

LAW OFFICES  
**ALLEY, MAASS, ROGERS & LINDSAY, P.A.**

340 ROYAL POINCIANA WAY, SUITE 321

POST OFFICE BOX 431

PALM BEACH, FLORIDA 33480-0431

(561) 659-1770

FACSIMILE (561) 833-2261

WWW.AMRL.COM

ALAN LINDSAY  
DAVID H. BAKER  
WILLIAM W. ATTERBURY III  
LOUIS L. HAMBY III  
ROBB R. MAASS  
M. TIMOTHY HANLON  
WARREN D. HAYES, SR.  
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CHRISTINE BIALCZAK  
WARREN D. HAYES, JR.  
NICOLE K. MAASS  
LAURA B. KNOLL

RAYMOND C. ALLEY (1893-1975)  
HAROLD G. MAASS (1923-2006)  
DOYLE ROGERS (1928-2016)  
KAREN S. MARX (1964-1994)

1331 SE OCEAN BOULEVARD  
STUART, FLORIDA 34996  
P (772) 287-4404  
F (772) 287-4044

August 8, 2019

**BY E-MAIL**

Madam Mayor and Members of the Town Council  
Town Hall  
Council Chambers - - Second Floor  
360 South County Road  
Palm Beach, Florida 33480

**Re: Staff Recommendation Related To Appeal By 100  
Emerald Beach Way LC As To ARCOM Authorization  
Of Permit For Ten "No Parking/Tow Away" Signs on  
Private Property Owned By John and Margaret Thornton**

Dear Madam Mayor and Town Council Members:

This Firm serves as counsel to John L. Thornton and Margaret B. Thornton (together, "Thorntons"), the owners of 1236 South Ocean Boulevard ("1236"), on which are located ten (10) "No Parking/Tow Away" signs as to all of which ARCOM has recently authorized issuance of a permit, and for which the Building Department of the Town of Palm Beach ("Town") has also issued a building permit. The Thorntons respectfully submit this paper in further opposition to the appeal by 100 Emerald Beach Way LC ("100 LC") of two administrative decisions made by the Town, as described in the letter of Amanda Q. Hand, Esq., dated May 14, 2019, as supplemented by her subsequent letter, dated July 2, 2019. In addition, this paper is specifically directed and objects to the "Staff Recommendation," contained in a two-page Memorandum from Joshua Martin, Director of Planning, Zoning and Building, to the Mayor and Town Council, via Kirk W. Blouin, Town Manager, dated July 1, 2019 and revised on July 9, 2019, that "the Town Council ... require the respective signage be removed." For the reasons set forth below and in the remainder of the record of this matter, the Staff Recommendation, as the instant appeal, entirely lacks merit and should be dismissed.

### **PRELIMINARY STATEMENT**

The Staff Recommendation essentially takes the position that a private street owned by the Thorntons on which the challenged signage is located, although private property, is, under the Code of Ordinances ("Code") of the Town of Palm Beach ("Town"), a "Street" on which the Thorntons are barred, under that same Town Code, from placing any signs. In sum, if the Town Council were to adopt the Staff Recommendation, it would necessarily have to grant the instant appeal. Such a decision by the Town Council, as we demonstrate below, would be gravely in error for the following reasons:

- The Thorntons' private street is not a "Street" under the Town Code, because it plainly is not "intended for general traffic circulation," as required under Town Code Section 134-2.
- Moreover, if the Town Council were to decide that the Thorntons' private street is a "Street" under the Town Code, that decision would blatantly violate and conflict with State law. Simply put, since the State definition of "Street," as contained in Florida Statutes, Section 177.031(17), demonstrably excludes the Thorntons' private street and the ingress/egress easement existing over it, that State provision "preempts" the divergent Town Code definition of "Street."
- Further, were the Town Council to abide by the definition of "Street" in the Town Code and conclude that said definition covers the Thorntons' private property, that decision would run afoul of Florida Statutes, Sections 715.07(2) and 715.07(5) and, in fact, strip the Thorntons of their right under State law to cause vehicles unlawfully parked on their private street to be towed away, if they post the requisite signage nearby. Otherwise put and for that reason, State law again preempts and nullifies any decision by the Town Council barring the Thorntons from placing such signage on their private property.

In sum, the Town Council **is required to** reject the Staff Recommendation pursuant to governing State law and, in so doing, **is required to** deny the instant appeal.

### **PERTINENT FACTS AND PROCEDURAL BACKGROUND**

The Thorntons and 100 LC, which is unquestionably and completely controlled and dominated by Bradley Jacobs and Lamia Jacobs (together, "Jacobs"), own adjoining oceanfront estates in Palm Beach. It is undisputed that the Thorntons' estate is, and has been since early 2009, their homestead, and that the Jacobs reside in Connecticut and visit their property for approximately two months annually. The Jacobs' estate and part of that of the Thorntons are within the three (3)-Lot Emerald Subdivision ("Subdivision"), which itself is governed by The Replat Of The Replat Of The Emerald ("TRTRTE"), a copy of which is annexed as Exhibit A. 100 LC is the record owner of the

easterly Lot 3 of the Subdivision. The Thorntons own Lot 2, now part of 1236, by virtue of a Unity of Title Agreement ("UTA"), dated December 28, 2016, a copy of which is annexed as Exhibit B. And, SMM Realty, LLC ("SMM") owns Lot 1, which is just west of Lot 2.

Running west to east through the Subdivision from the public thoroughfare (South Ocean Boulevard) to the front gate of the Jacobs' Lot 3 is a private street owned by SMM and the Thorntons known as "Emerald Beach Way" ("EBW"), formerly called "Ocean Woods Drive." See Ex. A. 100 LC owns no part of EBW, over which it has **only** an ingress/egress easement, as do the other Subdivision residents. TRTRTE, indisputably the current plat, leaves no doubt that the portion of EBW that the Thorntons own is included within the boundaries of Lot 2, which, of course, is now legally subsumed under and within 1236 as one property pursuant to the UTA. See Ex. B. Otherwise put and as a matter of law, the Thorntons' part of EBW, and Lot 2, and the former 1236 comprise, as they all have for over two-and-one-half years, **one property termed herein "1236."**

It is further irrefutable that ten (10) of the fourteen (14) signs of which 100 LC is complaining upon this appeal are located on 1236.<sup>1</sup> In fact, those signs are the successors of other "No Parking" signs that have been in plain sight, as the Jacobs well know, on the Thorntons' property since in or about January 2009. Those initial signs remained in place for over nine years, until July 2018, when the Thorntons replaced them with the subject ten signs, all reading "No Parking ... Private Property ... Unauthorized Vehicles Towed Away."

The major reason that the Thorntons, in the first place, put signage on their property - - and keep it there today - - has been and is the reality that the Jacobs/100 LC have seen fit to cause all manner of vehicles (their own, their guests', and their business invitees') to either park and/or stop on the Thorntons' private street, EBW, without consent. The illegality of that parking is now settled. On or about April 8, 2019, Honorable Joseph G. Curley of the Palm Beach County Circuit Court, issued an Order ("April 8 Order"), a copy of which is annexed as Exhibit C, holding that such parking violates longstanding Florida law and must cease. Nevertheless, the Jacobs/100 LC still contend that such vehicles - - at their behest - - have a right to stop on the Thorntons' property, notwithstanding the April 8 Order.

In any event, there is no dispute that a wide variety of vehicles have seen fit - - at the direction of the Jacobs/100 LC - - to park and stop on the Thorntons' private street **for roughly a decade**. Annexed as Exhibits D through P, respectively, are copies of photographs of such vehicles taken in the relevant period, including those of a "cherry-picker" trimming trees (Ex. D), sedan being serviced by a mobile car-washing vendor, with a pick-up truck nearby (Ex. E), pick-up truck unloading goods (Ex. F), heavy duty truck, pick-up truck, and "sedan" all parked simultaneously (Ex. G), vehicle with a

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<sup>1</sup> Four of those signs are located on the property of SMM, Lot 1 of the Subdivision, west of a portion of 1236. Those four (4) signs are *not* the subject of or in any way properly involved in this appeal, and the Thorntons take no position with respect to them.

license plate reading "NASTY 4 I" (Ex. H), unloaded storage containers being tugged by a truck (Ex. I), large dump truck and at least two other smaller vehicles together all at one time (Ex. J), a pick-up truck and huge (apparently) 14-wheel truck hauling a very sizable load (Ex. K), large truck belonging to a Jacobs' vendor (Carswell Landscape, Co.) (Ex. L), and sundry other vehicles (Exs. M, N, O, and P, respectively). **ALL WERE ILLEGALLY PARKED ON THE THORNTONS' PRIVATE PROPERTY.** One does not need a vivid imagination to see the safety and liability risks to the Thorntons tied to these unlawfully parked vehicles, especially given that the Thorntons have raised young children at 1236. Nor is a meretricious license plate fit for children's eyes. See Ex. H. Moreover, as has often been the case, the presence of such vehicles on EBW on weekends and/or after business hours has engendered substantial security concerns for Mrs. Thornton and her children, especially when alone in their homestead.

