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February 12, 2018

**Via Email**

Honorable Gail Coniglio, Mayor, and  
Town Council of Town of Palm Beach  
360 South County Road  
Palm Beach, FL 33480

**Re: Zoning Case # Z-17-00020 - Continued Objection to Modified Application for  
Special Exception (With Site Plan Review) to Change of Use of 264 and 270  
South County Road to Private Club and for Special Exception for  
Supplemental Off-Site Shared Parking**

Dear Mayor and Town Council:

As you know, our office represents John and Lory Volk, the owners of 206 Phipps Plaza, John and Pamela Schaefer, the owners of 240 S. County Road, Apt. 5, Katherine Bryan, the owner of 235 Phipps Plaza, and Bradley and Catharine Geist, the owners of 234 Phipps Plaza ("Neighboring Property Owners"). As detailed within our prior correspondence, the Neighboring Property Owners believe there are a series of fatal flaws which prevent the above Application for the proposed Carriage House Club ("Club") from being approved.<sup>1</sup> At the same time, while many of the recent resident objections are rightfully focusing on the large number of members and guests, and the overwhelming parking issues from the vast intensification of use from combining the 264 and 270 South County properties, often overlooked is the question of whether the Carriage House actually meets the goals and purposes of the C-TS Town Serving zoning district, and whether the Applicant has provided the Town Council with credible documentation supporting any such compliance. Without competent substantial evidence demonstrating the proposed Club would be Town Serving, the Application must be denied.

**Carriage House Club Does Not Meet Express Purpose of C-TS Zoning**

The 264 and 270 South County Properties are located in the C-TS, Town Serving zoning district. As set forth in Section 134-1106 of the Town Code ("Code") the purposes of the C-TS town-serving commercial district are to:

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<sup>1</sup> Once again, rather than repeating each and every one of the arguments contained therein, the Neighboring Property Owners incorporate by reference any and all of their prior communications, including correspondence, emails or otherwise to the Mayor, Town Council, Town Attorney and Staff regarding Zoning Case # Z-17-00020.

(1) *Create, preserve and enhance* areas of attractive, *small scale*, retail, personal and professional/ business services ... providing for the frequently recurring need of townspersons.

(2) *Enhance the general character* of the district *and its compatibility with its residential surroundings* and therefore, ... retail drive in facilities are not permitted and in order to maintain the town serving nature of the district, limitations on gross leasable floor areas (GLA) are imposed.<sup>2</sup>

On its face, the Carriage House Application represents the exact opposite. By incorporating over 6,000 square feet (of formerly retail and residential space) of the 270 South County Property into the existing 264 South County Property the Application represents a huge intensification in size and use, in that:

- At 11,000 GLA, the combination of the 264 and 270 South County Properties represents over three times the maximum 3,000 GLA established for the C-TS zoning district.<sup>3</sup>
- The change in the use of the 270 South County Property represents an increase in intensity of use from retail and residential apartment use to a club use.
- The inclusion of the 270 South County Property creates an intensification in the hours of operation from retail hours of 9:00 am to 6:00 p.m. to the late night hours requested by the Applicant.
- The inclusion of the 270 South County Property increases the vehicle trips and parking requirements from the three residential apartments.
- The hours of the 264 The Grill were limited from 11:30am to 11:30pm all week, while the proposed much larger Club is seeking hours of 11:00 a.m. to 12:00 midnight from Monday to Wednesday and from 11:00 a.m. to 2:00 a.m. from Thursday to Saturday.<sup>4</sup>
- The number of proposed seats for the Club will over double from the 118 seats of the former 264 restaurant to at least 244 seats, and potentially more during special events.

Clearly, the above intensification of use does not “*create, preserve and enhance*” the *residential surroundings* near the Club. Instead, the Neighboring Property Owners and residents of Phipps Plaza will be forced to bear the direct brunt of a 244 member Club, including the additional noise, light, and smells of its restaurants and bars and music until late in the evening along with the inevitable traffic and parking issues. As such, the Application does not meet the express purposes of the C-TS Town Serving zoning district and should be denied.

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<sup>2</sup> Businesses within the C-TS district are limited to a maximum of 3,000 square feet gross leasable space (GLA).

<sup>3</sup> While the Applicant has argued that the “useable square footage” of the Club is only 7,600 not 11,000 square feet, such an argument misses the point that the C-TS zoning district specifically sets a maximum *gross* leasable area.

<sup>4</sup> The proposed hours of the Club also exceed the 12:00 midnight closing time for commercial operations within 50 feet of residential property as set forth in Section 22-273 of the Code.

