

MINUTES OF SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 30, 1995

I. CALL TO ORDER AND ROLL CALL: President Smith called the Special Town Council Meeting to order at 10:00 A.M. On roll call, the following Elected Officials were found to be in attendance: Mayor Ilyinsky, President Smith, President Pro Tem McDonald, Councilmen McLendon, Shaw and Wyett. Also attending were Town Manager Doney, Assistant to the Town Manager Jakubiak, Town Attorney Randolph, Building & Zoning Director Robert Moore, Public Works Director Dusey, Town Engineer Bowser, Police Department Major Frank Croft and Town Clerk Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE: Invocation was given by Mrs. Pollitt. The Pledge of Allegiance was led by President Smith.

III. APPROVAL OF AGENDA: Motion was made to approve the agenda as printed by Mr. Shaw. Seconded by Mr. McLendon. On roll call the motion carried unanimously.

IV. MAR-A-LAGO CLUB - REVIEW AND CONSIDERATION OF STATUS OF CONDITIONS OF DECLARATION OF USE AGREEMENT

Mrs. Smith stated that the order of speaking would be Mr. Moore speaking first, followed by questions. Mr. Randolph would speak next, followed by questions. Mr. Rampell would speak third, followed by questions and statements by the public. She then asked if there was any member of the Council planning on recusing themselves or having a conflict.

Mr. Shaw stated that he had contacted Mr. Randolph about a week previously to specifically discuss the issue of a conflict, as he was a member of the Mar-A-Lago Club. He had discussed two points with Mr. Randolph, asking if the meeting held today was a meeting of affirmation of information from department heads and legal opinion, and would that be a conflict? His interpretation of Mr. Randolph's response was that it would not be. Mr. Randolph went on to say that Mr. Shaw definitely would have a conflict if there was a question of a vote and that vote would be questioning some of the terms and conditions. Mr. Shaw felt that there was an underlying issue--that was the relationship that any member of the Council or a committee had with any organization in Town and whether or not there was a right or obligation to vote or not vote. Mr. Shaw stated that if the terms of the agreement had been met in accordance with the building department and by the Town attorney, he would naturally vote in favor of giving the Certificate of Occupancy and the Occupational License, but at the point of consideration of a vote, he would recuse himself. If at some point he felt the discussion was leading in that direction he would take the position that it would be inappropriate to partake in a discussion where he would not be voting.

Mr. McDonald stated that he did plan to participate in the discussion. He did not anticipate that a vote by the Town Council would take place, however, if there was a vote he would recuse himself.

Mr. Moore stated that he had written a memorandum, dated March 30, 1995, to Mr. Doney saying that he was advising the Mayor and the Town Council by authority of Zoning Ordinance, Section 9.23, Building Permits, and Section 9.30, Certificate of Occupancy, upon advice from affected departments relating to the Construction Agreements that were found in the Declaration of Use Agreement, and upon final advice from Mr. Randolph that all of the legal issues were in compliance, and he was prepared to issue the Certificate of Occupancy and the subsequent Occupational Licenses for the Mar-A-Lago Club.

Mr. McLendon inquired about a 20 x 20 foot interior piece of property shown as a separate description in the exhibits.

Mr. Moore responded that area was for the lift station that Public Works had put in to assist the sewerage flow from the Mar-A-Lago Club to the sanitary sewer line.

Mr. Randolph stated that although a Certificate of Occupancy had not been requested by the Mar-A-Lago Club as of today's date, the Club's representatives had advised that they may be in a position tomorrow (March 31, 1995) to be requesting a Certificate of Occupancy. For that reason, Mr. Randolph wanted to report to the Town Council today on the status of his review, and the status of the documents that had been received. It was his understanding that a tentative closing had been scheduled for March 31, 1995, involving several parties, including the National Trust, a new mortgagee, Donald Trump, the Mar-A-Lago Club, etc. Mr. Randolph continued that he had intended all along, even prior to the scheduling of this meeting, to attend that closing and receive all of the executed documents which the Town needed prior to being able to issue a Certificate of Occupancy. Many of those documents were not signed at this time, but would be signed during the closing. Mr. Randolph had reviewed the documents relating to the closing, and he intended to be certain that all documents were properly executed and in recordable form--that they would be recorded prior to the issuance of the Certificate of Occupancy. That did not mean that they would physically be recorded prior to issuance, but that there would be a title agent who would be responsible for recording those documents at the closing. After his report, unless he heard any advice to the contrary from the Council, that was the way he intended to proceed.