Since the portion of EBW located on 1236 is private property owned by Mr. and Mrs. Thornton, they must have the right to remove illegal trespassers and protect their private property rights. On a related note, as incontestably has occurred over the years and several times recently, there have been and are issues with trespassers on and along EBW, who wish to use that private street to park near, and get to, the beach and ocean or to conduct business thereon or at 100 EBW. In fact, as the Jacobs/100 LC are surely cognizant, there have been at least two (2) such significant incidents in the past few months. Again, the safety, security, and liability risks and issues attendant to trespassers, both with vehicles and without, could hardly be more evident. Therefore, it should come as no surprise that the Thorntons have placed appropriate signage on their property for over ten (10) years now, with, as noted, the ten (10) current signs being positioned there roughly two (2) years ago.<sup>2</sup>

In or about May 2018, Paul Colby, then the Town's General Maintenance Supervisor, recommended those ten (10) signs. However, on or about March 19, 2018, the Town Council adopted a new Ordinance as to printed signs on certain streets. On or about April 1, 2019, the Thorntons received a "Notice of Violation" as to ten (10) signs, requiring removal by April 16, 2019 or, alternatively, a hearing before the Code Enforcement Board ("CEB") on May 16, 2019. Accordingly, Margaret Thornton - - as was and is her and every other Town resident's right - - met with certain Town officials on April 8, and the Thorntons, through counsel, on or about April 12, 2019, timely filed an application with ARCOM for Staff approval of all of the subject signs. ARCOM Staff issued that approval on or about April 23, 2019. As a result, a building permit for all of those signs, a copy of which is annexed as Ex. Q, was thereafter issued.

On or about May 14, 2019, the Jacobs/100 LC filed the instant appeal and then supplemented it through their counsel's letter, dated July 2, 2019. On or about July 9, 2019, the Thorntons submitted a detailed paper opposing that appeal ("July 9 Letter"). Literally the evening before the Town Council meeting set for the morning of July 10,

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<sup>2</sup> Also in July 2018, the Thorntons caused a number of "No Parking" legends to be stenciled on their part of EBW. It is undisputed that all of that stenciling has been removed.

2019, the Staff Recommendation surfaced and stated, in pertinent part, as follows (emphasis supplied):

Finally, in my original review of Section 134-2373(5), General Regulations and definitions applicable to permitted signs, which reads *"No sign other than an official traffic sign erected by the town, Palm Beach County, the State of Florida, the United States government and/or any agency thereof shall be erected within the right-of-way lines of any street or public way, nor shall any sign or banner be hung on, from, or beneath any canopy, awning or marquee,"* I read the aforementioned section to apply to those "public" streets or rights-of-way given the official traffic nature intent. However, since the Administrative Appeal was received and I conducted a second, comprehensive review of the Zoning Code and in definition of "street" I found the following: "Street means a facility, either public **or private**, that affords the primary access to abutting property and that is intended for general traffic circulation. A street includes the entire area between street lines (right-of-way lines), including provisions for culs-de-sac."

As a result, I recommend that the Town Council overturn my interpretation of the Zoning Code and to require the respective signage be removed. ...

Because the Staff Recommendation emerged hours before the scheduled July 10 hearing upon the instant appeal, it was decided that said hearing should be adjourned until the next Town Council meeting, on August 14, 2019, by which point the affected parties and Town Council members would have the time to fully address and consider all issues raised by the Staff Recommendation as related to that appeal.

Thus, the Thorntons hereby respectfully submit this paper in response and as an objection to the Staff Recommendation. And, they stand on the July 9 Letter otherwise in opposition to the appeal of 100 LC and the Jacobs. The Thorntons, through counsel, look forward to discussing relevant issues with the Town Council at its August 14 meeting.

## ARGUMENT

### I

#### **EBW IS NOT A "STREET" UNDER SECTION 134-2373(5) OF THE TOWN CODE.**

The Staff Recommendation appears to be premised on two Sections of Chapter 134 of the Town Code. The first, Section 134-2373(5), states, in pertinent part, as follows (emphasis supplied):

No sign other than an official traffic sign protected by the town, Palm Beach County, the State of Florida, the United States government and/or any agency thereof shall be erected within the right-of-way lines **of any street or public way. ...**

The second, Town Code Section 134-2410 (as to "Tow-away signs"), provides, in pertinent part, as follows:

Tow-away signs shall not be allowed on private property appurtenant to or obviously a part of a single-family residence.

For reasons illuminated in the July 9 Letter, Section 134-2410 is preempted by State law and is otherwise irrelevant to further discussion here. However, Section 134-2773(5) requires close scrutiny. Under related Town Code Section 134-2, the definition of "Street," as used in Section 134-2373(5), is set forth as follows (emphasis supplied):

*"Street"* means a facility either public or private, that allows for primary access to abutting property **and that is intended for general traffic circulation. ...**

It is the Thorntons' considered position that EBW, where the challenged signs are indisputably all located, is **not** a "Street" under this definition and so is excluded from the reach of Town Code Section 134-2373(5). There is no doubt but that EBW is a private street owned by two property/Lot owners within the Subdivision, SMM and the Thorntons. The Jacobs and 100 LC do not have any ownership interest therein and possess only an ingress/egress over EBW. No reasonable person could contend that this private street is "intended for general traffic circulation." The only parties who have a legal right to be on EBW are the Jacobs/100 LC (as the owners of Lot 3 and its aforesaid easement) and EBW's two owners (SMM and the Thorntons). All others are trespassing once they enter on to EBW, unless there by invitation or on consent. But, such invitation and/or consent surely does **not** constitute an intention to allow "general traffic circulation."

Three recent developments buttress this conclusion. First, in his April 8 Order, Circuit Court Judge Curley plainly held that the Jacobs/100 LC, as the beneficiaries of the aforementioned easement, were not allowed to park vehicles on EBW. On a thoroughfare “intended for general traffic circulation,” such an Order would have been unthinkable and never have emerged.

Second, in connection with recent motion practice in a suit 100 LC and the Jacobs have filed against the Town and the Thorntons, in the same Circuit Court before the same Judge Curley, seeking a Writ of Mandamus to compel the Town to issue to the Jacobs’ landscape vendor a permit to park on EBW, the Jacobs/100 LC filed both the Staff Recommendation and a Florida Attorney General Advisory Legal Opinion (“Opinion”), Number AGO 96-53, dated July 12, 2019, a copy of which is annexed as Exhibit B. The Opinion’s subject was “[p]olice enforcement of ordinances on private property.” The Opinion, “in sum,” stated as follows (emphasis supplied):

You have asked for my opinion on substantially the following question:

Does Chapter 316, Florida Statutes, authorize a municipal police officer or parking enforcement specialist to issue a traffic citation for vehicles parked on a private residential property (including, but not limited to, a private residential lawn) in violation of municipal ordinance?

In sum:

A municipal police officer or parking enforcement specialist **does not have the authority** under Chapter 316, Florida Statutes, **to issue a traffic citation for vehicles parked on a private residential property** in violation of municipal ordinance **since such property is not a thoroughfare or street upon which the public has a right to travel by motor vehicle.** However, vehicles improperly parked on private residential property which has been posted may be towed from that property at the property owner’s or lessee’s request pursuant to section 715.07, Florida Statutes, and a lien imposed for towing and storage under section 713.78, Florida Statutes. ...

