# MINUTES OF THE TOWN COUNCIL MEETING HELD ON APRIL 13, 1999

## I. CALL TO ORDER AND ROLL CALL

The meeting of the Town Council was called to order by President Lesly Smith at 9:34 A.M. on April 13, 1999. On roll call, the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Allen Wyett, Councilmen Jack McDonald, Sam McLendon, and Leslie Shaw. Also in attendance for all or a portion of the meeting were: Town Manager Robert Doney, Assistant Town Manager Peter Elwell, Assistant to the Town Manager David Jakubiak, Town Attorney John Randolph, Acting Finance Director Cheryl Somers, Fire-Rescue Chief Ken Elmore, Facility Maintenance Division Manager Joseph Ugi, Golf Course Manager Rick Dytrych, Police Chief Frank Croft, Planning, Zoning & Building Director Robert Moore, Zoning Administrator Paul Castro, Planner/Projects Coordinator Timothy Frank, Public Works Director Al Dusey, Recreation Director Russell Bitzer, Town Engineer James Bowser, and Town Clerk Mary Pollitt. City of West Palm Beach Mayor Joel Daves was also in attendance.

## II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Mary Pollitt gave the invocation. President Smith led the Pledge of Allegiance.

## III. PRESENTATIONS

A. Presentation of the Town's 16th Annual Par 3 Pro-Am Benefit Proceeds to the Rehabilitation Center for Children and Adults and to the Town's Recreation Department

Mayor Ilyinsky presented a check in the amount of $12,800 to the Rehabilitation center for Children and Adults as a portion of the proceeds from the Town's 16th Annual Par 3 Pro-Am Benefit.

B. Retirement of Mark McKeefrey, Firefighter Driver/Operator - 21 Years and 1 Month

Mayor Ilyinsky presented a ring with the engraved Town Seal to Mr. McKeefrey in appreciation of his service to the Town as a firefighter driver/operator.

C. Recognition of Arthur Gross, Golf Commission Member - 1997 to 1999

D. Recognition of Ann K. Herman, Golf Commission Member - 1993 to 1999

E. Recognition of James A. Maddock, Golf Commission Member - 1997 to 1999, Alternate - 1995 to 1997

F. Recognition of Larry Ochstein, Golf Commission Alternate - 1997 to 1999

G. Recognition of Richard A. Raffo, Golf Commission Alternate - 1996 to 1999

H. Recognition of Stuart Shulman, Golf Commission Member - 1994 to 1999

I. Recognition of Allan E. Shore, Golf Commission Member - 1994 to 1999

J. Recognition of Gail Coniglio, Seaview Park Commission Member - 1995 to 1999

K. Recognition of Ann Gardiner Drake, Seaview Park Commission Member - 1995 to 1999, Alternate - 1994 to 1995

L. Recognition of Renee Fisher, Seaview Park Commission Member - 1997 to 1999, Alternate - 1995 to 1997

M. Recognition of James C. Gavigan, Seaview Park Commission Member - 1994 to 1999, Alternate - 1993 to 1994

N. Recognition of Eileen Morris, Seaview Park Commission Member - 1995 to 1999, Alternate - 1994 to 1995

O. Recognition of Morton E. Shor, Seaview Park Commission Member - 1993 to 1999

P. Recognition of Stanley Silken, Seaview Park Commission Member - 1998 to 1999

Q. Recognition of Michael Spaziani, Seaview Park Commission Alternate - 1997 to 1999

R. Recognition of Thomas P. Turchan, Jr., Seaview Park Commission Member - 1995 to 1998, Alternate - 1998 to 1999

All of those present were recognized by Mayor Ilyinsky, and received plaques in honor of their services to the Town of Palm Beach.

## IV. COMMENTS OF MAYOR PAUL R. ILYINSKY

Mayor Ilyinsky recognized the birthday of Gertrude Maxwell, and presented her with a Proclamation from the Town of Palm Beach.

The Mayor congratulated Police Chief Croft and the Police Department for achieving accreditation status.

The Mayor recognized National Public Safety Telecommunications Week (4/11/99 - 4/17/99) honoring the dedicated men and women in the Palm Beach Communications Unit, who serve both the Police and the Fire-Rescue Departments twenty-four hours a day, every day of the year.

The Mayor recognized the week of 4/19/99 as Secretary's Week and 4/21/99 as Secretary's Day, noting the efforts of Cindy Cousins and Linda George in the Town Manager's office.

## V. MAYOR JOEL T. DAVES, CITY OF WEST PALM BEACH

Mayor Ilyinsky introduced Mayor Joel Daves, who addressed the settlement of the water dispute between the City of West Palm Beach and the Town of Palm Beach, noting that the terms had been approved by the newly elected City Commission on April 5, 1999. He presented a letter from City Attorney Pat Brown stating the sequence of events that led to a formal agreement. He stated that the City would be happy to work with the Town in putting the agreement in proper form, and that he wanted to bring this to the Town Council personally as a humble gesture of reconciliation.

## VI. APPROVAL OF THE AGENDA

**The following changes were made to the Agenda:**

**DEFER to May 11, 1999, Item XII. A., Public Hearings - Designation of the Brazilian Beautyleaf Historic/Specimen Tree at 14 South Lake Trail and Correction of Number of Specimen Trees on 20 Blossom Way; Resolution No. 14-99**

President Pro-Tem Wyett moved deferral of Resolution No. 14-99 to the May 11, 1999, Town Council Meeting. The motion was seconded by Councilman McDonald, and, upon roll call, carried unanimously.

**WITHDRAW - Item XIII.B.3., - Request by Newlands Design Group to Install Dune Plantings on Town Road Right-of-Way Opposite 260 North Ocean Boulevard.**

President Pro-Tem Wyett moved approval of the withdrawal of the request by Newlands Design Group to install Dune Plantings on the Town road right-of-way opposite 260 North Ocean Blvd. The motion was seconded by Councilman McDonald and, upon roll call, carried unanimously.

**ADD - to the Agenda for the May 11, 1999, Town Council Meeting, immediately after "Citizens Comments." - Item XIV.C.3., New Business - Other - Schedule Date and Time for Presentation by Mr. Leo Noble Regarding Concurrency Issues Relating to Palm Beach County Schools.**

Councilman McDonald moved approval of adding the presentation by Mr. Leo Noble regarding concurrency to the Agenda for the May 11, 1999, Town Council Meeting. The motion was seconded by President Pro-Tem Wyett and, upon roll call, carried unanimously.

**DEFER - Item XVI.B.4., - Variance No. 6-99, Howard Sontag, TR. And R. & Marta Limbaugh, 1495 No. Ocean Blvd, to May 11, 1999.**

Councilman McLendon moved deferral of Variance No. 6-99 to the May 11, 1999, Town Council Meeting. The motion was seconded by Councilman McDonald, and, upon roll call, carried unanimously.

**ADD - to the Agenda for May 11, 1999 - Discussion of Town Preparation for Y2K transition.**

The Town Council placed this item on the Agenda for the Town Council meeting to be held on May 11, 1999.

**Councilman McDonald suggested that discussion take place today regarding the 1998 Building Code Effectiveness Grading Classification response to the letter of Planning, Zoning & Building Director Robert Moore.**

Mr. Moore explained that when a response was received, this issue would be scheduled on the appropriate Town Council Agenda.