Mr. Randolph explained the list of things that he had been looking for all along, prior to advising the Building Department that this matter was ripe for issuance of a Certificate of Occupancy. First of all, it had always been incumbent upon Mr. Trump, pursuant to the terms of the Declaration of Use Agreement, to deed the property to the Mar-A-Lago Club. Mr. Randolph had received a copy of that Deed and in conjunction with that had received Homestead Affidavits from Mr. and Mrs. Trump and had approved those as to legal form. Two of the documents had been signed. The Deed had not been signed, so that would need to be executed at the closing and then recorded. Mr. Randolph had sent a letter to Mr. Rampell that the Deed should reference the Preservation Easement. The reason that he had stated that was when he reviewed the preservation easement he saw that requirement had been placed in there by the parties; that was Donald Trump, and the historic trust, and had not been a condition imposed by the Town. It was simply his advice that it be included in order to abide by the terms of the Agreement. He did not know whether that would be included or not, but the important thing for the Town was that the property be deeded from Donald Trump, as an individual, to the Mar-A-Lago Club.

The Application for Membership, the rules of the Club, By-Laws and Amendments to Articles of Incorporation had been received. The reason that these documents were needed was because of a requirement in the Declaration of Use Agreement, which indicated several things:

1. That the property would revert to single family use in the event the Club was intentionally or unintentionally abandoned.
2. The Town wanted to have a release from the club members in the event that were to take place.
3. Mr. Trump assumed in the Agreement, an obligation to meet the deficiencies which might exist in the operation of the Club during the first three years, relating to taxes, maintenance, etc.
4. There was a requirement in the Declaration of Use Agreement that a separate fiduciary account for maintenance and restoration of the guest suite be provided for, and that had been included.

Mr. Randolph pointed out that those portions of those documents were irrevocable and in going through the minutes as they related to the rules of the Club, it was found that as agreed in the Declaration of Use Agreement, those things should not be revocable. Mr. Rampell had provided those documents and Mr. Randolph was satisfied that they included the language as required by the Declaration of Use Agreement, and nothing more was needed in that regard.

As to the Deed of Conservation and Preservation Easement, Mr. Randolph reminded the Council that they had been advised that would be in place prior to a Certificate of Occupancy being requested. Mr. Rampell had agreed that a Certificate of Occupancy would not even be requested until that document was signed and ready for recording. Mr. Randolph had seen a copy of that document signed by Mr. Trump. To his knowledge, it had not yet been signed by the historic trust, but it was anticipated that it would be, and it was anticipated that would be executed at closing. Mr. Randolph wanted to be assured that document had been fully executed and in final form and ready for recording prior to the issuance of the Certificate of Occupancy.

Mr. Randolph had requested an attorney's title opinion in regard to the property. This had been something extra requested from Mr. Rampell that had not been requested before. Mr. Randolph indicated that he had done a search to make sure that there were no other interests in the property that would prevent the use of the property as a Club, and he was satisfied that there were no other interests in the property. Mr. Randolph had asked Mr. Rampell for a clarification as to one of the items on the Title Policy and he had clarified that.

The next item needed had been a Town-Serving Affidavit. Under 6.401 of the Special Exception Section of the Ordinance, it was required that a Special Exception prove a Town-serving purpose. The Declaration of Use Agreement included language which said that 50% of the members of the Club must maintain residences in the Town or be employed in the Town. Mr. Randolph had received the Town-Serving Affidavit which contained a breakdown of the percentage of people who were residents in the Town, the percentage of people who work in the Town and the percentage of the remainder that did not fit either of those categories. In addition, that Affidavit included a statement that it did not include people who were staying at hotels within the Town, or who were simply using post office addresses. Mr. Randolph had been advised that the accountant based this upon applications from residents of the Town. In addition, in that Affidavit, Mr. Randolph had requested a statement that, indeed, those club members who had joined the club had signed the document which indicated that they will release the Town from any liability in regard to enforcement of the Declaration of Use Agreement. That was an additional item that had been included, and Mr. Randolph was satisfied that had been taken care of appropriately.