**Continued Failure to Provide Adequate Town Serving Documentation**

Because of the potential for a business to detract from, rather than benefit a surrounding neighborhood, applicants in the C-TS district must demonstrate to the Council's satisfaction that the proposed use actually benefits of the Town and its residents as opposed to drawing the source of its business from primarily off the island. As such, Section 134-229(12) of the Town Code requires that:

(12) ... The applicant *shall submit evidence* satisfactory to the town council *that not less than 50 percent of the customers<sup>5</sup> of the proposed use will be town persons. Evidence* submitted in support of this contention *shall include credible data or information suitable for review by the town to determine the credibility and the appropriateness of the applicant's conclusion.* The submittal *shall include* a description of the types of information used and the methodology employed to arrive at the conclusion. *Information used shall include, but shall not be limited to, lists of customer/client addresses or certification thereof by an independent certified public accountant* approved by the town, *market studies* prepared by independent professional firms, or data from similar operations under the control of the applicant.

Previously, the Applicant provided a "Town Serving Report" describing the location, the Palm Beach Style, the Phipps Plaza history and the vision of the Club without ever providing any "evidence" that *"50 percent of the customers of the proposed use will be town persons."* Instead, the "Report" indicated that "Membership at the Carriage House will be limited to by invitation only *with preference offered to Palm Beach resident and business members.*" (emphasis added).

As recently as the February 2, 2018 Staff Report, Mr. Castro indicated that "[t]o date, Staff has not received any Town-serving documentation from the Applicant." Included in the Application backup, however, is now a "Town Serving Analysis for Carriage House Club in Palm Beach Florida" by "Fishkind & Associates Economic Consultants." ("Report"<sup>6</sup>) The most cursory of reviews of the Report, however, shows that it does not *"include credible data or information suitable for review by the town to determine the credibility and the appropriateness of the applicant's conclusion."* Likewise, the Report does not provide customers lists, documents provided by a certified public accountant, or even an actual market study of private clubs in the Town to support its findings. Instead, on its face:

- The Report is not authored by an individual with established credentials. Instead it is merely sourced from Fishkind & Associates, Economic Consultants. Without an individual with a CPA, MBA, or a degree in marketing collecting the data, making an analysis, and putting their signature and credentials on the bottom line, the Town cannot

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<sup>5</sup> On its face, Section 134-229(12) requires a Town Serving report to demonstrate that 50% of customers, not just members, will be townpersons.

<sup>6</sup> A courtesy copy of the Report is attached hereto.

determine its credibility and the Report should not be considered.<sup>7</sup>

- The Report is incomplete as its entire “analysis” is based upon “a private club” called “Carriage House” without ever describing the membership restrictions or requirements for the Club. Clearly, an economic analysis of a private club with an initiation fee of \$50,000 and annual dues of \$25,000 based upon a personal net worth of \$1 million is much different than a club with an initiation fee of \$200,000 with \$100,000 in annual dues and a personal net worth requirement of \$10 million or more. The scope of the potential members of each club would be much different. Without knowing this information up front any “conclusion” reached by the Report is specious.
- The Report is based upon the fact that “similar existing membership clubs” are located in the Town. Thereafter, the Report makes the broad assumption that the mere existence of such clubs “demonstrates the viability of the private club concept.” Whether other clubs in the Town “exist” (many of which are located in different zoning districts and serve widely different purposes) is irrelevant, as it does not demonstrate that *this* proposed Club will be viable at its proposed location, much less that it meets the Town Serving standards. As such, any reliance on “similar existing membership clubs” to demonstrate is flawed.
- Furthermore, the assumption the proposed Carriage Club would be “viable” just because there are other clubs in Town raises different issues which have gone unaddressed. With a limited number of “townspeople” and seven already existing private clubs, a market analysis would be needed (but one is not included) to show whether the market for private clubs in the Town is already saturated. There are only so many residents and “townspeople” in the Town, many of whom do not want to (or cannot afford to) be members in multiple private clubs, from which the Carriage House can draw. Again, such information would need to be known prior to making any “conclusion” that the Carriage House would be even viable, much less Town Serving.
- The Report is based upon an incorrect assumption that at “least 50% or more of the 244 *memberships must be Townspeople* to meet the Town-serving criteria.” The Town Serving standard is clearly based upon “customers” not “members” much less “memberships.” Furthermore, the repeated use of the word “*memberships*” (41 times) in a 10 page Report (excluding the Appendix) when compared to the use of the word “member” (3 times) raises serious concerns over what constitutes a “membership” and how is it different from a “member?” Does a membership include only an individual? Does the term include immediate family (such as a spouse and children), or does it also include extended family members (such as in-laws, grandparents and grandchildren)? Can a membership be held by a corporation? If so, who is allowed to use the membership? Can employees, staff and clients use a corporate membership? Without knowing the definition and scope of a “membership” the Report is meaningless and cannot legitimately purport to conclude the Club is Town Serving.

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<sup>7</sup> While in the past Mr. Fishkind has authored such “reports,” there is no indication he has done so in this instance. Furthermore, Mr. Fishkind is an economist, without a degree in accounting or marketing. As such, at best any such analysis he may be able to give is based upon a statistical likelihood not an actual study of specific project.

- The Report is based almost exclusively upon the application of certain “capture rates” to potential Club members including: a) walking distance employees (1.00%); b) driving distance employees (0.50%); c) permanent high value households (0.50%); and d) seasonal high value households (0.50%). Nowhere is the basis for any such “capture rates” explained, much less tied to any accepted industry standards. As such, there is no competent basis to judge whether the application of such capture rates to the numbers provided have any validity.
- The Report is based upon an alleged 11,638 “walking distance employees,” as set forth in an attached 16 page “esris business locator,” from which the Report concludes that 116 Club members could be found at a 1% capture rate. However, simply adding up the employees identified in the attached 16 page “business locator,” shows only 2,347 employees within walking distance of the Club, far fewer than represented in the body of the Report. Therefore, even if all of employees actually identified were subject to a 1% capture rate there would be only 22 “walking distance employee” members. As a result, the attachments to the Report does not support its ultimate conclusion.
- Even if the vastly inaccurate number of walking distance employees could be overlooked (which it cannot), the Report is still flawed, as it is based upon the assumption that 116 Memberships will be sold to “walking distance employees” when large numbers of such “walking distance employees” are public employees, teachers, in the service industry, and/or are in are of types of employment which clearly does not match the typical criteria of “member” sought by or who can afford to join what the Applicant describes as a “luxurious, high-end, exclusive Private Members Club.” For example, included in just a sampling of the “walking employees” who are assumed will buy memberships are: 73 school teachers from Palm Beach Day School, 30 Salon techs from Salon Margrit, 10 employees from Dish Network, 85 service employees from Café L’Europe, 100 service employees from Café Boulud, 39 employees of the Town Council, 50 employees of Crown Lift Trucks, 108 members of the Town Police Department, numerous other Town Hall employees (ranging from Firefighters and Lifeguards to Code Enforcement, the Recreation Department employees and even a Special Investigator), along with employees of multiple charities (such as the Boys and Girls Club and the American Red Cross), and small businesses (such as the Sunoco station, South Ocean Pharmacy, JD’s Pest Control and All Brand Vacuum Cleaners). The inclusion of such “questionable” employees in the pool of potential Club memberships makes the Report all the more suspect while removing them from the pool makes the Club clearly not Town Serving. Conversely, adding all of the lawyers (even at other locations), accountants, financial and bank employees along with architects, engineers and any other professional employees on the walking distance employees results in a pool of 985 potential members for the Club. Applying the 1% capture rate would equate to only 10 members. As such, the Club would not meet the Town Serving standards.<sup>8</sup>

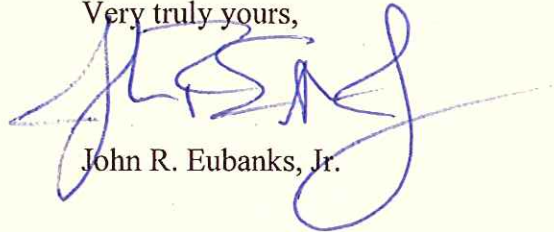
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<sup>8</sup> While the Report further assumes that 26 Club members will come from “driving distance employees,” there is no list of such potential employees attached to the Report so there is no way for the Town Council to verify such conclusion.

- As with the assumption that 116 potential Club members will come from “walking distance employees” the Report’s conclusion that at least 8 Club members will come from either permanent or seasonal “high value townspersons” with at least a \$2.5 million property value is also questionable given that: a) property values have risen sharply in recent years; and b) property values do not directly translate into high income individuals, with excess income who want to join a private club. At the same time, again, there is no study identifying how many of such potential “high value townspersons” already belong to one of the existing clubs in Town.

Using a series of questionable assumptions and unanswered questions, coupled with no set market standards, the Report does not provide “*credible data or information ... to determine the credibility and the appropriateness of the applicant's conclusion*” much less competent substantial evidence that the Applicant has met the Town Serving requirements of the C-TS zoning district. As a result, the Neighboring Property Owners (again) request that you deny the Carriage House Club Application.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Eubanks, Jr.", with a large, sweeping flourish extending to the right.

John R. Eubanks, Jr.

cc: Paul Castro, Zoning Administrator  
John C. “Skip” Randolph, Esq.  
Town Clerk, Town of Palm Beach (via Email & Hand Delivery)