**ADD - as XIV. New Business, C. Other 4, - Miller & Van Eaton increase in legal services fees.**

Councilman McDonald moved that discussion of the Miller & Van Eaton legal services fee be added to the Agenda today, as Item XIV. C. 4. The motion was seconded by President Pro-Tem Wyett, and, upon roll call, carried unanimously.

**ADD - as XIV. New Business, C. Other 5, - Discussion of feasibility study to provide a small skateboard area at the Recreation Center.**

Councilman Shaw moved that discussion of a feasibility study for a skateboard facility at the Recreation Center be added to the Agenda as Item XIV.C.5. The motion was seconded by President Pro-Tem Wyett, and, upon roll call, carried unanimously.

President Pro-Tem Wyett addressed the following issues:

Method of the appointment to Town Commissions. **The Town Council referred this to the Ordinances, Rules & Standards Commission.**

Review by the appropriate department of the area on North Lake Trail between Palm Beach Country Club and the adjacent property, where there had been some near accidents with the many trucks recently coming through the area. **The Town Council referred this issue to Police Chief Croft and Public Works Director Al Dusey so that they could report back to the Town Council.**

Clarification on the new Zoning Proposal Sliding Scale as to whether or not residents were entitled to use it as a means by which they petition to have their homes approved. Director of Planning, Zoning & Building Robert Moore responded that the sliding scale would not be enforced for one year. **The Town Council referred this issue to the Architectural Commission (ARCOM) for further discussion.**

Mr. McLendon commented that he resented the inference by the Health Department that the Town had been negligent in causing the recent sewage spill.

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

**VII. COMMUNICATIONS FROM CITIZENS - 3-MINUTE LIMIT PLEASE**

Mr. Eric Nord Gilbertson commented on the Water Agreement with the City of West Palm Beach.

Mrs. Etonnella Christlieb commented on the dog feces scoopers that were available for use in the Town of Palm Beach. Mrs. Christlieb was invited to the Ordinances, Rules & Standards (ORS) Committee on April 23, 1999, for further discussion of the ordinance concerning this matter.

## APPROVED AGENDA

**VIII. APPROVAL OF MINUTES OF FEBRUARY 9, 1999, AND MARCH 9, 10, 15, 17, AND 22, 1999, AND APRIL 5, 1999**

**IX. APPROVAL OF CHECK REGISTERS FOR MARCH 1999**

**X. APPROVAL OF MAJOR MATTERS CONSIDERED BY THE ARCHITECTURAL COMMISSION AT ITS MEETING OF MARCH 24, 1999**

**XI. OTHER**

A. Adopt Flag Etiquette Procedure per Memorandum dated March 24, 1999, from Fire-Rescue Chief Elmore

B. Authorization for Town Manager to Execute the Florida Department of Health's Consent Order Concerning Sewage Spill Incident of November 12 and 13, 1999

C. Selection of an Architectural Consultant in Accordance with the Consultants' Competitive Negotiations Act per Memorandum dated April 1, 1999, from Public Works Director Dusey

D. Establishing an Application Fee for Obtaining Voluntary Landmark Status - Resolution No. 31-98 *(Deferred from August 11, and September 8, 1998)* - **Staff Recommends Deferral to June 10, 1999, Finance & Taxation Committee Meeting**

President Pro-Tem Wyett moved approval of the "Approved Agenda." The motion was seconded by Councilman McDonald, and, upon roll call, carried unanimously.

## REGULAR AGENDA

**XII. PUBLIC HEARINGS**

A. Designation of the Brazilian Beautyleaf Historic/Specimen Tree at 14 South Lake Trail and Correction of Number of Specimen Trees on 20 Blossom Way; Resolution No. 14-99 - **Request for Deferral to May 11, 1999, per letter dated April 8, 1999, from Ms. Cynthia F. Skwierc**

This item was deferred earlier in the Agenda, under "Approval of the Agenda."

B. Landmark Designation of 153/155 Root Trail; Resolution No. 12-99

Planner/Projects Coordinator Timothy Frank reported that proof of publication had been received, and that the Landmarks Commission had found that 153/155 Root Trail had met the criteria for designation.

Mrs. Jane Day, Historic Preservation Consultant, addressed the Town Council, stating that two frame vernacular houses at 153 and 155 Root Trail were recommended by the Landmarks Commission for landmarking, although some of the evidence as to when the properties were built was contradictory. The 1919 Sanborn Fire Insurance map indicated that there were structures on the property in 1919, however, the Town records indicated that a building permit was pulled in 1926 and the buildings were built as temporary quarters for the help at Greenleaf & Crosby.

Mayor Ilyinsky asked Mrs. Day if she believed, as an expert, that the houses should be landmarked?

Mrs. Day responded that she had originally recommended against landmarking, however, her recommendation had been overturned by the Landmarks Commission, who felt that there were too few frame vernacular houses left in the Town.

Councilman McDonald moved approval of the Designation Report. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

The property owner, Eugene Fagan, addressed the Town Council, stating that it was an honor to be nominated for landmarking, and that it was hard to imagine what Palm Beach looked like in the past. He noted that he had reconditioned the buildings, and matched the original wood profile and colors. He requested that the houses be approved for landmarking.

Councilman Shaw noted that there had been a split vote of the Landmarks Commission regarding this property, and suggested that the entire street be considered as a landmarked district if possible. He them moved that the recommendation of the Landmarks Commission not be ratified, on the basis that it did not meet the criteria set forth in the Ordinance. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

C. Landmark Designation of 143 Clarendon Avenue; Resolution No. 13-99

Mr. Frank reported that there was proof of publication, and that the Landmark Commission had studied the subject property and found that it met the criteria for designation.

Mrs. Jane Day reported that 143 Clarendon Avenue was a good example of the work of Maurice Fatio, and was built in 1930 in the Mediterranean Revival style, with Italian influences.

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

Town Attorney Randolph read Resolution No. 13-99 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 54, ARTICLE 4 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 NO. 2-84, ALSO KNOWN AS CHAPTER 54, ARTICLE 4 OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH.

143 Clarendon Avenue

Councilman Shaw moved adoption of Resolution No. 13-99. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

## XIII. OLD BUSINESS

A. Ordinances (Second Reading)

1. Ordinance No. 3-99 - Removal of Abandoned Vehicles Within the Town's Corporate Limits

Town Attorney Randolph read ordinance No. 3-99 by title (second reading):

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 118 OF THE CODE OF ORDINANCES, TRAFFIC AND VEHICLES, BY CREATING A NEW ARTICLE 4 RELATING TO ABANDONED VEHICLES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT;

PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

Councilman Shaw moved adoption of Ordinance No. 3-99. The motion was seconded by Councilman Wyett. On roll call the motion carried unanimously.