Mr. Randolph had recently requested certain closing documents, some of which had been received. He had received a copy of a Satisfaction that was intended to be signed by Boston Safe. That would be a satisfaction of the outstanding mortgage, so that Boston Safe would not need to be involved in consenting to the Declaration of Use Agreement. There was a UCC-1 Financing Statement which Mr. Randolph had received a copy of and for which he had asked for a satisfaction. Mr. Randolph needed to receive a copy of the new Mortgage, which he understood was going to be in the amount of approximately \$7.5 million dollars. The only reason he needed to see that mortgage was to make sure that there was nothing contained within it contrary to the Town requirement that any person who had an interest in the property must agree to the terms of the Declaration of Use Agreement. At the closing, Mr. Randolph would assure that the new mortgagee would execute the Declaration of Use Agreement. That matter had been pending for some time, and the new mortgagee would be bound to the terms of the Declaration of Use Agreement because it had been recorded. In addition to that, the signature of the mortgagee to the Declaration of Use Agreement would be obtained. That would be taken care of by Mr. Randolph at closing.

Mr. Randolph continued that a letter had been received from City Bank stating that a fiduciary account had been set up in order to take care of deposits relating to the guest suites. He had requested a Hold Harmless Agreement in regard to the tunnel. He had received that and nothing more was needed in that regard, except the exhibits that would be attached.

Mr. Randolph noted that the Unity of Title was something that was required in the Declaration of Use Agreement, and that Agreement itself served as a Unity of Title. That Unity of Title incorporated all of the property, including the beach front property and provided that the property should not be subdivided, condominiumized, or co-oped, and that it should remain as one parcel of land. Nothing more was needed on the Easement to the pump station which was included in the Declaration of Use Agreement, because the Declaration of Use Agreement itself acted as that Easement.

Mr. Randolph continued that Affidavits regarding the guest suite occupancy had not yet been received. The Declaration of Use Agreement provided that Affidavits should be received on an annual basis regarding the guest suite occupancy, and the amount of funds expended in restoration or maintenance of those. It was too early to require those; they would be required on the anniversary date. The Town-Serving Affidavit also would be required to be filed each year.

Mr. Randolph explained that the Declaration of Use Agreement provided for guest privileges for Woodbridge Road residents, and nothing more was needed on that matter, as the Declaration Use Agreement itself covered that.

Mr. Randolph remarked that there was a provision that the Town would be reimbursed for special studies relating to the Application for the Special Exception and it was his understanding that had been taken care of.

Mr. Randolph said that he was prepared to go forward, assuming that he received all of the executed documents as described. He would then contact Mr. Moore and advise him that everything was in order and a Certificate of Occupancy was ready to be issued.

Mr. Wyett asked Mr. Randolph to clarify one question. Under the rules of Mar-A-Lago Club it listed active members, however, on page 2 there was a list of "seasonal subscribers". Since this was a seasonal club, he did not understand the difference. Also, he inquired as to the difference between a subscriber and a member. He questioned whether that would still include the 500 member limitation.

Mr. Randolph replied that because the Declaration of Use Agreement spoke to several requirements which must be met in the future by the applicant, he had not focused in on the different classifications of membership. There were several things that needed to be taken care of in the future; for instance, there could only be 319 average daily trips--that was a condition that would have to be met. There were also other requirements that must be met in the future, and it remained to be seen whether those would be met. He had only focused in on those things that had been required by the Council in order to issue the Declaration of Use Agreement. An Affidavit had been received that indicated that at the present time there were less than 300 members. On that basis, it was apparent that the 500 member cap had not been exceeded. Mr. Randolph had looked at the By-Laws, which could be amended from time to time, and the Rules, and under the classification of memberships it talked about active members, seasonal subscribers, junior subscribers, and honorary members. The Declaration of Use Agreement had a 500 membership cap and he believed that applied to the category of membership set forth in the rules.

Mr. McLendon asked about Item No. 9 in the Agreement. He inquired as to the meaning of the break even point or profitability for three consecutive years. He felt there was a possibility of misinterpretation.

Mr. Randolph replied that the intention there was that the Club remain viable for that three year period of time and that the responsibility would be there to make sure that all debts were taken care of--the break even point was the level that needed to be met. It was profitable beyond that it was fine, but the operative word was the "break even point," as assurance to all members that all deficits were covered up to a break even point.