The Opinion went on to explain its conclusion in the following manner (emphasis supplied and footnotes omitted):

**It is the availability of the area or place for travel and the right of general and common use which makes certain private property subject to public control** pursuant to Chapter 316, Florida Statutes. Thus, this office has determined that municipalities have enforcement authority with respect to traffic violation and accidents occurring in shopping centers and parking lots which are considered to be "streets and highways" upon which the public has the right to travel by motor vehicle. ... **However, no authority to enforce Chapter 316, Florida Statutes, exists on private residential property which may not be used by the public for motor vehicle traffic. ...**

The Opinion then summarized its central position, as follows (emphasis supplied):

Therefore, it is my opinion that a municipal police officer or parking enforcement specialist does not have the authority under Chapter 316, Florida Statutes, to issue a traffic citation for vehicles parked on private residential property in violation of municipal ordinance **unless the public has a right to travel by motor vehicle on such property.**

Third, the Thorntons, totally properly and lawfully, recently caused their portion of EBW to be repaved, repaired, and beautified. Had EBW been a "public" street, or one over which the Town had dominion and/or control, we submit that the Town would never have permitted such activity. To date, the Town has not objected, nor have the Jacobs/100 LC or SMM.

All in all, EBW is surely neither a "street" nor "public way" within the meaning of Town Code Section 134-2373(5). It is not a street, given that it is **not** "intended for general traffic circulation," and the general public is unquestionably prohibited from using it. And, as a private street owned by the Thorntons and SMM, EBW cannot be a "public way." The April 8 Order, the Attorney General's Opinion, and the Thorntons' recent repaving efforts reinforce these facts. As a consequence, with Section 134-2373(5) inapplicable, the Staff Recommendation is completely vitiated as a matter of fact and law and must be disregarded.



II

**FLORIDA STATE LAW PREEMPTS THE STAFF  
RECOMMENDATION'S STANCE THAT EBW  
IS A "STREET" UNDER THE TOWN CODE.**

If the Town Council were to adopt the Staff Recommendation, implicit in which is a finding that EBW is a "Street" within the meaning of Town Code Section 134-2, then the Town Council would be acting in violation of Florida State law. Moreover, and more significantly, that State law - - which in crystalline terms defines (as shown below) "Street" as *not* including EBW - - preempts the Town Code, as applied, in this matter.

Florida Statutes, Section 177.031(17) defines "Street," in pertinent part, in the following fashion (emphasis supplied):

"Street" includes any access way such as a street, road, land, highway, avenue, boulevard, alley, parking, viaduct, circle, place or cul-de-sac ... but **shall not include** those access ways such as **easements and rights-of-way intended for limited utility purposes, such as ... drainage ... and easements of ingress and egress.**

Thus, one needs to examine the State statutory definition of "easements" and "rights-of-way" to fully and properly interpret that definition. Florida Statutes, Section 177.031(7)(a) defines "easement" as follows:

"Easement" means any strip of land created by a subdivision for ... specified uses having limitations, the title to which shall remain in the name of the property owner, subject to the right of use designated in the reservation of the servitude.

The easement at issue here is surely for a "specified use having limitations" - - namely, ingress and egress - - and is subject to the rights of use held by the residents of the Subdivision, plainly set forth in the TRTRTE and easement itself, as follows (emphasis supplied):

Ingress and Egress Easement- The ingress and egress easement shown as Ocean Woods Drive is hereby **dedicated as a private street for ingress and egress to the residents of this**

**subdivision and for construction and maintenance of utilities and drainage.**

Therefore, this easement would seem to fit within the definition of "Easement" in Florida Statutes, Section 177.031(7)(a) and so be excluded from the State statutory definition of "Street." More clearly and more to the point, Florida Statutes, Section 177.031(16) defines "Right-of-way" as follows (emphasis supplied):

"Right-of-way" means land dedicated, decided, used, or to be used for ... **access for ingress and egress** or other person by the public, **certain designated individuals**, or governing bodies.

Just construing and applying the plain statutory language, then, EBW may be viewed *both* as an **easement** and a **right-of-way** specifically excluded from the definition of "Street" in Florida Statutes, Section 177.031(17) ("Street" ... **shall not include** ... those access ways such as **easements and rights-of-way intended solely for limited utility purposes, such as ... drainage, and easements of ingress and egress**") (emphasis supplied).

Consequently, were the Town Council to adopt the Staff Recommendation, it would effectively be blessing a definition of "Street" that drastically conflicts with the State statutory definition and State law. Such an outcome blatantly runs afoul of the established doctrine of preemption; that is, in the case of a conflict between State and local law, the former preempts (or trumps, excuse the pun) the latter. Indeed, and as illustrated in the July 9 Letter, such a decision by the Town Council would stand over one hundred (100) years of Supreme Court of the United States jurisprudence on its head. In *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178-79 (1907) ("Hunter"), the Supreme Court stated as follows (emphasis supplied):

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental power of the State as may be entrusted to them ... The State, therefore, at its pleasure may modify or withdraw all such powers ... expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. ... **In all these respects the state is supreme, and its legislative body, conforming its action to the state constitution, may do as it will**, unrestrained by any provision of the Constitution of the United States. ...

Some sixteen (16) years later, the Supreme Court expanded upon *Hunter*, in *City of Trenton v. New Jersey*, 262 U.S. 182, 189-90 (1923), as follows (emphasis supplied):

A municipal corporation is simply a political subdivision of the State, and exists by virtue of the exercise of the power of the State through its legislative department. The legislature could at any time

terminate the existence of the corporation itself, and provide other and different means for the government of the district comprised within the limits of the former city. **The city is the creature of the State. ...**

To be sure, under the Florida Constitution, municipalities have broad "Home Rule" powers to act for municipal purposes "**except as otherwise precluded by law.**" See FLA. CONST. Art. VIII § 2(b) (emphasis supplied). Moreover, the Municipal Home Rule Powers Act, Florida Statutes, Section 166.011, *et seq.*, provides that municipalities "shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, **except when expressly prohibited by general law.**" Fla. Stat., § 166.021(1) (emphasis supplied). See also *Miami Beach v. Fleetwood Hotel*, 261 So.2d 861, 863 (Fla. 1972).

The Supreme Court of Florida neatly encapsulated the legal principles salient to the issues at hand in *Thomas v. State*, 615 So.2d 468, 470 (1993) ("*Thomas*"), as follows (emphasis supplied):

Municipal ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute. As this Court stated in *Rinzler v. Carson*, 262 So.2d 661, 668 (Fla. 1972), "[a] **municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.**" Although municipalities and the state may legislate concurrently in areas that are not expressly preempted by the state, a **municipality's concurrent legislation must not conflict with state law. ...**

See also *Miami Beach v. Rocio Corp.*, 404 So.2d 1066 (Fla. 3d DCA), review denied, 408 So.2d 1092 (Fla. 1981).

These fundamental, entrenched principles control - - and doom - - any possibility of the Town Council lawfully and correctly adopting the Staff Recommendation insofar as the definition of "Street" goes. Both Sections 134-2373(5) and 134-2410 of the Town Code, as applied to the Thorntons in this matter, are in direct conflict with State law and are entirely preempted. State - - not local - - law is supreme in the premises. Municipal law must fail or be superseded, when it conflicts directly with State law by requiring what the State law prohibits or prohibiting what the State law requires. See *Thomas, supra*, 61 So.2d at 470. That is precisely what the Staff Recommendation, perhaps unwittingly, is trying to achieve. The Town Council should not be a party to such an egregious legal blunder.

Accordingly, the Town Council should reject the Staff Recommendation as preempted by State law, in the form of Florida Statutes, Sections 177.031(7)(a), (16), and (17). In short, since EBW is not a "Street" under State law, the Town Council should not treat it as such under the Town Code.

III

**ADOPTING THE STAFF RECOMMENDATION  
WOULD EFFECTIVELY GRANT THE INSTANT  
APPEAL, WHICH ITSELF IS ALSO PREEMPTED  
BY STATE LAW ALLOWING THE THORNTONS  
TO CAUSE VEHICLES PARKING ON THEIR  
PRIVATE STREET TO BE TOWED AWAY,  
IF THE REQUISITE SIGNAGE IS POSTED.**

It is obvious that if it were to adopt the Staff Recommendation, the Town Council would essentially be granting the instant appeal. For the same reasons that granting the instant appeal would contravene the preemption doctrine (See July 9 Letter at pp. 5-9), so too, would adoption of the Staff Recommendation. For this reason, we are constrained to repeat and reiterate much of what we contended in the July 9 Letter.