2. Ordinance No. 4-99 - Amending Chapter 6 of the Town Code, Alcoholic Beverages, and Regulation of Adult Entertainment Establishments

Town Attorney Randolph read Ordinance No. 4-99 by title (second reading):

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA, AMENDING CHAPTER 6, ALCOHOLIC BEVERAGES, OF THE CODE OF ORDINANCES OF THE TOWN OF PALM BEACH, BY PROVIDING THAT THE PREVIOUSLY ADOPTED SECTION 6-1 THROUGH 6-9 BE INCLUDED IN ARTICLE ONE, TO BE ENTITLED "IN GENERAL"; AMENDING SECTION 6-8 RELATING TO HOURS OF SALE FOR OFF PREMISES CONSUMPTION; PROVIDING FOR THE ADOPTION OF AN ENTIRELY NEW ARTICLE TWO, TO BE TITLED "ADULT ENTERTAINMENT CODE"; PROVIDING FOR REGULATIONS REGARDING ADULT ENTERTAINMENT AND ADULT ENTERTAINMENT ESTABLISHMENTS; PROVIDING DEFINITIONS; PROVIDING PENALTIES; PROVIDING A CONFLICTS CLAUSE; A SEVERABILITY CLAUSE; AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

Councilman Shaw moved adoption of Ordinance No. 4-99. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

B. Other

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

Public Works Director Al Dusey reported that the Royal Park Bridge schedule was moving forward as planned. A "no left turn" sign would be installed westbound at Southern Blvd. & Flagler.

Ms. Gail McKenna, PCL Project Manager for the Royal Park Bridge construction, reported that the project schedule was going along as planned. The schedule for relocating traffic would begin at the end of November or first part of December. The barricades on the west side of the bridge would be relocated so that all lanes could be used. The Coast Guard was aware of bridge opening concerns and the FDOT and Coast Guard were monitoring that and evaluating scheduled openings of the bridge on the weekends.

Ms. Polly Earl, of the Preservation Foundation, expressed concerns regarding the bridge approach being part of the date palm project, historic street lighting along the bridge, seeing some drawings of the project from the Palm Beach side, the beautification of the east end concrete median, and the final design presentation by the Florida Department of Transportation (FDOT) to the Landmarks Commission.

Public Works Director Dusey was directed to obtain information on the current historic street lights and their possible use on the new bridge.

2. Create a Civic Award to be Presented by the Mayor and Town Council *(Deferred from February 9, and March 9, 1999)*

After brief discussion, Councilman McDonald moved that this issue be referred to the Ordinances, Rules & Standards (ORS) Commission. The motion was seconded by President Pro-Tem McLendon, and failed 2/3, with Councilman McDonald and President Pro-Tem Wyett casting affirmative votes; President Smith, Councilman McDonald and Councilman Shaw casting dissenting votes.

President Smith mentioned that the Civic Associations and Chamber of Commerce did a wonderful job, and that the Town was very fortunate to have great civic supporters.

Councilman Shaw move that the issue be tabled. The motion was seconded by Councilman McLendon. On roll call the motion carried 3/2, with Councilman Shaw, Councilman McLendon, and President casting affirmative votes; President Pro-Tem Wyett and Councilman McDonald casting dissenting votes.

3. Request by Newlands Design Group to Install Dune Plantings on Town Road Right-of-Way Opposite 260 North

Ocean Boulevard *(Deferred from March 9, 1999)* - **Request for Withdrawal per letter dated March 29, 1999, from Mr. Raworth Newlands Wall**

This item was withdrawn earlier in the Agenda, under "Approval of the Agenda."

4. Yard Trash Storage Issues on Rights-of-Way Between Par 3 Golf Course and Lake Worth Road *(Deferred from February 9, 1999)*

Public Works Director Al Dusey reported that staff had been directed to approach all property owners between the Par 3 Golf Course and Lake Worth Road to ascertain the willingness to construct trash pads or place the yard trash in parking lots for collection, and if it would be done year round or seasonally. There were 22 properties involved; 12 were willing to construct trash pads with landscaping; 2 were willing to place yard trash in the parking lots year round; 2 others were willing to place yard trash in parking lots during the summer season; 6 did not want to do anything. He recommended that staff proceed with construction of pads and/or have the trash placed in the parking lots to determine what effect it would have on the landscaping in the area.

Mr. Arthur Gross, President of 2500 Condominium, addressed the Town Council, stating that there was a meeting held with representatives from the Public Works Department, and from the 2505 Condominium, and it was suggested that refuse be placed on the parking lot at the 2505 Condominium behind one of the shrubs.

Mr. Dusey was given authorization to proceed with organizing the trash collection for the properties that had expressed interest.

5. Semi-Annual Report on Unpaid Assessments, Fines, Fees, and Other Monies Owed to the Town

Acting Finance Director Cheryl Somers presented the updated semi-annual Status Report for Fines, Fees, and Other Monies Owed to the Town, as of March 31, 1999. False Alarm past due accounts were now included, that were also sent to Code Enforcement. Any amounts owed to the Town for less than $500 were not included on the report.

Chief Code Compliance Officer Brian House addressed the alarm fines and responded to questions from the Town Council regarding the procedure to be used in the collection of past due accounts.

President Pro-Tem Wyett moved that the judgment amount against Adrian Winterfield be removed from the report, as it was not collectible. The motion was seconded by Councilman Shaw. On roll call the motion carried 3/2, with President Pro-Tem Wyett, Councilman Shaw, Councilman McLendon casting affirmative votes; President Smith and Councilman McDonald casting dissenting votes. Town Attorney Randolph clarified that the judgment would merely be removed from the report, and that it would be re-recorded at the appropriate time.

Councilman Shaw moved that the Code Enforcement Board order concerning Cecelia Designs be removed from the report, and the lien forgiven, as the proprietor was now deceased. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

## XIV. NEW BUSINESS

A. Resolutions

1. Resolution No. 15-99 - Revisions to Rights-of-Way Standards Manual

Town Attorney Randolph read Resolution No. 15-99 by title:

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

Town Engineer James Bowser reported that an item had been considered at the Town Council meeting last month regarding the replacement of an underground cable as an overhead cable, and it had been noticed that there was a section in the manual that addressed this situation. The Town Council had expressed dissatisfaction with that section, and Resolution No. 15-99 would delete that option, and instead state that underground utilities in need of replacement shall be maintained as underground facilities. He recommended approval of the resolution.

Mr. Sid Poe, Regional Manager, BellSouth, addressed the Town Council, stating that there had been discussion about the cable situation in question, and he stipulated that under Public Service Commission guidelines there were very strict concerns regarding the economics of the work that was undertaken. He had discussed the situation with the BellSouth Legal Department, and they were currently researching a response to the proposal in the resolution being discussed today. He suggested that this item be deferred to the Town Council meeting next month so that all information could be gathered.

After discussion, Councilman Shaw moved that Resolution No. 15-99 be deferred to the May 11, 1999, Town Council meeting. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

B. Appointments

1. Code Enforcement Board - Two Member Three-Year Terms to Expire April 2002

Mr. Irving Wolfe and Dr. Leon Schwartz were reappointed to the Code Enforcement Board.