Mrs. Smith asked Mr. Randolph about the rights of the members to vote for the directors of the Club. The Club would be turned over and become the Mar-A-Lago Club, Inc. and in the presentation it appeared that there would be the right for each member to have a vote annually for the Board of Directors.

Mr. Randolph replied that he had not given attention to every specific inclusion within the Rules and the By-Laws. He had reviewed all of the minutes relating to the matter and it had been apparent that the Council had been more concerned with the use of the property than the internal operation of the Club. Therefore, he had not given consideration as to whether or not the members would have a vote, as he had not felt that was something the Town had an interest in.

Mrs. Smith suggested that Mr. Rampell could address the question at the appropriate time in the meeting.

Mr. Rampell addressed the Town Council, stating that he was deeply interested in the welfare of the community, as a resident of Palm Beach. He remarked that he had practiced law for 15 years in the Town of Palm Beach, and maintained his offices at 125 Worth Avenue. He acknowledged that he represented Donald J. Trump and the Mar-A-Lago Club.

He first wanted to present a schedule of all of the requirements under the Declaration of Use Agreement which must be met in order to obtain a Certificate of Occupancy. He addressed items No. 1 and 29. To follow up on what Mr. Randolph had said, there were two items, number 1, which stated "Trump shall convey title to Mar-A-Lago to The Mar-A-Lago Club, Inc.," Section 1 of the Declaration of Use Agreement. The Deed had been prepared and was ready to be signed by Mr. Trump. Regarding item, number 29, "Consent and Joinder of Mortgagee," page 13 of the Declaration of Use Agreement, that document had been prepared and was ready to be signed at the closing.

The 27 other items had all been completed. The sewage overflow manually valved, had been eliminated. Sewage generation had been calculated. The pump station had been upgraded and replaced. The air conditioning condensate had been re-routed into the storm sewer system. The exfiltration trenches were constructed along a portion of the perimeter of a parking area designated as Phase B in various drawings, and the soil stabilized along the cart path. The tunnel to the beach area had been evaluated for structural soundness and had been declared structurally sound. The tunnel to the beach area had been improved as required. Compliance had been made with all applicable building, fire, and life safety codes. An on-site fire hydrant was required and three on-site fire hydrants had been installed. An approved fire detection system and an approved fire extinguishing system had been installed. Certificates of Appropriateness had been obtained from the Landmarks Preservation Commission. A solid masonry wall had been installed, along with landscaping, along the northern perimeter wall. Surety had been posted. A signed, sworn Affidavit had been submitted verifying that at least 50% of the members of the Club consisted of individuals who maintained residency in the Town of Palm Beach or had places of employment in the Town of Palm Beach. Traffic monitoring devices were in place and had been approved. The northbound, left-turn storage lane on Ocean Blvd. had been completed. The main entrance on Ocean Blvd. would be used as an entrance only. Two lanes of ingress would exist on the main entrance drive. The existing service access on Ocean Blvd. would be used as an exit only. A gate west of the existing Southern Blvd. gate had been provided. There were 252 stabilized parking spaces provided. The cart path of grasscrete had been completed, which was 18 feet in width.

As Mr. Randolph had indicated, through proof in the form of a letter from City Bank, a separate fiduciary account had been established by the Club, into which 10% of all gross revenues from guest suites would be deposited. All members of the Club had acknowledged and consented to the terms of the Declaration of Use Agreement, and had specifically agreed to the reversion of Mar-A-Lago to Donald Trump, and its return to single family usage, in the event of the intentional or unintentional abandonment of Club usage. Articles of Incorporation to the Club had been amended

irrevocably with respect to Mr. Trump's obligation to pay deficits, maintain separate fiduciary accounts, and to obtain membership acknowledgements.

The Town of Palm Beach had been reimbursed for the reasonable costs of its consultants. There would be a closing prior to a request for a Certificate of Occupancy. Mr. Rampell wished to explicitly represent that a Deed of Conservation and Preservation Easement, already signed by Mr. Trump, was in the process of being signed by the National Trust for Historic Preservation, as well as a new lender. That would be fully executed before a Certificate of Occupancy was requested. Mr. Randolph would be provided with a copy of the fully executed document before a Certificate of Occupancy was requested. At the closing itself, it was expected that Mr. Randolph would be provided with copies of the fully executed Warranty Deed, copies of the executed Consent and Joinder of Mortgagee, copies of the fully executed Satisfaction of Mortgage and Termination of UCC Financing Statements. In exchange for those documents a Certificate of Occupancy would be received.

For the benefit of the audience, Mr. Rampell then showed, via video camera, exhibits of the items he had just discussed. He also presented two boards which showed green tags, each reflecting certain work performed at Mar-A-Lago inspected and approved by Town of Palm Beach officials. Extensive inspections had been performed and approved by Town experts. Mr. Rampell remarked that Donald Trump deserved a great deal of credit for spending millions of dollars, when no other individual or entity would, in order to preserve Mar-A-Lago as it had existed since 1927. It was now 10 years that he had single handedly paid all expenses of Mar-A-Lago. As just one example, Mr. Rampell presented the paid receipt for the tax bill paid yesterday of \$335,566.00. Mr. Trump had spent millions of dollars on the Southern Blvd. gate, the northbound holding lane on South Ocean Blvd., the fire detection system, the fire extinguishment system, the various requirements of the building code, and special arrangements for handicap facilities required under the State of Florida Disabilities Act. He added that Mar-A-Lago was safer and in a better condition to be preserved into perpetuity by reasons of these various improvements and enhancements.

Mr. Rampell noted that he anticipated objections and criticisms from certain individuals and organizations about definitions of members, definitions of residency, definition of Town-serving, and other objections that could be conceived in order to prevent the opening of the Club. The Declaration of Use Agreement had been strictly complied with, the crucial controlling contract between the Town of Palm Beach, Donald Trump, and the Mar-A-Lago Club, Inc. Issues about definitions of members, residency, and Town-serving were set forth either in the Code of Ordinances or in the Declaration of Use Agreement itself, and were governed accordingly. It would be an exercise in irrelevancy to develop or re-define those concepts. Mr. Rampell objected, as a legal technical matter at this time, to any vote by the Town Council on any substantive issue, since this meeting was a meeting for review purposes only, and without notice.

Mrs. Smith asked Mr. Rampell if the new mortgagee was the Union Labor Life Insurance Company, and if the document doing the re-financing of the mortgage was completed?

Mr. Rampell responded that the Mortgage Deed itself had been drafted and was being revised that day.

Mrs. Smith asked if it would be signed tomorrow?

Mr. Rampell replied that it was scheduled to be signed tomorrow.

Mrs. Smith inquired as to the closing--would it take place in Mr. Rampell's office?

Mr. Rampell replied affirmatively.

Mrs. Smith asked for an explanation of the vote of the stockholders--whether or not the Mar-A-Lago Club, Inc. would have stockholders, and whether or not those stockholders would vote for a board?

Mr. Rampell responded that the internal operation of the Club, just like the internal operations of all of the other private social clubs, was not subject to regulation by the Town of Palm Beach, except to the extent that consent had been made, for instance, to the limitation of membership to 500, the fiduciary accounts, and the required acknowledgement by the members. The Mar-A-Lago Club, Inc., would be owned by its shareholder or shareholders and they would elect its Board of Directors and officers.

Mr. McLendon asked how many types of classifications of members there were?

Mr. Rampell replied that there was only one type of member at the present time--called in the rules an active member.

Mrs. Smith remarked that an active member would be the shareholder who would be running the Mar-A-Lago Club.

Mr. Rampell replied that there were many active members.

Mrs. Smith asked for an explanation of why they were called "seasonal subscribers," as opposed to seasonal members and "junior members"

Mr. Rampell replied that the rules of the Mar-A-Lago Club were based on the rules of the Bath and Tennis Club across the street. The Bath and Tennis Club included in its rules active members, seasonal subscribers, junior members, and honorary members. All of those had been included in the Mar-A-Lago Club for flexibility. Only active members were anticipated. There could be 10 honorary members each year.

Mr. Wyatt asked for clarification of whether a seasonal subscriber was a member?

Mr. Rampell replied that was Mr. Randolph's interpretation and that he did not dispute that with Mr. Randolph.

Mrs. Smith asked if there were any members of the public who would like to speak?

Mr. Robert Grace, a legal resident of the Town of Palm Beach, addressed the Council. He presented a document that entailed Chapter 8 of the submission to the Town of Palm Beach of the

Application for Special Exception No. 11-93, entitled "The Mar-A-Lago Club, A Special Exception Use and Preservation Plan." All Town officials had received this plan, with Chapter 8 included, but it had also been circulated to various people in Town. On page 110, the members of the Club, upon election and paying a capital contribution, would receive a share of stock. On page 106, Item 5, those particular stock holders would elect the directors of the Mar-A-Lago Club and the directors would manage the affairs of the Club. Mr. Grace continued that was the heart of a true club, that which distinguished a Club from a club in name only, such as the 21 Club, Historic Club, Club Collette, etc. Mr. Grace thought the issue of members electing directors had been misunderstood. Mr. Rampell had stated something true of all corporations--that the shareholders elect the Board, however, he had not said that the members of the Club would be shareholders. That was the key item, and Mr. Grace did not think the members of the Club were shareholders. He had done a lot of research on it and, based upon that, the members of the Club would not be shareholders in the Mar-A-Lago Club, Inc., and would not have a vote for the Board of Directors.

Mr. Grace added that he was sure that Mr. Rampell would say that Chapter 8 had not been adopted by reference in the Agreement, but there was an important matter of reliance involved. When something was submitted with high publicity, people, including the Town Council, had the right to rely on that submission. By review of all the minutes of the Application proceeding, Mr. Grace had not found any Motion to Strike Chapter 8, and frankly, he could not even find discussion of removing Chapter 8, and he wondered if Town Officials who had signed the Agreement even knew that Chapter 8 had been removed. Mr. Grace noted certain items in the Minutes, which seemed to indicate that there was a definite connection between membership in the Club and being a shareholder of the Club. He cited an example in the minutes of May 13, page 5, where Mr. Rampell had stated that the club operation itself was developed from the corporate documents and those rules and regulations from the other Town clubs, and that he had reviewed them carefully and ended up using the corporate documents of the Bath and Tennis Club primarily. As a former Director and Officer of the Bath and Tennis Club, Mr. Grace certified that the members of the Bath and Tennis Club had a share of stock, entitling them to vote for the Directors of the Club.

Also, on page 14 of the minutes of May 13, Mr. Grace pointed out that Mr. Rampell had stated that the shareholders would own the Club, and it would be run through a Board of Directors, who would elect officers. He stated that the shareholders would be, initially, Donald Trump, and then any individuals who bought shares as equity club memberships. He stated when and if a majority of shares were sold the holder of the majority of shares would control the Club. On the next page of the same minutes, Mr. Rampell referred to the number of members the Club would have, noting that it was difficult to determine exactly how many members there would be, but to answer that question he would state 611 and that was what the Town traffic expert had in the report. It was noted that the Articles of Incorporation stated 500 shares, which indicated that the Council, at that time, was concerned about the number 611 of members, and only 500 shares. How would there be enough shares to go around? Later on, in discussions, the membership had been reduced.

Mr. Grace stated that his theory was that Mr. Rampell knew Palm Beach very well, and thought that a conscientious Town Council, looking at a Special Exception Application for a club in the Town, would see to it that the thing really was a club. He had, therefore, put in the application something that made the club look like it really was a club, i.e., that members had voting rights for the board that would run the club. Mr. Grace remarked that he was not sure how Chapter 8 was consigned, but reminded the Town Council of the reliance issue that the members of the public and Town Council had a right to insist upon receiving. As far as the current Town Council was concerned, Mr. Grace thought that the Town had a good argument to insist upon the connection between membership and shareholding in the Club. He hoped that the Town Council would not allow Mr. Rampell to confuse them on the issue by talking about equity in the Club. Mr. Grace said that he was not saying that all of the members who received a share of stock should have equity in the ownership of the real estate or the facilities. He was just saying that a representation had been made that the members would have a right to elect the Board of Directors. He made his final comment by stating that it would be great if, in the future, the CPA's Annual Affidavit on Membership not be entitled a Certification of Town-serving usage. The Town-Serving Ordinance was adopted to regulate the patronage of stores in the commercial district and to use that word "Town-serving" for regulating something in the residential district was a total misapplication of the Ordinance. In order to maintain the Town-Serving Ordinance in its proper legal framework, the word "Town-serving" should not be used in referring to the Mar-A-Lago Club, which all citizens knew was a business in an estate residential district.

Mrs. Smith thanked Mr. Grace and asked if there were any other members of the public wishing to speak to the issue?

Mr. Adrian Winterfield next addressed the Council, stating that he was a resident of the Town of Palm Beach and that he would like to add a sentence or two on the subject which Mr. Grace had addressed. By definition, a private club was one owned and operated by its members. That definition had been disregarded. The Council had been told that the internal operation was none of their business. He respectfully disagreed and felt that it was very much the Town's business. In correspondence the Town Attorney had said that he was satisfied that the corporate requirement had been met, without identifying the shareholders. It looked very much like this was going to be Mar-A-Lago Club, Inc., a/k/a Donald J. Trump, Inc. That was something which was not permitted by the Zoning Ordinance.

Mr. Winterfield then spoke on several minor items. There had been talk about the various categories of people using the Club. He submitted that a person using a club, no matter what label he was using, created the same amount of traffic. Therefore, when the annual audit took place, each one of the categories should be considered. He was concerned about two other details: the Application had been for a Club. The Application had not been for mixed use. There were guest suites contemplated in the Agreement. Mr. Winterfield respectfully submitted that use of any of the facilities of the Club, other than as guest suites, should not be allowed. In particular, if the Club was not offering facilities for a large part of the year, that would not mean that, because the facilities were not being offered, it could then be used as a residence. Mr. Winterfield thought it incumbent upon the Town Council to make that clear. Finally, Mr. Winterfield suggested that it would be very helpful if the Town Council had an opportunity to review all of the closing documents before authorizing the issuance of a Certificate of Occupancy and the Occupational License.

Mrs. Smith thanked Mr. Winterfield and asked if there were any other members of the public wishing to speak?

Mr. Joel Kopell, Attorney, next addressed the Town Council, stating that he had practiced in the area for 21 years, and represented Mr. and Mrs. Leonard Schneider who resided across the street from the Mar-A-Lago Club. He had been asked by Mr. and Mrs. Schneider to monitor the hearings on Mar-A-Lago, and he wished to commend the Council, as well as Mr. Trump, on preserving Mar-A-Lago. He considered it as a tribute to the Town. His clients were pleased that there would be a Club in their neighborhood that they could walk to, and that this estate would be preserved. He proposed a round of applause to the Town for its consciousness in watching very carefully how this had been done, and for Mr. Trump in making certain that decisions were followed to such a degree. He wished to thank and commend everyone involved.

Mrs. Smith thanked Mr. Kopell and asked if there were any other members of the public wishing to speak?

There were none.

Mrs. Smith then asked Mr. Rampell about the remarks made on Chapter 8-- had Chapter 8 been excluded from the final papers and if so, what did that do to the formation of the Preservation Committee that had been directed in Chapter 8--that the president should appoint, subject to approval of the board, a Preservation Committee, consisting of not less than 5 nor no more than 10 individuals. One member should be an architect, with expertise in preservation; one member should be nominated by the Landmarks Preservation of the Town; and one member should be nominated by the Director of the Division of Historical Resources, Florida Department of State. She inquired as to whether that provision was now gone?

Mr. Rampell responded that provision remained intact.

Mrs. Smith asked if he was saying that Chapter 8 was intact in the By-Laws?

Mr. Rampell responded that it had been supplemented by the requirements that Donald Trump pay operating deficits, that all members execute an acknowledgement that their membership was subject to the terms of the Declaration of Use Agreement, and that fiduciary accounts be maintained into which 10% of the revenues of guest suites be deposited.

Mrs. Smith responded by inquiring whether the provisions in Chapter 8, Articles 1, 2, 3, 4, 5, 6, 7, 8, 9--all of those reviewed by the Council in 1993 were in the Agreement?

Mr. Rampell replied that they were not in the Declaration of Use Agreement. They were specifically excluded because the Town Council had not voted that the Club must follow any particular format of By-Laws.

Mrs. Smith asked if they were in the papers that were presented to the Council?

Mr. Rampell replied that many papers were presented to the Council. For instance, in the Application they had proposed that members of the Bath and Tennis Club receive privileges of use at Mar-A-Lago. Many things were objected to and many things were modified. There were multitudinous conditions placed on them, and they had attempted to operate the Club in a manner in which sufficient revenues were generated. The By-Laws were not irrevocable. Whatever the By-Laws may be one day, could be changed the next day. He thought the focus on the By-Laws was totally improper, and he resented any implication that during the course of the public hearings any representations were made to the Town Council, because none were made to the Town Council. Chapter 8 was explicitly excluded because it was not a question to be determined by the Town Council as to whether or not this was an equity club, a non-equity club; whether there were Class A shares, Class B shares, or anything of that sort.

Mrs. Smith asked if there was a Preservation Committee in the By-Laws?

Mr. Rampell responded that there was, and it was their expectation that there would always be an internal Preservation Committee.

Mr. Randolph stated that the minutes of June 1, 1993, spoke to the issue of the Chapters that were included, where it was noted that there was a provision which stated that Chapters 2, 3, 10 and 11 of the Application were incorporated and that was the meat of the Application. Mr. Randolph continued that he had reviewed all of the documents preceding the final document, and he had noted that Chapters 2, 3, 10, and 11 were included from the beginning. Chapter 8 was never mentioned. At that same meeting, however, Mr. Randolph remarked that he had noted that the Agreement incorporated 2, 3, 10, and 11, but that perhaps Chapters 5 and 6 should also be included, which included the inventory of the buildings and the landscaping. The ultimate Agreement did include Chapters 2, 3, 5, 6, 10 and 11. Mr. Randolph said that he did not take the position that Chapter 8 was necessarily included in the Declaration of Use Agreement. The reason for that, he said, was because Chapter 10, part of the Declaration of Use Agreement, referred specifically to Chapter 8. The reason he had not paid a great deal of attention to the provisions of Chapter 8 was that there was a provision in both the Rules and in the By-Laws, which provided that those Rules could be waived or amended by the Club. He had reviewed all of the minutes, and he had extracted from them conversations which related to those portions of the Agreement that he felt the Council found significant enough that they did not want to have them revoked. It was because of that reason it had been asked that the By-Laws and Rules be amended to include those provisions, and that those provisions not be revocable or amended.

Mr. Randolph addressed the statement made that it was simply not allowed to have this Club operated other than by shareholders. That was not his interpretation when he looked at the definition of "Club" in the Town Code. That definition indicated that a club was to be owned and operated by a corporation or an association of persons. That was why it had been transferred to a corporation.

As to the point on Town persons, Mr. Randolph agreed that it may be a misnomer to title the affidavit an Affidavit of Town-Serving Usage. He pointed out that the Application and the minutes always talked about Town-serving usage. In one point in the June 3, 1993 minutes, Mr. Moore had made a comment that a very definite part of the Application was that they would have to submit annually a statement that 50% or more of the members were Town persons. The Declaration of Use Agreement went beyond that--Town persons were defined in the Code very liberally to provide it could even mean persons staying at accommodations within the Town. That definition of Town persons would not be accepted for purposes of the Affidavit, because the Declaration of Use Agreement required

that these persons maintain residences in the Town of Palm Beach. It was not intended that the Affidavit be a Town-Serving Affidavit in the strict sense of the word. He remarked that if the use of the word "Town-Serving" was a problem in the title, perhaps it could be taken out of the title.

Mrs. Smith asked Mr. Randolph what the next step in the process would be?

Mr. Randolph replied that he did not know whether there would be a closing tomorrow or not. He had been advised that there was one, however, that was not relevant to the Council. What was relevant, he said, was that a Certificate of Occupancy would not be requested from the Town until all of the items discussed had been taken care of. He anticipated receiving fully executed copies of the Preservation Deed, the Deed from Donald Trump to Mar-A-Lago, the Mortgagee's Consent on the Declaration of Use Agreement, and those other things mentioned in his list he had read initially.

Mr. Moore stated that he wanted to make the record clear in that the number of trips per day was 313 not 319.

Mayor Ilyinsky asked Mr. Randolph who would attend the closing?

Mr. Randolph replied that he anticipated attending the portion of the closing relating to the Town.

Mr. McDonald made a motion for adjournment. The meeting was adjourned at 11:25 A.M.

Mary A. Pollitt
Town Clerk

Prepared By:
Sue Eichhorn