To begin, the adoption of the Staff Recommendation must fail, because such a step would unlawfully uphold the validity of a Town Ordinance that, as applied in this case, conflicts drastically and dramatically with State legislation. Otherwise and more precisely put, and in the particular context of this matter, if the Staff Recommendation is correct, then the Town Ordinance supersedes Florida Statutes, Sections 715.07(2) and (5) and prohibits the Thorntons from posting the "Tow Away" signs that said Section 715.07(2) requires, before they can enforce their State-provided towing rights over their private property. The Town Council cannot take from the Thorntons, or preclude them from exercising, a right expressly given under State law. Absent the signs, the Thorntons cannot cause vehicles illegally parked on their interior private street to be towed, making a mockery of Section 715.07, not to mention the Circuit Court's April 8 Order. The Town Council cannot properly and lawfully allow such a result to eventuate here.

At the outset, it is noteworthy that Florida Statutes, Section 715.07(2) states, in pertinent part, as follows (emphasis supplied):

**The owner ... of private property ... may cause any vehicle ... parked on such property without his or her permission to be removed by a person regularly engaged in the business of towing vehicles ..., without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage. ...**

Florida Statutes, Section 715.07(5) contains the following exception to that rule (emphasis supplied):

Except for property appurtenant to **and** obviously a part of a single-family residence, ... any property owner ..., prior to towing or removing any vehicle ... from private property without the consent of, the owner or other legally authorized person in context of that vehicle ..., **must** post a notice meeting the following requirements: ... (emphasis supplied).

Simply put, these two provisions, read together, provide the Thorntons with a **crystalline statutory right under Florida State law** to cause the towing of vehicles parked on their private property, but because the portion of their property that is EBW is neither appurtenant to its property **or** obviously a part of a single family residence, **they must post an appropriate notice advising the owners/operators of the parked vehicles of the towing possibility.**

This point makes a significant difference in the matter at hand. The reason is that, as is undisputed, all of the subject signs are located on 1236, "property" owned by the Thorntons. The signs are **not** on "property appurtenant to **and** obviously made a part of a single-family residence." While it might be contended - - without merit, we submit - - that the signs are on property that is within the boundaries of 1236, those signs are not **also** on property "appurtenant to" a single-family residence. In other words, the Staff Recommendation would have the Town Council read the Town Code to bar signs on "property" that is "appurtenant to the property," when the only property involved is 1236. Obviously, **1236 cannot be appurtenant to itself.** To read the Town Code as does the Staff Recommendation is to advance and promulgate palpable inaccuracy. Simply stated, Section 715.07(5) can only be reasonably and fairly interpreted to exclude 1236 and the subject signs from its language and purview. Thus, under Section 715.07, the Thorntons retain their towing rights so long as they post signs meeting statutory requirements. They are **not** exempted from that requirement. Section 715.07(5) controls and makes clear that they are not entitled to that exemption.

Second, and more important, EBW is not "obviously part of a single-family residence," as the Town Code mandates. Because it is a paved, private road, it is easily mistaken to be a public road or right-of-way separate from the 1236 property and the Thorntons' residence. The photographs attached as Exhibits D through P certainly show that many people have been treating EBW as if it were not a part of the single-family residence by parking and conducting business thereon.

As a result, adopting the Staff Recommendation would cause the Town Council to trigger a certain violation of State law and dispossess the Thorntons of their irrefutable right thereunder to cause the towing of vehicles unlawfully inhabiting their private property in appropriate circumstances. This, we submit, the Town Council should not do. In other words, the Town Council should reject the Staff Recommendation, follow controlling Florida law, and decline to elevate the relevant Town Code provisions to a status above and beyond their State counterparts.

**CONCLUSION**

For all of the reasons set forth above and in the remainder of the record of this matter, the Town Council should dismiss the instant appeal in every regard and decline to adopt the Staff Recommendation in all respects.

Respectfully,

Alley, Maass, Rogers & Lindsay, P.A.

By: 

M. Timothy Hanlon

Enclosures

cc: John L. Thornton  
Margaret B. Thornton  
James J. McGuire, Esq.



EXHIBIT "B"



CFN 20160458337

DR BK 28800 PG 0135  
RECORDED 12/29/2016 15:57:34  
Palm Beach County, Florida  
Sharon R. Bock, CLERK & COMPTROLLER  
Pgs 0135 - 138; (4pgs)

This instrument prepared by  
M. TIMOTHY HANLON, ESQ.  
Alley, Maass, Rogers & Lindsay, P.A.  
340 Royal Poinciana Way, Suite 321  
Palm Beach, Florida 33480

### UNITY OF TITLE AGREEMENT

THIS UNITY OF TITLE AGREEMENT ("Agreement") is made and entered into as of this 22<sup>nd</sup> day of December, 2016, by and between JOHN L. THORNTON and MARGARET B. THORNTON ("Owner") and the TOWN OF PALM BEACH, a municipal corporation existing under the laws of the State of Florida ("Town").

### RECITALS

WHEREAS, Owner is the fee simple title holder of the following described property situated, lying and being in the Town of Palm Beach, Palm Beach County, Florida (the "Property" or "Properties"):

#### Parcel 1:

Being that part of the South 300 feet of the North 649 feet of Government Lot 1 in Section 2, Township 44 South Range 43 East, Palm Beach County, Florida, lying between the waters of the Atlantic Ocean and the center line of Ocean Boulevard. Subject to the right-of-way of Ocean Boulevard.

Parcel Identification Number: 50-43-44-02-00-001-0051; and

#### Parcel 2:

Lot 2, REPLAT OF THE REPLAT OF THE EMERALD, according to the Plat thereof, recorded in Plat Book 45, Page 177, of the Public Records of Palm Beach County, Florida.

Parcel Identification Number: 50-43-44-02-09-000-0020; and

WHEREAS, the Properties are physically contiguous and Owner is seeking a permit to join both Properties together as a single residence; and

WHEREAS, it is the desire of the Owner, in consideration of the receipt of such permit to create this Unity of Title, unifying the Properties into one single parcel so that the zoning requirements and other requirements of the Town will be met; and

WHEREAS, there are no mortgages or other encumbrances of record on the Property and all real estate taxes for the year 2016 and previous years have been paid.



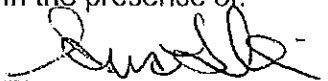
NOW, THEREFORE, in consideration of Ten and 00/100 (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the Town agree as follows:

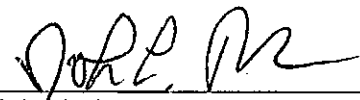
1. The Properties shall be considered as a single parcel of land.  
No portion of said single parcel of land shall be sold, transferred, devised, leased or assigned separately from the whole of the Property, except upon prior written approval of the Owner and the Town.
3. In the event a request is made in the future that this Unity of Title be released, should the two parcels otherwise be independently in compliance with the Town's comprehensive plan, zoning ordinance and the regulations of the Town, the Town shall, upon written request by the Owner, their successors or assigns, execute a recordable termination of this Unity of Title.
4. This Agreement shall be a covenant running with the Properties and shall be binding upon the Owner, their successors and assigns, and shall constitute notice to all persons whomsoever of the terms and provisions herein set forth.
5. This Agreement shall be recorded in the public records of Palm Beach County, Florida.

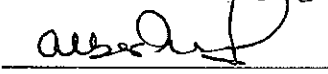
IN WITNESS WHEREOF the parties have executed and entered into this Agreement as of the date set forth above.

Signed, sealed and delivered  
In the presence of:


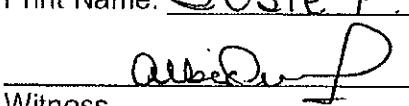
OWNER:

  
Witness  
Print Name: SUSIE F. ROJAS

  
John L. Thornton

  
Witness  
Print Name: ALBERTO DUMIT

  
Margaret B. Thornton

  
Witness  
Print Name: SUSIE F. ROJAS  
  
Witness  
Print Name: ALBERTO DUMIT

*This*  
*Copy*  
*12/22/16*  
*Paul Castro*

Witness  
Print Name: Cheryl Kleen

Witness  
Print Name: Antonia M. Fabriz

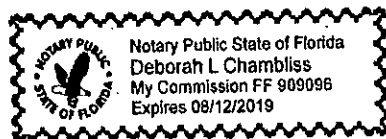
**RECOMMEND APPROVAL:**

12/22/16  
Paul Castro  
Paul Castro, AICP  
Zoning Administrator

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of Dec., 2016, by JOHN L. THORNTON and MARGARET B. THORNTON, who are personally known to me or who have produced \_\_\_\_\_ as identification.



TOWN:

TOWN OF PALM BEACH

By: Thomas G. Bradford  
Thomas G. Bradford  
Town Manager

ATTEST:

Susan A. Owens  
Susan A. Owens  
Town Clerk

APPROVED AS TO LEGAL FORM AND  
SUFFICIENCY:

John C. Randolph  
John C. Randolph  
Town Attorney

)  
) SS:  
)

Deborah L. Chambliss  
Signature of Notary Public

Deborah L. Chambliss  
Printed Name of Notary Public

Commission Number \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF PALM BEACH

SS:

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of December, 2016, by Thomas G. Bradford, the Town Manager of the TOWN OF PALM BEACH, a municipal corporation existing under the laws of the State of Florida, on behalf of the corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.



Kathleen Dominguez  
Signature of Notary Public

Kathleen Dominguez  
Printed Name of Notary Public  
FF 995620  
Commission Number

STATE OF FLORIDA

COUNTY OF PALM BEACH

SS:

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of December, 2016, by SUSAN A. OWENS, the Town Clerk of the TOWN OF PALM BEACH, a municipal corporation existing under the laws of the State of Florida, on behalf of the corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.



Kathleen Dominguez  
Signature of Notary Public

Kathleen Dominguez  
Printed Name of Notary Public  
FF 995620  
Commission Number

EXHIBIT "C"

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

Case No. 502017CA008154XXXXMB AA

100 EMERALD BEACH WAY LC,

Plaintiff,

vs.

JOHN THORNTON and  
MARGARET THORNTON,

Defendants.

ORDER ON MOTION OF DEFENDANTS JOHN AND MARGARET THORNTON  
FOR PARTIAL SUMMARY JUDGMENT ON COUNT II OF THE FOURTH AMENDED  
COMPLAINT AND COUNT VII OF THEIR COUNTERCLAIMS

THIS CAUSE came before the Court for special set hearing on March 7, 2019 upon the motion, filed on February 8, 2019, of defendants John and Margaret Thornton for partial summary judgment on Count II of the Fourth Amended Complaint ("4 AC") of plaintiff 100 Emerald Beach Way LC ("100 LC") and Count VII of their Counterclaims. The Court having heard the arguments of counsel, and being otherwise fully advised in the premises, it is:

**ORDERED AND ADJUDGED** that defendants' motion is granted in part, insofar as the Court has found that under *Avery Dev. Corp. v. Vill. By The Sea Condo. Apts., Inc.*, 567 So. 2d 447, 448-49 (Fla. 4th DCA 1990):

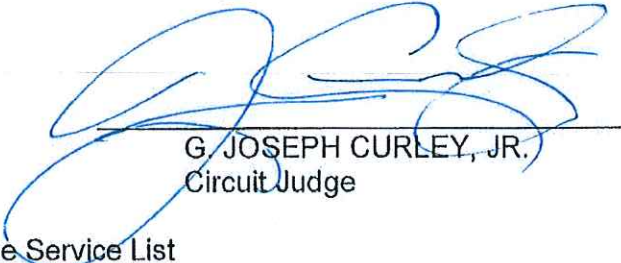
1. The terms of the written and express ingress and egress easement held by 100 LC are clear and unambiguous;
2. The intention of that easement's grantor is clear and unambiguous;

3. Said easement is exclusively for ingress and egress and does not mention or allow for vehicular parking on the private property of the movant defendants, including that portion of the private street, Emerald Beach Way, that they own;

4. Said easement does not permit plaintiff or plaintiff's business invitees or guests to enter the movant defendants' private property in order to park, paint walls, trim trees, accept deliveries from vendors or other tradespeople, or for any other purpose; and it is further:

**ORDERED AND ADJUDGED** that, notwithstanding the Court's ruling with respect to the aforementioned ingress and egress easement and the fact that 100 LC has not pled or mentioned an implied easement in the 4 AC, the motion is denied in part. There remains an issue in this action as to whether or not 100 LC holds an implied easement over Emerald Beach Way, as set forth in 100 LC's Twentieth Affirmative Defense to the pending Counterclaims. *See Highland Constr., Inc. v. Paquette*, 697 So.2d 235, 236 (Fla. 5th DCA 1997).

**DONE AND ORDERED**, in West Palm Beach, Palm Beach County, Florida, on this 8 day of April, 2019.

  
G. JOSEPH CURLEY, JR.  
Circuit Judge

Copies to Counsel of Record: see Service List

### SERVICE LIST

Jeffrey Schneider, Esq.  
Jezabel P. Lima, Esq.  
Levine Kellogg Lehman  
Schneider & Grossman, LLP  
201 South Biscayne Blvd.,  
22<sup>nd</sup> Floor  
Miami, FL 33131  
305-403-8788 Phone  
305-403-8789 Fax  
[jcs@Lklsq.com](mailto:jcs@Lklsq.com)  
[jl@Lklsq.com](mailto:jl@Lklsq.com)  
*Counsel for Plaintiff*

Robert D. Critton, Jr., Esq.  
J. Chris Bristow, Esq.  
Critton, Luttier & Coleman, LLP  
303 Banyan Boulevard, Suite 400  
West Palm Beach, FL 33401  
561-842-2820 Phone  
561-253-0164 Fax  
[rcritton@lawclc.com](mailto:rcritton@lawclc.com)  
[jcbristow@lawclc.com](mailto:jcbristow@lawclc.com)  
[czaguirre@lawclc.com](mailto:czaguirre@lawclc.com)  
*Counsel for Defendants John  
Thornton and Margaret Thornton*

David A. Greene, Esq.  
Fox Rothschild, LLP  
777 South Flagler Drive  
Suite 1700 West Tower  
West Palm Beach, FL 33401  
561-835-9600 Phone  
*Counsel for SMM Realty, LLC*

Alfred A. LaSorte, Jr., Esq.  
Shutts & Bowen LLP  
City Place Tower  
525 Okeechobee Blvd.  
Suite 1100  
West Palm Beach, FL 33401  
561-835-8500 Phone  
561-650-8540 Cell  
561-650-8530 Fax  
[alasorte@shutts.com](mailto:alasorte@shutts.com)  
*Counsel for Plaintiff*

James J. McGuire, Esq.  
Barton, LLP  
Graybar Building  
420 Lexington Avenue, 18<sup>th</sup> Floor  
New York, New York 10170  
212-687-6262 Phone  
212-885-8825 Direct  
646-236-4582 Cell  
[jmcguire@bartonesq.com](mailto:jmcguire@bartonesq.com)  
[mberube@bartonesq.com](mailto:mberube@bartonesq.com)  
*Admitted Pro Hac Vice  
Counsel for Defendants John Thornton  
and Margaret Thornton*



EXHIBIT "D"





EXHIBIT "E"





EXHIBIT "F"





EXHIBIT "G"

Example of illegal parking  
despite no parking signs





EXHIBIT "H"

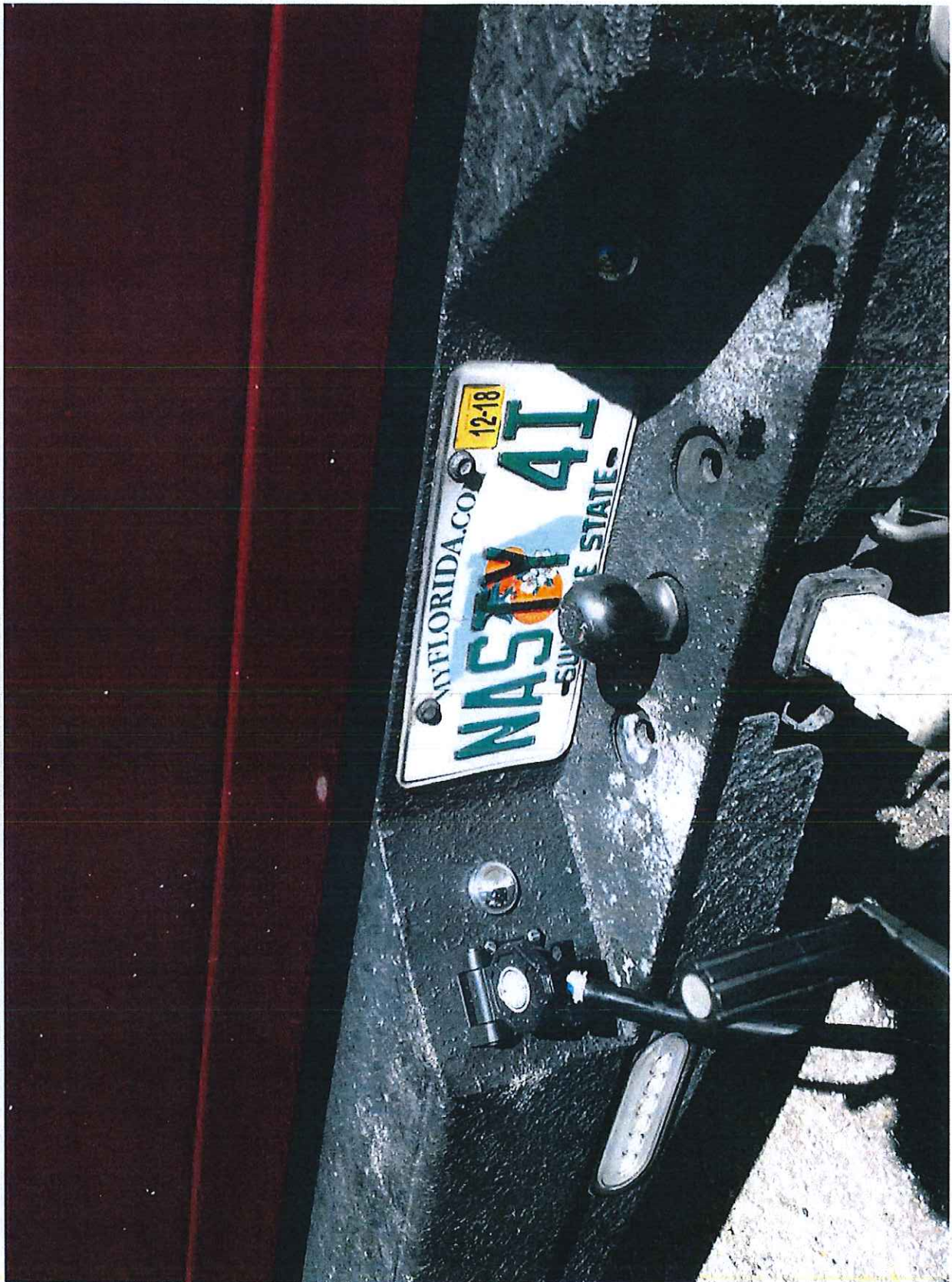




EXHIBIT "I"

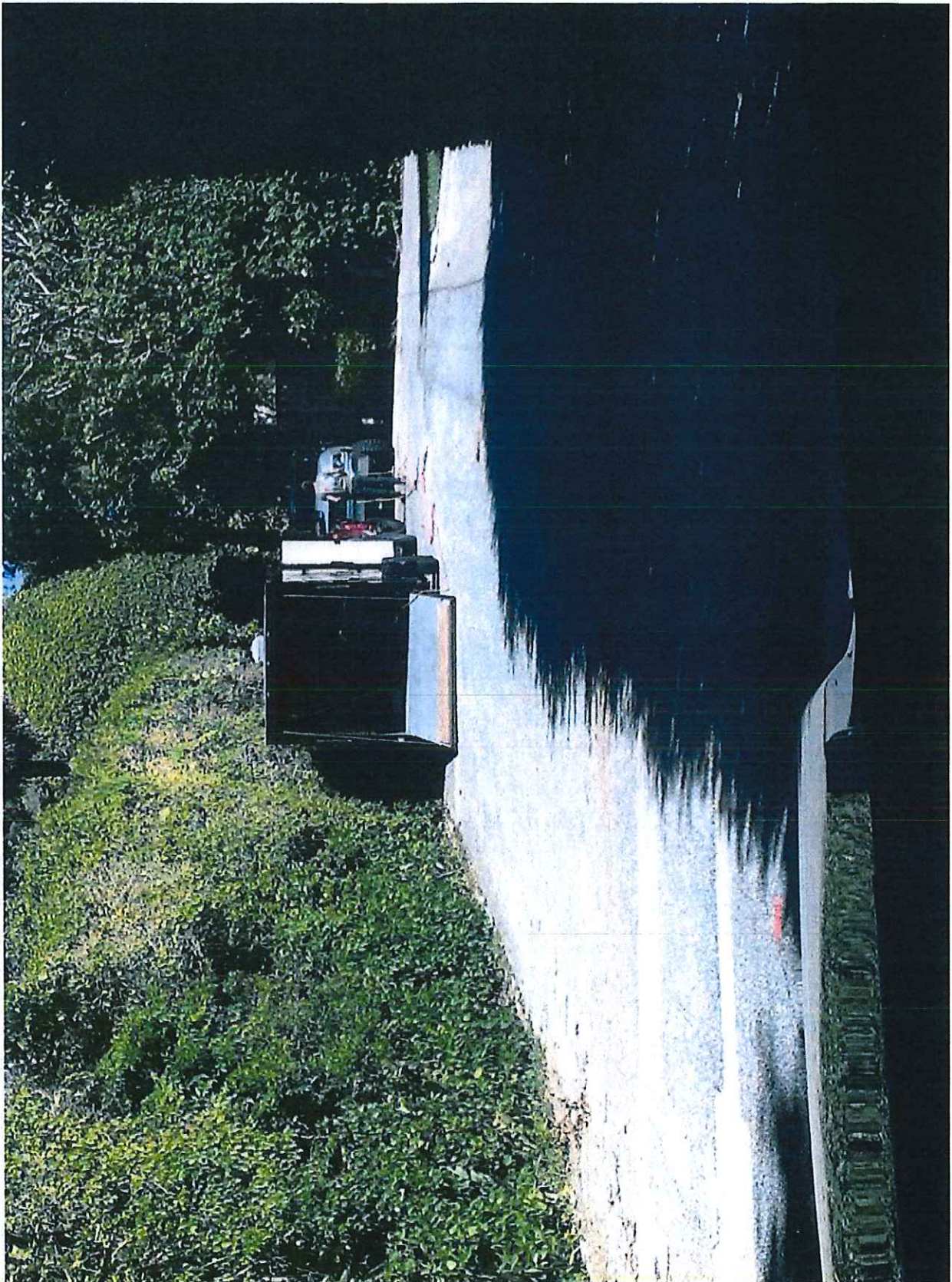




EXHIBIT "J"





EXHIBIT "K"





EXHIBIT "L"





EXHIBIT "M"

Tinted windows





EXHIBIT "N"

parked at night @ 8pm  
(summer)



EXHIBIT "O"

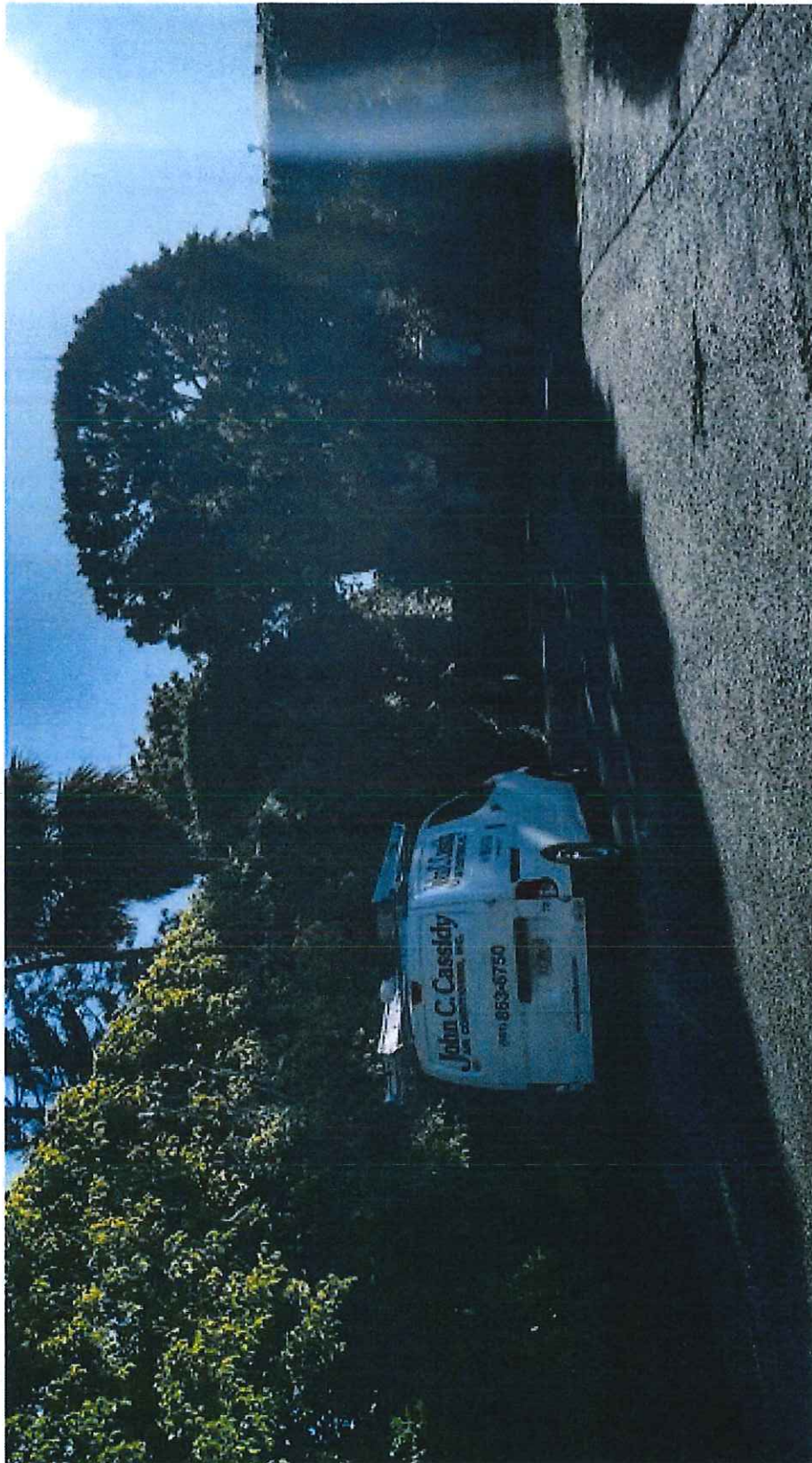
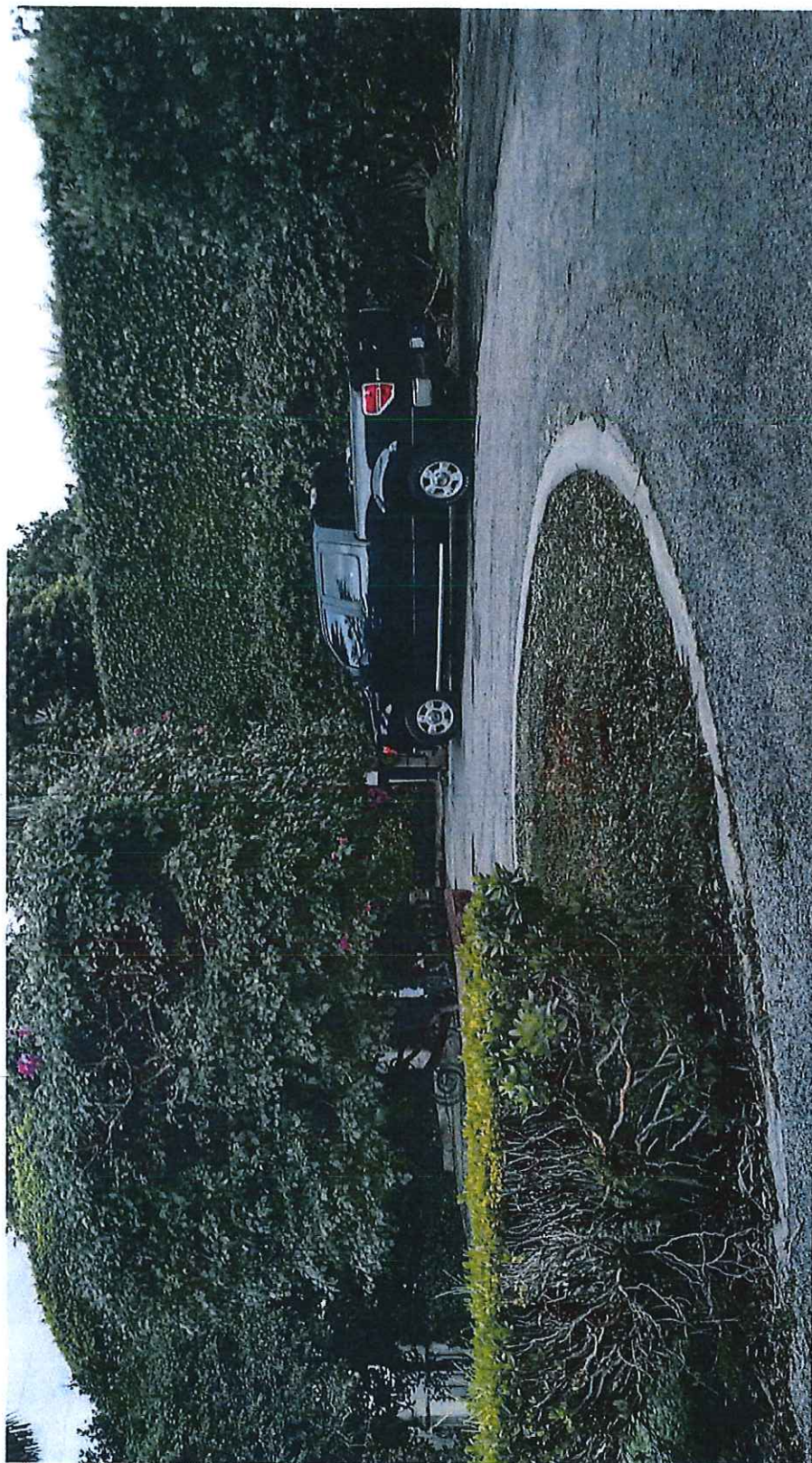




EXHIBIT "P"





## EXHIBIT "Q"



**TOWN OF PALM BEACH**  
 Planning, Zoning & Building Department  
 360 S County Rd  
 Palm Beach, FL 33480-6735

Permit No.: **B-19-78890**

Permit ID: **411681**

Issue Date: **04/23/2019**

Expiration Date: **10/20/2019**

Inspection Scheduling: (561) 227-7090

Web: [townofpalmbeach.com/permits](http://townofpalmbeach.com/permits)

P  
E  
R  
M  
I  
T

Contractor: **JOHN THORNTON-OWNER/BUILDER**

Address: **1236 S OCEAN BLVD**

Suite: **PALM BEACH FL 33480-5006**

Phone: **(202) 460-4084**

Fax:

Qualifier: **JOHN THORNTON**

Certification No:

Project Address: **1236 S OCEAN BLVD  
PALM BEACH FL 33480**

PCN: **50-43-44-02-00-001-0051-00**

Owner's Name: **THORNTON JOHN L &**

Owner's Address: **1236 S OCEAN BLVD  
PALM BEACH FL 33480-5006**

Construction Valuation: **1000**

Sq Footage:

Permit Type: **S-SIGN**

Description: **PLACEMENT OF SIGNS**

**PERMIT FEES:**

CONST PLAN REVIEW BLDG UPD	75.00
BAIF FUND STATE PL REV UPDATE	0.54
HMWNR RECOV STATE PL REV UPD	0.54
BAIF FUND STATE ISSUE UPDATE	1.26
HMWNR RECOV STATE ISSUE UPD	1.26

**PERMIT FEES:**

BAIF FUND TOWN PL REV UPDATE	0.06
HMWNR RECOV TOWN PL REV UPD	0.06
BAIF FUND TOWN ISSUE UPDATE	0.14
HMWNR RECOV TOWN ISSUE UPD	0.14

<b>Total Fees:</b>	<b>79.00</b>
--------------------	--------------

**WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.**

The issuance of this permit is conditioned upon compliance with any approvals granted by the Town Council, Landmarks Preservation Commission, and/or Architectural Commission. Any misrepresentation of facts pertaining to required permit information and/or the required design professional's plans shall be considered prima-facie evidence and be cause for permit revocation.





## PLANNING, ZONING & BUILDING DEPARTMENT TOWN OF PALM BEACH

### **HOW TO SCHEDULE or CANCEL INSPECTIONS**

**For permits issued on or after 10/5/2008:** You may schedule an inspection for your requested inspection date no later than 6:00 a.m. on the date of the inspection.

**By telephone (available 24/7):** Call 561-227-7090.

At the prompt, enter your six-digit Permit ID # (found on the top right of your permit). Confirm that you have entered the correct permit. Select one of the following and follow the prompts as you move through the system.

- 1 – Details of the permit
- 2 – Retrieve inspection results
- 3 – Schedule or cancel inspections
- 4 – Select another permit
- 5 – Returning to the main menu

**On the Web (available 24/7):** Go to [townofpalmbeach.com/permits](http://townofpalmbeach.com/permits)

Select Citizen Services\Permits & Inspections. Login in as a registered user (or register as a new user)

Select "Schedule Inspections" to schedule or cancel an inspection

Search for your permit. Enter the date for each inspection "Submit"

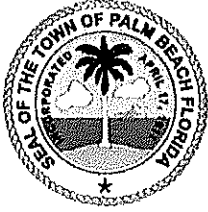
**Note:** Inspections may be canceled by phone or web up to 7:00 am the same day. Inspections cancelled prior to 7:00 am are not subject to re-inspection fees. To cancel an inspection prior to 9:00 am, or to get an approximate time for your inspection, contact the inspector assigned the inspection (shown on the web):

Mike Olbrych	227-6416	James Lydon	227-6417
Brian Thomas	227-6418	Joseph Fema	227-6419
Vacant	227-6420	Craig Johns	227-6421
PublicWorks Inspector	838-5440	Hybyrd Adjunct Inspectors	547-5701

**To cancel an inspection after 9:00 am, contact the office staff at 561-838-5431.**

**NOTICE:** In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county, and there may be additional permits required from other governmental entities such as water management districts, state agencies, or federal agencies.

It is the owner's responsibility to comply with the provisions of F.S. 469.003 regarding asbestos, and to notify the Department of Environmental Protection of his or her intentions to remove asbestos, when applicable, in accordance with state and federal law.



## **TOWN OF PALM BEACH**

360 S. County Road, Palm Beach, FL 33480

(561) 838-5431 – Fax (561) 835-4621

[www.townofpalmbeach.com](http://www.townofpalmbeach.com)

### **NOTICE OF “3-STRIKE” CONSTRUCTION PARKING RULE**

The Town wants you to be as informed as possible about local regulations that could affect your ability to continue working at individual job sites. All contractors should understand and comply with the “3-Strike Construction Parking Rule.” If and when a contractor should receive three parking tickets/strikes at a job site for parking non-authorized construction vehicles on the street, the PZ&B Director is obligated by local code to issue a Stop Work Order. The rules are structured as follows:

1. Vehicles belonging to or being used by personnel working on or visiting a construction site are to be parked off the roadway and on the private site if at all possible.
2. If the contractor shows that all vehicles cannot be parked on the site, he can apply for construction parking permits authorizing up to three construction related vehicles to park on the street where legally permissible if approved by the Town. You can make such application at the PZ&B Department (Town Hall). The property owner must acknowledge understanding the 3-strike for construction parking rules and the consequences for noncompliance.
3. Unauthorized/excessive vehicles parked on Town streets at construction sites can be ticketed by either Public Works or the Police Department.
4. If and when a contractor receives three tickets/strikes at any individual site, the PZ&B Director is to issue a Stop Work Order.
5. An appeal process (at the staff level) is built into the rules. Appeals, if filed, must be made in writing within seven (7) days of ticket issuance.
6. Once a Stop Work Order has been issued, work is not to recommence unless the contractor requests that the Town Council reinstate the building permit.
7. The Town Council has broad discretion in determining what, if any, conditions (including additional fines) are to be placed on reinstatement. Please note that the Town Council meets once monthly. Long work stoppages could potentially occur.

You are encouraged to police your construction site(s) very carefully to see that three strikes never occur. If that should happen, you should expect that a STOP WORK order will be issued. That action, regrettable as it may be, is now an automatic procedure. Please govern your crews and manage your parking plan accordingly. Thank you.

RECEIVED

APR 23 2019

Town of Palm Beach  
PZB Dept

12"



18"

**JOB SITE COPY**  
SUBJECT TO COMPLIANCE WITH  
ALL CODES AND ORDINANCES  
IN EFFECT IN THE TOWN OF  
PALM BEACH, FLORIDA

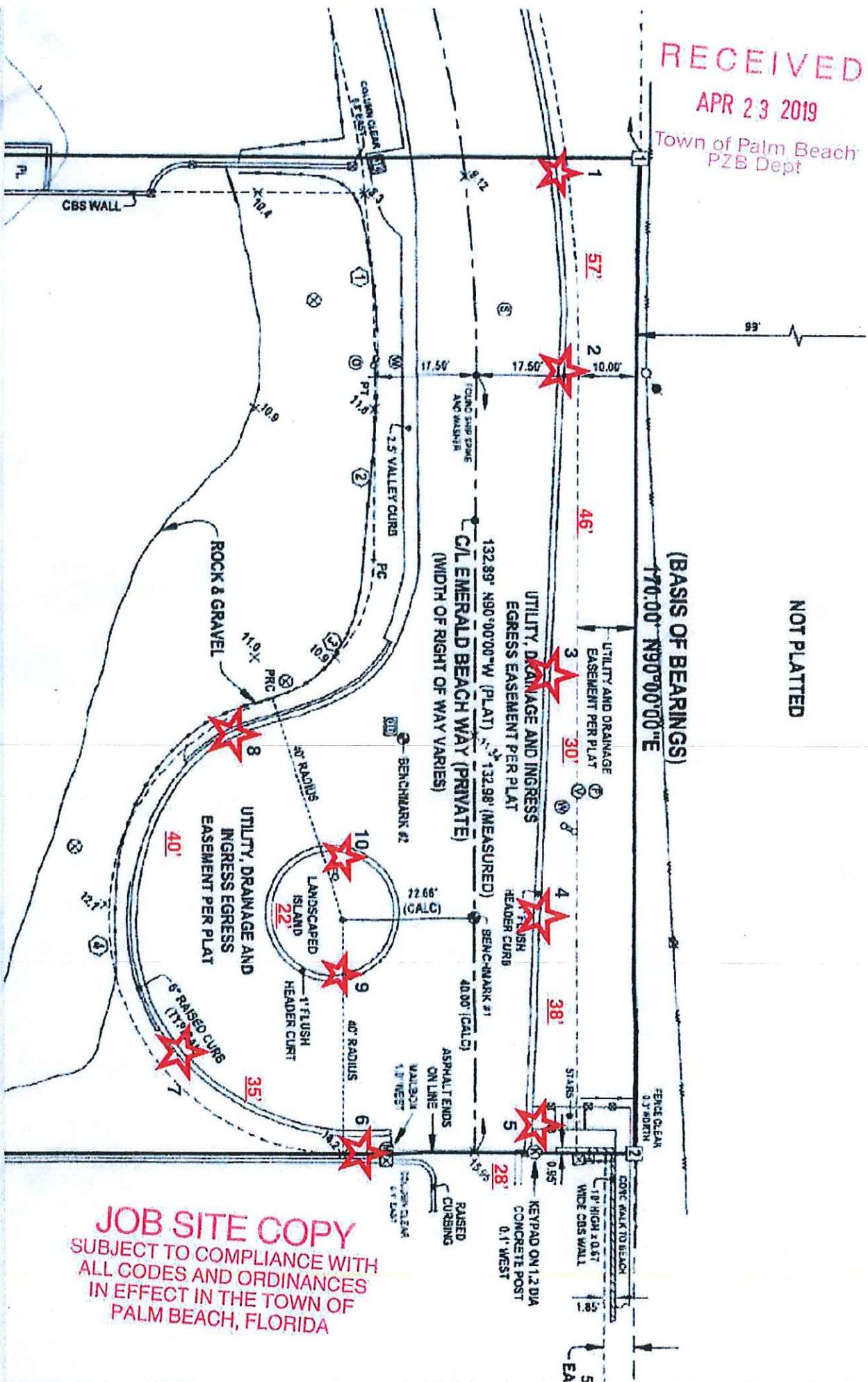
REVIEWED

APR 22 2019

TPB PLAN EXAMINER

Town of Palm Beach  
PZB Dept

**(BASIS OF BEARINGS)**



**JOB SITE COPY**  
SUBJECT TO COMPLIANCE WITH  
ALL CODES AND ORDINANCES  
IN EFFECT IN THE TOWN OF  
PALM BEACH, FLORIDA



EXHIBIT "R"