2. Recreation Commission - Seven Regular Members with Two Terms to Expire April 2000, Two Terms to Expire April 2001, and Three Terms to Expire April 2002; and Three Alternate Members with Terms to Expire April 2000, April 2001, and April 2002

The following were appointed as regular members of the Recreation commission:

Stanley Silken
Larry Ochstein
Eileen Morris
Stuart Shulman
James Gavigan
Gail Coniglio
Arthur Gross

The following were appointed as alternate members of the Recreation Commission:

Michael Spaziani
Morton Shor
Richard Raffo

C. Other

1. Request by Palm Beach Country Club for Elimination of Yard Trash Collection Fees

Public Works Director Al Dusey reported that a request had been received on March 10, 1999, from the Palm Beach Country Club for relief from yard trash fees. He noted that he had prepared a memorandum dated April 2, 1999, detailing the Palm Beach Country Club property, which included a perpetual easement for a storm water pump station, and dedication of land for a generator/fuel tank system. He noted that The Breakers had been given credit for yard trash, and suggested that the Everglades Club, which also provided a perpetual easement for a sanitary sewer pump station, as well as the Palm Beach Country Club be considered for credit. The total amount paid by the Palm Beach Country Club for additional yard trash collection was $9,805.00; the Everglades had paid $9,516.00. Those fees were in excess of the one load per week that the Town allowed commercial properties. Mr. Dusey suggested that 3 loads per week be approved for both the Palm Beach Country Club and the Everglades Club, which would require that both facilities still manage their yard trash cuttings not to exceed that.

Gerald Goldsmith, Chairman of the Palm Beach Country Club Greens Committee, addressed the Town Council, stating that the July/August/September removal was largely for removing the trees that the State had mandated be moved, which resulted in extra loads during that period. He stated that he did not believe that would be a recurring expense.

After discussion, Councilman McDonald moved that the Palm Beach Country Club and the Everglades Club be approved for what was approved at The Breakers. The motion was seconded by Councilman McLendon.

Mr. Dusey noted that the staff recommendation was for 3 additional loads per week for both the Palm Beach Country Club and the Everglades Club, even though The Breakers were approved for 5 additional loads per week, as they were a much larger facility.

Councilman McDonald clarified his motion to accept the recommendation of staff, that 3 additional loads per week be allowed for both the Palm Beach Country Club and the Everglades Club. The seconder of the motion agreed with that clarification. On roll call the motion carried unanimously.

2. Request by the Reef Condominium Association to Use a Portion of Phipps Ocean Park on West Side of State Road A1A

Mr. Don Castagnero, General Manager of the Reef Condominium, addressed the Town Council explaining that the condominium had a seawall on the west side of A-1-A behind some of the condominium buildings that failed during Tropical Storm Mitch. Access to the site was very limited, and it would be difficult to do the repair work. He requested access using a portion of the Town property in

Phipps Ocean Park.

Town Manager Doney advised that a letter had been sent to the Reef Condominium from Assistant Town Manager Peter Elwell, dated March 11, 1999, in response to their request, which contained the requirements for the use of Town property. He explained that in exchange for access, the Reef Condominium would provide the following to the Town of Palm Beach:

A. Indemnification by the Reef and every contractor granted use of the strip by the Reef.

B. Proof of insurance from the Reef and its contractors.

C. Removal of all non-native vegetation along access strip.

D. Planting of native or specific species in quantity specified by the Town of Palm Beach.

E. Initial care and maintenance required for the establishment of vegetation replaced.

F. Reconstruction of sidewalk within access strip.

G. The Reef Condominium would consider paying rent for the use of the 50' wide strip in question, but would consider the foregoing proposal to remove any non-native vegetation and replace it with the vegetation specified by the Town as a basis for waiving any monetary rent, or setting rent at a nominal amount.

H. All reconstruction work within the access granted will be completed by September 30, 1999.

Councilman McLendon questioned the condition of the adjacent bulkhead?

Mr. Castagnero responded that he had looked at the adjacent wall to the north, and it was of a different construction, a king pile with sheet panels, and was a newer construction. He had not seen any indication of repair work needed.

In response to Councilman McDonald, Mr. Castagnero pointed out that currently the property adjacent to the Reef Condominium north property line was overgrown with Brazilian Pepper trees and some Pines. He offered that he would work under the direction of Public Works Foreman Richard Horne, and would plant at the direction of the Town.

Mr. Dusey mentioned that the trail/bike path needed to be maintained and opened at all times during construction, and any damage would have to be repaired immediately. In addition, there would need to be traffic control if the path was used heavily.

President Pro-Tem Wyett moved approval, waiving all financial rent, with all conditions as noted (Items A-H as identified in the March 11, 1999 letter from Assistant Town Manager Peter Elwell to the Reef Condominium, replacement of plantings under the direction of the Public Works Department, that the trail/bike path be maintained and opened during construction, any damage on it repaired immediately, and traffic control if the path was used heavily). The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

Town Attorney Randolph advised that a temporary easement would be appropriate, rather than leasing the property.

President Pro-Tem Wyett amended his motion accordingly.

On roll call the motion carried unanimously.

Public Works Director Al Dusey indicated that certificates of insurance would be required, with the temporary easements signed and executed before work could begin on the removal of vegetation.

3. Schedule Date and Time for Presentation by Mr. Leo Noble Regarding Concurrency Issues Relating to Palm Beach County Schools

The Town Council had directed earlier in the meeting that this item would be heard at the May 11, 1999, Town Council meeting, immediately after "Citizens Comments."

4. Discussion of the Increase in Legal Fees Notification Received From Miller & Van Eaton

Councilman McDonald commented that he believed that any increase in fees should be reviewed before acceptance.

Councilman Shaw suggested that the outside counsel of Miller & Van Eaton not be used on a day to day to basis.

Assistant to the Town Manager David Jakubiak commented that currently there were six major legal issues being worked on, and that as much as work as possible was accomplished by staff. Through the advice of Town Attorney Randolph, he consulted with Miller

& Van Eaton as needed. He explained that the current lawsuits included:

BellSouth franchise, and the BellSouth public service tax audit.
AT & T Wireless Rooftop Agreement that would be upcoming.
AT & T License Agreement and Transatlantic Crossing Agreement (which was being done primarily by Attorney Randolph).
An agreement with Adelphia on the Okeechobee property (which was being worked on by Mr. Jakubiak and Attorney Randolph).
The Cable Franchise was once again up for renewal as of April 2000.

Mr. Jakubiak explained that he had worked very carefully with Miller & Van Eaton to encourage the minimization of all legal fees. He noted that there had been a $5,000 reimbursement from AT & T on the legal fees associated with them, as they had proposed a whole new agreement. He did not recommend that the relationship with Miller & Van Eaton be completely terminated. He also had emphasized to Miller & Van Eaton that the Town would not be responsible for paying for the education of new staff acquired by the law firm that would be working on these issues.

Town Manager Doney offered that any fee changes for legal services could be brought directly to the Town Council for approval. He would also request that Mr. Jakubiak direct a letter to Miller & Van Eaton emphasizing that the Town wished to keep legal fees at a minimum.

Councilman McDonald suggested that such items could be listed on the "Approved Agenda," with the opportunity for any council person to pull it off for discussion.

5. Consideration of an Offer by H. Loy Anderson to Raise Funds for a Small Skateboard Area at the Recreation Center

Councilman Shaw advised that he had discussed this issue with Mr. Anderson, who had proposed that the possibility of a small skateboard facility be considered by the Town at the Recreation Center. Mr. Shaw noted that Mr. Anderson had indicated that if the Town would consider doing a feasibility study he would be very happy to meet with parents to suggest that funds be raised to cover the costs of the study. He proposed that Recreation Director Bitzer be authorized to communicate with Mr. Anderson regarding this issue.

Councilman McDonald moved approval to authorize Mr. Bitzer to review the issue and report back to the Town Council at an appropriate time. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

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******The luncheon break was taken at 12:05 P.M., with the meeting resuming at 2:00 P.M.******

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## XV. COMMENTS OF THE TOWN COUNCIL MEMBERS

Councilman McDonald complimented Public Works Director Al Dusey and his staff for their work in eliminating the turn lane on the west side of Southern Boulevard.

Councilman McDonald noted that Comcast Cable, after recent channel changes that affected the Town, failed to provide a correct listing for programming, and suggested that staff could contact Comcast Cable regarding this matter.

Councilman Shaw thanked the Palm Beach Civic Association and the Palm Beach Citizens Association for their contribution resulting in a college scholarship for a child of a Town employee.

Councilman McLendon requested that location markers be installed on the Bike Trail to allow people to note their locations, in the case of an emergency using a cellular phone, etc.

## XVI. DEVELOPMENT REVIEWS

At this time Town Clerk Pollitt administered the oath to all those who would be speaking to the Development Review matters.

A. Appeals

1. Appeal of the Planning, Zoning, and Building Director's Decision Concerning 321 Brazilian Avenue by Mr. James

Brindell

Attorney James Brindell, on behalf of Franklyn DeMarco, addressed the Town Council, stating that a modification had been made at the Architectural Review Commission (ARCOM) meeting, which the Director of Planning, Building & Zoning had determined was inconsistent with a variance that had been granted on the property in November 1998. He recalled that a great deal of discussion had taken place regarding the mass of the house, and one of the suggestions that resulted in the variance granted in November was that the house be moved back to within 5' of the rear setback, since there was nothing but commercial property to the north. That would then allow the face of the house to be moved back to the 35' line, instead of the required 25' front setback line. At the appeal hearing in December 1998, mass was again discussed, and it was suggested by Mr. Bell, a member of ARCOM, that the mass issue with respect to the front could be dealt with architecturally by adding two little projections on the front. Between the December Town Council Meeting and the December ARCOM meeting, the representatives of the applicant met with Mr. Bell and discussed the concept, resulting in a presentation of a plan at the ARCOM meeting of December 18, 1998.

Attorney Brindell displayed the elevation seen by the Town Council in November 1998, and the elevation shown to ARCOM in December 1998, where the two additions in the front projected closer than 35' to the front. They were still 28' 8" from the street, and were well beyond the minimum 25' setback, however, the variance granted in November 1998 contemplated a 35' setback. He explained that the variance had been triggered by the second story of the house, which was still at 35', just as it was at the presentation made in November 1998. Director of Planning, Zoning & Building Robert Moore had then determined that the plans submitted to ARCOM in December 1998 were inconsistent with the November setback approval. Mr. Brindell requested that the Town Council reverse the determination of Mr. Moore, and find that the plan was consistent with the variance granted in November 1998, and that staff be directed to accept the plans.

Director of Planning, Zoning & Building Robert Moore commented that staff had indicated that the two additions were beyond the limits of the approval granted by the Town Council, although the intent had been to address mass. Because of the complexity of this application, Mr. Moore stated that he believed that the decision should be made by the Town Council.

Councilman Shaw moved approval on the basis that the plans followed the intent of the original discussion regarding the mass issue, and the design plan that ARCOM had suggested was appropriate. The motion was seconded by President Pro-Tem Wyett.

Chairman of ARCOM, John Schuler, commented that ARCOM did review the plans and had suggested the plan that had been acceptable to ARCOM.

On roll call the motion carried unanimously.

2. Appeal of the Architectural Commission's Decision of March 24, 1999, Concerning 3 Golf Road by Mr. Ronald K. Kolins

Attorney Ron Kolins addressed the Town Council, respectfully requesting that this matter be deferred to the next Town Council meeting, as discussions with his client had resulted in the decision to go back to the Architectural Commission (ARCOM) one more time.

Councilman McLendon moved deferral of the appeal of the Architectural Commission's decision of March 24, 1999, concerning 3 Golf Road, to the May 11, 1999, Town Council Meeting. The motion was seconded by President Pro-Tem Wyett.

President Smith commented that ARCOM had given three or four possible solutions, and that without giving them a chance, the appeal had been brought to the Town Council.

Attorney Kolins responded that he did not take appeals to the Town Council lightly, and would not do so until it was clear that it would be futile to work with ARCOM any further on a particular project. He explained that even though the applicant had only gone to ARCOM one time before he filed the appeal with the Town Council, he believed that going back to ARCOM would be futile, given the character of the differences between his client and ARCOM. It had then become clear to him that perhaps another try may work out, and he and his client had agreed to do so.

On roll call the motion carried 4/1, with President Smith casting a dissenting vote.

B. Variances, Special Exceptions, and Site Plan Reviews

Old Business - Major

1. SITE PLAN REVIEW NO. 4-99 WITH VARIANCES - ARC, L.C., 218 Royal Palm Way; located in the C-OPI Zoning District. To allow construction of a 47 sq.ft. elevator/mechanical equipment room. Variances requested are to allow a lot coverage increase from 31.48% to 31.72% in lieu of 25% allowed, and to allow a decrease in landscape open space from 16.11% to 15.88% in lieu of 30% required. *(Deferred from February 9, and March 9, 1999, Town Council Meetings)*

Ex-parte communication was declared by President Pro-Tem Wyett with Attorney Kolins concerning the application; by President

Smith with Attorney Kolins concerning the application; by Councilman Shaw with Attorney Kolins and a visit to the site; by Councilman McLendon with Attorney Kolins, reviewing the plans.

Attorney Kolins explained that a lot coverage variance of 47 sq. ft. was being requested, which was represented on the Site Plan displayed. The purpose was for a mechanical support building for an elevator that would be added to the building. The building was not presently ADA compliant, and there was very poor access. The application had been deferred due to some concerns about the aesthetics of the situation. The applicant had found a way to put the elevator building inside of the main building, and proposed to put the elevator just inside the lobby so that the housing for the elevator would be inside. The only external thing would be the 47 sq. ft. mechanical building.

Director of Planning, Building & Zoning Robert Moore commented that staff had required that the applicant indicate why the mechanical building could not go inside in order to consider granting a variance. He noted that the applicant had identified a way to put the elevator inside, with the mechanical room outside, and staff had no objections.

Councilman Shaw commented that he believed that the building on the outside took away from the architectural feature of the arched entranceway. He suggested that the mechanical room could be placed under the portico, which had originally been considered for the elevator itself.

Attorney Kolins responded that he believed the building would look less attractive if the portico was replaced by the mechanical room. He displayed photographs of the area in question, explaining that the applicant had believed the outside mechanical room placement was more appropriate. He presented several alternatives for placement of the mechanical room: one was where it was currently shown on the site plan, one was under the portico, and one was outside on the south side of the building, which would place it further from the elevator. He requested that the Town Council indicate any objections to the alternatives, and leave the applicant the remaining options.

President Pro-Tem Wyett moved approval of the variance requested. Councilman Shaw seconded the motion, on the basis that the building would be located on the south side, with the hardship being that there was no room inside.

Mr. Moore noted that the current location had been advertised in the required notice to the public, and also questioned if the flow of the parking could be reversed. Zoning Administrator Castro stated that he did not believe there was enough room to provide two parking spaces and a mechanical room on that side.

President Pro-Tem Wyett amended his motion to approve the original request. Councilman Shaw withdrew his second. President Smith passed the gavel to second the amended motion of President Pro-Tem Wyett. On roll call the motion carried 3/1, as Councilman McDonald was temporarily out of the room, Councilman Shaw cast a dissenting vote, and President Pro-Tem Wyett, President Smith, and Councilman McLendon cast affirmative votes. *(Later in the meeting clarification was made that approval included approval of the Site Plan as well).*

<u>New Business - Minor</u>

2. <u>VARIANCE NO. 5-99</u> - John & Cheryl Lucks, 332 Seaspray Ave; located in the R-B Zoning District. To allow construction of an addition providing a 5'10" rear yard setback, in lieu of 10' required.

There was no ex-parte communication declared by any Council Member.

Director of Planning, Zoning & Building Robert Moore advised that 323 Seaspray had been previously granted the same variance under different ownership, and staff found no objection.

President Pro-Tem Wyett moved approval of Variance No. 5-99. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

3. <u>SITE PLAN REVIEW NO. 6-99</u> - Paul Birmingham, 300 Cherry Lane; located in the R-B Zoning District. To allow construction of a new single family residence on a lot 80' deep in lieu of 100' minimum required.

There was no ex-parte communication declared by any Council Member.

Director of Planning, Building & Zoning Robert Moore advised that the property at 300 Cherry Lane was only 80' deep, as all lots on Cherry Lane, and had an excessive width. The proposal for the Site Plan met all zoning requirements, and staff had no objections.

President Pro-Tem Wyett moved approval of Site Plan Review No. 6-99. The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

<u>New Business - Major</u>

4. <u>VARIANCE NO. 6-99</u> - Howard Sontag, TR & R & Marta Limbaugh, 1495 N. Ocean Blvd; including a parcel known as 104 Mediterranean Rd.; located in the R-A & R–B Zoning District. To allow construction of an addition

to the residence at a 26.25' building height in lieu of 25' maximum permitted, and to allow an addition to the guest house at a 22.25' building height in lieu of 22' permitted. - **Request for Deferral to May 11, 1999, per memorandum dated April 2, 1999, from Mr. Frank Lynch**

Variance No. 6-99 was deferred earlier in the meeting under "Approval of the Agenda."

5. VARIANCE NO. 7-99 - Allison Rogers, 317 Chilean Ave.; located in the R-C Zoning District. To allow an increase in building height by elevating the existing residence to meet the Town's minimum floor elevation of 7.5' required when renovating a structure beyond 50% of its value, and allow continuance of existing setbacks, .6' west and 7.66' east yard setbacks in lieu of 20' required.

Councilman McLendon declared ex-parte communication with Attorney James Brindell to discuss the plans; Councilman Shaw declared ex-parte communication with Attorney James Brindell at the site; Mayor Ilyinsky and President Smith noted that they had both gone to the site to look at the building.

Attorney James Brindell, on behalf of Allison Rogers, addressed the Town Council, stating that the house was in the R-C Zoning District. One building in the rear contained two apartments on each side straddling the property line, with two belonging to Ms. Rogers and two belonging to the house to the west. The house owned by Ms. Rogers was 74 years old, built in 1925 at an elevation of 4.76'. The house had been compromised over time, however, Ms. Rogers was attempting to restore the house to what it had been. The street was an interesting mix of older properties and tear-down/rebuilds. Ms. Rogers had purchased the house in July of 1998, and the main house had approximately 1950 sq. ft., with the apartments in the rear containing about 600 sq. ft. each. At the time of purchase there were four legal dwelling units, two in the main house, and two in the apartments. Her renovation plan called for returning the main house to a single family unit, which would decrease the conformity of one unit. The architect, David Lawrence, had met with staff on numerous occasions and had agreed to eliminate the 15' carport awning, decrease the hardscape, and increase landscaping.

Attorney Brindell exhibited the Site Plan, noting that one apartment on the first floor sometimes flooded, mainly because there was no area for percolation to occur. The revised Site Plan created more area for water to percolate, as well as provided more green space. The applicant had agreed to install windows, remove a trellis, and place electric service underground. He explained that Ms. Rogers had received approval from staff without the necessity of going to the Architectural Commission, received her demolition permit, and commenced work. The point had been reached where it was apparent that additional work was needed, and staff had indicated that the expenses would amount to more than 50% of the structure, which brought the FEMA issue into play, which would mean that the house would need to be raised 2'9". The setback was 0.6' on the west side, with the other side of the house having 7'8" of setback, with code requiring 20' for a property with multiple units. He explained that Ms. Rogers also proposed to remove some window air conditioning units and install a central air conditioning system, to install a new electrical system, and convert the portico on the west side to a porch with some arches. Attorney Brindell displayed the new elevations accordingly. He explained that the variance was required in order to meet FEMA requirements.

Zoning Administrator Paul Castro commented that the proposal would improve the aesthetics of the property, however, staff had concerns relating to the portico area and parking facilities, and he suggested that it could be removed.

Attorney Brindell explained that there was parking in the driveway and on the street.

President Pro-Tem Wyett commented that he would rather give up green space in the rear and gain some parking, which would mean giving up the side patio.

Councilman Shaw pointed out that there was the possibility of six parking permits under the current conditions, and suggested that the applicant agree to request only three parking permits in order to alleviate parking concerns on the street, and questioned whether the portico area should remain.

President Pro-Tem Wyett moved approval on the FEMA aspect, raising the house to the required elevation, and deferred a decision on the patio and parking regulations. The motion was seconded by Councilman Shaw.

Attorney Brindell proposed that the portico be raised, left open, and notched out between the columns for a sufficient distance for a Ficus hedge, and that the number of parking permits requested be limited to three.

On roll call the motion of President Pro-Tem Wyett, approving the FEMA aspect, carried 4/0, as Councilman McDonald was temporarily out of the room.

Councilman Shaw moved approval of the east side yard setback at 7'8", with the hardship being that it was pre-existing. The motion was seconded by Councilman McLendon. On roll call the motion carried 4/0, as Councilman McDonald was temporarily out of the room.

President Pro-Tem Wyett moved deferral of the variance for the west side yard setback (.6') for further study. President Smith passed the gavel to second the motion. On roll call the motion resulted in a tie vote, with President Smith and President Pro-Tem Wyett casting affirmative votes; Councilmen McLendon and Shaw casting dissenting votes, and Councilman McDonald being temporarily out of the room. Mayor Ilyinsky broke the tie with an affirmative vote, and the motion carried 3/2.

Attorney Brindell clarified that the parking situation would be re-studied, that the applicant would return to the Town Council Meeting on May 11, 1999, and an application would be filed for the May 26, 1999, Architectural Commission meeting.

President Smith clarified that the 30-day requirement for submission of change in the plans to the Architectural Commission would be waived for the applicant.

6. SITE PLAN REVIEW NO. 7-99 WITH VARIANCES - 179 Corp., 420 Royal Palm Way; located in the C-OPI Zoning District. To allow construction of a 12,284 sq.ft. office building with underground parking. Variances are requested as follows: 1) allow 26 parking spaces at 8.5' width in lieu of 9' required 2) allow a tower at a 27.5' height in lieu of 25' maximum allowed.

Ex-parte communication was declared by Councilman McLendon via a meeting with Attorney Kolins to discuss the project; by Councilman Shaw via a meeting with Attorney Kolins to discuss the project; by President Smith via a meeting with Attorney Kolins to discuss the project; by President Pro-Tem Wyett via a meeting with Attorney Kolins to discuss the project.

Attorney Ron Kolins, representing the applicant, addressed the Town Council, stating that Site Plan approval and approval of two variances was being requested for what would be a new building at 420 Royal Palm Way. He exhibited the Site Plan for the new building, noting that the building sat back approximately 88' from Royal Palm Way. The building to the east of the proposed building was the City Bank Building, which was a four story building, sitting right on the street; the building to the west was the Northern Trust Building, which was a three story building, and also sat very near the street.

Mr. Kolins explained that the requested variance would allow a portion of the proposed building to have its tie beam 2 ½' higher than allowed by code, which would still allow the building to remain under the height limit for buildings in the Zoning District. The building would otherwise look incredibly out of place and squat compared to the building next to it. Attorney Kolins presented a street scape to give an example of the scale of the buildings. He indicated that part of the hardship was that two existing, taller, much more massive buildings were located on either side of the proposed building; in addition, there seemed to be an incongruity on this subject in the Town Code. He explained that the building was in the C-OPI Zoning District, and in that section of the Code, Section 134.1214, entitled "Exception to Height Regulations - Special Exception Structures," it said the following: "In order to encourage increased open space, landscaped open space, reduced density and lot coverage and architectural detail, the town council may at its discretion, upon review of an application and public hearing thereon, allow for the increase of the maximum building height, in the C-OPI office, professional and institutional district, upon a finding being made by the town council that the proposed increase in height for a contemplated special exception structure is in the public interest, that careful attention is given to architectural detail, and that it meets the standards of sections..." Mr. Kolins stated that the language only applied to Special Exceptions, which in this case would be a building already taller than the one proposed, and it allowed discretion to allow it to go even taller without a variance–just requiring that it be within the discretion of the Town Council. He suggested that if discretion was allowed for Special Exception buildings, it should certainly apply to non-Special Exception buildings as well. He indicated that was part of the hardship.

Zoning Administrator Paul Castro explained that one variance was for the width of parking spaces in the basement, and the hardship was that the columns were structural columns required to support the building above it, and the width could not be changed. Staff supported that variance request. Regarding the height, the applicant had been requested to demonstrate the hardship; in terms of the Site Plan, handicapped accessability must be provided from the front of the building, a 30' turning radius must be provided in the garage, and additional landscaping across the back to buffer the property. Increasing the height or adding a third story would require more parking, and re-notification and due process related to the application.

Architect Bell responded that a new plan had been submitted which showed a handicap ramp in the front, and the landscape plan was also changed; the width of the ramps going up and down to the parking garages was reduced, a 30' radius was provided, the stairs were relocated, and now only two parking spaces did not meet the 9' requirement.

Councilman McDonald commented that a more impressive building could be considered for the neighborhood, and moved that the applicant proceed with the demolition request before the Architectural Commission, and that the design of the building be deferred. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried 3/2, with Councilman McDonald, President Pro-Tem Wyett, and Councilman McLendon casting affirmative votes; President Smith and Councilman Shaw casting dissenting votes.

Mayor Ilyinsky vetoed the motion of Councilman McDonald.

Attorney Randolph advised that the veto power of the Mayor related only to ordinances and resolutions.

Attorney Kolins requested that the motion be reconsidered, because the applicant could not come back for two months with any changes, and the applicant would give consideration to a larger building.

Councilman McLendon moved that the motion of Councilman McDonald be reconsidered.
The motion was seconded by Councilman McDonald. On roll call the motion carried unanimously.

President Pro-Tem Wyett expressed concern about traffic/public safety with the repairs being done to the Royal Park Bridge.

Mayor Ilyinsky commented that he liked the building, and congratulated the architect for having the courage to put something so lovely on the street, having it a little smaller than the surrounding buildings.

Mr. Moore explained that a pre-work conference would lay out how demolition was made, and how access would be made to the site.

Councilman Shaw moved approval of the application for the Site Plan Review, and the variances as modified by Architect Bell, as to the radius issue, the wall on the back of the property, and the fact that only two parking spaces were 6" smaller.

Attorney Randolph suggested that the motion be divided for the special exception and the variances, since different criteria applied to each.

Councilman Shaw moved approval of Site Plan Review No. 7-99. The motion was seconded by Councilman McLendon. On roll call the motion carried unanimously.

President Pro-Tem Wyett suggested that the motion be amended to include a landscaping screen in front between the Palm trees, and proper screening for the resident in the rear.

Mr. Moore explained that there were townhouses in the rear of the property, and asked if the applicant was planning on completely site screening the townhouses from his property?

Architect Bell responded that this was the first time he had heard of that requirement.

Mr. Moore explained that would be a requirement, as that property was currently site screened 100% from the current building there, and there should be 100% site screening for the proposed building as well.

On roll call the motion of Councilman Shaw approving the Site Plan, carried unanimously.

Councilman Shaw moved approval of the variance for two of the twenty-six parking spaces to be at 8 ½' in lieu of 9', including all staff concerns as to radius, the wall, and handicapped access, with the hardship being that the structural columns could not be changed, as they supported the building. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

Councilman McLendon moved approval of the variance to include the architectural tower with the beam height of 27 ½; in lieu of 25', with the hardship being the height of the surrounding buildings, and the narrow lot. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

Attorney Kolins clarified that the Code inconsistency he had noted applied only to special exceptions, however, he believed there was an oversight in the Code that the same criteria did not apply to non-special exception buildings in that district, as it made no sense to give the Town Council the discretion to make higher buildings higher, but did not give it discretion to make lower buildings higher. He therefore explained that he believed there was an inconsistency in the Code that created a hardship for a non-special exception.

Councilman Shaw stated that the tower feature was a permitted use by Code in the residential sections, and in reality was probably an oversight in the Code that should go to zoning to see that the feature followed through in all sections of the Town.

C. Other

1. Reconsideration of Conditions in the Mitigation Plan outlined in the Town's Letter dated November 25, 1998, for FH of Palm Beach, Inc., commonly known as C-15 and C-16 of the Palm Beach Hotel, 251 Sunrise Avenue *(Applicant to Return to April 13, 1999 meeting to report on compliance with conditions as directed at the March 9, 1999 meeting)*

Ex-parte communication was declared by Mayor Ilyinsky, who had discussed the issue with many people in Town; by Councilman Shaw, who had received a phone message from Ms. Beane, however, he had not been able to return the call.

Attorney Roy Watson, on behalf of 251, addressed the Town Council, stating that direction had been received at the last Town Council meeting to return to update the Council on the status of the mitigation plan. He continued that the main concerns were noise levels and several neighbors. He noted that since the last meeting sound film had been installed on windows, as well as sound boards, curtains, sound proof mats, the Code Enforcement Board had exonerated them on a complaint, and a sound and acoustics engineer had been hired to take measurement of the sound. He commented that the applicant was willing to meet with any neighbors to address any problems.

In response to the query of President Pro-Tem Wyett, Mr. Allen Heise, co-owner of 251, reported that the bar manager typically had check-outs after closing, which take between 1-2 hours. Apparently he had allowed some employees and their spouses to have a drink after hours without charge. He now understood that should not happen and would not continue the practice.

President Pro-Tem Wyett commented that it seemed like something new came up every month regarding complaints at 251, and asked for an explanation of the after-hours serving that had recently taken place.

Mr. Allen Heise responded that the bar manager had apparently allowed some employees, and some of their spouses to have a drink after hours, however, nothing was sold. He now understood that this should not happen.

President Smith asked if the applicant would consider building a wall behind the homes of Ms. Beane and Dr. Nassar?

Mr. Heise responded that the property that the wall would be constructed upon was not under his control. He explained that he would be happy to participate, however, the Palm Beach Hotel, as well as some other tenants would have to become involved with the matter.

Ms. Gilda Beane addressed the Town Council, stating that she had moved to Palm Beach as it was one of the most environmentally friendly towns on the east coast. She explained that she was finding that the quality of life was not what it was when she had initially moved in the area, and that commercial development was taking over. She stated that the bass sound from the drums still caused her to lose sleep. She commented that the club had been allowed to operate without a license for 7 months, even though there had been an average of 20 or more police complaints each month. She urged that the Town Council give consideration to the neighbors of 251.

President Smith commented that 251 did have an occupational license, as did all businesses in Town.

Ms. Beane replied that she had made an error in her statement concerning the license.

President Pro-Tem Wyett asked Ms. Beane if she would accept aid in insulating windows and doors to reduce the noise problem?

Ms. Beane responded that the low frequency noise was escaping from the building, and that she believed the building was not constructed properly for the usage; she suggested that the buildings should be insulated properly; a wall would be fine, however, she did not believe any acoustical work on her property would help.

Police Chief Frank Croft reported that since the last Town Council meeting of March 9, 1999, there were 33 total calls regarding 251 including 11 noise complaints of which 8 complaining parties refused to sign the affidavit, which made it impossible for the police to effect an arrest; there was an arrest of an underage drinker inside the establishment; there was a Code Enforcement notice to appear to the manager on April 3, 1999 for serving alcohol after hours; on April 11, a woman called who felt that she had been drugged at the bar; on April 11 there was a fight near the dance floor between a patron and a bouncer, with the patron being charged.

In response to the query of Councilman Shaw, Chief Croft advised that it was not unusual for the Police Department to receive noise complaints two or three times per week from the other establishments that serve alcohol in the area. Of the 11 noise complaints received last month, there were several that the officers identified as coming from E.R. Bradley's or another location other than 251.

Attorney Kolins, representing the Biltmore residents, Ms. Beane, and Dr. Nassar, addressed the Town Council, stating that relatively little difference had been heard month after month, and offered the following suggestions:

A. That 251 come back in 3 months, after completely turning down and leaving down the bass.

B. As two of the most impacted people, Dr. Nassar and Ms. Beane, along with Attorney Kolins, seek a way to ameliorate the problems via a meeting with the applicant.

Fire-Rescue Chief Ken Elmore reported that there had been no over-crowding problems since the last meeting.

Public Works Director Al Dusey reported that there was no problem with the solid waste disposal.

Mrs. Margaret Sherman, 265 Park Avenue, addressed the Town Council, stating that last Saturday night was the worst she had ever heard. She had called the Police Department, however, she had not signed an affidavit. The "thump thump" noise was ongoing, and the quality of life was disappearing.

Ms. Beane asked what recourse there was if the restaurant did not turn down the bass?

Town Attorney Randolph responded that there had been no abatement in enforcement of Town ordinances; in the event the conditions imposed on the applicant were violated, the Code Enforcement Board would issue a violation. Mr. Randolph suggested that the Town Council restrict themselves to the conditions imposed upon the applicant at the granting of the original Site Plan, rather than the enforcement of ordinances, as the enforcement of ordinances stood on its own.

President Smith commented that she thought the period of 3 months was too long of a trial period to see if the noise problem was addressed. She suggested that some type of mediator, perhaps Mayor Ilyinsky, be present for a meeting of all those involved in order to come to an equitable solution.

Attorney Kolins stated that he would volunteer his offices for the meetings.

Chief Code Compliance Officer Brian House reported that he had visited 251 seven times at night during the last month, and noted that a styrofoam blanket had been installed across the doors in the back. The stereo system had barely registered on the noise meter on the outside. He stated that he could feel a little bit, but could not hear much. An extra piece was installed behind the blanket the next week, which quieted things considerably more. Several times after that he had been at 251 and had found that in the old area the noise was louder, however, there was no reading on the noise meter outside. A reading was obtained from the air conditioning system of the hotel. It was also found that music was coming from somewhere that could not be determined, however, it was not the music being played from 251. He suggested that if the outside speakers, in the old patio area, were kept to a reasonable level, he did not think anyone could hear or feel it outside.

President Pro-Tem Wyett clarified that the complaint was that various people behind the club felt the vibration noise inside their homes, and measurement was being taken on the outside. He suggested that measurement be taken from where the disturbance was being felt.

Mr. Heise commented that the sound and vibration report had concluded that there was not enough sound or decibels coming out of 251 to create a vibration, therefore, the vibrations were coming from something else.

Attorney Kolins commented that the bass should be turned totally off, according to discussion at the last Town Council meeting.

Attorney Watson commented that he believed it was unreasonable to ask that 251 totally turn off the bass portion of the music.

Town Attorney Randolph clarified that the Mayor should not be designated as a mediator by the Town Council.

Mr. Moore commented that Chief Code Compliance Officer Brian House had conducted spot checks at 251, and consider the improvements made to lessen the noise.

Councilman McLendon recalled that Mr. House could hear the low frequency noise, however, nothing showed on the noise meter.

Mr. House responded that was correct, until he was told how to read the meter. There were three settings on the meter, A, B, and C. The A setting would register the low frequencies. He explained that he had been using the C setting prior to knowing that. He had reviewed notes on a seminar he had attended regarding noise complaints, and he had been told to use the A setting for low frequency, which was much more accurate. The noise expert hired by 251 had more sophisticated equipment, and was more accurate. He noted that he was not at 251 last Saturday night, and did not know what the noise reading was at that time.

Councilman Shaw suggested that 251 analyze how the establishment would be hurt or impaired if it turned down the bass as far as possible for a few weeks, with the understanding that the intention was not to impair business, but to seek a level where everyone was comfortable.

Attorney Watson responded that the bass would be turned down even lower, and an engineer would determine if it could be heard. He commented that there needed to be an end to this problem somewhere.

President Smith suggested that the meeting between the applicant and the complainants could take place at 251, so that the noise could be heard by all and discussion could take place.

Attorney Kolins commented that there were many variations in turning down the bass, and agreement would have to be made on that.

President Smith clarified that the applicant had agreed to turn the bass down, and when the meeting took place, any change could be discussed, with the applicant returning to the June 8, 1999, Town Council meeting to report on any resolution.

Councilman McDonald clarified that Attorney Kolins would contact Attorney Watson to schedule the meeting, to be held within a month.

President Pro-Tem Wyett clarified that he did not want to hear that the meeting was held a week before the June 8, 1999, Town Council meeting, so that if more adjustment regarding noise needed to be done there would be time.

Councilman McDonald moved that the 251 mitigation plan be deferred to the June 8, 1999, Town Council meeting, with the bass being turned down in the interim, and the meeting held between the applicant and the complainants. The motion was seconded by Councilman Shaw. On roll call the motion carried unanimously.

## XVII. ANY OTHER MATTERS

There were none.

## XVIII. ADJOURNMENT

The meeting was adjourned at 5:55 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk