandfathered in and did not have to abide by the Town Rights-of-Way Manual.

Councilman Wyett moved approval of Recommendation No. 3 (as quoted earlier) in the memorandum from the law firm of Miller & Van Eaton of April 3, 1998.

Mr. Jakubiak clarified that the 1% fee was approximately $42,000, and the legislation would not take away the 7% the Town collected from BellSouth as a public service tax, which was approximately $325,000. He noted that even if the proposed legislation passed, the Town could still collect its fees. He concurred with adopting Recommendation No. 3 as stated in the Miller & Van Eaton memorandum.

Mr. Poe clarified that the motivation of BellSouth was not confrontational, nor were they attempting to hide any dollars. With regard to any of the other items in which payment was collected, BellSouth intended to adhere to ordinance requirements.

Councilman Wyett amended his motion to add the suggestion of Town Attorney Randolph that agreement should be received from BellSouth within 30 days, waiving their rights to claims in return for an extension. President Pro-Tem McLendon seconded the amended motion.

On roll call the motion carried unanimously.

Mr. Jakubiak suggested that a Council representative may want to contact Legislative Representatives in objection to HB 3291, as recommended in his memorandum of April 10, 1998.

The Town Council unanimously designated Mayor Ilyinsky as the contact of Legislative Representatives.

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At this time, Resolution 19-98, which had been deferred earlier, was discussed.

Town Attorney Randolph explained that, under Ordinance, the Town Council must act on the decision of the Landmarks Commission within 90-days of the Landmarks Commission final decision. The May meeting of the Town Council would fall within this deadline.

President Smith suggested that the Ordinance be amended to extend the time limit to 120-days.

Historic Preservation Consultant Jane Day suggested that the landmarked properties could be brought to the Town Council within 30-days, rather than the traditional 60-days.

Building Official Moore explained that there were certain advertising requirements in this regard, and suggested that the 120-day limit be considered.

Town Attorney Randolph noted that the Landmark Ordinance was fairly strong, and amendment would involve going to the State and Federal government; if presentations could be made within the 30-day time period that would be preferable.

President Pro-Tem McLendon moved that Resolution 19-98 be deferred to the May 12, 1998, Town Council Meeting. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

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XIV. NEW BUSINESS

A. Ordinances

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

Acting Town Manager Peter Elwell referred to his memorandum of April 6, 1998, referring to proposed Ordinance

No. 5-98, as well as the memorandum dated March 20, 1998, from Personnel Director William C. Crouse. The proposal would create some additional flexibility in the Retirement Program of the Town.

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

Town Attorney Randolph read Ordinance 5-98 by title:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 15 OF THE CODE OF ORDINANCES RELATING TO AMENDING SECTION 15-10 TO ADD DEFINITIONS: AMENDING SECTION 15-30 TO PROVIDE DEFERRED RETIREMENT OPTION PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

B. Bid Awards

1. Sealed Bid No. 98-07 - Underground Fuel Storage Pipe Replacement; Resolution No. 21-98

Town Attorney Randolph read Resolution 21-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO SUNDELL CORPORATION FOR THE UNDERGROUND FUEL STORAGE TANK PIPE REPLACEMENT.

President Pro-Tem McLendon moved approval of Sealed Bid 98-08, Resolution 21-98. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

2. Sealed Bid No. 98-08 - Par 3 Golf Course Irrigation Tubing; Resolution No. 22-98

Town Attorney Randolph read Resolution 22-98 by title:

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AWARDING A CONTRACT TO D & K SPRINKLERS, INC. FOR THE PAR 3 GOLF COURSE IRRIGATION TUBING REPLACEMENT.

Councilman Shaw moved approval of Sealed Bid 98-08, Resolution 22-98. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

3. Sealed Bid No. 98-12 - Modification of Aluminum Trash Truck Bodies

Public Works Director Al Dusey reported that the modification of the trash trucks would result in improvement of the trash operation.

Councilman Shaw moved approval of Sealed Bid 98-12. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

C. Appointments

1. Code Enforcement Board - Two Member, Three-Year Terms to Expire April 2001, and Two Alternate Member, Two-Year Terms to Expire April 2000

The current regular members, John G. Matich and Robert Gottfried were re-appointed for three-year terms. The current alternate members, Eugene Lawrence and David Thomas were re-appointed as alternate members for two-year terms.

D. Other

1. Consideration of Request by Mr. James Brindell, P.A., for a Quit Claim Deed Regarding 353 North Lake Way

Attorney James Brindell, representing Kenneth and Francis Eisenberg, addressed the Town Council, stating that there was a 12' strip of land immediately abutting their property to the south, which was filled with very mature trees and bushes. The strip had been dedicated 51 years ago by A.O. Edwards, developer of Stokesberry Park Subdivision, for use as a street by the Town. The Town accepted the dedication on February 11, 1947. The dedication included a provision to the effect that it would revert, upon abandonment, or discontinuance, by operation of law. He distributed photographs of the area, noting that the strip had never been developed as a path or street, and there was no evidence that any consideration had ever been given in any form. He cited Florida Statute Section 255.2, providing that if there was a dedication of land for a public street that was not used or maintained within 60 months from the date of the dedication, or the passage of the Statute, it was conclusively deemed to be abandoned. The Statute also said that a property owner of abutting property had a right to ask for a Quit Claim Deed from the governing body. Attorney Brindell requested that the property be abandoned and a Quit Claim Deed be provided.

Town Attorney Randolph replied that this may well fit within the parameters of the Statute, and it seemed on the basis of facts presented that it did. He noted that he had corresponded to Mr. Brindell that this would be an elective decision of the Town Council. He did not know whether there had been any consideration given for the property at the time, and this particular conveyance had not been to the Town of Palm Beach, but to the public. Florida Statute 255.22 addressed conveying real property to any municipality. He had advised Mr. Brindell that with normal abandonment procedures the property owner was usually requested to make payment for the property, however, this request was not the run-of-the-mill abandonment.

Councilman McDonald commented that he believed there should be some consideration of payment to the Town, and so moved. The motion was seconded by President Pro-Tem McLendon.

Town Engineer Bowser reported that the assessed value was $81.00 per square foot, and the strip was approximately 200' long–thus, an assessed value of $194,400.

Councilman McDonald moved that a Quit Claim Deed be executed at a cost of $5,000 to the applicant. The motion was seconded by President Pro-Tem McLendon.

Councilman Wyett expressed objection to the amount of $5,000, finding it too low, and suggested that the sum of $25,000 would be more acceptable. He suggested that the matter be deferred so that the applicant and the Town Attorney could discuss the situation.

Town Attorney Randolph explained that if a Quit Claim Deed was not received by the applicant, the recourse for the applicant would be to start a Quiet Title action in order to prove the necessary elements.

Councilman McDonald amended the motion to make an offer to the applicant for execution of a Quit Claim Deed at a cost of $5,000 to the amount of $25,000. The amended motion was accepted by President Pro-Tem McLendon. On roll call the motion carried unanimously.

2. Consideration of Whether to Request the Zoning Commission to Hold a Year-End Meeting Each April Beginning in 1999

Director of Planning, Building & Zoning Robert Moore reported that a year-end meeting of the Zoning Commission had been proposed for consideration of the action of the Town Council on the report of the Zoning Commission, for consideration of any matters that had been deferred, and for consideration of any new matters for the Town Council to authorize for study. The Chairman of the Zoning Commission, Mr. Wood, had indicated he would be in favor of such a meeting, as was staff. In order to save advertising fees, the Zoning Commission would be adjourned, with a time certain set for it to reconvene in the latter part of April.

Councilman Wyett moved approval of a year-end meeting, beginning in 1999 in the month of April to be held by the Zoning Commission annually. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

3. Consideration of Recommendation for the Town to Proceed as a Partner with Palm Beach County to Develop a Local Mitigation Strategy Plan

Acting Town Manager Peter Elwell referred to his memorandum of April 8, 1998, regarding the Local Mitigation Strategy Plan–Recommendation for the Town to Proceed as a Partner with Palm Beach County, reporting that there were advantages, as noted in the memorandum, for the Town to participate in the County Location Mitigation Strategy Plan. He recommended that the Town Council authorize Town participation as a partner with Palm Beach County and other municipalities in the development of a Countywide Local Mitigation Strategy Plan (a related interlocal agreement will be presented to the Town Council for review and approval at a future Town Council Meeting); and that Zoning Administrator Paul Castro be designated as the Town representative on the Local Mitigation Strategy Working Group.

Councilman Wyett moved approval of the recommendations of Acting Town Manager Peter Elwell. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

4. Consideration of Request for Additional Funding Authorization for the Inlet Influence Study Relating to the Implementation of the Lake Worth Inlet Management Plan

Public Works Al Dusey reported that the Town Council had authorized the execution of an agreement with the State Department of Environmental Protection (DEP) for three projects related to implementation of the Lake Worth Inlet Management Plan. One of those was the inlet influence study which would help determine the extent of erosion caused by the inlet. A budget had been approved of $42,000, however, the State DEP had revised the scope of work, and an amount of $57,600 was now needed. The State had indicated that the existing agreement would be amended after July, 1998, and they would pay half of the additional costs. Mr. Dusey noted that the study was very important to the Town of Palm Beach because if it was shown that any beaches in Town were affected by the inlet, the Town would be eligible for 50% State funding without consideration of Federal funding.

Councilman Shaw moved approval of the additional funding in the amount of $15,600, to come from the Coastal Protection Fund Reserves. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

5. Consideration of FY99 Proposed Budget Calendar

Acting Town Manager Peter Elwell referred to the FY99 Proposed Budget Calendar, and confirmed that a quorum would be present at all meetings where necessary.

President Pro-Tem McLendon moved approval of the FY99 Proposed Budget Calendar. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

6. Consideration of Request by the Charter Review Commission for Funding of Travel Expenses for Mr. William N. Cassella, Jr. to Address the Charter Review Commission at its Meeting on April 24, 1998

Chairman of the Charter Review Commission, Doyle Rogers, addressed the Town Council, stating that at the last meeting of the Charter Review Commission on April 3, 1998, he had been instructed to request a limited budget from the Town Council for the use of the Charter Review Commission to have a person of national reputation counsel with the Charter Review Commission. Mr. William Cassella was a noted authority, and had been contacted to appear before the Charter Review Commission, which he was willing to do at no charge for his consultation. Mr. Cassella did think, however, that he was entitled to air fare, lodging and meals. Mr. Rogers noted that the Palm Beach Civic Association and the Citizens Association of Palm Beach had each contributed $1,000 to be used for payment of those items, with the request of reimbursement by the Town. Mr. Rogers requested that a budget reimbursement be approved in this regard.

Councilman Wyett moved approval of reimbursement of the $2,000 budget request by the Charter Review Commission. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

7. Consideration of Authorization for Attendance at the Florida Institute of Government's Workshop for Public Officials on May 1, 1998, in Fort Lauderdale

This item was withdrawn from the Agenda earlier in the meeting.

8. Request to Use Remaining Funds from the Construction of the South Fire-Rescue Station to add Hurricane Bracing to Doors for all Three Fire-Rescue Stations

Councilman McDonald asked why hurricane bracing had not been included in the original construction of the South Fire-Rescue Station?

Town Engineer James Bowser replied that the original intention had been to include hurricane bracing, however, architects had indicated that a door could not be manufactured to meet 140 mph winds, however hurricane bracing could be installed.

Councilman McDonald noted that the bid was $15,000, however, the request was for $25,000.

Town Engineer Bowser replied that $5,000 had been spent on design services, and some of the money would be used for construction observation services for the architects. One unknown element was at the North Fire Station, which had a wood header, and significant testing had not been done of the existing beam, and there may be more work needed–thus, the $5,000 contingency.

Councilman McDonald asked why the accounts were kept open after construction was completed?

Town Engineer Bowser responded that the door bracing was needed, and the account had been requested to be kept open. When the entire project was completed, Mr. Bowser indicated he would alert the Finance Department to request that the remaining monies go into the Capital Improvement Fund Balance. He would assure that all purchase orders had been closed out.

Councilman McDonald moved approval of the funding for hurricane bracing to doors for all three Fire-Rescue Stations. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

9. Discussion of the Risk Management Position

Acting Town Manager Peter Elwell requested any specific questions that he would respond to at the May 14, 1998, Town Council

Meeting concerning the Risk Management position.

Councilman McDonald expressed concern that there was no longer one person responsible for the Risk Management function, and requested that a response to this issue be included.

President Pro-Tem McLendon asked if outside talent was being used in this regard?

Mr. Elwell responded affirmatively, however, it was not in a different way than in the past, but to a greater degree. He continued to be responsible for the Risk Management function.

Councilman Wyett requested that Mr. Elwell address the secretary that had been associated with the prior Risk Manager, and whether there was a full time position for her, and why she was located on the third floor, which was remote?

Mr. Elwell replied that space needs were difficult, however, functionally Ms. Webb was very busy. He indicated that he would prepare a memorandum to address the situation at the next Town Council Meeting.

President Smith asked who she would call if she had a risk management problem, and if Mr. Elwell believed someone else should be assigned to the position, as a result of his becoming Acting Town Manager?

Mr. Elwell replied that anyone could call him for a risk management problem, and he did not think it was necessary to re-assign the position, and would address the issue in the memorandum he would prepare. Internally, on the staff, Ms. Webb could handle day-to-day questions.

10. Discussion of the Response from Lake Worth Regarding Timed Bridge Openings

Councilman McDonald expressed concern over the response from Lake Worth to the request regarding timed bridge openings, as he had no idea why it had not been accepted or rejected.

Councilman Wyett pointed out that they had communicated that the bridge was high, with a minimal number of boats causing it to open; therefore, they saw no reason to interfere with the operation of the bridge.

XV. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman Wyett expressed the wish for a speedy recovery to Town Manager Robert Doney. He congratulated Acting Town Manager Elwell, as well as staff, and department heads for cooperating and making his increased temporary burden possible. He looked forward to the return of Mr. Doney.

Councilman Wyett suggested that the Town consider the proposal of the Garden Club for protection of trees in the Town of Palm Beach, and looked forward to seeing it on the next agenda.

Councilman McDonald commented that it seemed that as more variances were granted by the Town Council the result was that more variance requests were coming before the Council.

XVI. APPROVAL OF CHECK REGISTERS FOR MARCH 1998

Councilman Shaw moved approval of Check Registers. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

XVII. DEVELOPMENT REVIEWS

A. Major Matters Previously Considered by the Architectural Commission at Its Meeting of March 25, 1998 - Minutes Available in Town Manager's Office

A. DEFERRALS AND CONTINUATIONS - MAJOR PROJECTS

B1-98 Application by The Breakers, One South County Road, for new 20,000 s.f. facility comprised of a fitness center, 400 seat indoor/outdoor dining room - deferred.

B5-98 Application by K. Peter Knudsen, 593 Island Drive, for new one story residence - approved.

B11-98 Application by Arturo Burrigato, 6 Via Vizcaya, for additions and alterations to existing residence - deferred.

B15-98 Application by Australian Estate, Inc., 360 Cocoanut Row, for construction of two attached Mediterranean style townhomes - denied.

B16-98 Application by Judith A. Shackelford & Phyllis L. Gates, 333 Eden Road, for demolition of existing residence - approved.

B17-98 Application by Robert Fessler, 1430 North Lake Way, for demolition of existing residence and construction of new two-story Mediterranean style residence with four car garage and pool - demolition approved; construction deferred.

B18-98 Application by Adele Smither, 936 North Lake Way, for demolition of single family structure - approved.

B19-98 Application by Louisa Cohlan, 241 Kenlyn Road, for remodeling of entry porch, new loggia addition in courtyard, new gable roof over guest house and library to match existing, paint all exterior white with green trim - approved.

B20-98 Application by Mr. and Mrs. F. Quinn Stepan, 1554 North Ocean Way, for 997 s. f. second floor addition to an existing 2,790 s.f. single story residence - approved.

The Major Projects considered by the Architectural Commission, and the report of the meeting held on March 25, 1998, were approved through motion of Councilman Shaw, seconded by Councilman Wyett.

Councilman Shaw asked for definition of the fiscal period in which attendance was counted?

Director of Planning, Zoning & Building Robert Moore indicated that he would provide that information later in the meeting.

Town Attorney Randolph noted that lack of attendance was defined as failure to attend three or more meetings in any one calendar year.

On roll call the motion carried unanimously.

A. Appeals

1. Appeal of the Architectural Commission Regarding Item No. B15-98, 360 Cocoanut Row, Australian Estate, Inc.

Town Clerk Pollitt administered the oath to all those would be testifying in this and the following matters.

Ex-parte communication was declared by Councilman McDonald with Mr. Vegosen regarding the merits of the appeal; by Councilman Shaw with Mr. Vegosen regarding the merits of the appeal; by Mayor Ilyinsky with Mr. Vegosen regarding the merits of the appeal; by President Smith with Mr. Vegosen regarding the merits of the appeal; by President Pro-Tem McLendon with Mr. Vegosen regarding the merits of the appeal; and by Councilman Wyett with Mr. Vegosen regarding the merits of the appeal.

Attorney Dean Vegosen distributed material concerning the appeal of the Architectural Commission (ARCOM) regarding Item No. B15-98, stating that the proposed townhouse project had been denied by ARCOM, and the applicant was appealing for the following reasons:

- The applicant believed ARCOM rendered unfair treatment. Mr. Segraves, architect for the project, met with nine of the ARCOM commissioners prior to the February 25, 1998, meeting. Six of the nine commissioners gave him encouragement about the plan, commenting on architectural elements and style, as well as objection to the size of the project. The minutes of the meeting reflected encouragement for the project, with the objection again being size. At the March 25, 1998, ARCOM meeting the project had been considered unfit and should be totally re-worked.

- ARCOM denied the project under sub-sections A and G of Section 5-387 of the ARCOM Ordinance, but did not give any specific reasons for the denial, which was required under the terms of the Ordinance. ARCOM said that the project failed to meet the criteria of good taste, good design, and did not contribute to the image of Palm Beach as a place of beauty, spaciousness, balance, taste, fitness, charm, and high quality, and that it was not appropriate in relation to the established character of other structures in the immediate or neighboring areas in respect to significant design features, such as material or architectural design. They did not give the specifics of how it failed to meet those criteria.

- The motion under sub-sections A and G was a disingenuous motion. A and G had nothing to do with the denial–size had been the issue with regard to the project. Size was the issue of the conversations with each of the commissioners. It was the issue in the February 25, 1998, transcript, and at the March meeting as well. Because the numbers were proven, and shown that they were well within the CCR and FAR and height of neighboring projects, ARCOM did not have another way to deny the project except to invoke sub-sections A and G. Three independent architects had commented on the project, finding that the project was a fine example of Mediterranean architecture, well proportioned, and compatible with the neighborhood, adding to the image and charm of Palm Beach.

- Attorney Vegosen stated that it was his legal opinion that the jurisdiction of ARCOM to determine the size of a building no longer existed, once the threshold of a project was determined not to be excessively dissimilar to its neighbors in terms of cubic content ratio, FAR, and height. There was nothing in the ARCOM Ordinance that said ARCOM had a right to determine size of a building, except in comparison to its neighbors. Size was the province of the Zoning Code.

Mr. Vegosen continued that the transcripts would reveal only a few comments about the architectural elements of the project, other than size. One was that the southern entry was much too large and overpowering for the project; a second one was that the location of the garage was too close to the corner, and that the half roof over the garage was not appropriate to the style of architecture.

Dr. Donald W. Curl commented that he usually agreed with ARCOM, however, he believed that in this instance the building was not being criticized because of its style, massing, or decorative details–it was being criticized because it was deemed large. The building would become a wonderfully good project, when it was seen in relation to its neighbors, as well as when compared to what it would replace. The garage was a way of turning the corner in a residential block; the garage facing the street was irrelevant, because there were many garages on the street facing the street; the garage roof being lower than the rest of the house created a softening around the corner, which gave the townhouse more of a Mediterranean Revival feel. He noted that he thought the townhouse made the whole area much better than it was before, and did not understand why anyone would object to the building.

Architect Pat Segraves pointed out the changes made in the plans, which included simplifying the entry on Chilean, and re-design of the driveway/motorcourt to shelter the garage doors.

Mr. Vegosen noted that the garage had been placed in its present location because of the pool area and the livability of the house. Mr. Vegosen referred to the notes of Mr. Segraves, as relayed in his letter of April 10, 1998, and read the comments of the ARCOM commissioners into the record, summarizing that six of the nine commissioners liked the design.

Councilman Wyett expressed concern over quoting individual ARCOM members, when they had given of their own time to give comments to help an applicant get through ARCOM. He maintained that those were private comments. He suggested that Mr. Vegosen prove his case without referring to those comments, and requested that it be withdrawn from the presentation.

Mr. Vegosen replied that he would prove the case without that, but comments of public officials in ex-parte communications were taken seriously, because guidance was being requested from them. He accepted the objection of Mr. Wyett, but did not feel that he could withdraw it from his presentation, having already presented it.

Town Attorney Randolph pointed out that if a reviewing court were looking at the presentation, he did not believe that comments which were made outside the public meeting would be allowed as relevant evidence, particularly in light of the fact that the people were not present to affirm or rebut the statements.

Attorney Vegosen then approached the minutes of the ARCOM meetings of February 25, and March 25, 1998, quoting comments made in support of the project. He maintained that there was general acceptance by the ARCOM commissioners at the February 25 meeting as to the style of the project–the major concern and comment was on the size of the project. There had been comments about heaviness, the roof, and that the project should be simplified and streamlined, however, size was the overwhelming issue.

Mr. Vegosen referred to a chart indicating the evolution of the size of the project, which was labeled as Exhibit 4 of the presentation documents; Exhibit 2, which reflected neighborhood characteristics; Exhibit 3, which included a streetscape. He noted that the size of the project had been reduced after the February 25, 1998, ARCOM meeting from 9,850 s.f. to 9,690 s.f., as well as changes in the plans to lighten the building, which were included in Exhibits 8 and 9. He referred to the transcript of the March 25, 1998, ARCOM meeting, and read comments from the commissioners at this time, and the motion for denial based on sub-sections A and G, with recommendation for a total re-working.

Attorney Vegosen exhibited plans with minor revisions revised as of April 13, 1998, requesting that the Town Council approve it, or the plan submitted to the ARCOM Commission at the March 25, 1998 meeting.

Councilman Wyett asked if it was possible to change the entryway on the side with the garage doors opening on the street, so as to effect screening in front of the garage?

Architect Segraves replied that because of the style of the cast stone driveway, he had attempted to move it as close to the corner as possible, without encroaching on the corner of two streets. He planned to landscape screen the area.

Councilman Shaw moved approval of the plans revised as of April 13, 1998. After brief discussion he then withdrew the motion.

Director of Planning, Zoning & Building Robert Moore reported that ARCOM had reviewed the plans twice, and the applicant had indicated that they had received mixed signals from ARCOM as to what needed to be done for the project in order to meet their satisfaction. He noted that it was clear at the March meeting that the architectural design was what was in question. The applicant was addressing the massiveness today, as there was a distinctive visual change by the drop of 1' in the tie beam. It was the recommendation of staff that a clear indication be given by the Town Council as to size, the architectural style, and that the actual detail and landscaping plan be returned to ARCOM.

Mr. Vegosen commented that ARCOM had its opportunity to comment on the project, which had been addressed. He maintained that the Town Council was in a position today to make a decision of approval of the plan, with ARCOM deciding on details such as materials used, and landscaping. He noted that he believed it strange and inappropriate that a commissioner or tribunal whose ruling is in question would come to speak before the body that was ruling on its decision, and he objected on that basis.

President Smith remarked that she had asked Mr. Schuler to speak because she had several questions for him. He was not present to make a presentation.

Chairman of ARCOM, John Schuler, addressed the Town Council stating that the transcript provided by Mr Vegosen for the March 25, 1998 ARCOM meeting clearly pointed out that the denial was on an architectural basis, which was the mission of ARCOM. A number of elements had been added to the project, which the various members of ARCOM did not think were in keeping with the type of architecture. He urged that the Town Council uphold the denial of ARCOM, and noted that he had not seen some of the plans submitted today, as had none of the other members of ARCOM.

President Pro-Tem McLendon mentioned that there had seemed to be a great deal of inconsistency in the minutes of the meetings.

Mr. Schuler responded that it was a situation where one plan was presented at the February 25, 1998 meeting, and another plan was presented at the March 25, 1998 meeting. Therefore, different opinions could arise out of those two different plans, however the question was an architectural question. Architectural features had been questioned since the beginning of the project.

Councilman McDonald commented that he agreed that the new plan should go back to ARCOM so that it could be reviewed.

Councilman Shaw noted that the plans were not really new, but slightly revised.

Mr. Schuler replied that ARCOM had not seen what was being presented, and believed that ARCOM should have the opportunity to review it. He suggested that the matter go back to ARCOM, with the Town Council upholding the denial, so that ARCOM would have the opportunity to review the proposal presented today. Details on architectural facades were very important, and should be considered by ARCOM.

Councilman Shaw responded that Mr. Vegosen had indicated that he did not object to going back to ARCOM to discuss pertinent issues, if the Town Council approved the plans. He explained that Mr. Vegosen was requesting approval of the mass, size, location, and bulk of the building, and if the Town Council upheld the denial, the applicant could not go back to ARCOM.

President Smith asked if it would be possible to approve the style, with a recommendation to go back to ARCOM for detailing, without overturning the ARCOM denial?

Town Attorney Randolph responded that the project could be remanded back to ARCOM with specific direction, which would, in effect, overturn the denial.

President Smith remarked that she had no problem with the Mediterranean Revival style, and did not feel that it was up to ARCOM members to say they were tired of it. Nine townhouse projects had recently gone up, with most being Mediterranean Revival style, and were sold rapidly. Obviously, the public liked the style.

Councilman McDonald supported the position of President Smith.

Councilman Shaw clarified that he had intended to say that approval could be granted of the design from the standpoint of bulk, mass, and lowering of the tie beam; it was his understanding that Mr. Vegosen had indicated that he would go back to ARCOM to address details of the project.

Mr. Schuler stated that he had never seen any details of the plan presented, which he believed were needed so that ARCOM could see exactly what would be built.

Attorney Vegosen responded that the plans submitted to ARCOM were sufficient for approval under the ARCOM Ordinance, and included all details needed. He clarified that what he had stated was that the applicant would like to have Plan "A" or "B" approved, and the window materials could be brought back to ARCOM. He explained that there had been interest in window and roof materials expressed at the last ARCOM meeting. His request was to approve one of the plans, and send it back to ARCOM with the caveat that the window and roof materials come back to ARCOM.

Councilman Wyett moved that the project be remanded back to ARCOM, with note taken of the height reduction and architectural details of Mediterranean Revival style. Councilman Shaw seconded the motion.

Attorney Vegosen noted that the opinions of professionals indicated that the project had architectural integrity, fit into the neighborhood, was well-proportioned, and was of appropriate size. He expressed that it would not be appropriate to send the applicant back to ARCOM at this time. He suggested that if it was sent back at all, either Plan "A" or Plan "B" should be approved, and all ARCOM would deal with would be the exterior embellishments.

Town Attorney Randolph clarified that the motion basically approved the appeal, but remanded it with direction to ARCOM to look at the design features only.

Councilman Wyett also suggested the lowering of the height, and possibly pushing the building back, which would be the decision of ARCOM.

Director of Planning, Zoning & Building Moore interjected that "possibly pushing the building back" would leave too much of an open question for ARCOM

Mr. Schuler commented that ARCOM should be able to address issues relative to the architectural concepts, and design. This project had been turned down by ARCOM based upon an architectural aspect, and the denial should be upheld, with the project coming back to ARCOM. He emphasized that ARCOM did not design projects for architects, but critiqued projects as presented.

Mr. Moore clarified that the plan being sent back to ARCOM would have the 1' taken out of the tie beam.

Upon request, Town Clerk Pollitt re-stated the motion as made: Approval of the appeal; project sent back to ARCOM to look at the design features. ARCOM would not be able to turn down the project, and would look at the 4-13-98 plan. The footprint, the mass, and the height were all okay, and 1' had been taken out of the tie beam on the 4-13-98 plan.

Town Attorney Randolph clarified that ARCOM could not turn down the project on the basis of what had been presented today, i.e., building footprint, mass, height, etc.

Mr. Schuler commented that the authority of ARCOM needed to be very clear–if a design was presented that certain members of ARCOM did not think were architecturally acceptable, that would receive a negative vote. If the project was returned to ARCOM, then everyone should have the opportunity to express themselves on the design and whether the fenestration, etc., was proper or improper.

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

C. Variances, Special Exceptions, and Site Plan Reviews

<u>Old Business</u>

1. <u>SITE PLAN REVIEW NO. 6-97</u> - Salomon Dayan, 476 South Ocean Boulevard; located in the R-A Zoning District; to allow construction of a new two-story residence on a lot 14,996 sq.ft. In lieu of 20,000 sq.ft. required. *(Deferred from August 12, September 9, October 14, and November 12, 1997)* -**Request for Deferral to July 14, 1998, per letter dated March 26, 1998, from Dr. Salomon J. Dayan**

This project was deferred to the July 14, 1998, Town Council Meeting as moved earlier in the meeting.

2. <u>VARIANCE NO. 2-98</u> - El Vedado Way, Inc., 328 El Vedado Road; located in the R-A Zoning District; to allow construction of a 2nd story addition providing a 9.7' side yard setback in lieu of 15' required, and to allow additional height (5.5') to be added to an existing 2-story portion, providing a 9.7' side yard setback in lieu of 15' required, thereby requiring a variance from the required front yard setback of 49', in lieu of 30' existing. *(Deferred from January 13, February 10, and March 10, 1998)*

Attorney Robert Deziel, representing the property owners, Mr. and Mrs. Charles Holmes, addressed the Town Council, stating that the applicant had been attempting to come up with a design for the addition that would be acceptable to the Town Council. There were two basic elements: an in-fill addition at the rear of the property on the second floor; and the raising of the beam of the garage. Based upon discussions with staff and several members of the Town Council, Mr. Deziel suggested that approval be requested for the second floor in-fill addition, with removal of the request for the extension of the second story beam above the garage.

Ex-parte communication was declared by Councilman Shaw with Attorney Deziel and Architect Smith; by President Smith with Attorney Deziel and Architect Smith; by President Pro-Tem McLendon with Attorney Deziel and Architect Smith; and by Councilman Wyett with Attorney Deziel.

Zoning Administrator Castro gave the following staff comments: no objection to the two-story in-fill that would line up with the garage section.

Councilman Shaw moved approval of Variance 2-98, with the hardship being that it was a fill-in variance, lining up with an existing part of the house; the lot was irregular, and the hardship would lay with the land, and the setback under the new Zoning. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

New Business - Minor

3. VARIANCE NO.11-98 - Kenn Karakul & James Held, 754 S. County Rd; located in the R-A Zoning District; to allow construction of a parapet at a 3'4" height with a pitched roof system at a height of 34.83' in lieu of 30' maximum allowed pursuant to Sec. 4.20 footnote 18 of the Town Zoning Code.

Councilman McDonald questioned the distinction between a minor and major variance, asking if the test was not the same?

President Smith clarified that the reason for this item was as a result of the suggestion of Councilman Shaw made at a previous Town Council Meeting, for speeding up the Agenda.

Director of Planning, Zoning & Building Moore explained that this request would allow for both a parapet roof and a pitched roof to be in combination with each other. The intent of this was to prevent the pitched roof from having a parapet that would be an intersecting roof as it rose on the pitch. However, this project had a front yard setback of almost four times the required setback. The hardship in this case, was that the setback, which would deal with the mass, was almost four times what was required. It was determined by staff that this type of variance, with no one from the public speaking to it, and no Council person feeling that there was a problem, would be one that would need a full presentation. The distinction between minor and major was strictly an administrative distinction, however, the burden of proof was just as substantial for the minor variance as it was for the major variance.

Councilman Shaw moved approval with the hardship being that the setback was four times the required setback, and the intent of the Code was met, but was not applicable because the mass had been addressed with the setback exceeding four times the required setback. The motion was seconded by Councilman Wyett. On roll call the motion carried 4/1, with Councilman McDonald casting a negative vote.

New Business - Major

4. VARIANCE NO. 10-98 - Harold & Judy Heustein, 340 Cocoanut Row; located in the R-C Zoning District; to allow installation of a 9' trellis in lieu of 7' maximum allowed in a setback.

Jorge Sanchez addressed the Town Council, requesting a variance to apply a trellis to three sides of the rear part of the property. He exhibited drawings of the area in question for review of the Town Council, explaining that the trellis would distract the eye from the neighboring side.

Director of Planning, Zoning & Building Moore gave the following staff comments: Comprehensive Plan: trellis could be designed to conform to the Code; Building Department: does not find a hardship–it is an extension of the fence or wall; Town Manager: concurs with the hardship issue.

Mr. Sanchez explained that the hardship was that the neighbors had an existing trellis, which was above the property in question, and the issue was privacy. The space was tight, and the trellis would alleviate the situation. He distributed photographs of the area involved.

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

Mr. Hal Heustein, applicant, addressed the Town Council, stating that he had approval of the Condominium Association, and would provide two letters from neighbors in support of the trellis.

In response to Councilman McDonald, Mr Heustein stated that this was a two unit condominium, and the back wall was a common element.

Councilman McDonald responded that only the Condominium Association could request a change to the common elements.

Councilman McDonald asked Mr. Heustein if it was his feeling that he had no reasonable use of the land?

Mr. Heustein responded that he did not have privacy, and commented that a neighbor had erected a trellis without a permit.

Mr. Sanchez explained that the hardship was totally a privacy issue.

Councilman McDonald responded that he did not believe privacy was a hardship, and asked if there was any other reason?

Mr. Moore stated that if the property was a common element, the Condominium Association would be required to make the application, not the individual property owner. The records of the Building Department did not show that the property in question was a condominium, however, it was being stated that it was a condominium and the area in question was part of the common elements; therefore, staff would have to defer, and re-advertise as an association common element, and have the Condominium Association give the proper authorization as the applicant.

Mr. Sanchez responded that he could furnish a letter from the Condominium Association approving the proposed trellis.

Councilman McDonald responded that it was an advertising problem.

Town Attorney Randolph remarked that this was a procedural matter to be determined by the Town Council, and that he did not believe it created an advertising problem, but that the advertisement was correct in what was being requested. He stated that he did not think anyone would be detrimentally affected by the application going forward, in the event the owner was the President of the Condominium Association, and could change the application to himself, and provided the document of approval of the Condominium Association. Mr. Randolph advised that he did not believe that there was a legal problem from an advertising standpoint.

Director of Planning, Zoning & Building Moore noted that the Code Compliance Officer would look into the neighboring property trellis.

Councilman McDonald made a motion to deny the variance request. The motion was seconded by Councilman Shaw. On roll call the motion to deny carried 3/2, with President Smith, Councilman McDonald, and Councilman Shaw casting affirmative votes; President Pro-Tem McLendon, and Councilman Wyett casting negative votes.

5. VARIANCE NO.12-98 - Boston Homes, Inc., 711 Hi-Mount Rd.; located in the R-B Zoning District; to allow construction of two-story residence providing a 12.5' side yard in lieu of 15' required.

Attorney Peter Broberg, on behalf of Boston Homes, Inc., addressed the Town Council, stating that the house on Hi-Mount Road had originally been designed to fall under 5.48 of the Town Code, which was a special exception in the R-B Zone, allowing a roof to go from 30' to 35' if more than one-half of the first floor remained single story. Lot coverage was 22%, and in such a case the first floor could have 12.5' setbacks, with the second floor having 17.5' setbacks. The applicant did not want to take the roof up to 35', so conversations had been held with staff resulting in the decision to request a variance for 2.5' on the south side. Mr. Broberg explained that the lot was a corner lot, and over 20,000 s.f. The hardship was the irregularly shaped lot.

Ex-parte communication was declared by President Pro-Tem with Attorney Broberg, and by Councilman Wyett with Attorney Broberg.

Director of Planning, Building & Zoning Robert Moore gave the following staff comments: there is ample room on the property to design a house that conforms to the Codes: Building Department: no hardship; Town Manager: no hardship.

Attorney Frank Chopin addressed the Town Council, representing Mrs. Joyce Fisher, who owned the property most affected by the granting of the Variance. He noted that he had read the application and listened to Mr. Broberg today, and it did not represent what the law or the facts were.
He explained that the applicant had purchased the property as it was shaped, and the Zoning Code was in effect at that time. In addition, a house could be built on the property that would conform to Code, and there was no hardship. He advised that his client lived immediately to the south of the property in question, and a two-story house would adversely affect her; there was no reason to grant the application.

Attorney Broberg responded that if the Variance request was denied, the applicant would come back with a Special Exception in order to build the proposed home.

Councilman Wyett noted that no elevations had been shown, and the fenestration he had seen would not be acceptable. He advised that he could not review the project until final plans for elevations and site plans were shown together, and that he had advised Mr. Broberg to present a final set of drawings.

Attorney Broberg advised that he had met with members of ARCOM in ex-parte communication to review the styling of the house, and it had now changed. He suggested that a deferral of the project would be acceptable.

Councilman Wyett moved deferral of Variance 12-98.

Zoning Administrator Paul Castro pointed out that the provision being cited for use of a Special Exception would involve demonstration that the architecture of the house was meritorious for consideration for a Special Exception.

Attorney Chopin pointed out that the house would not comply with the Zoning, and there was no hardship involved. The proposed house would interfere with the rights of his client, and deferral was not an appropriate remedy.

Councilman Wyett withdrew his motion.

Councilman McDonald moved denial of Variance 12-98, as there was no hardship. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

6. VARIANCE NO. 13-98 - Via Vizcaya Development Corp., 6 Via Vizcaya; located in the R-A Zoning District; to allow construction of an entrance pavilion providing a front yard setback of 29' in lieu of 35' required, and to allow construction of a swimming pool providing a front yard setback of 21' in lieu of 35' required.

Ex-parte communication was declared by President Pro-Tem McLendon with Attorney Broberg; by Councilman Shaw with Attorney Broberg; by Councilman Wyett with Attorney Broberg.

Attorney Peter Broberg addressed the Town Council, stating that the applicant was proposing to build an entrance pavilion on Via Vizcaya. The neighbor across the street had no objection, as demonstrated in the letter sent to the Town Council. The variance was being requested because the road surrounding it was curved, and the property was irregularly shaped, as demonstrated on the exhibit provided. The pool variance was withdrawn.

Director of Planning, Zoning & Building Moore gave the following staff comments: Town Engineer: a second driveway was approved, but final location was subject to final review and approval by Public Works; Building Department: The pool hardship was withdrawn. No objection to the new entry, because of the hardship of the curved road.

Councilman Shaw moved approval of Variance 13-98, with the hardship being the irregularly shaped land. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

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

Zoning Administrator Paul Castro advised that the Variance Application for the sign itself had been determined not necessary, as long as the sign was 6 s.f. on either side and only visible from one side.

Mr. John Blades, of the Henry Morrison Flagler Museum, addressed the Town Council, stating that a few years ago the Museum had requested a Special Exception in order to enlarge the parking lot of the Museum, and to re-landscape. At the time the upgrading of signage on Cocoanut Row had been questioned, and the Museum had deferred development of that plan. Mr. Blades exhibited some photographs of the parking lot and landscaping. He advised that the project was now ready for completion, and the Landmarks Commission had given approval of the design for a new entrance along Cocoanut Row, and sign. He proposed a plan that would mitigate the appearance of the catch basin in the parking lot with a very low wall, put in an entrance appropriate for the design of Whitehall, and remove the utility poles for underground utilities.

Director of Planning, Zoning & Building Moore gave the following staff comments: Comprehensive Plan: Flagler Museum is highly visible, and there is no need to embellish the entry with oversized posts and/or increased signage; Town Engineer: construction within existing easements or proposed easements should not be allowed. If granted by the Town Council, Removal Agreement should be signed; Building Department: sign and walls, posts, should be moved back west of the easement; Town Manager: concurs with the comments that there was ample room to accommodate the proposed features west of the easement.

Mr. Blades pointed out that he believed there was a misunderstanding with the Town Engineer. The intent was to grant an easement to FPL and BellSouth to run their lines below ground–not a general utilities easement.

Architect Lawrence responded to the easement question, noting that it would be parallel to and back from the property line 10'. The lower posts, the wall, and the new sign would be on the easement. The Museum had discussed the wall with FPL, and had agreed to replace the wall if there was reason to remove it.

Councilman Wyett remarked that he believed the proposed construction was too close to the street, and objected to the sign variance.

Director of Planning, Zoning & Building Moore noted that the applicant had a hardship in that there was a retention pond area in the area, and they were attempting symmetry with the all system on the south lot as well as the north lot.

President Smith pointed out that the hardship and the retention pond were created by the creation of the north parking lot.

Councilman Shaw moved denial on the basis that there was no hardship, and that it would be inappropriate to create walls on an easement.

Councilman Wyett suggested that a modified plan be submitted, that would achieve the purposes desired.

Councilman McDonald moved deferral of Variance 14-98, so that the applicant could locate the correct easement locations, and come back before the Town Council at the May 12, 1998, Town Council Meeting. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

8. VARIANCE NO. 15-98 - Mr. & Mrs. Dudley Moore, 220 El Bravo Way; located in the R-A Zoning District; to allow construction of a second story addition providing a 24' street side yard setback in lieu of 35' required.

Ex-parte communication was declared by Mayor Ilyinsky with Attorney Robert Deziel; by President Smith with Attorney Deziel and Architect Jeff Smith; by President Pro-Tem McLendon with Attorney Deziel and Architect Smith with Attorney Deziel, Councilman Shaw with Attorney Deziel and Architect Smith.

Attorney Deziel addressed the Town Council, stating that, for the record, he had spoken with Councilman Wyett, who was not present in the room at this time. He explained that the property was located in the R-A Zoning District, with a total of approximately 46,200 s. f. The residence located on the property was originally designed by John Volk, and was designated as a Town of Palm Beach landmark. The owner would now like to build a second story in-fill addition above an existing first story, with a 24' street side yard setback in lieu of the 35' required. The new addition would not protrude further in the street than the existing two-story areas. The hardship was the irregularly shaped lot, as exhibited in the drawing presented, as well as the fact that the home was on a corner lot, therefore held to two front yard setbacks. He pointed out that the lot was a double lot, and the owner would be willing to enter into a Unity of Title Agreement with the property.

Director of Planning, Building & Zoning Moore gave the following staff comments: Comprehensive Plan: ample room exists to design a second story edition that conforms to Town Codes; Building Department: no objection – lot is irregularly shaped; Town Manager: questions hardship.

Ms. Merrilyn Bartes, 252 El Bravo Way, addressed the Town Council, stating that she was in opposition to the two-story edition at 220 El Bravo Way, as she found an issue with the structure. Presently there was a short wall about 24' from the edge of Travers Way, and this Variance request was for a two-story building structure to be built approximately in the same location of the wall. It would then loom over onto her property, which was directly across the street. She stated that she believed privacy would be lost, and requested that the Town Council be sensitive to the privacy needs of residents.

Attorney Deziel responded that Travers Way was approximately 12' wide, there was a 24' setback, and Mrs. Bartes' pool was probably at least 10-15' away, leaving a space of approximately 50'. There was already a second story area closer to Ms Bartes than the proposed construction. The reason for the request was that when the home was originally built the setback was approximately 15', because it was governed by Deed Restrictions. Mr. and Mrs. Moore were trying to deal with the property in the most architecturally sensitive way, and would work with Ms. Bartes in any way.

Ms. Bartes replied that she wanted the Town Council to understand her thoughts on the privacy issue–houses were getting closer and closer to each other, and she urged that the Town Council remain sensitive to the issue.

Architect Jeff Smith noted that the applicant had offered to fill in the landscaping of Ms. Bartes so that the proposed construction would never be seen.

Attorney Deziel noted that the applicant was also willing to work with Ms. Bartes in regard to the landscape plan of the applicant.

Ms. Bartes indicated that would be acceptable.

Councilman Shaw moved approval, with the hardship being the curvature, the lay of the land, and the fact that it was a in-fill variance, with the condition that landscaping be added to the property of Ms. Bartes, as well as landscaping on the property of the applicant, and the condition that a Unity of Title be provided. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried 4/1, with Councilman Wyett casting a negative vote.

9. VARIANCE NO. 16-98 - William I. Koch, 974 (975) S. Ocean Blvd.; located in the R-A Zoning District; to allow construction of a replacement swimming pool providing a 14'1" front yard setback in lieu of 35' required; a 6'8" side yard setback in lieu of 10' required; and a 6.21' rear yard setback in lieu of 10' required.

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

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

Attorney Doyle Rogers, representing William Koch, addressed the Town Council, stating that the application also had to go before the State, as the construction was for a beach house. The hardship was that the tie rods that held the seawall had been cut by a previous owner in order to put in the current swimming pool. In order to go forward with any kind of construction, the tie rods must be replaced, which had not been disclosed to Mr. Koch when he purchased the property. The proposed pool would be smaller than the current pool.

Director of Planning, Building & Zoning Moore gave the following staff comments: Building Department: no objection to the front or rear setback, however, there was no hardship seen on the side yard.

Architect Digby Bridges explained that the steel rods must be replaced, and the existing pool must be removed. The new pool would be smaller, and Mr. Bridges exhibited drawings of the proposed construction. The area would be heavily landscaped, and everything had been done to keep the area in the highest quality.

Councilman McDonald made a motion to approve Variance 16-98, with the hardship being that the tie beams were severed from their foundations. The motion was seconded by Councilman Shaw.

Mr. Moore explained that the lot was a narrow lot, and the hardship on the east and west sides was the depth of the lot; the hardship on the south side of the lot did not exist.

On roll call the motion to approve the portion of Variance 16-98 dealing with the east and west sides of the property carried unanimously.

10. VARIANCE NO. 17-98 - Jack C. Taylor, 125 Via Del Lago; located in the R-A Zoning District; to allow construction of a second story addition providing a front yard setback of 22.75' in lieu of 52' required. To allow a variance to the definition of basement to define the garage as a basement so that an addition can be constructed over the story above the garage. To allow a point of measurement height variance of 15.30' NGVD in lieu of 14.36' NGVD required.

Ex-parte communication was declared by Councilman Shaw with Attorney Robert Deziel, and Architect Jeff Smith; by President Smith with Attorney Deziel, and Architect Jeff Smith regarding the application; by President Pro-Tem McLendon with Attorney Robert Deziel, and Architect Jeff Smith regarding the application; by Councilman Wyett with Attorney Deziel.

Councilman Wyett mentioned that he could not see the display board nor the television screen, and suggested that all those presenting applications enlarge the plans so that they could be seen.

Attorney Robert Deziel, representing Mr. and Mrs. Richard Power, the contract purchasers, addressed the Town Council, stating that the two additions had been designed, that would not increase the lot coverage, but would be placed above existing first story areas. The predominate hardship was the irregularly sloped lot, ranging from 16' on the east side to 7' on the west side, resulting in a 9' grade differential. He displayed graphics and photographs detailing the proposed construction. The height differential variance was needed in order to match up the floor levels inside the home. There was currently a garage in the rear of the property at the basement level, with one floor of habitable space above that. The applicant would like to build another floor of habitable space above that. Mr. Deziel pointed out that the home was set back approximately 45' from the rear yard, and approximately 30' from the side yard, well away from neighboring properties. The second story addition variance, above the existing one story, was being requested so that it could align with the existing facade of the residence. He also proposed removal of the current tennis court on the property, increasing the green space dramatically. The owner would also like to designate the house as a landmark.

Director of Planning, Building & Zoning Moore gave the following staff comments: Comprehensive Plan: site has ample square footage to allow design to conform to Code; Building Department: no objection to point of measurement; no objection to front yard setback, as it was in line with the existing house; the current use of the garage was for habitable space, which would be removed, and the Building Department objected to the three story construction. The Building Department would find it difficult to recommend any approval of the hardship regarding the garage area and the creation of a third story. Town Manager: concurs with the above.

Councilman Shaw moved approval of the first and third portions of Variance 17-98; to allow construction of a second story addition providing a front yard setback of 22.75' in lieu of 52' required; to allow a point of measurement height variance of 15.30' NGVD in lieu of 14.36' NGVD required. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

Regarding the portion of Variance 17-98 regarding the variance to the definition of basement to define the garage as a basement so that an addition can be constructed over the story above the garage:

Zoning Administrator Paul Castro read a portion of the definition of "basement":

A story situated under building; said story having exterior perimeter walls, and having a floor level two or more feet below the level of the contiguous exterior ground outside of the building, and having one-half or more of its floor to ceiling height below the average level of all exterior ground of the lot comprising of the subject building development site.

Mr. Moore noted that no habitable space could be included.

Mr. Castro explained that the applicant would set up a grid system, take specific points, survey them, and then average them within the entire lot for measurement purposes. In this case, the applicant could not meet the average based upon the topography of the lot itself, as well as the exterior two feet of ground around it.

Councilman Shaw moved approval of the second portion of Variance 17-98, allowing a variance to the definition of basement to define the garage as a basement so that an addition could be constructed over the story above the garage, with the hardship being the lay of the land; it would remove a non-conforming use by taking away the habitable space in the garage; the setbacks were far in excess of requirements; there would be ample maintained site screening on the property so that it would not be visible to any neighbor. President Pro-Tem McLendon seconded the motion. On roll call the motion carried 4/1, with Councilman McDonald casting a negative vote.

11. VARIANCE NO. 18-98 - Ronald G. & Patricia Fraser, 205 Colonial Lane; located in the R-B Zoning District; to allow construction of an addition providing a street side yard setback of 12.5' in lieu of 25' required, and to allow a front yard setback of 24.6' in lieu of 25' required.

Ex-parte communication was declared by Councilman Wyett with Attorney Jim Brindell; and by President Pro-Tem McLendon with Attorney Jim Brindell.

Attorney Jim Brindell, on behalf of Mr. and Mrs. Fraser, addressed the Town Council stating that the applicants had lived at 205 Colonial Lane for five years, and loved the house and neighborhood. The variance requests were for the purpose of adding 319 s. f. to the existing home, which would be comprised of a bedroom, a bath, and a closet. The lot was a corner lot at the corner of Colonial Lane and Ocean Way, in the R-B Zoning District. The house faced Colonial Lane, and Attorney Brindell exhibited photographs displaying the area, explaining that the house was approximately 2,200 s. f. on a lot that was 90' x 94'; all of the other homes on Colonial were single family homes. Ocean Way was much more of a lane than a street, and most of the homes abutting Ocean Way used it as a side entrance, and not as a front entrance. The east side of the existing house was the only logical area in which to add to the house without creating a two-story home. There would be no reduction in landscaping.

Director of Planning, Zoning & Building Moore gave the following staff comments: Comprehensive Plan: street side yard variance should not be granted; front is minimal; Building Department: defer to comments of Town Manager; Town Manager: recommends approval, but no future second story, and North Ocean Way hedge must be maintained as a Deed Restriction.

Councilman Wyett moved approval of Variance 18-98, with the conditions that there be no future second story, and the North Ocean Way hedge maintained as a Deed Restriction. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

12. SPECIAL EXCEPTION NO. 7-98 - Mr. & Mrs. Norman G. Peslar, 100 Emerald Beach Way; located in the R-AA Zoning District; to allow driveway gates to be setback 9' from the street pavement in lieu of 18' per Sec.5.36(b) of Town Code.

Ex-parte communication was declared by Councilman Shaw with Attorney Robert Deziel, and Architect Jeff Smith; by President Pro-Tem McLendon with Architect Jeff Smith; by Councilman Wyett with Architect Jeff Smith.

Attorney Robert Deziel, representing Mr. and Mrs. Norman Peslar, addressed the Town Council, recalling that one year ago an application had been made for the height of the gate, and a Special Exception for the distance of the gate from the property line. At the time, gates were on the property line, and that application had been denied. With that in mind, new gates were contemplated on the existing gate rail that was right on the property line, as exhibited on the drawing presented. The existing wall and the existing gates that were on the property line had been demolished, and staff had advised that a Special Exception would now be appropriate. The Variance request for the extended height of the gate had thus been eliminated, leading to the request today for a Special Exception under the provision allowing gates to be closer than 18', as long as it was at the foot of a cul-de-sac. Kimley Horne had completed a traffic study that Mr. Deziel submitted for the record, indicating that there was no problem in that area. The exhibited drawing showed a street containing three homes with a standard sized car pulling up to the property, with the control box and curb cuts indicated as well. Mr. Deziel incorporated, by reference, the application submitted.

Director of Planning, Building & Zoning Moore gave the following staff comments: Comprehensive Plan: seems that more setback could be provided than 9', however, that was not mandatory; Building Department: traffic should be addressed. Zoning Administrator Castro explained that the neighbor directly to the west expressed concern relative to build-up of traffic when there were events held at the house.

Councilman Shaw moved approval of Special Exception 7-98. The motion was seconded by Councilman McDonald.

Councilman Wyett expressed that he saw no reason why the gates could not be located on three different sites on the long driveway up to the main receiving area. Trucks and delivery vans would be waiting to get in, and he saw no reason for the request, as he believed it was unnecessary.

On roll call the motion to approve carried 3/1, as President Smith was temporarily out of the room. Councilman Wyett cast a negative vote.

13. SPECIAL EXCEPTION NO. 8-98 - Robert Sheetz, 180 Royal Palm Way; located in the C-TS Zoning District; to allow 1st United (Wachovia) Bank to expand a special exception use from 15,812 sq.ft. to 19,500 sq.ft., further exceeding the 2,000 sq.ft. limit in this C-TS District. - **Request for Deferral to May 12, 1998, per letter dated March 30, 1998, from Mr. Peter S. Broberg**

This item was deferred to the May 12, 1998 Town Council Meeting, as moved earlier in the meeting.

14. SITE PLAN REVIEW NO. 5-98 with Variances - Ogden Edwards, 1072 N. Lake Way; located in the R-B Zoning District; to allow construction of a single family residence on a lot 94' deep in lieu of 100' minimum required. A variance is requested to allow for a 15' street side yard setback in lieu of 30' required.

Director of Planning, Zoning & Building Moore recommended deferral on this item, for the purposes of re-advertising, as a wrong address had been used.

Councilman McDonald moved deferral of Site Plan Review 5-98 with Variances to the May 14,1998 Town Council Meeting. The motion was seconded by President Pro-Tem McLendon. On roll call the motion carried unanimously.

D. Other

1. Consideration of Request for Waiver to Section 6-34(b) of the Town Code of Ordinances, "Projections" (in Article III, "Bulkheads and Pierheads on Lake Worth") for Seawall Construction at 2860 South Ocean Boulevard, La Palma Condominium Apartments

Ex-parte communication was declared by Councilman Wyett with a resident of the La Palm Condominium Apartments, whose name he could not recall.

President Smith asked why this project, which was almost an emergency, had come before the Town Council, rather than being automatically handled by the Building Department?

Director of Planning, Zoning & Building Moore responded that there was a problem with this particular project, as the request was for two purposes: to work on the piles, and to use batter piles. Batter piles were the piles that protruded out into the lake, which were prohibited by the Town. Permission to use those batter piles was being requested. Mr. Moore explained that in consultation with Town Engineer Bowser and Public Works Director Dusey no objection to the batter piles in the area of the building and swimming pool had been made, however, they believed that the area of the parking lot would not qualify for the exemption. They had recommended that batter piles not be approved in the area of the parking lot.

Ms. Norma Jean Jalovec, representing Boca Dock & Seawall, addressed the Town Council, explaining that the marine construction company had contracted with La Palma Condominium Apartments. She provided pictures of the three areas involved: the pool area, the building area, and the asphalt parking lot area. She explained that the parking lot was closest to the seawall, and that she did not understand why batter pilings would not be allowed in that area. She exhibited a drawing of the three different areas depicting exact measurements, stating that tie rods required 16 linear feet, which was nowhere near the measurements indicated of 4' at the narrowest, and 6' at the widest.

Councilman Wyett asked what would be accomplished by not allowing batter pilings in the parking lot?

Mr. Moore responded that Town policy had been that batter piles had been considered objectionable from a visual standpoint, and had been allowed in areas that exhibited legitimate hardships, such as a swimming pool, or a building. It would be more economical for them to build the batter piles, however, Town policy had been consistent with hardships being involved.

Ms. Jalovec explained that the complete asphalt parking lot and curbing would have to be taken up if batter pilings were not used. Even if a new seawall was installed the batter pilings would still have to be installed. She noted that batter pilings actually would give a cleaner line to the seawall, and the company had never had an objection from another City or Town as to unsightliness of a completed batter piling project. She had submitted photographs of an actual batter piling project for review of the Town Council.

Councilman Wyett considered that there were some unusual circumstances in this case, and moved approval of the request for a waiver to Section 6-34(b) of the Town Code of Ordinances. He explained that if two-thirds of the project was approved, he did not believe anything would be accomplished by denying the final one-third–this was a practical situation. The motion was seconded by President Pro-Tem McLendon.

Mr. Moore pointed out that perhaps it was time to change the ordinance to allow batter pilings, as complaints would be received about the use of batter piles. The physical installation of a standard seawall would be impossible to do with a building and a swimming pool involved.

Ms. Jalovec explained that these walls were 35-40 walls old, and the tie rods were decaying. The walls would not last forever, and had not been built to last forever. The cost for a new seawall would be approximately $300 per linear foot.

On roll call the motion of approval carried 3/2, with President Pro-Tem McLendon, Councilman McDonald, and Councilman Wyett casting affirmative votes; President Smith and Councilman Shaw casting negative votes.

XVIII. ANY OTHER MATTERS

President Smith thanked Acting Town Manager Peter Elwell for the fine job he had done in preparation of the Town Council Meeting on very short notice.

XIX. ADJOURNMENT

The meeting was adjourned at 8:00 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk